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Challenges and Possibilities Arising in the Development of Human Rights Indicators for State Reporting

An exemplifying study and analysis of indicators for use by the
Human Rights Committee and the Committee on Economic, Social
and Cultural Rights

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Summary

HR indicators are increasingly used as a method for analysis in the work with human rights. However, the concept of HR indicators is often subject to confusion due to the lack of a common and universal theoretical framework. This study focuses on the elaboration of HR indicators for state reporting within the UN treaty monitoring bodies and argues that an extended and more coherent use of HR indicators could enhance the clarity, transparency and objectivity of the state reporting procedure. Moreover, the use of similar indicators for civil and political rights and economic, social and cultural rights alike would demonstrate the universality and interrelatedness of all human rights.

Through an exemplifying study, where sets of indicators are developed for the right to freedom from torture and the right to the highest attainable standard of health, challenges and possibilities arising in the elaboration process are identified and analysed. The development of indicators is a complex task, as several aspects need to be considered in the drafting process. First, theoretical aspects of indicators have to be analysed and state obligations has to be conceptualised. In this regard, a number of choices should be made. How is an HR indicator defined? What kinds of HR indicators should be used? How should they be structured? What sources should be used in the identification of state obligations? In addition, due regard needs to be paid to the future use of the indicators in practice. Is requested data available? Are the created indicators logical and understandable? How should obtained data be processed and analysed?

Without providing any final answers to these questions, different options and suggestions are discussed. The analysis concludes that the already on-going research should be strengthened and that pilot tests are needed if a coherent indicators approach is to be institutionalised within state reporting. In particular, an agreement as to the theoretical framework of HR indicators will be necessary.

Preface

In the course of writing this thesis, a number of persons have contributed with invaluable support and inspiration.

First, I want to thank Jonas Grimheden, the enduring supervisor, who not only provided a lot of insights in our discussions but also proved to know how to handle computers.

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Abbreviations

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	The Committee on Economic, Social and Cultural Rights
CP-rights	Civil and Political rights
ESC-rights	Economic, Social and Cultural rights
HR	Human Rights
HRC	The Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGO	Inter-Governmental Organisation
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
WHO	World Health Organization

1 Introduction

Almost all states are parties to human rights treaties and have thereby submitted themselves to a number of legally binding obligations. Unfortunately however, human rights are seldom fully respected in practice. The UN treaty bodies have, in this regard, an important role in monitoring human rights compliance not only as far as law is concerned but also in practice – in the actual implementation of international law.

One important monitoring tool, mandatory in all major international human rights treaties, is the requirement of states parties to submit one initial report and thereafter periodic state reports on the national implementation of the obligations following ratification. These reports, together with shadow reports from NGOs¹, are scrutinised by the monitoring body in charge of the particular treaty and lead to concluding observations with recommendations on improvements. The concluding observations do not have any direct legal effect, but they are nonetheless authoritative statements that may serve as a basis of action of the UN or other states parties.² The system of state reporting currently faces great challenges. One obvious problem is the huge backlog of reports; state parties fail to submit timely reports, or do not submit any reports at all, and the examination of submitted reports is delayed due to lack of resources of the treaty bodies.³ By most states, the reporting obligation is seen as very burdensome and reports are often put together in the easiest and most general way.⁴ In addition, there is an apparent lack of a coordinated and coherent approach as to the content of state reports. All treaty bodies have issued their own guidelines and overlapping is frequent.⁵ Currently, a discussion is taking place on a major reform whereby one unified and permanent treaty body would replace the existing treaty bodies. States parties would submit one consolidated report, which would be subject to a more comprehensive and crosscutting analysis

¹ The possibility to submit shadow reports is increasingly used by NGOs and has become a crucial component of the assessment of state reports. See e.g. M. Nowak, *Introduction to the International Human Rights Regime* (Brill Academic Publishers, Leiden, 2003), p. 99; R. Brett, 'Role of NGOs- An Overview', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 845-854.

² V. Dimitrijevic, 'State Reports', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 198-199.

³ OHCHR, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, para. 18; J. Crawford, 'The UN Human Rights Treaty System: A System in Crisis?', in P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, Cambridge, 2000), pp. 4-5.

⁴ M. Nowak, *Introduction to the International Human Rights Regime* (Brill Academic Publishers, Leiden, 2003), p. 97.

⁵ OHCHR, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, para. 17; A. F. Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads*, (Transnational Publishers, Ardsley, 2001), pp. 19-20.

of a state's human rights performance with all the relevant treaty provisions taken into account.⁶ In addition, states parties may be required to submit a more extensive core document.⁷ This study focuses on the content of state reports by exploring challenges and possibilities likely to arise in the development of HR indicators for state reporting. The treaty monitoring bodies are already discussing an extended use of HR indicators in state reporting. However, the focus has so far been on quantitative (statistical) HR indicators.⁸ My aim is to suggest a more coherent analytical framework encompassing both quantitative and qualitative HR indicators. Consequently, this study is equally relevant for the existing system of state reporting as it is for a future reformed treaty body system.

Before going further into the subject of the study, it is appropriate to consider the question why we should at all worry about indicators. First, it is important to underline that indicators do not constitute the one and only method in support of monitoring human rights. There are various tools and methods for the analysis of human rights. So far, indicators seem to mainly have been elaborated within the sphere of economic, social and cultural (ESC) rights. This study's point of departure is that indicators can be used in the monitoring process of all human rights, hence both civil and political (CP) rights and ESC-rights. A common approach for all human rights in the identification of indicators is considered a necessity.⁹ At the same time, it is acknowledged that indicators, no matter how sophisticated, will never provide the complete picture and need to be complemented with other tools for analysis. Still, indicators are often put forward as a very helpful tool in the monitoring of human rights, be it within the national or international sphere. Over the last decade, the need to develop indicators as a tool in the monitoring process has been emphasized.¹⁰

So, what can indicators offer if used in the monitoring process? Firstly, it has been contended that the use of indicators can strengthen the process of building a system of accountability, as levels of performance are measured

⁶ OHCHR, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, paras. 27-28.

⁷ Ibid., para. 46.

⁸ OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 2.

⁹ This standpoint was also taken by the Turku expert meeting on human rights indicators and by the OHCHR. See *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 4; OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 33.

¹⁰ Ibid.; UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), p. 5; Commission on Human Rights, *The New International Economic Order and the Promotion of Human Rights, Realization of Economic, Social and Cultural Rights*, Progress Report prepared by Mr. Danilo Türk, Special Rapporteur (6 July 1990), E/CN.4/Sub.2/1990/19, para. 96. For a list of initiatives in the field of HR indicators see also WHO, Consultation on Indicators for the Right to Health, Geneva 1-2 April 2004, Meeting Report, pp. 8-13.

in a sustained and objective way.¹¹ Secondly, HR indicators are claimed to be suitable for measuring progress over time and identify areas where policy adjustments are needed.¹² In this respect, properly used indicators may provide a more solid basis for criticism of states parties and suggestions on improvements.

1.1 Objective

The objective of this thesis is to study how HR indicators could be created for state reporting before the UN treaty monitoring committees. What challenges and possibilities are likely to arise in the development of HR indicators? Closely connected to this question is the issue of potential problems and advantages, which could be foreseen in a future use of HR indicators. Even though this study focuses mainly on the elaboration of indicators, it is impossible not to also address potential challenges and possibilities in the actual use of indicators. The elaboration and use of indicators are too interrelated to be dealt with separately.

My thesis is that an extended use of indicators within state reporting would bring many advantages, including enhanced clarity, objectivity and transparency. Thus, I believe that HR indicators would contribute to forwarding human rights as corresponding state obligations are transformed into concrete measurements. Nonetheless, this study will analyse both positive and negative aspects of HR indicators with the aim of providing an analysis on both challenges and possibilities.

Numerous studies and conferences have already addressed the potential of HR indicators. However, most of them have mainly dealt with indicators in theory and have not elaborated indicators. Studies where indicators are elaborated have often only focused on more quantitatively oriented (statistical) indicators.¹³ Thus, my aim is to present a study where both theory and practice is included and analysed. In addition, I want to examine the potential use of the 4-A scheme and include both quantitative and qualitative HR indicators.

The study likewise aims at exploring the possible use of human rights indicators for all human rights, i.e. for both CP- rights as well as ESC-rights. My point of departure, concurring with several recent reports and studies, is

¹¹ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, pp. 1-2, <http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006.

¹² General Assembly, *The right of everyone to enjoy the highest attainable standard of physical and mental health*, Interim Report by Mr. Paul Hunt, Special Rapporteur of the Commission of Human Rights (10 October 2003), A/58/427, p. 7.

¹³ See e.g. OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, Annex, Tables 1-4.

that HR indicators can and should be used for all types of human rights.¹⁴ Through an exemplifying study, where two sets of indicators are developed, for one CP-right and one ESC-right, it will be possible to identify problems and potentials in the process of designing indicators for state reporting. In addition, this exercise will also contribute to the discussion on the suitability of HR indicators in the monitoring of all rights. In this context, I want to stress that my objective is not to create final and complete HR indicators ready for immediate use. Instead, I aim at providing examples on how HR indicators could be elaborated and structured. Thus, my intention is to use the exemplifying study as a basis for analysis of potential challenges and possibilities arising in the development of HR indicators.

1.2 Scope

The study is limited to two of the UN treaty monitoring bodies; the Human Rights Committee (the HRC) and the Committee on Economic, Social and Cultural Rights (the CESCR). These two have been chosen as they monitor the implementation of the two main international covenants in the field of CP-rights and ESC-rights respectively, the International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (the ICESCR). Likewise, they each represent one set of rights, CP-rights and ESC-rights. The rights contained in these two covenants are likely to represent the most authoritative universal standard of current international human rights law.¹⁵ As such, they are suitable objects of study in a crosscutting analysis of the full spectrum of rights. Consequently, the findings of this study are indeed relevant for other treaty bodies as well. This would of course be particularly true if a reformed and unified treaty body system would be established.

The main focus of this study is the potential elaboration of HR indicators for initial and periodic state reports. If HR indicators are to be used consistently within the state reporting process, both types of reports would have to adhere to the system of indicators. Although parts of this thesis may be relevant for supplementary (emergency) state reports as well, this kind of report will not be specifically covered.¹⁶

¹⁴ See e.g. *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 4 ; OHCHR, *Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework*, HRI/MC/2006/7, 11 May 2006, para. 33; The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005).

¹⁵ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel, Kehl, 2005), p. XX.

¹⁶ Emergency reports, supplementary to the periodic reports, may be requested by the monitoring bodies if the human rights situation in a country is found to be particularly unsatisfactory. See e.g. M. Nowak, *Introduction to the International Human Rights Regime* (Brill Academic Publishers, Leiden, 2003), p. 99.

In section five, where two exemplifying sets of indicators are developed, it has been necessary to limit the study to encompass only two rights. While only two rights is a severe limitation, the limitation will enable a more thorough and solid point of departure for further conclusions based on these representative rights. The two rights chosen are 'freedom from torture' and 'the right to health'. Freedom from torture belongs to the civil rights and is an absolute right, which signifies that no derogation is permissible.¹⁷ The right to health is partly subject to progressive realization and is a part of the group of economic, social and cultural rights.¹⁸ One reason for the choice of these two rights is the apparent mutual overlapping. The right to be free from torture has a great impact on the right to health, and vice versa. It is hoped that this relationship and interdependence will make the study more interesting. Hence, it is my belief that these rights constitute good examples of the two main categories of rights, and that they may demonstrate the interrelatedness of all human rights.

1.3 Method, Material and Disposition

In the first four chapters, where the theoretical framework of state obligations, state reporting and HR indicators are outlined, the material mainly includes secondary sources, i.e. academic literature and articles as well as some more practitioner oriented material. Although writings from legal scholars constitute the bulk of material, some material has its origin in other disciplines, in particular development studies and statistics. Indicators are currently being used in various disciplines and contexts. Therefore, any development of HR indicators will benefit from a consideration of current and previous use of indicators, within and outside the legal domain. In the first part, the method used can be described as descriptive and dogmatic. For the period of this study, a number of new texts and materials on HR indicators have been presented in various contexts. I have tried to cover all available relevant information in this area. Nonetheless, as a lot of development and research are going on, it is difficult to keep pace with all of them.

The second part of the thesis includes an exemplifying study, the actual design of two sets of HR indicators. This part builds on the theoretical framework and is forward-looking in its nature. In the design of HR indicators, the main sources are the texts of the treaty provisions, supported by general comments and guidelines for reporting issued by the treaty monitoring bodies. In the context of the right to freedom from torture, support is also drawn from the HRC's jurisprudence. Additional guidance is provided through the use of UN documents and academic works. In

¹⁷ M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel, Kehl, 2005), p. 157.

¹⁸ B. Toebes, 'The Right to Health' in, A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights: a Textbook*, (Kluwer Law International, the Hague, 2001), pp. 170 and 176.

particular, a lot of inspiration and knowledge is drawn from previous and current research on HR indicators at the Raoul Wallenberg Institute.¹⁹

In the development of HR indicators, the 4-A (available, accessible, acceptable and adaptable) scheme will be used. The scheme was developed by Katarina Tomasevski, during her appointment as the UN special rapporteur on the right to education, for the right to education.²⁰ The reasons for choosing the 4-A methodology as my four principal HR indicators, and not for example the respect, protect and fulfil scheme, are several. The 4-A scheme does represent a shift from the traditional notions protect, respect and fulfil, and is free from prejudices regarding differences between ESC-rights and CP-rights. However, the two schemes are complementary and reinforce rather than exclude each other. As will be shown in section two, the 4-A scheme covers the obligations to respect, protect and fulfil. I believe that the use of four principal HR indicators instead of three will enable a more solid and encompassing outcome. The four A's have pedagogical merits, they are easy to understand and to remember, and may be more attractive to a larger audience. Although the UN treaty monitoring bodies have so far had their focus on the obligations to respect, protect and fulfil, I believe that a shift toward the 4-A scheme would be a good supplement to the previous scheme and contribute to the universality of human rights in practice. HR indicators have also been presented as a scheme of structural, process, and outcome indicators.²¹ Even though this scheme has merits in demonstrating what is being measured, I think that these technical terms will be too difficult to understand and relate to in practice. Yet another way of presenting HR indicators is to use different schemes for different rights, drawing on the core elements of each right.²² Still, my point of departure is that one single scheme for all rights would contribute with a clarity that could not be achieved with separate schemes for all rights. Additionally, the use of the 4-A scheme as one all-encompassing scheme will better reflect the universality and interrelatedness of all human rights.

¹⁹ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005). At present, HR indicators are being used in a Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women's Affairs, as a tool for selection and analysis of best practices of law and implementation within the sphere of gender justice. The Gender Justice Project will be completed and presented in the beginning of 2007.

²⁰ Commission on Human Rights, *Economic, Social and Cultural Rights*, Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33 (13 January 1999), E/CN.4/1999/49, paras. 42-74; K. Tomasevski, *Human Rights Obligations in Education-The 4-A Scheme* (Wolf Legal Publishers, 2006); K. Tomasevski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers no. 3, <http://www.right-to-education.org>, last visited 16/6-2006, pp. 12-17.

²¹ See e.g. OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, Annex, Tables 1-4.

²² Ibid.

Finally, the last part of the thesis includes the analysis and conclusions. The analysis will be based on the lessons learnt in the exemplifying study and aims at providing answers to the underlying question; what challenges and possibilities arise in the elaboration of HR indicators? In the end, suggestions and questions for future work with HR indicators will be outlined.

2 The Nature of State Obligations

The development of indicators draws on the understanding of state obligations; HR indicators for state reporting aim at measuring a state's compliance or non-compliance with its obligations under the relevant treaty provision. Therefore, an understanding of the concept of state obligations within human rights law is necessary. This chapter starts with a brief overview of the common framework of core principles, followed by a description of the respect, protect and fulfil model in the context of state obligations. Thereafter, the difference in emphasis on state obligations in the ICESCR and the ICCPR respectively will be analysed. Finally, the concept of state obligations will also be put in relation to the 4-A scheme, which is the methodology chosen for the subsequent exemplifying study. Consequently, this chapter aims at providing the theoretical framework of state obligations upon which the elaboration of HR indicators is based.

2.1 The Common Framework

“All human rights are universal, indivisible and interdependent and interrelated.”²³

The construction of two different covenants, one on CP-rights and the other on ESC-rights, reinforced the theory of two distinct categories of rights with different corresponding state obligations.²⁴ Today, an increasing number of states have recognized the UN doctrine of indivisibility and interdependence of rights.²⁵ In this context, it should be underlined that no right exists in a vacuum; the fulfillment of one right requires the fulfillment of other rights as well. Hence, CP-rights and ESC-rights are inherently connected, as the state needs to respect, protect and fulfill all rights to achieve a full realization of human rights.²⁶ Moreover, the international system of human rights law draws on a set of core principles, overriding and equally valid for all rights. This section intends to briefly go through the spectrum of state obligations while at the same time leave behind some of the too often constructed differences between CP- and ESC-rights.

²³ The Vienna Declaration and Programme of Action (1993), A/CONF.157/23, para. 5.

²⁴ B-A. Andreassen, 'Article 22', in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Kluwer Law International, The Hague, 1999), pp. 477-478.

²⁵ The Vienna Declaration and Programme of Action (1993), A/CONF.157/23, para. 5; R. Künneman, 'A Coherent Approach to Human Rights', *17.2 Human Rights Quarterly* (1995), p. 323.

²⁶ Commission on Human Rights, *The New International Economic Order and the Promotion of Human Rights*, Report on the right to adequate food as a human right submitted by Mr. Asbjorn Eide, Special Rapporteur, E/CN.4/Sub.2/1987/23, paras. 66-69 and 112-114.

2.1.1 Core Principles in International Human Rights Law

The following core principles, equally valid for all human rights, can be explained as a set of procedural rights inherent to the human rights system itself. A significant difference compared with substantive rights is that procedural rights are not subject to progressive implementation clauses. Consequently, they all have an immediate effect.²⁷

The principle of *non-discrimination and equality* lies at the very core of the human rights framework.²⁸ The normative foundation of human rights is that all human beings are equal and have rights by virtue of being human. A discriminatory implementation of human rights in law or in practice, direct or indirect, is generally prohibited.

Another central principle is the concept of *effective remedy*.²⁹ Evidently, a right without a remedy will not be much of a right in practice. When a right is violated, a national remedy has to be available. This connection between rights and remedies is recognised as fundamental.³⁰ Remedies may take various forms depending on the violation, but should generally include access to justice, right to reparation and access to the facts concerning the violation.³¹ Thus, the principle of effective remedy is closely intertwined with the principle of accountability and the principle of the rule of law.³²

The right to *participation* in the making of any laws and policies affecting one's rights is considered to constitute another core value.³³ States are obliged to enable people to participate in decisions affecting them. Participation can take the form of referendums, consultations, public

²⁷ M. Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23 *Human Rights Quarterly* (2001), p. 1071.

²⁸ See e.g. M. Nowak, *Introduction to the International Human Rights Regime* (Brill Academic Publishers, Leiden, 2003), p. 61; M. Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23 *Human Rights Quarterly* (2001), p. 1071. See also ICCPR, arts. 2 (1) and 3; ICESCR, arts. 2 (2) and 3.

²⁹ *Ibid.* Unlike art. 2 (3) of the ICCPR, art. 2 of the ICESCR does not contain a clear reference to the right to an effective remedy. Still, however, this right is considered to be encompassed by the term 'appropriate means'. See CESCR, General Comment No. 9, *The Domestic Application of the Covenant*, E/C.12/1998/24, CESCR, para. 3.

³⁰ Møse, Erik, "Article 8", Alfredsson, Gudmundur and Eide, Asbjorn (eds.), *The Universal Declaration of Human Rights- A Common Standard of Achievement*, (Martinus Nijhoff Publishers 1999), p. 187

³¹ I. Bottigliero, *Redress for Victims of Crimes Under International Law* (Martinus Nijhoff Publishers 2004), p. 183 and p. 250.

³² International Council on Human Rights Policy (2005), *Local Government and Human Rights: Doing Good Service*, pp. 20-21.

³³ See e.g. M. Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23 *Human Rights Quarterly* (2001), p. 1071; International Council on Human Rights Policy (2005), *Local Government and Human Rights: Doing Good Service*, p. 19; UNDP, *Human Rights and Human Development*, Human Development Report (2000), p. 95; HRC, General Comment No. 25, *Article 25 (Participation in Public Affairs and the Right to Vote)*, 57th Session (1996), paras. 5-8.

hearings etc. A key for meaningful participation is that the level of awareness of rights is high among the general public.³⁴

Consequently, these overarching principles of human rights law need to be taken into account with respect to each separate right and each separate state obligation in the monitoring process. In the following sections, these core principles will likewise be put in relation to the respect, protect and fulfil scheme and the 4-A scheme, the later being the scheme that will be used in the subsequent exemplifying study.

2.1.2 Respect, Protect and Fulfil

Legal duties of states arising under human rights treaties are commonly described as a three-layered obligation; respect, protect and fulfil.³⁵ The aforementioned core principles of human rights law can easily be put in relation to this spectrum of state obligations. These core principles simply have to be respected, protected and fulfilled at all times.

The obligation to *respect* requires that the state refrain from any unlawful interference with the individual's enjoyment of rights. For example, the state has an obligation not to arbitrarily execute persons and has to refrain from arbitrarily excluding persons from the educational system. Accordingly, this obligation is negative in its nature, as the state has to abstain from interfering with the individual's enjoyment of human rights.

The obligation to *protect* obliges the state to protect individuals from human rights violations by private actors. For instance, the state has to protect individuals from third parties' interference in elections, and it has to protect women from being coerced to undergo female genital mutilation. This obligation hence demands positive action on behalf of the state, as it has to prevent violations of rights by third parties.

The obligation to *fulfil* refers to the obligation of states to put into effect the necessary measures, be it legislative, administrative or judicial, to effectuate the implementation of human rights. Thus, the state has to secure non-discriminatory access to medical services and create procedural and substantive guarantees to ensure fair trials. Consequently, this obligation calls for the state to take positive action. In this context, the word fulfil

³⁴ UNDP, *Human Rights and Human Development*, Human Development Report (2000), p. 100.

³⁵ The concept was originally introduced by A. Eide, see Commission on Human Rights, *Report on the right to adequate food as a human right*, Report on the right to adequate food as a human right submitted by Mr. Asbjorn Eide, E/CN.4/Sub.2/1987/23, paras. 66-69. See also e.g. K. Källström and A. Eide, 'Article 23', in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Kluwer Law International, The Hague, 1999), p. 502; M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel, Kehl, 2005), pp. 37-40; The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht January 22-27 1997, para. 6.

should not be equated with the word provide. Instead, the obligation to fulfil can be divided into two obligations; to facilitate and to provide. The state has an obligation to facilitate the enjoyment of rights but only a subsidiary obligation to assist or provide what is lacking for those unable to do so themselves.³⁶

As demonstrated by the abovementioned examples, both CP-rights and ESC-rights require positive and negative actions by the state. Consequently, the theory that CP-rights require no resources whereas ESC-rights are costly may well be called a great oversimplification. The situation may even be the opposite.³⁷ Instead, all state obligations are at stake in relation to all human rights. In the following section, the difference in emphasis on state obligations in the actual wording of the two covenants and the notions of state obligations of conduct and result will be discussed.

2.1.3 Different Emphasis on State Obligations

“Human rights differ only in the relative importance of the different categories in their spectrum of obligations.”³⁸

The differences between particular rights can also be described as differences in the weight given to the various obligations of states.³⁹ Despite this, however, I argue that the difference is more prevalent in the comparison of one right with another, rather than between the two sets of rights. For example, the duty of states to respect the liberty of parents to choose the schools for their children (ICESCR, art. 13.3) is an immediate obligation, whereas the duty of states to register children immediately after birth (ICCPR, art. 24.2) would in some states parties necessarily be subject to progressive realization. In the following, this will be demonstrated through an analysis of the wording of the two covenants and a brief section on the division of state obligations into obligations of conduct and result.

State Obligations in the ICCPR and the ICESCR

Article 2 of the ICESCR requires states parties to take steps to the maximum of its available resources with a view to achieve progressively the full realization of rights.⁴⁰ The concept of progressive realization has largely contributed to the perception of ESC-rights as a weaker set of rights.

³⁶ See e.g. B-A. Andreassen, ‘Article 22’, in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Kluwer Law International, The Hague, 1999), p. 485; R. Künneman, ‘A Coherent Approach to Human Rights’, *17.2 Human Rights Quarterly* (1995), p. 328.

³⁷ A. Eide and W. Barth Eide, ‘Article 25’, in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Kluwer Law International, The Hague, 1999), p. 536.

³⁸ R. Künneman, ‘A Coherent Approach to Human Rights’, *17.2 Human Rights Quarterly* (1995), p. 330.

³⁹ *Ibid.*, p. 329.

