



Access Guide to Human Rights Information

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Executive Summary

The Access Guide to Human Rights Information is based substantially on the information gathered through interviews with EU officials from the Commission, the Parliament and the Fundamental Rights Agency, reflected in the Baseline Study on Human Rights Indicators in the Context of the European Union, and on the other hand on the workshop results with international experts, held in Graz in April 2015.

The common findings were that firstly, EU officials require genuine human rights information for their manifold tasks. Secondly, it was found that the methodology by the OHCHR of indicating the human rights commitments, implementation and situation on the ground is appropriate to satisfy the information needs. Thirdly, it was shown that there is a broad spectrum of existing data and information relevant to human rights. However, the information is not easily accessible for two reasons. On the one hand it requires expertise on human rights and skills for assessment. On the other hand, information resources are scattered and often, while relevant to human rights, not genuinely collected and offered as human rights information.

The Access Guide to Human Rights Information therefore aims to provide EU officials with easy-to-access information on existing human rights indicators, human rights related data, as well as human rights compliance information provided by international and regional human rights bodies. For this purpose, the guide briefly discusses the pros and cons of these sources, shows exemplarily how to understand existing information and how to relate it to the normative content of the respective human rights provisions.

The Access Guide to Human Rights Information provides the available human rights specific information based on the example of the prohibition of torture, the freedom of expression, the rights of the child, as well as on social indicators. Information sources are structured along a typology derived from the purpose they were processed for. Accordingly, a differentiation is made between the application of the OHCHR-model, compliance information provided by human rights bodies, as well as indicator-based human rights-related information.

The Access Guide provides step-by-step guidance on the most effective retrieval and utilisation of existing human rights information based on exemplary research requests.

List of abbreviations

AAAQ – Availability, Accessibility, Acceptability and Quality criteria

ACHPR – African Commission for Human and Peoples’ Rights

AI – Amnesty International

AMB – African Media Barometer

APT – Association for the Prevention of Torture

AoC – Agencies of Control

AU – African Union

BBC – British Broadcast Corporation

BMI – Body Mass Index

CAT – United Nations Committee against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment

CCPR – United Nations Committee on Civil and Political Rights

CED – Committee on Enforced Disappearances

CEDAW – United Nations Committee on the Elimination of Discrimination against Women

CERD – United Nations Committee for the Elimination of all Forms of Racial Discrimination

CESCR – United Nations Committee on Economic, Social and Cultural Rights

CFR – Charter of Fundamental Rights

CHI – Child Helpline International

CIA – United States Central Intelligence Agency

CIRI – Cingranelli-Richards data project

CMPF – Centre for Media Pluralism and Media Freedom

CMW – United Nations Committee on Migrant Workers

CoE – Council of Europe

COICOP – Classification of Individual Consumption by Purpose

CPED – United Nations Convention on the Protection of all Persons from Enforced Disappearance

CPT – Council of Europe Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment

CRC – United Nations Committee on the Rights of the Child

CRIN – Child Rights Information Network

CRPD – Committee on the Rights of Persons with Disabilities

CSO – Central Statistic Office

CPT – European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment

CY – Country-Year allegations dataset

DG JUST – European Commission’s Directorate General for Justice

DHS – Demographic and Health Surveys

ECHR – European Convention on Human Rights

ECPT – European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECtHR – European Court of Human Rights

EEAS – European External Action Service

EHRC – Equality and Human Rights Commission

EIDHR – European Instrument for Human Rights and Democracy

ENOC – European Network of Ombudspersons for Children

EPSCO – Council of the European Union’s Employment, Social Policy, Health and Consumer Affairs Council

ESN – European Services Network

ETC – European Training and Research Centre for Human Rights and Democracy

EU – European Union

EUROSTAT – Statistical Office of the Commission of the European Union

EU-SILC – European Union Statistics on Income and Living Conditions

FES – Friedrich-Ebert-Stiftung

FRA – European Union Agency for Fundamental Rights

GA – United Nations General Assembly

GRETA – Council of Europe Expert Group on Action against Trafficking in Human Beings

HR – Human Rights

HRC – United Nations Human Rights Committee

HRW – Human Rights Watch

HUDOC – Human Rights Documentation

IA – Impact Assessment

IAC – Inter-American Court of Human Rights

IACHR – Inter-American Commission on Human Rights

IAMCR – International Association for Media and Communication Research

ICC – International Criminal Court

ICCPR – International Covenant on Civil and Political Rights

ICERD – International Covenant on the Elimination of all Forms of Racist Discrimination

ICESCR – International Covenant on Social, Economic and Cultural Rights

ICMW – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

IcSP – Instrument contributing to Stability and Peace

ICT – Information and Communication Technology

IGO – Intergovernmental Organization

ILO – International Labour Organisation

IREX – International Research and Exchanges Board

ITT – Ill-Treatment and Torture Data Collection Project

IPA – International Publishers Association

IPDC – International Programme for the Development of Communication

ISCED – International Standard Classification of Education

LGBT(I) – Lesbian, Gay, Bisexual, Transsexual (and Intersexual)

LOI – List of Issues

LOIPR – List of issues prior to reporting

MAF – European Union Agency for Fundamental Rights' Multiannual Framework

MDG – Millennium Development Goal

MDI – Media Development Index

MDG – Millennium Development Goals

MICS – Multiple Indicator Cluster Survey Programme

MISA – Media Institute of Southern Africa

MPM – Media Pluralism Monitor

MS – Member State

MSI – Media Sustainability Index

NGO – Non-Governmental Organisation

NHRI – National Human Rights Institution

NIP – National Indicative Programme

NPM – National Preventive Mechanism

OAS – Organisation of American States

ODA – Official Development Assistance

OECD – Organisation for Economic Co-operation and Development

OHCHR – United Nations Office of the High Commissioner for Human Rights

OMC – Open Method of Coordination for Social Protection and Social Inclusion

OPCAT – Optional Protocol to the United Nations Convention against Torture

OSCE – Organization for Security and Co-operation in Europe

PTS – Political Terror Scale

RWB – Reporters Without Borders

SA – Specific Allegation dataset (Torture)

SDG – Sustainable Development Goals

SPT – United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

SPC – Social Protection Committee

SPO – Social-Process-Outcome Indicators

TEU – Treaty on European Union

TFEU – Treaty on the Functioning of the European Union

THESEUS – Innovative technologies for safer European coasts in a changing climate

UDHR – Universal Declaration of Human Rights

UHRI – Universal Human Rights Index

UN – United Nations

UNCAT – United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UNCEDAW – United Nations Convention on the Elimination of All Forms of Discrimination against Women

UNCRC – United Nations Convention on the Rights of the Child

UNCRPD – United Nations Convention on the Rights of Persons with Disabilities

UNCT – United Nations Country Team

UNDP – United Nations Development Programme

UNESCO – United Nations Educational Scientific and Cultural Organisation

UNFPA – United Nations Population Fund

UNICEF – United Nations International Children's Emergency Fund

UNODC – United Nations Office on Drugs and Crime

UNPO – Unrepresented Nations and Peoples Organization

UPR – Universal Periodic Review

US – United States

USAID – United States Agency for International Development

VAC – Violence Against Children

WHO – World Health Organisation

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I. Introduction

A. Reasoning for an Access Guide

The second deliverable of the FRAME Work Package 13 (D13.2) takes the form of an Access Guide to Human Rights Information. By offering an Access Guide FRAME intentionally goes beyond the initial proposal to elaborate a set of new indicators by using the methodological framework developed by the United Nations Office of the High Commissioner for Human Rights (OHCHR).

Several striking arguments for this choice have been discussed at a workshop organised by the European Training and Research Centre for Human Rights and Democracy (ETC) in Graz in April 2015 and have further materialized in the course of the subsequent research. Experts of the FRAME consortium, the OHCHR and the EU Agency for Fundamental Rights (FRA) discussed strategies for the further development of human rights indicators in the context of the European Union (EU) at the workshop in Graz. There was a broad consensus among the experts that the EU institutions are undoubtedly interested in human rights information that can be used for the EU's internal and external actions. Relevant and reliable human rights information is broadly regarded as a key instrument for providing necessary evidence during the entire policy cycle. Previous research in the FRAME project confirmed that many EU bodies appreciate the refinement of the tools currently applied to measure human rights internally and externally. Indeed, specific requirements have been identified by EU officials for that purpose and have been presented in the first deliverable of FRAME Work Package 13 (D13.1).¹

However, the research results of D13.1 also revealed that at the moment there is no ready-made measuring system in place that meets all these requirements. There are good reasons to assume that the approach developed by the OHCHR would in theory provide a suitable framework for the EU. In fact the draft indicators that have already been developed by the OHCHR for almost all human rights constitute a thorough conceptual and methodological basis for measuring human rights, also for the purposes of the EU. It has to be noted carefully though that the model proposed by OHCHR's does not yet provide for a ready-made system of human rights indicators that can be applied straight away by the EU bodies. The OHCHR model can only provide guidance for the refinement of existing EU human rights measurements.

Yet, at the moment the EU has not taken up any comprehensive initiative to refine its approach to human rights measurements. As long as a comprehensive EU human rights measurement model has not been established, the focus of attention of EU officials thus necessarily has to rest on the human rights information that is already available.

Experts present at the FRAME workshop in Graz confirmed that there is indeed already a vast amount of human rights information available, which is also relevant for the practical work of EU officials. The sources range from information provided by treaty bodies of the United Nations (UN) or the Council of Europe (CoE), to datasets, indicators, and aggregated indices developed and compiled by governments, academics, or civil society. However, the existing information is not always easy to access, or to

¹ Klaus Starl and others, 'Baseline Study on Human Rights Indicators in the Context of the European Union' (2015), Frame Deliverable 13.1, available at <www.fp7-frame.eu/wp-content/materiale/reports/12-Deliverable-13.1.pdf> accessed 8 October 2015.

comprehend. The main difficulty in working with existing human rights information thus lies in the accessibility and assessment of relevant and intelligible human rights information.

In this context, the idea to establish a prototype of an information database on human rights information including a compilation of existing human rights indicators and related data was discussed, but eventually abandoned. Taking into consideration the requirements of EU officials, the development and exemplary population of new human rights indicators play only a secondary role in practice. Moreover, the sustainability of such an information database cannot be ensured beyond the duration of the FRAME project without further commitments by the EU.

Instead, an Access Guide to Human Rights Information was identified as prime tool to enhance the accessibility of the currently often fragmented human rights information for EU officials. The present Access Guide is regarded as a suitable tool to foster the EU officials' expertise of the different types and sources of often highly complex human rights information, as well as on the potential and the limits of existing human rights assessments. Overall, the Access Guide shall provide guidance on the proper retrieval and use of existing human rights information. Relevant information on human rights is thus not only made more accessible, but is also made more intelligible for EU officials.

B. Objectives of the Access Guide

By choosing the form of an Access Guide, D13.2 pursues three main objectives.

Firstly, the Access Guide aims to demonstrate in an exemplary manner, what information is available in the public domain in respect to human rights that are of significance to the internal and external dimensions of EU policies. The four human rights topics chosen as examples are the prohibition of torture, freedom of expression, the rights of the child, as well as social indicators as source of human rights information.

Secondly, the present Access Guide aims to explain how to understand the existing human rights information and how to relate it to the normative content of the applicable human rights provisions. In particular, the Access Guide aims to explain the particularities and differences as well as strengths and limitations of various types and sources of human rights information and thus goes beyond a mere presentation of the existing information.

Thirdly, the Access Guide aims to provide practical guidance on how to most efficiently obtain relevant human rights information in existing databases and other relevant sources. The information requirements of EU officials that have been identified in D13.1 constitute the starting point for exemplary - yet realistic - search procedures that shall provide hands-on guidance.

C. Target group of the Access Guide

The present Access Guide is primarily addressed to EU officials. A user-centred approach is applied throughout the report to meet the practical requirements and to increase its relevance and impact. This has several implications for the present Access Guide. First and foremost, only human rights information that is deemed to be relevant and useful for EU officials is included or referenced in the report. Secondly, the user-centred approach implies that the authors of this report refrained from reproducing or

commenting academic discussions whenever possible. Instead, the authors tried to give concise and introductory information on the respective topics.

D. Content and structure of the Access Guide

The FRAME Access Guide to Human Rights Information is structured along four human rights topics. Chapters II to IV present guidance for EU officials that shall increase the accessibility of existing human rights information in relation to the prevention of torture, freedom of expression and the rights of the child. These topics have been selected following EU priorities as enshrined in key documents on the EU's internal and external policies (such as the EU guidelines on human rights and the EU Strategic Framework on Human Rights and Democracy and the related Action Plans), expert consultations at the workshop held in April 2015 in Graz and an informed selection considering existing human rights information compiled in Annex I of D13.1.² The human rights selected allow for an illustration and explanation of key particularities of existing information, as well as diverse challenges that may occur in the search for relevant human rights information.

Chapter II provides information on the prohibition of torture. This right has been chosen as an example for a non-derogable *ius cogens* norm of the civil and political rights that figure prominently in a series of international and regional legal documents. The EU adopted its first guidelines against torture and other cruel, inhuman or degrading treatment or punishment already in 2001 and revised them in 2012. It was assumed that the numerous international and regional treaty monitoring bodies provide a considerable amount of (qualitative) information. Managing the wealth of information was assumed to constitute a challenge in the search for human rights information on the prevention of torture, which requires an in-depth examination in order to enhance access to this information.

Chapter III deals with the accessibility of information on freedom of expression. This right has been chosen as representative for the civil and political rights, which is frequently also regarded as the basis for the full enjoyment of a wide range of other human rights. In 2014, the EU also adopted Human Rights Guidelines on Freedom of Expression Online and Offline and thus underlined the importance of this topic. The question of how different assessment models cope with potential political bias and cultural differences in the perceptions on freedom of expression were decisive for selecting freedom of expression as the second topic for this Access Guide.

The rights of the child were chosen for chapter IV in order to analyse information available on a whole set of human rights that focus on a group, for which a comprehensive amount of international standards have been adopted. Human rights of children constitute a multifaceted and cross-cutting issue with an impact across all sectors of society. Consequently a wealth of child-focused information is available, which in fact might constitute a challenge for finding truly relevant information for a particular information requirement.

² Klaus Starl and others, 'Baseline Study on Human Rights Indicators in the Context of the European Union' (2015), Frame Deliverable 13.1, available at <www.fp7-frame.eu/wp-content/materiale/reports/12-Deliverable-13.1.pdf> accessed 8 October 2015.

Chapter V addresses the potential role of social indicators as human rights indicators. The expert workshop held in Graz in 2015 and subsequent research in Work Package 13 revealed that the topic of social indicators requires a more in-depth discussion from a human rights perspective. Social indicators are currently in use to monitor social conditions and trends in social policies in EU member states. An Indicators Sub-Group was set up in 2001 for this purpose, which developed a portfolio of EU social indicators. Yet, the linkages of these social indicators to human rights are not always obvious. Therefore, in its endeavour to enhance the accessibility of human rights information, the present Access Guide analyses in chapter V how relevant and comprehensive the EU portfolio is in monitoring the enjoyment of social and economic rights.

1. **Structure and guiding questions of chapters II to IV**

a) *Think-pieces*

The chapters on the prevention of torture (chapter II), freedom of expression (chapter III) and the rights of the child (IV) all follow a common structure. They commence with a think-piece that provides an analysis of the sources of information available and the lessons that can be drawn from searching for relevant information in these sources. The think-piece constitutes the main analytical section on the accessibility of relevant information in respect to the three human rights selected. The think-pieces are informed by a critical appraisal of the normative content of the human right at hand and a synopsis of the information sources available. The guiding questions discussed here are: To what extent is the normative content of a given human right reflected in existing human rights assessments? What are the strengths and limits of existing human rights information? What has to be taken into account when searching and eventually using information on these human rights?

b) *Overviews of key sources of human rights information*

Chapters II to IV present an overview of key sources of human rights information that are available for the respective human right. The overall guiding question addressed here is: What relevant information is available on the human right in question? Throughout the report, a distinction is made between three types of human rights information: (1) human rights indicators following the approach by the OHCHR, (2) human-rights (related) databases and indicator schemes, and (3) compliance information.

First of all, indicator schemes building on the approach of the OHCHR and resorting to structure, process and outcome indicators in a comprehensive manner are described. Information based on the OHCHR approach forms the starting point for the searches on each human right as it currently is the only human rights measurement instrument that uses indicators and at the same time addresses the human rights dimensions by measuring the respect, protection, fulfilment and promotion of human rights in a given context. Moreover, the approach suggested by the OHCHR is regarded as a prime source of information, as in theory it fulfils all the information requirements identified by EU officials in a series of interviews conducted during the course of the research on D13.1 of the FRAME project in 2014. Yet, practical applications of this system are indeed rare, however references shall be made to existing information based on this approach whenever possible.

In a second step, human rights related databases, indices and indicator schemes dealing with the prohibition of torture, freedom of expression and the rights of the child will be presented. These

subchapters build on the results of the broad mapping of sources on human rights information provided in Annex I of D13.1, yet substantiate these findings in more detail for the three human rights chosen. Human rights related databases and indicator schemes in practice comprise a variety of information stemming from datasets, indicators, and aggregated indices developed and populated by governments, academics, or civil society. Information on human rights is sometimes explicitly included in these sources, but sometimes unfolds only at a second, deeper glance. Thus, only human rights related databases and indicator schemes that focus on or include information on the prohibition of torture, the freedom of expression and the rights of the child will be presented in a more detailed manner. Each source is outlined in detail, by describing key characteristics, such as the author, the geographical range covered, the methodology and sources used, the frequency of application, the level of disaggregation, etc. Moreover, a brief discussion of the advantages and limitations of these information sources will be provided.

Human rights compliance information forms the third type of human rights information that will be described. Compliance information refers to the results of human rights monitoring that is conducted by specific bodies that have been set up to monitor the compliance of states with international and regional conventions or treaties. Such monitoring systems have been set up for the universal, regional and national level. The key information sources and databases compiled by, for instance, UN and CoE treaty bodies and the Universal Periodic Review (UPR) will be presented.

c) *Exemplary workflows*

The overview of information derived from human rights indicators following the OHCHR approach, human-rights related databases and indicator schemes, as well as compliance information will demonstrate that all of these sources are relevant for EU officials and have particular advantages and limitations. Chapters II to IV will therefore conclude with an exemplary workflow for searching relevant information on the prohibition of torture, the freedom of expression and the rights of the child. The overall guiding questions for these sections were: How to best search for relevant human rights information in the sources available? What steps should be followed when trying to retrieve information that meets the information needs of EU officials? How to best utilize the different sources of information available? The workflow includes the results of exemplary searches for human rights information in relation to different countries. This exemplifies what kind of information is available when following the suggested workflows. These examples are mere illustrations of how the existing search engines function and what data can be retrieved. They are not a complete compilation of the data found. The compilation further aims to disclose how the retrieved information could be related to structure, process or outcome indicators.

2. *Structure and guiding question of chapter V*

The reasoning behind the Access Guide's chapter on social indicators requires a somewhat different structure than for chapters II to IV. Chapter V attempts to critically analyse the portfolio of the European Social Indicators, maintained by the Indicators Sub-Group of the Social Protection Committee (SPC) from a human rights perspective. It scrutinizes the SPC's indicators on the right to an adequate standard of living, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as the right of everyone to social security and studies how these indicators can be adjusted or re-conceptualized to enhance their human rights relevance. These examinations take the form of briefs

(compiled in section B), which constitute the basis of an in-depth analysis provided in a think-piece (section A).

The guiding questions for this chapter are: What can be said about the relationship between the normative content of social rights and the information available? Is relevant information available? What has to be taken into account when using social indicators as human rights information? Are the indicators in use in the social domain fulfilling the ambition of the EU to mainstream human rights externally and internally and of intensifying work on social rights in all efforts?

By addressing these questions, chapter V attempts to document overlaps between the existing nature of social measurement under the EU metrics and human rights. Moreover, suggestions are made on how to address existing gaps. This feeds into a broader discussion on a need for a reconceptualization of social monitoring in the EU.

E. Format of the Access Guide

The Access Guide currently takes the form of an electronic publication, but the further publication on a website is envisaged. Presenting the FRAME Access Guide to Human Rights Information on an online information portal is expected to further ease the access for a broad audience and to facilitate potential updates. Therefore, the authors prepared the overall structure as well as individual chapters in a manner that facilitates the future presentation of the results on a website. Hyperlinks will be provided wherever possible to enable easy access to the relevant reports, databases and further sources.

II. The prohibition of torture³

A. Think-piece on the human rights information on the prohibition of torture

1. Introduction

This section offers an overview of the sources available for researching information on the prohibition of torture and an analysis of what needs to be taken into consideration when using the information gathered.

The section commences with an overview of the prohibition of torture in international law. It follows with an analysis of the three main source types for researching information on the prohibition of torture: human rights indicators following the methodology developed by the OHCHR, other human rights and human rights related measuring instruments and finally what information can be gathered when examining the monitoring bodies entrusted with monitoring the prohibition of torture.

For the purpose of this paper, the term “prohibition of torture” will be used to define the prohibition of torture, (and other cruel,) inhuman or degrading treatment or punishment as well as the positive obligations attached to it.

2. The prohibition of torture in international law

The prohibition of torture aims to protect the physical and mental integrity of people from abuse by state powers. Torture is a crime of opportunity that generally occurs when individuals are in a particularly vulnerable position, “at the mercy” of those who hold them in custody: ‘Torture aims at breaking the will of the victims and to degrade them to powerless tool in the hands of the perpetrators. Whereas slavery dehumanise human beings de jure, torture dehumanize them de facto.’⁴

As such the prohibition of torture has acquired a special status in international law: it is enclosed in a series of international legal documents that condemn it not only in times of peace, yet also in times of war.⁵ It is regarded as customary international law and a norm of *jus cogens*, a body of principles which cannot be derogated, even by treaties.⁶ Furthermore, it is an absolute and non-derogable norm of

³ This contribution was provided by Maddalena Vivona, European Training and Research Centre for Human Rights and Democracy.

⁴ Manfred Nowak and Anne Charbord, ‘Art. 4 - The Prohibition of Torture’ in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), p. 67.

⁵ Geneva Convention relative to the Treatment of Prisoners of War, adopted on 12 August 1949 (entered into force on 21 October 1950), UN Treaty Series Vol. 75 p. 135, Art. 3 1.

See also: Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (entered into force on 7 December 1978), Art. 75(2).

⁶ Art. 53 of the Vienna Convention on the Law of the Treaties states that:

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general

international law, meaning that no circumstances whatsoever may infringe this basic right.⁷ Besides including torture and other ill treatment as war crimes, therefore subject to the jurisdiction of the International Criminal Court (ICC),⁸ Art. 7 of the Rome Statute of the ICC defines torture also as a crime against humanity ‘when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.⁹ Art. 5 of UNCAT establishes also universal jurisdiction for crimes of torture under the principle *aut dedere aut judicare*.¹⁰

Accordingly, the prohibition of torture appears prominently in a series of international and regional legal documents, such as declarations and treaties. The Universal Declaration of Human Rights (UDHR) was the first international document explicitly prohibiting torture,¹¹ followed by the International Covenant on Civil and Political Rights (ICCPR).¹² In the 1980s the international community agreed also to a specialised treaty dedicated to the eradication of the practice of torture, the United Nations Convention against

international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Vienna Convention on the Law of Treaties, adopted on 23 May 1969 (entered into force on 27 January 1980), UN Treaty Series Vol. 1155 p. 331.

⁷ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] adopted by General Assembly resolution 39/46 of 10 December 1984 (entered into force 26 June 1987), Art 2 (2).

