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Beyond recognition: Human rights impact assessment as an operational framework for the right to development

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Abstract: *This chapter examines the persistent implementation gap surrounding the right to development (RtD) since its recognition in the 1986 United Nations Declaration on the Right to Development. It argues that the human rights impact assessment (HRIA) offers a particularly promising framework for translating the RtD from a normative commitment into practical implementation. Although the RtD has gained significant international and regional recognition, particularly through article 22 of the African Charter on Human and Peoples' Rights and related African jurisprudence, its influence on development planning and governance remains limited. The challenge is no longer legal recognition but operationalisation. The chapter identifies key barriers to implementation, including fragmented development governance, the increasing role of non-state actors, institutional capacity limitations, and reliance on reactive human rights mechanisms that address violations only after harm occurs. Development projects, especially in extractive industries, infrastructure and territorial development, continue to generate displacement, environmental degradation, social exclusion and unequal benefit sharing. Against this backdrop, the chapter analyses the evolution of HRIA as a preventive governance tool that integrates participation, accountability, equality and sustainability into development decision making. HRIA enables the identification and mitigation of human rights risks before project implementation while promoting transparency and inclusive participation. Drawing on African jurisprudence, notably SERAC and Ogiek, the chapter demonstrates how HRIA can strengthen community participation, equitable benefit sharing and responsible resource governance. It further explores HRIA's relevance within environmental, social and governance (ESG) standards, sustainable finance, human rights due diligence, climate governance and the energy transition. The chapter concludes that institutionalising HRIA offers a practical pathway for advancing rights-based, inclusive and sustainable development.*

Résumé : *Cet article examine le fossé persistant entre la reconnaissance et la mise en œuvre du droit au développement (DaD) depuis sa consécration dans la Déclaration des Nations Unies sur le droit au développement de 1986. Il soutient que l'évaluation de l'impact sur les droits de l'homme (EIDH) offre un cadre particulièrement prometteur pour faire passer le droit au développement d'un engagement normatif*

à une mise en œuvre concrète. Bien que le droit au développement ait acquis une reconnaissance internationale et régionale significative, notamment par le biais de l'article 22 de la Charte africaine des droits de l'homme et des peuples et de la jurisprudence africaine y afférente, son influence sur la planification du développement et la gouvernance reste limitée. Le défi ne réside plus dans la reconnaissance juridique, mais dans la mise en œuvre. L'article identifie les principaux obstacles à la mise en œuvre, notamment la fragmentation de la gouvernance du développement, le rôle croissant des acteurs non étatiques, les limites des capacités institutionnelles et le recours à des mécanismes réactifs de protection des droits de l'homme qui ne traitent les violations qu'une fois le préjudice subi. Les projets de développement, en particulier dans les industries extractives, les infrastructures et l'aménagement du territoire, continuent d'engendrer des déplacements de population, une dégradation de l'environnement, l'exclusion sociale et un partage inégal des bénéfices. Dans ce contexte, l'article analyse l'évolution de l'EIDH en tant qu'outil de gouvernance préventif qui intègre la participation, la responsabilité, l'égalité et la durabilité dans la prise de décision en matière de développement. L'EIDH permet d'identifier et d'atténuer les risques liés aux droits de l'homme avant la mise en œuvre des projets, tout en favorisant la transparence et une participation inclusive. S'appuyant sur la jurisprudence africaine, notamment les affaires SERAC c. Nigeria, Endorois c. Kenya et Ogiek c. Kenya, cet article démontre comment l'EIDH peut renforcer la participation communautaire, le partage équitable des bénéfices et la gouvernance responsable des ressources. Il explore en outre la pertinence de l'EIDH dans le cadre des normes ESG, de la finance durable, de la diligence raisonnable en matière de droits de l'homme, de la gouvernance climatique et de la transition énergétique. L'article conclut que l'institutionnalisation de l'EIDH offre une voie concrète pour faire progresser un développement fondé sur les droits, inclusif et durable.

Key words: *right to development; human rights impact assessment; development governance; participation and accountability; resource governance; sustainable development*

1 Introduction

The right to development (RtD) occupies a unique place in international human rights law. Enshrined in the 1986 United Nations (UN) Declaration on the Right to Development (DRtD), it affirms that every person and all peoples have the right to participate in, contribute to and benefit from development. Development is conceived not merely as economic growth but as a process aimed at the constant improvement of human well-being through the realisation of all human rights, participation, equality and social justice.[1]

The emergence of the RtD took place in the context of decolonisation and the demands of newly independent states for a more equitable international economic order. For these states, political independence could not be dissociated from economic development and the reduction of structural inequalities inherited from the international system. The RtD thus emerged as an attempt to bring development policies and human rights protection closer together within a single normative framework.[2]

Despite its normative importance, the RtD continues to face a persistent implementation gap. Nearly 40 years after the adoption of the 1986 Declaration, there is still a significant gap between the legal recognition of the right and its real influence on development processes. Although the RtD enjoys significant international and regional recognition, notably through article 22 of the African Charter on Human and Peoples' Rights (African Charter), its impact on development planning, investment decisions and economic governance remains limited.[3] As several authors have pointed out, the RtD remains one of the most widely recognised rights but also one of the least operational in the international human rights system.[4]

Several factors explain this situation. On the one hand, the RtD has developed primarily as a normative framework without institutional

1 United Nations General Assembly Declaration on the Right to Development (DRtD) GA Res 41/128 (4 December 1986) arts 1 & 2.
2 A Sengupta 'Right to development as a human right' (2001) 36 *Economic and Political Weekly* 2527-2536.
3 African Charter on Human and Peoples' Rights (1981) art 22.
4 SP Marks 'The human right to development: Between rhetoric and reality' (2004) 17 *Harvard Human Rights Journal* 137-168.

tools robust enough to guide decision making. On the other hand, contemporary development governance has become particularly complex. States are no longer the only decisive actors. International financial institutions, multinational enterprises, private investors and development agencies now exert considerable influence on development trajectories. However, the decisions taken in these different institutional spaces are not systematically evaluated in light of human rights.[5]

This weakness is most evident in contexts characterised by intensive exploitation of natural resources, large-scale infrastructure projects or rapid economic transformations. In several African countries, activities presented as engines of growth have sometimes led to population displacement, environmental damage, social conflict and an unequal distribution of economic benefits. These situations illustrate the limits of a conception of development that focuses primarily on economic indicators, and underscore the need for mechanisms capable of integrating human rights from the project design stage.