⁴⁰ See the full text of art. 2, ICESCR in Supplement A.

However, the concept of progressive realization does not allow for states parties to refrain from efforts to ensure full realization.⁴¹ States parties are obliged to take immediate, concrete and deliberate steps towards a full realization of rights subject to progressive realization.⁴² In addition, any deliberate retrogressive measure is deemed to constitute a violation.⁴³ One problematic aspect is to monitor and evaluate the actual steps taken by a particular country. Likewise, the assessment of whether a state has used its maximum available resources further adds up to this problem.⁴⁴ Not all aspects of ESC-rights are subject to progressive realization; the minimum core content of each right and core principles, such as non-discrimination, create immediate state obligations. Today, the concept of immediate core obligations is widely recognized and applies irrespectively of the availability of resources.⁴⁵ A problem in this context is to determine and agree upon the essential core elements of a right, as well as to identify the corresponding immediate state obligations.⁴⁶ In the subsequent exemplifying study, core elements of the right to health will be discussed further.

Consequently, an ESC-right may include elements of both progressive realization and immediate realization. The aspects of rights that are subject to progressive realization are in particular corresponding to obligations to fulfil. The obligation to respect is generally cost-free and forms part of the immediate core obligations. Obligations to protect, e.g. creating policies, legislation and enforcement mechanisms, require resources but are still often regarded as core obligations.⁴⁷

Article 2 of the ICCPR, where each state party undertakes to respect and to ensure the rights, has been interpreted as requiring states to immediately fulfil all CP-rights. The HRC also explains that the obligation to respect and to ensure has immediate effect.⁴⁸ The emphasis on an immediate obligation

⁴¹ The Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, E/CN.4/1987/17, Annex, para. 21.

⁴² CESCR, General Comment No. 3, *The Nature of States Parties Obligations (Article 2. Par. 1)*, contained in E/1991/23, para. 2.

⁴³ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, p. 4.

⁴⁴ A. R. Chapman and S. Russell, 'Introduction', in A. R. Chapman and S. Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Intersentia, 2002), p. 5.

⁴⁵ See e.g. CESCR, General Comment No. 3, *The Nature of States Parties Obligations (Article 2. Par. 1)*, contained in E/1991/23, para. 10; The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht January 22-27 1997, para. 9.

⁴⁶ See e.g. R. Chapman and S. Russell, 'Introduction', in A. R. Chapman and S. Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (Intersentia, 2002), pp. 8-10; M. Craven, 'The Covenant on Economic, Social and Cultural Rights' in R. Hanski and M. Suksi (eds.), *An Introduction to the Protection of International Human Rights* (Institute for Human Rights, Åbo Akademi university, Åbo, 1999), p. 110.

⁴⁷ Ibid.

⁴⁸ HRC, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 14.

to respect is natural as this is the area where the state is necessarily in immediate control. Even so, article 2 does show a tendency of progressive elements in stating that state parties shall take the necessary steps to give full effect to the rights.⁴⁹ Hence, the fulfilment-bound obligations, as well as some protection-bound obligations, could be interpreted as allowing for state parties to take financial abilities into account and implement some elements of CP-rights progressively.⁵⁰

Obligations of Conduct and Result

A traditional distinction of state obligations is the diversification into obligations of conduct (process) and obligations of result (outcome).⁵¹ In the context of this study, this division is not the most important aspect of state obligations. Nevertheless, this section is included as the notions of conduct and result are relevant in the discussions surrounding differences and similarities between CP-rights and ESC-rights. Elements of obligations of conduct and result can be found in each of the obligations to respect, protect and fulfil.⁵² It has been alleged that CP-rights correspond to obligations of conduct and that ESC-rights essentially demand obligations of result. An obligation of *result* is more concerned with an outcome, which should be either achieved or avoided, whereas an obligation of *conduct*, or of means, requires a certain course of action to be abstained from or followed.⁵³ Obligations of conduct are more often claimed to be self-executing norms and as such easier to monitor. Obligations of result are seen as more vague as they allow for the state to freely choose its methods in the fulfillment of its obligations. Following this division, CP-rights were seen as enforceable justiciable rights and ESC-rights as merely programmatic statements.⁵⁴ One basis of this theory is the difference in the formulation of state obligations in the ICCPR (art. 2) and the ICESCR (art. 2(1)). Nevertheless, a separate analysis of each particular right will show a different picture. Instead, all rights seem to include elements of both obligations of conduct and obligations of result. This has also been recognized by the treaty monitoring bodies in their general comments.⁵⁵

⁴⁹ See the full text of art. 2, ICCPR in Supplement A.

⁵⁰ See e.g. M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (N.P. Engel, Kehl, 2005), p. 39 and p. 62; R. Künneman, 'A Coherent Approach to Human Rights', 17.2 *Human Rights Quarterly* (1995), p. 330.

⁵¹ K. Drzewicki, 'Internationalization and Juridization of Human Rights', in R. Hanski and M. Suksi (eds.), *An Introduction to the Protection of International Human Rights* (Institute for Human Rights, Åbo Akademi university, Åbo, 1999), p. 30.

⁵² The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht January 22-27 1997, para. 7.

⁵³ See e.g. B-A. Andreassen, 'Article 22', in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Kluwer Law International, The Hague, 1999), p. 486.

⁵⁴ M. Nowak, *Introduction to the International Human Rights Regime* (Brill Academic Publishers, Leiden, 2003), p. 81.

⁵⁵ See e.g. CESCR, General Comment No. 3, *The Nature of States Parties Obligations (Article 2. Par. 1)*, contained in E/1991/23, para. 1; HRC, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 6 and para. 14.

To sum up, the full realization of CP-rights as well as ESC-rights requires the deployment of resources and time. Whereas the focus of the ICCPR often seems to be on the immediate obligation to respect, the ICESCR puts more emphasis on the progressive fulfilment of rights. Nonetheless, both covenants include the full spectrum of state obligations and build on the same underlying human rights principles. Likewise, they aim at the same goal, the full realization of human rights. A goal that cannot be achieved unless all rights are equally respected, protected, and fulfilled. Consequently, my conclusion is that CP-rights and ESC-rights have more similarities than they have differences. This is also what I aim at demonstrating in the exemplifying study where HR indicators for each type of right are developed.

2.2 The 4-A Scheme

In the exemplifying study where HR indicators are developed, the 4-A (available, accessible, acceptable and adaptable) scheme will be used as the four principal indicators.⁵⁶ The reasons for choosing this scheme over the respect, protect and fulfil model have already been outlined.⁵⁷ However, what remains to explain are the linkages between the two schemes. Hence, in the following, I will demonstrate the links between the 4-A scheme and the respect, protect and fulfil scheme. The schemes will likewise be connected with the core principles of human rights law. Firstly, however, it should be noted that the two models aim at capturing the obligations of states in the field of human rights norms, albeit with slightly different approaches. Whereas the respect, protect and fulfil scheme puts its emphasis on what a state should do or not do, the 4-A scheme emphasizes how a right should function, in practice and in law, for the state to be in compliance with its obligations. Consequently, each scheme represents a structure of the human rights obligations of states.

That a right should be *available* means that, for example in the context of the right to education, parents should be free to choose the form of education for their children, have a possibility to forward complaints if that right is violated, and have the complaints examined.⁵⁸ In order to be in compliance with the availability dimension, the state will have to ensure that its national legal system complies with the state's human rights obligations, for instance through the creation of judicial guarantees and complaints mechanisms. In this regard, availability corresponds to the obligation to respect, i.e. non-interference, but also to the obligation to protect, i.e. protect

⁵⁶ See e.g. K. Tomasevski, *Human Rights Obligations in Education- The 4-A Scheme* (Wolf Legal Publishers, 2006); K. Tomasevski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers no. 3, <http://www.right-to-education.org>, last visited 16/6-2006, pp. 12-17.

⁵⁷ See Section 1.3. Method, Material and Disposition, p. 7.

⁵⁸ See e.g. The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 14.

from violations from third parties, and the obligation to fulfil, i.e. provide judicial and administrative guarantees where complaints concerning the enjoyment of rights can be lodged and examined. In this respect, the availability dimension correlates to the core principle of available effective remedies when a violation occurs.

The *accessibility* aspect of a right encompasses, with regard to for example the right to vote, the prohibition of discrimination and geographical, physical and economical access of every citizen to vote in elections. Accessibility includes elements of the obligations to respect and protect, i.e. non-discrimination, and of the obligation to fulfil, i.e. ensure access in practice. Accordingly, the core principles of non-discrimination and equality are mainly addressed through the accessibility dimension of a right.

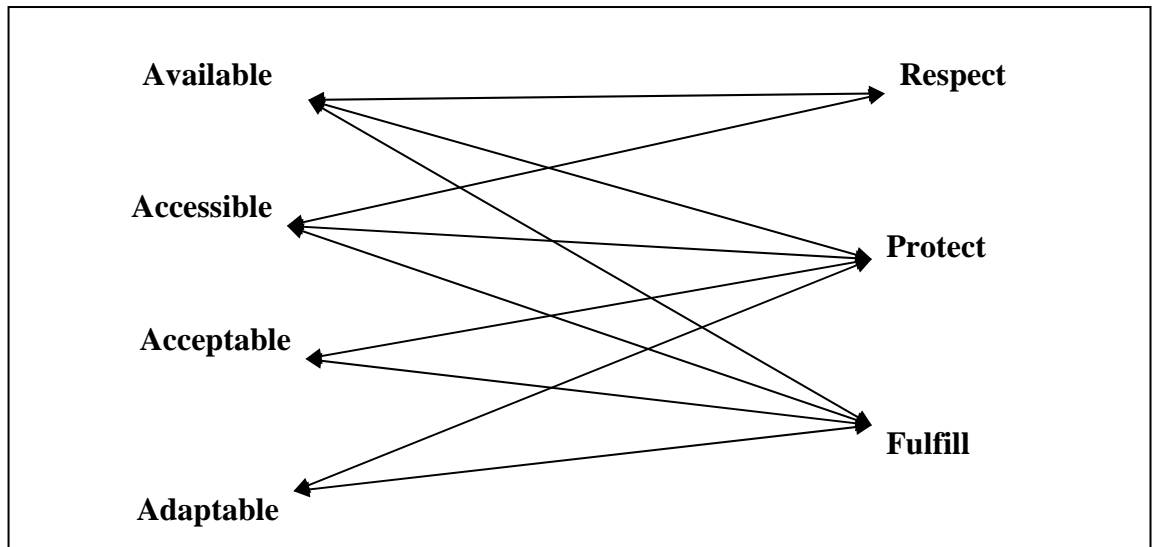
Acceptability of a right could also be described as the guaranteed quality, relevance and cultural appropriateness of a right.⁵⁹ For instance, an acceptable right to social security, whether provided by public or private actors, will at least reach a minimal social security standard and not be in violation of other human rights. Thus, acceptability mainly corresponds to the obligation to protect, i.e. from violations stemming from third parties, and to the obligation to fulfil, i.e. provide a minimal social security standard.

That a right is *adaptable* signifies that it is designed to meet different needs and that it is flexible enough to adjust to the particular circumstances at a given time.⁶⁰ For example, to meet obligations corresponding to the right not to be held in slavery, relevant state officials need to be educated on how to detect slavery and on new emerging forms of slavery. Furthermore, adaptability concerns the importance of relevant policies and programs, drafted with a participatory approach and regularly reviewed. Consequently, adaptability corresponds to the obligations to protect and fulfil, i.e. provide relevant authorities with sufficient knowledge to be able to protect, and to fulfil through adopting relevant and flexible policy measures. The adaptability dimension of a given right likewise closely relates to the core principle of participation.

⁵⁹ See e.g. CESCR, General comment 13, *The Right to Education*, E/C.12/1999/10, para. 6(c).

⁶⁰ *Ibid.*, para. 6 (d).

The interrelatedness and supplementary character of the two schemes can also be demonstrated through the following graphic picture.



3 Monitoring through State Reports

To enable an analysis of the central question in this thesis, challenges and possibilities likely to arise in the elaboration of HR indicators for state reporting, it is necessary to understand how monitoring through state reports is working at present. Only then is it possible to enter the debate on possible improvements of the current system.

All major international human rights treaties oblige states parties to submit initial state reports and thereafter periodic reports for scrutiny. The assessment of state reports by the treaty monitoring body is a quasi-judicial activity, normative in its character.⁶¹ Each assessment of a state report results in concluding observations including positive and negative remarks and recommendations on steps that could be taken to fully implement the treaty provisions. It should be noted that these recommendations do not have a legally binding power, thus there is no enforcement mechanism other than the good faith of the state party concerned. The role of the treaty bodies is, in this respect, primarily advisory and recommendatory. Nevertheless, the authority of concluding observations is most apparent when human rights violations are pronounced. In such cases, the state party is likely to be under a legal obligation to remedy the situation as the treaty obligations themselves are binding.⁶²

It is undisputed that the treaty bodies have contributed extensively to the respect for human rights.⁶³ Still, the reporting procedures have often been subject of criticism, alleged of being a meaningless and ineffective method of monitoring.⁶⁴ An underlying problem is that the system depends on states parties taking their obligations seriously and acting in good faith. Of course,

⁶¹ M. Scheinin, *Use of Indicators by Treaty Monitoring Bodies- Experiences and Potentials*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 2.

⁶² M. O'Flaherty, 'The Concluding Observations of United Nations Human Rights Treaty Bodies', *Human Rights Law Review*, 6(2006) 27-52, pp. 33-36. On the legal effect of concluding observations see also V. Dimitrijevic, 'State Reports', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 198-199.

⁶³ See e.g. G. Alfredsson, 'Concluding Remarks: More Law and Less Politics', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 916-917; OHCHR, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, paras. 11-12.

⁶⁴ See e.g. I. Boerefijn, *The Reporting Procedure under the Covenant on Civil and Political Rights. Practice and Procedures of the Human Rights Committee* (Intersentia, Antwerpen 1999), p. 357; S. Leckie, 'The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform', in P. Alston and J. Crawford (eds.), *The future of UN human rights treaty monitoring* (Cambridge University Press, 2000), p. 129.

concluding observations may serve as the basis for action of other states parties or other UN organs, or as a basis for 'naming and shaming' activities by NGOs. Nonetheless, as improvements ultimately have to be made at the national level, states themselves play the most important role.⁶⁵ Developing states, in particular, often have difficulties meeting their reporting obligations due to limited resources to produce state reports of high quality, and a lack of technical expertise needed to draft reports.⁶⁶ Other weaknesses that have been pointed out include the problem of monitoring by the monitored (i.e. the monitored state prepares the report on which the concluding observations are based), the absence of sanctions and enforcement mechanisms, the minimal level of resources allocated to the monitoring bodies, and the selectivity on particular human rights issues in the concluding observations.⁶⁷ A future reform and harmonization of the treaty-based human rights regime has been suggested as the way forward in order to make the system more efficient.⁶⁸ The current reporting procedure, however, is a fact and the starting point of this study is to focus on improvements within the existing system. Even so, the findings of this study will be equally relevant for a new reformed treaty monitoring system. Also, on a more positive note, some improvements have been made over the years. Most notably, NGOs have come to play a large role with the submission of so-called shadow reports and the issuance of general comments has further clarified the scope and the content of the rights.⁶⁹ This section covers the current reporting procedures under the ICESCR and the ICCPR. As will be shown below, the reporting guidelines of the two committees differ significantly. The CESCR's guidelines are very detailed

⁶⁵ On the unsatisfactory situation of states parties being internationally responsible, not to the individual victim, but to other states parties, see V. Dimitrijevic, 'State Reports', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 185-186.

⁶⁶ E. Riebel, *The IBSA Procedure as a Tool of Human Rights Monitoring*, Background paper to the Expert Symposium, Measuring developments in the realization of the right to food- the IBSA Procedure (22-23 May, 2006, Mannheim), p. 62

⁶⁷ S. Leckie, 'The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform', in P. Alston and J. Crawford (eds.), *The future of UN human rights treaty monitoring* (Cambridge University Press, 2000), pp. 130-133; OHCHR, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, paras. 15-18.

⁶⁸ See e.g. OHCHR, Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, paras. 27-28; B. G. Ramcharan, 'The United Nations and Human Rights in the Twenty-first Century', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 10-11.

⁶⁹ See e.g. S. Leckie, 'The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform', in P. Alston and J. Crawford (eds.), *The future of UN human rights treaty monitoring* (Cambridge University Press, 2000), pp. 129-130; I. Boerefijn, *The Reporting Procedure under the Covenant on Civil and Political Rights. Practice and Procedures of the Human Rights Committee* (Intersentia, Antwerpen 1999), p. 220 and pp. 300-301; R. Brett, 'Role of NGOs- An Overview', in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 845-854.

whereas the guidelines issued by the HRC are brief in comparison. In the following, the focus lies on the reporting guidelines for periodic reports and on the use of indicators in the monitoring process.

3.1 The Committee on Economic, Social and Cultural Rights

Under article 16 and article 17, ICESCR, states parties undertake to submit an initial report and thereafter periodic reports on the implementation of the covenant. The underlying objectives of the reporting procedure, as outlined by the CESCR in its first general comment, are, in brief, to facilitate public scrutiny, to provide a basis for an effective evaluation of the progress made, and to enhance the understanding of problems encountered.⁷⁰ Each concluding observation ends with the setting of a new date for the next periodic report. Four years is the most common time frame but there are variations.

Already at a relatively early stage, the CESCR acknowledged that all state reports should include both quantitative as well as qualitative data to enable an adequate assessment of progress over time.⁷¹ This view is likewise mirrored in the guidelines for reporting where both types of data are requested.⁷² The guidelines outline, with respect to each article in the covenant, a number of questions, including requests for statistical data as well as detailed descriptions of the national implementation so far. At least parts of these detailed guidelines could be equated with indicators, although the CESCR do not always explicitly label them as such.⁷³ The indicators included in the guidelines for reporting are closely connected to the use of indicators in the general comments. Over time, the general comments have become more and more explicit in identifying indicators and benchmarks as tools in the monitoring of progressive realization.⁷⁴

In its concluding observations on state reports, the CESCR often asks the state party to, in forthcoming reports, include detailed and disaggregated data with respect to various rights.⁷⁵ However, this practice is far from

⁷⁰ CESCR, General Comment No. 1, *Reporting by States parties*, contained in E/1989/22, paras. 2-9.

⁷¹ *Ibid.*, para. 7.

⁷² CESCR, *Revised General Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1.

⁷³ A. Eide, 'The use of indicators in the practice of the Committee on Economic, Social and Cultural Rights', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 545.

⁷⁴ M. Scheinin, *Use of Indicators by Treaty Monitoring Bodies- Experiences and Potentials*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, pp. 8-11 and p. 16.

⁷⁵ See e.g. CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Uzbekistan (initial report), E/C.12/UZB/CO/1 (2006), paras. 25, 44, 57; CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Austria, E/C.12/AUT/CO/3 (2006), paras. 8-18; CESCR, Concluding observations

uniform. The CESCR may sometimes ask for disaggregated statistical data with respect to each right in the covenant⁷⁶, in other cases it merely requests statistical data with respect to some rights⁷⁷. Naturally, the requests depend on the amount of data already provided by the state party, but it nonetheless seems peculiar that disaggregated data for all rights are not always asked for.

3.2 The Human Rights Committee

Under article 40, ICCPR, states parties are obliged to submit one initial report within one year of ratification and thereafter periodic reports. The vague wording of article 40 gave the HRC a major role in developing the framework of the reporting procedure.⁷⁸ The practice of the HRC is to set the date for the next report in its concluding observations for each state report.⁷⁹ Although a decision on periodicity provides that periodic state reports are to be submitted every five years, this timeframe has been applied with some flexibility by the HRC.⁸⁰

In contrast to the CESCR, the HRC's guidelines for reporting are not very detailed. Instead of asking for specific data under each respective article of the covenant, the HRC provides some general guidance concerning the content of the reports.⁸¹ Initial reports should explain the national legal framework as well as outline the responsibilities and powers of judicial, administrative and other state institutions in light of the Covenant rights.⁸² States parties are urged to structure periodic reports so as to follow the articles of the Covenant. In connection to each article, relevant data and statistics should be included, and factors and difficulties affecting the implementation are to be mentioned.⁸³ Although there is no explicit mentioning of indicators, quantitative as well as qualitative data are in fact asked for in reporting guidelines and general comments. This very implicit approach to indicators, as well as to a more explicit use of statistics, could be explained by the almost non-existent use of indicators in the general

of the Committee on Economic, Social and Cultural Rights, Libyan Arab Jamahinya, E/C.12/LYB/CO/2 (2006), paras. 2, 15, 29.

⁷⁶ See e.g. CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Libyan Arab Jamahinya, E/C.12/LYB/CO/2 (2006), para. 29.

⁷⁷ See e.g. CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Slovenia (initial report), E/C.12/SVN/CO/1 (2006), para. 26.

⁷⁸ I. Boerefijn, *The Reporting Procedure under the Covenant on Civil and Political Rights. Practice and Procedures of the Human Rights Committee* (Intersentia, Antwerpen 1999), p. 225.

⁷⁹ HRC, *Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights*, CCPR/C/66/GUI/Rev.2, para. B.2.

⁸⁰ HRC, *Decision on Periodicity*, CCPR/C/19; I. Boerefijn, *The Reporting Procedure under the Covenant on Civil and Political Rights. Practice and Procedures of the Human Rights Committee* (Intersentia, Antwerpen 1999), p. 186.

⁸¹ HRC, *Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights*, CCPR/C/66/GUI/Rev.2, paras. C and E.

⁸² *Ibid.*, para. D.

⁸³ *Ibid.*, paras. C and E.

comments. For example, few of the general comments ask for disaggregated statistical information.⁸⁴

A closer look at the HRC's most recent concluding observations shows that statistical data, and in particular disaggregated statistical data, is rarely asked for.⁸⁵ Of course, the need to request additional data depends on the amount of data already provided by the state party. However, the requests for data do not always seem to reflect the lack or the existence of data in the submitted state reports.

3.3 Summing up

Both committees are at present asking states parties to include quantitative and qualitative data in their reports. Nonetheless, there are big differences between the two monitoring bodies. The CESCR has come a long way in using indicators, in particular with regard to its elaborated guidelines and general comments. Likewise, its concluding observations frequently include requests for disaggregated statistical data, and subjects of concern are often connected to existing statistical data. The HRC, on the other hand, is seldom specifically asking for statistical data, and even more rarely for disaggregated statistical data. Beside the requests for statistical information, both committees include requests for thematic information, e.g. judicial procedures, access to remedies, policies for non-discrimination. In fact, the concluding observations could be said to include the setting up of country-specific thematic and statistical indicators or benchmarks. Additionally, the general comments contribute to the conceptualization of rights by clarifying their scope and asking for specific information to be included in the state reports. In particular, the requests for information are similar to indicators. However, the indicator-like requests for information, as well as the conceptualization of rights and obligations, are not structured in any coherent way. Also, the treaty monitoring bodies have yet to issue general comments for all rights in the covenants.

The conclusion is that a methodological consistency and rigor in the application of the indicators approach is lacking.⁸⁶ For states parties, this signifies that the meaning of state obligations has to be clarified through the

⁸⁴ M. Scheinin, *Use of Indicators by Treaty Monitoring Bodies- Experiences and Potentials*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 14.

⁸⁵ See e.g. HRC, Concluding observations of the Human Rights Committee, Norway, CCPR/C/NOR/CO/5 (2006); HRC, Concluding observations of the Human Rights Committee, Canada, CCPR/C/CAN/CO/5 (2006); HRC, Concluding observations of the Human Rights Committee, Democratic Republic of Congo, CCPR/C/COD/CO/3 (2006); HRC, Concluding observations of the Human Rights Committee, Hong Kong Special Administrative Region, CCPR/C/HKG/CO/2 (2006).

⁸⁶ M. Scheinin, *Use of Indicators by Treaty Monitoring Bodies- Experiences and Potentials*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 10.

use and analysis of various sources, thus making the identification of state obligations more difficult.

4 Human Rights Indicators

Before entering the section of the exemplifying study where examples of indicators are elaborated, it is necessary to explain the concept of HR indicators, to go through the potential advantages and disadvantages with HR indicators, and to show different approaches used in the development of indicators with regard to their form and content. In addition, the use and analysis of data will be dealt with. Consequently, this section aims at clarifying the often complex and confused terminology surrounding indicators. Under each heading, where appropriate, a small section departs from a descriptive method and connects the theoretical framework to the considerations and choices made with regard to the subsequent exemplifying study.

4.1 What is a HR Indicator?

In very general terms, an indicator can be described as “*a device for providing specific information on the state or condition of something*”.⁸⁷ Thus, an indicator is a tool for analysis used in the measurement of something. So what is an HR indicator? Within the field of human rights law, the term “indicator” has not yet a fixed definition.⁸⁸ This is problematic and can lead to confusion when the term is used to refer to different things. For some experts, indicators refer only to statistical information.⁸⁹ Yet, for many, indicators may likewise refer to information beyond statistics.⁹⁰

The OHCHR, drawing on the formulations used by Paul Hunt, the Special Rapporteur on the right to health, defines human rights indicators as “*specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights*”.⁹¹ Even

⁸⁷ UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), Appendix, p. 38.