United Nations Committee against Torture, ‘General Comment No. 2: Implementation of Article 2 by States Parties’ CAT/C/GC/2 of 24 January 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2andLang=en> accessed on 17 September 2015, para. 5-6.

⁸ See for example: Rome Statute of the International Criminal Court, adopted in Rome by the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court (corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002) (entered into force on 1 July 2002), Arts. 8 (2) (a) (ii) and 8 (2) (b) (xxi).

⁹ Rome Statute of the International Criminal Court, adopted in Rome by the United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court (corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002) (entered into force on 1 July 2002).

¹⁰ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] adopted by General Assembly resolution 39/46 of 10 December 1984 (entered into force 26 June 1987), Art. 5.

¹¹ Art. 5 of the Universal Declaration of Human Rights states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’

United Nations General Assembly, ‘Universal Declaration of Human Rights’, adopted by General Assembly resolution 217 A III of 10 December 1948, Art. 5.

¹² The ICCPR states in Art. 7 that ‘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.’ In the wake of the atrocities committed during the Second World War, this paragraph was introduced to clarify that the prohibition of torture extends also to medical or scientific experimentation.

International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 23 March 1976), Art. 7.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).¹³ The prohibition of torture is also included in a number of regional treaties, such as the American Convention on Human Rights,¹⁴ the African Charter on Human and People's Rights,¹⁵ the Arab Charter on Human Rights¹⁶ and the European Convention on Human Rights (ECHR),¹⁷ as well as the Charter of Fundamental Rights of the EU (CFR).¹⁸

3. Defining torture, (cruel,) inhuman and degrading treatment or punishment

The UNCAT is the only international treaty that offers a detailed **definition** of what constitutes an act of torture:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of

¹³ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] adopted by General Assembly resolution 39/46 of 10 December 1984 (entered into force 26 June 1987).

¹⁴ The American Convention on Human Rights states in Art. 5 2 that 'No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.'

American Convention on Human Rights [1969] signed at the Inter-American Specialized Conference on Human Rights on 22 November 1969 (entered into force on 18 July 1978).

¹⁵ The African Charter on Human and People's Rights prohibits torture together with other forms that violate people's human dignity 'Every individual shall have the right to respect of the dignity inherent in a human being and the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.'

African Charter on Human and Peoples' Rights [1981] adopted on 27 June 1981 (entered into force on 21 October 1986).

¹⁶ Article 8 of the Arab Charter on Human Rights states that:

No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

Arab Charter on Human Rights [2004] adopted on 22 May 2004 (entered into force on 15 March 2008).

¹⁷ In Europe, Art. 3 of the ECHR states that: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

European Convention on Human Rights [1950] signed on 4 November 1950 (entered into force on 3 September 1953).

¹⁸ Consolidated Version of the Charter of Fundamental Rights of the European Union [2012] OJ C326/391, Art.4.

any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁹

Art. 16 UNCAT further “defines” those acts or omissions that constitute inhuman or degrading treatment or punishment as those acts that fall short of being categorized as torture:

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²⁰

On a general note, the prohibition of torture has been divided into torture, (cruel,) inhuman and degrading treatment or punishment. This division aims to depict different **degrees of severity** of this human rights violation. However, whether the degree of severity alone is the distinguishing feature between torture, (cruel,) inhuman and degrading treatment is not completely settled in the body of jurisprudence on the prohibition of torture.²¹ It is in fact possible to distinguish two approaches to the issue of the severity of torture: the first approach considers torture, (cruel,) inhuman and degrading treatment as expressing only a different intensity in the pain caused to the victim;²² the second approach, which seems to be followed by the leading academic literature and recently by the case law of the ECtHR, distinguishes torture from other forms of ill-treatment depending on the existence of a purpose for torturing a victim.²³ Art. 1 UNCAT

¹⁹ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] adopted by General Assembly resolution 39/46 of 10 December 1984 (entered into force 26 June 1987), Art. 1(1).

²⁰ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] adopted by General Assembly resolution 39/46 of 10 December 1984 (entered into force 26 June 1987), Art. 16.

²¹ Manfred Nowak and Elisabeth McArthur, *The United Nations Convention Against Torture. A Commentary* (Oxford University Press 2008), pp. 66-69; Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (Oxford University Press 2009), pp. 322-323; Manfred Nowak and Anne Charbord, Article 4 – Prohibition of Torture and Inhuman or Degrading Treatment or Punishment, Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), p. 81

²² See for example: *Ireland v. United Kingdom* Application no. 5310/71 (ECtHR, 18 January 1978), para. 167.

²³ See for example: Manfred Nowak and Elisabeth McArthur, *The United Nations Convention Against Torture. A Commentary* (Oxford University Press 2008), p. 69; Nowak M. and Charbord A., ‘Art. 4 - The Prohibition of Torture’ in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), p. 81.

In the case *Aktaş v. Turkey*, for example, the European Court of Human Rights has stated that:

In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see the *Ireland v. the United Kingdom* judgment cited above, pp. 66-67, § 167). In addition to the severity of the treatment, there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating (Article 1 of the United Nations convention – see *Salman*, cited above, § 114).

offers a non-exhaustive list of these purposes: extracting a confession, obtaining information, intimidation and coercion, discrimination and punishment.²⁴

Whether the severity of the pain is considered torture or other ill-treatment, one issue remain: the categorisation of a treatment or punishment as torture, inhuman or degrading does not depend on the pain being **physical or psychological**. The prohibition of torture extends to both types of pain equally.²⁵ Needless to say that assessing psychological pain is far more complex than assessing bodily harm. The jurisprudence of the ECtHR has also established that **threats** to commit acts in violation of the prohibition of torture might also be in breach of the prohibition of torture.²⁶

The prohibition of torture, as was stated earlier, generally applies when the person committing it is a **state official** or a person acting in an official capacity. Typical examples of persons acting in an official capacity are private contractors hired by a state to conduct prisoner's interrogations. The 'state official' requirement, as it is also suggested by Art. 1 UNCAT, however has been interpreted to comprehend those conducts in violation of the prohibition of torture when the state **consent** or **acquiesce** to these violations.²⁷

The prohibition of torture is in fact not only an obligation to abstain from certain conducts: it encompasses also a series of **positive obligations**. The most prominent one is an **obligation to prevent acts of torture**, which is contained in general terms in Art. 2 (1) UNCAT and has been further defined by Art. 10 to 13 CAT. Art. 10 CAT obliges states to provide education and training on the prohibition of torture to all persons who might come into contact with detainees and to materialise the general principle also in the rules of conduct or instructions provided to those persons; Art. 11 CAT obliges states to systematically review interrogation and prison rules to ensure that no violation of the prohibition of torture occurs; Art. 12 and 13 CAT ensure that state parties start prompt and impartial investigations either when a victim complains or whenever there is a reasonable ground to believe that a breach to the prohibition of torture occurred

Aktaş v. Turkey Application No. 24351/94, (ECtHR, 24 April 2003), para. 313.

²⁴ Nowak and McArthur argue that the wording of the CAT ('for such purposes as') does not allow for a broad interpretation of the purposes contained in the treaty, as it is the case for example for the Inter-American Convention to Prevent and Punish Torture, which uses the wording 'or for any other purpose'.

Manfred Nowak and Elisabeth McArthur, *The United Nations Convention Against Torture. A Commentary* (Oxford University Press 2008), p. 75.

²⁵ In the *Söring* case the ECtHR has established that life in the death row can amount, under particular conditions to a breach of the prohibition of torture, because of the prolonged anguish of waiting for execution..

Söring v. the United Kingdom Application no. 14038/88 (ECtHR, 7 July 1989), para. 111.

²⁶ In the *Gäfgen* case for example the ECtHR established that the applicant was subjected to inhuman treatment. Mr. Gäfgen was a child murderer, threatened with torture by a police officer during interrogation in order to obtain information about the location of the child that at the time was still believed to be alive.

Gäfgen v. Germany Application no. 22978/05 (ECtHR, 3 July 2010).

²⁷ In a complaint, for example, the Committee against Torture held that:

the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying "acquiescence" in the sense of article 16 of the Convention.

Hajrizi Dzemajl et al. v. Yugoslavia, Communication No. 161/2000, U.N. Doc. CAT/C/29/D/161/2000 (2002).

(*ex officio*). The obligation to prevent torture means also that persons who are at risk of being tortured should not be sent back to their country of origin (***non-refoulement*** principle).²⁸

Art 10 of the ICCPR explicitly grants a positive obligation to ensure humane treatment of persons deprived of their liberty.²⁹ There are numerous cases in which conditions of detention have been found to be in breach of the prohibition of torture. In the case *C. v. Australia* for example the Human Rights Committee stated that ‘the continued detention of the author when the State party was aware of the author's mental condition and failed to take the steps necessary to ameliorate the author's mental deterioration constituted a violation of his rights under article 7 of the Covenant.’³⁰ In another case the Human Rights Committee found that ‘to keep the author’s brother in captivity and to prevent him from communicating with his family and the outside world constitutes a violation of article 7 of the Covenant.’³¹

The importance of the issue of prevention in relation to the prohibition of torture has been highlighted by the adoption of two international treaties designed with the explicit aim to prevent torture: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

²⁸ This principle is contained in Art. 33 of the United Nations Convention relating to the Status of Refugees and also in Art. 3 UNCAT. The Human Rights Committee has stated that:

the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.

United Nations Human Rights Committee, ‘General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant’, CCPR/C/21/Rev.1/Add.13 of 26 May 2004, para. 12.

²⁹ The Human Rights Committee has stated in this respect that:

Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

United Nations Human Rights Committee, ‘General comment No. 21, replacing General Comment No. 9: Humane treatment of Persons deprived of their Liberty, Article 10’ of 13 Mar 1993.

³⁰ United Nations Human Rights Committee, *C. v. Australia* Communication No. 900/1999 (HRC decision of 28 October 2002), para 8.4.

³¹ United Nations Human Rights Committee, *Edriss El Hassy v. The Libyan Arab Jamahiriya* Communication No. 1422/2005 (HRC decision of 13 November 2007, para 6.2.

(ECPT)³² and the Optional Protocol to the Convention against Torture (OPCAT).³³ Furthermore, in order to avoid violations of the prohibition of torture, relevant international organisations have adopted minimum rules for the treatment of detainees that express basic safeguards for persons deprived of their liberty.³⁴ It is not the place here to discuss these standards in detail, but it is important to mention them as they provide basic rules for the treatment of persons deprived of their liberty. These documents contain basic principles and requirements for the regulation of the life of persons deprived of their liberty, such as the necessity of separating certain categories of detainees (e.g. children, women, untried prisoners, etc.) or general requirements for personal hygiene (e.g. provision of water and toiletries and other articles necessary for health and cleanliness).

4. Assessing the prohibition of torture

a) *Human rights indicators following the OHCHR methodology*

An analysis of the measurement tool available for the prohibition of torture showed that currently no measurement tools exist which measure the respect, protection and fulfilment of this right. The OHCHR has developed an illustrative table of indicators on the prohibition of torture,³⁵ which however has not found practical application yet.

b) *Measuring the prohibition of torture*

During the years four measurement tools have been created to offer information on the prohibition of torture: The Political Terror Scale (PTS), The Cingranelli-Richards data project (CIRI), the

III-Treatment and Torture Data Collection Project (ITT) and the indicators created by Oona Hathaway, *Do Human Rights Treaties make a Difference?*. All these measurements originate from the **academic community**. The fact that these projects derive from the academic community has an impact on their **sustainability**: being dependant on external funding, academics and non-governmental organisations

³² European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [1987] adopted on 26 November 1987 (amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002).

³³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment [2002] adopted by General Assembly resolution A/RES/57/199 of 18 December 2002 (entered into force on 22 June 2006).

³⁴ United Nations Economic and Social Council, 'Standard Minimum Rules for the Treatment of Prisoners', adopted by resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; United Nations General Assembly, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', adopted by resolution 43/173 of 9 December 1988; United Nations General Assembly, 'United Nations Rules for the Protection of Juveniles Deprived of their Liberty' adopted by resolution 45/113 of 14 December 1990; Council of Europe Committee of Ministers, 'European Prison Rules', recommendation 2006/2 adopted on 11 January 2006; Inter-American Commission on Human Rights, 'Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas', adopted by resolution 1/08 of 3-14 March 2008.

³⁵ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), available at <http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf> accessed 19 October 2015, p. 91.

(NGOs) are not always able to sustain these projects for a prolonged period of time. In the field of torture only the PTS has been operating for more than 20 years. At the time of writing it appears that the CIRI project has not received funding for continuing its activity, while the ITT only provides information up to 2005. It is uncertain whether they will be able to continue their work.

All measurements analysed gather their data from the **same sources**: Amnesty International (AI) reports, the US State Department Reports and in one case Human Rights Watch (HRW) annual reports, which offer yearly and reliable information on the prevalence of torture per country.

The PTS, the CIRI project, the ITT and the indicators created by Oona Hathaway are designed to measure incidences of torture: they measure the actual enforcement of people's right not to be tortured. All the indicators analysed are also norm-based. They however focus on torture and the most severe form of ill-treatment, while leaving virtually untouched other forms of ill-treatment that also are included in the prohibition of torture (i.e. spending a considerable part of each day confined to a bed in a cell with no ventilation and no window).³⁶

When taking a closer look at the connection between the **normative content** of the prohibition of torture and the measurement tools, some areas appear to be excluded. This is the case for **private actors**: only some of the measurement instruments analysed, such as the PTS, consider acts committed by *de facto* or *de jure* authorities (such as private contractors hired by a state to conduct prisoner's interrogations) as violations of the prohibition of torture.³⁷ Furthermore, do they not consider a state's responsibility for the

³⁶ *Peers v. Greece* Application no. 28524/95 (ECtHR, 19 April 2001).

³⁷ The UN Committee against Torture, for example, has emphasized in many occasions that 'State's obligation to prevent torture also applies to all persons who act, *de jure* or *de facto*, in the name of, in conjunction with, or at the behest of the State party.'

United Nations Committee against Torture, 'General Comment No. 2: Implementation of Article 2 by States Parties' CAT/C/GC/2 of 24 January 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fGC%2f2andLang=en> accessed on 17 September 2015.

The same argument was made by the UN Special Rapporteur on Torture (Juan Mendez), 'Amicus Curiae Brief in support of the Petitioner in the case Asid Mohamad et al. v. Palestinian Authority and Palestine Liberation Organization before the Supreme Court of the United States (case No. 11-88), available at <www.ohchr.org/Documents/Issues/SRTorture/AmicusBriefDec2011.pdf> accessed 17 November 2015.

In the case *Elmi v. Australia* the Committee against Torture stated that:

The Committee does not share the State party's view that the Convention is not applicable in the present case since, according to the State party, the acts of torture the author fears he would be subjected to in Somalia would not fall within the definition of torture set out in article 1 (i.e. pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, in this instance for discriminatory purposes). The Committee notes that for a number of years Somalia has been without a central government, that the international community negotiates with the warring factions and that some of the factions operating in Mogadishu have set up quasi-governmental institutions and are negotiating the establishment of a common administration. It follows then that, *de facto*, those factions exercise certain prerogatives that are comparable to those normally exercised by legitimate governments. Accordingly, the members of those factions can fall, for the purposes of the application of the Convention, within the phrase "public officials or other persons acting in an official capacity" contained in article 1.

conducts of private actors when they consent or acquiesce to it, as it occurs in many cases of violence against children and women.³⁸

In addition, the existing measurements fail to consider punishments that are the result of **lawful sanctions** (such as flagellation or amputation of a limb, which under normal circumstances would constitute torture or other ill treatment) as violations of the prohibition of torture. In fact, even if Art. 1 (2) CAT appears to exempt lawful sanctions from being included as violations of the prohibition of torture,³⁹ the Human Rights Committee (HRC) in 1982 stated that 'In the view of the Committee the prohibition must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure.'⁴⁰ The

UN Committee against Torture, *Sadiq Shek Elmi v. Australia*, Communication No. 120/1998, U.N. Doc. CAT/C/22/D/120/1998 (1999), para. 6 5.

³⁸ The General Comment 20 on Art. 7 ICCPR clarifies that:

The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.

Human Rights Committee, 'General Comment 20 on Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)' U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621andLang=en> accessed on 17 September 2015, para. 2.

In a complaint, for example, the Committee against Torture held that:

the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying "acquiescence" in the sense of article 16 of the Convention.

UN Committee against Torture, *Hajrizi Dzemail et al. v. Yugoslavia*, Communication No. 161/2000, U.N. Doc. CAT/C/29/D/161/2000 (2002), para 9.2.

The same principle was applied also by the European Court of Human Rights in the case *A. v. The United Kingdom*:

The Court considers that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.

A. v. The United Kingdom Application no. 25599/94 (ECtHR, 23 September 1998), para. 22.

³⁹ Nowak and McArthur state that the inclusion of this sentence, originally thought as a reference to the UN Declaration against Torture permitting derogation from the prohibition of torture when lawful sanctions are complying with the UN Standards Minimum Rules on the Treatment of Prisoners, provoked a heated debate in the drafting phase of the Convention.

Manfred Nowak and Elisabeth McArthur, *The United Nations Convention Against Torture. A Commentary* (Oxford University Press 2008), p. 79.

⁴⁰ UN Human Rights Committee, 'General Comment 7 on Article 7', U.N. Doc. HRI/GEN/1/Rev.1 at 7 (1994).

General Comment Nr. 7 was replaced by General Comment Nr. 20, stating even more expressly that:

In the Committee's view, moreover, the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

Human Rights Committee, General Comment 20 on Article 7, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

CAT continues to state in their evaluation of the state's reports that corporal punishment is in breach of the convention.⁴¹ In Europe, corporal punishment has long been considered unacceptable and European states have banned it from their penal codes.

It appears thus that the tools measuring the prohibition of torture cover only parts of the normative content of the prohibition of torture. Furthermore, it is difficult to rely on these instruments for an up to date analysis, since the currently only functioning instrument is the PTS, which however does not distinguish torture from other forms of political violence and therefore cannot offer an accurate evaluation of the prohibition of torture.

c) *Monitoring compliance with the prohibition of torture*

Unique to the prohibition of torture is a relatively strong independent monitoring system at the international, European and national level. By way of the European Convention for the Prevention of Torture, Inhumane or Degrading Treatment or Punishment (ECPT) and the Optional Protocol to the United Nations Convention against Torture (OPCAT), a series of monitoring bodies with a strong mandate to visit places of detention in their respective member states have been created. The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the **Error! Reference source not found.** and **Error! Reference source not found.** have the mandate to visit any place under state's jurisdiction and investigate where persons are deprived of their liberty, and make recommendations to the states parties on how to improve the situation. These far-reaching mandates constitute an unrestricted access to places of detention, the possibility to conduct "unsupervised" interviews with persons deprived of their liberty as well as with members of staff, and the possibility to look into the files (medical and others) of the detainees.

Nevertheless, provisions in the respective treaties **bind all of these monitoring bodies to confidentiality.** As a result, states maintain control over which information goes public. Even though CPT reports are permitted to be published, only about half of the SPT reports have been authorised for publication by the signatory states to the convention. NPMs are bound to confidentiality to a varying degree.

The reports of the monitoring bodies offer a wide range of information on the prohibition of torture in places where persons are deprived of their liberty. Nevertheless, due to the duration of the reporting cycle of the international and regional bodies and sometimes the delay of states in presenting their reports, **it is difficult to rely on the availability of this up-to-date information.**⁴² Regarding the NPMs that could offer the most up to date information on the situation in the country, differences are so substantial that it is not possible to rely on this information.

⁴¹ For example: United Nations Committee against Torture, 'Concluding Observations on the Second Periodic Report of Qatar, adopted by the Committee at its forty-ninth Session (29 October–23 November 2012)' CAT/C/QAT/CO/2 of 25 January 2013.

⁴² The monitoring cycle of the SPT at the moment is of 7/8 years, while for the CPT the cycle is of 4/5 years.

5. What are the limitations of the sources on the realization of the prohibition of torture?

When assessing the sources available for the prohibition of torture, it must be noted that at the time of writing, measurement tools offer only a general indication about the level of torture in a country. This information might well be the starting point for a human rights information search that however needs to be complemented by more detailed information stemming from the monitoring bodies, whenever this is available.

The quality of the information that can be obtained through the existing indicators systems and the international, regional and national monitoring bodies varies substantially from one state to another. Whereas general information on the prohibition of torture can easily be accessed, when the demand for specialized information arises, the quality of information depends on the “everyday” commitment of states towards the prohibition of torture. In particular it appears that well-functioning monitoring bodies at the national level, which also seek to inform the public about its work and the problems it encounters, as it is the case in France, offers the most detailed and timely information on the prohibition of torture.

B. Overview of the relevant sources on the prohibition of torture

1. Human rights indicators following the OHCHR methodology

There are at the moment no human rights indicators schemes that apply the OHCHR's methodology to the prohibition of torture. However the guidelines of the OHCHR on Human Rights Indicators offer a suggestion on how an indicator scheme could look like.

Table 4					Illustrative indicators on the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Universal Declaration of Human Rights, art. 5)				
Physical and mental integrity of detained or imprisoned persons		Conditions of detention		Use of force by law enforcement officials outside detention		Community and domestic violence			
Structural	<ul style="list-style-type: none">• International human rights treaties relevant to the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (right not to be tortured) ratified by the State• Date of entry into force and coverage of the right not to be tortured in the constitution or other forms of superior law• Date of entry into force and coverage of domestic laws for implementing the right not to be tortured, including code of conduct on medical trials and scientific experimentation on human beings• Type of accreditation of national human rights institution by the rules of procedure of the International Coordinating Committee of National Institutions								
	<ul style="list-style-type: none">• Date of entry into force of code of conduct for law enforcement officials, including rules of conduct for interrogation of arrested, detained and imprisoned persons• Date of entry into force and coverage of formal procedure governing inspection of police cells, detention centres and prisons by independent inspection institutions• Legal maxima for incommunicado detention• Time frame and coverage of health policy for detention centres and prisons						<ul style="list-style-type: none">• Date of entry into force and coverage of specific legislation on community and domestic violence• Number of rehabilitation centres for victims of domestic violence, including women and children		
Process	<ul style="list-style-type: none">• Proportion of received complaints on the right not to be tortured investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded to effectively by the Government• Proportion of communications sent by the Special Rapporteurs on torture and on violence against women responded to effectively by the Government in the reporting period• Proportion of law enforcement officials (including police, military, specialized investigation agencies and custodial staff) trained in rules of conduct concerning proportional use of force, arrest, detention, interrogation or punishment								
	<ul style="list-style-type: none">• Proportion of detained or imprisoned persons in facilities inspected by an independent body in the reporting period• Proportion of custodial staff formally investigated for physical and non-physical abuse or crime on detained or imprisoned persons (including torture and disproportionate use of force) in the reporting period• Proportion of formal investigations of custodial staff resulting in disciplinary action or prosecution		<ul style="list-style-type: none">• Actual prison occupancy as a proportion of prison capacity in accordance with relevant United Nations instruments on prison conditions• Proportion of detained and imprisoned persons in accommodation meeting legally stipulated requirements (e.g., drinking water, cubic content of air, minimum floor space, heating)• Number of custodial and other relevant staff per inmate• Proportion of detention centres and prisons with facilities to segregate persons in custody (by sex, age, accused, sentenced, criminal cases, mental health, immigration-related or other)		<ul style="list-style-type: none">• Proportion of law enforcement officials formally investigated for physical and non-physical abuse or crime (including torture and disproportionate use of force) in the reporting period• Proportion of formal investigations of law enforcement officials resulting in disciplinary action or prosecution• Proportion of arrests and other acts of apprehending persons where a firearm was discharged by law enforcement officials		<ul style="list-style-type: none">• Proportion of public social expenditure on public awareness campaigns on violence against women and children (e.g., violence by intimate partners, genital mutilation, rape)• Proportion of health-care and community welfare professionals trained in handling domestic violence issues• Proportion of teaching staff trained against the use of physical violence against children• Proportion of teaching staff subjected to disciplinary action, prosecuted for physical and non-physical abuse of children• Proportion of women reporting forms of violence (physical, sexual or psychological) against themselves or their children initiating legal action or seeking help from police or counselling centres• Number of persons arrested, adjudicated, convicted or serving sentence for violent crime (including homicide, rape, assault) per 100,000 population in the reporting period		
Outcome	<ul style="list-style-type: none">• Incidence and prevalence of death, physical injury and communicable and non-communicable diseases (e.g., HIV/AIDS, malaria and tuberculosis, * mental impairment) in custody• Proportion of detained or imprisoned persons held incommunicado or in prolonged solitary confinement• Reported cases of inhuman methods of execution and treatment of persons sentenced to death /incarcerated in the reporting period• Proportion of detained or imprisoned persons with BMI < 18.5				<ul style="list-style-type: none">• Incidence of death and physical injury resulting from arrests or other acts of apprehending persons by law enforcement officials in the reporting period		<ul style="list-style-type: none">• Proportion of children or pupils per 1000 enrolled and patients who experienced corporal punishment in schools and medical institutions• Incidence and prevalence of deaths and crimes related to community and domestic violence (including homicide, rape, assault) in the reporting period		
	<ul style="list-style-type: none">• Reported cases of torture or cruel, inhuman or degrading treatment or punishment perpetrated by an agent of the State or any other person acting under its authority or with its complicity, tolerance or acquiescence, but without any or due judicial process (e.g., as reported to the Special Rapporteurs on torture/ violence against women), in the reporting period• Proportion of victims of torture or cruel, inhuman or degrading treatment or punishment who received compensation and rehabilitation, in the reporting period								
All indicators should be disaggregated by prohibited grounds of discrimination, as applicable and reflected in metadata sheets									

Source: United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), p. 91.

