

**Discussion paper for the Advisory Group meeting on  
9 March 2009**

**1. Introduction to Bristol's project on "Implementation of Human Rights Standards".**

This four-year project, funded by the Arts and Humanities Research Council, examines the use of soft-law standards in the international, regional and national systems. The project is taking the Robben Island Guidelines on the Prevention and Prohibition of Torture, Inhuman and Degrading Treatment or Punishment (RIG), adopted by the African Commission on Human and Peoples' Rights (ACHPR) in 2002, as a case study.

By tracking the use of one soft-law document, from its drafting through to its use by the regional and international human rights mechanisms, and national actors, this research will examine from a very practical perspective the use of soft-law instruments by various stakeholders. It will enable discussion on the contribution of soft law to the development and implementation of international law to take place in a more detailed light.

***Research Objectives***

The objectives of the research will be to examine:

1. How such soft law documents and guidelines have been created. It will track the process of the adoption of the RIG, the various actors involved; and the legitimacy of those creating the soft law.
2. The relationship between soft law and hard law: looking particularly at the relationship between the RIG and the African Charter and with other treaties and customary law.
3. How soft law is used by key actors, examining how the RIG are used by the African Commission, AU organs, states, NGOs, and nationally by, for example, judges, parliamentarians and government.
4. In what context soft law is used; the contexts in which the RIG are used, internationally and nationally.
5. How soft law instruments can be implemented, e.g. the need for, in the case of the RIG, a Follow-Up Committee; other mechanisms of the African Commission; and used at the national level.

The practical objectives of this research are both academic (book length study, articles, conference papers and a PhD on a related topic) and practical (seminars involving key stakeholders; policy papers which may assist the RIG Committee, NGOs and governments working on the issue of torture prevention).

***Research questions***

1. What is the process for creating soft law instruments such as the RIG? How are soft law instruments created and adopted, the actors involved and the legitimacy of those involved.
2. What is the relationship between soft law instruments such as the RIG and treaties? To what extent are soft law instruments such as the RIG used as an authoritative interpretation of treaties?
3. How and in what context are soft law instruments such as the RIG used by various stakeholders? How are they used by international actors such as UN committees and regional bodies; the African Commission on Human and Peoples' Rights and the African Union; as well as national actors such as governments, parliamentarians, judges and lawyers, national human rights institutions and NGOs?

4. How can soft law instruments such as the RIG be implemented? Despite their non-binding nature, various systems are often set up for the implementation of soft law documents, such as the Follow-Up Committee in respect of the RIG. What is the role of the Follow-Up Committee and similar international bodies? What use do international mechanisms make of the RIG? What use do national mechanisms, such as judges, parliamentarians, governments and NGOs, make of the RIG at the national level?

***Initial activities:***

For the first year of the project (October 2008-September 2009) we are intending to carry out, at least, the following activities:

1. A review of all the relevant literature (both academic and otherwise) on soft law and implementation of human rights standards generally and also the RIG.
2. An examination of the drafting process for the RIG.
3. A visit to the Gambia to collect documents and to carry out interviews.
4. Research into implementation of torture prevention standards in a few target States, including an examination of how torture is prevented and what knowledge various stakeholders have on the RIG. (Initial target countries are South Africa and Ghana.)
5. Hosting a seminar in one state (as yet to be identified).
6. Evaluation of training provided by key organisations and NGOs working in the field in Africa. (Currently we have agreed to evaluate training provided by the IBA to human rights defenders in Libya. We are also in discussion with PRI).
7. Establishment of an advisory group on implementation.

**2. Preliminary remarks on general trends in assessing the implementation of human rights.**

It is not the aim of this paper to review all of the existing international, regional, and national mechanisms that are in place to monitor the implementation of human rights. These are numerous and well known. Rather, this paper is designed to give food for thought for a broader discussion on effective implementation of human rights by highlighting certain trends in the current discourse on implementation.