⁸⁸ Ibid.

⁸⁹ See e.g. Commission on Human Rights, *The New International Economic Order and the Promotion of Human Rights, Realization of Economic, Social and Cultural Rights*, Progress Report prepared by Mr. Danilo Türk, Special Rapporteur (6 July 1990), E/CN.4/Sub.2/1990/19, para. 4; UNDP, “Human Rights and Human Development”, *Human Development Report* (2000), p. 89.

⁹⁰ See e.g. M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’, 23 *Human Rights Quarterly* (2001), p. 1078; Frivilligorganisationernas fond för mänskliga rättigheter, *Skriptserie om Ekonomiska, Kulturella och Sociala Rättigheter Del IX: Att mäta rättigheter* (2003), <http://www.humanrights.se/upload/files/2/Fondens%20publikationer/Att%20mata%20rattigheter.pdf>, last visited 26 May 2006, p. 11.

⁹¹ OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 7; General Assembly, *The right of everyone to enjoy the highest attainable*

though the OHCHR focuses on quantitative indicators, the definition of HR indicators is not limited to statistical information. Maria Green provides the following definition of a HR indicator; “A *Human Rights Indicator is a piece of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation*”.⁹² This definition also opens up for the use of both quantitative and qualitative data. In comparing the two definitions, it is evident that both capture the core features of a HR indicator. Nevertheless, I believe that the latter definition manages to encompass the core elements in a shorter wording that is more to the point. However, HR indicators could, according to the definition as provided by Maria Green, be interpreted as only targeting the obligation to fulfill and the enjoyment side of human rights. In the context of treaty monitoring, it is crucial that HR indicators reflect the whole spectrum of obligations; to respect, protect and fulfill. As a result, the working definition used in this study is a slightly modified version of Maria Green’s definition; *A Human Rights Indicator is a piece of information used in measuring the extent to which a legal right is being respected, protected or fulfilled in a given situation*. With regard to my choice of the 4-A scheme, a HR indicator could, for the purpose of this study, also be defined as *a piece of information used in measuring the extent to which a legal right is available, accessible, acceptable or adaptable in a given situation*. Nonetheless, I believe that such a definition would be too narrow as it implies that all HR indicators must be constructed with the use of the 4-A scheme. The use of the previous definition could be interpreted as only allowing for a use of the respect, protect and fulfill scheme. On the other hand, I still believe that the first definition opens the door to a more flexible design of HR indicators, where any scheme or method can be used as long as it captures at least one of these obligations.

The most important feature of any HR indicator is its normative basis in international human rights law and the focus on transforming rights into claims and corresponding obligations.⁹³ As a consequence, it is assumed that HR indicators have to be linked to the rights and obligations in the relevant human rights instrument.⁹⁴ With this in mind, the underlying approach followed by HR indicators could perhaps best be explained as a human rights-based approach. A human rights-based approach, in simplified terms, is guided by human rights principles and standards. Perhaps most importantly, a human rights based-approach recognizes the human individual as the active subject and rights-holder while also identifying the

standard of physical and mental health, Interim Report by Mr. Paul Hunt, Special Rapporteur of the Commission of Human Rights (10 October 2003), A/58/427, Section II.

⁹²M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’, *23 Human Rights Quarterly* (2001), p. 1065.

⁹³ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, para. 17; M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’, *23 Human Rights Quarterly* (2001), p. 1091.

⁹⁴ M. Green, ‘What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement’, *23 Human Rights Quarterly* (2001), p. 1066.

duty-bearers and their corresponding obligations.⁹⁵ The linkage to legal rights and obligations is also what often distinguishes HR indicators from other types of indicators, which are not created in relation to human rights standards.⁹⁶ However, as will be shown below, other indicators may sometimes function as HR indicators, although they were not originally created as such.

4.1.1 HR Indicators and Human Development Indicators

As indicators are currently being used within many different areas, it is important to distinguish HR indicators from other kinds of indicators. In particular, HR indicators risk being confused with human development indicators, which have long played an important role within development policy evaluation and analysis.⁹⁷ Although these two kinds of indicators may overlap, there are still significant differences. Where human development indicators strive to measure progress toward development, HR indicators measure a government's compliance with its human rights obligations.⁹⁸ Human development indicators focus on the extent to which basic needs are enjoyed but disregard factors of importance to a human rights assessment, such as for instance the conduct of state officials and the dignity and freedom enjoyed by the population. Thus, a high score on a human development index is not necessarily synonymous to a satisfactory human rights situation. It has, however, been contended that human development indicators and HR indicators can be regarded as two sides of the same coin, as true development necessitates the fulfillment of human rights and vice versa.⁹⁹ Human development programmes, at least within the UN framework, are also expected to follow a human rights-based approach. Consequently, core human rights principles and standards should guide all

⁹⁵ UNDP, *'A Human Rights-based Approach to Development Planning in UNDP- Adding the Missing Link'*, p. 2 and pp. 4-8, http://www.undp.org/governance/docs/HR_Pub_Missinglink.pdf, last visited 18/7-2006; OHCHR, *'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation'*, New York and Geneva (2006), HR/PUB/06/08, p. 15; Second Inter-Agency Workshop on Implementing a Human Rights Based Approach to Development in the Context of UN Reform, *'The Human Rights-Based Approach to Development Cooperation Towards a Common Understanding Among the United Nations Agencies'*, Stamford (2003). See also section 4.1.1. where the human rights-based approach is explained in the context of human development indicators.

⁹⁶ *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 2.

⁹⁷ K. Raworth, 'Measuring Human Rights', in S. Gruskin, M. A. Grodin, G. J. Annas and S. P. Marks (eds.), *Perspectives on health and human rights* (Routledge, 2005), p. 394.

⁹⁸ See e.g. A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, p. 2; UNDP, "Human Rights and Human Development", *'Human Development Report'* (2000), p. 91.

⁹⁹ 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, http://www.portal-stat.admin.ch/iaos2000/fukuda_parr_final_paper.doc, last visited 22/3 2006, p. 3.

activities. This does, however, not necessarily mean a change of what is done, rather a change in how it is done.¹⁰⁰ Thus, when human development indicators follow a human rights-based approach they will depart from the same basis as HR-indicators, i.e. international human rights standards and principles including indivisibility and universality of rights, non-discrimination and equality, participation and the rule of law.¹⁰¹ Nevertheless, I believe that it is important to distinguish between the two types of indicators, in particular as human development indicators could in my opinion never fully operate as HR indicators nor replace their function.

4.1.2 HR Indicators and Benchmarks

Additionally, HR indicators may be confused with so-called benchmarks. Benchmarks are often mentioned in relation to ESC-rights, by e.g. the CESCR and in academic works. At a glance, benchmarks and indicators may well seem to constitute the same thing. At a closer look, however, benchmarks distinguish themselves from indicators in referring to specific targets set by a government in relation to the fulfillment of a particular human right. Consequently, benchmarks are tailor-made for a specific country situation, and set specific objectives and timeframes. However, indicators have been suggested to constitute a first step in the process of developing national benchmarks.¹⁰² Moreover, benchmarks are not

¹⁰⁰ UNDP, 'A Human Rights-based Approach to Development Planning in UNDP- Adding the Missing Link', p. 2 and pp. 4-8,

http://www.undp.org/governance/docs/HR_Pub_Missinglink.pdf, last visited 18/7-2006;

OHCHR, 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation', New York and Geneva (2006), HR/PUB/06/08, p. 15; Second Inter-Agency Workshop on Implementing a Human Rights Based Approach to Development in the Context of UN Reform, 'The Human Rights-Based Approach to Development Cooperation Towards a Common Understanding Among the United Nations Agencies', Stamford (2003).

¹⁰¹ See e.g. Second Inter-Agency Workshop on Implementing a Human Rights Based Approach to Development in the Context of UN Reform, 'The Human Rights-Based Approach to Development Cooperation Towards a Common Understanding Among the United Nations Agencies', Stamford (2003), para. 2.

¹⁰² See e.g. OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 12; M. Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23 *Human Rights Quarterly* (2001), pp. 1080-1081; V. Wagner and M. Nowak, 'Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools', Ludwig Boltzmann Institute of Human Rights, Vienna, Austria (2006), p. 36. See also E. Riebel, 'The IBSA Procedure as a Tool of Human Rights Monitoring', Background paper to the Expert Symposium, Measuring developments in the realization of the right to food- the IBSA Procedure (22-23 May, 2006, Mannheim), pp. 77-80. The IBSA (Indicators, Benchmarks, Scoping, Assessment) Procedure suggests that country-specific benchmarks should be set by states parties on the basis of an accepted list of indicators used by the CESCR (or by another treaty body).

consistent over time, and they are almost only used with regard to rights subject to progressive realization.¹⁰³

4.1.3 Why HR Indicators?

Possibly the most important question to ask before moving on to the design of indicators is why HR indicators should at all be used. This section will briefly go over the main advantages with HR indicators, but it will also highlight potential disadvantages and arguments against the use of HR indicators.

One major advantage following the use of HR indicators is the required concretisation of human rights. Human rights are too often viewed as a vague and soft part of the international legal framework. The operationalisation of human rights into concrete measurements will help to remove the blurriness surrounding human rights at present, in particular with regard to ESC-rights.¹⁰⁴ HR indicators could provide human rights observers with the evidence needed to substantiate claims concerning a particular human rights situation.¹⁰⁵ Obviously, a claim supported with substantive evidence is more likely to be taken seriously by policy makers, and hence more likely to contribute to future improvement. Reliable information and statistics do constitute powerful tools and may serve as wake-up calls at national and international levels. Shocking statistics are often needed to draw attention to previously neglected or silenced issues, for instance homelessness.¹⁰⁶ In addition, precise data is more likely to get into the media. Media coverage is of course not an objective in itself, but can indeed serve as a call for action and enhance the awareness among the general public.¹⁰⁷

It is moreover argued that the use of indicators can strengthen the process of building a system of accountability, as levels of performance are measured in a sustained and objective way.¹⁰⁸ Likewise, well-designed HR indicators

¹⁰³ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, p. 2.

¹⁰⁴ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, para. 10.

¹⁰⁵ K. Raworth, 'Measuring Human Rights', in S. Gruskin, M. A. Grodin, G. J. Annas and S. P. Marks (eds.), *Perspectives on health and human rights* (Routledge, 2005), p. 395.

¹⁰⁶ *Ibid.*, p. 394.

¹⁰⁷ T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 4.

¹⁰⁸ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, <http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006, pp. 1-2; The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C.

are suitable for measuring progress over time, and for identifying areas where policy adjustments are needed.¹⁰⁹ HR indicators can for example help to identify unintended impacts of legislation and policies, identify whether obligations are met or not, and provide an early warning of potential violations.¹¹⁰ Within the procedure of state reporting, it is believed that HR indicators can serve as one important component in the compliance assessment, in particular with regard to the identification of problems and difficulties encountered by the state party.¹¹¹ At best, the result provided by HR indicators can thereafter serve as the basis for future work and improvements within the field of human rights at the national level and sub-national level. Consequently, it is believed that HR indicators can promote the development of human rights by contributing to a strengthening of human rights at all levels.¹¹² On the other hand, it should be noted that HR indicators only point out where changes have occurred but not *why* progress or retrogression have taken place.¹¹³

However, there is also concern that the development of HR indicators, and especially of HR indicators focusing on the minimum core obligations of states, will imply which parts of the right that can be left out. It is feared by some that the result would be a rewriting of human rights instruments to a lower level.¹¹⁴ It is indeed true that a HR indicator will be a simplification of the right it purports to measure, thus sacrificing some specificity. No matter how sophisticated, HR indicators are not likely to ever grasp all aspects of a right.¹¹⁵ In addition, the data used in the work with HR indicators only provides a broad picture of the human rights situation. The type of information asked for will show the human rights situation of different

Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 11.

¹⁰⁹ General Assembly, *The right of everyone to enjoy the highest attainable standard of physical and mental health*, Interim Report by Mr. Paul Hunt, Special Rapporteur of the Commission of Human Rights (10 October 2003), A/58/427, p. 7.

¹¹⁰ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Forum on Human Development, Rio de Janeiro 9-11 October 2000, Second Global
<http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006, p. 2.

¹¹¹ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, para. 10.

¹¹² The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), pp. 10-11.

¹¹³ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 12.

¹¹⁴ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, para. 134.

¹¹⁵ Frivilligorganisationernas fond för mänskliga rättigheter, *Skriftserie om Ekonomiska, Kulturella och Sociala Rättigheter Del IX: Att mäta rättigheter* (2003), <http://www.humanrights.se/upload/files/2/Fondens%20publikationer/Att%20mata%20rattigheter.pdf>, last visited 26 May 2006, p. 11.

groups but do not measure violations at the individual level.¹¹⁶ In addition, the use of statistics to measure and analyse human rights violations can be perceived as very dehumanizing.¹¹⁷ Undeniably, the transformation of violations into numbers tends to trivialize the problems at the individual level. Therefore, it is particularly important to combine statistical figures and data with context and explanations.¹¹⁸ This is also one of the main reasons for including both quantitative and qualitative indicators in sets of HR indicators. Any human rights compliance assessment needs both quantitative and qualitative information to be accurate.

HR indicators are well suited for comparison over time for a given country.¹¹⁹ The ability to catch progress and degeneration over time is also brought forward as one of the main advantages in the use of HR indicators. In the context of comparison, however, a point of concern is the potential use of HR indicators as a means to make comparisons and order states according to rank or score. Many experts argue, for several reasons, that this exercise should be avoided. Firstly, HR indicators for treaty monitoring purposes are not created to 'name and shame', but to help the states parties and the treaty monitoring committees in the state reporting process.¹²⁰ Secondly, the flow of human rights data will vary significantly from country to country, thus not covering the same things in each and every country. Furthermore, human rights violations take place in very diverse contexts and are never ripe for mechanical comparisons.¹²¹ This notwithstanding, state-to-state comparison is probably unavoidable. In my opinion, comparisons between states may not be entirely bad provided that any comparison pay due regard to the apparent limitations and problems in such an exercise.

Another important remark is that the utility of HR indicators is determined by the existence of adequate response mechanisms. Thus, when the use of an HR indicator indicates retrogression corrective action should be taken.¹²² Within the framework of state reporting, the available response mechanism is the concluding observations of the committee, and the possibility to ask

¹¹⁶ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 11.

¹¹⁷ T. Landman, 'Measuring Human Rights: Principle, Practice, and Policy', *26 Human Rights Quarterly* (2004), pp. 909-910.

¹¹⁸ T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 4.

¹¹⁹ See e.g. *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, pp. 8-9; K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 542.

¹²⁰ *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 8.

¹²¹ T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 5.

¹²² K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 542.

for follow-up reports. However, the follow-up procedure has not been integrated into the reporting system, which is recognized as a major flaw hampering a truly efficient monitoring. At present, non-compliance with concluding observations does normally not lead to any serious consequences or political costs for the state party concerned.¹²³ This apparent “lack of teeth” might be rectified if a permanent unified treaty body is established. It is believed that such a body would have more capacity to strengthening follow-up procedures through for instance follow-up missions by experts.¹²⁴

In consideration of the abovementioned criticism, it should be underlined that HR indicators cannot serve as the one and only tool for human rights compliance assessment. The conclusion is that HR indicators can constitute one important tool for analysis, but that the use of HR indicators should not exclude the development and use of complementary methods.¹²⁵ Other methods may for instance include country-specific benchmarks, the analysis of NGO reports and the scrutiny of reports on violations at the level of the individual.

4.2 What Do HR Indicators Purport to Measure?

After having made a decision to use HR indicators, the next step has to be to pinpoint what to measure. This will depend on several factors. In particular, it is important to consider the identity of the actor who will use the indicator. In addition, the validity of an indicator will naturally depend on the degree to which it measures what it is supposed to measure.¹²⁶ As a consequence, the form and the content of an indicator will depend on what it purports to measure. The first question concerns whether the HR indicators should measure the enjoyment of rights or the fulfilment of obligations, or both. Thereafter, it is necessary to conceptualize the components of the human right in question.¹²⁷ Thus, the first step is to consider the identity of the actor who will use the indicator and the context in which it will be used, and the second step to pinpoint and conceptualize the human rights that will be measured. Only then will it be possible to move on to the actual design of HR indicators, which will follow in the subsequent exemplifying study.

¹²³ M. G. Schmidt, ‘Follow-up Procedures to Individual Complaints and Periodic State Reporting Mechanisms’, in G. Alfredsson, J. Grimheden, B. G. Ramcharan and A. de Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob TH. Möller* (Kluwer Law International, 2001), pp. 210-215.

¹²⁴ OHCHR, Concept Paper on the High Commissioner’s Proposal for a Unified Standing Treaty Body, Report by the Secretariat, HRI/MC/2006/2, 22 March 2006, paras. 32 and 52.

¹²⁵ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 5.

¹²⁶ UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), p. 17.

¹²⁷ K. Tomasevski, ‘Indicators’, in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 531.

4.2.1 For Whom and With What Approach?

The identity of the actor who will use the indicators is crucial, as this will also determine the content of the indicator. HR indicators may be used at both the national and international level. At a national level, HR indicators can, as an example, be used as a component of a national action plan for human rights.¹²⁸ Although all HR indicators share a common human rights framework, and purport to measure the realization of human rights, they are based on different national and international legal instruments and may be tailor-made to capture a specific national situation.

HR indicators can be designed to measure human rights from two different angles or perspectives. If we want to capture the enjoyment of rights, i.e. the condition of people's lives, an enjoyment approach will guide the design of HR indicators. In contrast, if the purpose is to capture whether the duty holders are actually meeting their obligations, the HR indicators will be constructed with an obligations approach. The main difference lies in the interpretation of data and information, and not in the data or information asked for.¹²⁹ For example, a situation where not everyone in a country has access to healthcare would constitute a human rights violation according to the enjoyment approach. If applying the obligations approach to the same situation, a violation would only exist if the government had not done its utmost to fulfil its obligations in relation to health care. Apparently, the two approaches are compatible. Still, however, they can lead to different results in the same situation and it is therefore important to distinguish between them.¹³⁰ It is argued that the obligations approach is more suitable in human rights assessments aiming at guiding and developing policy. Instead of only assessing the extent to which people enjoy their rights, an assessment guided by an obligations approach would focus on the extent to which governments meet their obligations of conduct, and indicate what action is needed to meet that obligation.¹³¹

The obligations approach is also in line with the reasoning of Katarina Tomasevski. She states that the main purpose of this kind of HR indicators is to capture the willingness and the capacity of the state to protect and promote human rights. It is therefore important to distinguish between unwillingness and incapacity of states. She argues that international monitoring systems need to recognize resource constraints to avoid hypocrisy.¹³² This distinction would help to depoliticize the use of indicators, as only wilful acts or omissions and indifference should be deemed to constitute human rights violations. Where the indicators show an

¹²⁸ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), pp. 3-4.

¹²⁹ *Ibid.*, p. 401.

¹³⁰ K. Raworth, 'Measuring Human Rights', in S. Gruskin, M. A. Grodin, G. J. Annas and S. P. Marks (eds.), *Perspectives on health and human rights* (Routledge, 2005), p. 397.

¹³¹ *Ibid.*, p. 400.

¹³² K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 532 and p. 537.

inability of the state to live up to its obligations, this should instead be addressed through for example capacity building and technical assistance.¹³³ The importance to distinguish between unwillingness and incapacity is equally highlighted in the Maastricht guidelines.¹³⁴

In consideration of the remaining gap between rich and poor countries, a distinction between incapacity and unwillingness might be a political prerequisite to the use of universal indicators. Kate Raworth argues against the development of universal sets of HR indicators, and claims that such on beforehand established indicators fail to reflect particular national circumstances. Instead, context-specific HR indicators, which still reflect the universality of rights, should be developed.¹³⁵ Another idea is to accompany sets of universal indicators with country-specific indicators/benchmarks, with due regard taken to the specificities of each state party.¹³⁶ In the following, where I outline the points of departure for my exemplifying study, I will also explain why this idea is the one I adhere to.

The HR indicators in this study will be specifically designed for the workings of the treaty bodies, but with states parties, and possibly also NGOs, as actors applying the indicators on a country situation. Consequently, they aim at facilitating the international assessment of the realization of human rights at the national level. Hence, the design of HR indicators for this purpose needs to consider the objectives of state reporting. Furthermore, the indicators can only be developed on the basis of the human rights treaty they purport to monitor. As the main purpose of state reporting is to assess the government's compliance with its obligations, HR indicators designed for state reporting will be elaborated to measure human rights from an obligations approach. In contrast to the reasoning of Kate Raworth, I believe that it is possible to develop a set of universal HR indicators. National circumstances can be taken into account, primarily to discern unwillingness from incapacity, in the analysis of the result of the indicators. Arguably, the setting up of country-specific benchmarks, which is already done, is a good way of taking national circumstances into account. The result provided by HR indicators would thus serve as guidance

¹³³ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, para. 180.

¹³⁴ The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht January 22-27 1997, para. 13. The Maastricht Guidelines were drafted as a follow-up to the Limburg Principles from 1986 and reflect the international legal developments since 1986. In the Maastricht meeting, a group of 30 experts agreed on the guidelines which are intended to serve as a tool for monitoring and adjudicating bodies at national, regional and international levels. Thus, the guidelines are not binding as such but are still often considered an authoritative statement.

¹³⁵ K. Raworth, 'Measuring Human Rights', in S. Gruskin, M. A. Grodin, G. J. Annas and S. P. Marks (eds.), *Perspectives on health and human rights* (Routledge, 2005), pp. 404-405.

¹³⁶ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, paras. 24-25.

for the treaty bodies' development of specific national targets and goals, in which exercise all national circumstances may be taken into consideration. A departure from universal HR indicators would, in my opinion, endanger the notion of universality of human rights. Therefore, the HR indicators in this study are intended for universal use, at the international and national level.

4.2.2 The Conceptualization of Rights and Obligations

As has already been mentioned, the starting-point for the design of HR indicators is the conceptualization of the rights and corresponding obligations that are to be monitored. Only then can the actual design of indicators start.¹³⁷ Hence, the normative content of each human right needs to be identified and translated into operational elements.¹³⁸ A conceptualization of rights obviously necessitates an agreement as to the content and meaning of the rights. Considering the persisting vagueness of several norms and concepts, this exercise can be particularly complicated.¹³⁹ For HR indicators to be credible, their content needs to reflect the norms agreed upon.¹⁴⁰

In the context of state reporting, the natural point of departure is the treaty in question. In the process of conceptualization, core human rights principles should also be taken into account. This means that overarching principles such as non-discrimination, right to effective remedy and participation should be reflected in all sets of HR indicators.¹⁴¹ Likewise, HR indicators in treaty monitoring need to cover the whole spectrum of state obligations, i.e. the obligations to respect, protect and fulfil. States parties to a treaty have agreed to the rights and obligations as stated therein, something that cannot be disputed. However, this does not solve the problem of different interpretations of rights and corresponding obligations.

In our case, the formulated indicators should hence be visibly linked to the treaty provisions. Here, it is helpful that some provisions already refer to

¹³⁷ See e.g. K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 531 f.; A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, <http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006, p. 1 and pp. 4-5.

¹³⁸ R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 26.

¹³⁹ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, <http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006, pp. 4-5.

¹⁴⁰ K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), p. 534.

¹⁴¹ See 2.1.3 Core Principles in Human Rights Law.

quantitative indicators. For example, the ICESCR, in its article 12 on the right to health, states that steps taken by the state party shall include the reduction of stillbirth-rate and infant mortality. Likewise, the ICCPR, in article 24 (2), states that all children shall be registered after birth and shall have a name. These treaty provisions clearly contribute to the conceptualization of rights.¹⁴² Beside the treaty provisions, further clarification of the rights and their corresponding obligations are provided in the general comments. The general comments issued by, in particular, the CESCR often include both indicators and benchmarks for the right in question. This also holds true with regard to the CESCR's guidelines for state reporting.¹⁴³ Apart from general comments and guidelines for reporting, the HRC has in its individual complaints mechanism further clarified the scope of rights and obligations. As the majority of human rights contained in the two covenants have been elaborated beyond the mere text of the treaty provision, a rather solid basis for the development of corresponding HR indicators already exists.