2. Existing human rights and human rights related indicators schemes

a) *The Political Terror Scale (PTS)*

Type of Author: Academic.

Geographical range: Worldwide (187 countries).

Time span: Ongoing since 1976.

Which information can I expect to find here?	The Political Terror Scale does not offer information on torture <i>per se</i> : it offers standard-based quantitative information on 'state terror' worldwide.
What does it measure?	<p>The PTS was created to evaluate if US foreign aid was sent to countries committing severe human rights violations.⁴³ The PTS measures "state terror", defined as violations of physical and personal integrity rights carried out by a state (or its agents).⁴⁴ "State terror" therefore comprises some of the worst 'coercive activities on the part of the government designed to induce compliance in others',⁴⁵ such as torture, political imprisonment, extrajudicial killings and disappearances.</p> <p>For what concerns torture, the PTS considers only those forms of torture that can be related to a deliberate action of a state official, such as torture itself, while other forms of ill-treatment, such as 'life threatening' conditions of detention, are not considered in the PTS.⁴⁶ Freedom is left to the coders to consider as state violence those cases where states "allow" private or non-state actors to commit such crimes. State agents are defined as 'all actors on which the state (or its subsidiaries) has the capacity to exert significant influence'.⁴⁷</p>
How often does it measure?	The PTS offers yearly measurements since 1976.
What sources does it use?	The sources of information of the PTS are the US State Department Country Reports on Human Rights Practices, the Annual Report of AI and since 2013 also from the World's Reports of HRW ⁴⁸
How is this indicator scheme build?	<p>The PTS Index was adapted from the Freedom House Index and is a standards-based⁴⁹ composite ranking that classifies countries on a five point scale, according to the scope (type of violence), intensity (frequency) and range of state violence (portion of the population or segments of society targeted for abuse).⁵⁰ The PTS produces one index for every source it draws information from. Countries are classified as following:</p> <p>Level 1) Countries . . . under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional . . . political murders are extremely rare. . .</p>

⁴³ Political Terror Scale, 'History', available at <www.politicalterror scale.org/About/History> accessed 9 July 2015.

⁴⁴ Reed M. Wood and Mark Gibney, 'The Political Terror Scale (PTS): a Re-introduction and a Comparison to CIRI' (2010) 32 Human Rights Quarterly 367, p. 369.

⁴⁵ Steven C. Poe and C. Neal Tate, 'Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis' (1994) 88 The American Political Science Review 853, p. 854.

⁴⁶ Ibid, footnote 44, p. 370.

⁴⁷ Ibid, footnote 44, p. 388.

⁴⁸ Ibid, footnote 44, p. 372.

⁴⁹ 'Standards-based measures of human rights are one level removed from event counting and violation reporting, and merely apply an ordinal scale to qualitative information. The resulting scale is derived from determining if the reported human rights situation reaches a particular threshold of conditions, ranging from good (i.e. few violations) to bad (i.e. many violations). (...) different checklists are used to judge the degree to which rights are protected and are used to convert a qualitative account (or accounts) into a standard scale that provides a comparable measure of human rights across a large selection of countries.' Todd Landman and Edzia Carvalho, *Measuring Human Rights* (Routledge 2010), pp. 37-38.

⁵⁰ Ibid, footnote 44, p. 373.

Disaggregation**Discussion****Website**

Level 2) There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, torture and beating are exceptional ... political murder is rare...

Level 3) There is extensive political imprisonment, or a recent history of such imprisonment ... Execution or other political murders and brutality may be common. Unlimited detention, with or without trial, for political views is accepted...

Level 4) The practices of (Level 3) are expanded to larger numbers. Murders, disappearances are a common part of life. ... In spite of its generality, on this level terror affects primarily those who interest themselves in politics or ideas.

Level 5) The terrors of (Level 4) have been expanded to the whole population. ... The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals.⁵¹

Two senior coders and several students code every country. Disagreements are reviewed in first instance by the principal coders and, whenever the disagreement is not set aside, a third coder is consulted. Wood and Gibney state that differences in assessing countries are usually minimal and disagreement is rather rare.⁵²

The PTS does not disaggregate "state terror", providing only one score where multiple dimensions of abuse have been collapsed.⁵³

One of the main critiques of the PTS is that it does not disaggregate based on types of human rights violations.⁵⁴ The PTS regards physical integrity rights as substitutable policy options, where 'the choice of one may prevent or render unnecessary the use of the other. Killing one's political opponents clearly eliminates the need to imprison them.'⁵⁵

It has also been argued that different violations of physical integrity rights are differently valued by the authors of the PTS:

for the imprisonment dimension the level of activity has to increase within each rank, whereas for the torture and killing dimension the level of activity is about the same for countries scoring a 1 or a 2, and quite possibly for countries scoring a 3 with the use of the conditional phrase ("may be common"). Only with countries ranked 4 and 5 could one be sure that torture and killing is greater than "rare".⁵⁶

Cingranelli and Richards criticise also the fact that the PTS does not take into account state failure or foreign occupation and produces data also for those countries affected by it, as was the case for example for Afghanistan between 2003 and 2004 'when the former Taliban government was no longer in power, no new Afghan government had been installed, and government practices were under control of the United States'.⁵⁷

www.politicalterroryscale.org/Data

⁵¹ Ibid, footnote 44, p. 373.

⁵² Ibid, footnote 44, p. 372.

⁵³ Ibid, footnote 44, p. 376.

⁵⁴ James M. McCormick and Neil J. Mitchell, 'Human Rights Violations, Umbrella Concepts, and Empirical Analysis' (1997) 49 World Politics 510; David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395.

⁵⁵ Steven C. Poe and others, 'Repression of the Human Right to Personal Integrity revisited: A Global Cross-National Study covering the Years 1976-1993' (1999) 43 International Studies Quarterly 291, p. 298.

⁵⁶ James M. McCormick and Neil J. Mitchell, 'Human Rights Violations, Umbrella Concepts, and Empirical Analysis' (1997) 49 World Politics 510, pp. 515-516.

⁵⁷ David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395, pp. 406-407.

b) *The Cingranelli-Richards data project (CIRI)***Type of Author:** Academic.**Geographical range:** Worldwide (195 countries).**Time span:** 1981-2011.

Which information can I expect to find here?	CIRI provides information on state's respect for a wide range of human rights, including the prohibition of torture.
What does it measure?	<p>CIRI measures various violations of human rights, such as extrajudicial killings, disappearance, torture, political imprisonment. Torture is defined as follows:</p> <p style="padding-left: 40px;">Torture refers to the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials. This includes the use of physical and other force by police and prison guards – including rape and beatings – and deaths in custody due to tangible negligence by government officials. Torture can be anything from simple beatings, to other practices such as waterboarding, rape, or administering shock or electrocution as a means of getting information, or a forced confession. Torture also takes into account intentional mental abuse of those in custody. Military hazing also counts as torture.⁵⁸</p> <p>Excluded from the definition of torture are the death penalty and other “legal” punishments such as public flagellation or caning. General prison conditions are not considered as violation of the prohibition of torture. As for all others human rights measured in the CIRI dataset, reference in international law is made to the ICCPR (Art. 7).</p> <p>The authors of the CIRI project emphasise that their database covers only governmental human rights practices, meaning ‘human rights-related actions of a government and any and all of its agents, such as police or paramilitary forces.’⁵⁹ It follows that whenever there is any lack of central authority (state collapse) or the state is under foreign occupation, the CIRI Project does not provide scores for the country in question. To evaluate state failure and foreign occupation, the CIRI project utilizes the data from the Polity IV project⁶⁰ (a dataset that provides information on regime change and studies the effects of regime authority).⁶¹</p>
How often does it measure?	Yearly, from 1981 to 2011.
What sources does it use?	CIRI uses the US State Department Country Report on Human Rights Practices and AI Annual Report. In case of disagreement the coders follow the AI report. ⁶²

⁵⁸ David L. Cingranelli and David L. Richards, ‘The Cingranelli-Richards (CIRI) Human Rights Data Project Coding Manual Version 5.20.14’, available at <<https://drive.google.com/file/d/0BxDpF6GQ-6fbWkpxTDZCQ01jYnc/edit?pli=1>> accessed 11 October 2015.

⁵⁹ Ibid, footnote 58.

⁶⁰ Monty G. Marshall and others, ‘Polity IV Project - Political Regime Characteristics and Transitions, 1800-2013: Dataset Users’ Manual’ (2014), available at <http://www.systemicpeace.org/inscr/p4manualv2013.pdf> accessed 14 December 2015.

⁶¹ ‘The following are examples of the PTS producing scores for countries under foreign occupation. The PTS produced scores for Afghanistan in 2003 and 2004 when the former Taliban government was no longer in power, no new Afghan government had been installed, and government practices were under the control of the United States. Similarly, the PTS project produced a score for Iraq in 2003 and 2004 when no Iraqi government existed and for Lebanon in 1996–2000 when it too was under foreign rule. The CIRI project did not report human rights scores for any of those countries in any of those years. Instead, we assigned those country-years one of the special codes developed by the Polity data project.’ Ibid, footnote 57, p. 407.

⁶² Ibid, footnote 57, p. 400.

How is this indicator scheme build?

The CIRI Index classifies states human rights practices according to a three point ordinal scale. Torture, extrajudicial killing, political imprisonment and disappearance are coded separately and then summed in the physical integrity index (which ranges from 0 to 8).

The language used in the report is mostly decisive for defining in which category states fall. Each human right is coded separately by two trained coders. Irreconcilable disagreements are settled by senior coders and records on disagreements are kept, in order to assess the level of reliability of the data.⁶³ Coders are instructed to give precedence to the language than to the violations count. According to the wording of the reports therefore states are coded as follow:

0 = Practiced frequently, meaning instances where violations are described by adjectives such as "gross," "widespread," "systematic," "epidemic," "extensive," "wholesale," "routine," "regularly," or likewise, are to be coded as a ZERO (have occurred frequently); Indications of patterns of abuse most often are evaluated as 0;

1 = Practiced occasionally;

2 = Not practiced / Unreported.

Only for those countries where human rights violations are very well accounted for and reported in the US State Department reports, freedom is left to the coder to use the amount of violations, when she/he feels that those numbers represents the totality of the instance of torture. In this case coders follow this scale:

0 = 50 or more instances of torture;

1 = 1-49 instances of torture;

2 = 0 instances of torture.⁶⁴

The unit of measurement of the CIRI index are country's internationally recognized borders. No information is offered on areas smaller than a country.⁶⁵

Disaggregation

None

Discussion

One of the main critics to the CIRI project is the use of an alternative scale for reported human rights violation. Wood and Gibney in particular discuss the fact that US State Reports as well as AI reports, 'seldom (if ever) make any mention of an exact number of incidents of torture'.⁶⁶ Furthermore, they argue that the numerical scale does not adequately reflect the range of states violations, since the best score is given when there is no violation recorded, the second best score is for states where 1-49 violations were recorded, and the worst score is for all other states irrespective if 50 or many more violations were recorded.⁶⁷

The numerical scale does not take population size into account: 'International law does not give countries latitude to violate human rights based on their population size. For example, India is not allowed to torture more people than is Vanuatu, just because it has a greater population.'⁶⁸ Coupled with the fact that the CIRI Project uses an ordinal scale to measure state practices, this results in the fact that 'the governments of China and India almost always receive our lowest scores, in part because they have such large populations.'⁶⁹

Wood and Gibney also contest the fact that the count does not take into consideration the 'range' of human rights violation:

Counts of violence say nothing about who gets targeted. Range is an important dimension of physical integrity violations because range illustrates the selectivity of the violence. (...) A state that selectively targets a single societal group will generally receive a lower (better) score than a state that broadly targets its victims.⁷⁰

⁶³ Ibid, footnote 57, p. 403.

⁶⁴ Ibid, footnote 58.

⁶⁵ Ibid, footnote 58.

⁶⁶ Ibid, footnote 44, p. 378.

⁶⁷ Ibid, footnote 44, p. 378

⁶⁸ Ibid, footnote 58, p. 5.

⁶⁹ Ibid, footnote 57, p. 415.

⁷⁰ Ibid, footnote 44, p. 379.

Website

An example is offered on human rights violation in the Philippines in 2000. The PTS, taking into account the range and patterns of violence experience in the country scored the Philippines in the least bad category, while CIRI put it in the worst category of violators, together with Iraq and Afghanistan.⁷¹

Some authors also question the assumption at the base of the construction of the composite indicator on physical integrity, that different types of human rights violations equally affect individuals and therefore consider for example extrajudicial killings equivalent to arbitrary detention.⁷²

www.humanrightsdata.com

c) *Ill-Treatment and Torture Data Collection Project (ITT)*

Type of Author: Academic.

Geographical range: Worldwide.

Time span: 1995-2005.

Which information can I expect to find here?	The ITT Data Collection provides events-based quantitative information on state's violations of the prohibition of torture published by AI 'when the perpetrator is an agent of the state, the victim is a person detained under state's control ⁷³ , and the alleged abuse meets the definition of torture under UNCAT'. ⁷⁴
What does it measure?	<p>The ITT measures allegations of human rights violations recorded by AI. The ITT distinguishes between allegation of torture and other ill-treatments, as defined by UNCAT. Borrowing Rejali's categorisation,⁷⁵ allegations of torture are distinguished depending on the physical signs left on the victim: 'Scarring Torture' is coded when AI alleges torture that leaves marks on the human body, and 'Stealth Torture' or 'clean' torture is coded for allegations that do not leave marks on the body. <i>Unstated Torture</i> distinguishes allegations of torture in which AI documents that torture occurred, but does not provide information regarding the type of torture alleged.⁷⁶</p> <p>ITT does not code allegations of torture when a state is not properly functioning (state collapse or foreign occupation) or when states have a population of less than 1 million peoples.⁷⁷ Similarly to CIRI, state proper functioning is evaluated relying on the Polity IV project: when a country reaches a value of -66 or -77 in the Polity IV scale (a dataset that provides information on regime</p>

⁷¹ Ibid, footnote 44, p. 380.

⁷² Ibid, footnote 44, p. 377.

⁷³ The ITT considers that persons are deprived of their liberty when 'either 1) the state (or its agent) takes custody of a person, or 2) when the state (or its agent) targets an individual or group and deprives them of their liberty for a period of time'.

Courtenay Conrad and Moore W., 'The Ill-Treatment and Torture (ITT) Data Collection Project Specific Allegation Data User's Guide' (2011), available at <http://faculty.ucmerced.edu/cconrad2/Academic/Data_files/SAUserGuide28Nov11.pdf> accessed 9 March 2015, p. 6.

⁷⁴ Courtenay Conrad and others, 'Disaggregating Torture Allegations: Introducing the Ill-Treatment and Torture (ITT) Country-Year Data' (2013) 14 International Studies Perspectives 199, p. 201.

⁷⁵ Darius Rejali, *Torture and Democracy* (Princeton University Press 2009). In his book Rejali analyses torture practices and their link with democracy. In particular he examines how practice of torture changed from scarring techniques towards stealth techniques, which are more suitable to avoid detection in democratic societies.

⁷⁶ Courtenay Conrad and others, 'Torture Allegations as Events Data: Introducing the Ill-Treatment and Torture (ITT) Specific Allegation Data' (2014) 51 Journal of Peace Research 429, p. 431.

⁷⁷ Ibid, footnote 74, p. 201; Ibid, footnote 73, p. 7.

How often does it measure?

What sources does it use?

How is this indicator scheme build?

change and studies the effects of regime authority),⁷⁸ which means that it is under foreign occupation or the state is failing, the authors exclude the country from the database for that year.⁷⁹

For what concern state's agents, the ITT codes allegations when the perpetrator is 'someone in the state's employ or someone who is directed by a person in the state's employ to act on behalf of the state'.⁸⁰

The Specific Allegation (SA) dataset further records cases of trans-border nature, according to art. 3 UNCAT on the principle of *non-refoulement*. ITT defines refugees according to Art. 1 of the UN Convention on Refugees, but they 'do not require these individuals to have formally applied for refugee status or asylum'.⁸¹

The unit of measurement is a year, however it is unclear if data will be available after 2005.

The ITT uses four types of AI publications: Annual Reports (topical and regional), Press Releases and Action Alerts, that were published between 1995 and 2005.

The index is composed of two data sets: the Country-Year allegations (CY) and SA datasets. The CY dataset 'reports allegations of abuse targeted at a particular government agency over the course of an entire year'.⁸² This means for example that allegations of torture occurring in a specific police stations or allegations which are temporally confined are not recorded in this data set.⁸³ The SA data set 'include only precise allegations about abuse in a specific place that is smaller than the country itself or that occurred during a period of time less than a year in duration'.⁸⁴

The CY dataset uses Hathaway five point ordinal scale⁸⁵ to measure country-wide allegations of torture:

1. Infrequent (also sporadic, occasionally);
2. Some(times) (also several, many, numerous, often, other);
3. Frequent (also routinely, considerable, commonplace, regular, pattern);
4. Widespread (also extensive, all but few, prevalent, generalised, indiscriminate);
5. Systematic (also consistent, endemic, systemic, throughout).

Whenever AI states that the situation has improved or worsened, the ITT assigns a +1 point for improvement and a -1 point for worsening, as a conservative measure, even if the situation has improved or worsened more. If there are no values for the previous year, the ITT assigns the following values:

- 6 for continued (also persisted, further, sustained, remained, still);
- 7 for improved;
- 8 for increased or worsening;
- 99 allegation, no level of torture.⁸⁶

The SA Datasets offer also information about the magnitude of the victims allegedly victimised in a given allegation. The number of victims, whenever known, is also offered in the dataset and the magnitude is coded as follows:

- 0 = None;
- 1 = 1 – 9;
- 2 = 10 – 99;
- 3 = 100 – 999;
- 4 = 1.000 – 9.999;

⁷⁸ Monty G. Marshall and others, 'Polity IV Project - Political Regime Characteristics and Transitions, 1800-2013: Dataset Users' Manual' (2014), available at <http://www.systemicpeace.org/inscr/p4manualv2013.pdf> accessed 14 December 2015.

⁷⁹ Ibid, footnote 73, p. 8.

⁸⁰ Ibid, footnote 73, p. 11.

⁸¹ Ibid, footnote 73, p. 16.

⁸² Ibid, footnote 76, p. 430.

⁸³ Ibid, footnote 74, p. 202.

⁸⁴ Ibid, footnote 82, p. 430.

⁸⁵ Oona Hathaway, 'Do Human Rights Treaties make a Difference?' (2002) 111 Yale Law Journal 1935.

⁸⁶ Ibid, footnote 73, pp. 10-11.

	<ul style="list-style-type: none"> • 5 = 10.000 – 99.999; • 6 = 100,000 – 999.999; • 7 => 999.999; • 9 = Not Zero. <p>The SA dataset also describes the year, location (national territory, sovereign territory abroad or elsewhere, meaning airspace or sea space), the victim type and agency of control as described above, expectation of torture as well as ‘type’ of torture (ill treatment, scarring torture, unstated torture, stealth torture) as well as if the victim died as a consequence of torture. The dataset also collects data on state’s response to formal complaints, namely if a formal complaint has been reported (either by the victim or by an NGO) and investigated. It further collect information on the outcome of the investigation (e.g. adjudication or mediation, administrative sanction, dismissal, as well as legislation or institution creation), whether the adjudication took at a domestic or international court, as well as if the adjudication resulted in a pardon, conviction or guilty plea, acquittal or compensation.</p>
Disaggregation	<p>The CY and SA data are disaggregated per type of victim, agency of control (perpetrator), type of torture, obstruction of NGO access to victims. The SA dataset offers also information about the magnitude of the victims allegedly victimised in a given allegation.</p> <p>Both databases offer information on the governmental agency⁸⁷ considered responsible for an alleged abuse (police, prison, military, immigration detention, intelligence and paramilitary), on the types of victims (criminal,⁸⁸ political dissident,⁸⁹ member of a marginalized group⁹⁰ and state agent) as well as on the obstruction of NGOs access to victims. In both cases values relating to victims or perpetrators are not mutually exclusive: illegal migrants are coded for example under both, criminals and members of marginalized groups.⁹¹</p>
Discussion	<p>Since the ITT is a relatively recent endeavour, there is very little literature related to it. Richard Carver, states that:</p> <p style="padding-left: 40px;">The distinction between specific allegations and a broader claim that torture is “routine” or “widespread” may seem reasonable, but appears to misunderstand the nature of Amnesty International’s events-based reporting. Particularly in situations where access is limited, AI will tend to confine itself to reporting those cases about which it has definite information, without drawing any explicit one way or another about the general level of torture. (The ITT does have a separate coding category of Restricted Access, where AI has stated that it, or another international NGO, had difficulty gaining access to detainees.)⁹²</p>
Website	<p>http://faculty.ucmerced.edu/cconrad2/Academic/ITT_Data_Collection.html</p>

⁸⁷ Agencies of Control (AoC) data are not mutually exclusive: when the personnel of more than one agency might have participated in the offence both agencies are ‘held accountable’ for it. State’s agents are also coded under their official role, even if they are temporarily acting in another capacity. Ibid, footnote 73, p. 12.

⁸⁸ From the definition of criminal are exempted victims of crimes that can be considered threats to national security as well as in those instances ‘where a victim has broken a law that is in opposition to the articles in the Universal Declaration of Human Rights.’ Moreover, in the definition of criminals under the ITT, absent other information, falls the entire prison population, irrespective if sentenced or in pre-trial detention. Ibid, footnote 73, p. 13 footnote 19.

⁸⁹ Dissident is defined as ‘one believed to be a threat to the state or be willing to engage in illegal activity to challenge policy.’ In this category therefore fall prisoners of conscience, human rights activists and protesters. Persons that have disappeared are also coded under dissidents. Terrorists are coded under both, criminals and dissidents, while guerrillas are only coded under dissidents. Ibid, footnote 73, p. 13 footnote 20.