One of the major challenges is the largely reactive nature of traditional human rights protection mechanisms. These generally operate only after harm has occurred through judicial or quasi-judicial proceedings. However, development decisions often have long-term and sometimes irreversible consequences. Once a community has been displaced, an ecosystem has been degraded, or a way of life has disappeared, reparation mechanisms are often insufficient. The effective implementation of the RtD, therefore, requires instruments capable of anticipating risks and influencing decisions before damage occurs.

It is in this context that the human rights impact assessment (HRIA) acquires particular importance. Developed gradually over the past two decades, HRIA is a methodology for identifying, assessing and preventing the potential impacts of policies, projects and investments on human rights. Unlike approaches based mainly on reparation, it adopts a preventive approach. It aims to integrate human rights considerations into decision-making processes from the earliest stages of the design and implementation of development interventions.[6]

5 ME Salomon *Global responsibility for human rights: World poverty and the development of international law* (2007).

6 J Harrison 'Human rights measurement: Reflections on the current practice and future potential of human rights impact assessment (2011) 3 *Journal of Human Rights Practice* 162-187.

Recent developments in international law reinforce this dynamic. The draft International Covenant on the Right to Development explicitly recognises the importance of impact assessments as implementation mechanisms.[7] At the same time, developments in the areas of business and human rights, due diligence, sustainable finance, climate governance and environmental, social and governance (ESG) frameworks show a growing interest in preventive approaches based on risk management and stakeholder participation.

This chapter argues that the HRIA offers a particularly promising framework for operationalising the RtD. Its contribution lies not only in the identification of risks, but in its ability to integrate the fundamental principles of the RtD, including participation, equity, accountability and sustainability, into development governance processes.

This chapter adopts a doctrinal and policy-oriented legal research methodology to assess the potential of the HRIA as a mechanism for operationalising the RtD. It examines the normative content of the RtD through an analysis of international and regional legal instruments, jurisprudence, UN reports and relevant academic literature.

The study first analyses the legal foundations of the RtD, drawing on the DRtD, the African Charter, relevant UN resolutions and reports, and developments relating to the draft International Covenant on the Right to Development. This analysis identifies the core principles underpinning the RtD, including participation, equality, accountability, non-discrimination, benefit sharing and sustainability. These principles provide the analytical framework against which the HRIA is assessed.

The chapter then examines the conceptual foundations and methodological features of the HRIA, focusing on its capacity to integrate human rights considerations into development planning, implementation, monitoring and accountability processes. Attention is paid to the extent to which HRIA can translate the normative requirements of the RtD into practical decision-making tools.

To illustrate these issues, the chapter analyses selected African human rights cases, namely, *SERAC* and *Ogiek*. These cases were selected because they address development-related harms, participation, access to natural resources and equitable benefit sharing. Rather than undertaking

7 Draft International Covenant on the Right to Development UN Doc A/HRC/54/50 (2023).

empirical evaluation of individual HRIAs, the chapter uses a normative and analytical approach to assess whether the HRIA offers a credible framework for advancing the implementation of the RtD in practice.

2 Why has the right to development been difficult to implement?

2.1 Between normative strength and operational weakness

Since the adoption of the DRtD in 1986, this right has gained significant normative recognition within international human rights law. The Declaration enshrined a vision of development based on participation, equality, social justice and the realisation of all human rights.[8] This approach was reaffirmed by the 1993 Vienna Declaration and Programme of Action, which recognised the RtD as a universal, inalienable right and an integral part of human rights.[9]

The main strength of the RtD lies in its integrative nature. Unlike traditional approaches that distinguish between civil and political rights and economic, social and cultural rights, the RtD views development as a comprehensive process that enables the realisation of all human rights.[10] By placing the human being at the centre of development, it offers a coherent vision of the relationship between economic growth, social justice and human dignity.

However, this normative ambition has not been translated into effective implementation. Despite its broad political support, the RtD remains relatively weak operationally. Unlike other international rights protection regimes, it is not backed by a robust monitoring system or specialised enforcement mechanisms. In practice, its implementation has often been based more on political will than on clearly enforceable obligations.[11]

The main problem, therefore, is not the absence of principles but the absence of mechanisms capable of transforming these principles into concrete decision-making criteria. The RtD has long remained a

8 DRtD (n 1).
9 World Conference on Human Rights Vienna Declaration and Programme of Action (1993) part I para 10.
10 Sengupta (n 2).
11 SP Marks *The right to development: A primer* (2004).

normative objective with no real translation into the daily processes of planning, investment and governance of development.

2.2 Fragmentation of development governance

A second major obstacle stems from the transformation of contemporary development governance. Development trajectories are no longer determined exclusively by states. They are now influenced by a complex set of actors including international financial institutions, development agencies, multinational enterprises, private investors and regional organisations.[12]

This plurality of actors is accompanied by a plurality of institutional logics. Development ministries often prioritise economic growth; financial institutions place particular emphasis on macro-economic stability; companies pursue business objectives; while environmental authorities focus on sustainability. While these goals are not necessarily incompatible, they are rarely coordinated around a common human rights-based framework.