In recent years, there has been growing interest in the development of tools to measure State compliance with their obligations under international law, and to evaluate the impact of human rights activities and development projects.

Thus, various parallel initiatives have been initiated in response to specific needs or demands. Whilst, these broad and diverse activities have developed different approaches and tools, such as the use of events-based data; socio-economic and other statistics; public opinion and perception surveys; and expert judgements, the trend towards developing and using indicators to assist with assessing human rights implementation has been evident.

Part of this drive towards developing so-called “human rights indicators” may have been influenced by the use of “human development indicators” in development and poverty reduction activities worldwide. It is proposed in this paper, that whilst human development indicators and human rights indicators may converge at times, they are distinct. Human development indicators are used to measure the extent to which “basic needs” are enjoyed by the population with a State. Whereas, human rights indicators are aimed at assessing the level

to which a State is complying with its human rights obligations under international law.<sup>1</sup> Thus, these indicators measure different but interlinked conditions existing within a country. Notwithstanding this contextual difference, human development indicators, such as socio-economic statistics, can, and are used to monitor human rights.<sup>2</sup>

With respect to “human rights indicators”, they are, of course, not the only means to monitor implementation of human rights. However, it is noticeable that over the past few years more time and resources have been allocated to the development of indicators, in particular quantitative indicators, for measuring the implementation of human rights. Within these various activities, seven main trends can be observed:

1. Indicators have been developed to assist with monitoring State compliance with international treaty obligations.
2. Indicators have been developed to assist donors to evaluate projects and prioritise funding.
3. Indicators have been developed to assist civil society organisations and others to evaluate the impact of their human rights activities.
4. A particular emphasis has been placed on the development of indicators to measure the implementation of economic, social and cultural rights (ESC rights).
5. An emphasis is now being placed on developing a common approach to identifying indicators for monitoring implementation of civil and political rights, and ESC rights.
6. An emphasis is being placed on the need for human rights indicators to reflect the normative content of human rights treaties.
7. “Implementation” is commonly interpreted as requiring states to take measures to respect, protect, and fulfil the human right concerned.

However, this trend towards developing and using indicators to measure human rights implementation raises a number of important questions:

- What is meant by “human rights indicators”?
- Do indicators measure implementation (the obligation to respect, protect and fulfil) completely?
- Are indicators applicable to all human rights?
- Is there an over-reliance on human rights indicators?
- Can indicators be misused?
- Do indicators “rewrite” or lower treaty obligations?
- Can/should indicators, or other measures, be used to assess implementation of “soft-law”?

---

<sup>1</sup> See M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’, 23 *Human Rights Quarterly* (2001), p. 1078; S. Fukuda-Parr, ‘Indicators of Human Development and Human Rights- Overlaps, Differences... and what about the Human Development Index?’, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, available at: [http://www.portal-stat.admin.ch/iaos2000/fukuda\\_parr\\_final\\_paper.doc](http://www.portal-stat.admin.ch/iaos2000/fukuda_parr_final_paper.doc), last visited 22/3 2006, p.3.

<sup>2</sup> For instance, socio-economic statistics have been used, alongside other indicators, when reporting on the incidence of maternal mortality. See P.Hunt and J. Bueno de Mesquith, *Reducing Maternal Mortality: The Contribution to the Right to the Highest Attainable Health*, University of Essex, Amnesty international, *Peru: Poor and excluded women – Denial of the Right to maternal and child health*, Amnesty International, 2006, available at: <http://www.amnesty.org/en/library/asset/AMR46/004/2006/en/dom-AMR460042006en.html>

The development of human rights indicators has been linked to a broader emerging theme in monitoring state compliance, donor funding, and civil society projects, namely “human rights impact assessment” (HRIA). A necessary component of HRIA initiatives has involved the use and development of indicators. Yet, HRIA can be considered to be broader than simply applying human rights indicators in the field. HRIA can be understood to be an extensive process by which implementation can be assessed.