⁹⁰ Members of marginalised groups are defined depending on the scope of torturing, social control. In this category fall ‘members of marginalized religious and ethnic groups, the elderly and youths, and immigrants’. Ibid, footnote 74, p. 203.

⁹¹ Ibid, footnote 73, p. 13.

⁹² Richard Carver, ‘Does Torture Prevention work? Report of Exploratory Phase’ (2012), available at <www.apr.ch/content/files/apr%20institutional/Carver%20research%20project%20stage%201_report.pdf> accessed 2 November 2015, p. 20.

d) *Oona Hathaway, Do Human Rights Treaties make a Difference?*⁹³

Type of Author: Academic.

Geographical range: Worldwide (166 countries excluding the USA).

Time span: 1985-1999.

Which information can I expect to find here?	This study offers quantitative information on the respect for the prohibition of torture worldwide.
What does it measure?	<p>This study analysed the question of how effective human rights treaties are in changing state's behaviour. Scholars of international political and legal theory often claimed that (human rights) norms affect state's policy and behaviour by constraining or by shaping state's interests.⁹⁴ This study sought to find empirical proof to this claim by evaluating the impact that treaty ratification has on human rights violations. Hathaway examined five subject areas: genocide, torture, civil liberty, fair and public trials and political representation of women.</p> <p>The point of departure is the definition of the prohibition of torture contained in the main international treaties, namely UNCAT, the Inter-American Convention to Prevent and Punish Torture, the ECPT and the African Charter on Human and People Rights. The index focuses on torture and severe forms of ill-treatment, i.e beatings 'when they constituted affirmative acts of physical or mental abuse in prison or by police or other governmental officials. In this subcategory, I included maltreatment used to extract confessions or in initial interrogations.'⁹⁵ The Torture Index does not include 'punishments carried out pursuant to a country's legal system, even if that system may be considered by some to sanction torture'.⁹⁶ Furthermore it does not consider 'widespread poor prison conditions (e.g., overcrowding, inadequate food and lengthy detentions prior to trial) as torture unless the conditions of detention were so severe as to constitute mistreatment or abuse aimed at intimidating, penalizing, or obtaining a confession from detainees'.⁹⁷</p>
How often does it measure?	On-off activity. The data were updated by other researchers for other studies.
What sources does it use?	The sources of this study are the US Department of State's <i>Country Reports on Human Rights</i> . ⁹⁸
How is this indicator scheme build?	Hathaway created a standards-based Torture Index, which rates states' compliance on a scale from one to five. Countries' practices were coded according to key words that indicated the frequency of torture's occurrence and rated according to the highest category to which it

⁹³ Oona Hathaway, 'Do Human Rights Treaties make a Difference?' (2002) 111 Yale Law Journal 1935.

⁹⁴ Audie Klotz, 'Norms reconstituting Interests: Global Racial Equality and U.S. Sanctions against South Africa' (1995) 49 International Organizations 451; Kathryn Sikkink, 'Transnational Politics, International Relations Theory, and Human Rights' (1998) 31 Political Science and Politics 516; Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 53 International Organizations 887; Thomas Risse and others (eds.), *The Persistent Power of Human Rights: from Commitment to Compliance* (Cambridge University Press 2013).

⁹⁵ Ibid, footnote 85, p. 1970.

⁹⁶ Ibid, footnote 85, p. 1970.

⁹⁷ Ibid, footnote 85, p. 1970.

⁹⁸ Ibid, footnote 85, p. 1969.

corresponded.⁹⁹ Countries with insufficient information for coding were left blank in the database. The Hathaway scale codes countries as follows:

Level 1: There are no allegations or instances of torture in this year. There are no allegations or instances of beatings in this year; or there are only isolated reports of beatings by individual police officers or guards all of whom were disciplined when caught.

Level 2: At least one of the following is true: There are only unsubstantiated and likely untrue allegations of torture; there are "isolated" instances of torture for which the government has provided redress; there are allegations or indications of beatings, mistreatment or harsh/rough treatment; there are some incidents of abuse of prisoners or detainees; or abuse or rough treatment occurs "sometimes" or "occasionally." Any reported beatings put a country into at least this category regardless of government systems in place to provide redress (except in the limited circumstances noted above).

Level 3: At least one of the following is true: There are "some" or "occasional" allegations or incidents of torture (even "isolated" incidents unless they have been redressed or are unsubstantiated (see above)); there are "reports," "allegations," or "cases" of torture without reference to frequency; beatings are "common" (or "not uncommon"); there are "isolated" incidents of beatings to death or summary executions (this includes unexplained deaths suspected to be attributed to brutality) or there are beatings to death or summary executions without reference to frequency; there is severe maltreatment of prisoners; there are "numerous" reports of beatings; persons are "often" subjected to beatings; there is "regular" brutality; or psychological punishment is used.

Level 4: At least one of the following is true: Torture is "common"; there are "several" reports of torture; there are "many" or "numerous" allegations of torture; torture is "practiced" (without reference to frequency); there is government apathy or ineffective prevention of torture; psychological punishment is "frequently" or "often" used; there are "frequent" beatings or rough handling; mistreatment or beating is "routine"; there are "some" or "occasional" incidents of beatings to death; or there are "several" reports of beatings to death.

Level 5: At least one of the following is true: Torture is "prevalent" or "widespread"; there is "repeated" and "methodical" torture; there are "many" incidents of torture; torture is "routine" or standard practice; torture is "frequent"; there are "common," "frequent," or "many" beatings to death or summary executions; or there are "widespread" beatings to death.

A researcher performed the initial coding. The reliability of this initial coding was ensured by coding a random sample of 20% of the data.¹⁰⁰

Disaggregation

None

Discussion

Goodman and Jinks¹⁰¹ criticised this study for not taking sufficiently into account the interrelation and interdependence of human rights, therefore providing for a possibly distorted picture. As an example they offered the situation in Latin America in the late '70 and early '80 where states replaced the use of torture with 'disappearances'. Data may also be tainted by the fact that the more open a regime is towards human rights, the likelier it is to gain access to information about violation, therefore depicting the country as worse than it actually is in comparison with other more autocratic states.

⁹⁹ Ibid, footnote 85, p. 1970.

¹⁰⁰ Ibid, footnote 85, pp. 1970-72.

¹⁰¹ Roland Goodman and Derek Jinks, 'Measuring the Effects of Human Rights Treaties' (2003) 14 European Journal of International Law 171. Hathaway responded to those critics in an article appeared in the same journal: Oona Hathaway, 'Testing Conventional Wisdom' (2003) 14 European Journal of International Law 185.

3. Human rights compliance information

This section analyses the reporting procedures of the main human rights bodies at the universal, regional and national level (this is only the case for the NPMs), dealing with the prohibition of torture. It focuses on monitoring procedures and refrains from discussing case law and individual complaints procedures.

a) *United Nations Committee against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (CAT)*

Type of Author: Intergovernmental Organization.

Geographical range: Worldwide (at the time of writing the Convention counts 158 state parties).¹⁰²

Which information can I expect to find here?	State's Reports include a range of information on the prohibition of torture and follow the structure of the Convention. A wealth of information related to the prohibition of torture can be found in the reports: they range from legal and administrative safeguards against torture, to state's efforts to prevent and combat trafficking in women and children, or to efforts made from state's parties to diversify the composition of the police force. The CAT requests also quantitative information on a variety of issues, like the number of prison staff and prison inmates. The quality and level of detail of the information provided varies from country to country, especially in relation to quantitative information. Data provided are usually two years old at the time of reporting.
What procedural steps are taken to come to the report?	The reports are the outcome of a dialogue between CAT and the State. Shortly before CAT provides its concluding observations, civil society organizations are also allowed to present their view on how the situation has improved since the last periodic report.
Duration of the reporting cycle	The reporting process is ongoing: around 30/40 countries per year are being evaluated by the CAT during three sessions, usually in April, May/July and November. ¹⁰³ A reporting cycle usually is of about four years, sometimes however states delays their reporting obligations for years.
Website	www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx

¹⁰² United Nations Office of the High Commissioner for Human Rights, 'Status of Ratification of the Convention against Torture', available at < <http://indicators.ohchr.org> > accessed 16 July 2015.

¹⁰³ United Nations Office of the High Commissioner for Human Rights, 'Calendar of Country Reviews by Treaty Body', available at <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=SessionandLang=En> accessed 16 July 2015.

b) *UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)*

Type of Author: Intergovernmental Organization (Expert Body).

Geographical range: Worldwide (around 80 states parties).

Which information can I expect to find here?	<p>SPT Reports provide very detailed information about condition of detention in the states member of OPCAT. Information originates from direct observations made by the member of this expert body during a visit to a state party.</p> <p>It must however be noted that the number of member states to the OPCAT is quite limited.</p> <p>Due to its sensitive nature, the work of the SPT is covered by confidentiality and, unlike the member states of the ECPT, member states not always agree to publications. The SPT for various reasons has not been able so far to establish a monitoring cycle of 4/5 years as it was planned in the beginning. As a consequence, even if the quality of the information provided by the SPT is high, it is relatively unlikely that updated information will be available for a particular country.</p> <p>Also, it is difficult to identify trends, since the places of detention visited often varies between visits and the recommendations made always relate to the particular conditions that were observed during the visits.</p>
What procedural steps are taken to come to the report?	<p>Members of the SPT visit states party and produce then a confidential report which is sent to state's authorities. The report originates from direct observations of the members of the SPT, gathered through visiting places of deprivation of liberty, interviews with staff and inmates as well as discussions with NGOs representatives and national authorities. Usually the SPT covers all types of places of deprivation of liberty within a country visit.</p> <p>The report therefore originate from a dialogue between the SPT and its member states, that are asked to inform the Committee within six months of the SPT report about the steps taken in order to improve the situation.</p>
Duration of the reporting cycle	<p>Even with the increase of the number of members of the SPT to 25, the SPT is able to visit a country every 10/15 years at the moment. It has however established a system of follow-up visits, whenever it deems it necessary.</p>
Website	<p>www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx</p>

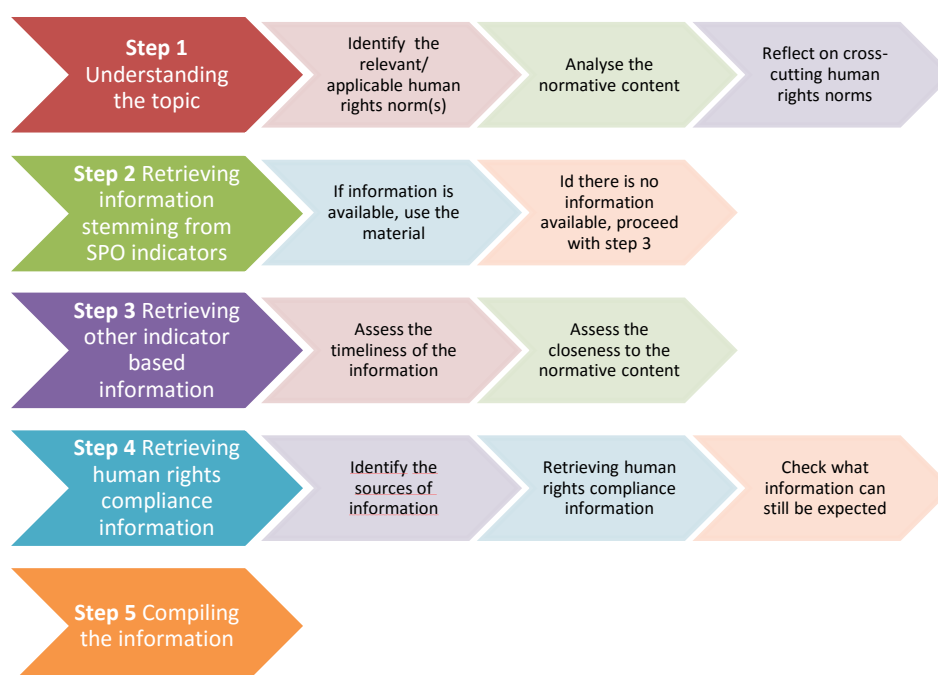
C. Workflow for exemplary information requests on the prohibition of torture

This section offers a short guide on how to retrieve information related to the prohibition of torture most effectively. The theoretical search model, which in principle can be applied to every search related to the prohibition of torture, will exemplarily be applied for retrieving information on the right of people deprived of their liberty to legal representation and access to justice in two countries: France and South Africa.

The right of access to a lawyer for persons deprived of their liberty was chosen since it is one of the most basic safeguards against torture and ill-treatment and has been recently highlighted by the SPT as particularly relevant in the context of the on-going process to update the standard minimum rules for the treatment of prisoners.¹⁰⁴ The choice of the countries was dictated by the interest in applying the search model to an EU country and a third-country and evaluating the quality and quantity of information available in a country that has ratified the most relevant treaties in the field of torture (and in particular OPCAT), and a country that did not.

The search has been divided into procedural steps with a series of sub-steps. The aim of each step, the procedure followed to retrieve information and the result of the exemplary search will be described. An overview of the steps is provided in Figure 1: Workflow's .

Figure 1: Workflow's structure for researching information on the prohibition of torture



¹⁰⁴ United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 'Summary of the Discussion on the On-going Process to amend the United Nations Standard Minimum Rules for the Treatment of Prisoners', CAT/OP/4 of 5 January 2013, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2f4&Lang=en> accessed on 24 August 2015.

1. Step 1: Understanding the topic

The starting point of every search for information should be a clear understanding of what one is looking for. When dealing with human rights, this means looking at the relevant international and regional normative documents and how these have been interpreted. Understanding the topic means also defining more precisely the issues that need to be considered when looking for information. It goes without saying that the depth of this search will depend on the time at hand, on the content as well as the number of countries analysed.

a) *Identify the relevant/applicable human rights norm(s)*

Aim

The identification of the applicable norms should be the starting point of every search for human rights information. For our exemplary search, this means looking for norms defining the right of access to a lawyer for people deprived of their liberty.

Procedure

The first procedural step is to identify to which human right the topic at hand relates to and which international and regional treaties are relevant in the field.

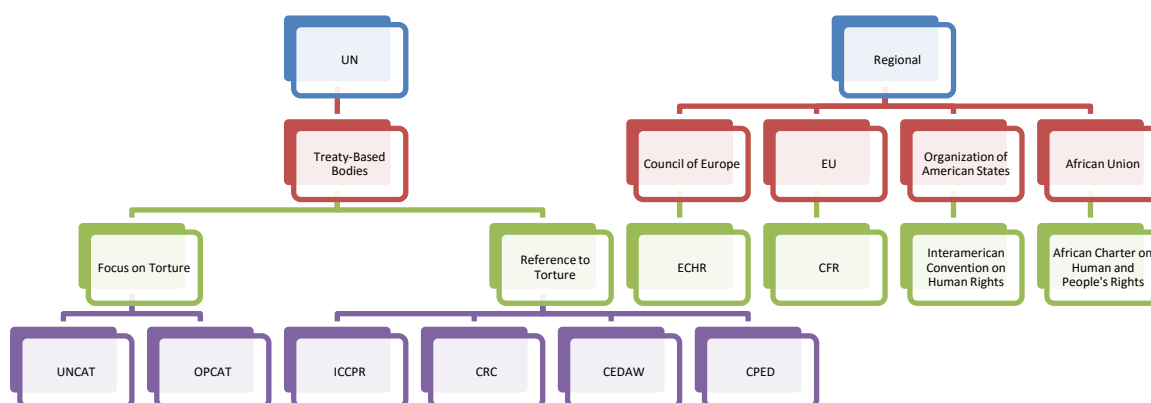
It will then be necessary to look at the obligations contained in these treaties in order to find the applicable norm(s).

No matter whether the search regards an EU country or a third-country, it is also important to analyse the EU policy and legislation in the field, in order to understand what the EU deems relevant.

Content

The rights of persons deprived of their liberty form an integral part of the normative content of the prohibition of torture. Figure 2: International and regional treaties related to the prohibition of torture shows the main international and regional treaties, dealing with the prohibition of torture.

Figure 2: International and regional treaties related to the prohibition of torture



The international treaties focusing on the prohibition of torture do not explicitly contain a right of all persons deprived of their liberty to have access to a lawyer. The right to legal representation is expressly mentioned only in the International Convention on the Protection of All Persons from Enforced Disappearance (CPED), where Art. 17 states that:

Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: (...)

Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;¹⁰⁵

In this particular case, it appears necessary to look at the interpretations of legal norms for some guidance. General Comment No. 20 of the HRC on the prohibition of torture, states that 'The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.'¹⁰⁶ The right of access to a lawyer is considered, together with the right of access to a doctor and to have contact with family members, a basic safeguard against torture and ill-treatment for people deprived of their liberty. It belongs thus to those fundamental safeguards that Art. 2 (1) UNCAT refers to when talking about the prevention of torture.¹⁰⁷ In fact the right of access to a lawyer, ensures not only that detainees are guaranteed a fair trial for the crime they are being held for: the presence of a lawyer during interrogation and the possibility to contact an independent lawyer in cases of torture or ill-treatment is believed to be a deterrent for public officers to misbehave.¹⁰⁸ Art. 11 UNCAT further obliges states to 'keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of

¹⁰⁵ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in 2006 (entered into force on 23 December 2010).

¹⁰⁶ United Nations Human Rights Committee, 'General Comment 20 on Article 7 (Prohibition of torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)' (1994), U.N. Doc. HRI/GEN/1/Rev.1 at 30, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621andLang=en> accessed on 17 September 2015, para. 11.

¹⁰⁷ Art. 2 (1) UNCAT states that: 'Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'.

¹⁰⁸ United Nations Subcommittee on Prevention of Torture, 'Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment to the Maldives' CAT/OP/MDV/1 of 26 February 2009, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=enandTreatyID=12andDocTypeID=23andDocTypeCategoryID=9> accessed on 17 September 2015, para. 69.

Similarly the CPT has stated that:

The possibility for persons taken into police custody to have access to a lawyer is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons. Further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'CPT Standards' CPT/Inf/E (2002) 1 - Rev. 2015, available at <www.cpt.coe.int/en/documents/eng-standards.pdf> accessed 30 September 2015, p. 15.

arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.’¹⁰⁹

Concerning the EU, the updated Guidelines on Torture of 2012, highlight the importance of ensuring that third states adopt and implement safeguards against torture, such as ‘access to and the right of confidential communication with independent lawyers’.¹¹⁰ EU directive 2013/48/EU¹¹¹ also deals with the right of access to a lawyer in criminal proceedings (and in the European arrest warrant proceedings) and offers a good overview of what the EU deems relevant in this context.

b) *Analyse the normative content*

Aim

Analyse the concrete normative content of the identified norms.

Procedure

In order to identify the concrete meaning of the identified norms, it is necessary look at the general comments or the statements made on particular issues of the UN treaty bodies, starting with those that focus on torture and then extending the research to those that provide only a reference to torture. In the field of the prohibition of torture, a number of bodies are also entrusted with the task of directly monitoring state’s compliance with this right by way of visits into the member states. The recommendations made by these bodies form a set of non-binding standards that also need to be analysed. Judicial and quasi-judicial bodies, such as the European Court of Human Rights (ECtHR) or the CAT, when analysing individual communications, also offer valuable information on how certain provisions should be interpreted. What was mentioned before for the UN level also is valid for the regional level and the three main regional organizations active in the field of the prohibition of torture around the world. Furthermore, there are a series of non-binding human rights standards, such as the Standard Minimum Rules for the Treatment of Prisoners¹¹² or the CPT standards.¹¹³

¹⁰⁹ Art. 11 UNCAT.

¹¹⁰ Council of the European Union, ‘Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – An up-date of the Guidelines’, 6129/1/12 REV 1 of 20 March 2012, available at <http://eeas.europa.eu/human_rights/guidelines/torture/docs/20120626_guidelines_en.pdf> accessed on 18 September 2015, p. 7.

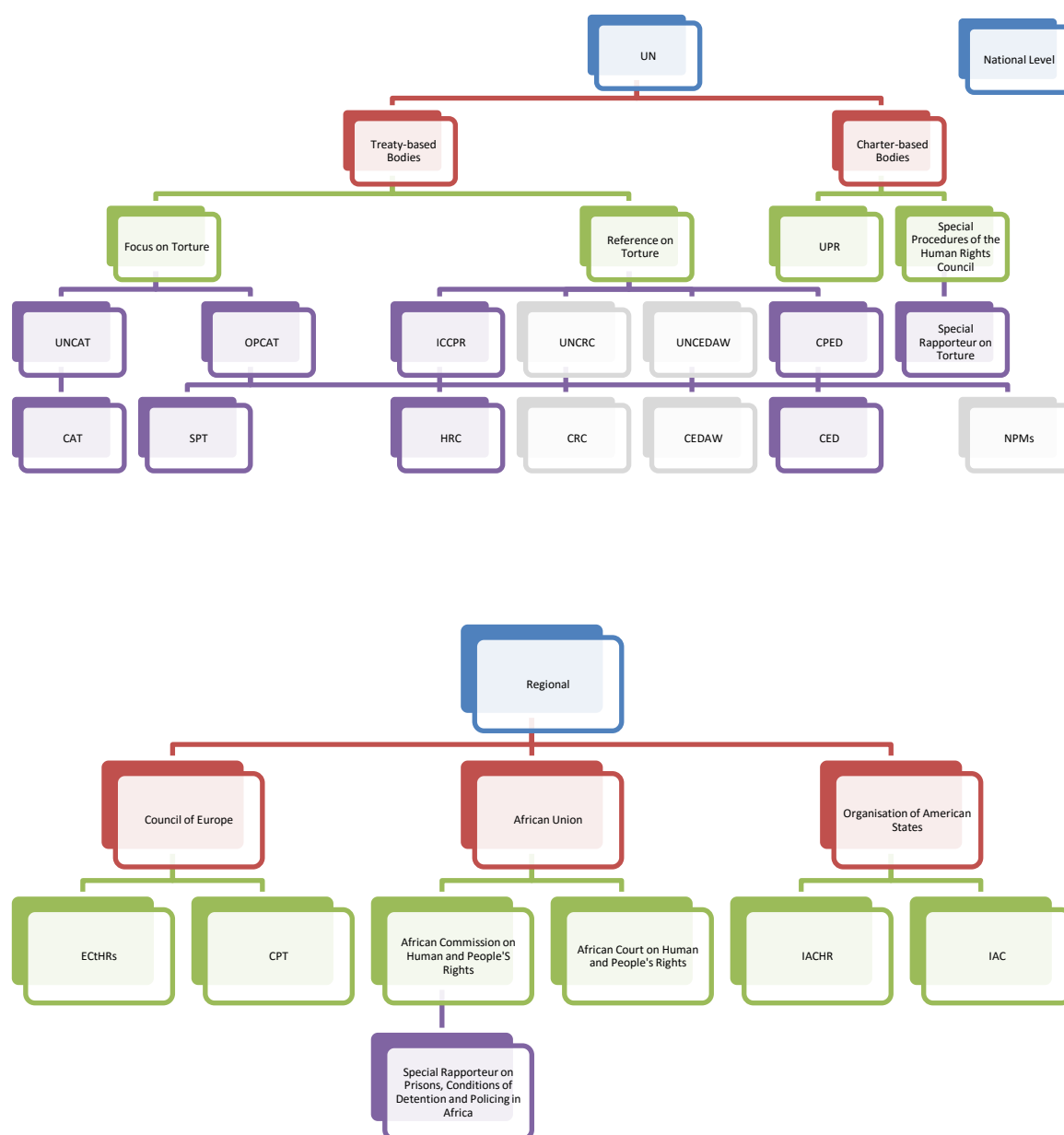
¹¹¹ European Parliament and Council Directive 2013/48/EU of 22 October 2013 on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to have a Third Party informed upon Deprivation of Liberty and to Communicate with Third Persons and with Consular Authorities while deprived of Liberty [2013] OJ L294/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>> accessed 18 September 2015.

