



Scottish
Human Rights
Commission

Scottish Human Rights Commission

Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments

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The views expressed in this report are the views of the authors, and do not necessarily reflect the views of the Scottish Human Rights Commission.

Forward

The Scottish Human Rights Commission (the Commission) considers that Human Rights Impact Assessments (HRIAs) are one of the key ways in which human rights and a culture of human rights can be systematically mainstreamed and embedded into the policies, practices, procedures and priorities of government, public and private bodies.

There is now considerable international experience of HRIAs used by public authorities, civil society, businesses and other bodies to examine the impact of a broad range of policies and practices on human rights. In Scotland, as in the rest of the UK, HRIA methodologies have been developed by public bodies largely as an extension of the more widely used Equality Impact Assessments. Among these public bodies there is limited awareness of the range of HRIA practices internationally and the lessons that can be learned from international experience.

While the range of HRIA methods, toolkits and resources in both the UK and internationally is growing there has been little assessment or critique of successful and unsuccessful methodologies and practices. Organisations considering carrying out a HRIA have a large number of models they can adopt or adapt but it is not always clear which of these will be most relevant to their situation. Although HRIAs can be an important tool for improving policy making processes, a poor HRIA may become little more than a tick box exercise with limited impact on the human rights of the most vulnerable or disadvantaged.

The Commission has therefore commissioned this research for two primary reasons. Firstly to provide a comprehensive information base regarding current practice in undertaking HRIAs, both domestically and internationally. Secondly, to guide future thinking on HRIAs and assist organisations develop HRIA methodologies and practices that will be appropriate to their particular area of work.

How to Use this Report

This report reviews a great deal of existing practice in the field of Human Rights Impact Assessment (HRIA) and makes detailed recommendations for how future HRIAs could be conducted.

This report is intended as a resource from which readers can access key findings, particular issues of interest and further resources on key topics. In order to help readers find the most appropriate section for their needs the report includes:

- [An executive summary](#) which sets out key findings and recommendations and has embedded hyperlinks to sections of the report which deal with those issues in more detail
- [A table of contents](#) which also contains embedded hyperlinks to the relevant sections of the report
- A [Compendium of Resources for Human Rights Impact Assessment](#) which is thematically arranged and includes hyperlinks to the resources themselves where they are available
- Hyperlinks are also imbedded throughout the text of the report to allow readers to navigate within the report and to key HRIA resources that are highlighted
- **Recommendations (in pink)**, **Examples of good practice (in blue)** and **quotes from experts and important conclusions (in orange)** are boxed and colour coded throughout the report for ease of reference

Executive Summary and Recommendations

This report provides an over-view of existing practice in Human Rights Impact Assessment (HRIA) in the UK and internationally. (A section by section over-view of the report is provided in [section A](#))

The report concludes that there is considerable variation in the complexity and quality of both HRIA methodologies and the resulting assessments. With some exceptions HRIA methodologies in the UK have tended to be fairly simple and focus on legal compliance with the Human Rights Act. HRIAs in the UK have been carried out as part of combined Equality and Human Rights Impact Assessments. International experience has been more varied and has included some extremely detailed assessments, which have covered social, economic and cultural rights in addition to the civil and political rights considered in the UK.

The report analyses existing practice and identifies an eight step methodology for carrying out HRIAs:

1. A screening stage (performing a preliminary check on the proposed policy to determine whether or not a full-scale impact assessment is necessary)
2. A scoping stage (the initial questions that need to be asked once the decision to undertake a full HRIA has been undertaken)
3. Evidence gathering
4. Consultation
5. Analysis
6. Conclusions and Recommendations
7. Publication
8. Monitoring and review

Successful methodologies are very context specific but the report makes a series of general recommendations for developing an effective methodology. It also makes recommendations for implementing HRIA methodologies and finally highlights some strategic questions for organisations introducing HRIAs. These are all set out below:

The human rights framework used for HRIA in Scotland

Organisations carrying out HRIAs in Scotland should carefully consider the human rights frameworks used. This should include the desirability of going beyond the strict domestic legal compliance focus of the current Human Rights Act approach – i.e. they should consider going beyond the floor of compliance and towards the ceiling of human rights fulfilment. Beyond the Human Rights Act, consideration should also be given to:

- The International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; The Convention on the Elimination of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and

other treaties depending on the subject – such as those related to refugees, race discrimination, access to information and participation in environmental decision making.

Recommendations for HRIA methodologies

These recommendations relate to the eight steps of the HRIA process. Existing HRIAs do not always conform to these recommendations and so, if implemented, they would significantly enhance existing practice.

At the same time, it is recognised that the recommendations and illustrations of good practice contained in this report represent a high and exacting standard. In practice organisations will need to consider the potential scope, scale and severity of the impact of a policy or practice in deciding what degree of e.g. evidence gathering, consultation etc. is reasonable and proportionate in any given assessment.

These recommendations are based on the UK context where HRIAs are likely to be carried out by public authorities rather than, for example, NGOs or businesses. However most are relevant to HRIAs carried out by other organisations. Detailed consideration of issues for each step and further more detailed recommendations can be accessed via the hyperlinks in the main report.

1. Screening

- There should be a series of context-specific questions available to the decision-maker to prompt their thinking about whether a full HRIA is appropriate;
- Consideration should be given to sources of information/expertise through which screening decisions can be tested e.g. selective secondary research and expert opinions;
- Training in screening processes should be a pre-requisite of making screening decisions;
- A decision not to carry out a Human Rights Impact Assessment should be signed off at a senior level within the organisation;
- The decision, along with the reasons behind it should be published.

2. Scoping

A HRIA scoping process should set out:

- Who will undertake the assessment;
- A description of the policy, its aims and why it has been developed;
- Who is affected by the policy;
- Possible human rights impacts of the proposal and indicators for how to measure those impacts;
- The evidence that exists to inform the assessment and any further evidence that needs to be found;
- The timescale of the assessment.

3. Evidence gathering

- HRIA toolkits and guidance should include comprehensive sections on the sort of evidence that might be required (with specific examples) and where that evidence can be found;
- HRIA training should include training in appropriate research methodologies;
- Organisations should consider identifying someone to collect information as it becomes available. Smaller organisations could pool resources to develop a shared database;
- Ongoing monitoring and review of HRIA research methods and application should be undertaken to identify and disseminate good practice.

4. Consultation

- Consultation processes should ensure there is adequate opportunity to respond and for those responses to be taken into account in the formulation and modification of policy;
- HRIAs should consider the full range of people who should be targeted by consultation processes (e.g. staff, service users, those affected by the policy and other stakeholders) and the best methods for consultation;
- People undertaking HRIAs should have an understanding of the specific barriers to consultation that arise for particular groups and methods for dealing with them through appropriate training, and context specific guidance;
- HRIA forms should ask for evidence of consultation with stakeholders not simply that consultation has taken place.

5. Analysis

- Human Rights Indicators should be utilised as the basis for analysis;
- Indicators or questions should be developed at the scoping stage in order to ascertain what evidence should be gathered and then again at the analysis stage to determine whether there has been a human rights impact;
- Indicators need to be developed which are context specific and linked to the human rights framework which is being employed;
- Indicators should be designed to assist non-legal specialists in understanding the human rights obligations which are at the core of the assessment process.

6. Conclusions and recommendations

- Making conclusions and recommendations should be highlighted as an integral part of the process of HRIA;
- HRIA toolkits and forms should be produced which include detailed guidance and questions that must be answered on the type of recommendations that might be appropriate including changes to the policy and/or mitigating actions;
- Where negative human rights impacts are identified then failure to recommend any action as a result should be fully justified;
- Where action is required, the person who will implement the recommendations should be identified, as well as the fact that they have been notified of the need for the change and the timescale within which this change will occur;
- Recommendations should be signed off by a senior person in the organisation

undertaking the assessment, preferably with responsibility for decisions on the policy changes.

7. Publication

- All HRIAs should be published including screening processes, full assessments and recommendations for action;
- HRIA forms should be designed in order to promote transparency and provide a full record of the impact assessment process;
- Individual HRIAs should be easy to access via a website and should be simple to find with a basic Google or other search engine search;
- Consideration should be given to circulating draft HRIAs for comment to those involved in the consultation process of the HRIA.

8. Monitoring and review

- Post –assessment internal monitoring and review procedures should be set up to consider whether recommendations have been implemented and what the ongoing impacts of the policy or practice are.
- The Procedures should specify:
 - who is responsible for monitoring the policy
 - the date when the policy will be reviewed and what evidence would trigger an early review
 - if there is any data which needs to be collected and how often it will be analysed.
 - how to continue to involve relevant groups and communities in the implementation and monitoring of the policy.

Successful implementation of the HRIA methodology

Toolkits and guidance should incorporate:

- Specific examples that are relevant to the organisation that will be carrying out the assessment;
- Illustrations showing how HRIAs have led to improved policy;
- Open questions that make the people completing the assessment think about the human rights implications of a policy that might not be obvious;
- Examples of how rights need to be balanced with each other and with other legitimate aims.

Training should cover:

- Key principles of human rights and equalities, including specific issues that might be expected to arise in the specific organisation undertaking the assessment;
- Regular opportunities to review and refresh knowledge and understanding of human rights, including opportunities to reflect on previous HRIAs and what might have been done differently.

Institutional support should include:

- Training for senior managers to ensure they understand and support the assessment process:

- Establishment of resource databases which provide the kind of quantitative information that is necessary to support informed analysis;
- Guidance in terms of finding other sources of qualitative and quantitative evidence;
- Access to internal or external human rights expertise to assist in decision-making where complex human rights issues are raised.

Recommendations on Specific Forms of Human Rights Impact Assessment

At various place in the report, specific recommendations are made with regard to specific forms of impact assessment, these are set out below with links to relevant sections.

Equality and human rights

- Human Rights Impact Assessment should always be combined with Equalities Impact Assessment.

Health and human rights

- Organisations planning integrated health and human rights impact assessments should give serious consideration to utilising an explicit right to health based methodology.

Business and human rights

- **Encourage practice** – Government support to business (e.g. through public procurement, taxpayer support, export guarantees etc) could be made conditional on HRIAs being undertaken.
- **Mandatory HRIAs** – The Companies Act 2006 could be amended to require companies to undertake an annual human rights impact assessment.
- **Encourage transparency** – Business could be encouraged to publish HRIAs in full unless publication would create legal or political risks for the company.
- **Independent Scrutiny of HRIAs** – Consideration should be given to the creation of an effective form of independent scrutiny that would increase the standards and credibility of existing practice in undertaking HRIAs.

Environment and Human Rights

- Organisations planning integrated environmental and human rights impact assessments should ensure that there is sufficient human rights expertise in the assessment team and that human rights are not marginalised in the assessment process.

Strategic questions for organisations planning HRIAs

What type of assessments does the organisation wish to promote?

- Organisations planning HRIAs should decide whether to focus on a small number of detailed HRIAs or a larger number of less complex HRIAs. This may depend on the type of organisation undertaking the HRIA.

What level of support will be needed

- Organisations planning HRIAs should ensure that they have the on-going support they require in order to carry out effective assessments.

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A. Introduction and Overview

1. Structure and Purpose of the Report

This report is a strategic document intended primarily to drive future policy formulation with regard to HRIAs. The report therefore:

- introduces the concept of impact assessment, highlighting its potential benefits and limitations ([Section B](#))
- summarises and analyses existing practice in human rights impact assessment in the UK and internationally ([Section C](#))
- identifies eight key methodological steps for HRIAs and recommendations for how those steps should be implemented ([Section D](#))
- provides two illustrations of the processes by which human rights impact assessment might be undertaken ([Section E](#))
- discusses the advantages and disadvantages of integrated impact assessments, and how HRIAs should be integrated with equality impact assessments and could be integrated with health and environmental impact assessments ([Section F](#))
- concludes with some strategic questions for organisations planning to undertake HRIAs ([Section G](#))

This report provides generic guidance on how HRIAs should be undertaken (Section D) and illustrations of how the guidance might be utilised (Section E). But this report is not an attempt at a comprehensive methodological blueprint for undertaking any individual HRIA. One of the key findings of our report is that **HRIA methodologies are very context specific**. The report does not attempt to deal in depth with the issues relating to HRIAs in relation to every issue and actor. However it does make recommendations for HRIA best practice and identify questions organisations planning a HRIA need to ask themselves. A good deal of further work will be required to develop methodologies that are appropriate in particular contexts.

The report contextualises its analysis throughout with a series of examples of how principles might be applied, which are drawn from among the Commission's strategic priorities. The report also poses questions about how, by whom, when and why HRIAs should be undertaken. The answers to these questions will require detailed ongoing consideration if HRIA is to achieve its full potential. This report provides a sound basis upon which to ground those discussions.

2. Sources Utilised in the Report

This report analyses the following sources:

- **UK HRIA and Equality Impact Assessment Materials** – including guidelines and toolkits for conducting EIAs and combined EIAs and HRIAs and the assessments produced using these toolkits.
- **International Human Rights Impact Assessment Materials** including HRIAs (both published and unpublished) and guidelines and toolkits on the conduct of HRIAs
- **Commentaries and Critical Analysis** - Academic articles, Policy Papers and other commentary on the conduct of HRIAs and EIAs
- **Other Relevant Materials** - Papers and other guidance concerning the development of human rights indicators (e.g. by relevant UN, EU bodies); relevant guidance on standards of consultation beyond that contained in the HRIAs set out above
- **Discussions with Practitioners and Commentators** – We have held discussions with a number of practitioners and commentators who have been involved in the practice of HRIAs, have designed methodologies, or who have critically examined how they have functioned in the UK and internationally.

A [Compendium of resources for Human Rights Impact Assessment](#) is attached as an appendix to this report.

B. Introduction to Human Rights Impact Assessment

This section introduces the concepts of ‘impact assessment’ and ‘human rights impact assessment’ and highlights some of the key features of the state of the art in HRIA.

1. What is Impact Assessment?

Impact assessment is an increasingly widely-adopted tool for evaluating the effect of policies, practices, programmes and regulatory interventions across a wide range of different fields.² The term is now widely used at both international and national level by a variety of different actors including national and local governments, non-governmental organisations and inter-governmental organisations. The [International Association for Impact Assessment \(IAIA\)](#) promotes the practice of impact assessment and collects many resources on the issues.

Internationally there are a huge range of types of impact assessment. At its 2006 International Conference, the IAIA listed over 50 different ‘topical streams’.³ The most relevant for our purposes include:

- Child Impact Assessment
- Environmental assessment and Strategic Environmental Impact Assessment
- Equality Impact Assessment
- Health Impact Assessment
- Poverty and Social Impact Analysis
- Regulatory Impact Assessment
- Social impact assessment

Definitions of all these types of impact assessments and links to further information about them are available at [Annex 1](#).

2. What is Human Rights Impact Assessment?

Human Rights Impact Assessments are a means of either

- ensuring the human rights implications of a policy are considered when that policy is being developed (*ex ante*); or
- of assessing the impact of policy or practice on the rights of those affected once the policy is implemented (*ex post*).

The aim of a HRIA is to ‘build attention to human rights into the project cycle’.⁴ Just as policymakers consider the environmental, social or economic impacts by conducting impact assessments to explore these issues, HRIAs aim to make policymakers consider the human rights impact of their policies.

It is helpful at this stage to highlight some key features of the state of the art in HRIA, before exploring the issues in more detail in the sections that follow

I. Human Rights Norms and Standards as the Basis for Assessment

HRIAs draw on internationally agreed definitions of human rights as set out in various international conventions and/or domestic law. We exclude from our analysis any impact assessments that do not utilise human rights norms and standards as the basis for impact assessment. For instance, there are a number of impact assessments that consider issues like corruption, peace and conflict and HIV/AIDS but do not use an explicit human rights approach and so are not considered here.⁵

Within the UK, the rights being assessed are almost always those set out in the Human Rights Act, which incorporates the European Convention on Human Rights into UK law. These are civil and political rights. The most notable exception is the Children’s Rights Impact Assessment model developed by Scotland’s Commissioner for Children and Young People, which draws on the UN Convention on the Rights of the Child.

International practice in HRIA incorporates a broader conception of human rights and has included a great deal of consideration of social, economic and cultural rights such as the right to health or right to education.

“HRIA ... equip women’s organizations with solid, evidence-based arguments with specific reference to why and how women’s rights are being violated”
Human Rights Impact Assessment in Practice: The Case of the Health Rights of Woman Assessment Instrument
Bakker et al, 2009, p.442

II. The Methodological Framework for Assessment

There is no single existing blueprint for undertaking HRIAs. This type of assessment is a policy mechanism that is in its infancy having been undertaken for less than a decade. There is no universally accepted definition of what a HRIA is, and no generally accepted framework for how they should be carried out has been developed.⁶ However in this report we identify **an overlapping consensus about eight key methodological steps** which are involved in the HRIA process. These are:

1. **A screening stage** (performing a preliminary check on the proposed policy to determine whether or not a full-scale impact assessment is necessary)
2. **A scoping stage** (the initial questions that need to be asked once the decision to undertake a full HRIA has been undertaken)
3. **Evidence gathering**
4. **Consultation**
5. **Analysis**
6. **Conclusions and Recommendations**
7. **Publication**
8. **Monitoring and review**

More detail about these stages can be found in [section D](#).

We also identify inconsistencies, weaknesses and discrepancies in different types of HRIA practice. To a certain extent, this can be put down to the origins of HRIA;

- At the international level HRIAs have been developed primarily on a voluntary basis by civil society organisations and so lack the formalisation and professionalization of a government initiative based on legal obligations.
- In the UK, HRIAs have largely been grafted on to existing EIA models in a piecemeal fashion by individual public authorities (see [Section C.2](#) below for detailed mapping of existing practice).

This practice is in contrast to other forms of impact assessment – in particular environmental impact assessment – where there is a much longer history of practice, legal entrenchment at the national and international level and much more widely recognised frameworks for how they should be carried out.

As we will explore in the sections which follow, there is **no ‘one size fits all’ model to impact assessment**. The appropriate model will depend on the nature of what is being assessed as well as a series of strategic decisions made about that assessment process. [Section C](#) below analyses individual HRIA as well as various toolkits and guidelines to highlight the best practice and key decisions needed when developing a model for a specific context.

III. Evidence-Based Analysis

A common thread in defining HRIAs by those undertaking them is the evidence-based nature of the exercise. All HRIAs are concerned with attempting to measure **actual or potential human rights impacts through some form of evidence-based analysis**. The techniques by which this should be done, and the situations in which such analysis will be appropriate are very much at the heart of the impact assessment process and will be explored in [Section D](#).

3. The Rationale for Undertaking HRIAs and Potential Dangers

Before considering the technical process by which a human rights impact assessment is conducted, it is important to put it in the context of what we hope to achieve. At the heart of human rights impact assessment is the idea that it might have a transformational power to change policies and practices and make peoples’ lives better. Below we therefore set out the potential opportunities presented by HRIAs for achieving this, as well as the potential dangers of the process.

There are a number of strong rationales for undertaking HRIAs. **First**, undertaking human rights impact assessments has important potential benefits for the enhancement of human rights protection including:

- **A holistic approach to human rights protection:** HRIAs address human rights issues during the process of policy development and reflection on existing practice. Therefore they have the potential to impact upon the ways that policy is developed and altered with regard to all individuals rather than only those who have the resources to bring cases to courts
- **Prevention rather than redress:** HRIAs have the potential to prevent human rights violations before they happen if they are undertaken at a point in the policy cycle before decisions are made and before people are affected
- **Impact on Institutional culture:** HRIAs enable human rights to be ‘mainstreamed’ within policymaking.⁷ This has the potential to affect both institutional cultures and individual decision-making more widely in organisations. Particularly where HRIAs are conducted by those who are directly responsible for making policy, there is the potential for real change to be implemented and for the attitudes of policymakers themselves to be changed so that they start to take into account human rights issues regularly in their decision-making processes.

“Human Rights Impact Assessment...helps to bring to the surface the human rights effects of policies and practices. By doing so, it adds transparency, public debate and accountability. It creates opportunities for...improved policies and initiatives. In the end it should add to the improvement of people’s lives.” Marike Radstaake, [Human Rights in Practice Conference Report 2006](#), p.7.

“Children’s rights impact assessments are a way of looking at decisions, practice, policy or legislation and identifying and measuring their effect on children and young people and their rights. Using the assessment, you can predict the impact of a decision on children, monitor it and, if necessary, avoid any negative impact. Or, if the negative impact cannot be avoided, compensatory or mitigating measures could be taken.”

[Scotland’s Commissioner for Children and Young People](#) (SCCYP)

- **Raising awareness** – HRIAs have the potential to raise awareness about human rights issues in affected communities and more widely in society.

Second HRIAs can have added benefits over and above other forms of impact assessment

- **Legal accountability** – Human rights represent legal obligations of States. HRIAs should compel ‘duty-bearers’ to act to protect the rights of ‘rights-holders’ and provide justifications for their policies in human rights terms.⁸
- **Specificity** - Human Rights Impact Assessment ensures engagement with specific rights, such as freedom of expression that might be ignored in less

legally grounded forms of assessment like social impact assessment.⁹ The human rights model may also require impacts to be disaggregated to specifically focus on the most vulnerable, poor and otherwise disadvantaged whose rights are most frequently overlooked.¹⁰

- **Participation and transparency** – the human rights model encourages participation in policy making by the people affected, enhancing empowerment, legitimacy and ownership of policy choices. It should also encourage transparency in the process of undertaking impact assessment.¹¹ However, we need to make sure that the rhetoric is reflected in the reality.