In this context, an important remark concerns the non-binding character of the documents issued by the treaty monitoring committees. At best, their interpretation of rights and obligations is regarded as authoritative, and accepted as such by the states parties. Consequently, an important question is the extent to which HR indicators can draw on more progressive interpretations without losing credibility. Likewise, if HR indicators were designed to please the states parties' interpretation of human rights, the scope of rights and obligations would be clearly diminished. States parties have, by ratification, subjected themselves to monitoring by an international body. Therefore, it could be argued that they have agreed to be assessed in light of the interpretations made by that body. Still, a balance needs to be struck in order not to revise the treaty provisions but only interpret them. Support for the adoption of a more progressive approach could also be drawn from the European Court of Human Rights that applies a dynamic interpretation to the European Convention of Human Rights. A dynamic approach signifies that rights and freedoms are interpreted in light of developments in political and social attitudes as well as seen in light of the whole treaty text to better realize the underlying aim and object of the treaty.¹⁴⁴ In this context, it is also worth noting that the European Court of Justice has adopted a similar teleological approach in its legally binding interpretation of European Community law. As a consequence, most European states have come to generally accept the legitimacy of this method of interpretation.¹⁴⁵

¹⁴² R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, pp. 3-4.

¹⁴³ M. Scheinin, *Use of Indicators by Treaty Monitoring Bodies- Experiences and Potentials*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, pp. 8-11 and p. 16.

¹⁴⁴ See e.g. C. Ovey and R. C. A. White, *Jacobs and White European Convention on Human Rights* (Oxford University Press, 2002), pp. 32-35.

¹⁴⁵ *Ibid.*, p. 41; P. Craig and G. De Búrca, *EU Law: Text, Cases and Materials* (Oxford University Press, 2003), pp. 96-98.

In this study, HR indicators will be developed on the basis of the wording of the chosen rights in the two covenants, with further support from general comments and guidelines for reporting issued by two treaty monitoring committees. In the context of freedom from torture, additional support comes from the jurisprudence of the HRC. Additionally, previous indicator studies will be referred to. The point of departure is however that HR indicators developed for use in state reporting should, as far as possible, reflect the wording of the treaties. Still, however, it is believed that HR indicators also need to reflect the monitoring committees' interpretation of rights and obligations to avoid a deterioration of human rights. To fulfil the underlying aim of the treaties, the interpretation of rights and obligations must, at least to a certain extent, adapt to present conditions. Consequently, the conceptualization of rights in this study endeavours to strike a balance between universally accepted interpretations and more progressive interpretations of rights and obligations. The aim is to design HR indicators that are credible, while at the same time able to advance the development of rights.

4.3 The Design of HR Indicators

Moving on to the actual design of HR indicators, this section will describe different kinds of HR indicators. As has been already pointed out, the form and the content of the indicator will depend on what it purports to measure. The subsequent categorization of HR indicators also reflects this interrelatedness. In the following, the common distinction between structural, process and outcome indicators and the difference between quantitative and qualitative indicators are dealt with. In addition, the necessary balancing between general and specific indicators is covered.

4.3.1 Structural Indicators, Process Indicators and Outcome Indicators

Perhaps the most commonly used HR indicator is the *structural indicator*. A structural indicator captures the ratification of legal instruments and the legal commitments of the state in question.¹⁴⁶ Consequently, it measures the commitment and compliance with human rights in law but not in practice. Structural indicators will hence scrutinize the national legal framework but not its factual implementation.¹⁴⁷ As for HR indicators targeting the commitment to human rights in practice, a distinction is usually made between HR indicators measuring government compliance (obligations-

¹⁴⁶ *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 5; OHCHR, *Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework*, HRI/MC/2006/7, 11 May 2006, para. 17.

¹⁴⁷ V. Wagner and M. Nowak, *'Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools'*, Ludwig Boltzmann Institute of Human Rights, Vienna, Austria (2006), p. 16.

approach) and HR indicators measuring individual enjoyment (violations-approach).¹⁴⁸ HR indicators measuring government compliance are often called *process indicators*, as they aim at measuring the process of a progressive realization of human rights. Process indicators measure the efforts to realize human rights over time, and not the outcome of these efforts.¹⁴⁹ Process indicators are further described as measuring the degree to which the government complies with its human rights obligations.¹⁵⁰ For example, an indicator asking for information on the existence or non-existence of a national policy to combat domestic violence, and the implementation of this policy if it exists is a process indicator. Consequently, process indicators capture state policy instruments and their implementation.¹⁵¹ HR indicators targeting the individual or collective enjoyment of rights often fall under the label *outcome indicators*, also called impact indicators or result indicators. Outcome indicators targeting the individual enjoyment of rights aim at recording *de facto* violations of rights.¹⁵² In addition, outcome indicators refer to indicators measuring the result of the efforts, or the lack of efforts, taken by the state in order to meet a human rights obligation.¹⁵³ This type of outcome indicator is hence focused on the collective enjoyment of rights. As an example, the measurement of maternal deaths is an outcome indicator.¹⁵⁴

¹⁴⁸ M. Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23 *Human Rights Quarterly* (2001), pp. 1085-1086.

¹⁴⁹ V. Wagner and M. Nowak, 'Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools', Ludwig Boltzmann Institute of Human Rights, Vienna, Austria (2006), p. 16; General Assembly, 'The right of everyone to enjoy the highest attainable standard of physical and mental health, Interim Report by Mr. Paul Hunt, Special Rapporteur of the Commission of Human Rights (10 October 2003), A/58/427, para. 26.

¹⁵⁰ M. Guzman and B. Verstappen, *What is Monitoring?*, Volume I, Human Rights Monitoring and Documentation Series, HURIDOCS (2003), <http://www.huridocs.org/basmonen.htm>, last visited 26/5 2006, p. 5.

¹⁵¹ See e.g. OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 18; The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 7; *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 5.

¹⁵² See e.g. *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, p. 5; Frivilligorganisationernas fond för mänskliga rättigheter, *Skriftserie om Ekonomiska, Kulturella och Sociala Rättigheter Del IX: Att mäta rättigheter* (2003), <http://www.humanrights.se/upload/files/2/Fondens%20publikationer/Att%20mata%20rattigheter.pdf>, last visited 26 May 2006, p. 22.

¹⁵³ V. Wagner and M. Nowak, 'Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools', Ludwig Boltzmann Institute of Human Rights, Vienna, Austria (2006), p. 16; M. Guzman and B. Verstappen, *What is Monitoring?*, Volume I, Human Rights Monitoring and Documentation Series, HURIDOCS (2003), <http://www.huridocs.org/basmonen.htm>, last visited 26/5 2006, p. 5.

¹⁵⁴ OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 19; General Assembly, *The right of everyone to enjoy the highest attainable standard of physical and mental health*, Interim Report by Mr. Paul Hunt, Special Rapporteur of the Commission of Human Rights (10 October 2003), A/58/427, paras. 28-29.

Some argue that the three kinds of indicators correspond to the notions to respect, protect and fulfil. Thus, structural indicators correspond to the obligation to respect, process indicators to the obligation to protect, and outcome indicators to the obligation to fulfil. Nonetheless, it has also been pointed out that elements of the obligations to respect, protect and fulfil are relevant for all kinds of HR indicators.¹⁵⁵ However, the distinction between different kinds of indicators is mainly theoretical, as all approaches are needed to get the complete picture of any human rights situation. Hence, in practice, the distinction is often blurred. Still, the distinction may be relevant in certain cases.¹⁵⁶ In particular so as it is always relevant to carefully consider what one wants to measure before formulating the actual indicators.

None of the treaty monitoring bodies explicitly makes a distinction between different kinds of indicators in their use of indicators. My opinion is also that HR indicators measuring government compliance will also have to contain indicators measuring individual enjoyment as these aspects are so interrelated. In addition, even if process and outcome indicators may be more important in demonstrating the implementation in practice, implementation will still hinge on the existence of an appropriate structural framework. As a consequence, I include structural, process and outcome indicators in the subsequent exemplifying study. Arguably, the use of all types of indicators will provide a broader picture of the human rights situation, and facilitate the assessment of government compliance. The 4-A scheme could also be labelled in terms of structural, process and outcome indicators, which will be demonstrated in the introduction to the exemplifying study.

4.3.2 Quantitative and Qualitative Indicators

Yet another distinction can be made between *quantitative and qualitative indicators* (sometimes also referred to as statistical and thematic indicators). Quantitative indicators measure quantifiable data, i.e. statistics. Qualitative indicators, on the other hand, have a thematic approach, referring to information beyond statistics.¹⁵⁷ For example, the percentage of female parliamentarians in the national parliament is a quantitative indicator, measuring the degree of female political representation in exact figures. The result of quantitative indicators is normally based on available socio-economic and/or administrative statistics. A qualitative indicator may instead, as an example, ask for information on the impact of female members of the parliament in the practical work of the national parliament, thus targeting a policy or a procedure rather than numerical information.

¹⁵⁵ *Report of Turku expert meeting on human rights indicators*, 10-13 March 2005 Turku, pp. 5-6.

¹⁵⁶ M. Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement', 23 *Human Rights Quarterly* (2001), pp. 1085-1088.

¹⁵⁷ *Ibid.*, pp. 1077-1080.

Accordingly, the result provided by qualitative indicators will be more open and reasoning.¹⁵⁸ It should also be pointed out that indicators of a qualitative nature could sometimes be transformed into quantitative data.¹⁵⁹

These examples demonstrate that quantitative and qualitative data supplement each other. With regard to the complex nature of human rights monitoring, all types of data will be needed.¹⁶⁰ As mentioned above, the treaty monitoring bodies are also asking states parties to include both types of data in their state reports. Consequently, the design of HR indicators for the purpose of state reporting will include requests for quantitative as well as qualitative data.

4.3.3 General or Specific?

Furthermore, it is of importance to carefully consider how general or specific the content of the indicator should be. A too general formulation will give a result that is too open and not easily evaluated. A very specific formulation will naturally give a more precise result, but risks being too specific and not valid for measurements over time.¹⁶¹ For HR indicators to constitute an adequate tool for analysis in the work with state reports, they need to be reliable, i.e. be consistent over time and unambiguous. As a consequence, it is crucial to strike the right balance between general and specific content.¹⁶² My way of solving this problem will be to complement one general indicator with several more specific sub-indicators and indicative questions.

4.4 The Use and Analysis of Data

Following the design of indicators, it is time to continue with the data needed for the actual use of HR indicators. One methodological prerequisite for the use of HR indicators is the collection of, and the access to, relevant, reliable and valid data.¹⁶³ High quality data, preferably in disaggregated

¹⁵⁸ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 6.

¹⁵⁹ R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, pp. 2-3.

¹⁶⁰ See e.g. V. Wagner and M. Nowak, 'Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools', Ludwig Boltzmann Institute of Human Rights, Vienna, Austria (2006), p. 18.

¹⁶¹ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 8.

¹⁶² On the issue of reliability see e.g. UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), p. 17.

¹⁶³ A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000,

form, is a prerequisite for the evaluation of the implementation of human rights through the use of HR indicators.¹⁶⁴ Consequently, this section covers different categories of data and methodological problems likely to arise in the use and analysis of data, for example biased information and lack of relevant data.

4.4.1 Different Categories of Data

One could say that four main types of data are currently being used in the measurement of enjoyment of human rights: socio-economic and other administrative statistics, events-based, survey-based, and standard-based (the latter sometimes called data based on expert judgment).¹⁶⁵ Examples of the use of different types of data will be provided below. All these kinds of data may include the use of HR indicators, previous initiatives on HR indicators are also found in relation to each type of data.¹⁶⁶ Standards-based data is mainly used to rank states in relation to their ability to respect human rights, by translating the frequency and the degree of violations into quantitative scales.¹⁶⁷ Consequently, this type of data is of little relevance to the treaty bodies where the focus lies not on mechanical comparison of states but on the assessment of progress/retrogression within one country. As a result, this kind of data will not be analysed further in this study. In the following, the three other categories of data will be discussed in light of potential methodological problems.

Socio-economic and other administrative statistics normally refers to data sets based on objective and verifiable quantitative or qualitative information (e.g. sex, income, age) related to for instance standards of living. This type of data is usually collected through administrative records and statistical surveys, and administered by national statistical agencies or international

<http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006, p. 1.

¹⁶⁴ Ibid., p. 5.

¹⁶⁵ See e.g. UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), pp. 12-13; T. Landman, 'Measuring Human Rights: Principle, Practice, and Policy', 26 *Human Rights Quarterly* (2004), p. 918; R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 5. For an extensive overview of the four different kinds of data and current sources of data see V. Wagner and M. Nowak, 'Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools', Ludwig Boltzmann Institute of Human Rights, Vienna, Austria (2006), pp. 18-36.

¹⁶⁶ R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 5.

¹⁶⁷ UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), p. 13.

governmental organizations or agencies.¹⁶⁸ Although this kind of statistical data is not often created to monitor human rights, it can be very useful in the monitoring of both CP-rights and ESC-rights. Yet, for use in the monitoring of human rights, statistical data need to be linked to the relevant human rights instrument to reflect human rights standards.¹⁶⁹ In any evaluation of statistical data, it should be remembered that statistical data might be manipulated; in particular so as many governments are not interested in exposing the true human rights situation.¹⁷⁰ Another concern is that official statistics often fail to include the most vulnerable groups in a society, such as homeless persons and 'hidden' refugees. The inclusion of these groups will normally require other methods, for instance household surveys and interviews.¹⁷¹

Events-based data count reported acts or omissions constituting human rights violations, e.g. cases of torture. Thus, it focuses on violations of the obligations to respect and protect human rights. Events-based data can take the form of both quantitative and qualitative data. Normally, this category of data is based on information collected in a standardised way, for instance through first-hand testimonies of victims and through information provided by the media or civil society organizations.¹⁷² So far, this type of data has been used mainly in the context of violations of CP-rights.¹⁷³ Methodological problems associated with events-based data, apart from biased information or biased selection of data, are under-reporting or over-reporting of violations.¹⁷⁴ Some experts argue that the events-based methodology and the indicators-based methodology constitute two separate tools for analysis in the monitoring of human rights. This theory seems to be partly based on the view that events-based data is suitable for the monitoring of CP-rights, whereas the indicators-based approach, interpreted as to only involve statistics, is especially suited for the monitoring of ESC-rights.¹⁷⁵ However, I argue that the events-based methodology involves the

¹⁶⁸ R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 9.

¹⁶⁹ *Ibid.*, p. 17.

¹⁷⁰ T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 5.

¹⁷¹ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 32.

¹⁷² R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 6.

¹⁷³ UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), p. 12.

¹⁷⁴ T. Landman, 'Measuring Human Rights: Principle, Practice, and Policy', *26 Human Rights Quarterly* (2004), p. 923.

¹⁷⁵ M. Guzman, 'The Investigation and Documentation of Events as a Methodology in Monitoring Human Rights Violations', *18:2-3 Statistical Journal of the UN Economic Commission for Europe* (2001), p. 249.

use of indicators, and that, as a consequence, the line between the two methodologies is not that clear. Also, the point of departure of this study is that HR indicators can and should ask for both statistical and thematic information.

The third category of data is the *survey-based data*. This type of data tracks the individual's perception of the human rights situation by asking standard questions to a random sample of the population in a state.¹⁷⁶ Hence, survey-based data captures the views of the population on a given issue, but the result will be largely qualitative and subjective.¹⁷⁷ Pitfalls in the evaluation of survey-based data include cultural bias, i.e. that the questions asked are understood differently in different countries, and by different individuals within one country.¹⁷⁸ The evaluation of survey-based data should in particular consider the formulation of questions and the competence of interviewers to assess the reliability and validity of the results.¹⁷⁹

4.4.2 Overarching Methodological Problems

“Not everything that counts can be counted, and not everything that can be counted counts”¹⁸⁰

The lack of relevant data is, in the context of this study, the most difficult methodological obstacle to overcome. Considering that high-quality information is a prerequisite for a meaningful use of HR indicators, this is indeed a particularly pressing problem. A number of countries are yet to establish functioning national statistics offices.¹⁸¹ As a consequence, many developing countries lack a complete system for the registration of births and deaths.¹⁸² This vacuum may partly, but not to a sufficient degree, be complemented with information from other sources, such as UN agencies and NGO's. As a result, it is crucial that official data collection is given priority and that sufficient resources are allocated for this purpose. In this respect, the political will of states to enhance their official data collection is central. The development and use of HR indicators could hopefully serve as

¹⁷⁶ T. Landman, 'Measuring Human Rights: Principle, Practice, and Policy', 26 *Human Rights Quarterly* (2004), pp. 918-919.

¹⁷⁷ R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 18.

¹⁷⁸ T. Landman, 'Measuring Human Rights: Principle, Practice, and Policy', 26 *Human Rights Quarterly* (2004), pp. 923-924.

¹⁷⁹ R. Malhotra and N. Fasel, *Quantitative Human Rights Indicators- A survey of major initiatives*, paper presented at the Expert Meeting on Human Rights Indicators, Turku/Åbo 11-13 March 2005, p. 18.

¹⁸⁰ Albert Einstein quote,

<http://www.brainyquote.com/quotes/quotes/a/alberteins100201.html>, last visited 16/6-2006.

¹⁸¹ T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 6.

¹⁸² K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), pp. 540-541.

one incentive to put up functioning national statistical agencies, and as a reason to expand international technical support in this area.

Furthermore, it is vital to counter-balance any official data with data available from other sources, such as NGOs and UN agencies.¹⁸³ Still, available data will rarely provide a complete picture of the human rights situation. Not only are governments unlikely to share available data exposing human rights violations, information from NGOs and other non-state bodies may also be biased.¹⁸⁴ Each piece of information needs to be assessed in light of its source; i.e. from where does it originate? How was it collected? How transparent is the data collection procedure?¹⁸⁵ Another problem is that human rights data is often very sensitive and has to be handled with care to protect the sources. As a consequence, NGOs may possess data that they cannot disseminate.¹⁸⁶ Also, when such data is actually disseminated it is difficult to validate. In the context of state reporting, it is of paramount importance that the treaty monitoring bodies develop the capacity to interpret data, statistical as well as qualitative.¹⁸⁷

The need for disaggregated data may also pose some delicate problems. For example, the division of individuals into groups on the basis of criteria such as ethnicity and sexual preference is both controversial and questionable.¹⁸⁸ The collection of disaggregated data requires a clear definition of the groups in question, that the members of the groups can be located, and most important that they are willing to be identified.¹⁸⁹ Still, even when these obstacles are tackled, disaggregated data are not always unproblematic. History has clearly demonstrated that this type of data can have devastating effects. To avoid this, the collection and storage of disaggregated data should not enable the identification of individuals belonging to a particular group.¹⁹⁰ Although disaggregated data is constantly asked for, in particular by the CESCR, the above-mentioned problems have to be further addressed.

¹⁸³ OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 24.

¹⁸⁴ K. Tomasevski, 'Indicators', in A. Eide, C. Krause and A. Rosas (eds.), *Economic, Social and Cultural Rights* (Kluwer Law International, 2001), pp. 540-541; UNDP, *Indicators for Human Rights and Human Rights Based Approaches to Development in UNDP Programming: A Users Guide* (Final Draft Version March 2006), pp. 16-17.

¹⁸⁵ Frivilligorganisationernas fond för mänskliga rättigheter, *Skriftserie om Ekonomiska, Kulturella och Sociala Rättigheter Del IX: Att mäta rättigheter* (2003), <http://www.humanrights.se/upload/files/2/Fondens%20publikationer/Att%20mata%20rattigheter.pdf>, last visited 26 May 2006, p. 11.

¹⁸⁶ T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 5.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid., p.16

¹⁸⁹ G. Goldmann, *Defining and Observing Minorities: An Objective Assessment*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/goldmann_final_paper.doc, last visited 22/3 2006, p. 9.

¹⁹⁰ See e.g. UN Statistical Commission, *Fundamental Principles of Official Statistics*, endorsed 11-15 April 1994, principle 6.

The OHCHR has in this context called for appropriate legal and institutional standards in the context of disaggregated data collection.¹⁹¹

In addition, a systematic use of HR indicators requires an information management system. Such a system is necessary to enable analysis and comparisons over time, which is crucial in the assessment of progress and retrogression of the human rights situation in each state party. It has been suggested that a computerized information management system should be set up by the OHCHR.¹⁹² Preferably, the information management system should include data not only from states parties but also gather data from the various agencies and bodies within the UN system.¹⁹³ Currently, a lot of information and data exist within the UN system but there is a clear lack of cooperation and data sharing among the different UN bodies and agencies.¹⁹⁴ Thus, an all-encompassing UN information management system could help to rectify this problem. An easily accessible and user-friendly information management system could in addition make the system of state reporting much more transparent.¹⁹⁵

To sum up, a meaningful use of HR indicators requires that states parties possess the knowledge and means to apply them at the national level. When that is done, all data is to be analysed with caution and in light of potential bias and distortions. A critical assessment is necessary not only for statistical data but also for qualitative data. It is of utmost importance that the treaty monitoring bodies are aware of the pitfalls and obstacles likely to arise in the analysis of the data rendered by the use of HR indicators. In addition, methodological problems need to be considered in the process of developing and drafting HR indicators. Perhaps most importantly, it should be remembered that no piece of data could alone provide the complete picture of a human rights situation.

¹⁹¹ OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, para. 27.

¹⁹² A. R. Chapman, 'Indicators as Standards for Monitoring Economic, Social and Cultural Rights', Article presented at the Second Global Forum on Human Development, Rio de Janeiro 9-11 October 2000, <http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf>, visited on 30 March 2006, p. 1, p. 12, p. 14; T. Hammarberg, *Searching the Truth: The Need to Monitor Human Rights with Relevant and Reliable Means*, Paper presented at the IAOS Statistics, Development and Human Rights Conference, Montreal 4-8/9 2000, http://www.portal-stat.admin.ch/iaos2000/hammarberg_final_paper.doc, last visited 22/3 2006, p. 11.

¹⁹³ World Conference on Human Rights, Preparatory Committee, *Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights*, Geneva 25-29 January 1993, A/CONF.157/PC/73, para. 187.

¹⁹⁴ *Ibid.*, para. 178.

¹⁹⁵ S. Leckie, 'The Committee on Economic, Social and Cultural Rights: Catalyst for Change in a System Needing Reform', in P. Alston and J. Crawford (eds.), *The future of UN human rights treaty monitoring* (Cambridge University Press, 2000), p. 143.

5 Exemplifying Study

In this chapter, two sets of indicators will be developed as examples of HR indicators. This exemplifying study builds on the previous chapters where the concepts of state obligations and HR indicators have been outlined. Throughout this chapter, the term indicator refers to HR indicators. As for the structure of this chapter, it begins with the right to freedom from torture, including a brief overview of the right followed by the indicators and their explanation. The same procedure is then followed for the right to health. Problems encountered in the process of developing indicators, anticipated weaknesses in a future application of the indicators as well as other possible limitations in the use of indicators will be thoroughly analyzed in the following and concluding chapter.

A number of key principles, mentioned in previous chapters, will guide my construction of indicators. First, the aim of the indicators is to serve as a tool for analysis in the assessment of a state's compliance or non-compliance in the state reporting procedure. This implies that the indicators are intended for universal use, which by necessity has an impact on the level of details in the indicators. In order to create manageable and sufficiently clear indicators, a balance between general and specific content has been necessary. However, it is my opinion that indicators should be complemented with detailed country-specific benchmarks to better mirror the conditions in each separate country.¹⁹⁶ Second, the indicators are intended to be consistent over time as well as used over time to yield better results. Still, my intention is not to use them in order to compare the performance of different state parties but to use them to catch progress and retrogression within one state party. Third, the normative basis of the indicators is the text of the treaties as well as general comments and guidelines issued by the treaty monitoring bodies. Other UN documents, academic literature and articles provide supplementary guidance. Finally, the indicators are constructed according to the 4-A scheme, and ask for both quantitative and qualitative information.

The sets of indicators include structural indicators, indicators of process and indicators of outcome. In this regard, the set of availability indicators is mainly structural but with some elements of process indicators. In contrast, both the accessibility and acceptability dimensions could be described as both outcome and process oriented. The set of adaptability indicators is best described as process oriented. However, the exercise of labeling indicators is seldom that clear-cut and overlapping is frequent. This study will not examine these aspects more in-depth with regard to each sub-indicator and indicative question as this is not the most important aspect. Yet, this is still something that should be further explored and examined if a coherent indicators approach is to be developed for all state reports.

¹⁹⁶ See section 4.1.2. on HR indicators and benchmarks.

This exemplifying study covers two different but interrelated human rights, the right to freedom from torture and the right to the highest attainable standard of health. The main content of each right will be outlined before I proceed with the development of the respective indicators. Each set of indicators will first be presented as one complete set followed by a more thorough explanation of each indicator. In the explanatory part, the indicators are supplemented with more detailed indicative questions that would form part of the country assessment procedure. As my idea is that initial and periodic state reports will follow the same scheme of indicators, they are here dealt with in one context. However, whereas the initial report will include the complete scheme of indicators, sub-indicators and indicative questions subsequent periodic reports focus more on the changes and developments which have been made over time. As a consequence, periodic reports do not have to repeat all information already provided in the initial report unless any changes have occurred. In order to demonstrate this difference, indicative questions intended for use in both types of state reports are followed by “(IP)” standing for initial and periodic state reports, indicative questions intended only for initial reports are marked with an “(I)” standing for initial, and indicative questions intended only for periodic reports are marked with a “(P)”.