¹¹² United Nations Economic and Social Council, ‘Standard Minimum Rules for the Treatment of Prisoners’, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at <www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf> accessed 3 November 2015.

¹¹³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘CPT Standards’ CPT/Inf/E (2002) 1 - Rev. 2015, available at <www.cpt.coe.int/en/documents/eng-standards.pdf> accessed 30 September 2015.

The figure below offers an overview of the main international and regional monitoring bodies active in the field of monitoring the safeguarding of the prohibition of torture. It might be worth noting that in the field of the prohibition of torture the OPCAT has also added an additional layer from monitoring at the national level, constituted by the NPMs. The CRC and CEDAW are coloured in grey, because they entail obligations specific to certain vulnerable groups that at this stage do not need to be analysed. The same goes for the NPMs, which contain information specific to a particular country.

Figure 3: Torture and torture-related monitoring bodies at UN, regional and national level



Content

When researching the right of access to a lawyer for persons deprived of their liberty, the first step is to define **who is entitled to this right**. In this regard CAT has stated that: ‘Certain basic guarantees apply to **all persons deprived of their liberty**. (...) Such guarantees include, inter alia, maintaining an official register of detainees, the right of detainees to be informed of their rights, the right promptly to receive independent legal assistance (...).’¹¹⁴ The meaning of “deprivation of liberty” has been defined as ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority’.¹¹⁵

It also needs to be clarified **what “access to a lawyer” means**, or more specifically, when does the right to access to a lawyer come into play and what does it entail (e.g. right to be informed about one’s right, legal aid, right of confidential communication, etc.). The international monitoring bodies state in this regard that access to a lawyer should be granted **at the outset** of deprivation of liberty.¹¹⁶ Some institutions have tried to provide an even more detailed specification of what this means, by offering an exact amount of time within which access to a lawyer should be guaranteed.¹¹⁷

¹¹⁴ United Nations Committee against Torture, ‘General Comment No. 2: Implementation of Article 2 by States Parties’ CAT/C/GC/2 of 24 January 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGC%2f2andLang=en> accessed on 17 September 2015, para. 13.

¹¹⁵ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 57/199 of 18 December 2002 (entered into force on 22 June 2006), Art. 4 (2).

¹¹⁶ See for example: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘CPT Standards’ CPT/Inf/E (2002) 1 - Rev. 2015, available at <www.cpt.coe.int/en/documents/eng-standards.pdf> accessed 30 September 2015, p. 15.

This is one of the main difference with the EU directive 2013/48/EU, that foresees the right of access to a lawyer more generally in criminal proceedings and therefore “extends” this rights from the moment a person is suspected or accused of having committed a crime, irrespective if they are deprived or not of their liberty. Art. 2 (1) states that:

This Directive applies to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

European Parliament and Council Directive 2013/48/EU of 22 October 2013 on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to have a Third Party informed upon Deprivation of Liberty and to Communicate with Third Persons and with Consular Authorities while deprived of Liberty [2013] OJ L294/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>> accessed 18 September 2015.

¹¹⁷ The Special Rapporteur on Torture for example has stated that: “Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention.”

United Nations Commission on Human Rights, ‘Report of the Special Rapporteur on the Question of Torture submitted in Accordance with Commission Resolution 2002/38’ E/CN.4/2003/68 of 17 December 2002, available at <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=3360> accessed on 17 September 2015, para. 26(g).

In order for the right of access to a lawyer to be effective, detainees also need to be **informed about their rights**.¹¹⁸ The Special Rapporteur on Torture for example refers to the Basic Principles on the Role of Lawyers¹¹⁹ and states that ‘all persons arrested or detained should be informed of their right to be assisted by a lawyer of their choice or a State-appointed lawyer able to provide effective legal assistance.’¹²⁰ In the same line, the EU Directive on the right to information in criminal proceedings states that:

Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively: (a) the right of access to a lawyer; (...) ¹²¹

Having access to a lawyer also means having access to **legal aid** whenever a detainee does not have sufficient means to pay for it.¹²² In one of its country reports, the SPT, for example recommends the ‘extension of the system to cover all persons deprived of liberty who cannot, due to financial or other reasons, benefit from the assistance of a private lawyer, and that from as early a stage of the deprivation of liberty as possible, preferably from the outset.’¹²³

The right of access to a lawyer entails also a **right of confidential communication**. Discussing this issue in the context of police custody, the CPT stated that:

Seen as a safeguard against ill-treatment (as distinct from a means of ensuring a fair trial), it is clearly essential for the lawyer to be in the direct physical presence of the detained person. This is the only way of being able to make an accurate assessment of the physical and psychological state of the person concerned. Likewise, if the meeting with the lawyer

¹¹⁸ European Parliament and Council Directive 2012/13/EU of 22 May 2012 on the Right to Information in Criminal Proceedings [2012] OJ L142/1, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0013&from=EN>> accessed 5 October 2015.

¹¹⁹ United Nations Congress on the Prevention of Crime and the Treatment of Offenders, ‘Basic Principles on the Role of Lawyers, adopted by the Congress at its meeting in Havana (27 August to 7 September 1990)’, available at <www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> accessed 5 October 2015.

¹²⁰ United Nations Commission on Human Rights, ‘Report of the Special Rapporteur on the Question of Torture submitted in Accordance with Commission Resolution 2002/38’ E/CN.4/2003/68 of 17 December 2002, available at <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=3360> accessed on 17 September 2015, para 26(g).

¹²¹ European Parliament and Council Directive 2012/13/EU of 22 May 2012 on the Right to Information in Criminal Proceedings [2012] OJ L142/1, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0013&from=EN>> accessed 5 October 2015, Art.3(1).

¹²² Art. 14 (3d) of the ICCPR states the right:

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 23 March 1976).

¹²³ United Nations Subcommittee on Prevention of Torture, ‘Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment to the Maldives’ CAT/OP/MDV/1 of 26 February 2009, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=12&DocTypeID=23&DocTypeCategoryID=9> accessed on 17 September 2015, para. 69.

is not in private, the detained person may well not feel free to disclose the manner in which he is being treated.¹²⁴

The right of access to a lawyer thus ensure also that, in the early stages of criminal proceedings, **lawyers are present during police interrogations** and that they are able to intervene.¹²⁵

The right of access to a lawyer however is subject also to **restrictions**.¹²⁶ The Special Rapporteur on Torture has stated that:

In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.¹²⁷

c) *Considering cross-cutting human rights norms*

Aim

Reflect on the implication of cross cutting human rights norms, such as non-discrimination, and comprehend the implications of certain norms for particularly vulnerable groups.

Process

¹²⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'CPT Standards' CPT/Inf/E (2002) 1 - Rev. 2015, available at <www.cpt.coe.int/en/documents/eng-standards.pdf> accessed 30 September 2015, p. 16.

In the same line see: European Parliament and Council Directive 2013/48/EU of 22 October 2013 on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to have a Third Party informed upon Deprivation of Liberty and to Communicate with Third Persons and with Consular Authorities while deprived of Liberty [2013] OJ L294/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>> accessed 18 September 2015, Art. 3 (3a) and 4.

¹²⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'CPT Standards' CPT/Inf/E (2002) 1 - Rev. 2015, available at <www.cpt.coe.int/en/documents/eng-standards.pdf> accessed 30 September 2015, p. 16; European Parliament and Council Directive 2013/48/EU of 22 October 2013 on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to have a Third Party informed upon Deprivation of Liberty and to Communicate with Third Persons and with Consular Authorities while deprived of Liberty [2013] OJ L294/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>> accessed 18 September 2015, Art. 3 (3b).

¹²⁶ European Parliament and Council Directive 2013/48/EU of 22 October 2013 on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings, and on the Right to have a Third Party informed upon Deprivation of Liberty and to Communicate with Third Persons and with Consular Authorities while deprived of Liberty [2013] OJ L294/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>> accessed 18 September 2015, Art. 3 (6).

¹²⁷ United Nations Commission on Human Rights, 'Report of the Special Rapporteur on the Question of Torture submitted in Accordance with Commission Resolution 2002/38' E/CN.4/2003/68 of 17 December 2002, available at <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=3360> accessed on 17 September 2015, para. 26 (g). In the same line see also: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'CPT Standards' CPT/Inf/E (2002) 1 - Rev. 2015, available at <www.cpt.coe.int/en/documents/eng-standards.pdf> accessed 30 September 2015, p. 16.

Look at the treaties and standards developed by the monitoring bodies and see if there is any specific norm relating to particularly vulnerable groups. Beside more easily identifiable categories of vulnerable persons, such as children and women, there might be other topic-specific vulnerabilities, such as suspected terrorists, whose rights might be more easily violated in the context of criminal proceedings.

It might be useful in this sense to think about the different categories of detainees and look if and how they might be affected by the normative content of the rights discussed earlier.

Content

Taking as an example the right of detainees to be **informed about their right** to access a lawyer, it can be stated that children and foreign nationals are two categories of prisoners that might have specific needs in this regard. The SPT recommends for example that the authorities should ensure that a parent or a guardian is present every time a child is questioned by the police and that children enjoy unrestricted access to a lawyer.¹²⁸

In relation to foreign nationals, for example, it might not be sufficient to inform them about their rights in the language native to the country where they are detained, since this would not allow them to truly comprehend their right and will therefore be against the “spirit of the law”. In this sense the Special Rapporteur on Torture has stated that ‘[t]he right of foreign nationals to have their consular or other diplomatic representatives notified must be respected.’¹²⁹ Another vulnerable group where informing might not be equal to understanding their rights are psychiatric patients.

2. Step 2: Retrieving information stemming from SPO indicators

At the moment there are no SPO measurement systems in place that measure the prohibition of torture. However, there are initiatives at national level that apply the framework of the OHCHR to different human rights: Bolivia for example has developed and partly populated tables of indicators for certain human rights.¹³⁰ The prohibition of torture does not figures among them, but there are some indicators developed in the framework of access to justice and fair trial that might be relevant also for an analysis of the prohibition of torture.¹³¹ It is therefore not excluded that information might be available in Bolivia or in other states also on the prohibition of torture in the nearest future.

¹²⁸ United Nations Subcommittee on Prevention of Torture, ‘Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment to the Maldives’ CAT/OP/MDV/1 of 26 February 2009, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=enandTreatyID=12andDocTypeID=23andDocTypeCategoryID=9> accessed on 17 September 2015, para. 307.

¹²⁹ United Nations Commission on Human Rights, ‘Report of the Special Rapporteur on the Question of Torture submitted in Accordance with Commission Resolution 2002/38’ E/CN.4/2003/68 of 17 December 2002, available at <http://ap.ohchr.org/documents/alldocs.aspx?doc_id=3360> accessed on 17 September 2015, para. 26 (g).

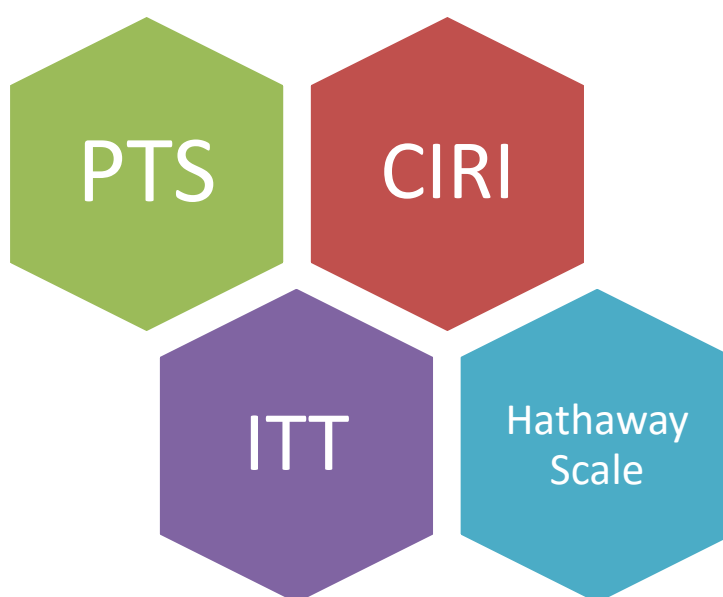
¹³⁰ Bolivian Ministry of Justice, National Statistical Institute and Office of the High Commissioner for Human Rights, ‘Indicadores de Derechos Humanos in Bolivia, ‘Derecho de Acceso a la Justicia y Juicio Justo’, available at <www.ine.gob.bo/indicadoresddhh/justo.asp> accessed 11 November 2015.

¹³¹ Bolivian Ministry of Justice, National Statistical Institute and Office of the High Commissioner for Human Rights, ‘Indicadores de Derechos Humanos in Bolivia, ‘Derecho de Acceso a la Justicia y Juicio Justo’, available at <<http://www.ine.gob.bo/indicadoresddhh/justo.asp>> accessed 11 November 2015.

3. Step 3: Retrieving other indicators based information

There are four human rights measurement systems that deal specifically with the prohibition of torture. These systems have the advantage of offering readymade information on the prohibition of torture and clearly depicting national trends. However, when analysing the information provided from these measurement instruments, it is important to take into consideration what exactly they measure and what their limitations are (as illustrated in the tables above: Existing human rights and human rights related indicators schemes).

Figure 4: Human rights and human rights related indicators measuring the prohibition of torture



a) *The Political Terror Scale*

Aim

Find relevant information related to the right of access to a lawyer.

Procedure

The The Political Terror Scale (PTS) offers a good deal of information related to 'political terror'. The information can be downloaded in different commonly used software (such as excel), as well as in files suitable to the most commonly used statistical software (.dta, .Rdata and .csv).¹³²

The PTS team is working on a software application¹³³ that allows to easily visualise trends not only related to a particular country, but also to compare a country to the overall world trend.

¹³² The Political Terror Scale, 'The Political Terror Scale: Download', available at <www.politicalterrorsscale.org/Data/Download.html> accessed 23 October 2015.

¹³³ The Political Terror Scale, 'The Political Terror Scale App', available at <<https://haschke.shinyapps.io/PTS-App/>> accessed 23 October 2015.

The PTS offers only information on 'state terror', defined as violations of physical and personal integrity rights carried out by a state (or its agents), such as torture, political imprisonment, extrajudicial killings and disappearances. Since it does not disaggregate the data based on types of rights, let alone within a particular human right, it is difficult to infer information on the right of access to a lawyer. However, the PTS offers a timely overview of the overall situation of state repression and might be helpful in visualizing country specific trends. It might be therefore used to evaluate the overall situation in a given country.

Content France

In 2014 France obtained a score of 2 in the measurement of AI reports, meaning that 'There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, torture and beatings are exceptional. Political murder is rare.' The coding of the US state department reports produced a value of 1 in the PTS scale, meaning that 'Countries under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare.'

Looking at the trends, the situation of the last years appears to be stable and France appears to be well under the world average.

Content South Africa

In 2014 South Africa obtained a score of 3 for all the sources analysed, meaning that 'There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.'

Looking at the trends, the situation of the last years appears to have improved, although still places above the world average.

b) *The CIRI database*

Aim

Find relevant information related to the right of access to a lawyer.

Procedure

The The Cingranelli-Richards data project (CIRI) database offers information on the prohibition of torture, but not on the right of access to a lawyer. The information can be downloaded in .xls format and in .csv. from the CIRI website.¹³⁴

It might be worth mentioning that since CIRI does not take population size into account, highly populated countries are most probably going to have lower (worse) scores than less populated ones.

Content France

France scored 1 in 2011, the last year included in the database, meaning that torture in France is practiced occasionally.

¹³⁴ CIRI Human Rights Data Projects, 'CIRI Human Rights Data Projects: Data and Documentation', available at <www.humanrightsdata.com/p/data-documentation.html> accessed 23 October 2015.

Content South Africa

South Africa scored 0 in the last years up to 2011, meaning that torture in South Africa is practiced frequently.

c) *Ill-Treatment and Torture Data Collection Project (ITT)*

Aim

Find relevant information related to the right of access to a lawyer.

Procedure

In order to access the information contained in the Ill-Treatment and Torture Data Collection Project (ITT) database. Data is available in .csv-format, which is created by a software that exports raw data from data bases and tables. It is possible to open these files with common programmes such as excel or word. Once opened however, the files cannot be meaningfully read because the values, which are usually separated by columns and rows, are separated by commas in .csv. It is in fact necessary to view the files with either the .csv-software or use a programme to convert data.

Since the last application of the ITT database dates to 2005, the content of the database is not relevant for the exemplary search and will not be therefore analysed.

d) *Oona Hathaway, Do Human Rights Treaties make a Difference?*¹³⁵

The database has been produced for a paper published in 2002: even if the methodology applied by Oona Hathaway, *Do Human Rights Treaties make a Difference?* has been widely appreciated and her data used and updated in a number of academic studies,¹³⁶ it is not advisable to retrieve this information.

¹³⁵ Oona Hathaway, 'Do Human Rights Treaties make a Difference?' (2002) 111 Yale Law Journal 1935.

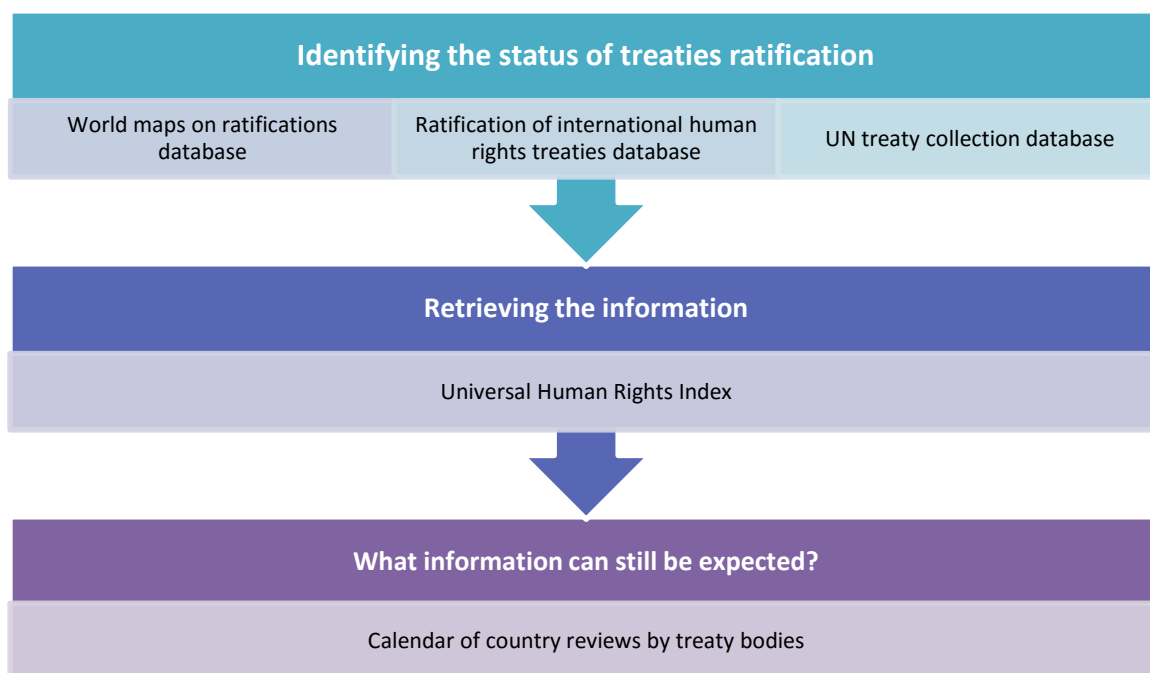
¹³⁶ See for example: Beth Simmons, *Mobilizing for Human Rights* (Cambridge University Press 2009); Michael J. Gilligan and Nathaniel H. Nesbitt, 'Do Norms reduce Torture?' (2009) 38 Journal of Legal Studies 445.

4. Step 4: Retrieving human rights compliance information

a) ...in the UN system

The OHCHR website offers a great variety of tools to retrieve human rights information derived from the UN monitoring bodies. Figure 5: Retrieving torture related information in the UN system offers an overview of the process and the applicable tools to be employed in the search.

Figure 5: Retrieving torture related information in the UN system



(1) Identifying the sources of human rights compliance information

Aim

To define the status of treaties ratifications for human rights compliance information within the UN system.

Procedure

The UN offers a series of databases for researching the ratification status of the main international human rights treaties. The [UN treaty collection database](https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en)¹³⁷ is the most comprehensive tool, but necessitates some time in order to obtain the information. The OHCHR offers two other databases: the [World Maps on Ratifications](http://indicators.ohchr.org/),¹³⁸ with an interactive map of the status of ratification of the eighteen international human rights treaties, from which it is possible to quickly visualize the status of

¹³⁷ United Nations, 'UN Treaty Collection: Chapter IV Human Rights', available at <<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>> accessed 16 October 2015.

¹³⁸ Office of the High Commissioner for Human Rights, 'World Maps on Ratifications', available at <<http://indicators.ohchr.org/>> accessed 16 October 2015.

ratification of a certain human rights treaty. The map gives an overview of the status of ratification of the main human rights treaties per country, which is colour-coded depending on the number of treaties that a state has ratified. The interactive map also allows seeing the declarations that have been made by a specific country, but not the reservations.

The second database is the [Ratification status of international human rights treaties](#).¹³⁹ The database does not contain declarations and reservations made by the member states, but has the advantage of singling out if a state has accepted individual complaints procedures or inquiry procedures under the UN treaties.

Content

Regarding the status of ratification of the UN treaties and the reservations made in relation to the prohibition of torture, Table 1: Status of ratification of UN treaties related to the prohibition of torture for France and South Africa shows the results for the exemplarily search for France and South Africa.

Table 1: Status of ratification of UN treaties related to the prohibition of torture for France and South Africa

Treaty	France		Reservations	South Africa		Reservations
CAT	yes	no		yes	no	
OPCAT	yes	no		no	-	
ICCPR	yes	no		yes	no	
CRC	yes	no		yes	no	
CEDAW	yes	no		yes	no	
CPED	yes	no		no	-	

Source: OHCHR, 'World Maps on Ratifications' and 'UN Treaty Collection Database'

¹³⁹ Office of the High Commissioner for Human Rights, 'Ratification Status of International Human Rights Treaties', available at < http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx > accessed 16 October 2015.

(2) Retrieving human rights compliance information

Aim

Retrieving relevant human rights information from the UN treaty and Charter-based monitoring bodies.

Procedure

The [Universal Human Rights Index](#)¹⁴⁰ is the most suitable search engine for researching human rights compliance information within the UN system: it offers information deriving from the human rights treaty bodies, the UN special procedures as well as the UPR of the Human Rights Council.

There are basically two ways of looking for information in this search engine: 'annotation' searches and 'document' searches. For researching compliance information for a specific country and topic, the simple annotation search is the easiest to operate and also offers the most relevant results.

Using a keyword close to the topic and the normative content of the right should ideally produce a sufficient amount of meaningful results. This was the case in the search related to France, where the most applicable results were achieved when using keywords that were close to the normative content of the right, e.g. 'access to a lawyer' or even 'lawyer'. In the case where there is limited information available in the database, as it was the case for South Africa, it is necessary and advisable to choose a broader keyword, such as 'torture'.

Furthermore, in the annotation search it is recommended to tick the box 'all annotation types'. This way the observations from where the recommendations derive are also presented in the overview. The annotations are organised under the title of the correspondent section of the report, but it is not always easy to identify the exact paragraphs in the text.