But there are also **dangers** that HRIAs may not have the positive impact on policy that might be hoped for:

- **Bureaucratisation** – Human rights impact assessment can become simply a bureaucratic process that must be overcome before a decision is made. It may come to value technique over substance and become a tick box exercise rather than a process that transforms policies, practices and institutional cultures. In worst case scenarios, HRIAs can be utilised in order to justify decisions that have already been made. The danger of Bureaucratisation is particularly prevalent where HRIAs are being undertaken by people who are not necessarily themselves experts in human rights (e.g. government officials, business people)¹² or where there is a lack of institutional appreciation of, or commitment to, the value of the role that human rights standards may play with regard to that institution's functions.
- **Cutting off debate.** HRIAs can become a mechanism for stopping further debate on an issue ('we have already considered the human rights implications of this when carrying out the impact assessment, there is no need to do it again').¹³
- **Measurement** – There is a danger that impact assessment will concentrate on short term impacts that are easily quantifiable rather than long term effects or impacts that are not easily anticipated.¹⁴ HRIAs could thereby be associated with a 'dumbing down' process on human rights fulfilment and on policy-making generally.
- **Legalisation** – There is a danger that a minimum level of compliance with legal obligations on human rights can be seen incorrectly as maximum goals ('as long as we can't be sued, we have done our job'). This would have the unfortunate effect of transforming the floor of human rights into the ceiling and may mean that consideration of the broader social impacts of policies may be marginalised or overlooked entirely.
- **Bad Decision Making** - Proper human rights impact assessment is a complex process. There is a danger that ill-equipped officials may (in good faith) make poor decisions

"The adversarial nature of human rights means that it is far more likely to be manipulated than other forms of impact assessment. Human rights can never glide comfortably down the mainstream. That would mean that the power game was over and that all who love justice have run out of dreams." *The Politics of Human Rights Protection: Moving Intervention Upstream With Impact Assessment*, Knippers Black, (2009) p.238

which may undermine the whole human rights framework. Since the passage of the Human Rights Act in 1998 we have seen a trend in the UK for unpopular decisions by public bodies to be blamed on 'human rights'. This could be exacerbated where decision-making is based on poor HRIA analysis which does not reflect true human rights values or standards.

This report will now go on to consider existing practice of human rights impact assessment ([Section C](#)). Throughout this report we will reflect on how the potential dangers of conducting HRIAs can be minimised and the potential benefits maximised so as to have the greatest potential to positively affect human rights issues on the ground.

C. Mapping out Existing Types of Human Rights Impact Assessments

1. Introduction

This section maps out existing HRIAs, methodological guidance and other relevant resources. **Section 2** maps out the existing practice of conducting **equality and human rights impact assessments in the United Kingdom**. Section C.2.I provides an overview of the nature and practice in the UK. This is followed by a discussion of the relationship between equality and human rights impact assessment (section C.2.II). Section 2.III catalogues the existing practice of undertaking human rights impact assessment in the UK and section 2.IV evaluates this practice.

In **Section 3** we first give an overview of the practice with regard to **international human rights impact assessment**. This starts with some overall comments and analysis on the nature of the practice at the international level (Section 3.I). This is followed by a catalogue of the main types of HRIA, (Section 3.II – 3.X). In this catalogue, we focus on two types of international HRIA which are strategic priorities for the Commission and where considerable resources have been developed – impact assessments of health and human rights (Section 3.IV) and Business HRIAs (Section 3.III).

Section 4 sets out some **key findings** from this mapping exercise. It discusses some of the key differences between different types of HRIA which are fundamental to understanding how future HRIAs of particular types should be conducted. It also explores some of the fundamental differences between UK and international practice in conducting HRIAs.

2. UK practice in Human Rights Impact Assessment

This experience is reviewed in the sections which follow.

I. Overview of the UK Practice

a. Equality Impact Assessment

In the UK, including in Scotland, the most common form of human rights-related impact assessment used to date has been Equality Impact Assessment (EIA). EIAs have taken the form of assessments looking specifically at race, gender or disability as well as combined Assessments looking at a range of equality issues.

EIAs in the UK have come about as a result of statutory duties on public authorities to prevent discrimination and promote equality on grounds of race, gender and disability. The Equality

Act passed in March 2010 extends these duties to three other equalities 'strands': age, religion or belief and sexual orientation and includes a new duty to consider equality on ground of socio-economic status.

Many public authorities have developed **methodologies for general Equality Impact Assessments covering all six equality strands in anticipation of the Equality Act**. Some also include socio-economic status (see text box). For example the Department of Health EIA tool requires policy makers to consider the impact of policy on grounds of age, disability, ethnicity, gender (including transgendered people), religion or belief, sexual orientation and socio-economic status.

Including socio-economic status

Coventry City Council's EIA tool includes a section which asks 'Does analysis by ward or area show that there are different parts of the city that are particularly disadvantaged or excluded?'

(Coventry City Council Equalities Department)

The Act does not specifically require public bodies to carry out Equality Impact Assessments; rather they are a tool to make sure that they are meeting their duties under the Act. EIAs involve assessing the likely (or actual) impact of policies and practices on people across the equalities strands. EIAs enable public bodies to identify potential negative impact of policies before they are introduced and take action to remove or mitigate them. Negative impacts that amount to unlawful discrimination must be removed. In addition **EIAs allow public bodies to identify opportunities to promote equality** that may have been missed or not fully utilised and take action to improve equality

The Equality and Human Rights Commission has produced [a detailed guide](#) to carrying out Equality Impact Assessments. The guide contains practical examples of the sorts of issues an

According to the EHRC [Equality Impact Assessment Guidance](#), a good EIA methodology (p.12):

- is focused on the equality goals and identifying the necessary actions
- has been checked by an expert in anti-discrimination and equality law
- is supported by training that looks at 'whys' as well as 'whats' and 'hows'
- documents any decision not to carry out an EIA, along with the reasons and evidence used
- includes sections relevant to different stages of the policy development process
- uses open questions, with examples as 'prompts'
- requires the collection and use of detailed information, including service level data and the results of consultation and/or involvement
- ensures appropriate consultation and involvement are in place to inform the EIA
- includes sign-off by those with authority in the organisation
- is explicitly used in decisions on the policy, and
- includes an action plan, including actions that monitor the actual impact of the policy once it has been implemented.

EIA might uncover and some of the policy changes that might come about as a result of an EIA.

An over-view of some of the other EIA tools that have been developed in the UK is included in the [Compendium of Resources](#) Appendix.

b. Human Rights Impact Assessment

In the UK, public bodies have also had to ensure that their policies and practices have been compliant with the Human Rights Act (HRA) since the Act entered into force in October 2000. However this requirement is limited to the rights covered in the Act and does not include economic, social and cultural rights (for example the right to the highest attainable standard of health or to an adequate standard of living). A much smaller number of public bodies have now incorporated HRIAs into existing equality impact assessment models. We have identified four examples of such practice which are set out in [section C2.III](#) below.

We also identified one example of a stand-alone human rights impact assessment – a child rights impact assessment conducted by Scotland's Commissioner for Children and Young People (SCCYP). This is the only impact assessment we are aware of in the UK which utilises international human rights standards as the basis for the assessment (the UN Convention on the Rights of the Child).

II. The relationship between HRIAs and Equality Impact Assessments

Although HRIAs and EIAs cover many of the same issues (and some HRIAs focus on particular equality groups such as the human rights of women) they are not the same things. **EIAs focus on relative treatment** rather than absolute standards. Avoiding discrimination or promoting equality does not necessarily raise the standard of treatment for everybody. In contrast, **human rights can raise general standards to an acceptable level and protect against universally bad treatment.**¹⁵

Example of the added value of a HRIA: An EIA of policy in care homes might find that all groups were being treated equally. But a HRIA could be used to uncover and tackle policies which restricted the rights of people in care homes even if it was happening to all groups in the same way.

So a HRIA could add value in areas where EIAs do not require policy change. However the legal context in the UK gives particular ‘teeth’ to an EIA when carried out by a public body. Public authorities are obliged by law to tackle discrimination and promote equality and have adopted EIAs as a way of ensuring they are meeting their legal obligations. Public bodies are required not only not to breach equalities legislation (for example by discriminating) but also to promote equality. Therefore **effective EIAs do not simply focus on legal compliance but also on outcomes.**

With regard to human rights, **public authorities only need to ensure that their policies and practices are compliant with the Human Rights Act**. This means that the HRIAs they have carried out have generally focused on the rights contained in the Human Rights Act rather than addressing economic, social and cultural rights such as the right to health, housing etc. It also means that concerns are often limited to legal obligations not to violate human rights rather than broader issues of promoting human rights standards. This is in stark contrast to the international experience we will explore below.

Both HRIAs and EIAs require a degree of **expertise in order to be effective**. EIAs require an understanding of the different ways in which a policy that appears to treat all groups equally may in fact fail to meet the needs of one particular group (indirect discrimination). HRIAs require knowledge of the absolute rights standards (or “red lines”) that cannot be breached in any circumstances (what constitutes degrading treatment, what is required to protect an individual from threats to their life) and how to assess legality, necessity and proportionality of infringements of qualified rights (such as how balances between the right private life of one person and the right to freedom of expression of another should be handled). In our review of existing practice in section B.IV below we highlight some of the problems encountered in existing assessments. First we review existing practice of conducting HRIAs in the UK.

III. Existing UK Practice in Human Rights Impact Assessments

There are a wide range of toolkits for carrying out Equality Impact Assessments and a smaller number for combined Equality and Human Rights Impact Assessments. Although these differ in many respects (particularly the complexity of the analysis expected), most cover the same basic stages; most of the [eight steps set out in the methodological guidance section below](#) are adopted by the majority (with some variations, omissions and differences in terminology).

The following is a brief overview of Equality and Human Rights Impact Assessment tools developed in the UK.

[Sussex NHS Foundation Trust – Equality and Human Rights Impact Assessment toolkit](#)

Sussex NHS Foundation Trust has developed a toolkit for joint EHRIA which has been in use since 2008. To date [over 90 assessments have been carried out](#). The Sussex Toolkit itself includes only limited guidance on what positive or negative human rights impacts might mean in practice. The toolkit comes with a ‘Guidance Handbook’, which explains some of the terms used (‘what are equality groups?’ ‘what is meant by impact?’). But it **does not give practical examples or pointers** to help people with little experience of equalities or human rights issues. However the questions used are more open than in some other EIA/HRIA toolkits and encourage greater reflection. For example, officials are asked to consider whether a policy has a positive or negative impact on human rights rather than simply whether a policy is in breach of the Human Rights Act.

[Aberdeen City Council’s Equality and Human Rights Impact Assessment \(EHRIA\): The Guide](#)

In 2008 Aberdeen City Council published a guide for staff on how to carry out a combined

Equality and Human Rights Impact Assessment. The Guide follows a similar template to most Equality Impact Assessments, although **without the initial screening or scoping stage**. However, in addition to the assessment of likely impact on equalities, it includes a series of human rights questions which relate to the Human Rights Act. The City Council has carried out EHRIAs of its 2009/10 budget including over 40 assessments on specific policy areas including car park charges, closure of public toilets, housing, services for children, services for older people and sports policy. A brief review by the authors of this paper of EHRIAs carried out under the scheme suggests to them that the **level of analysis carried out is been fairly limited** (see below for examples).

[Care Quality Commission Equality and Human Rights Impact Assessment Tool](#)

The Care Quality Commission EHRIA tool differs from others we have examined in that it focuses on the human rights impact of policy across equality groups rather than looking at human rights and equality separately. Four assessments have been published utilising the tool so far. The tool uses a grid which asks users to consider whether a policy will have a differential human rights impact on different groups. It includes carers and socio-economic status as well as the six equality strands included in the Equality Act 2010. The tool asks for details of evidence and consultation with stakeholders. It includes a section for changes made as a result of consultation and for an action plan which should be subject to monitoring and review. The tool comes with guidance (in the form of Frequently Asked Questions) which gives **concrete examples of what equality and human rights might mean in a social care setting**.

[NHS Wales Centre for Equality and Human Rights – a toolkit for carrying out an Equality Impact Assessment](#)

Although this toolkit is referred to as an EIA it contains a substantial section on human rights (no less extensive than any of the other toolkits referred to as combined EHRIA). The toolkit provides a **comprehensive guide to carrying out an EHRIA**. The human rights section of the EHRIA gives details of the various issues that might come up under each article. For example under Article 2 (the right to life examples given include the protection and promotion of the safety and welfare of patients and staff; issues of patient restraint and control). The accompanying step by step guidance gives specific case studies for each article as it relates to NHS Wales. This toolkit was published in April 2010 and at the time of publication of the present report it was not possible to access any published assessments carried out using it.

[Scotland's Commissioner for Children and Young People – Scotland's Commissioner for Children and Young People](#)

Scotland's Commissioner for Children and Young People (SCCYP) has a statutory duty to promote and safeguard the rights of children and young people as protected by the United Nations Convention on the Rights of the Child (CRC). SCCYP has developed a model for carrying out a Child Rights Impact Assessment as a mechanism for complying with its statutory duties. The model includes [a toolkit for carrying out the assessment and a set of template forms](#) which are extremely detailed and comprehensive. The forms include open questions to encourage full reflection on the policy (is there disagreement as to the likely impact of the proposal? Is the proposal the best way of achieving its aims? Has the "do nothing" option been considered? Can alternatives to the proposal be suggested?). Because the CRC is the basis for the assessment, it also includes consideration of a

much broader range of rights than the other UK assessments listed above. At the time of publication of the present report, SCCYP informed us that twenty three initial ‘screening’ processes and one full human rights impact assessment had been carried out. The Scottish Government have also used the SCCYP model to carry out three initial screenings

IV. Evaluation of UK Practice in Human Rights Impact Assessment

Overall, we found that there was considerable variation between HRIA guidance, toolkits and individual assessments produced by different public authorities.

a. Guidance and toolkits all tended to include reasonably good descriptions of the steps that should be followed in undertaking the assessment, but differed between

- **The most limited** - e.g. [Sussex NHS Foundation Trust](#) – gives very limited guidance on how to conduct the assessment and no examples of how to apply the human rights – an annex of the European Convention on Human Rights devoid of any commentary or explanation, seems unlikely to be helpful.
- **The most comprehensive** – e.g. [NHS Wales Centre for Equality and Human Rights](#) – detailed guidance on how to carry out the EHRIA and examples throughout of the kind of concrete human rights issues that might occur.

b. Individual assessment forms ranged from:

- **Basic tick-box forms** that contain very limited requirements for analysis or justification of decision-making (e.g. [Aberdeen City Council](#));
- **Detailed forms** that encourage comprehensive cataloguing of every step of the assessment process and extensive reflection on decision-making (e.g. [SCCYP](#)).

c. Actual performance in undertaking assessments to a certain extent demonstrates the limitations of more limited materials, but also highlights other factors that are important. More detailed methodologies can encourage greater analysis but they do not guarantee it, and the same tool can result in very different levels of assessment. We analyse existing practice briefly below:

Aberdeen City Council - An analysis by the authors of this report of published EHRIAs completed using this tool suggests that it **has not encouraged detailed analysis**. Of 41 EHRIAs reviewed all but three concluded that the policy assessed would have no human rights impact. Three highlighted a possible article 8 impact (private and family life). These were an increase in allotment charges (because of the cost of pursuing a hobby), reduced maintenance of sports facilities (because of the cost of pursuing a hobby) and an introduction in car park charges (enabling families to use car parks attached to local parks that were previously used by commuters). In all three the connection of the impacts to the realisation of human rights appeared fairly weak. In contrast policies which would appear to have a far stronger connection to human rights – such as proposals to reduce funding to combat homelessness, to reduce provision of services to some older people and to cut a staff post responsible for domestic abuse policy - were assessed as having no potential human rights impact. Analysis of equality impact seems similarly basic.

Sussex NHS Foundation Trust - Although the Sussex toolkit is basic, **some of the EHRIAs so far published contain a higher level of more detailed analysis** than those carried out by other bodies. The 'Assessment of Process for Evaluating and Rating Ward Reconfiguration Options' for example includes demographic information about use of different wards and highlights the fact that the majority of users of older people's services are women and that this must be taken into account in service design. It highlights possible right to life, prohibition on torture, inhuman and degrading treatment and right to private and family life issues with regard to changes to ward arrangements.

However other EHRIAs are less comprehensive. The 2009 EHRIA of 'Deprivation of Liberty Safeguards policy' which relates to people detained under the (English) Mental Health Act highlights the negative impact that the policy might have on a number of human rights (right to liberty and security, right to a fair trial, right to freedom of thought, conscience and religion and right to freedom of expression and information). But there is **no analysis of the extent of these negative impacts, or consideration of what action (if any) can be taken to deal with them.**

Care Quality Commission - Assessments carried out using the toolkit contain a reasonable level of human rights and equalities analysis. The assessment of a review of 'healthcare for people in care homes' includes evidence of how care outcomes may differ according to disability, race and gender. It highlights a Department of Health report into the impact of sexism, homophobia and other forms of discrimination on lesbian, gay and transgender people. It concludes with concrete steps on how to ensure equality and human rights issues are central to the review process.

SCCYP – The one full assessment which has been completed is of the Vulnerable Groups (Scotland) Bill. It is **by far the most detailed and comprehensive assessment of all those conducted by UK public authorities** we examined. This partly reflects the level of detail inherent in the SCCYP process. It also reflects SCCYP's particular interest and expertise in children's rights (e.g. we would not necessarily expect a non-specialist local authority to be capable of such detailed analysis). But there are a number of lessons for other HRIAs which we will draw upon in the methodological guidance section below.

Conclusions

Our own analysis was tested against discussions with consultants working in the field. We would suggest that there are a number of inter-connected reasons for different levels of performance in conducting HRIAs, including:

- The level of detail requested within each toolkit and required in the assessment form
- The amount of advice, information, practical guidance and examples of application available alongside the various toolkits
- The level and adequacy of the training given not only in how to fill in the toolkit but in some of the potential issues an analysis should consider
- The level of political will at a senior level in support of the policy of carrying out assessments
- Appropriate use of external expert advice, either through consultants or advisory groups who can highlight issues that might otherwise be ignored

3. International Practice in Human Rights Impact Assessment

I. Introduction to International Practice

HRIAs are increasingly **demand**ed by relevant international human rights actors including -

- the UN treaty monitoring bodies, especially the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women.¹⁶
- Other UN human rights actors including the UN Special Representative on Business and Human Rights, the UN Special Rapporteur on the Right to Health and the UN Special Rapporteur on the Right to Food.¹⁷
- European human rights bodies like the European Court of Human Rights and European Committee of Social Rights.¹⁸

The majority of methodologies, toolkits and individual HRIAs have been undertaken by civil society organisations. There is also some guidance and limited practice which has been undertaken by intergovernmental and governmental actors. Corporate actors have also become involved in the HRIA process, although most of the practice of designing methodologies and undertaking HRIAs is undertaken on their behalf by civil society organisations ([see Section C.3.III below](#)).

Below we set out the main types of HRIAs that have been undertaken at the international level. The [Human Rights Impact Resource Centre](#) contains a much more comprehensive catalogue of existing assessments, guidelines, toolkits and commentary. We will not repeat that resource here. Rather we will map out existing practice by highlighting different types of HRIA that have taken place and **focus in the text on those types of HRIA which are particularly relevant to the Scottish context**. The [Compendium of Resources](#) Appendix then sets out all the good practice we have found in relation to HRIAs (toolkits, guidance etc.) by category in order to provide an ongoing resource to the Commission.

Partly because of its civil society origins, and partly because of its diverse range of subject coverage, there are a far greater range of methodologies developed and impact assessments undertaken internationally than in the UK.¹⁹ However, there is also an overlapping consensus about the key methodological steps of impact assessment in the majority of comparable HRIAs – most of them adopt most of the elements of the [eight step process we identify in the methodology section](#) below (we explain where there are major deviations). We therefore concentrate in this mapping exercise on those HRIAs which adopt comparable methodological frameworks, and in particular on those HRIAs which are most closely related to the strategic priorities of the Commission. We make much more brief reference to other forms of impact assessment and refer to further resources which may be of interest in the Appendix.

II. Impact Assessments on Health and Human Rights

The Background

The Dutch-based NGO Aim for Human Rights (formerly the Humanist Committee on Human Rights) has been the most important actor in developing thinking around human rights impact assessment at the international level.²⁰ Their [Health Rights of Women Assessment Instrument \(HeRWAI\)](#) is an instrument that has been utilised by a number of NGOs globally to undertake assessments. Likewise the former UN Special Rapporteur on the right to the highest attainable standard of health has explored the development of health rights impact assessments. So it is appropriate to start mapping international HRIAs in the field of health. We also deal with this issue in detail because it is a strategic priority of the Commission.

There are a number of overlapping reasons for wanting to undertake HRIAs in the health field:

1. **To ensure protection and promotion of the right to health:** UN treaty bodies have been making calls for a number of years for countries to undertake HRIAs to ensure they are not violating the right to health and other related rights in a range of different fields.
2. **To improve healthcare policies** – Human Rights Impact Assessment has been suggested as a tool to monitor and improve a range of healthcare policies.²¹
3. **To improve existing Health Impact Assessment methodologies** – Health impact assessments (HIAs) measure the impact of a diverse range of policies, projects etc. on health outcomes (e.g. transport, housing, employment, agriculture etc.). Analysis of existing health impact assessments (HIAs) reveals limitations. In particular from a human rights perspective there is often a failure to evaluate how policies differentially affect the most vulnerable and disadvantaged.²² This leads to calls for human rights to be incorporated into HIAs.