The origin of each indicator and indicative question, in particular where the indicator or indicative question is identical or similar to previously developed indicators, will be referred to in footnotes in the explanatory part. As has already been mentioned, the 4-A scheme originates from Katarina Tomasevski.¹⁹⁷ This exemplifying study is also, to a large extent, influenced by previous and current work on HR indicators under the auspices of the Raoul Wallenberg Institute.¹⁹⁸ Before entering the section of indicators, I want to re-emphasize that my aim is not to present final and complete sets of HR indicators ready for immediate use. Instead, I aim at providing examples on how HR indicators could be elaborated and structured. Thus, the following exemplifying study will serve as a basis for the last chapter’s analysis of potential challenges and possibilities arising in the development of HR indicators.

¹⁹⁷ K. Tomasevski, *Human Rights Obligations in Education- The 4-A Scheme* (Wolf Legal Publishers, 2006); K. Tomasevski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, Right to Education Primers no. 3, <http://www.right-to-education.org>, last visited 16/6-2006, pp. 12-17.

¹⁹⁸ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005). At present, HR indicators are being used in a Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women’s Affairs, as a tool for selection and analysis of best practices of law and implementation within the sphere of gender justice. The Gender Justice Project will be completed and presented in the beginning of 2007.

5.1 The Right to Freedom from Torture

In the process of developing HR indicators, the first step is to conceptualize the actual content of the right in question. Thus, this section will deal with the substance of the right to freedom from torture (freedom from torture is in this section used as an all encompassing term referring to all the prohibited acts in article 7) as laid down in article 7 of the ICCPR.

Article 7, ICCPR

No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Forming part of the international human rights framework, the fulfillment of the right to freedom from torture necessitates compliance with the core principles of international human rights law.¹⁹⁹ In the context of torture, the prohibition of discrimination (art. 2 (1), ICCPR), the right to equality (art. 3, ICCPR) and the right to an effective remedy in case of violation (art. 2 (3), ICCPR) are of particular importance. It should also be underlined that, according to article 4 (2) of the ICCPR, no derogations can be made in relation to article 7. As a consequence, article 7 is an absolute right to be upheld at all times.

The core purposes of article 7 are to uphold and protect human dignity and each individual's physical and mental integrity.²⁰⁰ The prohibited acts cover both physical pain and mental suffering.²⁰¹ In contrast to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (the CAT), article 7 of the ICCPR applies to acts committed by persons acting in official or private capacity.²⁰² This significantly increases the scope of application to encompass not only prohibited treatment within the public sphere, for example in detention centers and hospitals, but also within the private sphere, for instance domestic violence and female genital mutilation.²⁰³ The Committee has underlined that state parties need to provide information on national laws and practices with regard to violence

¹⁹⁹ See section 2.1.1. on core principles.

²⁰⁰ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 2.

²⁰¹ *Ibid.*, para. 5.

²⁰² *Ibid.*, para. 2. Compare to article 1(1) of the CAT, "...when such pain or suffering is inflicted by or at the instigation of a public official or other person acting in official capacity...", which makes clear that the Convention only applies to acts where someone in official capacity is involved.

²⁰³ M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, (N.P. Engel, 2nd revised edition, 2005), p. 184.

against women to enable the Committee to assess compliance with article 7.²⁰⁴

Albeit concise in wording, article 7 contains a prohibition of several interrelated acts. These acts could be seen as a sliding scale of cruelty with torture as constituting the most serious violation. According to the Committee, the distinction of the different kinds of treatment or punishment depends on their nature, purpose and severity.²⁰⁵ Thus, whether an act is deemed as torture or not will to a large extent hinge upon the severity of the inflicted suffering (physical and/or mental), which likewise depends on the victim's subjective feelings. Other elements that will be taken into account include the intent and purpose behind the act.²⁰⁶ An act of inhuman or cruel treatment will not reach the intensity of suffering required for an act to constitute torture.²⁰⁷ Degrading treatment requires a lower intensity of suffering but will in addition include an element of humiliation.²⁰⁸ Cruel, inhuman or degrading punishment will, as all punishment, also include an element of humiliation. However, to be in violation of article 7, the punishment likewise has to be particularly unacceptable and fail to meet the proportionality test for punishment.²⁰⁹ Nevertheless, according to the Committee, corporal punishment constitutes cruel, inhuman and degrading punishment irrespective of the nature of the crime that is to be punished.²¹⁰ Prohibited medical and scientific experimentation include experiments that by their nature constitute torture, inhuman, cruel or degrading treatment. In addition, such experiments are normally carried out without the free consent and/or informed knowledge of the patient.²¹¹ The prohibition of torture is also closely related to a number of other rights, including the right to life (art. 6 of the ICCPR), the right to liberty and security (art. 9 of the ICCPR) and the right of detained persons to humane treatment (art. 10 of the ICCPR). Articles 9 and 10 of the ICCPR will normally be applied when the treatment does not reach the threshold set by article 7.²¹²

A number of measures need to be taken by state parties to the ICCPR to refrain from violating article 7. Each state party has to enact criminal provisions covering all the prohibited acts whether committed by persons acting in public or private capacity. Those who violate article 7 must be held responsible, no amnesties are permitted, and the victims must receive appropriate redress. This necessitates prompt and impartial investigations as

²⁰⁴ HRC, General Comment No. 28, *Equality of rights between men and women (article 3)*, CCPR/C/21/Rev.1/Add.10 (2000), para. 11.

²⁰⁵ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 4.

²⁰⁶ M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, (N.P. Engel, 2nd revised edition, 2005), pp. 161-163.

²⁰⁷ *Ibid.*, p. 163.

²⁰⁸ *Ibid.*, p. 165.

²⁰⁹ *Ibid.*, pp. 166-167.

²¹⁰ HRC, *Osbourne v. Jamaica (759/1997)*, para. 9.1.

²¹¹ M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, (N.P. Engel, 2nd revised edition, 2005), pp. 190-191. Note that normal medical treatment carried out in the interest of the patient's health, e.g. compulsory immunization, will not fall under article 7 of the ICCPR.

²¹² *Ibid.*, p. 168 and p. 172.

well as an independent judiciary.²¹³ In addition, evidence obtained through prohibited treatment must be non-admissible.²¹⁴ The population at large as well as all affected actors, for example lawyers, police officers and health care staff, must receive information and training on the content of article 7.²¹⁵ In addition, institutions such as detention centers, medical centers and schools must implement particular safeguards and be subject to supervision in order to prevent the occurrence of prohibited treatment.²¹⁶ Yet another important obligation following upon article 7 is the principle of non-refoulement, prohibiting all state parties to return anyone to a situation in another country where he or she would be exposed to prohibited treatment.²¹⁷ Thus, the obligations of states have implications on a vast number of areas and require both the deployment of resources and commitment.

5.1.1 The Indicators

Entering the section where the actual indicators are presented and explained, the principles outlined in the introduction to this exemplifying study should be kept in mind. Each set of indicators will first be presented as one complete set followed by a more thorough explanation of each indicator. In the explanatory part, the indicators are supplemented with more detailed indicative questions intended to form part of the country assessment procedure. A table with an overview of the complete sets of indicators can be found in Supplement B.

1. Available

- a. Ratification of international and regional human rights instruments
- b. National legal framework
- c. Possibility to lodge complaints and have them examined
- d. Budget allocation

2. Accessible

- a. Non-discriminatory access to preventive measures, complaints mechanisms and support services
- b. Preventive measures, complaints mechanisms and support services are physically and economically accessible
- c. Access to information and education
- d. Disaggregated statistics measuring access to preventive measures, complaints mechanisms and support services

²¹³ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), paras. 13-15.

²¹⁴ *Ibid.*, para. 12.

²¹⁵ *Ibid.*, para. 10.

²¹⁶ *Ibid.*, paras. 5, 7, 8 and 11.

²¹⁷ *Ibid.*, para. 9.

3. Acceptable

- a. Quality of relevant mechanisms and institutions ensured through supervision
- b. Cultural acceptability

4. Adaptable

- a. Systematic review and evaluation of practices, standards and rules
- b. No contradictions with other rights, other legislation or other policies
- c. Continuous education of relevant professionals on current standards and rights

Elaborations

Available

The first principal indicator targets the legal and budgetary framework within the state in question. Subsequent sub-indicators target the state's formal commitment to human rights and whether the national framework is in compliance with the obligations arising out of article 7 of the ICCPR.

a) The first sub-indicator measures the legal commitment to human rights through ratification of international and regional human rights instruments. As the right to freedom from torture is closely connected to the fulfillment of other human rights, CP-rights as well as ESC-rights, it will be necessary to include all international and regional human rights instruments in the assessment. In addition, it will likewise be important to look into any eventual reservations, or withdrawals of earlier reservations, made by the state in question. Any remaining reservations should be explained and justified by the state in question. Consequently, the following indicative questions should be asked.

- Which international and/or regional human rights instruments have been ratified? (I)
- Have additional international and/or regional human rights instruments been ratified and/or denounced since the last state report? (P)
- Have any reservations been made or withdrawn? If reservations remain in force, why?²¹⁸ (IP)

b) The second sub-indicator captures the national legal implementation of the state's obligations in relation to the right to freedom from torture. An assessment of the national legal framework includes a survey of all relevant national legislation, from the Constitution to ordinances and regulations at

²¹⁸ HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. C.2.

the local level.²¹⁹ The state's human rights obligations arising out of article 7 of the ICCPR should guide the analysis of each law. In the following, indicative questions that should be considered as a part of the assessment are outlined. The first set of indicative questions demonstrates the importance of looking at different levels of the normative framework. In addition, it is important to track all legal changes, progressive as well as retrogressive, made since the last state report.

- How are ratified international treaties implemented in the national legal system? Are they directly applicable upon ratification?²²⁰ (I)
- Is the right to freedom from torture, the prohibition of discrimination, the principle of equality and the right to an effective remedy included in the Constitution or in a bill of rights, if so, what provisions are made for derogations?²²¹(I)

The following indicative questions concern the implementation of article 7 in national criminal law.

- Are torture, cruel, inhuman and degrading treatment or punishment, and non-voluntary medical and scientific experimentation committed by public officials as well as by private individuals penalized in the criminal law?²²² (I)
- Are all persons who aid and abet, encourage, order, tolerate and perpetrate these crimes held responsible under criminal law?²²³ (I)
- What penalties apply to these crimes?²²⁴ (I)
- Does the criminal law allow for amnesty?²²⁵ (I)

Concerning procedural and evidential law, the subsequent indicative question should form part of the assessment.

- Does procedural law bar the admissibility of all evidence and confessions obtained through torture and other prohibited treatment?²²⁶ (I)

Recognizing that torture and other prohibited treatment may occur in numerous private and public settings it is important to scrutinize the legal framework governing a variety of situations and institutions.

²¹⁹ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

²²⁰ HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. D.2.2.

²²¹ Ibid.; HRC, General Comment No. 31, *The Nature of the Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 15.

²²² HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 13.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid., para. 15; HRC, General Comment No. 31, *The Nature of the Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 18.

²²⁶ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 12. See also e.g. HRC, *Sahadeo v. Guyana* (728/1996), para. 9.3.

- How is torture and other prohibited treatment addressed in laws and regulations govern the different situations and institutions where torture and other prohibited treatment may occur, e.g. arrest and interrogation, extradition/expulsion, detention centers, correctional institutions, educational institutions, medical institutions (including forced abortion and forced sterilization), medical and scientific experimentation, gender based violence and military service?²²⁷ (I)
- How do these laws and regulations address and ensure non-discrimination and equality? (I)
- Is abortion legal for women who have become pregnant as a result of rape? Under which circumstances, if any, is a woman who has an abortion criminalized?²²⁸ (I)

The last indicative question is based on the importance of identifying all legal changes, progressive as well as retrogressive, made since the last state report.

- What changes in the abovementioned laws and regulations, if any, have been made since the last state report?²²⁹ (P)

c) The third sub-indicator, the possibility to lodge complaints and have them examined, is closely related to the previous sub-indicator but constitutes a separate indicator in order to underline the importance of complaints mechanisms and effective remedies.²³⁰ In the application of this sub-indicator, it will be necessary to study the domestic legal framework and the inclusion or non-inclusion of judicial and administrative remedies for individuals, nationals as well as non-nationals. Complaints mechanisms should be in place for complaints concerning all principal indicators and their sub-indicators: availability (e.g. complaints concerning non-compliance of national law with international human rights law), accessibility (e.g. complaints relating to discrimination), acceptability (e.g. complaints relating to failure to enforce judgments) and adaptability (e.g.

²²⁷ HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), D.2.1.; HRC, General Comment No. 28, Equality of rights between men and women (article 3), CCPR/C/21/Rev.1/Add.10 (2000), para. 11. On gender based violence as a specific form of torture see e.g.

Commission on Human Rights, *Question on the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment*, Report of the Special rapporteur, Mr. N. S. Rodley (12 January 1995), E/CN.4/1995/34, paras. 15-24.

²²⁸ HRC, General Comment No. 28, *Equality of rights between men and women (article 3)*, CCPR/C/21/Rev.1/Add.10 (2000), paras. 11 and 20.

²²⁹ HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. E.4.

²³⁰ See e.g. the indicators contained in the Raoul Wallenberg Institute's study on methods and tools for analysis in the work on human rights where the importance of complaints mechanisms is underlined through the inclusion of sub-indicators covering the availability of such mechanisms. The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005).

complaints concerning export of torture equipment). The subsequent indicative questions are intended to guide the assessment.

- Which judicial, administrative or other competent authorities have jurisdiction to secure the right to freedom from torture?²³¹ (I)
- Which complaints mechanisms and remedies are available in case of violation, by the state or by third parties, of article 7 committed within the territory or within the jurisdiction of the state?²³² (I)

The following indicative questions concern the initiation of a criminal investigation.

- In case of a violation of article 7, by the state or by a third party, who can lodge a complaint?²³³ (I)
- May an investigation concerning a violation of article 7 be initiated *ex officio*?²³⁴ (I)

Remedies likewise concern the prevention of torture and other prohibited treatment. Hence the next set of indicative questions.

- How is the immediate termination of torture and other prohibited treatment, as well as the prevention of recurrence ensured upon the reception of a complaint?²³⁵ (IP)
- What preventive measures are available in the context of gender-based violence, including domestic violence?²³⁶ (I)

With regard to court proceedings, the following indicative questions should be asked.

- Does the law provide for legal aid, if yes, to what extent? (I)

²³¹ HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. D.2.3.

²³² HRC, General Comment No. 31, *The Nature of the Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, paras. 10, 12, 15-18; HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. D.2.2. In its jurisprudence relating to torture, the HRC will, in case a violation is found, always stress the victim's entitlement to an effective remedy including appropriate compensation. The HRC may also call for other more case specific remedies such as an earlier release from prison and a decision to not deport a person. It has likewise stressed the state obligation to ensure the prompt trial of all persons responsible as well as to expedite judicial proceedings. See e.g. HRC, *C. v. Australia* (900/1999), para. 10, HRC, *Teesdale v. Trinidad and Tobago* (677/1996), para. 11, HRC, *Sarma v. Sri Lanka* (950/2000), para. 11, and HRC, *Bondarenko v. Belarus* (886/1999), para. 12.

²³³ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 14.

²³⁴ *Ibid.*

²³⁵ *Ibid.*; HRC, General Comment No. 31, *The Nature of the Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, paras. 15, 17 and 19. In its jurisprudence relating to torture, the HRC will, in case a violation is found, emphasize the state's obligation to prevent reoccurring violations. See e.g. HRC, *C. v. Australia* (900/1999), para. 10, HRC, *Teesdale v. Trinidad and Tobago* (677/1996), para. 11, and HRC, *Bondarenko v. Belarus* (886/1999), para. 12.

²³⁶ HRC, General Comment No. 28, *Equality of rights between men and women (article 3)*, CCPR/C/21/Rev.1/Add.10 (2000), para. 11.

- Does the law provide for recourse to appeal, if yes, is leave of appeal required?²³⁷ (I)

The next set of indicative questions targets the availability of complaints mechanisms where complaints regarding the failure to make the right accessible, acceptable and adaptable can be lodged.

- Where and by whom can complaints regarding the accessibility dimension be lodged? (I)
- Where and by whom can complaints regarding the acceptability dimension be lodged? (I)

The following indicative question is based on the importance of identifying all eventual changes, progressive as well as retrogressive, made since the last state report.

- What legal and/or administrative changes relating to the enjoyment of an effective remedy, if any, have been made since the last state report?²³⁸ (P)

At last, statistics on the number of complaints and on the investigation and adjudication of them should be asked for.

- How many complaints concerning torture and other prohibited treatment have been received, investigated and adjudicated by the existing complaints mechanisms since the last state report (divided per year and disaggregated by the prohibited grounds of discrimination)?²³⁹ (IP)

d) The fourth sub-indicator concerns budget allocation at the national level. In the context of torture and other prohibited treatment, an analysis of budget expenditure will have to be divided into several parts, as there will not be one identifiable budget post referring specifically to the prevention and punishment of the prohibition of torture. Instead, an analysis of the allocation of means to a number of public sectors is deemed necessary. It is my strong belief that under resourced public sectors will not only fail to prevent torture but also fail to remedy torture. Hence, the indicative questions try to grasp a multitude of areas in order to enable an assessment of the state's financial commitment to eradicate torture and other prohibited treatment. Note that all these indicative questions demand that the state provide figures not only for the present year but also for previous years. In order to assess compliance, it will also be necessary to relate the figures to world averages.

- Public expenditure on the judiciary as percentage of GDP? (IP)
- Public expenditure on the police as percentage of GDP? (IP)
- Public expenditure on education as percentage of GDP? (IP)

²³⁷ HRC, General Comment No. 13, *Article 14 (Administration of Justice)*, 21st session (1984), para. 17.

²³⁸ HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. E.4.

²³⁹ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 14.

- Public health expenditure as percentage of GDP?²⁴⁰ (IP)

In addition, the following more detailed indicative questions should form part of the assessment.

- How are administrative complaints mechanisms funded? (IP)
- How are mechanisms of supervision funded? (IP)

Accessible

The second principal indicator aims at capturing the non-discriminatory access to preventive measures, complaints mechanisms and support services if the right is violated. The last sub-indicator demands the employment of statistics, often in a disaggregated form.

a) The first sub-indicator concerns non-discriminatory access to preventive measures and access to complaints mechanisms as well as support services when a violation occurs. In this context, particular attention needs to be paid to internationally prohibited grounds of discrimination, including race, color, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.²⁴¹ Thus, the state party should, for each indicative question, specifically consider whether any of the aforementioned groups are subjected to a higher risk of torture. The indicative questions focus, in particular, on the most vulnerable groups in the society. The questions target the need for preventive measures as well as the preventive measures already taken as well as access to complaints mechanisms and support services. The first three indicative questions, focusing on preventive measures, will require detailed information from the state party. The second and third questions require information on for instance interrogation rules, registries over detainees, instructions for teachers and rules for the police on the handling of reports concerning domestic violence.

- What groups can be identified as being the most vulnerable and the most likely to be exposed to a risk of torture?²⁴² (IP)
- What preventive measures are needed and which preventive measures have been taken to eliminate the risk of torture for the identified vulnerable groups?²⁴³ (IP)

²⁴⁰ This formula is already in use by UN agencies. See e.g. UNDP, *Human Development Indicators 2003*, available at http://hdr.undp.org/reports/global/2003/indicator/indic_57_1_1.html, last visited 10/12-2006. According to UNDP's Human Development Indicators, public health expenditure consists of current and capital spending from government (central and local) budgets, external borrowings and grants (including donations from IGOs or NGOs) and social (or compulsory) health insurance funds.

²⁴¹ ICCPR, Art. 2 (1).

²⁴² In its general comment on torture, the Committee specifically mentions children, pupils, patients, detained persons and persons not able of giving a valid consent. See HRC, General Comment No. 20, *Article 7*, 44th Session (1994), paras. 5, 7 and 11.

²⁴³ *Ibid.*, para. 11.

The following indicative question focuses on non-discriminatory access to complaints mechanisms and support services.

- What measures are needed and what measures have been taken to guarantee non-discriminatory access, including access for non-citizens, to complaints mechanisms and support services?²⁴⁴ (IP)

b) The second sub-indicator targets the physical and economic accessibility of preventive measures, complaints mechanisms and support services. Physical accessibility implies that preventive measures, complaints mechanisms and support services are within safe physical reach for the whole population. Economic accessibility requires that preventive measures, complaints mechanisms and support services are affordable for all. The first set of questions concern economic accessibility and the system needed to ensure affordability.

- Are preventive measures, such as a request for and the enforcement of protection orders in the context of domestic violence, free of charge for the victim/complainant? (I)
- Is the filing of a complaint with a complaints mechanism levied with a fee? (I)
- How is affordability for all ensured with regard to support services, e.g. torture rehabilitation centers and shelters? (I)
- What measures have been taken to eliminate informal payments constituting barriers to equal economic access to services? (I)
- What changes affecting the affordability of the abovementioned services, if any, have occurred since the last state report? (P)

The last indicative question emphasizes the need to ensure both physical and economical access for the most vulnerable groups in the society.

- What measures are needed and what measures have been taken to enhance and ensure physical and economical access for vulnerable groups, including minorities, indigenous populations, women, physically and mentally disabled persons, detained persons, children and adolescents?²⁴⁵ (IP)

c) The third sub-indicator concerns access of the population at large and of particularly vulnerable groups to information and education on the absolute right to freedom from torture. In this regard, accessibility necessitates that the right to seek, receive and impart information concerning all issues relating to torture is upheld. The following indicative questions, underlining the freedom and dissemination of information, will be relevant in the

²⁴⁴ HRC, General Comment No. 18, *Non-discrimination*, 37th session (1989), para. 9.

²⁴⁵ *Ibid.*; HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 11.

assessment of this sub-indicator. The first indicative questions particularly target the dissemination of information to the population at large.

- What measures have been taken to disseminate information to the population at large relating to the right to freedom from torture, available preventive measures, complaints mechanisms and support services?²⁴⁶ (IP)
- Are information campaigns context-specific and flexible, e.g. available in different languages and disseminated through various channels, to reach different groups in the society?²⁴⁷ (IP)
- Do all school children receive obligatory education on human rights, including the right to freedom from torture? (IP)

The following indicative questions aims at ensuring that particularly vulnerable groups, such as detainees, asylum seekers as well as medical patients, receive information on their rights and on available complaints mechanisms as soon as they enter a situation where they become particularly vulnerable to torture or other prohibited treatment.

- How and when is information on rights and complaints mechanisms given to particularly vulnerable groups? (IP)
- Is the information available in different languages and in both written and oral form? (IP)

d) The last accessibility sub-indicator, disaggregated statistics measuring accessibility, aims at measuring *de facto* accessibility through the employment and analysis of statistics.²⁴⁸ However, all statistics asked for, in particular the required disaggregated statistical data, may not always be available. In the following, statistics relating to all aspects of accessibility are outlined. Note that each set of statistics should present statistics not only from the present year but also from previous years. The first indicative questions target physical access to preventive measures and complaints mechanisms.

- Geographical density of police personnel? (IP)
- Geographical distribution of complaints mechanisms? (IP)

The subsequent statistics will provide an indication of physical access to support services.

- Proportion of the population having access to trained medical personnel and essential drugs within one hour's

²⁴⁶ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 10; HRC, General Comment No. 31, *The Nature of the Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 7.

²⁴⁷ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, forthcoming report in 2007 within the Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women's Affairs, on file with author.

²⁴⁸ A state report shall, according to the guidelines of the Committee, "*include sufficient data and statistics to enable the Committee to assess progress in the enjoyment of Covenant rights, relevant to any appropriate article*". HRC, Consolidated guidelines for State reports under the International Covenant on Civil and Political Rights, CCPR/C/66/GUI/Rev.2 (2001), para. C.6.

walk or travel, disaggregated by sex, rural/urban division, ethnic group and geographical area? (IP)

- Geographical density of medical and para-medical personnel and hospital beds? (IP)
- Density of medical personnel in detention centers and prisons (per 1000 interns)? (IP)
- Density of beds at shelters for women (per 10 000 women)? (IP)
- Number of torture rehabilitation centers and total number of beds? (IP)

The last set of statistics asked for is intended to reveal the factual access to information and education on the right to freedom from torture.