Content related to France

Table 2: Reproduction of the Universal Human Rights Index relevant results for France

Annotation	States/ Entities	Rights	Affected Persons
CAT/C/FRA/CO/4-6 (CAT, 2010)			
w) following the entry into force of the act of 20 november 2007, asylum-seekers at the border now have the right of appeal with suspensive effect against a decision refusing entry for the purposes of asylum	France	Prohibition of Torture and cruel, inhuman or degrading treatment	general refugees and asylum-seekers
c) the very short time limit for submitting such an appeal (48 hours), at the fact that the language used for the appeal must be french and at the fact that the administrative judge may reject the appeal by		Right to an effective	

¹⁴⁰ Office of the High Commissioner for Human Rights, 'Universal Human Rights Index', available at <<http://uhri.ohchr.org/en>> accessed 12 October 2015.

court order, thereby depriving the applicant of a hearing at which he may defend his case, and of procedural guarantees such as the right to an interpreter and a lawyer (art. 3)¹⁴¹

c) about the amendments to the act of 9 march 2004, which, under the special procedure applicable in cases of terrorism and organized crime, delay access to a lawyer until the 72nd hour of police custody

c) these provisions are likely to give rise to violations of the terms of article 11 of the convention, since it is during the first few hours after an arrest that the risk of torture is greatest, particularly when a person is being held incommunicado

c) about the frequent use of pretrial detention and the duration of such detention (arts. 2 and 11)¹⁴²

r) that the state party take appropriate legislative measures to guarantee immediate access to a lawyer during police custody, in accordance with article 11 of the convention

r) steps be taken to reduce the use of pretrial detention and the duration of such detention¹⁴³

c) while noting the efforts the state party has made to improve the conditions prevailing in waiting areas, including those at airports, by setting up a ministerial working group to deal with the problems of minors in such waiting areas, the committee remains deeply concerned about the announcement, in connection with the bill on immigration, integration and nationality of 31 march 2010, that waiting areas will be set up at all the state party's borders for foreign nationals entering outside a border crossing point, which means that all such waiting persons will fall under a regime devoid of the procedural guarantees applicable outside such areas, notably the right to see a doctor, to speak to a lawyer, and to be assisted by an interpreter (arts. 11 and 16)¹⁴⁴

	remedy, impunity		
France	Prohibition of Torture and cruel, inhuman or degrading treatment	general	persons deprived of their liberty
France	Prohibition of Torture and cruel, inhuman or degrading treatment	general	persons deprived of their liberty
France	Administration of justice and fair trial	children	
	Conditions of detention	general	
	Prohibition of Torture and cruel, inhuman or degrading treatment	non-citizens	persons deprived of their liberty refugees and asylum-seekers

¹⁴¹ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France' CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015.

¹⁴² United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France' CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015.

¹⁴³

¹⁴⁴ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France'

CCPR/C/FRA/CO/4 (HRC, 2008)	
<p>c) while noting the threat to life posed by acts of terrorism, the committee is concerned that act no. 2006/64 of 23 January 2006 permits the initial detention of persons suspected of terrorism for four days, with extensions up to six days, in police custody (<i>garde à vue</i>), before they are brought before a judge to be placed under judicial investigation or released without charge</p> <p>c) terrorism suspects in police custody are guaranteed access to a lawyer only after 72 hours, and access to counsel can be further delayed till the fifth day when custody is extended by a judge</p> <p>n) the right to remain silent during police questioning, in respect to any offence, whether related to terrorism or not, is not explicitly guaranteed in the code of criminal procedure (articles 7, 9 and 14)¹⁴⁵</p>	<p>France Administration of justice and fair trial general</p> <p>Enforced disappearances</p> <p>Prohibition of Torture and cruel, inhuman or degrading treatment</p>
<p>r) ensure that anyone arrested on a criminal charge, including persons suspected of terrorism, is brought promptly before a judge, in accordance with the provisions of article 9 of the covenant</p> <p>r) the right to have access to a lawyer also constitutes a fundamental safeguard against ill-treatment, and the state party should ensure that terrorism suspects placed in custody have prompt access to a lawyer</p> <p>r) anyone arrested on a criminal charge should be informed of the right to remain silent during police questioning, in accordance with article 14, paragraph 3 (g), of the covenant¹⁴⁶</p>	<p>France Administration of justice and fair trial general</p> <p>Enforced disappearances</p> <p>Prohibition of Torture and cruel, inhuman or degrading treatment</p>
CAT/C/FRA/CO/3 (CAT, 2006)	
related documents: CAT/C/FRA/CO/3/Add.1	
provisions concerning custody and treatment of arrested, detained and imprisoned persons	<p>France Prohibition of Torture and cruel, inhuman persons deprived of their liberty</p>

CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015.

¹⁴⁵ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France' CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015, para. 14.

¹⁴⁶ United Nations Human Rights Committee, 'Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee - France', CCPR/C/FRA/CO/4 of 31 July 2008, available at <<http://uhri.ohchr.org/document/index/fe797595-63b7-4222-9687-6022af8bdb9c>> accessed 15 October 2015, para. 14.

c) amendments to act of 9 march 2004 which, under special procedure applicable in cases of organized crime and delinquency, delay access to lawyer until 72nd hour of police custody

these new provisions are likely to give rise to violations of article 11 cat, since it is during first few hours after arrest, particularly when person is held incommunicado, that risk of torture is greatest

c) frequent resort to pretrial detention and duration of such detention (art. 11)¹⁴⁷

provisions concerning custody and treatment of arrested, detained and imprisoned persons

r) take appropriate legislative measures to guarantee access to lawyer within first few hours of police custody, with view to avoiding any risk of torture, in accordance with article 11 cat

r) in this connection, extend to adults practice of filming minors in police custody

r) measures be taken to reduce length of pretrial detention and its use¹⁴⁸

or degrading treatment

France

Prohibition of Torture and cruel, inhuman or degrading treatment

persons deprived of their liberty

Content related to South Africa

Table 3: Reproduction of the Universal Human Rights Index results South Africa

Annotation	State/Entities	Rights	Affected Persons
CAT/C/ZAF/CO/1 (CAT, 2006)			
n) existence of legal-aid mechanisms	South Africa	Context, statistics, budget, dissemination, civil society	General
c) difficulties vulnerable persons or groups experience in efforts to exercise their right to complain, including for linguistic reasons, to obtain redress and fair and adequate compensation as victims of acts of torture		Prohibition of Torture and cruel, inhuman or	
c) lack of awareness of cat's provisions by vulnerable groups (arts. 13 and 10) ¹⁴⁹			

¹⁴⁷ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France', CAT/C/FRA/CO/3 of 3 April 2006, available at <http://uhri.ohchr.org/document/index/2267f805-945d-401e-ac19-cfaa114cb880> accessed 15 October 2015, para. 16.

¹⁴⁸ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France', CAT/C/FRA/CO/3 of 3 April 2006, available at <http://uhri.ohchr.org/document/index/2267f805-945d-401e-ac19-cfaa114cb880> accessed 15 October 2015, para. 16.

¹⁴⁹ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – South Africa',

i) committee requests detailed information on bills criminalizing torture and on child justice and on any other bills or laws related to implementation of cat

i) it request information on existing training programmes for law enforcement officials and on monitoring mechanisms in mental health and other welfare institutions as well as on measures to prevent and prohibit production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment¹⁵⁰

	degrading treatment	
	Right to an effective remedy, impunity	
South Africa	Constitutional and legislative framework	Children general
	Context, statistics, budget, dissemination, civil society	
	Cooperation with treaty bodies	
	Prohibition of Torture and cruel, inhuman or degrading treatment	

(3) Check what information can still be expected

Aim

Look for information that is public already, but has not been included in the UN Human Rights Index because the documents have not been annotated yet in the database. This procedure will allow also determining if there is any information that might be expected in the near future.

Procedure

The '[Calendar of country reviews by treaty bodies](#)' provides an overview of reporting obligations for member states.¹⁵¹ The database can easily be filtered by region, country, year, document type (e.g. list of issues, concluding observations, state party report, etc.) and treaty body.

CAT/C/ZAF/CO/1 of 7 December 2006, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/ZAF/CO/1andLang=En accessed 19 November 2015, para. 21.

¹⁵⁰ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – South Africa', CAT/C/ZAF/CO/1 of 7 December 2006, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CAT/C/ZAF/CO/1andLang=En accessed 19 November 2015, para. 28.

¹⁵¹ United Nations Office of the High Commissioner for Human Rights, 'Calendar of Country Reviews by Treaty Bodies', available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx?Type=SessionandLang=En accessed 12 October 2015.

Content**Table 4: 2015 expected date of consideration for France**

<i>Region</i>	<i>Country</i>	<i>Treaty</i>	<i>Document type</i>	<i>Sessions</i>	<i>Start Date</i>	<i>End Date</i>
Europe and Central Asia	France	CAT	List of issues	CAT Session 56	09 Nov 2015	09 Dec 2015
Europe and Central Asia ¹⁵²	France	CCPR	Concluding observations	CCPR Session 114	29 Jun 2015	24 Jul 2015
Europe and Central Asia	France	CEDAW	List of issues	CEDAW Pre-Sessional Working Group 64	23 Nov 2015	27 Nov 2015
Europe and Central Asia	France	CERD	Concluding observations	CERD Session 86	27 Apr 2015	15 May 2015
Europe and Central Asia	France	CESCR	List of issues	CESCR Pre-Sessional Working Group 55	09 Mar 2015	13 Mar 2015
Europe and Central Asia	France	CRC	List of issues	CRC Pre-Sessional Working Group 71	08 Jun 2015	12 June 2015

Source: OHCHR, Calendar of country reviews by treaty bodies

Table 5: 2015 expected date of consideration for South Africa

<i>Region</i>	<i>Country</i>	<i>Treaty</i>	<i>Document Type</i>	<i>Sessions</i>	<i>Start Date</i>	<i>End Date</i>
Africa	South Africa	CCPR	List of issues prior to reporting (LoIPR)	CCPR Session 114	29 Jun 2015	24 Jul 2015

Source: OHCHR, Calendar of country reviews by treaty bodies

(4) ...in the regional human rights systems

In the context of the exemplary search for France and South Africa it is necessary to look also at the Council of Europe and the African Union.

¹⁵² The treaties that are not relevant for our search for information on the right of access to a lawyer have been coloured in grey.

(a) *Council of Europe*

(i) *Identifying the status of treaty ratification*

The Treaty Office of the Council of Europe has a [database on treaty ratifications](#) that allows looking for the relevant human rights treaties ratified by the CoE member states.¹⁵³ In order to look for human rights treaties, it is necessary to select human rights in the list of “Available subject matters” and select the member state one is interested in.

All 47 members of the CoE have ratified the ECPT (treaty Nr. 126). Reservations and Declarations are also available on the website and can be easily retrieved.

(ii) *Retrieving the information*

Procedure

The [HUDOC database](#) contains all information related to the work of the CPT.¹⁵⁴ In order to retrieve information it is possible to select a state, keywords and topics. By selecting the keyword “lawyer” no result was produced in the database. The reason behind that is that the keyword search looks for the words in the text, which not necessarily are available in English.

It is therefore advisable to use the topic search, instead of the keyword search in the database. The topics are pre-selected and follow the CPT report structure and the CPT standards. Even when the documents are produced only in French, it is possible to identify the relevant sections of the CPT reports through the database. In our particular case it was possible to find a subtopic on safeguards against ill-treatment, specifically dedicated to “access to a lawyer”. The search led to 14 results, all of which appeared to be relevant.

Another problem encountered in the HUDOC database, is that it contains all published reports and public statements made by the CPT, yet does not contain the state’s replies to the CPT reports. For this reason a complementary search on the CPT website is recommended.

¹⁵³ Council of Europe, ‘Search on States and International Organisations’, <www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/search/states_coe> accessed 20 October 2015.

¹⁵⁴ Council of Europe, ‘HUDOC Database’, available at <<http://hudoc.cpt.coe.int/eng#>> accessed 15 October 2015.

Content France**Table 6: Observations and recommendations made by the CPT¹⁵⁵ and response of the French government¹⁵⁶**

CPT Recommendation	French Government Response
<p>16. Le <u>droit de toute personne en garde à vue à un avocat dès le début de la mesure</u> est, de l'avis du CPT, l'une des garanties les plus fondamentales contre les mauvais traitements. La reconnaissance de ce droit constitue une recommandation phare formulée par le Comité depuis sa première visite en France en 1991.</p> <p>17. La loi relative à la garde à vue du 14 avril 2011 comporte sans conteste certaines avancées en la matière. Elle comprend trois volets essentiels du point de vue de la prévention des mauvais traitements : (i) la possibilité, étendue en principe à tout gardé à vue, d'avoir un entretien confidentiel avec un avocat dès le début de la mesure et, le cas échéant, dès le début de sa prolongation ; (ii) l'accès de l'avocat au procès verbal constatant la notification de la garde à vue et les droits qui y sont rattachés, les certificats médicaux et les procès-verbaux d'audition de la personne qu'il assiste ; (iii) l'assistance de l'avocat aux</p>	<p>Sur ce point, le Gouvernement prie le Comité de se reporter aux observations en réponse à la recommandation formulée au §19.</p>

¹⁵⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'Rapport au Gouvernement de la République française relatif à la visite effectuée en France par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 novembre au 10 décembre 2010, CPT/Inf (2012) 13 of 19 April 2012, available at <<http://www.cpt.coe.int/documents/fra/2012-13-inf-fra.pdf>> accessed 19 November 2015.

¹⁵⁶ French Government, 'Réponse du Gouvernement de la République française au rapport du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) relatif à sa visite effectuée en France du 28 novembre au 10 décembre 2010', CPT/Inf (2012) 14 of 19 April 2012, available at <<http://cpt.coe.int/documents/fra/2012-14-inf-fra.pdf>> accessed 15 October 2015, pp. 11-14.

auditions et confrontations de la personne gardée à vue.

En ce qui concerne ce dernier volet, la loi dispose que la première audition ne peut débuter sans la présence de l'avocat choisi ou commis d'office avant l'expiration d'un délai de deux heures suivant la demande formulée par la personne gardée à vue d'être assistée par un avocat. Toutefois, lorsque les nécessités de l'enquête exigent une audition immédiate de la personne, le procureur peut autoriser, par décision écrite et motivée, que l'audition débute sans attendre l'expiration de ce délai ; **De l'avis du CPT, le procureur ne doit permettre l'audition de la personne gardée à vue sans attendre l'arrivée de l'avocat que sur la base d'impératifs exceptionnels clairement définis, tels que la prévention d'une atteinte imminente aux personnes.**

Il convient également de relever que l'avocat n'est pas habilité à intervenir à tout moment lors des auditions et confrontations. **Le CPT estime que l'avocat doit toujours pouvoir intervenir lorsqu'il est témoin, lors d'une audition ou confrontation, d'une quelconque forme de mauvais traitements (y compris des menaces pouvant constituer un manquement à la déontologie de la sécurité et/ou une infraction pénale) à l'encontre de la personne qu'il assiste.**

18. Le CPT relève avec préoccupation que la loi offre à un magistrat la possibilité de

Le code de procédure pénale définit les conditions et les modalités de l'intervention des avocats au cours de la garde à vue. De l'avis du Gouvernement, la seule circonstance que l'avocat ne soit pas autorisé à intervenir « à tout moment », et de manière potentiellement intempestive, lors des auditions et confrontations ne l'empêche nullement d'engager, après la tenue de celles-ci, toute démarche que lui semblerait dicter l'attitude de tel ou tel participant. L'équilibre indispensable entre les nécessités de l'enquête et la protection de la personne privée de liberté s'oppose clairement à ce que soient créées les conditions d'une possible obstruction, quand bien même celle-ci constituerait la défense la plus efficace. En outre, à la connaissance des autorités françaises, le seul cas de violences observées à ce jour par un avocat lors d'une garde à vue a été le fait du mis en cause lui-même, qui a violemment agressé le policier qui l'entendait. L'avocat concerné a, par la suite, refusé de témoigner des faits auxquels il avait assisté.

La loi n°2011-392 du 14 avril 2011, entrée en vigueur le 1er juin 2011, a réformé en profondeur les dispositions relatives à la mesure de garde à vue, et notamment celles régissant les

différer la présence d'un avocat lors des auditions et confrontations, voire tout contact de la personne gardée à vue avec un avocat.

Dans le cadre du *régime de droit commun de la garde à vue*, la présence de l'avocat lors des auditions et confrontations peut être différée pendant une période allant jusqu'à 12 heures, sur autorisation du procureur ou du juge, si cette mesure apparaît indispensable pour des raisons impérieuses tenant aux circonstances particulières de l'enquête, soit pour permettre le bon déroulement d'investigations urgentes tendant au recueil ou à la conservation des preuves, soit pour prévenir une atteinte imminente aux personnes. Lorsque la personne est gardée à vue pour un crime ou un délit puni d'une peine d'emprisonnement supérieure ou égale à cinq ans, le juge peut différer la présence de l'avocat lors des auditions et confrontations jusqu'à 24 heures.

Dans le cadre du *régime dérogatoire de la garde à vue*, tout contact avec l'avocat peut être différé en considération de raisons impérieuses tenant aux circonstances particulières de l'enquête ou de l'instruction, soit pour permettre le recueil ou la conservation des preuves, soit pour prévenir une atteinte aux personnes, pendant une durée maximale de 48 heures. Lorsqu'il s'agit d'une infraction liée au trafic de stupéfiants ou au terrorisme, le juge peut différer la présence d'un avocat pendant une durée maximale de 72 heures.

conditions dans lesquelles une personne faisant l'objet d'une telle mesure bénéficie de l'assistance d'un avocat.

Le principe énoncé par ces dispositions nouvelles est que toutes les personnes placées en garde à vue, quelle que soit la nature des faits commis, peuvent s'entretenir avec un avocat dès le début de la mesure.

L'article 63-3-1 du code de procédure pénale consacre par ailleurs le principe du libre choix de l'avocat par une personne placée en garde à vue.

Toutefois, en cas de décision de report de l'intervention de l'avocat choisi par la personne gardée à vue, la législation en vigueur ne prévoit pas son remplacement par un autre avocat désigné par le bâtonnier, et cela eu égard aux hypothèses très restrictives dans lesquelles un tel report peut intervenir.

En effet, et comme le précise la circulaire du 23 mai 2011 relative à son application, la loi du 4 avril 2011 prévoit que le report de l'intervention de l'avocat ne peut avoir lieu que sur décision écrite et motivée du procureur de la République et dans des circonstances tout à fait exceptionnelles :

- Par application de l'article 63-4-2 du code de procédure pénale, et s'agissant des gardes à vue de droit commun, un report de 12 heures n'est possible qu'à « titre exceptionnel » et « si cette mesure apparaît indispensable pour des raisons impérieuses tenant aux circonstances particulières de l'enquête, soit pour permettre le bon déroulement d'investigations urgentes tendant au recueil ou à la conservation des preuves, soit pour prévenir une atteinte imminente aux personnes ». Le report ne doit intervenir, en pratique, que dans des hypothèses tout à fait rarissimes: le seul exemple donné au cours des débats parlementaires a été celui d'une personne soupçonnée d'être l'auteur d'un enlèvement dont les déclarations devraient être immédiatement recueillies pour tenter de retrouver en vie sa victime. Il convient également de noter que, pour une garde à vue de droit commun le report ne porte que sur la consultation des pièces de la procédure et la présence de l'avocat au cours des auditions, mais non sur l'entretien de trente minutes dès le début de la mesure qui, lui, ne peut être reporté.
- Par application de l'article 706-88 du code de procédure pénale, et s'agissant des gardes à vue diligentées du chef de crime ou délit relevant de l'article 706-73 du même code, le report n'est possible « qu'en considération de raisons impérieuses tenant aux circonstances particulières de l'enquête ou de l'instruction, soit pour permettre le recueil ou la conservation des preuves, soit pour prévenir une atteinte aux personnes ». Il ne pourra ainsi ni intervenir de façon systématique, ni être

19. Depuis plus de vingt ans, le CPT a fait le même constat à travers l'Europe : les personnes privées de liberté par les forces de l'ordre courent un risque accru de mauvais traitements au cours de la période qui suit immédiatement l'interpellation. L'existence du droit de tout gardé à vue d'être assisté par un avocat dès le début de la mesure a un effet dissuasif sur ceux qui seraient enclins à maltraiter les personnes gardées à vue. En outre, un avocat est bien placé pour prendre les mesures qui s'imposent si de telles personnes sont ou ont récemment été maltraitées. Le Comité conçoit très bien que, à titre exceptionnel et dans les intérêts légitimes de l'enquête, il puisse être nécessaire de différer l'accès d'une personne gardée à vue à l'avocat de son choix. En revanche, une telle mesure ne doit pas avoir pour conséquence le refus total du droit à l'accès à un avocat pendant la période de privation de liberté. **Le CPT appelle les autorités françaises à amender les dispositions pertinentes du Code de procédure pénale afin de garantir en toute circonstance et à toute personne placée en garde à vue, quel que soit le type d'infraction qu'elle est soupçonnée d'avoir commise ou tenté de commettre, le droit d'être assistée par un avocat dès le début de la mesure. La possibilité, pour le procureur ou le juge, de différer l'exercice du droit d'être assisté par un avocat, y compris lors des auditions et confrontations, ne doit viser que l'avocat du choix de la personne gardée à vue ; en cas de recours à cette**

envisagé en considération de la seule qualification de l'infraction. Il ne sera possible que lorsque l'extrême gravité et la particulière complexité des faits, impliquant la mise en cause de nombreux auteurs et coauteurs le rendront absolument nécessaire. Il s'agit là de la seule hypothèse où l'entretien avec l'avocat, et non seulement l'accès de celui-ci à la procédure ou sa présence lors des auditions, peut être reporté.

Par ailleurs, la prolongation du report ne peut être décidée que par le juge des libertés et de la détention (JLD) saisi par le procureur de la République, et cela dans des conditions tenant compte de la même distinction entre :

- d'une part, les gardes à vue de droit commun pour lesquelles le report par le JLD après douze heures n'est possible que dans l'hypothèse de crimes ou délits punis d'une peine d'emprisonnement supérieure ou égale à cinq ans, et pour une nouvelle durée maximale de douze heures;
- d'autre part, les gardes à vue concernant des crimes ou délits relevant de l'article 70673 du code de procédure pénale (criminalité organisée), pour lesquelles le report par le JLD après vingt-quatre heures n'est possible que pour une nouvelle durée de vingt-quatre heures ou, en matière de terrorisme ou de trafic de stupéfiants, pour une nouvelle durée de vingt-quatre heures renouvelable une fois.

possibilité, il convient d'organiser l'accès à un autre avocat, qui peut, en l'espèce, être désigné par le bâtonnier.

20. Lors de la visite de 2010, nombre d'interlocuteurs, y compris au niveau des forces de l'ordre, ont fait part de leurs inquiétudes quant à la capacité des avocats à intervenir dès le début de la garde à vue lorsque le nouveau dispositif serait en place. Sous l'empire des textes en vigueur au moment de la visite, la consultation des registres et des « billets » de garde à vue a confirmé ces inquiétudes ; les avocats n'intervenaient pas toujours lorsqu'ils étaient appelés. **Le Comité souhaite recevoir des informations sur les modalités pratiques d'intervention des avocats, en concertation avec les Barreaux, qui ont été mises au point afin d'assurer la mise en œuvre des nouvelles dispositions en matière d'accès à l'avocat (organisation des permanences, de jour comme de nuit, indemnisation, etc.).**

L'application des dispositions de la loi du 14 avril 2011 portant réforme de la garde à vue a été suivie de la publication du décret n° 2011-810 du 6 juillet 2011 relatif à l'aide à l'intervention de l'avocat au cours de la garde à vue et de la rétention douanière. Modifiant le décret n° 91-1266 du 19 décembre 1991 portant application de la loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique, ce décret détermine le barème de rétribution des avocats désignés d'office par le bâtonnier de l'ordre des avocats selon la nature de leur intervention lors de la mesure de garde à vue. Il introduit également les adaptations nécessaires de l'attestation d'intervention et des règles de gestion financière et comptable des caisses des règlements pécuniaires des avocats.