The Human Rights Impact Resource Centre defines the aims of HRIA as determining the impact of policies, programmes, and projects on human rights and is intended to help prevent violations of human rights.<sup>3</sup>

Effective HRIA initiatives have been interpreted as involving three main phases<sup>4</sup>:

- a) An analytical phase – human rights indicators are used to examine the current human rights situation and determine existing policies.
- b) A deliberative and decision-making phase – consultation with a wide range of people affected by policies in order to inform policymakers about their preferences and rights; this process is then followed by decisions on implementing appropriate and effective human rights policies.
- c) Monitoring and evaluation – the effects of policy during implementation should be monitored to identify any immediate, short-term and long-term changes in the human rights situation as a result of policies. Evaluation should also involve the process by which the HRIA was conducted.

Current HRIA activities do seem to have focused primarily on the development of quantitative indicators to assess the implementation of ESC rights. It is proposed that this is a result of the conventional approach of focusing on violations of civil and political rights and the progressive realisation of ESC rights.<sup>5</sup> However, one area of civil and political rights that has received attention under HRIA initiatives has been efforts to evaluate justice sector reform within states.<sup>6</sup>

### 3. Summary of a few key activities looking at implementation

#### ***a) International level***

**OHCHR:** In addition to the monitoring of states’ compliance with their human rights obligations by the UNGA, Security Council, Human Rights Council, treaty bodies, Special Procedures etc., the OHCHR has a team dedicated to the development and promotion of human rights indicators.

This work was initiated in response to a request from the Inter-Committee Meeting of Treaty Bodies (ICM) to help them make use of statistical information in States Parties’ report to assess the implementation of human rights. The OHCHR has developed a conceptual and methodological framework for identifying possible human rights indicators. Based on this framework, a list of illustrative

---

<sup>3</sup> See [www.humanrightsimpact.org](http://www.humanrightsimpact.org)

<sup>4</sup> This is the interpretation applied by the Human Rights Impact Resource Centre.

<sup>5</sup> See R.Malhotra and N.Fasel, *Quantitative Human Rights Indicators – A survey of major initiatives*, p.26.

<sup>6</sup> See for example the International Human Rights Network’s activities on justice sector reform in Uganda at [http://www.ihrnetwork.org/justice-sector-uganda\\_216.htm](http://www.ihrnetwork.org/justice-sector-uganda_216.htm)

indicators has been prepared for a number of selected human rights.<sup>7</sup> This approach uses structural, process, and outcome indicators as a means to monitor implementation.<sup>8</sup> It also recognises that whilst qualitative indicators are also relevant, the current OHCHR focus is on developing quantitative indicators due to the nature of the request from the ICM.

#### **b) Regional level**

**EU** – Attention has been paid recently to the implementation of the *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment* (hereinafter referred to as the “EU Guidelines”). The aim of the evaluation process was to enhance the implementation of the EU Guidelines and their contribution to the prevention of torture and other ill-treatment. This evaluation process involved reviewing the extent to which the EU Guidelines were known, used and implemented by EC delegations, EU missions, local authorities, and civil society within third countries. Within this evaluation process a range of strategies for effective torture prevention were also identified.<sup>9</sup>

**Council of Europe** – the COE regularly publishes statistics related to the administration of justice. Member States have to fill-in a questionnaire on this issue and quantitative indicators are compiled on a range of issues including the deprivation of liberty and judicial procedures. These indicators have been interpreted as being a useful tool for monitoring the implementation of civil and political rights.<sup>10</sup>

#### **c) Civil society initiatives**

Civil society organisations have frequently used a range of indicators to assess state compliance with their obligations under international human rights law without necessarily labelling these approaches as “human rights impact assessment” or “human rights indicators”. One of the most common methods used by civil society organisations to record and assess human rights violations within countries is so-called “events-based data” relating to the occurrence of human rights violations.<sup>11</sup> For instance, the victim and/or witness testimonies and media reports compiled by Amnesty International and Human Rights Watch in