This fragmentation contributes to the marginalisation of human rights considerations in decision-making processes. Mining, infrastructure or investment projects are frequently evaluated according to financial or technical criteria without systematic consideration of their consequences for the populations concerned.[13] Development and human rights institutions often operate in parallel rather than in an integrated manner.

One consequence is that economically efficient projects can simultaneously produce significant negative effects on participation, equality, livelihoods or the environment. The gap between RtD objectives and actual governance practices is largely due to this institutional fragmentation.

2.3 Lack of a preventive approach

Another important weakness is the essentially reactive nature of traditional human rights protection mechanisms. National, regional and international institutions generally intervene after the occurrence

12 B Rajagopal *International law from below: Development, social movements and Third World resistance* (2003).
13 Salomon (n 5).

of the injury, through contentious, quasi-contentious or administrative procedures.

While these mechanisms remain indispensable, they often prove insufficient in the context of development. Infrastructure projects, extractive operations or large agricultural investments frequently produce long-term, sometimes irreversible, impacts. Once a community has been displaced, an ecosystem has been destroyed or a critical resource has disappeared, reparation mechanisms rarely offer full restitution of affected rights.[14]

This reality has led to a growing recognition of the need for preventive approaches. The UN, treaty bodies, and business and human rights frameworks are now placing greater emphasis on the early identification of risks and the prevention of human rights abuses.[15]

However, historically, the RtD did not have a systematic instrument to integrate such a logic of prevention into development processes. This gap partly explains why it has often been perceived as a normatively ambitious but practically limited right.

2.4 Institutional and capacity constraints

The implementation of the RtD is also affected by persistent institutional limitations, particularly in developing countries. The effective realisation of the law requires institutions capable of integrating human rights into development policies, monitoring impacts and enforcing accountability mechanisms.

In many states, however, governments have limited financial resources, insufficient technical expertise or weak regulatory capacity.[16] National human rights institutions, environmental authorities or local authorities often struggle to effectively monitor complex development projects.

Civil society organisations face similar challenges. Although they play a critical role in community participation and citizen control, their

14 O de Schutter Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreement UN Doc A/HRC/19/59/Add.5 (2011).

15 United Nations Guiding Principles on Business and Human Rights (2011) Principle 17.

16 United Nations Development Programme (UNDP) 'Human Development Report' (latest edition cited in original article).

resources are often limited. In some contexts, restrictions on civic space further reduce their ability to influence public policy.[17]

These challenges are particularly visible in sectors such as the extractive industry or projects related to the energy transition, where decisions are based on highly specialised technical and financial knowledge. The resulting information imbalance tends to strengthen the position of the actors with the greatest resources to the detriment of the affected communities.

2.5 Lessons from African jurisprudence

The African experience illustrates both the advances and the limitations of the RtD implementation. Article 22 of the African Charter is one of the most explicit regional recognitions of the right to development.[18]

Through the cases of *Endorois*[19] and *Ogiek,*[20] African institutions have gradually clarified the content of the right. In particular, they affirmed that development implies the effective participation of the communities concerned, respect for their land and cultural rights, as well as an equitable sharing of the benefits of development projects.

This case law has made an important contribution to the normative clarification of the RtD. They confirmed that the success of a project cannot be evaluated solely on the basis of its economic results. Development must also be appreciated through its impact on human dignity, inclusion and social justice.

However, these decisions also reveal the limitations of existing mechanisms. Even when legal principles are clearly established, their translation into administrative, economic and political practices often remains incomplete.

2.6 Towards operational solutions

The main challenge of the RtD therefore is no longer that of its normative recognition but that of its operationalisation. The obstacles identified,

17 World Bank 'World development report 2017: Governance and the law' (2017).
18 African Charter art 22.
19 *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).
20 *African Commission on Human and Peoples' Rights v Kenya* Application 6/2012 (African Court on Human and Peoples' Rights, 26 May 2017) (*Ogiek*).

whether institutional fragmentation, lack of preventive mechanisms or capacity constraints, show that the effective realisation of the right requires instruments capable of influencing decisions before harm occurs.

Against this background, the HRIA appears to be a major innovation. By introducing mechanisms for risk assessment, participation and anticipation at the heart of development processes, it offers a concrete way to link the RtD principles to governance practices. The HRIA can thus be understood as the operational link that has long been missing from the right to development, and which now makes it possible to envisage a more effective implementation of its fundamental objectives.

3 Human rights impact assessment: From an emerging methodology to a development governance tool

3.1 The need for an operational framework for the right to development

Despite its recognition in international and regional human rights instruments, the RtD continues to face challenges of implementation.[21] While its normative content has become increasingly clarified, less attention has been devoted to identifying practical mechanisms capable of translating its principles into concrete development processes and outcomes.[22]

The broad and multidimensional nature of the RtD requires institutional tools that can integrate human rights considerations into development planning, implementation, monitoring and evaluation.[23] Such tools must be capable of promoting participation, transparency, accountability, and the prevention of harm throughout the development cycle.

Against this background, increasing attention has been given to mechanisms that can bridge the gap between the normative aspirations of the RtD and their practical application. The HRIA has emerged as one such mechanism, offering a structured approach for incorporating human

21 DRtD (n 1); African Charter art 22.
22 A Sengupta 'On the theory and practice of the right to development' (2002) 24 *Human Rights Quarterly* 837.
23 S Deva 'The human right to development' in D Moeckli, S Shah & S Sivakumaran (eds) *International human rights law* (2018) 622-638.

rights standards into development decision making. The following parts consider how HRIA can contribute to the operationalisation of the RtD by giving practical effect to its core principles.