Afin d'assurer la rétribution des interventions des avocats commis d'office en cours de garde à vue, et après concertation avec les ministères de l'Intérieur et du Budget et les représentants des barreaux, de nouveaux imprimés-type d'attestation d'intervention ont été établis.

Le Conseil National des Barreaux et le Ministère de la Justice et des Libertés ont par ailleurs trouvé un accord sur un projet de convention relative à l'organisation matérielle des permanences pénales liées à l'assistance des gardés à vue ayant vocation à servir de base à la signature, au niveau local, de conventions entre les chefs de juridiction et les bâtonniers. Il convient en effet de rappeler que l'organisation et le bon fonctionnement des permanences pénales des barreaux relèvent de la compétence exclusive des ordres des avocats et de leur bâtonnier.

Source: HUDOC and CPT website

(iii) *Look for possible information updates*

The CPT has a fairly regular cycle of visits of 4 to 5 years, but it may conduct also *ad hoc* visits. *Ad hoc* visits are scheduled outside the periodic cycle and usually held to check the status of implementations of the CPT recommendations or whenever, due to particular circumstance, the CPT deems it necessary. It is therefore advisable to look at the CPT website¹⁵⁷ for more information on the visits scheduled and conducted during the last years. In the case of France, the CPT has planned to visit France in 2015, yet at the time of writing no information is available on the visit.¹⁵⁸

¹⁵⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'CPT Visits', available at <www.cpt.coe.int/en/visits.htm> accessed 19 October 2015.

¹⁵⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'Press Release: Council of Europe Anti-torture Committee announces Visits to Ten States in 2015', available at <www.cpt.coe.int/en/visits/2014-03-20-eng.htm> accessed 19 October 2015.

(b) *African Union*(i) *Identifying the status of treaty ratification*

The search engine on the African Union website is not of significant assistance in quickly identifying the status of treaty ratification of the main human rights treaties.¹⁵⁹ In fact it offers only the list of the African Union treaties and their status of ratifications. Retrieving information on a particular country's accession to a specific treaty might require some time.

(ii) *Retrieving the information*

The website of the African Commission has a number of databases to retrieve information from. Concerning the prohibition of torture, the State's Reports and concluding observation website, which lists states in alphabetical order, appears to be the simplest way to look for human rights information.¹⁶⁰ An initial inspection of the database however showed that South Africa has not submitted any report yet to the African Commission on Human and People's Rights.¹⁶¹

Yet, the Special Rapporteur on Prison and Detention Condition visited South Africa in 2004.¹⁶² At the bottom of the website there is a list of all visits conducted by the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa: as it appears, the visit to South Africa was one of its last visits.¹⁶³

(c) *... at national level***Procedure**

If the state concerned is an OPCAT signatory, the [APT-OPCAT Database](#) offers useful information on the designation of national NPMs.¹⁶⁴ By opening the .pdf file a range of information on how the OPCAT has been implemented by each state will open. The information contained in the file is up to date. Furthermore, if the NPM has created a website, it is possible to visit that website by a simple click on the link.

France, as a OPCAT signatory, has designated the 'Contrôleur général des lieux de privation de liberté' as NPM.¹⁶⁵ South Africa has not signed OPCAT, and therefore has no NPM in place.

¹⁵⁹ African Union, 'African Union Conventions, Treaties, Protocols and Charter', available at <www.au.int/en/treaties> accessed 27 October 2015.

¹⁶⁰ African Commission on Human and People's Rights, 'State Reports and Concluding Observations', available at <www.achpr.org/states/reports-and-concluding-observations> accessed 19 October 2015..

¹⁶¹ African Commission on Human and People's Rights, 'State Reports and Concluding Observations', available at <www.achpr.org/states/reports-and-concluding-observations> accessed 19 October 2015.

¹⁶² Special Rapporteur on Prisons and Conditions of Detention in Africa, 'Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa Mission to the Republic of South Africa' (2004), available at <www.achpr.org/files/sessions/37th/mission-reports/prisons-2004/misrep_specmec_priso_southafrica_2004_eng.pdf> accessed 19 October 2015.

¹⁶³ Special Rapporteur on Prisons and Conditions of Detention in Africa, 'Special Rapporteur on Prisons and Conditions of Detention', available at <www.achpr.org/mechanisms/prisons-and-conditions-of-detention/> accessed 19 October 2015.

¹⁶⁴ Association for the Prevention of Torture, 'OPCAT Database', available at <www.appt.ch/en/opcat-database/> accessed 19 October 2015.

¹⁶⁵ Association for the Prevention of Torture, 'France: OPCAT situation', available at <www.appt.ch/en/opcat_pages/opcat-situation-88/?pdf=info_country> accessed 19 October 2015.

Content France

Topic	Observations	Recommendations
Possession of Personal Documents and Access to Documents that can be made available for Discovery and Inspection by Prisoners ¹⁶⁶	<p>“Documents” in the broad sense are a source of difficulties in prison.</p> <p>In the first place, certain documents constitute a part of each individual’s personal life. Moreover, respect for privacy comes within the field of fundamental rights.</p> <p>The keeping of such documents in a cell is something of a feat. Everything is known to others in prison, and even if the cell is considered to be a “private” space, any lawfully ordered search enables prison officers to get their hands upon any items kept there. Correspondence with lawyers, medical prescriptions, nothing is done to protect professional secrecy, always ignored on these occasions, not to mention letters from spouses (already inspected) and family photos (which do not always come out of searches unscathed, above all if there is an intention to “bully” the occupant).</p> <p>Fundamental rights should allow the performance of security measures, but on the condition that the latter do not thwart respect for privacy. Any infringement of the latter should be necessary and proportionate.</p>	<p>For this reason, in order to ensure respect for these principles, it is proposed that lockers for such papers should be placed in each cell, and that the content thereof should only be verified by officers with authorisation for this purpose and in compliance with the laws on professional secrecy.</p> <p>If these conditions are met, it should be possible for documents concerning prisoners’ criminal cases (in particular those containing the grounds for imprisonment) to be placed therein, if so desired; the current Prisons Act provides for the compulsory filing of such documents at the registry; yet, the conditions of operation of the latter do not provide any better guarantee of the necessary confidentiality. It should therefore be possible to choose between either keeping personal documents in the cell or in the registry. However, in the latter case, confidentiality needs to be guaranteed by appropriate practical means. The possibility of making copies should be provided, without any possibility of the amount chargeable to the prisoner being greater than their production cost.</p>

¹⁶⁶ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, pp. 16-17.

Waiting Areas and Detention facilities for Illegal Immigrants¹⁶⁷

From the practical point of view, there is a difference between waiting areas and detention centres for illegal immigrants. Whereas the latter are built under the sole responsibility of the State, on certain sites coming under public state property or over which the administration possesses prerogatives, in general waiting areas have to be established in premises which, not only come under the authority of third parties (concession-holding companies), but of third parties very little inclined to have elements as disturbing as foreigners in detention incorporated into the peaceful air travel landscape. Moreover, it is also to be deplored that negotiations with third parties are often left to decentralised State authorities, whose powers appear limited in relation to certain commercial corporations.

Yet, although such norms exist for detention centres (the value of which will be seen below), none are applicable to waiting areas, as though the fate of newly arriving foreigners was even less worthy of interest than that of foreigners deported from France. The current Act and regulations provide a certain number of elements in this respect.

Article L. 221-2 of the CESEDA provides that waiting areas may include "one or several accommodation premises" providing "hotel-type services". Moreover, it mentions that these premises

For this two-fold reason, and also in order to protect the dignity of persons, who need to be accommodated – for almost three weeks if necessary – in decent conditions, it is important that minimal norms should apply to the habitability of waiting areas.

The *Contrôle Général* therefore recommends an amendment of the law (article L. 221-2) in order to include a few essential general principles therein, corresponding to the considerations mentioned above. For example, rather than a "space" for lawyers, it needs to provide that the practical framework shall protect the secrecy and confidentiality attached to the duties of counsels to foreigners held in detention. The same applies to the privacy, right to family life, health etc. Of the persons concerned. The draft bill on asylum reform could serve as a vehicle for these additions. It also recommends that, in application of these principles and by statutory reference, the

¹⁶⁷ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, pp. 19-21

shall include a “space” enabling protection of the confidentiality of interviews between the person held and their lawyer. Finally, pursuant to the same provision, waiting areas and detention facilities shall be physically separate.

regulatory part of the CESEDA (chapter 1 of title 2 of book II) should be supplemented by a group of provisions comparable (but not identical) to those appearing under articles R. 553-1 et seq. Of the same code, concerning norms of habitability.

The requirements of current law as far as waiting area facilities are concerned go no further. They are completely inadequate.

As well as with regard to the issues that they pass over in silence. For example, the current law expressly mentions the case of lone minors (article L. 221-5). It does not make any provision for the separation of these children from other persons held in waiting areas. It gives no instructions concerning issues related to health, hygiene, movement and access to the open air and food, not to mention any possible activities (there are none...).

Generally speaking, as far as deprivation of liberty is concerned, the French legislature devotes attention to defining (in an abstract manner) the rights attached to individuals. It too often neglects the matter of protection of their dignity. Yet, apart from formal rights (telephoning a consul etc.), international law, and the European Court of Human Rights in particular, has long imposed upon the authorities an obligation to protect individuals’ lives and safeguard them from

	<p>physical and moral harm. Current laws only reflect this requirement in an imperfect manner.</p> <p>Such is indeed the case with regard to waiting areas.</p>
Period of Detention of Foreigners in Police Stations without controls ¹⁶⁸	<p>In the second case, the foreigner remains in the police station where they are unable to have any contact with third parties. Admittedly, their rights (to request an interpreter or doctor and to call for a lawyer or any person with whom they wish to speak) are applicable. But nobody can say how these rights are brought to their attention. No more than anybody is aware of the manner in which they are applied.</p>
Detention Facilities for Illegal Immigrants ¹⁶⁹	<p>The list of practical items which detention facilities should possess, as given under article R. 553-6 of the Code, is inadequate. In accordance with international recommendations, these should include the possibility of access to the open air for every detained person at least once a day. Moreover, the intended facilities are far from always being provided. In one facility on which a report was sent to the minister in 2013, no room was provided to cater for any lawyers that may arrive: interviews were provided for in the room; yet, since the latter was shared, it was thus very difficult to ensure the confidentiality of exchanges.</p>

¹⁶⁸ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, p. 21.

¹⁶⁹ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, p. 24.

Legal Information and Advice Access Points ¹⁷⁰	<p>These schemes providing free legal consultations within prisons, in accordance with article 24 of the Prisons Act correspond to the legal information and advice access points put in place by the departmental committees for legal information and advice (CDAD /<i>Conseils départementaux de l'accès au droit</i>).</p> <p>They are held by legal professionals, lawyers and jurists of mediation associations remunerated by the councils of French departments. This service is often subject to an agreement between the institution, the SPIP and the Council of the Department. In most cases it is coordinated by the SPIP, which is problematic since requests on the part of the prison population are obliged to pass through this prison service. At the time of inspections, the prison population encountered emphasised the importance of the scheme, and appreciated the collective meetings which can be organised on the initiative of the organisers of this legal information and advice. Although legal information and advice access points are mentioned in many booklets provided to new arrivals, certain prisoners informed inspectors that they were unaware of the existence of a scheme of this kind. This confirms the fact that information and the circulation thereof need to be a constant concern.</p>	<p>The Controller General recommends better provision of information to prisoners concerning the precious aid that they can obtain from legal information and advice access points and extension of the latter's areas of authority</p>
Exercising Defence Rights ¹⁷¹	<p>For several years, defence rights have been reinforced and court control of measures of deprivation of liberty has been increasing: presence</p>	<p>Interviews with lawyers should take place in a room which is insulated with regard to sound, in order to guarantee the</p>

¹⁷⁰ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, pp. 94-95.

¹⁷¹ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, p. 134.

of lawyers in police custody and in disciplinary committee meetings and *de jure* control by the liberty and custody judge of decisions of hospitalisation without consent. These changes accordingly call for appropriate architectural designs. Respect for the confidentiality of interviews constitutes part of such measures. It is dependent upon the arrangement of certain adjoining premises and the location thereof.

Most gendarmerie facilities, and sometimes those of the police, do not possess premises dedicated to confidential interviews with lawyers and medical examinations. Interviews and medical consultations take place in the office belonging to the officer in charge of investigations, the premises reserved for searches or in the cell. This situation is not acceptable. Medical consultations for persons placed in police custody should be carried out under confidential conditions enabling the compatibility of the police custody measure to be determined.

In psychiatric hospitals, no specific place is provided for interviews between patients and their lawyers.

In most courts, there is no office near to the jails enabling persons transferred from custody and brought before the courts, to have interviews with counsels and personality investigators. In old and cramped prisons, visiting rooms for lawyers are often premises shared with other actors—prison visitors and representatives of social bodies. In addition, the location and arrangement (lack of sound insulation) of these premises do not always protect the confidentiality of the interviews held in them.

confidentiality of the comments exchanged, devoid of video surveillance and separation devices, which place the parties to the interview further apart and, if necessary, oblige them to raise their voices.

In all places of deprivation of liberty in which they have occasion to assist persons staying therein, lawyers and doctors should be able to have separate premises at their disposal ensuring the confidentiality of interviews and consultations.

Finally in application of article 42 of the Prisons Act, the documents mentioning the grounds for the prisoner's committal should be compulsorily entrusted to the registry at the time of their arrival. Accordingly, as long as these provisions remain unchanged, it is important for prisons to place premises at

The Action of the Liberty and Custody Judge¹⁷²

The Act of 5th July 2011 introduced the examination of placements by the liberty and custody judge within fifteen days of the initial placement, reduced to twelve days by the Act of 27th September 2013, and every six months in case of continuation of the measure of hospitalisation without consent. For the first year of application of these provisions (2012), more than 36,000 systematic verification rulings were made by JLDs.

The inspectors' findings show that the application of these provisions is not without presenting difficulties. (...)

The notice to appear in court itself, which is sent late in view of the deadlines, is not handed over to the patient in accordance with a reliable and traceable method, enabling effective notification to be guaranteed, particularly as far as the right to be assisted by a lawyer is concerned.

Defence also constitutes a major issue. To an even greater extent than for minors and foreigners, the defence of persons committed for psychiatric treatment without consent can be described as being in its embryonic stages; it is still too often based upon lawyers working in criminal consultations, whereas it ought to require specialised training. Lawyers rarely go to the hospitals and they meet their clients for the

prisoners' disposal, in which they can consult these documents under satisfactory conditions of confidentiality.

14) Training specialised lawyers in order to assist patients committed for treatment without consent

The *Contrôleur Général* recommends that specific training should be given to lawyers assisting or representing psychiatric patients committed to institutions without their consent.

An increase in the allowances paid to these lawyers is also indispensable in order to ensure the provision of high-quality justice, there being no justification for their current remuneration being lower than that for other lawsuits.¹⁷³

¹⁷² Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, p. 182-

¹⁷³ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, p. 196.

Notification and
Provision of Information
concerning Means of
Remedy¹⁷⁴

first time immediately before the hearing; when the latter is not held by means of videoconferencing, while their discussions with the client are rapid, often held in a corridor, and sometimes in the presence of medical staff. They do not have, or do not take, the time required for collecting opinions and documents likely to go against the evidence appearing in the file. At hearings, the inspectors have had occasion to note that they frequently limit themselves to the actions strictly necessary in order to ensure the lawfulness of the proceedings. Several lawyers have said to the inspectors that their conditions of remuneration were far from being without bearing on these difficulties.

At the time of their arrival in a treatment unit, and whatever their status, patients are seen by a nurse or health staff manager, who explains the operation of the unit to them and gives them general information concerning that of the institution. In principle, the booklet for new arrivals and the rules and regulations are handed over to them.

Notification of decisions of committal to treatment without consent and provision of information concerning means of remedy and the rights of patients hospitalised without consent more generally, takes place according to widely differing practices, which are rarely formalised.

Committal decisions are in most cases passed on to the patient by a health manager or member of medical staff, who are not necessarily aware of the implications

¹⁷⁴ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, pp. 185-186.

of the status, far less of the means of remedy. They sometimes refer the patient to a lawyer, or to the information contained in the new arrivals booklet. However, lawyers are absent from hospitals and the inspectors have noted on several occasions that the information contained in new arrivals booklets is sometimes incomplete, obsolete or even erroneous. Assuming that the patient is in a state to read the decision handed over to them, the compulsory information that it contains concerning means of remedy is hardly intelligible for persons in difficulty, and unaccustomed to legal language.

The inspectors have seen institutions in which persons received the same decision twice (one sent by the administrative authority, the other handed over by the institution) whereas, in another, decisions made by the director (ASPD) were not subject to any notification. Finally, because of the complexity of the administrative channels and the absence of definition of specific procedures for this purpose, institutions are not always in a position to provide proof that patients have indeed been notified of these decisions.

The problems are identical as far as the notification of decisions made by the JLD is concerned.

Noting of the Patient's
Observations and
Appointment of a
Trusted Legal
Representative¹⁷⁵

As mentioned above, article L 3211-3 of the Public Health Code provides that persons subject to psychiatric treatment without consent shall be placed in a position to submit their observations before each ruling pronouncing the continuation of treatment or defining the form of

¹⁷⁵ Contrôleur général des lieux de privation de liberté, *Annual Report 2013* (Contrôleur général des lieux de privation de liberté 2014), available at <www.cglpl.fr/wp-content/uploads/2012/12/Rapport-annuel-2013_EN.pdf> accessed 21 October 2015, p. 186

provision thereof and specifies that their opinion shall be noted and, insofar as possible, taken into consideration as far as the practical details of treatment are concerned.

In theory, these observations should be expressly recorded by psychiatrists at the time of informing their patients of decisions that they intend to take, as far as patients subject to treatment without consent are concerned.

In practice, this notification does not appear to always give rise a specific interview, and is rarely distinguished from the exchanges that doctors have with all patients concerning their treatment. In the institutions inspected by the *Contrôle Général*, this notification is never formalised.

Finally, since the Act of 4th March 2002 concerning the rights of patients and the quality of the health system, any person hospitalised (for somatic or psychiatric treatment, whether freely or without consent) has the right to appoint a trusted person as a legal representative, in a position to help them take decisions concerning the treatment; with the patient's agreement, they can be present at medical interviews.

In this regard, once again, the inspectors noted that although this option was indeed proposed to hospitalised persons, they are rarely specifically informed of the objectives of this appointment so that, in practice, the appointed person is very often confused with the person to be informed in case of emergency

5. Step 5: Compiling the information

Once all information has been retrieved, it is necessary to compile the information. To this end it will be necessary to go back to the first step of the workflow and see what information should ideally be there and check if it was possible to retrieve information on all the issues.

a) *Compiling the information for France*

There is a wealth of very detailed information available for France on the right of access to a lawyer.

State's commitment	<p>France has ratified all international and regional treaties, relevant for the prohibition of torture (CAT, OPCAT, ICCPR, CRC, CEDAW, CPED, ECHR and the ECPT).</p> <p>It has been noted however that the right of access to a lawyer might be improved in some circumstances. For example, the act enabling asylum seekers to appeal with suspensive effect against a decision refusing entry for the purposes of asylum, in fact also provides barriers for fully realizing this right, such as: a very short time limit for submitting such an appeal (48 hours); the fact that the language used for the appeal must be French; and the fact that the administrative judge may reject the appeal by court order, thereby depriving the applicant of a hearing at which he may defend his case, and of procedural guarantees such as the right to an interpreter and a lawyer (art. 3).¹⁷⁶</p> <p>The law of 2011 relative to police custody seems to have brought some general improvement to previous legislation, such as the possibility for a lawyer to be present during interrogations and confrontations, in particular by establishing that the first interrogation of a suspect should be held only with a lawyer present. However the law allows also derogation to this general rule such as in the case of suspected terrorist and members of criminal organizations, where access to a lawyer may be delayed for up to 72 hours of police custody.¹⁷⁷</p>
State's actions	<p>Asylum Seekers</p> <p>Concerning state actions, the monitoring bodies, although noting a general improvement of conditions in waiting areas, were concerned by the announcement that waiting areas will be set up at all the state party's borders for foreign nationals entering outside a border crossing point, which means that all such waiting persons will fall under a regime devoid of the procedural</p>

¹⁷⁶ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France', CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015.

¹⁷⁷ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France', CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015.

	<p>guarantees applicable outside such areas, notably the right to see a doctor, to speak to a lawyer, and to be assisted by an interpreter (arts. 11 and 16).¹⁷⁸</p> <p>Furthermore the issue of confidential communication with a lawyer appears also to be an issue in waiting areas as well as in detention facilities for illegal migrants.</p> <p>Psychiatric Hospitals</p> <p>The issue of confidential communications with a lawyer was raised also in relation to psychiatric patients. Adequate training for lawyers assisting psychiatric patients, in particular those committed without consent, has been also discussed as well as an increase in their allowance in order to enable a better preparation of the defence.</p> <p>A clearer notification system and provision of information concerning means of remedy appears to be also an issue in relation to psychiatric patients.</p>
Situation on the ground	Human rights indicator based information shows that torture and other forms of violation of personal integrity rights are practiced in exceptional cases in France and the situation appears to be stable in this respect.

b) *Compiling the information for South Africa*

As it was discussed already, there is very little information available for South Africa on the right of access to a lawyer.

State's commitment	South Africa has ratified some of the main international treaties, relevant for the prohibition of torture (CAT, ICCPR, CRC and CEDAW).
State's actions	Very little information is available from the human rights monitoring bodies.
Situation on the ground	Human rights indicator based information shows that torture and other forms of violation of personal integrity rights are practiced frequently in South Africa, although the situation appears to have improved in the last years.

¹⁷⁸ United Nations Committee against Torture, 'Consideration of Reports submitted by State Parties under Article 19 of the Convention: Conclusions and Recommendations of the Committee against Torture – France', CAT/C/FRA/CO/4-6 of 20 May 2010, available at <<http://uhri.ohchr.org/document/index/d9e13742-d39d-475e-8ef5-2c9963580a63>> accessed 15 October 2015.

III. Freedom of expression¹⁷⁹

A. Think-piece on human rights information on freedom of opinion and expression

Freedom of opinion and expression is not only a right in itself, yet it also constitutes the foundation of the full access to a broad range of other human rights.¹⁸⁰ In order to assess the implementation of freedom of expression, we firstly need to be aware of its scope. Therefore, the normative content will be defined briefly. Once a general understanding of the most relevant human rights provisions on freedom of expression has been established, the implications of assessing its implementation will be discussed. Finally, the different instruments available to measure and monitor the implementation of the freedom of expression will be evaluated.

1. The normative content

This chapter aims to provide as much information on the normative content of the right to freedom of opinion and expression as is needed when searching and assessing different sources of information on its implementation. This chapter refrains from providing a detailed legal analysis of the right to freedom of opinion and expression, as it has already been completed by others.¹⁸¹

In general, the right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority.

Definitions of the right to freedom of opinion and expression at an international level can be found in Art. 19 of the UDHR and Art. 19 of ICCPR. The ICCPR provides a more detailed definition of freedom of expression than the UDHR as it also includes criteria for restrictions. The first and second paragraphs define the freedoms protected; the third defines the circumstances in which a state may legitimately interfere with the exercise of freedom of expression.

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;

¹⁷⁹ This contribution was provided by Isabella Meier, European Training and Research Centre for Human Rights and Democracy.

¹⁸⁰ United Nations Human Rights Committee, 'General Comment No. 34 on Article 19 (Freedoms of Opinion and Expression)' CCPR/C/GC/34 of 12 September 2011, available at <www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> accessed 19 October 2015.