Main Methodologies

1. [Health Rights of Women Assessment Instrument \(HeRWAI\)](#) (Aim for Human Rights²³). A strategic tool for NGOs to utilise to lobby governments to better implement health rights of women utilising a human rights approach. Can be used to analyse both health policies and a wide range of other policies that have indirect health impacts.
2. [Impact Assessments, Poverty and Human Rights: A Case Study Using the Highest Attainable Standard of Health](#) (Paul Hunt – then UN Special Rapporteur on the Right to Health - and Gillian MacNaughton – Oxford University, published by UNESCO). This is a tool which is intended to be used by governments to assess the impact of proposed policies on human rights. It builds upon the HeRWAI methodology. It focuses on the impact of policies on the right to health, but could be utilised as the basis for other economic, social and cultural rights HRIAs.
3. [The Assessment of the Right to Health and Healthcare at the Country Level](#) (People's Health Movement) – based upon the HeRWAI model. This tool is intended for use by

NGOs in order to evaluate the overall government health policy and the extent to which it is realising the right to health

4. [Using Human Rights for Maternal and NeoNatal Health: A tool for strengthening laws, policies and standards of care](#) (WHO and Harvard School of Public Health) – a tool to assist countries in conducting a ‘self-assessment of their national laws, policies and practices that affect maternal health and neonatal morbidity using a human rights framework’. This tool has been applied in the context of a pilot project in Indonesia.

Studies Conducted

Aim for Human Rights has done extensive outreach, training and support for groups globally who wish to utilise the Health Rights of Women Assessment Instrument. As a result, [studies have been conducted](#) in Kenya (labour law and maternity leave), Bangladesh (preventing maternal mortality), the Netherlands (reform of health insurance law for undocumented workers and closing prostitution areas), Nepal (reproductive health and violence against women) and Pakistan (national education policy). These studies have all been the basis for lobbying and have led to a number of changes to relevant policies.²⁴ Other individual studies of right to health in developing countries are set out in the Appendix.

Evaluation and Application to the Scottish Context

The People’s Health Movement and WHO methodologies are very much designed for the developing country context and are quite context specific. The HeRWAI methodology can be utilised in both developing and developed country contexts. In general terms it follows the methodology of other HRIAs analysed in this report, but it is very much a lobbying tool for NGOs and so has significant differences from a tool that is suitable for public authorities. The Hunt and MacNaughton methodology is the most directly applicable to the Scottish context as it is designed for use by governmental actors as well as NGOs.

Both the Hunt and MacNaughton and HeRWAI methodologies provide a series of questions and guidance for the application of the right to health to HRIAs, unpacking the core obligations and related principles of the rights (e.g. availability, accessibility, acceptability and quality; minimum core content etc.). This demonstrates how the right to health can be utilised to explore health outcomes in a level of detail which is not possible if simply using a civil and political rights approach.

Recommendation

Organisations planning to develop and implement integrated health and human rights impact assessments should give serious consideration to the explicit inclusion of the right to the highest attainable standard of physical and mental health.

III. Business Human Rights Impact Assessments

Environmental and Social Impact Assessments are common in the business arena, particularly for ‘projects with a significant physical footprint’ especially those in the extractive industry, and are often required by national law.²⁵ Experimentation with Human Rights Impact Assessments of Business activity is more recent. There are now a number of toolkits and methodologies for conducting them set out below. But HRIAs of business activity are the exception rather than the rule.

The starting point today for considering human rights and business issues is the UN Special Representative on Business and Human Rights, John Ruggie’s ‘protect, respect and remedy’ Framework. According to this framework, businesses have a ‘responsibility to respect’ human rights. This includes a duty to conduct due diligence with regard to their business activity. Ruggie has identified HRIAs as a key component of this due diligence. He does not himself define how a HRIA should be conducted. Instead Ruggie identifies a number of existing tools which are being developed and ‘may prove helpful’ depending on the nature of the HRIA being undertaken.²⁶ The main HRIA tools mentioned by Ruggie are as follows:

- [Conflict Sensitive Business Practice: Guidance for Extractive Industries](#) (International Alert) – A tool developed for extractive industries operating in conflict regions. The tool includes human rights alongside a number of other issues like corruption, transparency, social investment etc. The tool should be utilised from the earliest stages of potential investment and can be utilised over the whole lifecycle.
- [Guide to Human Rights Impact Assessment and Management](#) (International Business Leaders Forum and International Finance Corporation) – A tool for assessing the human rights impacts of projects generally, but focus seems to be on developing countries. Can be started at any time during the project cycle. Presents an eight step process for conducting a HRIA. No detailed indicators. Was to be road-tested and a revised version was anticipated in June 2010.
- [Human Rights Compliance Assessment/Country Risk Assessment](#) (Danish Institute for Human Rights) – Includes Country Risk Assessment (applied to a range of developing countries), (Full) Human Rights Compliance Assessment (HRCA) (with a database of questions covering the full spectrum of human rights issues) and Quick Check (a more limited assessment tool particularly for small and medium sized companies). The HRCA is a comprehensive tool designed to detect human rights risks in company operations. It covers all internationally recognized human rights and their impact on all stakeholders, including employees, local communities, customers and host governments. The tool incorporates a database of 195 questions and 947 indicators, each measuring the implementation of human rights in company policies and procedures. This database is only available to companies who pay a subscription fee. There is one published assessment of [Goldcorp’s Marlin mine in Guatemala](#) which has been undertaken on the basis of the HRCA methodology.

- [A Methodology for Human Rights Impact Assessment](#) (Nomogaia) A methodology to examine the elements of capital projects in developing countries that could directly harm or improve the status of human rights listed in international rights instruments. It includes three types of HRIAs - Desktop, Rapid Response and Comprehensive. This was not mentioned by Ruggie in the reports reviewed for this project as it was a more recent development. The methodology is notable because three HRIAs have been published by Nomogaia utilising their template - [Paladin Energy's Kayelekera Uranium Project](#) in Malawi, [Green Resources' Tree Plantations in Tanzania](#), and the [Nuiguyo Project – A gold and silver mine in Indonesia](#).
- [Community HRIA Guide for Foreign Investment Projects](#) (Rights and Democracy) – A tool by which local civil society organisations can assess the specific human rights impacts of foreign investment projects on local communities and seek appropriate remedies. It is primarily an *ex post* assessment tool. It includes case studies of assessments carried out in the Philippines, Tibet, the Democratic Republic of Congo, Argentina and Peru.

Additional resources

A more detailed summary of the four methodologies highlighted by Ruggie can be found in the [Guide to Human Rights Impact Assessment Tools](#) by Aim for Human Rights. The report offers practical guidance to assist understanding of which of the HRIA tools will be most appropriate for a business that wants to undertake a HRIA of a particular aspect of its operations. A greater range of toolkits and guidance on human rights can be found at the Business and [Human Rights Resource Centre](#).

Evaluation of Resources

What is interesting to note is that there are so few completed and published HRIAs undertaken by businesses.²⁷ As Ruggie states it is “too early to offer a definitive evaluation of HRIAs for business, because to date only the summary of one such assessment has been made public (for BP’s Tangguh liquefied natural gas project in Indonesia)”.²⁸ Searching for HRIAs on business undertaken from that date until the finalisation of this report, the authors of this report were only able to locate the three Nomogaia studies and Goldcorp assessment identified above. (The Rights and Democracy case studies were conducted by civil society groups rather than business themselves). Other companies claim to undertake HRIAs (e.g. Yahoo!) but nothing is publicly available. So there is **very limited practice with which to evaluate the effectiveness of the methodologies that have been produced**.

Conversations with those working in the field suggest that, unlike in environmental impact assessment, there is **not yet a sense of a standardisation and convergence in methodologies or agreement on concrete criteria for what constitutes a rigorous HRIA process**. As in other areas we have evaluated, the practice of undertaking HRIAs has yet to be ‘professionalized’. Most of the effort from civil society organisations has been to try to engage businesses in the process of undertaking HRIAs. There has been very little work to critically scrutinise existing HRIA methodologies and to differentiate good from bad HRIAs by independent actors who are

not also involved in trying to develop methodologies and/or engage businesses in participating in the HRIA process. As more and more corporate actors undertake HRIAs, independent scrutiny will become increasingly important. Otherwise there is a danger that corporations themselves will not feel the benefits of undertaking a process that is widely recognised as robust and credible.

Overall we can say that the resources we have reviewed are primarily aimed at companies who are undertaking specific projects (particularly in the extractive industries) in developing countries. The Guide to Human Rights Impact Assessment and Management and Human Rights Compliance Assessment have potentially wider application (to policies and practices as well as projects) although their focus still appears to be on business activities in developing countries.

Broadly speaking business HRIAs adopt similar methodological frameworks as HRIAs in other areas, although screening and scoping processes differ, and not all business HRIAs are published. The more detailed Nomogaia and Goldcorp studies however run to 100s of pages and are at the more detailed and complex end of the spectrum of HRIAs we reviewed. In particular they make heavy use of indicators – far more than in other types of assessment.

The application of existing business HRIA methodology to the Scottish domestic context is not straightforward. For instance, questions and indicators would often need to be adapted from a focus on issues of concern in a developing to a developed country context. The methodological

Recommendations:

Governments, businesses and others with responsibility should consider steps to introduce effective HRIAs, including:

- **Encourage practice** – Governments support business in all kinds of ways at home and abroad – e.g. through public procurement, taxpayer support, export guarantees etc. – [Ruggie](#) (p.7) has suggested that this support could be conditional on HRIAs being undertaken.
- **Mandatory HRIAs** - The [UK Parliament's Joint Committee on Human Rights](#) (para 254) has recommended that the Government considers amending the Companies Act 2006 to require companies to undertake an annual human rights impact assessment.
- **Encourage transparency** – [Ruggie](#) (p.5) has suggested that HRIAs should be published in full unless publication would create legal or political risks for the company.
- **Independent Scrutiny of HRIAs.** There is a need for external and independent scrutiny of HRIAs in order to differentiate between good and bad practice. Consideration should therefore be given to the creation of an effective form of independent scrutiny that would increase the standards and credibility of existing practice.

frameworks may be more directly useful for Scottish companies who are operating in developing countries.

IV. Children's Rights Impact Assessment

Children's Rights Impact Assessment is a sub-set of human rights impact assessment which specifically considers the impact of policy and practice on the rights of children. The UN Convention on the Rights of the Child (which includes economic, social and cultural as well as civil and political rights) is the basis of the assessment. UNICEF has recently attempted to catalogue existing practice in the field in a 'Child Rights Toolkit' (draft seen by the authors). The toolkit details 'leading models of CRIAs' and case studies of assessments including in Bosnia-Herzegovina, Finland, Ireland, New Zealand, Scotland (SCCYP, discussed above), Sweden and the UK. These models have been applied to a range of issues including:

- assessment of an individual child's situation when parents are deported (Ireland);
- building a children's perspective into local planning (Sweden, Finland and New Zealand);
- impact of price rises in electricity on the rights of children (Bosnia-Herzegovina);
- reviewing legislation for impact on children's rights (Scotland and UK);
- as more generalized tools for policy review (Scotland and Sweden).

The UNICEF toolkit suggests a model CRIA process which is broadly speaking similar to other model HRIA methodological frameworks. We have already discussed the SCCYP CRIA above. The authors of this report would also particularly highlight the [Bosnia-Herzegovina study](#) as one they consider well designed instrument that has been drawn upon in the methodological guidance section of this report.

V. Budget Analysis

Budget analysis explores the ways in which government resources are utilised and their impact upon human rights. It creates a methodology for assessing the human rights compliance of budgets and making recommendations for change where needed. While much budget analysis is not explicitly termed 'impact assessment', it follows many of the same principles. Existing budget analysis has mainly focused on economic, social and cultural rights. There has also been considerable work on equality budgeting and on gender-based human rights budgeting (e.g. see the work of the Scottish Women's Budget Group).²⁹ There are frameworks (see appendix for details) produced by different organisations which deal with

- [The right to health –including a case study of the Mexican health budget](#)
- [The right to food – including case studies in Guatemala, the Philippines and Uganda](#)
- [The right to education – a basic methodological guide](#)
- [The right to adequate housing – a study of the social housing budget in Northern Ireland](#)

The focus of this work (bar the Northern Ireland Study) has been very much on developing countries. Methodologies have been developed to assist organisations to analyse whether the budget (in terms of revenues, allocations, expenditures or the impact of the expenditures) may

be having a negative impact on human rights and how improvements might be achieved. The methodology can be utilised at the local, regional or national level.

The Northern Ireland study, undertaken by a research team at the School of Law, Queen's University, is an individual case study assessing selected aspects of the social housing budget in Northern Ireland against the budget-specific obligations stemming from the International Covenant on Economic, Social and Cultural Rights.³⁰ It applies core economic, social and cultural rights obligations (minimum core, progressive realisation, respect, protect fulfil, affordability, maximum available resources) to the social housing situation in Northern Ireland. It examines the baseline scenario and changes that recession and changes in housing policy have made. It is the most closely applicable framework to the Scottish context.

VI. Development Policies, Programmes and Civil Society Organisations

There are a number of HRIA methodologies that have been developed to measure the human rights impact of development policies, programmes and civil society organisations who have been funded to carry out development activities. In general terms this follows the trend towards human rights-based approach to development. In light of this, donor agencies have wanted to measure the human rights impact of their development funding and so toolkits have been designed and impact assessments undertaken in order to measure impact. Because of the focus on development projects etc., overall methodological frameworks have a different focus from the one primarily considered here. There are still some potential lessons for the Scottish context which are drawn out individually in Section D below. Leading frameworks are set out in the [Compendium of Resources](#) Appendix.

VII. Trade

Human Rights Bodies have been calling for HRIAs of trade agreements for a number of years. Such HRIAs have been undertaken by various actors. We have not covered these in detail as international trade policy is a matter reserved to the UK Parliament. HRIAs have been undertaken in relation to the following:

- The Thailand-US Free Trade Agreement by the Thailand Human Rights Commission (draft on file with authors)
- [Various studies](#) by the Ecumenical Advocacy Alliance (EAA) considering the impact of trade liberalisation on the right to food
- A study of the impact of the intellectual property provisions of the Central American Free Trade Agreement (CAFTA) on the right to food

A useful resource in this area is 'The Future of Human Rights Impact Assessments of International Trade Agreements', by Simon Walker³¹ which includes the above CAFTA study and a very detailed methodological framework for conducting a trade HRIA. All resources are set out in the Appendix to this report.

VIII. Government Legislation

Some of the HRIA models described elsewhere in this report have been utilised to assess government legislation (e.g. SCCYP HRIA of the Protection of Vulnerable Groups (Scotland) Bill). We review those models thematically within the relevant sections. In addition there is a study of the impact of anti-terrorism legislation in the Netherlands, but the study is in Dutch with only a brief summary in English, so we were unable to evaluate it.

Compliance assessments of draft legislation – often undertaken by national human rights institutions and/or Parliamentary human rights committees - have been termed by some as a form of human rights impact assessment.³² They do not generally however conform to a uniform ‘impact assessment’ model. Rather they tend to take the form of **free-flowing expert comment on the legislation and its potential human rights impacts**. They are not therefore further analysed in this report. Further study or investigation could be undertaken in order to understand why a more structured HRIA model has not been adopted by NHRIs who are involved in this practice. If a more structured model was considered appropriate then the guiding principles set out in section D could be used to inform a methodology for carrying out HRIAs of legislation in the Scottish context.

IX. EU impact assessments

The EU Commission has adopted a model of integrated impact assessment (IIA) to assess its policy-making and formulation of legislative proposals. The integrated model includes assessment of economic, environmental and social impacts. [Latest guidance](#) on how to undertake IIAs includes extensive mention of the need to assess the impact of policies on EU fundamental rights. But there is no separate category for fundamental rights impacts in the revised guidelines or even a subheading within the section on social impacts. Rather rights are integrated into the three existing categories, namely economic, social and environmental impacts.

There is considerable scepticism of the degree to which early practice has in fact incorporated detailed consideration of fundamental rights issues.³³ More recent IIAs that were reviewed in the context of preparing this report did seem to include more detailed consideration of fundamental rights issues. But consideration of rights issues can be partial and restricted to those that appear the most obvious. So for instance a [proposal for a European Border Surveillance System](#) considers only the right to protection of personal data. It does not consider other human rights impacts on asylum seekers and migrants who are the main focus of the proposal (e.g. right to fair trial, prohibition of torture etc.).

X. Other Impact Assessments

There are a number of other human rights impact assessments/methodological frameworks which do not naturally fit into any of the categories list above. Brief mention is made here of some of the more prominent ones:

- A HRIA of [‘the impact of the resolutions and other activities of the European Parliament in the field of human rights outside the European Union’](#) – a very detailed study which could be a useful template for assessing a government’s foreign human rights policy
- A [Guide to Conducting a Right to Food Assessment](#) produced by the Food and Agriculture Organisation and a study conducted by Rights and Democracy of the Right to Food in Haiti using that methodology.

4. Key Findings of the Mapping Exercise

I. Eight Steps of the Assessment Process

As stated above, both the international and UK-based toolkits and individual HRIAs analysed indicate that there is an ‘overlapping consensus’ about [eight key steps of the assessment process](#). Not all HRIA models adopt all of these stages, but there is enough consensus for these stages to be the subject of detailed analysis in Section D below.

II. Actors Undertaking the Assessments

We have seen that HRIAs can be undertaken by a variety of different actors. Generally these actors can be placed into four different categories

- Civil society organisations
- Public officials reviewing their own policies (national government, local government etc)
- Public officials reviewing the policies of other organisations (national human rights commissions, ombudsmen etc.)
- Business actors

The majority of the international experience of human rights impact assessment models has been to provide a human rights language and framework for non-government organisations and other civil society groups to campaign and lobby on issues where they have a long-standing interest and expertise. NGOs would generally be expected to have a pre-existing concern with the social justice or other issues they were analysing (such as maternal morbidity) even if the use of a human rights framework to consider these issues was new.

In contrast the Equality Impact Assessments and combined Human Rights and Equality Impact Assessments developed in the UK have been designed to encourage public officials without a pre-existing interest in social justice or rights issues to be aware of these issues when developing policy. Therefore to be effective it is not enough for the model to offer a framework with which to present issues, it has to make officials aware of those issues in the first place.

Conclusions:

Careful thought needs to be given to the different considerations which come into play when governmental or business actors are undertaking a HRIA. The review of practice suggests to the authors that the motivations in such a process may be very different and officials' primary concern appears at times to be to demonstrate that the legal obligations of human rights have been taken into account in a decision-making process rather than to promote a human rights approach to policy making.

III. The Legal Basis for the Human Rights Analysis

a. The Nature of the Rights

All of the UK experience, bar the SCCYP model, has been undertaken to consider public authorities' duties under the Human Rights Act. For this reason the human rights focus has been limited to the (civil and political) rights in the European Convention on Human Rights.

Many of the international models have adopted a more expansive human rights approach. In this way a HRIA can be used to consider more directly many of the issues that are going to arise in relation to HRIA in the Scottish context, in a broader and more appropriate human rights framework. While an impact assessment based on the Human Rights Act alone may capture many of the key human rights impacts of policy changes in areas such as policing and justice, it is unlikely to be sufficient in areas such as housing and health. The rights to health and adequate housing for instance clearly must be central to considering health and housing policy. While rights in the Human Rights Act must also be considered, excluding consideration of economic, social and cultural rights impacts will significantly reduce the potential benefits of a HRIA in many of the areas within the legislative competence of the Scottish Parliament.

b. The Role of Human Rights

The UK HRIA experience thus far has adopted a legalistic approach and almost exclusively focuses narrowly on whether the legal obligations of the Human Rights Act have been violated. The majority of the international HRIAs include broader considerations of how human rights can be more promoted (particularly with regard to economic social and cultural rights and the obligation of progressive realisation).

c. Considerations for Future Impact Assessment

The analysis in this paper suggests that UK HRIAs undertaken by public bodies have generally found few human rights engaged and there have been relatively few policy changes as a result of assessments. International HRIAs largely undertaken by civil society actors and considering a broader range of rights with a less legalistic focus have been able to suggest many more

changes. The nature and scope of the rights considered (along with the actor undertaking the assessment) will have a great effect on the results of any HRIA undertaken and its ability to influence policy on the ground.

Recommendation

The development of HRIAs by Scottish public authorities should extend beyond the rights contained in the Human Rights Act, as appropriate, to ensure their effective use to identify and address all relevant human rights impacts. Beyond the Human Rights Act, consideration should also be given, as appropriate to:

- The International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities; The Convention on the Elimination of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and other treaties depending on the subject – such as those related to refugees, race discrimination, access to information and participation in environmental decision making.