3.2 Participation as a core principle of the right to development

Participation is a central principle of the RtD. The DRtD affirms the right of individuals and peoples to participate in, contribute to and enjoy development, recognising participation as both a means and an end of development processes.[24]

Meaningful participation requires that affected individuals and communities have access to relevant information and genuine opportunities to influence decisions that may affect their rights and livelihoods.[25] This is particularly important in the context of development projects involving land acquisition, natural resource extraction, displacement or significant environmental and social impacts.

The HRIA provides a structured framework for operationalising this principle by ensuring that potentially affected stakeholders are identified, consulted and involved throughout the development process.[26] In this way, the HRIA contributes to the realisation of participatory development and helps align development decision making with the requirements of the RtD.

3.3 Accountability and transparency in development governance

Accountability and transparency are essential components of the RtD. The effective realisation of the RtD requires that development decisions are made openly, that affected individuals and communities have access to relevant information, and that mechanisms exist to monitor outcomes and address grievances.[27]

Lack of transparency and accountability has frequently contributed to development-related human rights violations, particularly in contexts involving large-scale infrastructure projects, natural resource extraction

24 DRtD (n 1) arts 1(1), 2(3) & 8(2).
25 *Endorois* (n 19) paras 281-298.
26 S Walker *The future of human rights impact assessments of trade agreements* (2009) 21-31.
27 DRtD (n 1) arts 1, 2 & 8; African Charter arts 21, 22 & 24.

and land acquisition.[28] Ensuring oversight and access to effective remedies is therefore critical to rights-based development governance.

The HRIA supports these objectives by requiring the disclosure of relevant information, documenting decision-making processes, identifying rights holders and duty bearers, and establishing mechanisms for monitoring and remedy.[29] In doing so, the HRIA helps strengthen accountability and transparency throughout the development cycle and contributes to the implementation of the RtD.

3.4 Prevention and *ex ante* human rights assessment

Prevention is a fundamental dimension of the RtD. The effective realisation of the RtD requires not only remedies for harms that have occurred, but also measures to anticipate, avoid and mitigate adverse human rights impacts before development decisions are implemented.[30] A preventive approach is particularly important in the context of large-scale development projects, where harmful consequences for communities and vulnerable groups may be difficult or impossible to reverse.

An *ex ante* human rights assessment provides a practical means of identifying potential risks before policies, programmes or projects are approved and implemented.[31] By evaluating likely human rights impacts at an early stage, decision makers are better equipped to modify proposed interventions, consider alternatives and adopt appropriate safeguards.

The HRIA operationalises this preventive function by systematically assessing potential impacts on rights holders before harm occurs.[32] In doing so, it supports more informed decision making, reduces the likelihood of rights violations, and advances the objectives of the RtD through proactive rather than reactive action.

28 *Social and Economic Rights Action Centre (SERAC) & Another* (2001) AHRLR 60 (ACHPR 2001) (*SERAC); Endorois* (n 19).
29 Walker (n 26) 21-39; Danish Institute for Human Rights *Human rights impact assessment guidance and toolbox* (2016).
30 DRtD (n 1) arts 2(3), 3 & 8; African Charter arts 21, 22 & 24.
31 De Schutter (n 14) paras 3-7.
32 Walker (n 26) 21-31; Danish Institute for Human Rights (n 29).

3.5 Human rights impact assessment as an operational tool

The HRIA provides a practical methodology for integrating human rights considerations into development decision making. Drawing on international human rights standards, the HRIA enables the systematic identification, assessment and management of actual or potential human rights impacts associated with policies, programmes and projects.[33]

A distinguishing feature of the HRIA is its emphasis on participation, transparency, accountability and evidence-based analysis throughout the development cycle.[34] Through stakeholder engagement, impact assessment, monitoring and follow-up measures, the HRIA creates structured processes through which the principles of the RtD can be incorporated into development governance.

By moving beyond abstract commitments and focusing on concrete decision-making processes, the HRIA helps translate the normative requirements of the RtD into practical measures that promote equitable, inclusive and sustainable development.[35] As such, the HRIA offers an important mechanism for bridging the gap between the recognition of the RtD and its effective implementation.

3.6 Emerging legal support for assessment-based implementation

Recent developments in international law suggest growing recognition that the effective implementation of the RtD requires assessment-based approaches capable of evaluating the human rights consequences of development interventions. While the DRtD established the normative foundations of the right, subsequent developments have increasingly focused on mechanisms for its practical realisation.[36]

Of particular significance is article 21 of the draft International Covenant on the Right to Development, which requires the assessment

33 Walker (n 26) 21-39; Danish Institute for Human Rights (n 29).
34 De Schutter (n 14) paras 3-11.
35 N Götzmann (ed) *Handbook on human rights impact assessment* (2019) 1-18; J Harrison *The human rights impact of the World Trade Organisation* (2007) 213-220.
36 Human Rights Council Resolution 51/7 on the Right to Development (2022); Working Group on the Right to Development 'Report of the Working Group on the Right to Development on its twenty-fourth session' UN Doc A/HRC/54/40 (2023).

and monitoring of the human rights impacts of development policies, programmes and projects.[37] While the Declaration primarily articulated the normative content of the RtD, article 21 moves towards institutional implementation by embedding assessment obligations within development governance processes. In doing so, it reflects an emerging recognition that the effective realisation of the RtD requires systematic *ex ante* and ongoing evaluation of the human rights consequences of development interventions.

The provision is especially noteworthy because it incorporates core principles associated with the RtD, including participation, accountability, transparency, equality and the prevention of harm. Consequently, article 21 provides important normative support for the use of HRIAs as a practical mechanism through which these principles can be operationalised and monitored in development decision-making processes.