- Proportion of school children educated on the right to freedom from torture disaggregated by sex, rural/urban division, ethnic group and geographical area?²⁴⁹ (IP)
- Proportion of population covered by awareness raising programs on the right to freedom from torture, including information campaigns on violence against women, disaggregated by sex, rural/urban division, ethnic group and geographical area?²⁵⁰ (IP)
- Number and size of registered civil society organizations that are involved in the promotion and protection of the right to freedom from torture? (IP)

Acceptable

The third principal indicator and its set of mainly qualitative sub-indicators intend to evaluate the system put in place to ensure the quality of preventive measures, support services, complaints mechanisms. In addition, the cultural acceptability of the relevant institutions and mechanisms ought to be assessed.

a) The first sub-indicator targets the quality of support services and complaints mechanisms. The quality of preventive measures is also indirectly assessed through indicative questions concerning the vetting of and the control over relevant groups working within areas where torture or other prohibited treatment may occur. Hence, the set of indicative questions primarily relates to guidelines and systems of supervision and control. In this context, guidelines may for example take the form of codes of conduct and codes of medical ethics. Supervision may for instance be carried out through regular and unannounced visits to detention centers and other places where torture might occur.

- What measures, including guidelines and systems of supervision, are taken to ensure the non-occurrence of

²⁴⁹ Ibid.

²⁵⁰ Ibid.

torture within all relevant sectors of the society, including both the public and private sphere?²⁵¹ (IP)

- What measures, including guidelines and systems of supervision, are taken to ensure that complaints mechanisms are impartial and independent and abide by other fair trial standards?²⁵² (IP)
- Are medical and para-medical personnel, members of the police force, prison guards, judicial personnel, teachers and military personnel registered in professional registers and/or vetted before employment? (I)

b) Cultural acceptability, the second sub-indicator, emphasizes that the dignity of each individual must always be upheld, through the provision of services, including preventive measures, support services and complaints mechanisms, in a sensitive and context-specific way. As an example, all services should be gender-sensitive. Gender-sensitivity is for instance to ensure that victims of domestic violence or other female victims of torture are examined by female health care personnel and that they may file a report with a police officer who has received special training on gender related crimes. Moreover, it is important that any provision of service is respectful of the culture of individuals, minorities and indigenous people. This also includes the provision of services in different languages or through the use of an interpreter. Confidentiality is another key to cultural acceptability without which many will refrain from using the available services. The following indicative questions are intended to guide the assessment of this sub-indicator:

- What measures, including guidelines and systems of supervision, are taken to ensure that services provided are gender-sensitive?²⁵³ (IP)
- What measures, including guidelines and systems of supervision, are taken to ensure that services respect the culture of individuals, minorities and indigenous people?²⁵⁴ (IP)
- What measures, including guidelines and systems of supervision, are taken to ensure confidentiality? (IP)

Adaptable

The fourth principal indicator strives to capture the process of implementation and integration of the right to freedom from torture through

²⁵¹ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), paras. 7, 8 and 11.

²⁵² *Ibid.*, para. 14; HRC, General Comment No. 13, *Article 14 (Administration of Justice)*, 21st session (1984), paras. 1-3.

²⁵³ See e.g. Commission on Human Rights, *Question on the human rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhuman or degrading treatment or punishment*, Report of the Special Rapporteur, Mr. N. S. Rodley (12 January 1995), E/CN.4/1995/34, para. 24.

²⁵⁴ HRC, General Comment No. 23, *Article 27 (Rights of Minorities)*, 50th session (1994), paras. 1, 6(1) and 9.

continuous policy making, evaluation and education. This indicator underlines that the work on human rights is a constant process with no definite end.

a) The first sub-indicator is intended to ensure that all existing policy documents, such as national strategies, rules, instructions and methods, and practices are subject to systematic and regular review.²⁵⁵ The review and evaluation should preferably be a participatory and transparent process in which for instance NGOs are encouraged to participate. The following indicative questions strive to cover the systematic review of guidelines and practices.

- How is freedom from torture addressed in existing national strategies, rules and instructions?²⁵⁶ (IP)
- How and when are national strategies, rules, instructions and practices evaluated and reviewed?²⁵⁷ (IP)
- How has public participation and civil society participation been ensured in the review and evaluation of existing policies and practices?²⁵⁸ (IP)

b) The second sub-indicator concerns the importance of a coherent and integrated approach where the legislative framework and state policies move toward the same direction. For instance, policy documents must be followed by necessary legislative changes to enable a full realization. In addition, different state and regional authorities must cooperate to avoid contradictory approaches undermining the enjoyment of rights in practice. This is particularly important as relevant policy documents and practices will relate to a number of policy areas such as public health, the judiciary, correctional institutions, the school system and the advancement of women. Preferably, a central state agency and specific regional agencies should be responsible for ensuring coherent and non-contradictory standard setting. Furthermore, it is important to ensure that the regulation of the right to freedom from torture does not contradict or undermine any other human rights. It is also emphasized that the state obligations relating to the right to freedom from torture extend beyond national borders and should hence be reflected in foreign policies, including asylum policies, as well. The following indicative questions are intended to reveal such gaps and contradictions.

- What measures have been taken to ensure coordination and cooperation between relevant agencies and authorities at central and regional level, and between different levels? (IP)
- What agency and/or agencies have the overarching responsibility for ensuring a coherent approach? (IP)
- Have policy documents been coupled with legislative changes? (IP)

²⁵⁵ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 11.

²⁵⁶ *Ibid.*, para. 10.

²⁵⁷ *Ibid.*, para. 11.

²⁵⁸ HRC, general Comment No. 25, *Article 25 ((Participation in Public Affairs and the Right to Vote)*, 57th Session (1996), paras. 5-8.

- How do foreign policies take into account the right to freedom from torture, regarding for instance development cooperation, asylum and export of equipment that could be used to inflict torture?²⁵⁹ (IP)

c) The last sub-indicator concerns the necessity of continuous education of all affected actors on current rights and standards. In contrast to the sub-indicator access to information and education under the general indicator of accessibility, this sub-indicator does not target the population at large but the groups of professionals who work in fields particularly relevant in the context of freedom from torture. The content of the education will vary depending on the targeted group. For instance, health care personnel should receive appropriate training on how to detect and treat torture and the police should receive training on lawful interrogation methods. However, certain components of the education will be the same for all groups. The implementation of the right to freedom from torture demands that, in particular, these individuals have a sufficient knowledge and understanding of this right and other human rights as well as of the national legal framework. Additionally, education should also target harmful traditional practices (e.g. female genital mutilation) and attitudes (concerning e.g. violence against women) having a detrimental effect on the enjoyment of the right of freedom from torture. In the context of torture, it will likewise be important that the education covers preventive measures as well as physical and mental health effects of torture. Groups that should receive continuous education include all law enforcement personnel, health care personnel, judges, lawyers, teachers and civil society organization. The following indicative questions will be relevant in the assessment of this indicator.

- Are any educational programs targeting relevant groups of professionals institutionalized in the country?²⁶⁰ (IP)
- What groups receive education and which components form part of the education?²⁶¹ (IP)
- How is high quality ensured in education and training? (IP)
- Proportion of the relevant groups of professionals that have received education on the right to freedom from torture? (IP)

²⁵⁹ HRC, General Comment no. 31, *The Nature of the General Legal Obligation Imposed on States parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

²⁶⁰ HRC, General Comment No. 20, *Article 7*, 44th Session (1994), para. 10.

²⁶¹ *Ibid.*

5.2 The Right to the Highest Attainable Standard of Health

The first step in the development of indicators is to conceptualize the content of the right in question. Thus, this section will deal with the substance of the right to the highest attainable standard of health as laid down in article 12 of the ICESCR.

Article 12, ICESCR

- 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
- 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right include those necessary for:*
 - a. the provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child;*
 - b. the improvement of all aspects of environmental and industrial hygiene;*
 - c. the prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
 - d. the creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

As a part of the international human rights framework, the fulfilment of the state obligations stemming from right to the highest attainable standard of health necessitates compliance with the core principles of international human rights law.²⁶² Of particular importance are the prohibition of discrimination (art. 2 (2), ICESCR) and the equal right of men and women to the enjoyment of human rights (art. 3, ICESCR). Additionally, the principle of participation needs to be taken into account in the course of realizing the right to health. Participation in the context of the right to health includes for instance public participation in political decisions relating to the right to health.²⁶³ In contrast to the ICCPR, the ICESCR does not explicitly include the right to an effective remedy. Nevertheless, the CESCR has clearly stated that ‘appropriate means’ in art. 2 (1) of the ICESCR entail the

²⁶² See section 2.1.1. where the core principles are explained in more detail.

²⁶³ CESCR, General Comment No. 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, paras. 17, 43 (f) and 54. See also section 2.1.1. where participation is explained in the context of core principles.

right to an effective remedy as no means would be effective unless complemented by judicial remedies.²⁶⁴

Moving on to the content of the right to the highest attainable standard of health and its corresponding state obligations, I want to start by emphasizing that the right to health is not a right to be healthy.²⁶⁵ Instead, the right to health is a right to enjoy the preconditions, facilities, goods and services necessary for the achievement of the highest attainable standard of health. The right contains freedoms, e.g. reproductive freedom and the right to be free from non-consensual medical treatment, and entitlements, e.g. the right to a system of health protection based on equality of opportunity for people to enjoy the highest attainable standard of health.²⁶⁶ Nevertheless, the right to a system of health care is not to be interpreted as a right to free health care. Payments shall, however, be based on the principle of equity and health insurance should be made affordable for all. Yet, as these state obligations belong to the obligations to fulfil they are subject to progressive realization.²⁶⁷ Thus, the right to health encompasses not only health care but also the underlying determinants of health, e.g. environmental and occupational health, protection from violence, health related education, safe water, housing, sanitation and nutrition.²⁶⁸ The elements of the right to health may hence be divided into two categories: one includes elements relating to health care and one contains elements related to the preconditions for health.²⁶⁹ Another division of the different elements of the right to health has been made in the indicators drafted by the OHCHR. Their right to health indicators are divided into indicators on reproductive health, child mortality and health care, natural and occupational environment, prevention, treatment and control of diseases, and accessibility to health facilities and essential medicines.²⁷⁰ In this study, however, the HR indicators will follow the 4-A scheme and not be specifically divided into these types of elements. Instead, each indicator is intended to be equally valid and used for all main elements of the right to health; preconditions for health, health care facilities, goods and services. The reason for not dividing the HR indicators further is to maintain a more holistic approach. Yet, in the development of more detailed country-specific benchmarks a division might be preferred. It should also be mentioned that Paul Hunt, Special Rapporteur on the right to health, uses the analytical framework of available, accessible, acceptable

²⁶⁴ CESCR, General Comment No. 9, *The domestic application of the Covenant*, E/C.12/1998/24, para. 3; CESCR, General Comment No. 3, *The nature of states parties obligations* (article 2, par. 1), Fifth session 1990, paras. 4-5; CESCR, General Comment No. 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, paras. 59-62.

²⁶⁵ CESCR, General Comment No. 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, paras. 8-9.

²⁶⁶ *Ibid.*, para. 8.

²⁶⁷ *Ibid.*, paras. 12 and 36.

²⁶⁸ *Ibid.*, paras. 10, 11 and 21.

²⁶⁹ See e.g. B. Toebes, 'The Right to health', in A. Eide, C. Krause and A. Rosas (eds.), *Economic Social and Cultural Rights- A Textbook* (Kluwer Law International, 2001), p. 174.

²⁷⁰ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

and good quality to the right to health.²⁷¹ This scheme is very similar to the 4-A scheme but seems to be intended for policy makers rather than for compliance assessment and monitoring.²⁷² In comparison, the 4-A scheme covers the same aspects while also adding the dimension of health policies by the principal indicator adaptability. Paul Hunt has however chosen to create his illustrative right to health indicators, focusing on sexual and reproductive rights, in a matrix combining structural, process, and outcome indicators with a number of rights-specific features.²⁷³

The right to health, or at least parts of the right, may be subject to progressive realization.²⁷⁴ However, the CESCR has, in its general comment on the right to health, laid down a number of non-derogable core obligations related to the right to health that each state party has to ensure at all times. According to the Committee, the non-discriminatory access to health facilities, goods and services must always be ensured. Similarly, health facilities, goods and services must be equitably distributed and essential drugs (as defined by the WHO) must be provided. Each state party is obliged to adopt and implement a national public health strategy and plan of action. Health care personnel must receive appropriate training, including human rights education. Measures must be taken to prevent, treat and control epidemic and endemic diseases and immunization against the major infectious diseases ought to be provided. In addition, maternal, reproductive and child health care must also be ensured at all times. Access to information and education concerning the main health problems should also be ensured for everyone. Finally, all states parties must ensure access for all to the minimum essential food needed to be free from hunger and ensure access to basic shelter, housing, sanitation and safe potable water.²⁷⁵

Moreover, in its general comment on the right to health the CESCR stresses that state parties have international obligations to respect the enjoyment of the right to health in other countries. These international obligations require that third parties are prevented from violating the right to health in other countries, that state parties with sufficient means provide assistance to improve access to health facilities, services and goods in other countries and that state parties refrain from imposing embargoes restricting the supply of medicines and medical equipment in other states.²⁷⁶

²⁷¹ Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2005/51, para. 46.

²⁷² *Ibid.*

²⁷³ Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, pp. 23-34

²⁷⁴ See section 2.1.3 where the concept of progressive realisation is explained.

²⁷⁵ CESCR, General Comment No. 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, paras. 43-44.

²⁷⁶ *Ibid.*, paras. 38-42.

5.2.1 The Indicators

Entering the section where the actual indicators are presented and explained, the principles outlined in the introduction to this exemplifying study should be kept in mind. Each set of indicators will first be presented as one complete set followed by a more thorough explanation of each indicator. In the explanatory part, the indicators are supplemented with more detailed indicative questions intended to form part of the country assessment procedure. A table with an overview of the complete sets of indicators can be found in Supplement B.

1. Available

- a. Ratification of international and regional human rights instruments
- b. National legal framework
- c. Possibility to lodge complaints and have them examined
- d. Budget allocation

2. Accessible

- a. Non-discriminatory access to determinants for health, health care facilities, services, goods and complaints mechanisms
- b. Determinants for health, health care facilities, services, goods and complaints mechanisms are physically and economically accessible
- c. Access to health related information and education
- d. Disaggregated statistics measuring accessibility

3. Acceptable

- a. Ensured quality of determinants for health, health care facilities, services, goods and complaints mechanisms
- b. Cultural acceptability

4. Adaptable

- a. A national public health strategy and a plan of action are in place and subject to regular evaluation and review
- b. No contradictions between other rights, legislation or state policies
- c. Continuous education of relevant professionals on current rights and standards

Elaborations

Available

The first principal indicator targets the legal and budgetary framework within the state in question. Subsequent sub-indicators target the state's formal commitment to human rights and whether the national framework is in compliance with the obligations arising out of article 12 of the ICESCR.

a) The first sub-indicator measures the legal commitment to human rights through ratification of international and regional human rights instruments. As the right to health is closely interrelated to and dependent upon the realization of other human rights, ESC-rights and CP-rights alike, it is important to include all human rights instruments in a survey of formal commitments. In this context, it will likewise be important to look into any eventual reservations, or withdrawals of earlier reservations, made by the state in question. Consequently, the following indicative questions should be asked.

- Which international and/or regional human rights instruments have been ratified?²⁷⁷ (I)
- Have additional international and/or regional human rights instruments been ratified and/or denounced since the last state report? (P)
- Have any reservations been made or withdrawn? If reservations remain in force, why? (IP)

b) The second sub-indicator captures the legal implementation of the state's obligations in relation to the right to health. An assessment of the national legal framework includes a survey of all relevant national legislation, from the Constitution to ordinances and regulations at the local level.²⁷⁸ Each law needs to be assessed in the light of the state's human rights obligations arising out of article 12 of the ICESCR. In the following, indicative questions that should be considered as a part of the assessment are outlined. The first set of indicative questions demonstrates the importance of looking at all levels of the normative framework. In addition, it is vital to track all legal changes, progressive and retrogressive, made since the last state report.

- How are ratified international treaties implemented in the national legal system? Are they directly applicable upon ratification?²⁷⁹ (I)
- Is the right to health, the prohibition of discrimination, the principle of equality and the right to an effective remedy included in the Constitution or in a bill of rights, if so, what provisions are made for derogations?²⁸⁰(I)
- What laws and regulations govern underlying determinants of health/recognize the right to health, e.g. laws on occupational safety and environmental

²⁷⁷ Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S1., p. 23.

²⁷⁸ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

²⁷⁹ CESCR, General Comment No. 9, *The domestic application of the Covenant*, EC.12/1998/24, paras. 4-8, 12-15.

²⁸⁰ Consolidated Guidelines for the initial part of the reports of States parties, HRI/1991/1, para. 3; Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S2., p. 23.

protection, laws criminalizing gender-based violence, social security legislation providing for housing etc.²⁸¹

(I)

- Which laws and regulations govern health care facilities, services and goods? (I)

The following indicative questions highlight particular issues of importance in the process of realizing the right to health.

- How does the law regulate patient fees for health care services and goods, and health insurance?²⁸² (I)
- How does the law regulate abortion and fetal sex determination?²⁸³ (I)
- Does the domestic legal framework contain any provisions limiting the right to seek, impart and receive health related information?²⁸⁴ (I)

The following set of indicative questions concern non-discrimination and underlines the importance of legal provisions prohibiting all kinds of discrimination.

- For each law relevant to the right to health, are the prohibition of discrimination and the principle of equality upheld? (I)
- Is the right to health subject to specific non-discrimination provisions, covering direct and indirect discrimination, in domestic law?²⁸⁵ (I)
- Does the domestic legal framework guarantee the right to health, with all its elements, to non-nationals? If not, how is the differentiation justified?²⁸⁶ (I)

The last indicative question is based on the importance to track all legal changes, progressive as well as retrogressive, which have been made since the last state report.

²⁸¹ Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S3., p. 23.

²⁸² CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, paras. 12 (b) and 36.

²⁸³ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9; Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S20., p. 31.

²⁸⁴ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, para. 34; Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S9., p. 26.

²⁸⁵ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, A. Part of the report relating to general provisions of the Covenant, Article 2, para. 2.

²⁸⁶ *Ibid.*, A. Part of the report relating to general provisions of the Covenant, Article 2, para. 1.

- What changes in the abovementioned laws and regulations, if any, have been made since the last state report?²⁸⁷ (P)

c) The third sub-indicator, the possibility to submit complaints and have them examined, is closely related to the previous sub-indicator but constitutes a separate indicator in order to underline the importance of complaints mechanisms and effective remedies.²⁸⁸ In the application of this sub-indicator, it is necessary to study the domestic legal framework and the inclusion or non-inclusion of judicial and administrative remedies for individuals, nationals as well as non-nationals. Complaints mechanisms should be in place for complaints concerning all principal indicators and their sub-indicators; availability (e.g. complaints concerning non-compliance of national law with international human rights law), accessibility (e.g. complaints relating to discrimination), acceptability (e.g. complaints relating to non-acceptable quality of health care services) and adaptability (e.g. complaints concerning failed public participation in the development of the public health strategy). Indicative questions that need to be considered include the following.

- Which judicial, administrative or other competent authorities have jurisdiction to secure the right to health?²⁸⁹ (I)
- Which complaints mechanisms and remedies are available in case of violation, by the state or by third parties, of article 14 committed within the territory or within the jurisdiction of the state?²⁹⁰ (I)
- In case of a violation of any of the elements included in the right to health, who can lodge a complaint? (I)

As remedies likewise concern the prevention of reoccurring violations and the immediate termination of violations, the following indicative questions should be asked.

²⁸⁷ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 5 (a).

²⁸⁸ See e.g. the indicators contained in the Raoul Wallenberg Institute's study on methods and tools for analysis in the work on human rights where the importance of complaints mechanisms is underlined through the inclusion of sub-indicators covering the availability of such mechanisms. The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005).

²⁸⁹ Consolidated Guidelines for the initial part of the reports of States parties, HRI/1991/1, para. 3 (a).

²⁹⁰ *Ibid.*, para. 3 (b); CESCR, General Comment No. 9, *The domestic application of the Covenant*, EC.12/1998/24, para. 9; CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, para. 59. According to the Committee, adequate remedies include restitution, compensation, satisfaction and guarantees of non-repetition.

- How is the immediate termination of a violation as well as the prevention of a reoccurring violation of the right to health ensured upon the reception of a complaint?²⁹¹ (I)
- What preventive measures are available in the context of gender-based violence?²⁹² (I)

With regard to complaints proceedings, the following indicative questions should be asked.

- Does the law provide for legal aid if yes, to what extent?²⁹³ (I)
- Does the law provide for recourse to appeal, if yes, is leave of appeal required?²⁹⁴ (I)

The following indicative question is based on the importance of identifying all eventual changes, progressive as well as retrogressive, made since the last state report.

- Which legal and/or administrative changes relating to the enjoyment of an effective remedy, if any, have been made since the last state report? (P)

At last, statistics on the number of complaints and on the investigation and adjudication of them should be asked for.

- How many complaints concerning the enjoyment of the right to health have been received, investigated and adjudicated by the existing complaints mechanisms since the last state report (divided per year and disaggregated by the prohibited grounds of discrimination)?²⁹⁵ (IP)

d) The fourth sub-indicator concerns health-related budget allocation at the national level. An analysis of expenditure, where the need for services is contrasted with the public expenditure on health, is a good indicator of the state's commitment to realize the right to health. However, the budget analysis should also take into account the percentage of the national budget originating from international assistance or the percentage of the national budget allocated to international assistance. In addition, eventual conditions attached to the provision of international assistance should be scrutinized.²⁹⁶

Thus, indicative questions that should be included in the assessment include the following. Note that all these indicative questions demand that the state

²⁹¹ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, paras. 51 and 59.

²⁹² Ibid., paras. 21 and 51.

²⁹³ CESCR, General Comment No. 9, *The domestic application of the Covenant*, EC.12/1998/24, para. 9.

²⁹⁴ Ibid.

²⁹⁵ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

²⁹⁶ An example of a condition with a negative impact on the full enjoyment of the right to health could be the so-called 'global gag rule' restricting family planning activities funded by USAID (note however that the USA is not a party to the ICESCR). See e.g. Center for Reproductive Rights, *The Bush Global Gag Rule: Endangering Women's Health, Free Speech and Democracy* (July 2003), http://www.crlp.org/pub_fac_ggrbush.html, last visited 1/10-2006.

provides figures not only for the present year but also for previous years in order to assess development over time. In order to assess compliance, it will also be necessary to relate the figures to world averages.

- Public health expenditure as percentage of GDP?²⁹⁷ (IP)
- What percentage of regional budgets is spent on health?²⁹⁸ (IP)
- What percentage of the total health expenditure are out-of-pocket payments, i.e. payments made by the patients?²⁹⁹
- What percentage, if any, of the national budget originates from international assistance?³⁰⁰ (IP)
- What percentage, if any, of the national budget is allocated to international assistance relating to health?³⁰¹ (IP)
- Are any specific conditions related to the right to health attached to the provision of international assistance?³⁰² (IP)

In addition, the following more precise indicative questions should be asked.

²⁹⁷ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 3; Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, P3., p. 23. This formula is already in use by UN agencies. See e.g. UNDP, *Human Development Indicators 2003*, available at http://hdr.undp.org/reports/global/2003/indicator/indic_57_1_1.html, last visited 10/12-2006. According to UNDP's Human Development Indicators, public health expenditure consists of current and capital spending from government (central and local) budgets, external borrowings and grants (including donations from IGOs or NGOs) and social (or compulsory) health insurance funds.

²⁹⁸ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 3.

²⁹⁹ WHO, *Consultation on Indicators for the Right to Health*, Geneva 1-2 April 2004, Meeting Report, p. 11.

³⁰⁰ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 9.

³⁰¹ *Ibid.*, A. Part of the report relating to general provisions of the Covenant, Article 2, para. 3; Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, para. 49 (c) (iv).

³⁰² CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, paras. 39 and 50. Regarding international development assistance and sexual and reproductive health see e.g. Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S15-16 and P15-17, p. 28.

- How are complaints mechanisms related to the right to health funded? (IP)
- How are mechanisms of supervision related to the right to health funded? (IP)

Accessible

The second principal indicator aims at capturing the actual access, without discrimination, to determinants for health, health care facilities, services and goods, and complaints mechanisms. The last sub-indicator demands the employment of statistics, often in a disaggregated form.

a) The first sub-indicator concerns non-discriminatory access to determinants for health, health care facilities, services and goods, and complaints mechanisms. In this context, particular attention needs to be paid to internationally prohibited grounds of discrimination, including race, color, sex, language, religion, political and other opinion, national or social origin, property, birth or other status.³⁰³ The indicative questions focus, in particular, on the most vulnerable groups in the society and on the measures needed and the measures already taken to improve their access to all health related determinants, facilities, services and goods.

- What groups can be identified as the most vulnerable or marginalized in the context of health?³⁰⁴ (IP)
- What minority groups and/or indigenous people are recognized and/or not recognized by the state? How is their health situation? (IP)
- What measures are needed and what measures have been taken to improve the health situation of vulnerable groups?³⁰⁵ (IP)

b) The second sub-indicator relates to physical and economical accessibility of determinants for health, health care facilities, services, goods and complaints mechanisms. Physical access implies that health related determinants, health care facilities, services, goods and complaints mechanisms are within safe physical reach for the whole population. Economic accessibility requires that health related determinants, health care facilities, services, goods and complaints mechanisms are affordable for all. Payments should be based on the principle of equity.³⁰⁶ In the following, a

³⁰³ ICESCR, Art. 2 (2).