IV. The Timing, Frequency and Complexity of the Assessment

a. When to Assess Human Rights Impact

There is a clear difference between HRIAs that are undertaken in advance of the implementation of a particular policy and those undertaken afterwards. These are often described as ‘*ex ante*’ HRIAs (before) and ‘*ex post*’ HRIAs (after). We found numerous examples of both kinds of practice:

- In the UK public bodies introducing HRIAs generally carry out assessments on new policies as they are developed (*ex ante*).
- Some UK public bodies also review all existing policy to decide which should be highest priority for *ex post* HRIAs. Sussex Partnership NHS Foundation Trust, for example, has published [a document](#) on its website listing when all the Trust’s policies are due to be assessed considering ‘proportionality, relevance and risk’.
- Internationally, there has been a mixture of *ex post* and *ex ante* assessments and different models for conducting different types of assessment

Ex ante HRIAs are much more difficult to undertake because it is much trickier to measure what you think the impacts of an intervention will be in future than what you observe have been the impacts of an intervention in the past.³⁴ But it is clearly preferable to consider how to avoid negative human rights impacts before they occur than deal with abuses after they have already happened. We deal with some of the methodological difficulties in undertaking *ex ante* HRIAs in Section D below.

b. How Often to Assess Human Rights Impact Assessment

A number of commentators have argued that HRIA is not a one off activity, but an ongoing and dynamic process. Ideally *ex post* and *ex ante* repeat until they become cyclical.³⁵ But we found little evidence of this occurring in practice. HRIAs mainly appear to be one-off processes – once an impact assessment has been undertaken there was little evidence impact was assessed again.

We also found a huge differentiation in frequency of assessments. At one extreme we found some public authorities in the UK conducting HRIAs of a huge range of policy decisions, at the other extreme we found a number of HRIA toolkits for which we could find no (or very little) evidence of their use.

Concerns could be expressed about both ends of the spectrum – we have found that in situations where HRIAs have been used very frequently they were often superficial exercises and where they never or very rarely took place this was often where methodologies were very complex. This issue is considered further below.

c. Complexity versus Simplicity

We found that the process of human rights impact assessment can vary greatly between two extremes:

1. A technically very complex procedure with detailed toolboxes, high level of analysis and very detailed and thorough final reports;
2. An uncomplicated process with brief methodological frameworks, little analysis beyond the opinions of the decision-maker and tick-box only final reporting.

Broadly speaking, the international HRIAs we analysed tended to be much more at the detailed and complex end of the spectrum, while the UK HRIAs tended to be far more basic. There are exceptions highlighted above (e.g. see analysis of NHS Wales Centre for Equality and Human Rights and SCCYP approaches). But there are a number of possible rationales for this general difference in approach:

- International HRIAs are generally conducted by civil society organisations with a passion for the issues, whereas UK HRIAs are conducted by public officials for whom it may often be seen as a process they must go through to ensure compliance with the law.
- International HRIAs tended to be one off processes in response to particular issues while UK HRIAs are conducted regularly as part of the policy making process.
- International HRIAs generally tend to be aimed at lobbying for policy change whereas UK HRIAs tend to be aimed at identifying whether there is technical compliance.

While the more detailed and complex HRIAs tended to have better informed policy outcomes as a result, there is a trade-off here. Instruments need to be sufficiently simple that they are easy to use by the actors who will be undertaking the assessment. This is a tension that we will explore in great detail in the next section when we consider appropriate methodologies for undertaking HRIAs.

D. Methodology for Undertaking Human Rights Impact Assessments

1. Introduction

This section contains guidance on the methodologies and principles to consider when carrying out HRIAs. This guidance is based on the context in Scotland where, as in the rest of the UK, HRIAs are likely to be carried out by public organisations on their own policies. It is **not possible to define a single framework for conducting HRIAs** that would be appropriate for the Scottish context. There is variation in practice both in the UK and internationally depending on:

- a. The range of subjects assessed – both the particular issues involved (e.g. health, education, etc.) and the type of subject analysed (a project, a policy, a piece of legislation, a budget etc.);
- b. The different actors involved in carrying out the assessment;
- c. When the assessment takes place – before or after the policy or practice comes into force;
- d. The quality and complexity of the analysis undertaken.

Although there is no single methodology for HRIAs, most have some key features in common. We have identified eight key steps that should be included in any HRIA.

We therefore set out guidance and recommendations in relation to these eight steps that apply to HRIAs generally, while recognising that there will inevitably be significant differences in approach depending on the context. Throughout we base our analysis on good practice in existing assessments and guidance and toolkits and academic commentaries that have been produced. But there are inevitably gaps in this methodology (particularly when it is applied to the Scottish context) as well as differences of approach. So we make determinations about what seems to us to be the most appropriate approaches where there are differences and gaps. We also highlight where further work is needed.

At the same time, it is recognised that the recommendations and illustrations of good practice contained in this report represent a high and exacting standard. This is particularly the case where organisations are only just developing an expertise in undertaking assessments. In practice organisations will need to consider a number of factors in deciding what degree of e.g. evidence gathering, consultation etc. is reasonable and proportionate in any given assessment. For instance, a decision to close a hospital should place higher demands upon an organisation undertaking an assessment than a decision to close a hospital café. Relevant factors in decision-making will be:

- The importance of the issues at stake in the HRIA and how closely they relate to a particular human right (scope of impact)
- The numbers of people affected (scale of impact)
- The severity of the impact upon those affected (severity of impact)

Throughout this section, we discuss ‘policies’ (e.g. ‘a HRIA of a policy’). This should be taken as shorthand for policy, programme, project or practice. It is simply too cumbersome to use all the terms continually.

2. Eight Key Steps for Undertaking a HRIA

As identified in Section C.4.II above, we can identify an overlapping consensus about eight key methodological steps that should be the basis for a rigorous HRIA process. There will in practice be some overlap between steps (in particular the ‘evidence gathering’ and ‘consultation’ steps will often be undertaken at the same time)). But each of the stages is set out in turn below for clarity and ease of reference:

1. [A screening stage](#) - perform a preliminary check on the proposed policy to determine whether or not a full-scale impact assessment is necessary;
2. [A scoping stage](#) – the questions that need to be asked once the decision to undertake a full HRIA has been undertaken
3. [Evidence gathering](#) - collect information to inform analysis of the policy;
4. [Consultation](#) – procedures for ensuring the voices of those (likely to be) affected by the policy are heard and taken into account in the HRIA process;
5. [Analysis](#) – analyse the (likely) human rights impact of the policy;
6. [Conclusions and Recommendations](#) – set out the results of the HRIA and the action which needs to be taken as a result including alternative proposals and mitigating measures;
7. [Publication](#) – what, when and where should be published to make sure that the HRIA process is fully transparent;
8. [Monitoring and review](#) – action to make sure that the HRIA is not a one off process but an ongoing and cyclical review of policy.

Within these broad headings there is significant variation in the style and complexity of the work carried out in existing assessments. Below we explore each of these stages in more detail and make recommendations about good practice in developing HRIA methodologies

I. Screening

'Screening' is the process of deciding whether a particular policy is suitable for a full impact assessment, and screening out policies where a HRIA is not considered appropriate or necessary. Screening processes are a generally accepted part of the HRIA methodology and appear in the majority of methodological frameworks. Screening processes will be particularly important where there are a large number of policies that are potentially subject to impact assessment such as in a local authority, NHS Trust, or big business.

Screening prevents bodies having to undertake full HRIAs of all their policies and practices. It allows them to focus their energy on those where there are potentially important human rights impacts. Without screening processes there is a danger that a large number of superficial assessments may be undertaken and there is insufficient focus on the really important human rights issues. Aberdeen City Council for instance has no screening stage in its HRIA methodology and so all of its HRIAs are subject to a full assessment.

But there are also dangers that screening processes may eliminate policies that actually raise important or sensitive human rights issues.³⁶ Many HRIA methodologies do not define how the screening process should take place. This increases the chances of policies being screened out that do in fact raise important human rights issues.

Decision-makers need criteria and evidence to assist them in making decisions about whether to screen out a particular policy/project etc. The extent of screening processes will depend on the number of policies being screened and the resources available. But there are mechanisms for significantly improving the chances that the screening process is a rational rather than arbitrary one. Recommendations are made below for how to create a robust screening process.

Recommendations:

- At the very least, there should be a series of context-specific questions available to the decision-maker to prompt their thinking about whether a full HRIA is appropriate (see box example below).
- Consideration should be given to sources of information/expertise through which screening decisions can be tested e.g. - selective secondary research and expert opinions.
- Training in screening processes should be a pre-requisite of making screening decisions
- A decision not to carry out a HRIA should be signed off at a senior level within the organisation.
- The decision, along with the reasons behind it should be published. This increases the ability of external actors with expertise in the area who may be aware of a particular human rights issue that the screening exercise has missed to question the decision

[The Scottish Executive Equality Impact Assessment Toolkit](#) asks ‘are you sure?’ if an initial screening suggests an Equality Impact Assessment is not necessary. It goes on to ask:

- ‘Will individuals have access to or be denied access to a service or function as a result of your policy or changes you propose to make to existing services or function?’
- Will the implementation of your policy result in individuals being employed, a change in staffing levels or a change in terms and conditions, employer or location either directly or indirectly?
- Is there a change in the size of a budget, how will this change impact on individuals, will a service be withdrawn, changed or expanded?
- If you have answered yes to any of these questions, your policy does affect people and you should undertake an equality impact assessment....
- If you think that there is no equality impact because your policy applies to everyone, then you should reconsider’

II. Scoping

We define ‘scoping’ as **the questions that need to be asked once the decision to undertake a full HRIA has been undertaken.** This stage is termed ‘planning’ or ‘mapping’ in some HRIA methodologies.

[Care Quality Commission Equality and Human Rights Impact Assessment Tool](#)- The tool comes with guidance (in the form of [Frequently Asked Questions](#)) which suggests that while the person carrying out the assessment should be someone involved in the policy, it can also be useful to involve an ‘outsider’ (someone who is not involved in the process) as an independent challenge or ‘critical friend’ to ensure that the assessment, and indeed the policy or methodology itself, are seen with fresh eyes’. The guidance highlights the positive and negative implications of working with external consultants with a specialism in equality or human rights.

In a number of HRIA processes the scoping part of the assessment is restricted to simply identifying the policy and what it seeks to achieve.³⁷ The scoping stage should however do much more than this. We identify the following six key issues which should be addressed at this stage. Questions identified within these issues are a composite of those mentioned in a number of different human rights and equality impact assessment processes.³⁸ Not all questions will be relevant to all HRIAs, but all of the six main issues should be addressed.

a. Who should carry out the Assessment?

Who should carry out the HRIA will depend on **balancing the requirements of independence with those of ‘ownership’ of the process.** Many of the international business HRIAs we scrutinised (where independence is crucial and funding is not so problematic) were carried out by independent consultants. There are also examples of (inter-)governmental HRIAs being undertaken by independent consultants (e.g. [the HRIA of the European Parliament](#)). The [Child Rights Impact](#)

[Assessment of Potential Electricity Rises in Bosnia and Herzegovina](#) had two experienced Bosnian researchers – specialist in statistical analysis and in qualitative research and working with children and strong links with organisations where they could draw upon existing research. NGOs and public authorities tend to carry out their own HRIAs with guidance and toolkits designed by themselves or experts.

Generally speaking, one off large-scale assessments of major government or business activity should be carried out by an independent team to ensure objectivity. Otherwise, and in particular with regard to public authorities, it is important that the assessment is ‘owned’ by the people responsible for developing the policy. This will also ensure that the assessment is based on a realistic understanding of what the policy involves. It will also increase the chances that a human rights approach is a central part of policy development rather than an add-on completed by an outside body. But independence can still be incorporated (see box above for example).

An HRIA carried out by a junior staff member with little or no human rights expertise and no power to influence any changes to policy as a result of the HRIA is unlikely to be successful. (See below for more on the resources, support and training required to carry out effective assessments). We make recommendations that attempt to balance the need for ownership and participation, independence and expertise:

Recommendations:

- Large-scale assessments of major government or business activity should generally be carried out by an independent team to ensure objectivity.
- Assessments undertaken by public authorities should generally be undertaken by those responsible for developing and/or implementing the policy. There should also be:
 - support at a senior level so that any changes recommended as a result of the analysis have a realistic chance of being implemented;
 - someone with expertise in human rights approaches who can understand the issues and how they might apply to the policy;
 - input from those effected by the policy (see consultation process below);
 - Consideration of utilising an ‘outsider’ as part of a team to bring fresh eyes to the issue.

b. The proposed policy/project etc.

All HRIAs should include a description of the policy, its aims and why it has been developed. Questions that might be asked include:

- Who initiated the policy?
- Who has responsibility for implementation?
- What is the legal, policy and practice context of the proposal?

- How does it relate to other initiatives?
- Does it seek to fulfil any targets set, for example, by government?
- What are the resource implications of the proposal?

A thorough understanding of the policy and its context is vital to being able to undertake a proper HRIA and to the ability to suggest appropriate alternative policies where negative human rights impacts are identified. It also means if someone else in the organisation is reviewing the HRIA they can quickly find out what the policy being assessed is, and why it is being introduced.

c. Who is Affected by the Policy

At this stage it is necessary to identify the people and groups who are potentially affected by the policy. This will assist in identifying the potential human rights issues. It will also assist in determining who needs to be consulted during the HRIA and the timing of the consultation. Methods of consultation are discussed [below](#).

There is also a need to ascertain whether there are any groups who are more likely to be affected by the policy. This is where an integrated equality and human rights impact assessment process is particularly useful. It is then possible to cross-reference human rights impact across the six equality strands (race, gender, disability, sexual orientation, religion and belief and age) as well as socio-economic status.

d. Possible Human Rights Impacts of the Proposal

An initial identification should be made of the potential human rights impacts of the policy in question. This does exclude the possibility that other human rights issues may be raised later, for example, as a result of the consultation process. But it will help to focus the subsequent information gathering and analysis steps onto the key human rights issues. Questions should include:

- What aspects of the policy are particularly relevant to human rights?
- Are there any areas where there is uncertainty over the human rights impacts?
- Where the policy is complex and multifaceted, which aspect(s) of the particular project, policy, law etc. will be subject to a full assessment?
- Where there are many potential aspects of the policy which could be explored, which of them is highest priority?
- Where a potential human rights impact has been identified, what are the indicators of whether there is (or will be) an impact?

We found that **very few potential human rights impacts were identified by public bodies in existing EHRIAs in the UK**. This was even the case where potential human rights impacts seemed quite striking, given some understanding of human rights. For instance, in Aberdeen City Council, policies to reduce funding for homelessness provision, reduce provision of services

to some older people and cut a staff post responsible for domestic abuse policy were assessed as having no potential human rights impact.

A toolkit that simply asks ‘does the policy have a negative, positive or neutral impact on...’ followed by a list of human rights does not encourage real analysis. Too many of the toolkits and HRIA forms we analysed adopted this approach. Rather, materials should include open questions, with examples which make it more likely that the official completing the assessment might consider the full range of potential human rights impacts (see box for example). In effect, this means **creating ‘indicators’ of human rights impact**. This issue will be discussed further in the [Analysis section](#) of the methodology below. But indicators will have to be developed at this stage of the process in order to aid decision-making on what evidence needs to be collected.

e. Evidence

Identifying the evidence that might be needed and where it might be found is a key part of the scoping stage. This may involve highlighting gaps in existing evidence and possibly commissioning research to fill the gaps (depending on the scope, scale and severity of impacts). The types of evidence that will assist in decision making will be discussed in detail in the [Evidence Gathering section](#) below.

f. Timescale of the assessment

In no scoping process that we reviewed was the timescale for the assessment considered. However, we would argue that consideration of timescale is a vital part of the process at this stage. In particular, consideration should be given to how the assessment needs to fit into other key events at this stage (e.g. is there a vital meeting at which the policy in question will be finalised).

Care [Quality Commission Equality and Human Rights Impact Assessment Tool](#) gives concrete examples of the implications of human rights in a health and social care setting. For example, it describes issues in relation to the right to life as including:

- decisions about life-saving treatment based on age;
- deaths through negligence in hospitals and care homes;
- not being able to eat properly while in hospital or a care home;
- Do not Resuscitate orders placed without consent;
- Carers jeopardizing patients’ health by delaying medical treatment due to inadequate support to relieve them of caring duties.

[NHS Wales Centre for Equality and Human Rights – Toolkit and Forms](#) - The human rights section of the EHRIA gives details of the various issues that might come up under each article (e.g. Article 2: the right to life. Examples: the protection and promotion of the safety and welfare of patients and staff; issues of patient restraint and control). The accompanying step by step guidance gives specific case studies for each article as it relates to NHS Wales.

Recommendations

An HRIA scoping process should set out:

- Who will undertake the assessment (see more detailed recommendations above);
- A description of the policy, its aims and why it has been developed;
- Who is affected by the policy;
- Possible human rights impacts of the proposal and indicators for how to measure those impacts;
- The evidence that exists to inform the assessment and any further evidence that needs to be found;
- The timescale of the assessment.

“A good HRIA tool helps organizations to collect data in a structured way, based on careful study of the available evidence.... the process of information-gathering is the most time consuming part of the process”
Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women
Assessment Instrument (HeRWAI), Bakker et al, 2009

III. Evidence Gathering

What information do you need in order to know whether there has been (or is likely to be) a human rights impact?

This is at the heart of an impact assessment methodology and will probably be the most time consuming part of the process.

a. Types of Evidence that should be gathered?

Without gathering evidence about the (potential) impacts of a policy, the conclusions of the decision-maker

are likely to reflect simply their own knowledge, experience and prejudices. This is not to say that evidence will provide certain knowledge about a policy's human rights impacts. '... questions of time, causation and spuriousness affect any assessment's ability to draw inferences about the true impact of a set of activities.'³⁹ But it should give a more informed basis on which to make decisions.

When assessing the human rights impact of a policy it is important to look not only at what the intention of the policy is, but also its outcomes (or likely outcomes) – both direct and indirect. A crucial part of a HRIA is recognising where a policy can impact on someone's rights even when this was not intended when the policy was developed (see blue box for example). A policy also may have a disproportionate impact on a particular social group because that group has needs which are distinct from the general population. For instance, disabled people may need access to public services that, if removed, will not infringe the human rights of others. Collecting

[A HRIA of Paladin Energy's Kayelekera Uranium Project in North Malawi](#) utilised existing research to ascertain that HIV rates increased as a result of the improved transportation and increased in-migration of the project. Therefore mitigation measures were required to ensure against spread of HIV/AIDs which would negatively impact the right to health of the local population.

evidence of actual impact (or evidence that suggests what the probable impact is likely to be) can help highlight where this is happening or likely to happen.

The evidence required and the methods for collecting it will depend on the type of assessment being undertaken. For instance, in an *ex post* assessment there will be evidence of what has occurred as a result of the policy change whereas in an *ex ante* assessment the same information will not be available about future impacts. However it is often possible to predict changes based on comparable situations elsewhere and from estimating likely responses to policy changes by affected individuals. For instance, in a HRIA in Bosnia-Herzegovina of the future impact of electricity price rises on the rights of children a variety of research methods were used to identify vulnerable households and 'estimate the range of responses and coping strategies' in order that they might be utilised in response (see Bosnia text box below).

Whether a HRIA is *ex post* or *ex ante*, a combination of research sources will be required. Most advanced HRIA methodologies suggest a combination of quantitative and qualitative research methods:

Quantitative Research – This is the measurement of 'hard' data about a situation. It will include demographic data, surveys, results of questionnaires and other statistical information. This gives us information about the percentage/number of persons, nationally, regionally and locally in particular groups or categories. For instance the percentage of people who are on income support, number of people who live in state funded care homes etc.