Far from being an external policy tool applied to the RtD framework, the HRIA can therefore be understood as increasingly aligned with emerging legal developments that seek to transform the right from a largely normative aspiration into an implementable and measurable standard for development governance.

4 Potential applications of human rights impact assessment in development governance and extractive industries

Having established the conceptual and normative foundations of the HRIA as a framework for operationalising the RtD, this part examines its potential application to contemporary development challenges.[38] Rather than evaluating specific HRIA processes, the discussion explores how HRIA principles and methodologies can be used to identify, prevent and mitigate human rights risks associated with development interventions.[39] Particular attention is paid to challenges arising in the context of extractive industries, the energy transition and natural resource governance in Africa. The objective is to illustrate the practical relevance of the HRIA as a tool for promoting participation,

37 Draft International Covenant on the Right to Development (n 7) art 21.
38 J Harrison *Human rights impact assessment: Review of practice and guidance for future assessments* (2010).
39 Walker (n 26).

accountability, transparency, equality and sustainability in development decision making.[40]

4.1 The challenge of development in resource-rich economies

The practical value of the HRIA is particularly evident in resource-rich economies. In many African countries, the exploitation of mining, oil and gas resources has generated significant economic growth without producing commensurate improvements in people's well-being. This situation, often described as the 'resource curse', highlights the limitations of development models based primarily on macro-economic indicators.[41]

From the perspective of the RtD, the success of a development policy cannot be measured solely by the revenues generated or the investments attracted. It also requires effective participation of affected populations, equitable distribution of benefits and respect for human rights.[42] Economic growth certainly is an element of development, but it cannot be the only criterion for its evaluation.

African jurisprudence has largely contributed to this understanding. Through the interpretation of article 22 of the African Charter, African mechanisms have affirmed that development must be participatory, inclusive and compatible with the rights of affected communities.[43]

4.2 Extractive industries as a laboratory for the right to development

The extractive industries are a particularly clear illustration of the tensions between economic development and the protection of human rights. Mining, oil and gas projects create jobs, generate tax revenues and attract foreign investment. At the same time, they can lead to population displacement, environmental damage, labour rights violations or conflicts related to resource management.[44]

40 Danish Institute for Human Rights (n 29); De Schutter (n 14).
41 R Auty *Sustaining development in mineral economies: The resource curse thesis* (1993).
42 DRtD (n 1) arts 1-2.
43 African Charter art 22; *Endorois* (n 19).
44 Natural Resource Governance Institute (NRGI) 'Resource Governance Index Reports'.

SERAC remains emblematic in this regard. The African Commission on Human and Peoples' Rights (African Commission) found that the lack of effective control of oil activities in Nigeria contributed to serious violations of the rights of Ogoni communities, including the environment, health and livelihoods.[45] The decision demonstrated that economic growth based on the exploitation of natural resources can be incompatible with development when it is achieved to the detriment of the populations concerned.

The *Endorois* and *Ogiek* case law then reinforced this approach by emphasising that communities affected by development projects must be effectively consulted and benefit equitably from the resulting economic benefits.[46] These decisions enshrined several central elements of the RtD: participation, consultation, protection of land rights and benefit sharing.

4.3 The HRIA's contribution to the project life cycle

One of the main strengths of the HRIA lies in its ability to intervene throughout the life cycle of a development project.

At the planning stage, it helps identify affected communities, vulnerable groups and potential human rights risks. During the design of the project, it helps guide choices relating to siting, land use, consultation mechanisms and mitigation measures. During the implementation phase, it provides a monitoring framework to verify compliance with the commitments made. Finally, after the completion of the project, it facilitates the evaluation of results and the possible implementation of reparation mechanisms.[47]

This approach has a major advantage over traditional mechanisms. Many social and environmental impacts only appear after several years. Displacement, degradation of natural resources or local economic transformations are often incremental processes. The HRIA allows these cumulative effects to be taken into account and to maintain the protection of human rights throughout the duration of the project.

45 *SERAC* (n 28).
46 *Endorois* (n 19); *Ogiek* (n 20).
47 International Finance Corporation 'Performance standards on environmental and social sustainability' (2012).

4.4 Community participation and empowerment

As discussed in part 3, participation is a core principle of both the RtD and the HRIA. Article 2 of the DRtD explicitly recognises active, free and meaningful participation as an essential component of development.[48]

In practice, the HRIA implements this principle by creating institutional spaces for consultation and dialogue between project promoters, public authorities and the populations concerned. Unlike traditional approaches that often limit consultation to an administrative formality, the HRIA aims to enable participation that can influence decisions.

This requirement is particularly important in the African context, where extractive, energy or infrastructure projects frequently affect rural or indigenous communities whose livelihoods are highly dependent on access to land and natural resources.

Endorois confirmed that consultation must be meaningful, informed and capable of influencing the outcome of the decision-making process.[49] The HRIA provides the procedural mechanism to make this requirement a reality. In this way, it helps to strengthen the legitimacy of development decisions and to prevent conflicts related to exclusion or lack of transparency.

4.5 Territorial development and local value creation

The contribution of the HRIA is not limited to assessing the impacts of an isolated project. It also promotes a territorial approach to development that takes into account the wider effects on the communities and regions concerned.

Extractive or energy investments often function as economic enclaves producing significant national benefits, while generating few positive effects for local populations. The HRIA seeks to go beyond this logic by assessing how projects contribute to local development, access to public services, employment, economic diversification and community well-being.[50]

48 DRtD (n 1) art 2(3).
49 *Endorois* (n 19) paras 281-298.
50 World Bank *Mining community development agreements source book* (2012).

Such an approach is fully consistent with the RtD, which conceives of development as an overall improvement in living conditions rather than as a mere increase in economic indicators. The HRIA thus makes it possible to link decisions relating to individual projects to broader territorial and human development objectives.