³⁰⁴ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, para. 12 (b); CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para.5.

³⁰⁵ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, paras. 5 (b), (c) and (i)..

³⁰⁶ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, paras. 12 (b) and 43 (e).

number of indicative questions that should be used in the assessment are outlined. The first set of questions concern economic accessibility and the system needed to ensure affordability.

- How is affordability for all ensured with regard to health related determinants, health care facilities, services and goods?³⁰⁷ (IP)
- Is the filing of a complaint with a complaints mechanism levied with a fee? (I)
- What changes affecting the affordability of the abovementioned services, if any, have occurred since the last state report? (P)
- What measures have been taken and what measures are needed to eliminate informal payments in the context of health related determinants, health care facilities, services and goods as well as complaints mechanisms? (IP)

The last set of indicative questions emphasizes the need to ensure both physical and economical access for the most vulnerable groups in the society.

- What measures are needed and what measures have been taken to enhance and ensure physical and economical access for vulnerable groups, including minorities, indigenous populations, women, older persons, physically and mentally disabled persons, persons living with HIV/AIDS, detained persons, children and adolescents?³⁰⁸ (IP)

c) The third sub-indicator concerns access to health related information and education. In this regard, accessibility necessitates that the right to seek, receive and impart information concerning health issues is upheld, although without impairing the right to confidentiality of personal health data.³⁰⁹ The following indicative questions, underlining the freedom and dissemination of information, will be relevant in the assessment of this sub-indicator:

- What measures have been taken to disseminate information to the population at large relating to healthy lifestyles, health problems and effective preventive measures, reproductive health, available health services, complaints mechanisms and support services and harmful traditional practices such as female genital mutilation?³¹⁰ (IP)
- Are information campaigns context-specific and flexible, e.g. available in different languages and disseminated

³⁰⁷ Ibid., paras. 12 (b), 36 and 52.

³⁰⁸ Ibid.

³⁰⁹ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, paras. 12 (b), 34, 36, 37 and 44 (d).

³¹⁰ Ibid.; CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 8.

through various channels, to reach different groups in the society?³¹¹ (IP)

- Do all school children receive obligatory education on human rights, including the right to health together with elements of reproductive and sexual health?³¹² (IP)

d) The last accessibility sub-indicator, disaggregated statistics measuring accessibility, aims at measuring *de facto* accessibility through the employment and analysis of statistics. Following the recommendations by Paul Hunt, Special Rapporteur on the right to health, the indicative questions ask for data disaggregated by at least sex, race, ethnicity, rural/urban and socio-economic status.³¹³ All statistics asked for, in particular the required disaggregated statistical data, may not always be available. Yet, several international agencies, such as the WHO, the UNDP and the UNFPA, can contribute with quantifiable data.³¹⁴ In the following, statistics relating to all aspects of accessibility are outlined. Note that each set of statistics asked for should cover not only the present year but also previous years to enable an assessment over time. The first set of indicative questions highlights women's enjoyment of reproductive health, an aspect of the right to health with an immense impact on women's lives.

- What are the total and adolescent fertility rates?³¹⁵ (IP)
- Percentage of women (15-44 years old) using modern contraception or whose partner is using contraception, disaggregated by race, ethnicity, rural/urban and socio-economic status?³¹⁶ (IP)
- Medical terminations of pregnancy as a proportion of live births, disaggregated by race, ethnicity, rural/urban and socio-economic status?³¹⁷ (IP)
- Maternal mortality ratio, before and after childbirth, disaggregated by race, ethnicity, rural/urban and socio-economic status?³¹⁸ (IP)

³¹¹ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, forthcoming report in 2007 within the Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women's Affairs, on file with author.

³¹² Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, S24., p. 33.

³¹³ *Ibid.*, paras. 49 (b) and 66 (b).

³¹⁴ See e.g. WHO, World Health Reports; UNDP, Human Development Reports; and UNFPA, State of World Population Reports.

³¹⁵ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

³¹⁶ *Ibid.*, p. 9. This indicator is similar to the Millennium Development Goal (MDG) indicators connected to goal 6, see UN Statistics Division, Millennium Development Goals Indicators, indicators 19, 19a and 19c, <http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm>, last visited 9/1-2007.

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*; CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on*

The subsequent statistics will provide an indication of the physical access to health related determinants, facilities, services and goods, and indicate where additional measures are needed.

- Proportion of the population having access to trained medical personnel and essential drugs within one hour's walk or travel, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³¹⁹ (IP)
- Geographical density of medical and para-medical personnel and hospital beds?³²⁰ (IP)
- Proportion of population with access to safe water, sanitation, food and housing disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²¹ (IP)

Statistics on health-insurance coverage are indicative of the factual situation of economic access.

- Proportion of population covered by health insurance, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²² (IP)

The following statistics are intended to provide a picture of the factual health situation in a state by asking for life expectancy, child mortality rates, immunization rates, HIV/AIDS prevalence and health consequences following unsafe natural or occupational environment. When disaggregated, these statistics will also indicate the prevalence of discrimination as well as variations in physical and economical access for different groups and among different geographic areas.

- Life expectancy at birth, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²³ (IP)

Economic, Social and Cultural Rights, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 4 (g); Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, O5., p. 29. This indicator is also a Millennium Development Goal (MDG) indicator, see UN Statistics Division, Millennium Development Goals Indicators, indicator 16, <http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm>, last visited 9/1-2007.

³¹⁹ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 4 (f).

³²⁰ Ibid.

³²¹ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9. This indicator partly corresponds to Millennium Development Goal (MDG) indicators, see UN Statistics Division, Millennium Development Goals Indicators, indicators 30-32, <http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm>, last visited 9/1-2007.

³²² Ibid.

³²³ Ibid.; CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 4 (e).

- Infant and under five mortality rates, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²⁴ (IP)
- Proportion of population immunized against vaccine-preventable diseases, disaggregated by age, sex, race, ethnicity, rural/urban and socio-economic status?³²⁵ (IP)
- Proportion of population living with HIV/AIDS, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²⁶ (IP)
- Incidence of deaths/injuries/diseases caused by unsafe natural and occupational environment, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²⁷ (IP)

The last set of statistics asked for is intended to reveal the factual access to health related information and education.

- Proportion of school children educated on health issues, including sexual education, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²⁸ (IP)
- Proportion of population covered by awareness raising programmes on health issues, including reproductive and sexual health, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status?³²⁹ (IP)
- Number of registered civil society organizations that are involved in the promotion and protection of the right to health?³³⁰ (IP)

³²⁴ Ibid.; CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, paragraph 4 (a). This indicator is also a Millennium Development Goal (MDG) indicator, see UN Statistics Division, *Millennium Development Goals Indicators*, indicators 13-14, <http://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm>, last visited 9/1-2007.

³²⁵ Ibid.; CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 4(d).

³²⁶ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

³²⁷ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

Acceptable

The third principal indicator and its set of mainly qualitative sub-indicators intend to assess the quality of preconditions for health, health care services, goods and complaints mechanisms, targeting not only their standard but also their cultural acceptability.

a) The first sub-indicator aims at measuring whether the quality of determinants for health, health care facilities, services, goods and complaints mechanisms is ensured or not. To begin with, a set of indicative questions relating to the standard of quality of health care facilities, goods and services should be asked.

- What measures, including guidelines and systems of supervision, are taken to ensure that health facilities, goods and services, including treatments, equipment and drugs, are scientifically and medically appropriate?³³¹ (IP)
- Do all health care facilities have access to safe water and adequate sanitation?³³² If not, which measures are taken to improve the situation? (IP)
- Are all medical and para-medical personnel vetted before employment and/or registered in a professional register?³³³ (I)

The following questions target the ensured quality of determinants for health, including natural and occupational environment, water, food, sanitation and housing.

- What measures, including guidelines and systems of supervision, are taken to ensure and improve the natural and occupational environment?³³⁴ (IP)
- What measures, including assistance and systems of supervision, are taken to ensure and improve sanitary housing conditions in publicly as well as privately owned properties functioning as housing?³³⁵ (IP)

³³¹ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, para. 12 (d).

³³² Ibid.

³³³ Ibid., para. 35.

³³⁴ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 5 (f).

³³⁵ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, para. 43 (c); The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), p. 19.

- What measures, including guidelines and systems of supervision, are taken to ensure that food and water sources are of acceptable quality?³³⁶ (IP)
- What measures, including guidelines and systems of supervision, are taken to ensure that complaints mechanisms function in accordance with international standards?³³⁷ (IP)

b) Cultural acceptability, the second sub-indicator, emphasizes that the dignity of each individual must always be upheld, through the respect for medical ethics, including respecting the general rule of consent for medical treatment, and the provision of services in a sensitive and context-specific way. The provision of health care facilities, services and goods should be respectful of the culture of individuals, minorities and indigenous people, for instance with regard to traditional preventive care and medicines. In addition, cultural acceptability requires gender-sensitivity and confidentiality. Examples of gender-sensitivity are the establishment of specialized clinics for victims of sexual violence as well as ensuring that women can visit health care facilities without having a spouse or another male family member present. Confidentiality is a key to cultural acceptability without which many will refrain from using the available facilities, services and goods. The following indicative questions are intended to guide the assessment of this sub-indicator:

- What measures, including guidelines and systems of supervision, are taken to ensure that health care personnel respect medical ethics?³³⁸ (IP)
- What measures, including guidelines and systems of supervision, are taken to ensure that health facilities, goods and services, including treatments, equipment and drugs, respect the culture of individuals, minorities and indigenous people?³³⁹ (IP)
- How is gender-sensitivity implemented and ensured throughout the health care system?³⁴⁰ (IP)
- What measures, including guidelines and systems of supervision, are taken to ensure confidentiality throughout the health care system?³⁴¹ (IP)

³³⁶ CESCR, General Comment Nr. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, paras. 43 (b) and (c).

³³⁷ CESCR, General Comment No. 9, *The domestic application of the Covenant*, EC.12/1998/24, paras. 7 and 9.

³³⁸ CESCR, General Comment No. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, paras 12 (c) and 34; The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, forthcoming report in 2007 within the Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women's Affairs, on file with author.

³³⁹ CESCR, General Comment No. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, para. 27.

³⁴⁰ *Ibid.*, paras. 12 (c) and 52.

³⁴¹ *Ibid.*, para. 12 (c); Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the

Adaptable

The fourth principal indicator strives to capture the process of implementation and integration of the right to health through continuous policy making, evaluation and education. This indicator underlines that the work on human rights is a constant process with no definite end.

a) The first sub-indicator is intended to ensure that a national public health strategy and a plan of action are in place and that they are subject to regular evaluation and review. All elements of the right to health should be covered by national strategies and plans of action, whether in one document or in several different strategies and plans. Crucial components of any national strategy or plan are clear provisions on the allocation of resources to fulfill the objectives. In the process of developing the national public health strategy and the plan of action, a participatory and transparent approach shall be taken. People's participation in decision-making processes is vital to promote health and ensure the effective provision of health services. In addition, the civil society should be encouraged to participate in the development of strategies and plans. The following indicative questions strive to cover the aforementioned elements of national strategies and action plans.

- Do a national public health strategy and a national plan of action exist at the state level? Do separate strategies and/or plans of action exist at regional/municipal levels?³⁴² (IP)
- Which elements of the right to health are covered by national public health strategy/strategies and national plan(s) of action and what is their period of application?³⁴³ (IP)
- How has public participation and participation of other relevant stakeholders such as the civil society been ensured in the development, implementation and evaluation of health strategies and plans of action?³⁴⁴ (IP)

highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, para. 49 (c) (iii).

³⁴² CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 2; CESCR, General Comment No. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, paras. 43 (f) and 56.

³⁴³ OHCHR, *Indicators for Monitoring Compliance with International Human Rights Instruments, Conclusions and Recommendations*, Second Expert Consultation, Geneva, 30-31 March 2006, p. 9.

³⁴⁴ CESCR, *Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/1991/1, B. Part of the reporting relating to specific rights, Article 12, para. 7; CESCR, General Comment No. 14, *The right to the highest attainable standard of health* (article 12), E/C.12/2000/4, paras. 54 and 57; Commission on Human Rights, *Economic, Social and Cultural Rights*, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable

- How and when are health strategies and plans of action evaluated and reviewed?³⁴⁵ (IP)
- Are sources of resource allocation, corresponding to objectives included in health strategies and plans of action?³⁴⁶ (IP)

b) The second sub-indicator underlines the importance of a coherent and integrated approach where the right to health, as well as other human rights, are upheld throughout all legal and policy documents.³⁴⁷ For instance, policy documents must be followed by necessary legislative changes to enable full realization. In addition, different state and regional authorities must cooperate to avoid contradictory approaches undermining the enjoyment of rights in practice. Preferably, a central state agency and specific regional agencies should be responsible for ensuring coherent and non-contradictory standard setting. The following indicative questions are intended to reveal such gaps and contradictions:

- What measures have been taken to ensure coordination and cooperation between relevant agencies and authorities at central and regional level, and between different levels? (IP)
- What agency or agencies, if any, are responsible for ensuring a coherent approach? (IP)
- Have health strategies and national action plans been coupled with legislation such as a framework law?³⁴⁸ (IP)

c) The last sub-indicator concerns the necessity of continuous education of all affected actors on current rights and standards. In contrast to the sub-indicator access to information and education under the general indicator of accessibility, this sub-indicator does not target the population at large but the groups of professionals who work in fields related to the right to health. The content of the education will vary depending on the targeted group. For instance, health care personnel should receive appropriate training on how to provide safe health care and employers on how to ensure a safe occupational environment. However, certain components of the education will be the same for all groups. The implementation of the right to health likewise demands that, in particular, these individuals have a sufficient knowledge and understanding of the right to health and of other human rights. Additionally, education should also target harmful traditional practices (e.g. female genital mutilation) and attitudes (concerning e.g. reproductive health and gender roles) having a detrimental effect on the

standard of physical and mental health, Paul Hunt, E/CN.4/2006/48, para. 49 (c) (ii), and, S8 and P8, p. 25.

³⁴⁵ Ibid., paras. 36 and 43 (f).

³⁴⁶ CESCR, General Comment No. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, para. 53.

³⁴⁷ The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, forthcoming report in 2007 within the Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women's Affairs, on file with author.

³⁴⁸ CESCR, General Comment No. 14, *The right to the highest attainable standard of health (article 12)*, E/C.12/2000/4, para. 56.

enjoyment of the right to health. For example, groups that should receive continuous education include health care personnel, judges, lawyers, teachers, employers, trade unions and other civil society organizations. The following indicative questions will be relevant in the assessment of this indicator:

- Are any educational programs targeting relevant groups of professionals institutionalized in the country?³⁴⁹ (IP)
- What groups receive education and what components form part of the education?³⁵⁰ (IP)
- How is high quality ensured in education and training? (IP)
- Proportion of the relevant groups of professionals that have received education on the right to health?³⁵¹ (IP)

³⁴⁹ Ibid., paras. 12 (d) and 36.

³⁵⁰ Ibid.

³⁵¹ UNDP, BiH, RMAP, CoP Meeting Yerevan 2006, *Checklist health*, p. 2, available at http://europeandcis.undp.org/?wspc=practice-4_h_5_4, last visited 19/11-2006.

6 Analysis and Conclusions

This final chapter aims at providing an analysis of the previous chapters and, perhaps most importantly, a presentation of the lessons learnt throughout the writing process. I have to acknowledge that the indicators approach has proved to be a very challenging method, in particular when it comes to the actual drafting process. It is hence my hope that others can avoid or prevent some of the problems discovered during this work. As will be shown below, many questions should be discussed and researched in the future.

To start with, an analysis of the problems encountered in the process of developing indicators, coupled with an analysis of anticipated weaknesses in a future application of the indicators as well as other findings made in the process of drafting indicators, are provided. The second section includes a list of questions that would need further analysis if a coherent indicators approach is to be institutionalized within the state reporting system.

6.1 Challenges and Possibilities

After having outlined the basis on which the indicators are founded, through the scope of state obligations to the state reporting process and finally to HR indicators at a theoretical level, I entered the part of the study where indicators were in fact to be drafted. Much material exist on indicators in theory, much less material contain comprehensive examples of sets of indicators. This made the drafting process more challenging but also, certainly, more interesting. In the following, I will try to outline the main challenges and problems discovered during the drafting of indicators for freedom from torture and for the right to health. In this context, it should also be stressed that the same problems and issues arose for both sets of indicators alike. The fact that the two chosen rights are often regarded as belonging to two different groups of rights did not have any impact in this regard. Freedom from torture was not easier to pinpoint through appropriate indicators than was the right to health. The fact that one right is partly subject to progressive realization whereas the other is absolute was not mirrored in the final indicators as would be supposed. However, I believe that this difference would rather be demonstrated in the actual assessment of the result provided through the use of indicators.

In the beginning, I had planned to follow the structure of the previous and current work with indicators at the Raoul Wallenberg Institute, i.e. the 4-A scheme as the four principal indicators, each one of them supplemented with a set of sub-indicators followed by explanations.³⁵² However, as I proceeded

³⁵² The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005). At present, HR indicators are being

in the drafting process, I thought that this framework was too limited in the context of state reporting, in particular with regard to the already existing reporting guidelines.³⁵³ Thus, I chose to expand and elaborate the original structure of principal indicators and sub-indicators with one additional layer under each sub-indicator, the indicative questions. In doing this, I could include more questions and also reach a more detailed level of information. Another advantage was that the structure became clearer than it would have been if the content of the indicative questions had been included in an explanatory text for each sub-indicator. As these indicators are explicitly intended for state reporting, it is my belief that a clear and precise structure will make them easier to use by both state parties and other users such as NGO's. In addition, the use of indicative questions as a third layer enables a more precise outline of the state obligations in question. On a more negative account, the level of detail in the indicative questions may make it easy to confuse them with benchmarks. For instance, the indicative questions on budget allocation may be too close to benchmarks in practice. In order to assess country compliance, expenditure needs to be analyzed against a world average or against a specific target set by the treaty bodies. On the other hand, it is not impossible to imagine that at least some indicative questions, in particular when the use of them shows a tendency of retrogression, could be transformed into country-specific benchmarks by the treaty monitoring body. Whichever structure chosen, however, country-specific benchmarks will be a valuable supplement to the use of indicators as they can take the specificities of each country situation into account. A coherent structure with different layers of indicators is lacking within the current state reporting procedure, where indicators are used but in a less outspoken way. The insertion of all sets of indicators into tables also contributed to clarity in demonstrating the links between all levels of indicators. Additionally, the tables noticeably displayed the need for a thorough analysis of the relationship between all indicators, sub-indicators and indicative questions. I believe that such an analysis should be done in any future elaboration of indicators at different levels.

Perhaps the most difficult part in the actual drafting of indicators is to strike a good balance between specificity and generality in the content of the indicators. On one hand, I found it impossible to include all elements of one specific right, as the indicators need to be manageable in practice. On the other hand, a too narrow scope of the indicators risks to ultimately diminishing the right. Nonetheless, a careful balance need to be struck so as not to overstep the limits of treaty interpretation, ultimately risking a

used in a Gender Justice Project, commissioned by ILAC for the Haitian Ministry of Women's Affairs, as a tool for selection and analysis of best practices of law and implementation within the sphere of gender justice. The Gender Justice Project will be completed and presented in the beginning of 2007.

³⁵³ In this regard, it should also be noted that the indicators in the Raoul Wallenberg Institute of Human Rights and Humanitarian Law's initial work on indicators, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), are intended for use within a different setting; state authorities and municipalities. Naturally, this as well as the draft format (the indicators has not yet been piloted) has influenced the structure and level of detail of the indicators.

creation of indicators that will not be taken seriously. Thus, to find a balance proved to be an extremely difficult and yet crucial exercise. In this context, the first step of identifying the state obligations corresponding to each right is essential. During that process one also has to make a choice regarding the sources that will form the basis of these obligations. This choice will largely affect the balance between specificity and generality as well as the level of progressive treaty interpretation. Questions arising in this process include questions concerning the use of general comments and guidelines for reporting, the potential use of jurisprudence as well as the use of other available sources outside the sphere of the treaty bodies. I chose to include general comments and guidelines for reporting as the two main sources besides the texts of the treaties. In the context of the right to freedom from torture, jurisprudence from the HRC was also used. Additionally, I made references to previous works where indicators had been developed as well as to other academic works. I believe that considerations concerning sources would need to be thoroughly discussed in any future large-scale indicator project.

Closely related to this problem is the apparent overlapping and interrelatedness of different rights. The exemplifying study only included two different rights but a number of similarities, at times even identical indicators, can be seen when comparing the two sets. This supports the underlying theory that the difference between CP-rights and ESC-rights and their corresponding state obligations is largely overstated. One right will always be very much intertwined with several other rights, both within the own sphere of rights and amid the two different sets of rights. However, in the development of indicators, this also leads to a number of questions. For example, I have chosen to include indicators that are based on general comments concerning other rights in the relevant Covenants. Is this the right way forward or should indicators strive to only extract and capture the specificity of each right? Yet, keeping in mind the interrelatedness and overlapping of different rights one has to ask whether that would at all be possible? On the other hand, if indicators were to be developed for each right contained in international human rights instruments and was to be assessed by one unified treaty body, unnecessary duplication of indicators should be avoided. A number of questions would then have to be clarified. For instance, should effective remedies be dealt with separately for all rights or under one unified heading? Should statistics on for example access to health care be separated from the sets of indicators for each right and instead form part of a more general compilation of statistics, which could serve as a reference document for all rights? Yet another example, should preventive measures for gender based violence be asked for under all relevant rights (e.g. right to health, freedom from torture, right to life etc.) or should they only be asked for in the assessment of the most relevant right, and if so, which right is the most relevant?

Due to the limited scope of this exemplifying study, other human rights instruments, such as the CAT and the CEDAW as well as their general comments and jurisprudence, have not been used in the exemplifying study.

However, if a unified state reporting procedure was put into place, all these instruments and the interpretation of them by the treaty bodies would form part of any development of indicators. Seeing the overlapping between only two rights in this exemplifying study, it is not difficult to foresee that overlapping will be extensive if all rights would be included in the exercise of developing indicators. A unified reporting system would also have to deal with the challenge of different ratification patterns. For instance, a set of indicators for the right to freedom from torture taking into account all relevant international human rights provisions could only be applied to countries that are parties to all the instruments. Which indicators should then be applied to a country that has ratified the ICCPR but not the CAT? Bearing this in mind, indicators may still have to be created separately for each treaty and its provisions, which means that some of the advantages of a more universal and unified system are lost.

With overlapping in mind, one way of making state reporting more comprehensible and manageable might be to create a more all-embracing core document for each country based on the information provided through the use of indicators created for initial reports. The content of each core document would of course vary depending on the ratified treaties. However, if a core document shall be helpful in future country assessments it would also need to be continuously updated. One way of doing this would be to already from the beginning create clear links between indicators used for initial reports and indicators used for periodic reports. For this reason, I believe that the indicators used in periodic state reporting could contribute to updates of the core document if that linkage is taken into account in the creation of indicators. My opinion is hence that a successful indicators approach demands that indicators are consistently used throughout the state reporting system. This interrelatedness between initial reports and periodic reports is also the reason why I have chosen to combine the two in my sets of indicators. Still, it likewise has to be acknowledged that such a system would necessitate additional full-time staff and funding in order to be viable. For instance, the core documents would preferably be managed through a database, which if open to the public would also have the advantage of creating a more open and accessible information system.

The use of the 4-A scheme and the use of the same scheme of principal indicators for all rights bring both advantages and disadvantages. One problematic aspect with the 4-A scheme is the interrelatedness of the four principal indicators. I sometimes found it difficult to find the right place for the sub-indicators as well as the indicative questions. One solution might be to add a set of introductory indicative questions, or to make a set of indicative questions connected to more than one sub-indicator. On the other hand, this could present some challenges to the logic of using the 4-A scheme. Even though my aim has been to create a logical and coherent framework, the impression is still somewhat disrupted. As an example, different aspects of complaints mechanisms are dealt with under the auspice of three out of four principal indicators. If the 4-A scheme is to be used, it would in my opinion be difficult to merge them into one single sub-

indicator under one of the principal indicators as this would undermine the logic of using the four A's, i.e. the importance of highlighting the aspects connected to each principal indicator. Also, the more detailed requests for information, i.e. in particular on the level of indicative questions, the more difficult it is to separate the four A's from each other. Nevertheless, I believe that the same situation would arise under any other similar simplified scheme as well. If the principal indicators were different for different rights, mirroring the specific elements of a particular right, the system might feel less strained.³⁵⁴ Yet, using the same scheme all over would bring several advantages. It would be easier to see the interrelatedness of rights and corresponding obligations and it would be easier to compare the progress/regression made under each right. In addition, one single scheme may be easier to grasp with its pedagogical merits; they are easy to remember and may be more attractive to a larger audience. All these advantages and disadvantages would need to be carefully considered in any future development of indicators. If the decision would be to create one single scheme for all rights, other schemes would have to be further researched and tested. One possible scheme is of course the already institutionalized respect, protect and fulfill scheme. Yet another idea could be to create an even easier and more practical scheme, for instance through the use of the headings such as law, policy and reality as the principal indicators.³⁵⁵ Considering the close relations between the different schemes, it could also be interesting to connect them in different constellations in one single matrix.³⁵⁶ The issue of alternative schemes would need much further elaboration and research in the future.