[“A Children’s Rights Impact Assessment conducted in Bosnia and Herzegovina \(BiH\) to assess the potential impact of the proposed increases in electricity prices on children employed a mixed methodology. Existing data sources and knowledge were integrated with further quantitative and qualitative research findings to identify vulnerable households and estimated the range of responses and coping strategies that they might use in the light of price increases in electricity. The following sequence of research methods were implemented in this CRIA:](#)

- A review of existing literature on child poverty and disadvantage in BiH and an analysis of existing quantitative data (e.g., Household Budget Survey, Living in BiH Wave 4) ⁴⁰ to confirm profiles of households most likely to be adversely affected by electricity price reforms.
- Qualitative research, involving focus groups with households and separately with groups of children, and structured interviews with key informants in public institutions responsible for children’s education, leisure or welfare. A focus on immediate impact was balanced with the focus on coping strategies to better inform understanding of long-term consequences for children.
- An additional quantitative survey, drawing on findings of the qualitative research. This survey was tied closely to the Multi-Indicator Cluster Survey (MICS) 3⁴¹ sample so that the consistency of the sample could be double checked against the results from the much larger MICS sample.
- Cross-referencing findings of quantitative and qualitative research components, so that

econometric modelling, development of child rights/ well-being indicators and ultimate conclusions were based on insights from both forms of research.”⁴²

Qualitative Research – Simply put, this is research which does not give you a hard number, but rather gives you a narrative about people’s experiences. Consultation can provide qualitative research but there may also be pre-existing qualitative data from earlier research. Qualitative research might include

- focus groups
- interviews with key rights-holders
- interviews with experts on the subject of the policy and on the rights issues
- case studies of particular groups and individuals
- questionnaires which ask for narrative responses
- other reports or academic articles

We would also add **case law**. This is not included as a category of research in existing HRIA methodologies. But knowledge of courts’ decisions about a particular human rights issue can assist the decision-maker to know whether a human rights violation is likely to occur, particularly in respect of the Human Rights Act.

b. What Type of Research To Use

Most advanced models of human rights impact assessment advocate combining these two types of research (quantitative and qualitative) in order to analyse what the human rights impact of a policy is, or is likely to be, on particular people. This is because:

- Qualitative research can give a human face to what might otherwise be an abstract set of numbers and show how real people’s lives have been or could be affected by a policy;
- However, over-reliance on qualitative research faces the accusation of being subjective (it depends on who you have in the room).
- Quantitative data can show how many people actually experience certain outcomes.
- Quantitative data can also be disaggregated (for example by race or gender) more reliably because of the potentially larger numbers in the data set. This can help expose differential impact of a policy on particular groups.
- But over reliance on quantitative methods can marginalise consultation and also leads to ‘the erroneous impression of precision and confidence in predictions’.⁴³ It may also disguise impacts on particular people in a particular place where the figures are not sufficiently precise (e.g. a national survey will not give you accurate figures for a particular school or hospital).

c. Existing Methodological Approaches

We found there was a lack of evidence to support conclusions in many of the UK-based EHRIAs we scrutinised. There were notable exceptions (see text box). But where evidence was cited it was often difficult to see how this informed conclusions that were then reached. The UK experience is in stark contrast to a number of the better international HRIAs we analysed where there was considerable evidence gathering upon which conclusions were then based (see Bosnia text box above). We identify a number of reasons for the general lack of research undertaken in UK HRIAs. UK HRIAs:

- Are undertaken frequently, in relation to a wide range of different policies
- Are often undertaken by public officials with limited expertise, time and resources
- Involve tick-box forms that do not encourage detailed research.
- Do not contain detailed guidance on appropriate research methodologies

d. Level of Evidence Gathering that is Appropriate

The question of the degree of evidence that is required in order to inform an impact assessment is a tension that is prevalent in many discussions of HRIAs among practitioners. On the one hand rigorous and scientific assessment methods are demanded so that the conclusions that are drawn are as robust and secure as possible.⁴⁴ On the other hand it is suggested that demands for 'academic' quality research can make tools less attractive to potential users.⁴⁵ Generally we found that more rigorous and demanding HRIA tools were generally more lightly used in practice. As mentioned above, the evidential burden is going to

Sussex NHS Foundation Trust's 'Assessment of Process for Evaluating and Rating Ward Reconfiguration Options' for example includes demographic information about use of different wards and highlights the fact that the majority of users of older people's services are women and that this must be taken into account in service design. Care Quality Commission Equality review of 'healthcare for people in care homes' includes evidence of how care outcomes may be affected by disability, race and gender. It highlights a Department of Health report into the impact of sexism, homophobia and transphobia on lesbian, gay and transgender people. It concludes with concrete steps to ensure equality and human rights issues are central to the review process.

The Department of Health Equality Impact Assessment guidance (p.31.f) contains a comprehensive section on sources of evidence which includes:

- Sources of qualitative and quantitative evidence
- LibCat (a list of over 200,000 references to books, official reports, articles, chapters and electronic publications of relevance to the Department of health)
- NHS evidence (an on line search tool for searching health related English language publications)
- Lists of other databases
- Explanation of 'grey literature' (technical reports, working papers, papers from workshops and conferences)
- Examples of the sort of evidence that might be used (for example 24% of people who are deaf or hard of hearing miss appointments because of poor communication)

Sussex NHS Trust also has a [database for impact assessments](#) to assist those undertaking assessments. EHRC Equality Impact Assessment (p.14) gives several examples of data collection systems in the equality sphere

be higher where the human rights impact is more serious in terms of its scope, scale and severity.

We suggest that the right balance between rigour and ‘usability’ will only become clearer through ongoing review and analysis of existing HRIAs. But more effective guidance and collaboration with regard to sources of evidence can be of great assistance. Our recommendations reflect this.

Recommendations

- HRIA toolkits and guidance should include comprehensive sections on the sort of evidence that might be required (with specific examples) and where that evidence can be found (see Department of Health textbox above for details).
- HRIA training should include training in appropriate research methodologies
- Organisations should consider identifying someone to collect information as it becomes available. Smaller organisations could pool resources to develop a shared database.
- Ongoing monitoring and review of HRIA research methods and application should be undertaken to identify and disseminate good practice.

IV. Consultation

The majority of the guidance on consultation processes which the authors reviewed both nationally and internationally simply stress the importance of consultation and participation from a human rights perspective and argue that HRIAs should include effective consultation with the full range of potential rights-holders.⁴⁶ The empowerment aspect of consultation is also stressed – that the process of bringing together (potentially) affected persons is itself a valuable end in itself.⁴⁷ But beyond this little is actually said about how effective consultation processes should be undertaken.

The Equality and Human Rights Commission guidance on developing EIAs highlights the fact that many of these groups ‘face particular barriers to involvement which means that specific, targeted outreach activities are needed’.⁴⁸ But we found little evidence in any toolkits or guidance of consideration of the barriers to effective consultation that might occur in practice, or how they may be overcome. Nor did we find any evidence of attempts to highlight participatory methods of consultation that improve chances of engagement with rights-holders.

The [Child Rights Impact Assessment of Potential Electricity Rises in Bosnia and Herzegovina](#) contains a detailed consultation process involving focus groups, questionnaires and interviews which then formed the basis of much of the qualitative research in the assessment and clearly informed many of the final recommendations of the Study

Individual HRIAs will have to consider the likely barriers depending on an assessment of the rights-holders who are involved and react accordingly. The first stage of the process is therefore to identify the key rights-holders that are to be consulted. Then barriers to those individuals and groups need to be considered. Barriers to effective consultation and potential solutions may include:

- **Language barriers** – Consider producing materials in languages other than English
- **Literacy problems** – Consider means of communication other than written materials and ensure any written materials produced are accessible.
- **Lack of time** (or caring responsibilities that make it impossible) to attend public meetings, fill in forms, take part in focus groups – consideration of specific outreach activities, support for carers etc.
- **Access issues** (materials in formats that cannot be read, meetings in venues that cannot be entered, lack of computer access for online consultations) – Widen accessibility generally and pay particular consideration of the needs of groups and individuals identified as important to the consultation
- **Lack of awareness** that a consultation is taking place – Consideration of appropriate forms of consultation to individuals and groups and how it should be publicised
- **Lack of faith** that the consultation is genuine – full explanation of the consultation process and how it will feed into final determination of policy and appropriate publicity of the results.

The timing of consultations is particularly important. Often authorities where decisions are made by elected officials do not consult on policies until the elected officials have discussed the policy. Unfortunately by then the policy generally has such a strong momentum behind it that it is difficult to make changes even if the results of the consultation are very negative.

Effective consultation should be judged on results, not activity. It is not enough to say ‘we consulted and people had the opportunity to respond’. Lack of response does not necessarily mean lack of interest. It may well indicate a failure in the consultation process.

It is impossible within the context of this short report to create the detailed context-specific guidance necessary for conducting effective consultation processes. As mentioned above, the requirement to conduct more extensive consultation is going to be higher where the human rights impact is more serious in terms its scope, scale and severity. The appendix to this report contains a number of guidance documents that give more specific examples of good practice in consultation with regard to specific groups. More general recommendations follow here.

Recommendations:

- Consultation processes should ensure there is adequate opportunity to respond and for those responses to be taken into account in the formulation and modification of policy
- HRIAs should consider the full range of people who should be targeted by consultation processes (e.g. staff, service users, those effected by the policy and other stakeholders) and the best methods for consultation
- People undertaking HRIAs should have an understanding of the specific barriers to consultation that arise for particular groups and methods for dealing with them through appropriate training, and context specific guidance
- HRIA forms should ask for evidence of consultation with stakeholders not simply that consultation has taken place.

V. Analysis

I. Current Practice

This is the stage of the process where a decision is taken over what the human rights impact is. We found that in much of the UK practice, even where there were sophisticated procedures for collecting evidence, the analysis element of the process often only demanded a tick box exercise (e.g. is there a negative, neutral or positive impact on human rights).⁴⁹

There is generally little attempt in toolkits to produce guidance on how the process should take place and in individual assessments it is often difficult to see how the evidence which has been collected has informed the analysis undertaken.

II. Use of Indicators

Instead of simply tick box exercises, more detailed analysis requires a series of questions or 'indicators' to be developed to ascertain whether a particular right has been violated. There has been much work internationally to put together indicators which can be utilised to determine whether a right has been violated. A selection of sets of indicators developed in relation to particular

Checklist of indicators for the [Assessment of the impact of European Parliament resolutions and other activities in the field of human rights \(selected\)](#):

Indicators on the situation of the target groups/individuals

- Did the situation of the target groups or individuals change (e.g. liberation, commutation of death penalty to another sentence, etc.)?
- Did the violations stop?

Indicators on the global human rights situation

- Did the human rights situation described in the resolution improve?

Indicators on authorities' reactions

- Did the authorities officially react to the resolution/activity of the EP?
- Did the authorities change their policy or behaviour after the resolution was adopted?
- Did the authorities engage into discussion with the EU on the issues addressed by the resolution or with the groups or individuals concerned by the resolution?
- Did the authorities improve protection of these groups or individuals?
- Did they offer remedies to stop and compensate the HR violations?

rights is set out in the [Compendium of Resources](#) Appendix.

However, despite much talk about using these indicators in impact assessment, there is little evidence of their use. This may be because work on indicators is generally relatively recent and has advanced more in relation to certain rights.⁵⁰ But it is also because importing lists of indicators of particular rights wholesale into an impact assessment process is likely to be overwhelming for decision-makers and also lack the contextual specificity necessary for this kind of exercise.⁵¹ What we found in the international HRIAs that did use indicators as tools of analysis were smaller lists of very context-specific questions. The questions were used in order to test the particular human rights issues which were the subject of the assessment (see box example above).

Indicators will also be specific to the human rights framework which is being employed. For example, indicators which relate to the Human Rights Act will need to focus (at least to a degree) upon the key legal issues of the HRA (e.g. legality, legitimate aim, proportionality). Indicators relating to economic, social and cultural rights will utilise indicators based on those frameworks (e.g. minimum core obligations, progressive realisation, availability, accessibility, acceptability, quality).⁵² Whatever the legal framework used, indicators must be translated into language which those undertaking the impact assessment will understand.

A final thought is how legalistic indicators or questions should be in impact assessment. A strict legal approach to impact assessment will focus on whether recognised human rights standards have been violated ('does this breach the Human Rights Act?'). A more progressive approach will look at whether the policy in question has any kind of positive or negative impact on the rights concerned. The latter approach is likely to pick up more human rights issues than the former and therefore have a greater impact on policy. Perhaps because of the principle of progressive realisation, we found that HRIAs utilising economic, social and cultural rights as the basis for assessment identified a greater range of policy interventions than HRIAs focusing on civil and political rights.

Recommendations

- Human Rights Indicators should be utilised as the basis for analysis
- Indicators or questions should be developed at the scoping stage in order to ascertain what evidence should be gathered and then again at the analysis stage to determine whether there has been a human rights impact.
- Indicators need to be developed which are context specific and relevant to the human rights framework which is being employed
- Indicators should be designed to assist non-legal specialists in understanding the human rights obligations which are at the core of the assessment process

VI. Conclusions and Recommendations

The formulation of policy-orientated conclusions and recommendations is central to conducting a HRIA. However, a significant number of HRIA models we considered both nationally and internationally did not put sufficient emphasis on the formulation of conclusions and recommendations that could be acted upon by decision-makers (see box for example). In other HRIAs, conclusions themselves seemed weak and unrelated to the problems identified.⁵³ There is a risk that a misdirected or inappropriate recommendation will serve to hinder or freeze the advancement of human rights in an institution's work. This can make those carrying out HRIA nervous about being too specific. But lack of concrete recommendations hugely reduces the chance of the HRIA being acted upon.

The [Aberdeen City Council Guide](#) does not suggest those carrying out an EHRIA consider changing policy as a result of their assessment. The guide does say 'If, as a result of your monitoring arrangements you find there is a negative impact upon any of the equality target groups, or risk of any other human rights breach, you must take action to modify the function or policy'. However the form used to carry out the process recommended by the guide does not include a section for any modifications to policy as a result of the assessment. So for instance, an assessment of a decision to close public toilets in the City Centre identifies an impact on the elderly and disabled people but does not suggest any action that could be taken to mitigate the impact of the decision.

There are four types of conclusions that can be reached:⁵⁴

1. No negative impact found;
2. Change the policy or bring in additional measures to mitigate the impact;
3. Negative impact found, but policy not changed (in particular this needs to be fully justified);
4. Stop and Remove the policy.

Making sure that HRIAs result in conclusions and recommendations that can be acted upon by relevant actors requires considerable thought and attention. Some HRIAs had detailed recommendations for alternative policies and mitigating actions, for instance, the [Child Rights Impact Assessment of Potential Electricity Rises in Bosnia and Herzegovina](#) (see p70f). As with

[NHS Wales Centre for Equality and Human Rights – a toolkit for carrying out an Equality Impact Assessment](#)

The toolkit specifically encourages those completing the assessment to consider alternatives to the policy proposed:

- What changes to the policy have been made as a result of conducting this EIA?
- Describe any mitigating actions taken to reduce negative impact
- Is there a handling strategy for any unavoidable but not unlawful negative impacts that cannot be mitigated?
- Describe any actions taken to maximise the opportunity to promote equality (i.e. changes to the policy, regulation, guidance, communication, monitoring or review

evidence gathering and assessing impacts, the ability to formulate appropriate recommendations will depend on the resources and expertise available to the assessment team. But decision-makers can also be prompted to think about relevant responses by appropriate questions in guidance and on forms (see box above for example).

Recommendations:

- Making conclusions and recommendations should be highlighted as an integral part of the process of HRIA;
- HRIA toolkits and forms should include detailed guidance and questions that must be answered on the type of recommendations that might be appropriate including changes to the policy, mitigating actions;
- Where negative human rights impacts are identified then failure to recommend any action as a result should be fully justified;
- Where action is required, the person who will implement the recommendations should be identified, as well as the fact that they have been notified of the need for the change and the timescale within which this change will occur;
- Recommendations should be signed off by a senior person in the organisation undertaking the assessment, preferably with responsibility for decisions on the policy changes.

VII. Publication

Publishing Human Rights Impact Assessment is vital to the impact assessment process. It ensures that the body responsible can be held to account by rights-holders and other interested actors. Impact assessments should provide a transparent audit trail “for others who want to question the methods or results or redo the analysis with different assumptions”.⁵⁵

We found examples of human rights impact assessments which appeared not to be published (e.g. [Yahoo!](#)) or where it was difficult to find completed assessments. There may be occasions (particularly in HRIAs conducted by businesses) where confidentiality issues prevent publication of specific parts of HRIAs. But the presumption should be in favour of full publication of the full assessment processes including:

- Any screening processes, whether or not it led to full assessments
- A form cataloguing all actions taken during the HRIA process
- The recommendations for action and how they were (or are to be) acted upon.⁵⁶

To increase transparency and participation, it has been suggested that a draft report of the HRIA should be circulated to those involved in the consultation process so that they can comment on the findings and the options presented for dealing with any human rights issues arising.⁵⁷ However, we could not find any HRIA where this had actually taken place.

Recommendations

- All HRIAs should be published including screening processes, full assessments and recommendations for action
- HRIA forms should be designed in order to promote transparency and provide a full record of the impact assessment process
- Individual HRIAs should be easy to access via a website and should be simple to find with a basic Google or other search engine search.
- Consideration should be given to circulating draft HRIAs for comment to those involved in the consultation process of the HRIA

VIII. Monitoring and Review

A human rights impact assessment should not be a one-off event but an ongoing and dynamic process.⁵⁸ This means that at the end of any assessment process a procedure should be put in place for how and when impacts should be assessed again in the future.

The HRIA team should identify a monitoring and review process to make sure that:

- Recommendations are implemented.
- Impacts of the policy are reviewed over time to see whether predicted impacts have occurred or other unexpected impacts have arisen.

The [Child Rights Impact Assessment of Potential Electricity Rises in Bosnia and Herzegovina](#) includes a whole section that sets out indicators to measure future impacts once any electricity price increases are introduced (p.62-64). It also includes recommendations for how any future studies should be conducted (p71-72)

We found that most HRIA methodologies included some form of monitoring and review process, but there was often little evidence that any further review had taken place. More detailed monitoring and review processes included review and reflection on the assessment process itself and identification of indicators to measure future impacts (see box for example).

Recommendations:

- Post –assessment internal monitoring and review procedures should be set up to consider whether recommendations have been implemented and what the ongoing impacts of the policy or practice are.
- The Procedures should specify:
 - who is responsible for monitoring the policy
 - the date when the policy will be reviewed and what evidence would trigger an early review
 - if there is any data which needs to be collected and how often it will be analysed.
 - how to continue to involve relevant groups and communities in the implementation and monitoring of the policy.

3. Successful Implementation of the HRIA methodology

A successful HRIA does not simply depend on developing the ideal methodology. It must be translated into action on the ground.

It is important to remember the context in which public officials may be carrying out a HRIA in the UK. We have already mentioned the trend in the UK for unpopular decisions by public bodies to be blamed on ‘human rights’ since the passage of the Human Rights Act in 1998. Some of these cases are best described as media myths – either the decision itself did not happen or the context was very different from that reported. However a requirement on public

“It takes more than a good tool to make HRIA contribute to the promotion of human rights. It also requires a sustainable strategy to disseminate the tool...The user friendliness of the tool therefore not only depends on structure, layout and language, but also on the support given to (potential) users.” *Human Rights Impact Assessment in Practice: The Case of the Health Rights of Woman Assessment Instrument* Bakker et al, 2009, p.452

officials to carry out a HRIA with only a basic framework of advice, inadequate support and no training in what human rights principles mean in practice, may lead to decisions which do not meet human rights standards.

It is important that the assessment is ‘owned’ by the people responsible for developing the policy. But this will almost certainly mean that they lack the specific expertise to be aware of all the potential human rights implications of the policies in question. In these circumstances they may be particularly vulnerable to pressure from individuals and groups who use human rights arguments even if these arguments are fairly weak, and/or fail to take into consideration the human rights of others. A mechanism designed to protect and promote the rights of everyone in society may become in effect another tool used by the already privileged.

In order to avoid this, organisations need to prioritise the training, support materials and organisational support given to those carrying out appraisals. Below we set out some of the key issues for a successful implementation of the HRIA methodology.

The toolkits, guidance and forms used by those carrying out HRIA can be important aids to the assessment process if they are of high quality. But this is often not the case. We have reviewed some materials that are so brief they do little more than state the relevant human rights law (in one case, this meant simply [reproducing the European Convention on Human Rights](#) as an annex). On the other hand training manuals can run to more than 100 pages of dense methodological guidance.

Similarly some HRIA processes can involve filling in simple pro-forma largely tick-box forms that actually discourage proper analysis. On the other hand, it is notable that the longer and more complex forms (like SCCYP) have not been greatly utilised.

We believe that a balance is possible and that guidance and assessment forms can be produced that will encourage meaningful and manageable assessments. But good supporting materials will not by themselves lead to good assessment. Training and support is required to bring methodologies to life and make people realise how they should be applied.

Training in support of a particular toolkit or methodology can all too often become focused on the process of completing the forms (the 'how?'), rather than an exploration of the values and the approach that should be informing the analysis ('the why?')

Commitment at a senior level in the organisation undertaking the assessment is vital. Where senior staff see this as an important process, then staff undertaking the assessments are far more likely to be encouraged or even required to produce assessments of high quality and given the training and support to do this. The best methodology in the world can become a tick box exercise where there is not ongoing support for taking it seriously.

The only way that HRIA methodologies are likely to improve is by further practice.⁵⁹ We are less than a decade into undertaking HRIAs and it is only by trial and error of existing methodologies that they are likely to be refined and improved upon. "Now that some tools are being used, learning from each other's experiences and analysing what works well and what does not is essential to further develop the discourse on HRIA."⁶⁰

Recommendations:

Toolkits and guidance should incorporate:

- Specific examples that are relevant to the organisation that will be carrying out the assessment.
- Illustrations showing how HRIA has led to improved policy
- Open questions that make the people completing the assessment think about the human rights implications of a policy that might not be obvious
- Examples of when rights are absolute, and when qualified rights should be balanced with each other, according to principles of legality, necessity, and proportionality, to pursue legitimate aims.

Training should cover:

- Key principles of human rights and equalities, including specific issues that might be expected to arise in the specific organisation undertaking the assessment;
- Regular opportunities to review and refresh knowledge and understanding of human rights, including opportunities to reflect on previous HRIA and what might have been done differently.

Institutional support should include:

- Training for senior managers to ensure they understand and support the assessment process.
- Establishment of resource databases which provide the kind of quantitative information that is necessary to support informed analysis.
- Guidance in terms of finding other sources of qualitative and quantitative evidence
- Access to internal or external human rights expertise to assist in decision-making where complex human rights issues are raised.

E. Illustrations of the Human Rights Impact Assessment Process

1. Introduction

We include two illustrations below of how the methodology described in Section D might be utilised. These illustrations draw on actual situations but do not describe a specific HRIA. They are ‘illustrations’ not assessments – they illustrate the general processes HRIAs might follow, rather than the actual results HRIAs would achieve. A real HRIA would be conducted in relation to a specific scenario with much greater knowledge of the actual situation than is possible here.