4.6 The example of the Democratic Republic of the Congo

The Democratic Republic of the Congo (DRC) is a particularly relevant example of contemporary RtD challenges. The country has significant reserves of cobalt, copper and other strategic minerals that have become essential to the global energy transition. Despite this wealth, many mining regions continue to experience high levels of poverty, weak infrastructure and persistent social tensions.[51]

The rapid expansion of global demand for critical minerals is exacerbating resource governance issues. Without appropriate mechanisms, local communities may bear the social and environmental costs of exploitation while benefiting little from the economic benefits.

In this context, the HRIA can play a crucial role. It helps to increase the transparency of land acquisition processes, protect workers' rights, improve benefit-sharing mechanisms and foster dialogue between public authorities, companies and affected communities.

More fundamentally, it makes it possible to evaluate exploitation projects not only through their economic performance, but also according to their contribution to human development and the realisation of fundamental rights.

4.7 HRIA and the global energy transition

The energy transition is now one of the main drivers of global economic transformation. The increase in renewable energy production is leading to strong growth in demand for strategic minerals such as cobalt, lithium, nickel or copper.[52]

51 World Bank *Democratic Republic of Congo Economic Update*; UNDP 'Human Development Reports'.

52 International Energy Agency 'The role of critical minerals in clean energy transitions' (2021).

This dynamic creates significant opportunities for several African countries. However, it also carries the risk of replicating some of the failures historically associated with traditional extractive industries: population displacement, environmental pressures, low local benefits and exclusion of affected communities.

The HRIA is particularly relevant in this context. It assesses the social and economic implications of the energy transition and ensures that projects simultaneously contribute to the fight against climate change and the protection of human rights.

In this way, it participates in the implementation of the concept of 'just transition', according to which the benefits and costs associated with climate policies must be distributed equitably.[53]

4.8 HRIA as a tool for climate justice

Contemporary debates on climate justice emphasise that environmental policies must be evaluated not only through their ecological outcomes, but also through their social and human consequences.

The HRIA contributes to this goal in several ways. It promotes procedural justice by ensuring the participation of affected populations in decisions on climate projects.[54] It also supports distributive justice by examining the distribution of benefits and burdens resulting from investments related to the energy transition.[55]

Finally, it reinforces accountability through the establishment of indicators, monitoring mechanisms and control procedures to assess the real effects of projects on the populations concerned.[56]

From this perspective, the HRIA is an essential instrument to ensure coherence between climate objectives, the principles of sustainable development and the requirements of the right to development.

53 International Labour Organisation 'Guidelines for a just transition towards environmentally sustainable economies and societies for all' (2015).
54 UNEP 'Environmental rule of law and climate governance reports'.
55 Paris Agreement (2015).
56 UNFCCC 'Just Transition Work Programme Documents'.

4.9 Towards a transformation of development governance

The importance of the HRIA ultimately goes beyond individual projects. Its main contribution lies in its ability to transform the way development decisions are designed and implemented.

In the extractive sectors, territorial development and energy transition, the HRIA introduces a governance logic based on risk anticipation, community participation and the protection of human rights. In this way, it contributes to changing development models from an approach focused exclusively on economic growth to one that is more oriented towards human dignity, equity and sustainability.

The African experience has shown that such a development was not only desirable but necessary if the RtD was to become a concrete reality. Properly implemented, the HRIA is therefore much more than a simple technical evaluation tool: It is a governance mechanism capable of operationalising the fundamental principles of the RtD.

5 Human rights impact assessment as a bridge between the right to development and new global governance frameworks

5.1 Beyond the protection of human rights: An instrument of development governance

The effective implementation of the RtD increasingly depends on its ability to influence contemporary systems of economic governance.[57] Decisions shaping development trajectories are no longer taken exclusively by states. They are also influenced by financial markets, multinational enterprises, development finance institutions, energy transition actors and global value chains.[58]

This evolution has created a growing disconnect between economic governance systems and human rights frameworks, with the former prioritising growth, investment and risk management, and the latter emphasising participation, equality and accountability. The challenge of the RtD is to bring these institutional spheres closer together.

57 A Sengupta (n 22) 837; P Alston & M Robinson (eds) *Human rights and development: Towards mutual reinforcement* (2005).
58 Deva (n 23) 622.

As discussed in part 3, the HRIA offers a practical mechanism for bridging this gap by integrating human rights standards into investment, financing and development planning processes. In doing so, it helps translate the principles of the RtD into operational criteria that can guide decision making across diverse governance sectors.

5.2 HRIA and ESG governance

Environmental, social and governance (ESG) criteria have become central to contemporary investment strategies and corporate governance. Investors increasingly rely on ESG indicators to assess risks related to sustainability, reputation and long-term organisational performance.[59]

Despite their growing importance, ESG frameworks present significant limitations. They often focus on risks to businesses rather than impacts on rights holders and affected communities. In addition, ESG indicators frequently rely on quantitative measures that may not adequately capture social realities, power imbalances or situations of vulnerability. Moreover, ESG methodologies are not always firmly anchored in international human rights standards.

The HRIA can help address these limitations by shifting attention from institutional risk to the real-world impacts of economic activities on individuals and communities. By grounding assessments in human rights standards and incorporating stakeholder perspectives, the HRIA introduces a normative and qualitative dimension that is frequently absent from conventional ESG frameworks.

Rather than replacing ESG mechanisms, the HRIA can strengthen them by improving the assessment of human rights risks and enhancing the credibility of social sustainability claims. In this respect, the HRIA contributes to aligning responsible investment practices with the objectives of the RtD.