One important aspect that ought to be considered in this context is the fact that the indicators drafted in this study have not been tested in practice. Even though this has not been done in this particular study, due to its limited scope, I believe that any development of indicators should include such a pilot study and a subsequent evaluation as a natural last part of the process. The consistency over time of the indicators would moreover have to be assessed and evaluated over time. Previous experiences at the Raoul Wallenberg Institute have likewise demonstrated the importance of actually applying the indicators in practice in order to reveal their weaknesses and

³⁵⁴ See e.g. OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, Annex, Tables 1-4. The illustrative indicators have been structured according to core elements of each right. For instance, the right to health is divided into reproductive health; child mortality and health care; natural and occupational environment; prevention, treatment and control of diseases; and accessibility to health facilities and essential medicines.

³⁵⁵ This particular alternative has also formed part of the discussions at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in the course of the on-going Gender Justice Project. The word reality may also be changed to either implementation or actual situation.

³⁵⁶ For an example of this see e.g. OHCHR, Report on Indicators for Monitoring Compliance with International Human Rights Instruments: a Conceptual and Methodological Framework, HRI/MC/2006/7, 11 May 2006, Annex, Tables 1-4. The tables of indicators are placed in a matrix, connecting core elements of the rights with structural, process and outcome indicators.

strengths.³⁵⁷ This being said, one might wonder why I have still included a theoretical discussion on for instance access to statistics and other related practical problems. The reason for that is simply that I still think that all these issues need to be highlighted already at the beginning of the process. Thus, even if the real difficulties will not show until after an actual test in practice, I believe that the magnitude of the problems will largely depend on the amount of preparatory work done. As a consequence, future developments of indicators could probably benefit a lot from the involvement of statisticians and other relevant groups of professionals. It is apparent that the lack of accurate data will be a problem if a streamlined indicators approach is adopted. On the other hand, that the data is actually asked for might also contribute the improvement of national data collection, provided that such requests are coupled with technical assistance measures. In addition, a well-functioning and efficient cooperation between all relevant UN and other entities in order to share already existing information is essential.

6.2 Questions for the Future

This study ends with a number of questions for the future, based on the analysis made in the previous section. Thus, the following questions would need to be subject to extensive discussions and research to pave the way for a more coherent use of indicators within the state reporting system.

First, I start with some questions of a more general nature.

- What definitions, e.g. HR indicator, benchmark and different types of HR indicators, can be agreed upon as a starting point?
- Should indicators be used throughout the state reporting system, and if so, how should such a system be framed in order to yield the best results?
- How should different ratification patterns be taken into account in the creation of indicators?
- Which steps should be included in the process of developing indicators, for instance pilot tests and evaluations?

³⁵⁷ This has for instance been the case in the current Gender Justice Project at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law where the practical application of the indicators revealed several shortcomings and ultimately resulted in adjustments. See also The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, C. Johnsson, J. Grimheden, K. Nowak, J. Svedberg and A. Algård, *A Study on Methods and Tools for Analysis in the Work on Human Rights* (Lund, 2005), pp. 32-33, where a pilot study is suggested as an important way forward.

- How should statisticians and other non-legal professions be involved in the drafting process? How should states parties be consulted in the process?

The following questions concern the structure, i.e. the scheme and format, used for the indicators.

- How should sets of indicators be structured, for instance, how many layers of indicators should be used?
- Should one scheme, e.g. the 4-A scheme, be used for all rights or should each right have its own scheme with the point of departure being the main elements of each particular right?
- If the choice is to use one single scheme, which possible schemes could be imagined? Which are their advantages and weaknesses?
- Should country-specific benchmarks be developed, drawing on the results displayed through the use of indicators? How could benchmarks be set in a country participatory way?³⁵⁸

Next set of questions targets the actual content of the indicators and is relevant whichever structure chosen.

- What texts, besides the treaties themselves, should form the theoretical basis of future indicators? General Comments? Jurisprudence? Concluding Observations? Other sources?
- How could a balance between specificity and generality be achieved without diminishing the content of the rights?
- How should duplication and overlapping between different sets of indicators be avoided?

At last, some questions regarding the use of indicators in practice.

- What further technical support measures should be offered to states parties in need of enhancing their national data collection and technical ability to draft state reports?
- How should the information obtained through the use of indicators be managed, e.g. through an open and updated database including

³⁵⁸ For suggestions in this regard, see e.g. E. Riebel, *The IBSA Procedure as a Tool of Human Rights Monitoring*, Background paper to the Expert Symposium, Measuring developments in the realization of the right to food- the IBSA Procedure (22-23 May, 2006, Mannheim), pp. 77-80. The IBSA (Indicators, Benchmarks, Scoping, Assessment) Procedure suggests that country-specific benchmarks should be set by states parties on the basis of an accepted list of indicators used by the CESCR (or by another treaty body).

core documents as well as concluding observations and other documents?

- How could a better cooperation be achieved with other UN and other entities regarding the use of data?

To sum up, the elaboration of HR indicators is a difficult and time-consuming process. Nevertheless, I still adhere to the thesis that the use of indicators within state reporting could contribute to enhanced clarity, objectivity and transparency. In particular, I believe that the use of indicators for both CP-rights and ESC-rights would contribute to the forwarding of human rights. A similar structure for all kinds of human rights would clearly demonstrate the universality and interrelatedness of human rights, as well as the similarity of state obligations. There is no doubt that a great deal of research already exists within the field of HR indicators. However, an extended and successful elaboration and use of indicators will require further preparatory research and work. In particular, all actors involved in the creation and use of HR indicators would benefit from using a coherent terminology and definitions. I believe that each single elaborated indicator needs to be analysed and scrutinized in light all the aforementioned questions. The elaborated indicators would also need to be tested in practice by both states and NGOs. It is my hope that the already existing work within the OHCHR regarding HR indicators will expand and intensify in order to create a platform for a more consistent use of HR indicators within state reporting.

Supplement A

ICCPR, Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

ICESCR, Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Supplement B

The Right to Freedom from Torture		
Principal indicators	Sub-indicators	Indicative questions
<i>1. Available</i>	a) Ratification of international and regional human rights instruments	<ul style="list-style-type: none"> - Which international and/or regional human rights instruments have been ratified? - Have additional international and/or regional human rights instruments been ratified and/or denounced since the last state report? - Have any reservations been made or withdrawn? If reservations remain in force, why?
	b) National legal framework	<ul style="list-style-type: none"> - How are ratified international treaties implemented in the national legal system? Are they directly applicable upon ratification? - Is the right to freedom from torture, the prohibition of discrimination, the principle of equality and the right to an effective remedy included in the Constitution or in a bill of rights, if so, what provisions are made for derogations?

		<ul style="list-style-type: none"> - Are torture, cruel, inhuman and degrading treatment or punishment, and non-voluntary medical and scientific experimentation committed by public officials as well as by private individuals penalized in the criminal law? - Are all persons who aid and abet, encourage, order, tolerate and perpetrate these crimes held responsible under criminal law? - What penalties apply to these crimes? - Does the criminal law allow for amnesty? - Does procedural law bar the admissibility of all evidence and confessions obtained through torture and other prohibited treatment?
		<ul style="list-style-type: none"> - How is torture and other prohibited treatment addressed in laws and regulations govern the different situations and institutions where torture and other prohibited treatment may occur, e.g. arrest and interrogation, extradition/expulsion, detention centers, correctional institutions, educational institutions, medical institutions (including forced abortion and forced sterilization), medical and scientific experimentation, gender based violence and military service? - How do these laws and regulations address and ensure non-discrimination and equality? - Is abortion legal for women who have become pregnant as a result of rape? Under which circumstances, if any, is a woman who carries out an abortion criminalized?
		<ul style="list-style-type: none"> - What changes in the abovementioned laws and regulations, if any, have been made since the last state report?

c) Possibility to lodge complaints and have them examined	<ul style="list-style-type: none"> - Which judicial, administrative or other competent authorities have jurisdiction to secure the right to freedom from torture? - Which complaints mechanisms and remedies are available in case of violation, by the state or by third parties, of article 7 committed within the territory or within the jurisdiction of the state?
	<ul style="list-style-type: none"> - In case of a violation of article 7, by the state or by a third party, who can lodge a complaint? - May an investigation concerning a violation of article 7 be initiated <i>ex officio</i>?
	<ul style="list-style-type: none"> - How is the immediate termination of torture and other prohibited treatment as well as the prevention of recurrence ensured upon the reception of a complaint? - What preventive measures are available in the context of gender-based violence, including domestic violence?
	<ul style="list-style-type: none"> - Does the law provide for legal aid, if yes, to what extent? - Does the law provide for recourse to appeal, if yes, is leave of appeal required?
	<ul style="list-style-type: none"> - Where and by whom can complaints regarding the accessibility dimension be lodged? - Where and by whom can complaints regarding the acceptability dimension be lodged?

		<ul style="list-style-type: none"> - What legal and/or administrative changes relating to the enjoyment of an effective remedy, if any, have been made since the last state report?
		<ul style="list-style-type: none"> - How many complaints concerning torture and other prohibited treatment have been received, investigated and adjudicated by the existing complaints mechanisms since the last state report (divided per year and disaggregated by the prohibited grounds of discrimination)?
	d) Budget allocation	<ul style="list-style-type: none"> - Public expenditure on the judiciary as percentage of GDP? - Public expenditure on the police as percentage of GDP? - Public expenditure on education as percentage of GDP? - Public health expenditure as percentage of GDP?
		<ul style="list-style-type: none"> - How are administrative complaints mechanisms funded? - How are mechanisms of supervision funded?
2. Accessible	a) Non-discriminatory access to preventive measures, complaints mechanisms and support services	<ul style="list-style-type: none"> - What groups can be identified as being the most vulnerable and the most likely to be exposed to a risk of torture? - What preventive measures are needed and which preventive measures have been taken to eliminate the risk of torture for the identified vulnerable groups?
		<ul style="list-style-type: none"> - What measures are needed and which measures have been taken to guarantee non-discriminatory access, including access for non-citizens, to complaints mechanisms and support services?

	<p>b) Preventive measures, complaints mechanisms and support services are physically and economically accessible</p>	<ul style="list-style-type: none"> - Are preventive measures, such as a request for and the enforcement of protection orders in the context of domestic violence, free of charge for the victim/complainant? - Is the filing of a complaint with a complaints mechanism levied with a fee? - How is affordability for all ensured with regard to support services, e.g. torture rehabilitation centers and shelters? - What measures have been taken to eliminate informal payments constituting barriers to equal economic access to services? - What changes affecting the affordability of the abovementioned services, if any, have occurred since the last state report?
	<p>c) Access to information and education</p>	<ul style="list-style-type: none"> - What measures have been taken to disseminate information to the population at large relating to the right to freedom from torture, available preventive measures, complaints mechanisms and support services? - Are information campaigns context-specific and flexible, e.g. available in different languages and disseminated through various channels, to reach different groups in the society? - Do all school children receive obligatory education on human rights, including the right to freedom from torture?
	<ul style="list-style-type: none"> - What measures are needed and which measures have been taken to enhance and ensure physical and economical access for vulnerable groups, including minorities, indigenous populations, women, physically and mentally disabled persons, persons living with HIV/AIDS, detained persons, children and adolescents? 	

		<ul style="list-style-type: none"> - How and when is information on rights and complaints mechanisms given to particularly vulnerable groups? - Is the information available in different languages and in both written and oral form?
	<p>d) Disaggregated statistics measuring access to preventive measures, complaints mechanisms and support services</p>	<ul style="list-style-type: none"> - Geographical density of police personnel? - Geographical distribution of complaints mechanisms?
<ul style="list-style-type: none"> - Proportion of the population having access to trained medical personnel and essential drugs within one hour's walk or travel, disaggregated by sex, rural/urban division, ethnic group and geographical area? - Geographical density of medical and para-medical personnel and hospital beds? - Density of medical personnel in detention centers and prisons (per 1000 interns)? - Density of beds at shelters for women (per 10 000 women)? - Number of torture rehabilitation centers and total number of beds? 		
<ul style="list-style-type: none"> - Proportion of school children educated on the right to freedom from torture disaggregated by sex, rural/urban division, ethnic group and geographical area? - Proportion of population covered by awareness raising programs on the right to freedom from torture, including information campaigns on violence against women, disaggregated by sex, rural/urban division, ethnic group and geographical area? - Number and size of registered civil society organizations that are involved in the promotion and protection of the right to freedom from torture? 		

3. <i>Acceptable</i>	a) Quality of relevant mechanisms and institutions ensured through supervision	<ul style="list-style-type: none"> - What measures, including guidelines and systems of supervision, are taken to ensure the non-occurrence of torture within all relevant sectors of the society, including both the public and private sphere? - What measures, including guidelines and systems of supervision, are taken to ensure that complaints mechanisms are impartial and independent and abide by other fair trial standards? - Are medical and para-medical personnel, members of the police force, prison guards, judicial personnel, teachers and military personnel registered in professional registers and/or vetted before employment?
	b) Cultural acceptability	<ul style="list-style-type: none"> - What measures, including guidelines and systems of supervision, are taken to ensure that services provided are gender-sensitive? - What measures, including guidelines and systems of supervision, are taken to ensure that services respect the culture of individuals, minorities and indigenous people? - What measures, including guidelines and systems of supervision, are taken to ensure confidentiality?
4. <i>Adaptable</i>	a) Systematic review and evaluation of practices, standards and rules	<ul style="list-style-type: none"> - How is freedom from torture addressed in existing national strategies, rules and instructions? - How and when are national strategies, rules, instructions and practices evaluated and reviewed? - How has public participation and civil society participation been ensured in the review and evaluation of existing policies and practices?

	<p>b) No contradictions with other rights, other legislation or other policies</p>	<ul style="list-style-type: none"> - What measures have been taken to ensure coordination and cooperation between relevant agencies and authorities at central and regional level, and between different levels? - What agency and/or agencies have the overarching responsibility for ensuring a coherent approach? - Have policy documents been coupled with legislative changes? - How do foreign policies take into account the right to freedom from torture, regarding for instance development cooperation, asylum and export of equipment that could be used to inflict torture?
	<p>c) Continuous education of relevant professionals on current standards and rights</p>	<ul style="list-style-type: none"> - Are any educational programs targeting relevant groups of professionals institutionalized in the country? - What groups receive education and which components form part of the education? - How is high quality ensured in education and training? - Proportion of the relevant groups of professionals that have received education on the right to freedom from torture?

The Right to the Highest Attainable Standard of Health

Principal indicators	Sub-indicators	Indicative questions
<i>1. Available</i>	a) Ratification of international and regional human rights instruments	<ul style="list-style-type: none"> -Which international and/or regional human rights instruments have been ratified? (I) -Have additional international and/or regional human rights instruments been ratified and/or denounced since the last state report? (P) - Have any reservations been made or withdrawn? If reservations remain in force, why? (IP)
	b) National legal framework	<ul style="list-style-type: none"> - How are ratified international treaties implemented in the national legal system? Are they directly applicable upon ratification? (I) - Is the right to health, the prohibition of discrimination, the principle of equality and the right to an effective remedy included in the Constitution or in a bill of rights, if so, what provisions are made for derogations? (I) - What laws and regulations govern underlying determinants of health, e.g. laws on occupational safety and environmental protection, laws criminalizing gender-based violence, social security legislation providing for housing etc.? (I) - What laws and regulations govern health care facilities, services and goods? (I)

		<ul style="list-style-type: none"> - How does the law regulate patient fees for health care services and goods, and health insurance? (I) - How does the law regulate abortion and fetal sex determination? (I) <ul style="list-style-type: none"> - Does the domestic legal framework contain any provisions limiting the right to seek, impart and receive health related information? (I) -
		<ul style="list-style-type: none"> - For each law relevant to the right to health, are the prohibition of discrimination and the principle of equality upheld? (I) - Is the right to health subject to specific non-discrimination provisions, covering direct and indirect discrimination, in domestic law? (I) - Does the domestic legal framework guarantee the right to health, with all its elements, to non-nationals? If not, how is the differentiation justified? (I)
		<ul style="list-style-type: none"> - What changes in the abovementioned laws and regulations, if any, have been made since the last state report? (P)
	<p>c) Possibility to lodge complaints and have them examined</p>	<ul style="list-style-type: none"> - Which judicial, administrative or other competent authorities have jurisdiction to secure the right to health? (I) - Which complaints mechanisms and remedies are available in case of violation, by the state or by third parties, of article 14 committed within the territory or within the jurisdiction of the state? (I) - In case of a violation of any of the elements included in the right to health, who can lodge a complaint? (I)

		<ul style="list-style-type: none"> - How is the immediate termination of a violation as well as the prevention of a reoccurring violation of the right to health ensured upon the reception of a complaint? (I) - What preventive measures are available in the context of gender-based violence? (I)
		<ul style="list-style-type: none"> - Does the law provide for legal aid, if yes, to what extent? (I) - Does the law provide for recourse to appeal, if yes, is leave of appeal required? (I)
		<ul style="list-style-type: none"> - What legal and/or administrative changes relating to the enjoyment of an effective remedy, if any, have been made since the last state report? (P)
		<ul style="list-style-type: none"> - How many complaints concerning the enjoyment of the right to health have been received, investigated and adjudicated by the existing complaints mechanisms since the last state report (divided per year and disaggregated by the prohibited grounds of discrimination)? (IP)

	d) Budget allocation	<ul style="list-style-type: none"> - Public health expenditure as percentage of GDP? (IP) - What percentage of regional budgets is spent on health? (IP) - What percentage of the total health expenditure are out-of-pocket payments, i.e. payments made by the patients? (IP) - What percentage, if any, of the national budget originates from international assistance? (IP) - What percentage, if any, of the national budget is allocated to international assistance relating to health? (IP) - Are any specific conditions related to the right to health attached to the provision of international assistance? (IP)
		<ul style="list-style-type: none"> - How are complaints mechanisms related to the right to health funded? (IP) - How are mechanisms of supervision related to the right to health funded? (IP)
2. Accessible	a) Non-discriminatory access to determinants for health, health care facilities, services, goods and complaints mechanisms	<ul style="list-style-type: none"> - What groups can be identified as the most vulnerable or marginalized in the context of health? (IP) - What minority groups and/or indigenous people are recognized and/or not recognized by the state? How is their health situation? (IP) - What measures are needed and which measures have been taken to improve the health situation of vulnerable groups? (IP)

	<p>b) Determinants for health, health care facilities, services, goods and complaints mechanisms are physically and economically accessible</p>	<ul style="list-style-type: none"> - How is affordability for all ensured with regard to health related determinants, health care facilities, services and goods? (IP) - Is the filing of a complaint with a complaints mechanism levied with a fee? (I) - What changes affecting the affordability of the abovementioned services, if any, have occurred since the last state report? (P) - What measures have been taken and what measures are needed to eliminate informal payments in the context of health related determinants, health care facilities, services and goods as well as complaints mechanisms? (IP)
		<ul style="list-style-type: none"> - What measures are needed and what measures have been taken to enhance and ensure physical and economical access for vulnerable groups, including minorities, indigenous populations, women, older persons, physically and mentally disabled persons, detained persons, children and adolescents? (IP)
	<p>c) Access to health related information and education</p>	<ul style="list-style-type: none"> - What measures have been taken to disseminate information to the population at large relating to healthy lifestyles, health problems and effective preventive measures, reproductive health, available health services, complaints mechanisms and support services and harmful traditional practices such as female genital mutilation? (IP) - Are information campaigns context-specific and flexible, e.g. available in different languages and disseminated through various channels, to reach different groups in the society? (IP) - Do all school children receive obligatory education on human rights, including the right to health together with elements of reproductive and sexual health? (IP)

	<p>d) Disaggregated statistics measuring accessibility</p>	<ul style="list-style-type: none"> - What are the total and adolescent fertility rates? (IP) - Percentage of women (15-44 years old) using modern contraception or whose partner is using contraception, disaggregated by race, ethnicity, rural/urban and socio-economic status? (IP) - Medical terminations of pregnancy as a proportion of live births, disaggregated by race, ethnicity, rural/urban and socio-economic status? (IP) - Maternal mortality ratio, before and after childbirth, disaggregated by race, ethnicity, rural/urban and socio-economic status? (IP)
		<ul style="list-style-type: none"> - Proportion of the population having access to trained medical personnel and essential drugs within one hour's walk or travel, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Geographical density of medical and para-medical personnel and hospital beds? (IP) - Proportion of population with access to safe water, sanitation, food and housing disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP)
		<ul style="list-style-type: none"> - Proportion of population covered by health insurance, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP)

		<ul style="list-style-type: none"> - Life expectancy at birth, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Infant and under five mortality rates, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Proportion of population immunized against vaccine-preventable diseases, disaggregated by age, sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Proportion of population living with HIV/AIDS, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Incidence of deaths/injuries/diseases caused by unsafe natural and occupational environment, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP)
		<ul style="list-style-type: none"> - Proportion of school children educated on health issues, including sexual education, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Proportion of population covered by awareness raising programmes on health issues, including reproductive and sexual health, disaggregated by sex, race, ethnicity, rural/urban and socio-economic status? (IP) - Number of registered civil society organizations that are involved in the promotion and protection of the right to health? (IP)

<p>3. Acceptable</p>	<p>a) Ensured quality of determinants for health, health care facilities, services, goods and complaints mechanisms</p>	<ul style="list-style-type: none"> -What measures, including guidelines and systems of supervision, are taken to ensure that health facilities, goods and services, including treatments, equipment and drugs, are scientifically and medically appropriate? (IP) - Do all health care facilities have access to safe water and adequate sanitation? If not, which measures are taken to improve the situation? (IP) - Are all medical and para-medical personnel vetted before employment and/or registered in a professional register? (I)
		<ul style="list-style-type: none"> - What measures, including guidelines and systems of supervision, are taken to ensure and improve the natural and occupational environment? (IP) - What measures, including assistance and systems of supervision, are taken to ensure and improve sanitary housing conditions in publicly as well as privately owned properties functioning as housing? (IP) - What measures, including guidelines and systems of supervision, are taken to ensure that food and water sources are of acceptable quality? (IP) -What measures, including guidelines and systems of supervision, are taken to ensure that complaints mechanisms function in accordance with international standards? (IP)

	b) Cultural acceptability	<ul style="list-style-type: none"> - What measures, including guidelines and systems of supervision, are taken to ensure that health care personnel respect medical ethics? (IP) - What measures, including guidelines and systems of supervision, are taken to ensure that health facilities, goods and services, including treatments, equipment and drugs, respect the culture of individuals, minorities and indigenous people? (IP) - How is gender-sensitivity implemented and ensured throughout the health care system? (IP) - What measures, including guidelines and systems of supervision, are taken to ensure confidentiality throughout the health care system? (IP)
4. Adaptable	a) A national public health strategy and a plan of action are in place and subject to regular evaluation and review	<ul style="list-style-type: none"> - Do a national public health strategy and a national plan of action exist at the state level? Do separate strategies and/or plans of action exist at regional/municipal levels? (IP) - Which elements of the right to health are covered by national public health strategy/strategies and national plan(s) of action and what is their period of application? (IP) - How has public participation and participation of other relevant stakeholders such as the civil society been ensured in the development, implementation and evaluation of health strategies and plans of action? (IP) - How and when are health strategies and plans of action evaluated and reviewed? (IP) - Are sources of resource allocation, corresponding to objectives included in health strategies and plans of action? (IP)

	<p>b) No contradictions between other rights, legislation or state policies</p>	<ul style="list-style-type: none"> - What measures have been taken to ensure coordination and cooperation between relevant agencies and authorities at central and regional level, and between different levels? (IP) - What agency or agencies, if any, are responsible for ensuring a coherent approach? (IP) - Have health strategies and national action plans been coupled with legislation such as a framework law? (IP)
	<p>c) Continuous education of relevant professionals on current rights and standards</p>	<ul style="list-style-type: none"> - Are any educational programs targeting relevant groups of professionals institutionalized in the country? (IP) - What groups receive education and what components form part of the education? (IP) - How is high quality ensured in education and training? (IP) - Proportion of the relevant groups of professionals that have received education on the right to health? (IP)

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