Both illustrations are HRIAs of policies at a relatively local level to make them more concrete. The first illustration is of a local authority decision to ‘refocus’ social care spending on those defined as having most need. In particular it involves budget-cutting issues, a range of human rights issues, and complex issues of timing, evidence and consultation. The second relates to a school who undertake an assessment of all their policies. In particular, it involves consideration of how the screening and scoping process would function, and a different range of human rights issues leading to different types of recommendations and monitoring processes.

HRIAs in the UK context should always be undertaken alongside equality impact assessment (see recommendation [below](#)). Therefore in each assessment we also consider some of the equalities impacts of the policies in question. This demonstrates how an integrated approach is important. But we mainly focus on the human rights aspect of these assessments.

2. Illustration 1: Local authority decides to ‘refocus’ social care spending on those defined as having most need.

A local authority decides to re-define those who are ‘in need’ of social care in their own home. Those agreed to be in high need of care will continue to receive it free of charge but criteria for different levels of need (low, moderate, high, urgent) will be amended to reduce the number of people defined as having a high level of need.

The authority is facing budget cuts and the policy is largely a response to this. However the social care team also believe that resources could be better targeted at those in highest level of need.

The authority decides to undertake a HRIA as soon as the decision has been made that the policy is required. They have a draft set of criteria for different levels of need but this will not be finalised by the authority until a meeting of the council in 3 months time and so there is an opportunity to influence the policy before it is implemented.

The following represents a description of how the HRIA methodology described in Section D might be applied to this issue:

I. Screening

The authority screens the policy to see if a full analysis is needed. The authority first asks a number of questions that they have developed to test the potential impact of the policy. Answers to two of the questions make it clear that a full HRIA is required:

- *Will individuals have access to or be denied access to an important service or function as a result of your policy or changes you propose to make to existing services or function?*
ANSWER – Yes
- *Is there a change in the size of a budget, how will this change impact on individuals, will a service be withdrawn, changed or expanded?* **ANSWER – Yes and services are likely to be withdrawn to some individuals**

No further research or inquiry is therefore required at this stage – a decision is made to move on to a full HRIA. Details of the screening stage are immediately posted on the authority’s website.

This policy is further identified as a high priority for a HRIA because of the numbers of people affected and their vulnerability and is therefore carried out immediately.

II. Scoping

a. Who is going to conduct the assessment?

The Authority decides that this policy change has such serious implications that it requires a team of people. The team will involve senior staff within the social care team and representatives of staff on the ground. The team will establish an advisory group of those affected, including those receiving care and carers. The team also identifies the Head of the Human Rights and Equalities team in the authority who agrees to give human rights advice and guidance when it is needed, or seek outside advice where necessary.

b. What is the policy that is being assessed?

The requirement to reduce the budget was initiated by the national government, but the local authority will make the decisions about what specific cuts are made and how they are implemented.

The policy will redefine those at high need of social care. This will allow resources to be focused more on those with greatest need, but the policy is also driven by a need to balance the authority’s budget. The team recognises that it is important to keep in mind these dual policy contexts when undertaking their human rights analysis (e.g. to assess whether the purpose is legitimate and the policy is a proportionate response).

c. Who are the people affected?

People receiving services are clearly going to be the people most directly affected by the policy. The team is aware that different groups have different care needs. The policy is particularly likely to affect:

- *People with disabilities*
- *Older people, especially the very elderly*
- *Women will be disproportionately affected as those needing care and unpaid and paid carers*
- *Some BME groups may not access the care they need*
- *Travellers*
- *LGBT groups who may experience discrimination from care workers*
- *Poorer people who are unable to pay for other care if they are assessed as no longer being in high need.*

The team therefore recognise the need to cross-reference human rights impact across the six equality strands (race, gender, disability, sexual orientation, religion and belief and age) as well as socio-economic status as part of the assessment.

The team agrees that the policies will affect not only those receiving services but friends, family members and other carers who will pick up the slack. There are some concerns about staff working in the services – if focus is on the most in need groups will their work become harder? The policy may also impact on the work load of other health care professionals (e.g. GPs who may need to deal with health issues that develop). The team agrees that all these groups need to be consulted at the earliest possible stage in order to inform the assessment.

d. Possible Human Rights Impacts of the Proposal

The team decide that they have to review the whole policy because it is only then that they can ascertain its overall human rights impact.

The team identify the following rights under the Human Rights Act as potentially engaged:

- *Right to life (article 2 HRA)*
- *Right not to be tortured or treated in an inhuman or degrading way (article 3 HRA)*
- *Right to respect for private and family life (article 8 HRA)*
- *Right not to be discriminated against (article 14 HRA)*

In addition to these rights under the Human Rights Act the team decide to consider the impact of the policy on the Right to Health.

They develop indicators/questions to help them to measure potential human rights impacts.

NOTE: *Some potential indicators are set out for the right to life and right to health below. These indicators are neither comprehensive nor designed on the basis of rigorous analysis. They are merely intended to be indicative of the kind of indicators that might be developed:*

Potential Indicators for the right to life

- *Is there a danger reduction in services will endanger the lives of anyone who receives local authority care?*
- *Will the new responsibilities on carers impact upon their ability to get medical treatment for those receiving services (e.g. because of lack of support to relieve them) when they really need it, thereby endangering lives?*

Potential Indicators for the right to health:

- *Will this policy change lead to a deterioration of the basic health care facilities and services available to those receiving the Authority's care services?*
- *Will the policy jeopardize funding for services primarily used by people whose health is at greatest risk, such as people living in poverty and other marginalized people?*
- *Does the Authority have a plan of action for how it will ensure no deterioration in health care services as a result of the policy change?*

e. Evidence

The council has developed an evidence resource database shared with the local health authority, police and a number of other public bodies. This allows all the bodies to share the cost of developing and maintaining a good evidence base for their policy development. This will give them quantitative evidence about:

- *The number of people receiving care according to each of the draft criteria (low, moderate, high, urgent)*
- *Cross-referenced data for each of the equality strands and socio-economic status*
- *The numbers of carers who are registered as providing care in the area*
- *The number of care workers, where they work and who they provide care to*

The team realise that they need to find additional evidence in relation to the likely impact on all the affected groups. In particular they decide to search for:

- *National studies (quantitative and qualitative) on the impact in reduction of particular types of care and care to certain groups*
- *Evidence of impact (quantitative and qualitative) from other authorities that have pursued similar policies (including evidence from groups other than the authority who are taking the action)*
- *Views of affected groups in the locality about the change in policy (qualitative)*

f. What is an appropriate time-scale?

The team decide that the HRIA must be completed within the next three months so that it can feed into the meeting of the council to agree the budget.

III. Gathering the Evidence

The team gathers evidence of impact from the sources set out above. They find good evidence through their database in relation to the numbers currently receiving care – numbers assessed as being at greatest need – broken down by into the various equality strands.

They find a number of national studies in relation to the impact of reduction in particular types of care but very little on the impact on particular groups. They decide to contact a number of renowned experts in elder care and care of people with disabilities because of their particular concerns about what the differential impact here might be.

They decide they also need to obtain primary evidence in relation to the views of:

- *those needing care;*
- *staff of the authority who deliver care;*
- *other carers and close friends and family;*
- *other health specialists in different types of care locally.*

They will obtain this evidence through their consultation process.

IV. Consultation

The team recognise that they need to start their consultation process as soon as they can – they only have 3 months before the criteria for assessment is finalised and they want to feed it into the Board’s decision-making process. But they also need to give people something concrete to consult on. On the basis of advice from their advisory group the team agree on the following strategy for consultation:

- *Produce materials which set out the policy change in simple terms and gives details of key aspects of policy (e.g. specifics about what ‘high need’ means and what it doesn’t mean). It also sets out possible alternatives to the proposed policy (e.g. fewer hours for a greater number of people);*
- *Design a questionnaire which asks people key questions about the policy and asks for information about their priorities;*
- *Put the materials into a large font size because of the number of people with eyesight difficulties who will be consulted;*
- *Distribute materials (including reading through the materials with those receiving care who are unable to do so themselves) and give talks at other organisations’ consultative forums and distribute questionnaires as well as obtaining oral feedback from people at the meetings;*
- *Establish consultative forums themselves and invite all the affected groups they have identified;*
- *Check for on-line support groups and consult them.*

As a result of this process, they have obtained a wide range of opinions from those needing care, staff of the authority who deliver care and other health specialists in different types of care

locally. But they have had very few responses from other carers. They identify a need to provide respite care for carers to take part in consultations and this is done.

V. Analysis

The team analyse the results of their evidence gathering and consultation utilising the human rights indicators they have identified. They identify a number of issues in relation to all the potential human rights engaged.

NOTE: There are many potential issues that could arise here and analysis depends to a great extent on the specifics of the policy and the precise evidence found. Only a few indicative examples are given here.

Right to life

- *There is a particular danger to the elderly of a reduction in services even for those whose care needs have been identified as low or moderate;*
- *New responsibilities for carers will mean that they will have less time to consult with other health care professionals and get medical treatment to service users in cases where delay in treatment could be life threatening.*

Right to health

- *There is a danger that the policy will lead to a deterioration of the basic health of those who will no longer be entitled to care because they are no longer defined as in 'high need';*
- *Among those who are no longer entitled to care the policy will particularly impact on people living in poverty who cannot afford to pay for care and people without family or friends to care for them;*
- *The authority does not currently include a plan of action to mitigate the effect of this policy.*

Other impacts might include e.g.

- *Increased number of people having to go into care homes because social care at home is no longer available (This may impact on the right to private and family life – the team will have to assess whether this impact is justified);*
- *The policy will have a negative impact on gender equality as carers - who are mainly women – have to take on extra unpaid caring and are able to do less paid work.*

VI. Conclusions and Recommendations

NOTE: Again, there are many potential recommendations that could be made and recommendations would depend on precise findings. A few indicative recommendations are made here.

The team conclude that the policy will have negative human rights impacts in terms of the right to life, the right not to be treated in an inhuman or degrading way, respect for private and family life, the right not to be discriminated against and the right to health.

They recommend that the policy is stopped, while there is a re-think and consideration is given to cuts elsewhere in the authority's services.

NOTE: *If the team wanted to undertake a HRIA which scrutinised the overall allocation of the authority's budget, they could undertake the kind of budget analysis work which was highlighted above in [Section C.3.5](#)*

The team recognise that the reality of budget squeeze means that the authority will probably not abandon the policy altogether. So in the alternative, they identify the following adaptation and mitigation measures that can be taken immediately to deal with the most egregious human rights issues:

- *A change in the criteria for services should apply to new cases first and not be applied to those currently receiving care;*
- *Greater flexibility in the application of the policy to allow a wider range of circumstances to be taken into account (e.g. taking into account age, disability etc.);*
- *The existing help-line for people needing care and carers should be given more information to sign-post other sources of care;*
- *Emergency service set up so that carers can obtain priority consultation over medical treatment for service users where required.*

They recommend that the authority and the health authority develop closer working relationship in order to tackle the on-going relationship between social care and health.

VII. Publication

The team's report and draft recommendations are circulated to all those who contributed to the consultation process for feedback and comments. Some changes are incorporated as a result of the feedback. The report is then posted on the authority's website.

VIII. Monitoring and Review

The team decide that this is such an important policy that a formal review should take place after one year. They identify indicators which are designed to show whether there have been reductions in the quality, accessibility and affordability of health and they identify the information that must be collected during the year to enable the end of year review to take place.

3. Illustration 2: A school decides to do an EHRIA on all school policies

A school introduces a policy of carrying out Human Rights Impact Assessments on all school policies and practices. It does this in conjunction with assessing equality impacts. All new policies will be subject to an EHRIA as part of their development. In addition the school decides to review all existing policies.

I. Screening

As a first stage the school screens all its policies to identify those with the highest possible human rights relevance. The school has so many policies on many different issues that they realise that the screening process is very important.

The Governors of the School have little idea of which policies should be prioritised for assessment. They do some initial research which identifies a report on the human rights implications of school policies and they speak to experts from relevant human rights bodies and educational experts in order to inform their screening process.

As a result, the school identifies the exclusion policy and bullying policy as those most relevant to human rights. Some members of the Governors are concerned about the school's uniform policy because of seeing reports in the media of cases taken under the Human Rights Act (HRA) so it is decided to include this policy in the first round.

Other policies are timetabled to be assessed later. A list of all policies to be assessed and the timetable for assessing them is published on the school's website, together with a report of the screening process.

The Governors also decide that, as part of the consultation process with affected groups, they will include some questions about the priority that these groups would give to consideration of other policies. This will help them identify policies that some groups believe have a high human rights relevance that the Governors might not have identified.

Note: *Due to the importance of the screening process, it will probably be appropriate to set up a small working group (e.g. school governor, teacher, child representative, local community representative) to carry out the initial screening and prioritisation of policies, and then draw other people in once targets are identified.*

II. Scoping

a. Who is going to conduct the assessment?

The team identified to carry out the scoping study will also carry out the full assessment. They will work with the equalities team at the local education authority which can provide human rights advice and comment on the report.

The team decide to involve other staff, pupils, parents and the local community through consultation.

b. What is the policy that is being assessed?

The team gathers copies of the school policies on exclusion, bullying and uniform. All the policies are a few years old and there is no formal written record of the purpose they were intended to achieve. The senior staff members on the team draft a purpose clause for each policy to be agreed at the next governors' meeting. The team realise that it is important to be clear about the purpose of a policy to help assess whether (a) the purpose is legitimate; (b) any restriction of someone's rights is necessary and proportionate in order to achieve that purpose.

They decide to include questions about people's understanding of these policies and what they mean in practice as part of their consultation survey. This will help identify practices which are considered as part of the policy even if they are not written down.

c. Who are the people affected?

The team agrees that the policies primarily affect pupils and staff. They also have an effect on parents and a potential effect on the wider community. The team decides that these people should all be consulted as part of the assessment process.

d. Possible Human Rights Impacts of the Proposal

The team identify the primary human rights issues as being:

Exclusion policy:

Right to a fair trial (article 6 HRA and article 12 CRC)

Right not to be discriminated against (article 14 HRA and article 2 CRC)

Right to education (article 2, protocol 1 HRA)/Right to education in ICESCR and CRC

Bullying policy

Right not to be treated in an inhuman and degrading way (article 3 HRA and article 37 CRC)

Right to a fair trial (article 6 HRA and article 12 CRC)

Right to private and family life (article 8 HRA and article 16 CRC)

Right not to be discriminated against (article 14 HRA, article 2 CRC)

Right to education (article 2, protocol 1 HRA) /Right to education in ICESCR and CRC

Uniform policy

Right to freedom of thought, conscience and religion (article 9 HRA and article 14 CRC)

Right to freedom of expression (article 10 HRA and article 13 CRC)

Right not to be discriminated against (article 14 HRA and article 2 CRC)

Right to education (article 2, protocol 1 HRA) /Right to education in ICESCR and CRC

The team also note that there is evidence that the education system as a whole can treat different groups in a discriminatory manner. It will cross reference human rights impact across the six equality 'strands' (race, gender, disability, sexual orientation, religion and belief and age) as well as socio-economic status as part of the assessment.

NOTE: *Some potential indicators are set out for the right to fair trial below. These indicators are neither comprehensive nor designed on the basis of rigorous analysis. They are merely intended to be indicative of the kind of indicators that might be developed:*

Right to Fair Trial Indicators (combined with non-discrimination)

- *Does the exclusion policy include: warning of hearing; pupil told why exclusion is being considered and for what reasons; pupil allowed to be present; pupil has chance to be represented; pupil has right of appeal to an independent body?*
- *Are these stages always followed?*
- *Are they followed for some groups or types of offence but not others?*
- *What is the demographic breakdown among pupils committing offences for which exclusion is sometimes or always considered and what is the breakdown of pupils excluded?*
- *How does this compare with the demographic breakdown of the school?*
- *If pupils appeal against a decision to exclude how often if at all are these appeals upheld?*
- *What is the demographic breakdown of those whose appeal is upheld and those whose appeal is refused?*

e. Evidence

The school has records of exclusions and disciplinary action short of exclusion, reported bullying incidents and action taken, and reported incidents of breach of uniform policy and action taken. The team decides it needs to review this evidence.

The team also agrees it needs to collect the following additional information:

- *national and local evidence about the possible impact of all three policies on children generally and on different groups;*
- *Evidence from pupils, teachers, parents and the wider community of the impact of the three policies;*
- *Examples of exclusion, bullying and uniform policies from other schools in the area.*

f. What is an appropriate time-scale?

The team agree to spend a term collecting evidence and consulting. The final assessment will then be completed in time for the next Governors' meeting half way through the following term. This timescale is published on the school website.

III. Gathering Evidence

The team contacts the local education authority for national and local evidence about the possible impact of all three policies on children generally and on different groups. It also asks the LEA for examples of exclusion, bullying and uniform policies from other schools in the area. The local education authority provides all this information.

Exclusion policy

- *The national evidence shows that exclusion policies disproportionately affect certain groups – particularly BME and white working class boys;*
- *When the team disaggregate data from within the school about exclusions and action short of exclusion this shows a similar trend: some children are given warnings when other children are excluded for the same offence. Boys, particularly BME boys are more likely to be excluded;*
- *The local authority equalities team highlight some examples of best practice in exclusion policies that have been developed to tackle this problem.*

Bullying policy

- *The national evidence shows that there is a tendency for some types of bullying (sexist and homophobic bullying) to go unchallenged while other types (racist bullying) always challenged;*
- *There is evidence of the damaging effect on pupils of bullying;*
- *With the help of equalities staff at the local authority the team collect examples of bullying policies and toolkits produced by voluntary organisations*

Uniform policy

- *The team ask for advice from equalities organisations about uniform policy.*
- *They collect judgments in recent court cases about uniform.*
- *Uniform policy was developed in consultation with equalities organisations*
- *Survey shows that pupils and parents are happy with uniform.*

The school can find no record of evidence from pupils, teachers, parents and the wider community of the impact of the three policies. So they decide to collect this as part of their consultation process.

IV. Consultation

The team decide to consult pupils, staff and parents through a combination of surveys, small group discussions and face to face meetings:

- *Form tutors will be asked to raise the three policies being assessed during class discussions and feedback the results to the team;*
- *Students and staff will be asked to complete an anonymous on-line survey and given time to complete it;*
- *Parents will be sent a short survey with the termly newsletter that can be filled in on line or in paper form.*

The team realise that on-line surveys will not be appropriate for many parents who do not use the internet on a day to day basis and the return rate for paper surveys sent to parents is low. Nevertheless they feel that these do offer the opportunity for any parent who wishes to participate. In addition a smaller number of parents, selected at random, will be consulted by telephone.

The team ask the local education authority if there have been any recent area wide consultations that might contain useful evidence, and whether future consultations are planned where some of these questions could be raised. The education authority is also asked to provide support for consulting parents who do not have English as a first language.

The school has an on-going programme of liaison meetings with local businesses and residents and the team ask the group responsible for this to raise the policies being assessed and ask for feedback.

Exclusion Policy

- *The consultation shows a belief among some pupils and parents that the exclusion policy is used unfairly;*
- *There is concern among teachers that if the policy is changed then extremely disruptive pupils will remain in the classroom disrupting the ability of other pupils to learn;*
- *There is similar concern among some parents;*
- *There is concern among local community of behaviour of temporarily excluded pupils.*

Bullying

- *The consultation shows that some pupils experience sustained homophobic bullying but are unwilling to report it. Some complain that teachers treat homophobic comments directed towards them as 'banter' rather than bullying;*
- *The consultation also shows that sexist bullying of both female teachers and pupils goes unchallenged.*

Uniform policy

- *The consultation shows a general acceptance of the uniform policy among pupils and parents;*

- *Female Muslim students are happy that the policy allows them to dress in accordance with their religious beliefs.*

Other

The consultation also highlights a separate issue of access for students with disabilities. The school has an equal opportunities policy but some pupils feel that it is not being applied, making it difficult for them to participate. This becomes the subject of the next EHRIA.

V. Analysis

Exclusion policy

The team first uses guidance from the education authority to check whether the policy complies with pupils' right to a fair hearing. Pupils' rights under the policy include:

- *To receive adequate warning before a hearing takes place;*
- *To be informed of the reasons why exclusion is being considered;*
- *To be present during the hearing;*
- *To have the opportunity of representation during the hearing;*
- *To have a right of appeal to an independent body.*

This appeared to the team to be in accordance with fair hearing rights.

The purpose of exclusion is a last resort when other methods have failed to prevent the behaviour of some children seriously impacting on the learning opportunities of other children. Therefore although exclusion means that children are no longer able to continue their education at that school the team considered it to be a legitimate restriction of the rights of some children in order to protect rights of others so long as it is proportionate.

An analysis of those excluded showed a disproportionate number of BME boys were excluded. A smaller number of white working class boys were excluded. No girls were excluded. Some children were permanently excluded for behaviour that resulted only in a temporary exclusion for other children. The team considered the proportions of children affected by the policy to suggest a possible breach of article 14 (non discrimination) as it relates to right to education. In addition they felt there may be in breach of the gender and race equality duty.

Bullying

The school has a positive duty under the Human Rights Act to protect against inhuman and degrading treatment. Certain types of bullying could be classified as degrading.

If the bullying is so severe that a pupil is unable to continue at the school this could affect their right to education.

In addition if the school's bullying policy only addresses certain types of bullying while leaving some children vulnerable to continued bullying this may amount to discrimination.