5.3 HRIA and sustainable finance

Financial institutions exert considerable influence over development pathways through decisions relating to lending, investment and project

59 Principles for Responsible Investment 'An introduction to responsible investment: ESG issues' (2022).

financing. These decisions often determine which sectors and activities receive the resources necessary for expansion and implementation.[60]

The growth of sustainable finance reflects efforts to align financial flows with environmental and social objectives. Green bonds, sustainability-linked investments and development finance initiatives illustrate this trend.

Nevertheless, sustainable finance instruments do not always give adequate attention to human rights impacts. A project may satisfy ambitious environmental objectives, while simultaneously generating adverse consequences for local communities, workers or displaced populations.[61]

The HRIA can complement sustainable finance frameworks by introducing a systematic assessment of human rights impacts into investment decision making. This enables financial institutions to better evaluate the social consequences of their investments, strengthen risk management processes, and improve coherence between financial decisions and sustainable development objectives. This function is particularly important in developing countries, where international financial flows often play a decisive role in shaping development priorities and outcomes.[62]

5.4 HRIA and climate governance

Climate change represents one of the most significant challenges facing contemporary development. Decarbonisation strategies, adaptation measures, and the transition to low-carbon economies are transforming patterns of production, investment and consumption across the globe.[63]

In response, the concept of climate justice has highlighted the importance of addressing the social and human dimensions of climate action. Environmental policies cannot be regarded as sustainable if they

60 United Nations Environment Programme Finance Initiative 'Human rights guidance tool for investors' (2014).
61 De Schutter (n 14) paras 3-11.
62 Harrison (n 38) 24-31.
63 Human Rights Council Resolution 48/13 'The human right to a clean, healthy and sustainable environment' (2021); Office of the United Nations High Commissioner for Human Rights 'Frequently asked questions on human rights and climate change' (2021).

contribute to exclusion, marginalisation or violations of fundamental rights.

The HRIA can support climate governance by assessing the implications of climate-related projects for communities, livelihoods, land rights and access to natural resources. This is particularly relevant in the context of the global energy transition, which has increased demand for strategic minerals such as cobalt, lithium and copper.[64] While these resources are essential for low-carbon technologies, their extraction may generate significant social and human rights risks. The HRIA provides a framework for identifying and addressing such risks, thereby helping to align climate objectives with the principles of the RtD.[65]

5.5 Global value chains and transnational responsibility

Globalisation has fundamentally transformed systems of production. Contemporary supply chains span multiple jurisdictions and involve numerous actors operating under different legal and regulatory frameworks.[66] This fragmentation creates significant accountability challenges. Human rights abuses associated with natural resource extraction, labour conditions or land acquisition frequently occur far from the jurisdiction where the principal economic benefits are realised.

Contemporary human rights due diligence frameworks increasingly recognise that responsibility for adverse impacts extends beyond direct operational activities.[67] In this context, the HRIA provides an important means of identifying risks throughout value chains and making visible the social and environmental consequences of transnational economic activity.

By highlighting the impacts of decisions taken across multiple jurisdictions, the HRIA supports a more responsible approach to

64 United Nations Development Programme (UNDP) 'What are critical minerals and why are they important?'; International Energy Agency (IEA) 'The role of critical minerals in clean energy transitions (2021).

65 D Boyd, UN Special Rapporteur on Human Rights and the Environment, reports on climate change, energy transition and human rights.

66 United Nations Conference on Trade and Development (UNCTAD) 'World Investment Report'.

67 United Nations Guiding Principles on Business and Human Rights (n 15) Principles 13, 17 & 18.

development governance and reflects the growing interdependence of contemporary economies.[68]

5.6 Strengthening policy coherence for development

A persistent challenge in contemporary governance is the coexistence of multiple policy frameworks that are often developed and implemented in isolation from one another.[69] Development, climate, finance, investment and human rights policies frequently operate through separate institutions with distinct objectives and priorities. Such fragmentation can undermine policy coherence and weaken the effectiveness of sustainable development efforts.

The HRIA helps address this challenge by providing a common analytical framework grounded in international human rights standards.[70] It allows policies and projects across different sectors to be evaluated using coherent criteria and facilitates a more integrated approach to governance. By providing a common framework across development, climate, finance and human rights policy domains, the HRIA promotes greater policy coherence and helps align development objectives with human rights obligations.[71]

5.7 A contribution to the transformation of development

Beyond its technical functions, the HRIA contributes to a broader shift towards human-centred development governance. Traditional approaches have often measured development primarily through economic growth indicators. By contrast, the RtD emphasises development that advances human dignity, equality, participation and social inclusion.[72]

The HRIA gives practical effect to this vision by integrating human rights considerations into decision-making processes and evaluating development outcomes in terms of their impact on people and communities. In this sense, the HRIA serves as an important bridge

68 Organisation for Economic Co-operation and Development 'OECD due diligence guidance for responsible business conduct' (2018).
69 United Nations Transforming our world: The 2030 Agenda for Sustainable Development (2015) paras 8-18.
70 Danish Institute for Human Rights (n 29).
71 A Cornwall & C Nyamu-Musembi 'Putting the rights-based approach to development into perspective' (2004) 25 *Third World Quarterly* 1415.
72 DRtD (n 1) arts 1, 2 & 8.

between contemporary governance frameworks and the normative aspirations of the RtD.[73]

6 Challenges and conditions for institutionalising human rights impact assessment

6.1 From normative potential to practical effectiveness

The preceding discussion has shown that the HRIA offers a particularly promising framework for operationalising the RtD. However, its normative potential does not automatically translate into effective practice. Like other assessment mechanisms, the HRIA operates within political, economic and institutional contexts that may either facilitate or constrain its influence on development outcomes.