---

<sup>7</sup> The human rights on which indicators have been elaborated are: the right to life; the right to liberty and security of the person; the right to participate in public affairs; the right not to be subjected to torture and other forms of ill-treatment; the right to the enjoyment of the highest attainable standard of physical and mental health; the right to adequate food; the right to adequate housing; the right to education; the right to social security; and the right to work. See UN Doc. HRI/MC/2008, 6 June 2008. Available at: <http://www2.ohchr.org/english/bodies/icm-mc/docs/HRI.MC.2008.3EN.pdf>

<sup>8</sup> In this process, “structural indicators” are defined as those indicators that reflect the ratification/adoption of legal instruments and existence of basic institutional mechanisms to facilitate the realisation of human rights; “process indicators” relate to state policy, and “outcome indicators” reflect individual and collective attainments that reflect the status of the realisation of the relevant human right. See R.Malhotra and N.Fasel, *Quantitative Human Rights Indicators – A survey of major initiatives*, p.28.

<sup>9</sup> See *The Implementation of the EU Guidelines on Torture and other Cruel, Inhuman or degrading Treatment or Punishment*, Directorate General External Policies, April 2007. Available at: [http://www.omct.org/pdf/various/2007/ep\\_study\\_torture\\_2007.pdf](http://www.omct.org/pdf/various/2007/ep_study_torture_2007.pdf)

<sup>10</sup> This is the interpretation proposed by R.Malhotra and N.Fasel in, *Quantitative Human Rights Indicators – A survey of major initiatives*, p.16.

<sup>11</sup> See R.Malhotra and N.Fasel, *Quantitative Human Rights Indicators – A survey of major initiatives*, p.6.

order to document and support allegations of human rights violations by states, can be considered to be “events-based data”. This type of approach tends to illustrate the fact that violations are occurring and therefore demonstrate that human rights are not being implemented at a national level. This approach does not necessarily identify concrete measures that should be taken by states to implement (respect, protect and fulfil) their obligations under international human rights law but is a necessary tool to identify non-compliance by a state.

Civil Society organisations have also made use of socio-economic statistics within their human rights monitoring activities. The use of this type of indicator is most relevant to monitoring the implementation of ESC rights within a country and has emerged as a dominant theme within the discourse on the implementation of human rights standards.

In addition to using indicators and others means to assess the level of implementation of human rights within a particular country, it must be noted that civil society organisations have, themselves, been increasingly called upon to adequately assess the impact of their activities on human rights implementation. More often than not, this requirement to evaluate the impact of civil society organisations’ activities is a condition imposed by project donors. While this aspect of “implementation assessment” is outside the remit of this current paper, it is nevertheless relevant to Bristol’s “Implementation of human rights standards” project as a whole.

#### **4. Suggested areas for discussion by the Advisory Group.**

As part of Bristol’s current project, a small advisory group composed of key individuals with a range of expertise and backgrounds from government, academic, national institutions, international organs and civil society is being established. The general aims of this advisory group will be:

- to broaden the project out to look at implementation more generally;
- to brainstorm around the idea of what is required to implement human rights law; and
- to come up with some sort of practical strategy, for all levels, on how this can be achieved.

Following the general trends in evaluating the implementation of human rights standards outlined in this paper, the following possible areas have been identified for further consideration by the Advisory Group:

- What does effective “implementation” mean in practice?
- How can implementation of human rights be measured effectively?
- What are the possible triggers for implementation of soft law?
- What does “human rights impact assessment” mean?
- What are the opportunities for using/developing indicators?
- What are the limitations and/or dangers of using indicators to measure human rights implementation?
- Can we identify relevant initiatives at the international, regional, and national levels to follow or participate in?
- Can other possible participants or guests to join the Advisory Group be identified?