In addition the school may be in breach of the public sector duty to promote equality in terms of gender and sexual orientation

Uniform

Although some Governors were worried about the uniform policy after seeing cases reported in the media, analysis of recent case law suggested to the team that the school's uniform policy was compliant with the Human Rights Act. The uniform policy was amended a few years earlier to allow girls to wear trousers. Although it did not allow the niqab (full face covering) a version of uniform consisting of trousers, tunic and headscarf was developed in consultation with local Muslim women's groups. The policy allows small items of religious jewellery (cross, silver bangle etc.).

The team felt that the policy balanced the rights of pupils to freedom of religion and belief with the legitimate aim of the school to maintain cohesion through enforcing a uniform policy.

Disability

The consultation process highlighted problems with access for disabled students. Policies were in place to support disabled students but it appeared that some teachers were not following the policy.

VI. Conclusions and Recommendations

The team recommended that the school:

- *Identify best practice on exclusion policy and make changes to tackle discriminatory application of the policy;*
- *Amend the bullying policy to cover homophobic and sexist bullying;*
- *Introduce a programme of assemblies etc to tackle attitudes behind homophobic and sexist bullying;*
- *Train staff to tackle the above;*
- *Review issues of access for disabled students as a matter of urgency.*

The senior management team and school Governors agree to review policies in the light of the result of the assessment at a fixed date. They agree that their decision and the reasons for it should be published alongside the assessment.

VII. Publishing

A draft report of the EHRIA is published on the school website and reported on in the school newsletter. There is an opportunity to comment on the HRIA and the new policy recommendations before they go to the School Governors. The response of the Governors and the senior management team will also be reported on the website.

VIII. Monitoring and Review

It is agreed that there will be a review of the new policies after two years to see what effect they have had. The school will go on collecting evidence in respect of the exclusion and bullying policy so that it is in position to assess the policies at the end of the two year period.

4. Concluding Thoughts on Illustrations

These illustrations will help those planning to undertake assessments to understand how the guidance which is set out in the rest of this report can be applied in practice. They represent a high and exacting standard of HRIA. All HRIAs will be different, depending on who is undertaking the assessment, the subject matter of the HRIA, the resources available and the potential scope, scale and severity of the impacts. But these illustrations are intended to assist in demonstrating some key generic issues that may arise in any HRIA. Of particular interest may be:

- How the legal obligations of human rights are translated into indicators or questions (illustrations 1 and 2)
- How important a screening process is where there are many policies that potentially could be assessed (illustration 2)
- How important consideration of the timescale of the assessment can be (illustration 1)
- How appropriate methods of consultation will differ depending on the nature of the people being consulted (compare the differing concerns in illustrations 1 and 2)
- How issues not identified at the screening stage may still become apparent later, for instance through consultation (illustration 2)
- The importance of understanding the right research methods to utilise to inform the assessment process (illustrations 1 and 2) including case law (illustration 1).

F. Integrated Impact Assessments

1. Introduction

There is considerable discussion in the commentary on human rights impact assessments about whether HRIAs should be introduced as stand-alone instruments, or whether they should be integrated into other forms of impact assessment. Below we discuss three forms of impact assessment into which human rights impact assessment could be integrated – equality, health and environmental impact assessment. First we make some general comments about the advantages and disadvantages of integration.

2. Advantages and Disadvantages of Integration

There are a number of advantages and disadvantages of integrated forms of impact assessment identified by commentators.

Advantages include:

- **No need to set up a new instrument** – integration into existing impact assessments reduces start up costs and administrative burdens;
- **Build on existing expertise** – Human rights impact assessment can build on the experience and expertise of existing impact assessment which has a longer history and more refined methodologies (e.g. equality, health, and environment);
- **Encourages mainstreaming** – By integrating human rights into other impact assessments it encourages human rights to be mainstreamed into government/business processes more generally.⁶¹

Potential disadvantages include:

- **Narrows the focus of HRIAs** – HRIAs are only developed in areas where there are existing impact assessments, rather than in areas where the human rights concerns are greatest;
- **Marginalisation of human rights** – There is a danger that human rights may be marginalised within other impact assessment methodologies (see criticism of [EU integrated assessments](#) above) and human rights are seen as aspirations rather than legal obligations with which policymakers must comply;⁶²
- **Expertise** – Where HRIAs are being integrated into other forms of impact assessment (e.g. health, environment) and where the primary expertise of those undertaking the assessment is on the latter issues (i.e. health, environment etc.) then appropriate training, support, guidance and monitoring becomes even more important to ensure proper implementation of methodologies.

3. Equality and Human Rights Impact Assessments

In the UK context, we have analysed [existing practice](#) and noted that the majority of this

practice has combined equality and human rights impact assessment. We would argue that human rights and equality impact assessment should always be combined in this way. Non-discrimination and equality are fundamental human rights principles and so the two forms of impact assessment are mutually reinforcing (see illustrations in [Section E](#) above for examples of this). There is extensive existing practice by public bodies of undertaking equality impact assessment and so HRIAs can be integrated into existing equality impact assessments.

The only danger of marginalisation comes from the type of human rights analysis that is conducted. [As we have presented in more detail above](#), **equality impact assessments** have been utilised by public authorities as a way of ensuring they are meeting their legal obligations – **not only not to discriminate but also to promote equality**. The Human Rights Act does not similarly require public authorities to promote, but simply to ensure compliance with human rights. This means that **public authorities concerns in relation to the Human Rights Act are often limited to their legal obligations not to violate human rights rather than broader issues of promoting human rights standards**. Also, HRIAs they have carried out have generally focused on the rights contained in the Human Rights Act rather than addressing economic, social and cultural rights such as rights to health, adequate housing etc. There is therefore a need to think about the scope of the human rights obligation which HRIAs entail. [Recommendations are made above](#) for considering expanding the scope of human rights impact assessment in the UK context.

Recommendation

Human Rights Impact Assessment should always be combined with Equalities Impact Assessment

4. Health Impact Assessments

The steps we have seen for undertaking Health Impact Assessment in the Scottish context are broadly analogous to the eight step process we have mapped out here for undertaking HRIAs. There should not therefore be a problem, from a technical perspective in integrating the two approaches. But inevitably, undertaking each of the specific elements (evidence gathering, analysis, consultation etc) will require a human rights expertise that is to some degree distinct from the health one. We do not have the scope in this report to make recommendations about how that integration process could function. But we would in particular stress that it is important that there is the requisite focus on human rights in the assessment process, and context-specific training in human rights in order to ensure that human rights are not marginalised within the integrated impact assessment.

A great deal of work has been done internationally to suggest that human rights and equality impact analysis can add significantly to existing health impact assessment methodologies. [This work is summarised at Section C.3.2 above](#). We would reiterate that this work focuses mainly

on utilising the right to health as the basis for a human rights approach to health impact assessments.

Recommendation

Organisations planning integrated health and human rights impact assessments should give serious consideration to integrating analysis of the right to health.

5. Environmental Impact Assessments

The only existing practice we have identified where human rights and environmental impacts are considered in the same impact assessment process are EU integrated impact assessments. Environmental impacts are considered as a separate strand of that process (alongside social and economic impacts). Consideration of fundamental EU rights is 'mainstreamed' through the assessment process. But there are concerns about the degree to which human rights are given detailed consideration in that model, [as discussed above](#). We would therefore certainly advocate a model where the human rights impacts are considered separately in any form of integrated assessment.

As we understand it, there are two related forms of environmental impact assessment where human rights could be incorporated into the process in the Scottish context -

- **Environmental assessment (EnvIA)** - a tool used to examine, analyse and assess planned activities with a view to ensuring environmentally sound and sustainable development. [Various pieces of legislation](#) which form part of the law of Scotland require environmental impact assessment in relation to planning applications.
- **Strategic Environmental (Impact) Assessment** – Strategic Environmental Assessment (SEA) is linked to Environmental Impact Assessment. However it aims to develop environmental assessments for more strategic decision making. In Scotland, SEAs are required for strategies, plans and programmes, in accordance with European Union [Directive 2001/42/EC](#), as incorporated into the law of Scotland by the [Environmental Assessment of Plans and Programmes Regulations 2004](#) and [Environmental Assessment \(Scotland\) Act 2005](#). This requires national, regional and local authorities to carry out strategic environmental assessment on particular types of plans and programmes that they promote.

We looked at methodological guidance and completed environmental assessments and strategic impact assessments from various Scottish bodies including the [Forestry Commission Scotland](#), [Aberdeen City Council](#), [Scottish National Heritage](#) and various assessments listed on the Scottish Environmental Protection Agency website.

As with Health Impact Assessment, the main stages of the SEA and EnvIA share many features with the eight step process we have set out for HRIAs. From a technical perspective therefore, human rights impacts could potentially be assessed alongside and integrated with

environmental impact assessments in the same assessment process. But inevitably, undertaking each of the specific elements (e.g. evidence gathering, analysis, consultation) will require a human rights expertise that is very distinct from the environmental one. We do not have the scope in this report to make recommendations about how that integration process could function, other than again warning that measures need to be taken to ensure that human rights are not marginalised within the integrated impact assessment process.

In terms of the substantive human rights issues that would be the subject of SEAs and EnvIAs, a combination of Article 2 (right to life) and Article 8 (right to respect for private life) of the ECHR are those that are most obviously engaged. The *Öneryildiz v Turkey* and *Budayeva v Russia* cases highlight the duty upon the State to “put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.”⁶³ The *Tătar v. Romania* case found that Romania had breached its citizens’ right to respect for private and family life by failing to take the appropriate steps to assess the likely environmental impact of a mining project and to communicate the results to the local community.⁶⁴

The *Tătar v. Romania* case seems only to demand proper *ex ante* *environmental* impact assessment, and dissemination of the information about the risk to the local communities. But in order to avoid potential litigation at a later date (as well as to focus the assessment on the issues of e.g. protecting human life and the right to privacy), it would seem sensible for the authorities to explicitly include consideration of the underlying human rights issues in the assessment process itself. The ECHR case law also demands that information is shared with local communities. As we have stated in the consultation section of this report above, appropriate consultation and information sharing will depend on how the specific impact assessment itself is designed. HRIAs can be just as un-transparent as other forms of impact assessment if consultation and information-sharing are not taken seriously.

One final point we would make is that HRIA is going to be most useful in determining immediate risks (e.g. to the lives, privacy) of individuals directly affected by particular projects (e.g. toxic factories, dangerous mining operations etc.). It is likely to be of less use where the process involves long term human rights issues (e.g. threat to right to life from climate change by a new coal fired power station). In the latter scenario it is going to be much more difficult to employ the evidence gathering and analytical processes we have highlighted above as fundamental to the HRIA methodology. In fact, such impacts may be marginalised by a human rights framework. Anecdotal evidence from people undertaking environmental impact assessments with regard to wind farms suggests that human rights arguments are raised and considered by local authorities primarily in terms of right to privacy arguments of local residents. Less well-defined human rights arguments in relation to climate change are not raised or considered.

Recommendation

Organisations planning integrated environmental and human rights impact assessments should ensure that there is sufficient human rights expertise in the assessment team and that human rights are not marginalised in the assessment process.

G. Conclusions: Strategic Questions for organisations planning HRIAs

I. What type of assessment does the organisation wish to carry out?

Organisations need to make a strategic decision about the type of assessment they wish to carry out. As we have shown, approaches to date have ranged on a scale from short pro-forma HRIAs which focus on the legal requirements of the Human Rights Act to more detailed HRIAs with extensive use of evidence and consultation and covering a wider range of human rights including economic, social and cultural rights.

Longer, more detailed assessments are time consuming and it would be unrealistic to expect organisations, particularly smaller organisations to carry them out for all policies. Shorter, more basic assessments can still have an impact if they are conducted by properly trained individuals and the change required is relatively small. But they are always in danger of becoming tick box exercises.

Different types of assessment will be appropriate for different organisations depending on the nature of their work and their level of resources (e.g. national government, big businesses, local authorities etc.). But organisations may have to decide between fewer, more detailed assessments, or a larger number of more basic assessments.

Organisations also need to recognise that carrying out HRIAs is only part of the process of ensuring that human rights are protected and promoted. Conclusions and recommendations of HRIAs should identify action that needs to be taken. Recommendations then need to be acted upon and changes made. Organisations should therefore make sure that there are sufficient resources and energy available to make sure that the findings of HRIAs are acted upon.

Recommendation

Organisations planning HRIAs should decide whether to focus on a small number of detailed HRIAs or a larger number of more simplistic HRIAs. This may depend on the type of organisation undertaking the HRIA.

II. What level of support will the organisation need?

If HRIAs are to be effective the organisations carrying them out will need on-going support. Although the level of support needed will vary depending on the complexity of the assessment and the size and resources of the organisation carrying it out, some support will always be needed. This may include advice in developing appropriate methodologies, training for staff, assistance in producing toolkits and guidance and on-going advice and support for staff carrying out assessments.

Many smaller organisations in particular will lack the internal human rights expertise to support staff carrying out assessments. With tightening budgets they may also lack the resources to employ external experts and/or trainers. Organisations should certainly consider pooling their resources to maximise the support they are able to receive.

Part of work to promote HRIAs will have to be providing support, or identifying other sources of support available to those undertaking assessments.

Recommendation

Organisations planning HRIAs should ensure they have the on-going support they require in order to carry out effective assessments.

Annex 1 - Key Categories of Impact Assessment

The [International Association for Impact assessment](#) has a website where further details can be found of many of the different kinds of impact assessment conducted internationally. The [Human Rights Impact Centre](#) also provides definitions and explanations of key types of impact assessment that are related to human rights impact assessment. We also set out some of the key types here, with links to further information:

- **Environmental assessment** - According to the United Nations Environment Programme (UNEP), EIA is a tool used to examine, analyse and assess planned activities with a view to ensuring environmentally sound and sustainable development. To learn more about the principles for undertaking EIAs click [here](#).⁶⁵
- **Strategic Environmental Impact Assessment** – “Strategic Environmental Assessment (SEA) is linked to Environmental Impact Assessment. However it aims to develop environmental assessments for more strategic decision making, such as the development of plans and programmes”. To learn more click [here](#).⁶⁶
- **Equality Impact Assessment** – This is defined in Section C.3.I of this report.
- **Health Impact Assessment** - Health Impact Assessment (HIA) is a means of assessing the health impacts of policies, plans and projects in diverse economic sectors using quantitative, qualitative and participatory techniques. HIA helps decision-makers make choices about alternatives and improvements to prevent disease/injury and to actively promote health. To learn more click [here](#).⁶⁷
- **Poverty and Social Impact Analysis** - “Poverty and Social Impact Analysis (PSIA) is the analysis of the distributional impact of policy reforms on the welfare of different stakeholder groups, with a particular focus on the poor and vulnerable. PSIA has an important role in the elaboration and implementation of poverty reduction strategies in developing countries, promoting evidence-based policy choices and fostering debate on policy reform options.” To learn more click [here](#).⁶⁸
- **Regulatory Impact Assessment** - Regulatory Impact Assessment or Analysis is “is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives”. To learn more click [here](#).⁶⁹
- **Social impact assessment** - 'the process of assessing and managing the impacts of a project, plan, program or policy on people.' To learn more click [here](#).⁷⁰
- **Child Rights Impact Assessment** – This is defined in Section C.2.II of this report

Appendix 1 - Compendium of Resources for Human Rights Impact Assessment

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1. General Resources

Title	Type of Resource/Author	Subject Area	comments
International Association for Impact Assessment (IAIA)	Website	Impact Assessment	"A forum for advancing innovation, development, and communication of best practice in impact assessment."
Human Rights Impact Resource Centre	Website	Human Rights Impact Assessment	A very rich database of resources and information about HRIAs.
Human Rights Impact Assessment in Practice - Conference Report	Conference Report (2006)	Human Rights Impact Assessment	Provides overview of many different types of HRIAs and key issues discussed by practitioners
Human Rights Impact Assessment in Practice - Conference Report	Conference Report (2007)	Human Rights Impact Assessment	Provides overview of many different types of HRIAs and key issues discussed by practitioners
'Human Rights Impact Assessments'	Gauthier De Beco Vol 27/2 (2009)	Human Rights Impact	Overview of existing practice and key

	Netherlands Quarterly of Human Rights 139-166	Assessment	methodological issues
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2. Budget Analysis

Title	Author and Date	Subject Area	Comments
Dignity counts - A guide to using budget analysis to advance human rights	Fundar, the International Human Rights Internship Program and the International Budget Project	Economic Social and Cultural Rights with a focus on the right to health	The original budget analysis methodology. Includes a case study of the Mexican health budget
Budget work to advance the Right to Food 'Many a slip...'	Food and Agriculture Organisation (2009)	Right to Food	Comprehensive methodological guidance. Case studies of Guatemala, the Philippines and Uganda
Reading the books: Governments' budgets and the right to education	International Budget Partnership and the Institute of International Education (2010)	Right to Education	Simple step-by-step guide with very brief case studies of budget work done in a range of developing countries
Budget Analysis and the Advancement of Economic and Social Rights in Northern Ireland - Budgeting for Social Housing	Queens University Human Rights Centre	Right to Housing	Not yet published. Draft on file with authors. Study of the impact of Northern Ireland's Housing Policy on the right to housing.
Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW	Diane Elson, UNIFEM, 2006	Gender Budgeting	Detailed and comprehensive budget analysis methodology for monitoring compliance of budgets with CEDAW.

3. Business and Human Rights

Title	Authors and Date	Subject Area	Comments
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	where applicable		
Methodological Guidance			
Conflict Sensitive Business Practice: Guidance for Extractive Industries	International Alert (2005)	Methodology for conducting impact assessment of projects in the extractive sector	Includes human rights alongside a number of other issues like corruption, transparency, social investment etc.
Guide to Human Rights Impact Assessment and Management	International Business Leaders Forum and International Finance Corporation (2007)	Methodology for Conducting HRIAs of business projects	This is a draft guide. The final guide is due to be launched on 25 June 2010
Human Rights Compliance Assessment/Country Risk Assessment	Danish Institute for Human Rights	Methodology for conducting Human Rights Compliance Assessment/Country Risk Assessment	Methodology for conducting Human Rights Compliance Assessment available only to subscribers
A Methodology for Human Rights Impact Assessment	Nomogaia (2008)	A methodology for conducting HRIAs of investment projects in developing countries	Three HRIAs have been published by Nomogaia utilising their template – see below
Community HRIA Guide for Foreign Investment Projects	Rights and Democracy (2008)	Methodology for local NGOs to conduct HRIAs of investment projects	It includes case studies of assessments carried out in the Philippines, Tibet, the Democratic Republic of Congo, Argentina and Peru.
Human Rights Impact Assessments			
Paladin Energy's Kayelekera Uranium Project – A Human Rights Impact Assessment	Nomogaia (2010)	An HRIA of Paladin Energy's Kayelekera Uranium Project in North Malawi	This is a HRIA of the largest foreign investment project in Malawian history. It is also the country's first uranium mine. It is largely complimentary with some suggestions for improvements
Green Resources, Tanzania – A Human Rights Impact	Nomogaia (2009)	An HRIA of Norwegian-owned	Highlights poor labour treatment, poor

Assessment		tree farms in Tanzania	healthcare for workers, and the rising prevalence of HIV
The Nuiguyo Project – A Human Rights Impact Assessment	Nomogaia (2009)	An HRIA of Aimec Minerals’ Nuiguyo Project which is an open pit gold and silver mine located in the tropical southern district of one of Indonesia’s forested islands.	Identifies a number of positive human rights impacts of the project but also Respect for the Right to Clean Water and Environment has not been sufficiently demonstrated by the Project
Human Rights Assessment of the Proposed Tangguh LNG Project: Summary of Recommendations and Conclusions	Gare A. Smith, Foley, Hoag & Eliot, LLP for BP Indonesia (2002)	An HRIA of BP’s Tangguh liquefied natural gas project in Indonesia	The full HRIA has not been published, only these brief conclusions and recommendations. There are subsequent reports that also mention human rights
Human Rights Assessment of Goldcorp's Marlin Mine	Common Ground Consultants Inc. (2010)	An HRIA of Golcorp’s Marlin Mine in Guatemala	Utilises the Danish Institute for Human Rights’ Human Rights Compliance Assessment as a model.
Analysis of Business HRIAs			
Guide to Corporate Human Rights Impact Assessment Tools	Aim for Human Rights (2009)	Overview of key HRIA methodologies for business	Good guide to understanding the differences between the major methodological frameworks
Human rights impact assessments - resolving key methodological questions	Ruggie, John (2007)	Describes current practice and addresses some key methodological issues in HRIA	Short paper. Also presents similarities to/differences from social and environmental impact assessment
Reports to the UN Human Rights Council	Ruggie, John (2006-2010)	Reports on human rights and business	Contains various references to HRIAs and related themes as set out in main report
Any of our business? Human rights and the UK private sector: Volume I Report and Formal Minutes	Joint Committee on Human Rights (2009-10)	On human rights and business in the UK generally	Consideration and recommendations on HRIAs for business

Other Materials			
Database of Materials on Impact Assessment	UN Special Representative on Business and Human Rights	HRIAs on business and human rights	Includes papers by the Special Representative, consultations and submissions by other parties
News and Reports relating to business HRIA	Business and Human Rights Resource Centre	HRIAs on business and human rights	Reports on all aspects of HRIAs, including methodological development and implementation