The challenge therefore is not whether the HRIA is relevant, but under what conditions it can function as an effective and sustainable instrument of development governance. Experience with environmental and social assessment regimes demonstrates that assessment processes are most effective when supported by robust legal frameworks, institutional oversight and meaningful implementation of their findings.[74]

6.2 Political and economic constraints

The effectiveness of the HRIA is influenced by the political and economic realities within which development decisions are made. Governments frequently face pressure to attract investment, accelerate economic growth and increase public revenues. In such contexts, human rights considerations may be treated as secondary to immediate economic objectives.

These tensions are particularly evident in extractive industries, infrastructure projects and energy-transition initiatives, where significant financial interests are at stake. The effectiveness of the HRIA, therefore, depends on sufficient political commitment to ensure that human rights

73 A Sen *Development as freedom* (1999); A Sengupta 'The human right to development' (2004) 32 *Oxford Development Studies* 179-203.
74 Harrison (n 38) 15-22.

considerations are integrated into development decision making and that assessment findings are reflected in project design and implementation.[75]

6.3 The risk of procedural formalism

A further challenge is the risk that the HRIA becomes a procedural exercise focused primarily on regulatory compliance. Assessments may generate reports and consultations without significantly influencing decision making or project outcomes.

This risk is especially pronounced where assessments are conducted without independent oversight or where recommendations are not linked to monitoring and accountability mechanisms. The value of the HRIA ultimately depends not on the production of assessment reports, but on its capacity to inform and shape development decisions.[76]

6.4 Institutional and technical capacity

Effective implementation of the HRIA requires adequate institutional and technical capacity. Undertaking assessments often demands multidisciplinary expertise spanning legal, social, economic, environmental and human rights fields.

In many developing countries, regulatory agencies, national human rights institutions and local authorities face resource and capacity constraints that limit their ability to review, monitor and enforce assessment processes. Similar challenges affect civil society organisations, which may possess valuable local knowledge but lack the technical resources necessary to engage fully in complex assessment procedures.[77]

Access to reliable and disaggregated data remains an additional challenge. Without accurate information on affected populations, existing vulnerabilities, land use and socio-economic conditions, the quality and effectiveness of the HRIA may be significantly diminished.

75 Sengupta (n 22) 837.
76 Walker (n 26) 147-161.
77 Danish Institute for Human Rights (n 29).

6.5 Participation and power asymmetries

The quality of participation remains a critical determinant of effective HRIA implementation. Development interventions frequently occur in contexts characterised by significant disparities in power, resources and access to information.

Affected communities may face obstacles, including geographical isolation, language barriers, limited access to information and unequal bargaining power. These challenges often affect indigenous peoples, rural communities, women and other groups in vulnerable situations.

As recognised by the African Commission in *Endorois*, participation must be meaningful and capable of influencing decision-making outcomes rather than constituting a purely procedural requirement.[78] Ensuring that affected communities can engage effectively in assessment processes remains essential to the legitimacy and effectiveness of the HRIA.

6.6 Conditions for institutionalisation

The challenges identified above point to several conditions necessary for the effective institutionalisation of the HRIA.

First, states should progressively integrate HRIA requirements into domestic legal and regulatory frameworks, particularly for activities that present significant human rights risks, including extractive projects, major infrastructure developments and energy-transition initiatives.

Second, public institutions responsible for reviewing and monitoring assessments should be provided with adequate resources, technical expertise and oversight powers.

Third, the HRIA should be integrated into broader corporate human rights due diligence and sustainability frameworks, ensuring that assessment processes become a regular component of business decision making rather than an exceptional exercise.

Fourth, transparency should be strengthened through the public disclosure of assessment findings, mitigation measures and monitoring arrangements.

78 *Endorois* (n 19) paras 281-298.

Finally, greater coordination between human rights, environmental, social and climate assessment processes would improve policy coherence, reduce duplication, and strengthen the effectiveness of development governance.[79]

6.7 Towards an operational architecture for the right to development

One of the principal challenges facing the RtD has been the absence of practical mechanisms capable of translating its principles into development decision-making processes. The HRIA contributes to addressing this gap by providing a structured framework through which development interventions can be assessed, monitored and evaluated against human rights standards.

By linking development planning with assessment, participation, monitoring and accountability processes, the HRIA helps move the RtD from normative aspiration towards practical implementation. As international attention increasingly shifts from recognition of the RtD to its effective realisation, the HRIA offers a particularly promising framework for building an operational architecture capable of supporting rights-based development governance.

7 Conclusion

The RtD has long been challenged by the gap between normative recognition and practical implementation. This chapter has argued that the HRIA offers a particularly promising framework for bridging that gap by integrating human rights considerations into development decision-making processes.

By providing a structured methodology for assessing the human rights implications of policies, programmes and projects, the HRIA translates key RtD principles, including participation, accountability, transparency, equality and sustainability, into operational practice. Its relevance extends beyond individual projects to emerging areas of governance such as extractive industries, sustainable finance, climate governance, human rights due diligence and global value chains.

79 De Schutter (n 14).

The analysis has further demonstrated that recent developments, including article 21 of the draft International Covenant on the Right to Development, reflect growing recognition of the need for assessment-based approaches to implementing the RtD. While the HRIA is not a substitute for political will, effective institutions or robust legal frameworks, it provides an important mechanism through which development interventions can be aligned with human rights standards.

As attention increasingly shifts from defining the RtD to implementing it, the HRIA offers a particularly promising framework for operationalising its principles within contemporary development governance. By embedding human rights considerations into the planning, financing, implementation and evaluation of development interventions, the HRIA helps translate the RtD from a normative commitment into a practical instrument of governance. Its significance lies not merely in assessing impacts, but in enabling development decisions to be shaped by the values of participation, accountability, equality and human dignity that lie at the heart of the RtD.

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