4. Child Rights Impact Assessment

Title	Authors	Subject Area	Comments
1. Methodological Frameworks			
Child Rights Toolkit – Child Rights Impact Assessment Resource Centre	UNICEF (Draft, April 2010) – On file with authors	Children’s Rights, Scotland	Comprehensive guidance on undertaking child rights impact assessments and summaries of case studies from a range of different countries
Children's Rights Impact Assessment: The SCCYP Model	Scotland's Commissioner for Children and Young People	Children’s Rights - International	Good model with practical examples and detailed forms to assist in the assessment process.
All Our Children: Child Impact Assessment for Irish Children of Migrant Parents	Children’s Rights Alliance	Children of migrant parents rights in Ireland	A review of other CRIA methodologies and detailed template for assessing the impact on individual children of decisions to deport their parents
2. Impact Assessments			
Child Rights Impact Assessment of Potential Electricity Rises in Bosnia and Herzegovina	UNICEF and other orgs (2007)	Child Rights	Very good and detailed study with good participatory methodology, good use of qualitative and quantitative methods. Human Rights approach not always explicit because based on Poverty and Social Impact Analysis

5. Development Programming

Title	Authors	Subject Area	Comments
Handbook in human rights assessment : state obligations awareness & empowerment	Norwegian Agency for Development Co-operation (2001)	Development Programmes	Simple methodology and checklist for undertaking a HRIA of development programmes funded by NORAD
Evaluation of nine non-governmental human Rights organisations	Todd Landman and Meghna Abraham (2004)	Evaluation of the performance of NGOs	Very detailed 200 page study

6. EU Integrated Impact Assessment

Title	Authors/Date	Subject Area	Comments
Impact Assessment Guidelines	EU Commission (2009)	All aspects of the EU Integrated Assessment Process	Includes numerous references to the need to include consideration of Fundamental Rights
Guidance for assessing Social Impacts within the Commission Impact Assessment system	EU Commission (2009)	Social impacts	Includes numerous references to the need to include consideration of Fundamental Rights
Impact Assessment website	EU Commission	All aspects of the EU Integrated Assessment Process	Includes database of completed IIAs

7. Health and Human Rights Impact Assessments

Title	Authors and citation where appropriate	Subject Area	Comments
1. Methodological Frameworks			
Health Rights of Women Impact Assessment Instrument	Aim for Human Rights (2008)	Health rights of Women	A strategic tool for NGOs to utilise to lobby governments to better implement health rights of

			women utilising a human rights approach. Can be used to analyse both health policies and a wide range of other policies that have indirect health impacts.
Impact Assessments, Poverty and Human Rights: A Case Study Using the Highest Attainable Standard of Health	Paul Hunt United Nations Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health and Gillian MacNaughton (2006)	Right to Health	This is a tool which is intended to be used by governments to assess the impact of proposed policies on human rights. It builds upon the HeRWAI methodology. It focuses on the impact of policies on the right to health, but could be utilised as the basis for other economic, social and cultural rights HRIAs.
The Assessment of the Right to Health and Healthcare at the Country Level	People's Health Movement (2006)	Right to Health	Based upon the HeRWAI model. This tool is intended for use by NGOs in order to evaluate the overall government health policy and the extent to which it is realising the right to health
2. Impact Assessments			
Deadly Delays: Maternal Mortality in Peru A Rights-Based Approach to Safe Motherhood	Physicians for Human Rights	Right to Health Impact Assessment	A study of maternal mortality in Peru
Reproductive and Sexual Health Rights in Kenya, Tanzania and Uganda	African Women's Development and Communication Network (FEMNET) (2007)	Reproductive and Sexual Health Rights	The research assesses the implementation by African governments of the International Conference on Population and Development (ICPD) and other relevant international and regional instruments including the Section C of the Beijing

			Platform for Action (PFA).
Using Human Rights for Maternal and NeoNatal Health: A tool for strengthening laws, policies and standards of care	World Health Organisation (2006)	Human rights generally applied to the issue of maternal and neo-natal health	A case study of Indonesia
11 HRIAs using the Health Rights of Women Assessment instruments	Hosted on the Human Rights Impact Resource Centre	Health rights of Women Impact Assessment	Studies include Kenya (labour law and maternity leave), Bangladesh (preventing maternal mortality), the Netherlands (reform of health insurance law for undocumented workers and closing prostitution areas), Nepal (reproductive health and violence against women) and Pakistan (national education policy)
3. Commentaries			
Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women Assessment Instrument (HeRWAI)	Bakker, Saskia et al Journal of Human Rights Practice Vol. 1:3 (2009) 436-458	Health Rights of Women	Good overview of some of the success and problems of the HeRWAI instrument
Health Impact Assessment: A Tool to Help Policy Makers Understand Health Beyond Healthcare	Cole and Fielding Annual Review of Public Health 2007 28: 393-412	Health Impact Assessment	Good critical analysis of the benefits and drawbacks of HIA. Many lessons for HRIA.

8. Trade

Title	Authors and Date	Subject Area	Comments
Various Human Rights Impact Assessments on the Right to Food	Food First Information and Action Network	Trade and the Right to food	Various studies of the impact of trade liberalisation on specific crops in developing countries
The Future of Human Rights Impact Assessments of Trade Agreements	Simon Walker (2009, intersentia)	Trade and a particular focus on right to health	Includes a right to health impact assessment of the intellectual property

			provisions of the Central American Free Trade Agreement
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9. UK Equality and Human Rights Impact Assessment Resources

Title of Document	Authors	Subject Area	Comments
Housing Corporation Equality Impact Assessment Toolkit	Housing Corporation	Race Equality	Gives a clear explanation of the methodology but no examples of the sort of impact that might be uncovered, how to consult or where to find information
Scottish Executive Equality Impact Assessment Toolkit	Scottish Executive	Equalities	Clear, accessible language. Links to research resources. Explicit challenge to notion that an EIA may not be needed. No examples or leading questions
Department of Health Equality Impact Assessment. Summary Tool and guidance for policy makers	Department of Health	Equalities	Covers promotion of equality as well as preventing unequal treatment. Open questions to encourage full response. Good appendix with sources of evidence and examples of the sort of evidence that might be used.
Equality Impact Assessment Guidance	Equality and Human Rights Commission	Equalities	Guide to developing EIA methodologies. Very comprehensive and accessible. Examples and case studies. Encourages open questions. Stresses importance of training
Equality and Human Rights Impact Assessment: The Guide	Aberdeen City Council	Equality and Human Rights (HRA rights)	A standard EIA with an additional section on compliance with the Human Rights Act. The Guide provides some guidance on the process of carrying out an assessment and details of groups with whom to consult. It has less information on the human

			rights issues that may arise in the course of assessment. It refers to a Best Practice Guide on Human Rights which is more informative but rather legalistic
A toolkit for carrying out equality impact assessment	NHS Wales centre for equality and human rights	Equality and Human Rights (HRA rights)	Very comprehensive and accessible toolkit. Includes examples and case studies to help explain what the Human Rights Act might mean for the NHS in Wales.
Quality Care Commission Equality and Human Rights Impact Assessment Tool	Quality Care Commission	Equality and Human Rights (HRA rights)	Assesses impact of policy on human rights across equality strands. Comes with guidance on what Human Rights mean in a health care context.
Sussex Partnership NHS Foundation Trust – Equality and Human Rights Impact Assessment toolkit	Sussex Partnership NHS foundation trust	Equality and Human Rights (HRA rights)	The toolkit comes with a ‘Guidance Handbook’, which explains some of the terms used (‘what are equality groups?’ ‘what is meant by impact?’) but does not give practical examples or pointers to help people with little experience of equalities or human rights issues.
Children's Rights Impact Assessment: The SCCYP Model	Scotland's Commissioner for Children and Young People	Rights of Children	The model is based upon the UN Convention on the Rights of the Child. Good model with practical examples and detailed forms to assist in the assessment process.

10. Other Human Rights Impact Assessments

Title	Author and Date	Subject Area	Comments
Legal protection at risk - the cumulative impact of anti-terror legislation	Humanist Committee on Human Rights (HOM) (2005)	Study of the impact of Dutch anti-terror legislation on human rights	Summary of the study is in English, full study is in Dutch.
The Human Right to Food in Haiti	Rights and Democracy (2008)	HRIA Right to Food Assessment	Adopts the FAO methodology

Beyond Activism - The impact of the resolutions and other activities of the European Parliament in the field of human rights outside the European Union	European Inter-University Centre for Democracy and Human Rights (2006)	The impact of the resolutions and other activities of the European Parliament in the field of human rights outside the European Union	Very detailed 300 page study
Guide to Conducting a Right to Food Impact Assessment	Food and Agriculture Organisation (2009)	HRIA methodology for the right to food	Comprehensive methodological guide to conducting a HRIA of the right to food.

11. Materials on Consultation Processes

Title	Author and Date	Subject Area	Comments
Good Practice Guidance Consultation with Equalities Groups	Scottish Executive (2002)	Consultation with equalities groups generally	Step by step guide to consultation in the Scottish context
The Disability Equality Duty and involvement	Disability Rights Commission (2006)	Guidance for public authorities on how to effectively involve disabled people	Gives principles and examples of effective consultation with disabled people
Consulting Hard to Reach Groups	West Berkshire Council	Consultation with 18 different hard to reach groups	Very short guides to how to consult with 18 hard to reach groups
Consulting with Children and Young People	Joseph Rowntree Foundation	Consultation with children and young people with disabilities	Lessons from projects on how to effectively consult with these groups

12. Materials on Indicators

Title	Author and Date	Subject Area	Comments
Monitoring housing rights	United Nations Housing Rights Programme (2003)	Right to Housing	Developing a set of indicators to monitor the full and progressive realisation of the human right to adequate housing Background paper for the 2003 expert group meeting on housing rights monitoring

Report on Indicators for Monitoring Compliance with International Human Rights Instruments	Office of the High Commissioner for Human Rights (2006)	Human Rights generally	Includes annexes of indicators for the right to life, health, food and judicial review of detention
Report on Indicators for Promoting and Monitoring the Implementation of Human Rights	Office of the High Commissioner for Human Rights (2008)	Human Rights generally	Includes annexes of a range of indicators for a range of human rights issues
Human Rights Indicators at Programme and Project Level	Erik Andre Andersen and Hans-Otto Sano, Danish Institute for Human Rights (2006)	Human Rights Indicators for Projects	Complex Methodological Guide
Manual for the Measurement of Indicators for Children in Formal Care	UNICEF (2009)	Children's rights	Common global indicators for children in formal care
Measuring Human Rights	Landman and Carvalho (2009)	Human rights generally	Explores the debates and tradeoffs between different data collection schemes and levels of analysis in academic and NGO research.

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- ¹ James Harrison is Associate Professor in the School of Law at the University of Warwick (see <http://www2.warwick.ac.uk/fac/soc/law/staff/academic/harrison>). Mary-Ann Stephenson is an independent consultant specialising in gender and human rights issues (see <http://www.maryannstephenson.co.uk/>). Andrew Williams also provided extensive expertise and review in the researching and writing of this report.
- ² See the International Association for Impact Assessment at <http://www.iaia.org/modx/>
- ³ Hunt and MacNaughton, 'Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health', (UNESCO, 31 May 2006) available at: http://www.who.int/hhr/Series_6_Impact%20Assessments_Hunt_MacNaughton1.pdf, p.9
- ⁴ Landman, *Studying Human Rights* (2006), p. 128.
- ⁵ The [Human Rights Impact Resource Centre](#) includes within its database of human rights impact assessment resources a range of toolkits and assessments that do not utilise explicit human rights methodologies but touch upon human rights related issues.
- ⁶ De Beco, 'Human Rights Impact Assessments' Vol 27/2 (2009) *Netherlands Quarterly of Human Rights* 139-166 p.140.
- ⁷ De Beco, 2009, Above n.6, p.146.
- ⁸ De Beco, 2009, Above n.6, p.147, Hunt and MacNaughton, 2006, Above n.3, p.15.
- ⁹ Ruggie, J 'Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts' U.N. Doc. A/HRC/4/035 (9 February 2007), p.6.
- ¹⁰ Hunt and MacNaughton, 2006, Above n.3, p.15.
- ¹¹ Hunt and MacNaughton, 2006, Above n.3, p.15; De Beco, 2009, Above n.6, p.166.
- ¹² Knippers Black, *The Politics of Human Rights Protection: Moving Intervention Upstream With Impact Assessment* (2009), p.238.
- ¹³ Knippers Black, Above n.11, 2009, p.238.
- ¹⁴ Cole and Fielding, 'Health Impact Assessment: A Tool to Help Policy Makers Understand Health Beyond Healthcare' (2007) *Annual Review of Public Health* 28: 393-412, p.400; Knippers Black, 2009, Above n.12, p.238.
- ¹⁵ NHS Wales Centre for Equality and Human Rights: A toolkit for carrying out equality impact assessment at p43 <http://www.wales.nhs.uk/sites3/page.cfm?orgid=256&pid=4315>.
- ¹⁶ De Beco, 2009, Above n.6, p.143.
- ¹⁷ For the Un Special Representative on Human Rights and Business see Section [C.III.3](#). For the UN Special Rapporteur on the Right to Health see section [C.III.2](#). For the UN Special Rapporteur on Food see <http://www.srfood.org/images/stories/pdf/officialreports/or1-a-1-hrc-9-23final-eng.pdf>.
- ¹⁸ De Beco, 2009, Above n.6, p.143.
- ¹⁹ De Beco, 2009, Above n.6, p.140.
- ²⁰ De Beco, 2009, Above n.6, p.141.
- ²¹ Gostin and Mann, 'Towards the Development of a Human Rights Impact Assessment for the Formulation and Evaluation of Public Health Policies' Vol 1 (1994) *Health and Human Rights*, 58-80
- ²² O'Keefe and Scott Samuel, 'Health Impact Assessment as An Accountability Mechanism for the International Monetary Fund: The Case of Sub-Saharan Africa (2010) *International Journal of Health Services*, Volume 40, Number 2, Pages 339-345, p.342.
- ²³ Formerly the Humanist Committee on Human Rights – at the time when they designed this assessment instrument.
- ²⁴ Bakker et al, 'Human Rights Impact Assessment in Practice: The Case of the Health Rights of Women Assessment Instrument (HeRWAI)' *Journal of Human Rights Practice* Vol 1:3 (2009), 436-458 at p446-7, Aim for Human Rights, *Effect measurement report HeRWAI* (2009) p29-31.
- ²⁵ Ruggie 2007, Above n.9, p.3.
- ²⁶ (Ruggie 2007, Above n.9, p.8.
- ²⁷ The Rights and Democracy Study offers case studies of HRIAs undertaken by a number of civil society organisations.

²⁸ Ruggie, 2007, Above n.9, p.4.

²⁹ See <http://www.swbg.org.uk/index.html> for details of the work of the Scottish Women's Budget Group and http://www.wbg.org.uk/GBA_Present.htm for a list of resources for gender budgeting. See also work of Diane Elson e.g. *Budgeting for Women's Rights; Monitoring Government Budgets for Compliance with CEDAW* (UNIFEM, New York, 2006).

³⁰ The case study is one output of the Budget Analysis and the Advancement of Economic and Social Rights in Northern Ireland Project which examines public expenditure in Northern Ireland by using economic and social rights-based budget analysis.

³¹ Simon Walker, 'The Future of Human Rights Impact Assessments of International Trade Agreements' (Intersentia, 2009)

³² De Beco, 2009, Above n.6, p.145.

³³ Helen Toner, 'Impact Assessment and Fundamental Rights Protection in EU Law' *European Law Review* 31:3 (June 2006) 316-341 at 320f .

³⁴ Landman, *Studying Human Rights* (2006) p.129.

³⁵ Aim for Human Rights 2009, Above n.24, p.6; Ruggie 'Business and human rights: further steps toward the operationalization of the "protect, respect and remedy" framework' (2010) p.17 at http://www2.ohchr.org/english/issues/trans_corporations/docs/A-HRC-14-27.pdf.

³⁶ De Beco, Above n.6, 2009, p.154-5.

³⁷ E.g. See Care Quality Commission 'Guidance: How to complete Equality and Human Rights Impact Assessment (EHRIA)' p.2 at http://www.cqc.org.uk/db/documents/EHRIA_Guidance.doc.

³⁸ See EHRC, [Equality Impact Assessment Guidance](http://www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf), p.26 at http://www.equalityhumanrights.com/uploaded_files/eiaguidance.pdf.

³⁹ Landman, 2006, Above n.35, p.130.

⁴⁰ This data is based on a Living Standards Measurement Survey (LSMS).

⁴¹ MICS is a household survey developed by UNICEF in the 1990s. It assists countries in filling data gaps for monitoring human development, especially the situation of women and children. MICS 3 was conducted in BiH by the BiH government with the assistance of UNICEF in 2006.

⁴² This summary of the evidence-gathering methodology is directly quoted from the Child Rights Toolkit, Tool 4, Part 1, April 2010 Draft. Several spelling mistakes were corrected.

⁴³ Cole and Fielding, 2007, Above. n.14, p.400 Baker et al 2009, Above n.24, p.451-2.

⁴⁴ Landman, 2006, Above n.35, p.139. "Maximising the rigour of a human rights impact assessment can only help to strengthen the types of inferences that are drawn and add weight to the types of human rights arguments that are made. The underlying logic of impact assessment is straightforward but is vulnerable to a number of methodological challenges that if not adequately addressed may lead to insecure inferences about impact, and ultimately undermine the kinds of human rights arguments that we make."

⁴⁵ Humanist Committee on Human Rights, *Human Rights Impact Assessment in Practice, Conference Report* (2007) p.37-40 '...there is an inevitable tendency to be precise, complete and almost academic in developing (and using) particular instruments and tools. This can be disadvantageous for the actual use and effectiveness of the tool' ...Instruments need to be as simple and easy to use as possible. This helps to 'sell' the concept to potential users: NGOs, governments and business. It also keeps the process manageable".

⁴⁶ De Beco, 2009, Above n.6, p.164. Participation in public affairs is itself a human rights (ICCPR Art. 25). Various human rights bodies have interpreted a right to participation in particular contexts as integral to particular rights. For instance in CESCR's General Comment No.14 public participation in health-related decisions is regarded as an essential component of the right to health. In the *Ilmari Lansma v Finland* case the Human Rights Committee found that minorities had the right to be consulted on policies that had an impact on their traditional way of life. In *Hatton and others v UK*, the court took into account the degree to which affected individuals had the opportunity to give their opinion on a policy. Ruggie, 2010, Above n.36, p.17 – Human Rights Impact Assessment has

consultation and dialogue with affected persons at the heart of its methodology because it involves rights holders rather than merely stakeholders.

⁴⁷ Ruggie, 2007, Above n.9, p.5. the process of bringing together communities, government and business representatives is as important as the result.

⁴⁸ EHRC, [Equality Impact Assessment Guidance](#), p.15

⁴⁹ See e.g. NHS Wales Centre for Equality and Human Rights, '[A toolkit for carrying out equality impact assessment](#)' p.30 and p134.

⁵⁰ Bakker et al, 2009, Above n.24, p.440 – “As the formulation of human rights indicators is a recent development and limited to some rights only, most existing HRIA tools have been developed without such agreed indicators and instead have their own ways to measure impacts.”

⁵¹ Humanist Committee on Human Rights, *Human Rights Impact Assessment in Practice, Conference Report (2007)* p.37, “...the length of lists of indicators is an important issue to deal with. Long lists of indicators and elaborate checklists make the process of impact assessment unattractive and costly. At the same time the use of lists of indicators and checklists is intrinsically linked to the whole process of impact assessment and keeps it manageable. In sum there needs to be a way to develop key indicators that are strategic and make a difference to stakeholders.”

⁵² See Hunt and MacNaughton, 2006, Above n.3, Annex 3 for some indicators in relation to the right to health.

⁵³ For instance, a significant number of the Sussex NHS Trust’s EHRIA recommendations related to changing the documentation relating to a policy rather than the policy itself.

⁵⁴ EHRC, [Equality Impact Assessment Guidance](#), p.34-35.

⁵⁵ Cole and Fielding, 2007, Above n.14, p397.

⁵⁶ Baker et al, 2009, Above n.24, p.451.

⁵⁷ Hunt and MacNaughton, 2006, Above n.3, p.5, EHRC, [Equality Impact Assessment Guidance](#), p.36.

⁵⁸ Ruggie, 2010, Above n.63, p.17.

⁵⁹ De Beco, 2009, Above n.6, p.166.

⁶⁰ Baker et al, 2009, Above n.24, p.454.

⁶¹ Hunt and MacNaughton, Above n.3, p.31.

⁶² De Beco, 2009, Above n.6, p141.

⁶³ Budayeva and others v. Russia, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March, 2008, paras 128-129.

⁶⁴ Tătar v Romania (Application No. 67021/01), ECHR Judgment of 27 January 2009

⁶⁵ http://www-penelope.drec.unilim.fr/penelope/library/Libs/Int_nal/unep/unep.htm

⁶⁶ <http://www.humanrightsimpact.org/hria-guide/related-concepts/>

⁶⁷ <http://www.who.int/hia/en/>

⁶⁸ <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPSIA/0,,menuPK:490139~pagePK:149018~piPK:149093~theSitePK:490130,00.html>

⁶⁹ http://www.oecd.org/document/49/0,3343,en_2649_34141_35258801_1_1_1_1,00.html

⁷⁰ <http://www.humanrightsimpact.org/hria-guide/related-concepts/>