¹⁸¹ Lorna Woods, 'Article 11 – Freedom of Expression and Information' in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014).

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.¹⁸²

UN treaties on the rights of specific groups or on combating discrimination also include provisions on freedom of expression. These provisions can be found in the United Nations Convention on the Rights of the Child UNCRC (Art. 13), the International Convention on the Elimination of all forms of Racial Discrimination ICERD (Art. 5), the United Nations Convention on the Rights of Persons with Disabilities UNCRPD (Art. 21) and in the Framework Convention for the Protection of National Minorities of the Council of Europe FCNM (Art. 9).

According to the ICERD,¹⁸³ the dissemination of racist ideas, incitement to racial discrimination or financing of racist activities are indictable. The UNCRPD¹⁸⁴, the UNCRC¹⁸⁵ include measures, such as affirmative action and provisions to ensure freedom of expression and information for their respective target groups. The FCNM obligates states to facilitate the possibility for members of national minorities to create and use their own media.¹⁸⁶ These treaties address the instrumental role of the media in the realisation of the right to freedom of expression and information generally and particularly for the respective groups.

At the regional level, freedom of expression is guaranteed by Art. 10 of the ECHR and at the EU level by Art. 11 of the CFR.¹⁸⁷ The provisions in the ECHR¹⁸⁸ contain a longer list of exceptions than those in

¹⁸² International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 23 March 1976).

¹⁸³ International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965 (entered into force on 4 January 1969), Art. 5.

¹⁸⁴ Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution A/RES/61/106 of 13 December 2006 (entered into force on 3 May 2008), Art. 21.

¹⁸⁵ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990), Art. 13.

¹⁸⁶ Framework Convention for the Protection of National Minorities adopted by the Committee of Ministers of the Council of Europe in 1994 (entered into force on 1 February 1998), Art. 13.

¹⁸⁷ Art. 11 of the CFR states that:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Consolidated Version of the Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

¹⁸⁸ The ECHR state at Art. 10 that:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

European Convention on Human Rights, signed on 4 November 1950 (entered into force on 3 September 1953).

the ICCPR and are different from the ICCPR as they do not include the right to seek information. The provisions in the ECHR are also more detailed than those in the CFR, whereby Art. 11 of the Charter corresponds to Art. 10 of the ECHR.¹⁸⁹

Article 9¹⁹⁰ of the African Charter on Human and Peoples' Rights (also known as the Banjul Charter) and Article 13 of the American Convention on Human Rights¹⁹¹ also provide definitions for freedom of opinion and expression. The provision on freedom of opinion and expression in the Banjul Charter is relatively short and unprecise as it protects the freedoms only within the law, which is not defined further. The American Convention offers the most detailed definition of the right to freedom of opinion and expression. It includes detailed provisions on the freedoms protected as well as on legitimate interference.¹⁹² According to Art. 4 of the American Declaration of the Rights and Duties of Men (adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948): 'Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever'.¹⁹³

In the following, the **scope of the right** to freedom of expression will be discussed briefly. The right to freedom of opinion and expression is not only applicable to information or ideas that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb the state or any

¹⁸⁹ Lorna Woods, 'Article 11 – Freedom of Expression and Information' in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), p. 311. Ssee also Art. 52(3) of the Charter.

¹⁹⁰ Article 9 of the African Charter on Human and Peoples' Rights [1981] adopted on 27 June 1981 (entered into force on 21 October 1986) states that:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

¹⁹¹ American Convention on Human Rights [1969] signed at the Inter-American Specialized Conference on Human Rights on 22 November 1969 (entered into force on 18 July 1978).

¹⁹² Art. 13 of the American Convention on Human Rights [1969] signed at the Inter-American Specialized Conference on Human Rights on 22 November 1969 (entered into force on 18 July 1978), states that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 23 March 1976).

¹⁹³ American Declaration of the Rights and Duties of Men [1948], adopted by the Ninth International Conference of American States in Bogotá, Art. 4.

sector of the population.¹⁹⁴ Article 10 ECHR has been broadly interpreted by the Strasbourg Court. The role of the press and the significance of media pluralism have been recognised and the scope of the last sentence of Art. 10 (1) according to which states may require licensing of media enterprises, was limited to technical aspects.¹⁹⁵

The modes of expression include any media regardless of frontiers and forms of expression. In terms of mediums, the freedom of expression includes books, newspapers, pamphlets, posters, banners, clothing, blogging, social media and legal submissions. Thus, freedom of expression covers not only the substance of the ideas and information expressed but also the form in which they are conveyed.¹⁹⁶ The right further includes expressions in the course of political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse. Thus, political, artistic or commercial speech are protected. In practice, commercial speech attracts a lower level of protection than other forms of expression (artistic, scientific or political) and states have greater opportunities to limit it, i.e. through the prohibition of advertising for certain products or limiting the frequency of commercials.¹⁹⁷ Political speech is the most protected and states enjoy a limited margin of appreciation.¹⁹⁸ According to the ICCPR Art. 19(3) and the ECHR Art. 10(2), the right to freedom of expression carries with it duties and responsibilities. Thus, the Strasbourg Court's reasoning has been influenced by the public standing of the actors expressing their opinions. Public persons, judges or soldiers have a higher responsibility when expressing their opinion.

According to the Human Rights Committee (HRC), freedom of opinion cannot be made subject to any lawful derogation. The Committee clearly stated that no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions.¹⁹⁹ Any attempt to indoctrinate, force or coerce people into holding or not holding certain opinions is impermissible.²⁰⁰ **Restrictions** to freedom of expression are only allowed on grounds specified in Art. 19 (3). They must be prescribed by law and are only allowed for the purpose of respecting the rights of others or for the protection of the national security, the public order, health and morals. States must base the restrictions on a proportionality assessment. This is a test of the means chosen (restriction of the right to freedom of expression) against the legitimate ends as defined by the provision (protection of national security, public order or public health and morals). Generally, cases pertaining to national emergency and national security will enjoy a wide margin of appreciation.²⁰¹

¹⁹⁴ United Nations Human Rights Committee, 'General Comment No. 34 on Article 19 (Freedoms of Opinion and Expression)' CCPR/C/GC/34 of 12 September 2011, available at <www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> accessed 19 October 2015.

¹⁹⁵ *Groppera Radio AG and Others v Switzerland* Application no. 10890/84 (ECtHR, 28 March 1990).

¹⁹⁶ *De Haes and Gijssels v. Belgium* Application no 19983/92 (ECtHR, 24 February 1997).

¹⁹⁷ *Novo Nordisk AS v. Ravimiamet*, Case C-249/09 (CJEU, 5 May 2011).

¹⁹⁸ Lorna Woods, 'Article 11 – Freedom of Expression and Information' in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), p. 329.

¹⁹⁹ United Nations Human Rights Committee, 'General Comment No. 34 on Article 19 (Freedoms of Opinion and Expression)' CCPR/C/GC/34 of 12 September 2011, available at <www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> accessed 19 October 2015.

²⁰⁰ *Yong-Joo Kang v. Republic of Korea*, Communication No. 878/1999, U.N. Doc. CCPR/C/78/D/878/1999 (2003).

²⁰¹ Lorna Woods, 'Article 11 – Freedom of Expression and Information' in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014)

Furthermore, state parties have the **positive obligation** to ensure that public broadcasting services operate in an independent manner and to guarantee their independence and editorial freedom. In addition, they are obliged to foster access to social media and internet and they must ensure that persons are protected in their enjoyment of Article 19 from acts by private persons or entities that would impair it.²⁰² An example for this protection would be rights against dismissal of employees, be they active in trade unions or not.²⁰³

2. How to assess the realization of freedom of expression?

Analysis of existing human rights information on freedom of expression indicates two methods of assessments for the implementation of freedom of expression – monitoring and measuring. **Monitoring** is the human rights assessment in the narrow sense. It requires a certain human rights standard to which the situation on the ground can be compared – an obligation or an objective that shall be achieved. The human rights norms on freedom of expression as protected in the treaties and conventions previously mentioned are such standards. The purpose of monitoring is assessing **compliance**. Thus, monitoring requires an instrument that is precise enough to capture the degree to which the human rights obligation is achieved. Information on monitoring freedom of expression is provided by the UN, the IACHR and the CoE. Their monitoring bodies assess compliance of states with human rights obligations. Their assessment is based on information provided by states, human rights experts, NGOs and National Human Rights Institutions (NHRIs). The UN website provides state-per-state information on treaty ratification and reporting. This kind of implementation of provision on freedom of expression monitoring focuses on states' activities. Compliance monitoring information emphasises legal and policy developments, while the situation on the ground remains underexposed.

Measuring on the other hand provides information on the situation on the ground. In a general sense, it does not require a normative standard or a human rights obligation; any social phenomenon with countable characteristics can be measured. This means that measuring not necessarily follows a human rights based approach. Research found human rights related indicator schemes and systems, which measure freedom of expression or parts of this right (i.e. media pluralism). These indicator schemes are mostly comprised of country data, which is rated by experts. The findings are comparative and also provide information on country specific progress or regress of the implementation of the freedom of expression. While these measurements provide information on the 'situation on the ground', they do not provide information on the states' activities or commitments in implementing freedom of expression. They do not monitor the realisation of freedom of expression as the states' duty and thus they do not monitor states' positive obligations.

Information on freedom of expression through monitoring and measuring supplement each other. However, an ideal combination of these two strategies to assess freedom of expression would be the OHCHR model of human rights indicators. Thereby, *structural indicators* **monitor** the states' commitment to implement freedom of expression; *process indicators* **monitor** the states activities in this regard and *outcome indicators* **measure** the actual outcome, namely the situation on the ground. Outcome indicators allow the identification of trends.

²⁰² Lorna Woods, 'Article 11 – Freedom of Expression and Information' in Peers S. and others (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014), p. 316.

²⁰³ *Özgür Gündem v. Turkey* Application no. 23144/93 (ECtHR, 16 March 2000).

3. What are the limitations of existing assessments?

As freedom of expression has not yet been measured with the OHCHR indicators, EU officials need to utilize different measuring and monitoring mechanisms and need to rely on a patchwork of sources of information.

Most relevant **monitoring information** on the implementation of freedom of expression is accessible on the website of the OHCHR²⁰⁴, via the website of the IACHR's Office of the Special Rapporteur on Freedom of Expression²⁰⁵, the ACHPR Special Rapporteur on Freedom of Expression and Access to Information²⁰⁶, at the CoE websites²⁰⁷ as well as via their respective databases.²⁰⁸

The information on UN treaty ratification and reporting status of countries is complete, up-to-date and can be accessed via the OHCHR.²⁰⁹ The monitoring bodies' information on the implementation of these provisions is not complete. It depends on the state parties' reporting, which is not always carried out as required.²¹⁰ Periodic reports to the HRC include substantial information on countries' progress in implementing the ICCPR. It appears that states' are eager to provide (only) information on successful implementation. The concluding observations by the monitoring committee provide limited information on compliance (although positive developments are mentioned), but rather focuses on non-compliance. Periodic reports and concluding observations do not include any information on freedom of expression if a state is compliant with all provisions of Art. 19 ICCPR, if no violation of the right to freedom of expression has been registered or if there was no development in the reporting period. NGOs can provide additional information in the course of the monitoring process.

Further UN human rights information is provided in the frame of Special Procedures. Special rapporteurs are nominated by the Human Rights Council to monitor and report on human rights situations. They carry out country visits in order to assess the human rights situation in the respective country. Under thematic mandates, the Special Rapporteurs assess the specific institutional, legal, judicial, administrative and de facto situation. They meet with national and local authorities and relevant stakeholders. The Special Rapporteur on the Promotion and Protection of Freedom of Expression is relevant in this context. Furthermore, the UPR provides compliance information too.

²⁰⁴ United Nations Office of the High Commissioner for Human Rights, 'Human Rights Bodies', available at <<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>> accessed 6 November 2015.

²⁰⁵ Inter-American Commission on Human Rights, Office of the Special Rapporteur on Freedom of Expression, available at <<http://www.oas.org/en/iachr/expression/index.asp>> accessed 2 December 2015.

²⁰⁶ African Commission on Human and Peoples' Rights, 'Special Rapporteur on Freedom of Expression and Access to Information', available at <<http://www.achpr.org/mechanisms/freedom-of-expression/>> accessed 17 December 2015.

²⁰⁷ Council of Europe, 'Directorate General for Human Rights and the Rule of Law: Latest News', available at <<http://www.coe.int/en/web/human-rights-rule-of-law/home>> accessed 6 November 2015.

²⁰⁸ Office of the High Commissioner for Human Rights, 'Treaty Body Search', available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en> accessed on 6 November 2015; Council of Europe, 'HUDOC Database', available at <<http://hudoc.cpt.coe.int/eng#>> accessed 15 October 2015.

²⁰⁹ Office of the High Commissioner for Human Rights, 'Ratification Status of International Human Rights Treaties', available at <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx> accessed 16 October 2015.

²¹⁰ United Nations Human Rights Committee, 'Working Methods', available at <<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/WorkingMethods.aspx>> accessed 4 December 2015.

Human rights NGOs such as AI or HRW have formal and informal roles in compliance monitoring. In the framework of the UPR they are invited to provide assessments as key stakeholders. Here, NGO reports and assessments provide valuable background information as they offer insight into the consequences of government actions to the situation on the ground. NGO information is based on violations of human rights obligations; thus, they mainly offer event based information.

Supplements to this UN and CoE compliance information are the annual country specific human rights reports of the United States (US) Department of State. These reports give an overall picture of the state of affairs. They provide information on freedom of expression also if no violations of the freedom of expression occurred during the one year reporting period.²¹¹

Many **comparative measurements**²¹² of freedom of expression put an emphasis on the media including the press and on media pluralism. Media landscapes and the situation of media actors are assessed rather than the fulfilment of human rights standards for the individual persons. This focus is valid for EU internal monitoring systems, such as the Media Pluralism Monitor (MPM) and for international instruments, such as the Press Freedom Index or other regional instruments i.e. the African Media Barometer (AMB). This emphasis on media monitoring is justified with practice, according to which victims of the infringement of the right to freedom of expression by public authorities are more often journalists than “ordinary individuals”. Furthermore, it is argued that the ECtHR has developed extensive case-law providing a body of principles and rules granting the press a special status in the enjoyment of the freedoms contained in Art. 10 ECHR (see chapter III A 1). The press is perceived as a “political watchdog” and freedom of the press is attributed explicit importance in political debate.

Yet it has to be said, that mechanisms, which focus on the right to freedom of expression for ordinary citizens and not just for media actors still need to be developed. The focus on media professionals needs to be supplemented against the background of the increasing amount of bloggers, other non-journalistic reporters and writers emerging in the context of the new media. The best known example for worldwide measurements of freedom of expression, namely the Freedom of the World Survey by the US organisation Freedom House, is an exception to this focus on media professionals. The Freedom House Report aims at measuring the “real world situation” of civil and political liberties. However, in doing so, it does not draw much attention to the duty bearer’s commitment to protecting and promoting freedom of expression as a human right. The checklist questions focus on the absence of state’s interventions into freedom of expression rather than states’ activities to protect it.

Apart from the scope of measurements, there are two main limitations of standardised instruments when measuring freedom of expression: political bias and the neglect of cultural differences in the perceptions of freedom of expression. While public interference into Holocaust denial and Nazi propaganda are legitimate in many EU countries, this is not the case in the US. While the EU perceives public funding of media (print, broadcast, etc.) as a legitimate form to strengthen freedom of expression and media pluralism, the US rely stronger on the market forces in this regard. In the US, public funding would be perceived as a restriction of the freedom of media. The criteria for the

²¹¹ U.S. Department of State, ‘Human Rights Reports’, available at <<http://www.state.gov/j/drl/rls/hrrpt/>> accessed 9 November 2015.

²¹² Such as the Freedom of the World Survey, the Press Freedom Index, the African Media Barometer and the Media Sustainability Index.

evaluation of the realisation of freedom of expression are influenced by the cultural context of the authors. As a result, the differences in the resulting rankings of countries are not only a result of a different perception of freedom of expression. This adherence to cultural context can also explain why one country receives different rankings by different indicator schemes for the same assessment period.

However, as the analysis of indicator schemes measuring the implementation of freedom of expression shows, these differences in rating are small (see chapter III C). Despite of this, EU officials who are in charge of assessing the right to freedom of opinion and expression have to bear the cultural context of the measurements in mind. The role of the cultural context of measurements makes it necessary to discuss the general question, whether freedom of the press/expression can be and should be defined and measured in the same way worldwide. Notwithstanding the advantages of a worldwide comparison, a homogeneous measurement to be applied universally might not be as sensible for different cultures as it is required to. In addition to a worldwide measurement for comparison – as exemplified by the Press Freedom Index – an additional country-tailored scale is needed. This scale needs to include the core country specific elements of media systems and other relevant country-context factors. A standardised measurement system, which takes into account such domestic particularities too, is the Structure-Process-Outcome-indicator (SPO) model developed by the OHCHR. This model not only foresees the modification of indicators along national characteristics, but also measures the states' obligations (structure), their actions to meet them (process) and the outcome of these actions (outcome). The problem of the SPO model is that it has not yet been applied in practice for measuring the realisation of the right to freedom of expression. However, a list of exemplary indicators is available. These exemplary indicators need to be modified according to national or domestic characteristics of the country (region) to be monitored.

B. Overview of relevant sources on the freedom of expression

1. SPO human rights indicators

The aim of the OHCHR indicator system is to explore and utilize the usage of commonly available information, particularly from data sets that can be easily quantified for tracking human rights implementation.²¹³ It primarily suits two types of data-gathering, namely 1) official statistical systems (censuses, statistical surveys, administrative records) and 2) indicators or standardised information that is more generally compiled by NHRIs and civil society sources, NGOs or witnesses.

The OHCHR handbook provides illustrative indicators on freedom of opinion and expression based on Art. 19 of the UDHR. These are reproduced in the following page. The OHCHR admits that not all illustrative indicators developed for a right need to be used. The actual choice of indicators should rather be made in consultation with treaty body experts or while taking into account the country's context, its implementation priorities and considerations on data availability. Furthermore, it depends on the dimensions of the freedom of expression a respective interest is put on, as also the OHCHR indicators draw specific attention on the media.

²¹³ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), available at <www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf> accessed 19 October 2015, p. 80.

Table 10 The right to freedom of opinion and expression (Universal Declaration of Human Rights, art. 19)

	Freedom of opinion and to impart information	Access to information	Special duties and responsibilities
Structural	<ul style="list-style-type: none"> • International human rights treaties relevant to the right to freedom of opinion and expression (freedom of expression) ratified by the State • Date of entry into force and coverage of the right to freedom of expression in the constitution or other forms of superior law • Date of entry into force and coverage of domestic laws for implementing the right to freedom of expression, including availability of judicial review of any decision taken by the State to restrict it • Number of registered and/or active NGOs (per 100,000 persons) involved in the promotion and protection of the right to freedom of expression • Date of entry into force and coverage of code of conduct/ethics for journalists and other media persons 		
	<ul style="list-style-type: none"> • Date of entry into force and coverage of legislation for the protection of the freedom of the media, including decriminalization of libel, defamation and slander • Date of entry into force and coverage of domestic law for the protection and safety of journalists and any other media persons, including protection against disclosure of sources • Date of entry into force and coverage of domestic law for equal opportunity of access to radio concessions and TV broadcast frequencies • Time frame and coverage of national policy on education for all, including provisions for temporary special measures for target groups, human rights curricula and "active learning" 	<ul style="list-style-type: none"> • Date of entry into force and coverage of legislation on access to information • Date of establishment of an independent monitoring mechanism (e.g., information commissioner) • Date of entry into force and coverage of statistical legislation to protect independence and quality of official statistics • Time frame and coverage of national policy to promote access to information technology 	<ul style="list-style-type: none"> • Date of entry into force and coverage of domestic law prohibiting propaganda for war • Date of entry into force and coverage of domestic law(s) prohibiting advocacy of national, racial, religious or sexist hatred constituting incitement to discrimination, hostility or violence
Process	<ul style="list-style-type: none"> • Proportion of received complaints on the right to freedom of expression investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded to effectively by the Government • Proportion of communications from the special rapporteurs (e.g., Special Rapporteur on the promotion and protection of the right to freedom of expression) responded to effectively by the Government 		
	<ul style="list-style-type: none"> • Number of newspapers, magazines, radio stations, TV broadcasts, Internet sites by ownership (public or private) and audience figures • Number of mergers or acquisitions by media companies investigated, adjudicated and refused by an independent competition commission in the reporting period • Number of newspapers, articles, Internet sites and other media broadcasts closed or censored by regulatory authorities • Proportion of complaints filed by journalists or any other media persons investigated, adjudicated and approved by courts or other competent mechanisms • Number of media institutions of ethnic, linguistic minority and religious population groups recognized or given public support • Proportion of requests for holding demonstrations accepted by administrative authorities • Proportion of schools engaged in "active learning", giving children the opportunity to express themselves freely 	<ul style="list-style-type: none"> • Proportion of information requests by the media responded to effectively by the Government • Subscriptions and average daily sales of national and main regional newspapers • Proportion of population with access to TV and radio broadcasts • Number of personal computers in use with Internet access per 100 population* • Number of Internet domains registered per 1000 population 	<ul style="list-style-type: none"> • Proportion of judicial actions on alleged libel, defamation and slander investigated and resulting in conviction • Proportion of judicial actions against propaganda for war investigated and resulting in conviction • Proportion of (quasi)judicial actions against advocacy of national, racial, religious or sexist hatred investigated and resulting in conviction
Outcome	<ul style="list-style-type: none"> • Number of journalists and any other media persons who reported sanctions, political or corporate pressure for the publication of information 	<ul style="list-style-type: none"> • Reported cases of non-disclosure of documents, archives and administrative or corporate data of public interest (e.g., justice records, arms exports, environmental data, asylum seekers) • Proportion of different linguistic population groups having access to media broadcasts in their own language 	<ul style="list-style-type: none"> • Proportion of victims of libel, defamation or slander who received compensation and rehabilitation
	<ul style="list-style-type: none"> • Reported cases of killing, disappearance, detention and torture against journalists, human rights defenders or any other persons who exercised their right to freedom of expression, perpetrated by an agent of the State or any other person acting under its authority or with its complicity, tolerance or acquiescence, but without any or due judicial process (e.g., reported to United Nations special procedures) 		

All indicators should be disaggregated by prohibited grounds of discrimination, as applicable and reflected in metadata sheets

* MDG-related indicators

IV. >> Illustrating the Framework - Indicators for Some Rights

2. Human rights related data/indicator schemes

The indicator schemes, presented in this chapter, have been selected according to the following relevant criteria: measurements, that are well-known to human rights experts, already applied (at least pilot application), reviewed and discussed in literature.

a) *Freedom House Report*

Type of Author: NGO.

Geographical range: 195 countries and 15 disputed territories.

Time span: Annually since 1972.

Which information can I expect to find here?	<p>If you want to monitor trends in democracy and track improvements and setbacks in civil and political rights worldwide, you can use the Freedom House report. The survey includes analytical reports and numerical ratings, as it can be seen in the report on Freedom of the World 2015.²¹⁴ It provides information on freedom and democracy in general and also as freedom of expression.</p> <p>It enables an examination of trends in freedom over time and on a comparative basis across regions with different political and economic systems.</p>
What does it measure?	<p>Global political rights and civil liberties, including freedom of expression. More concretely, it measures political rights based on monitoring the electoral process, political pluralism and participation, and functioning of government. Civil liberties based on an evaluation of freedom of expression and belief, associational and organizational rights, rule of law, personal autonomy and individual rights. Freedom of expression encompasses free and independent media and the absence of the following: direct or indirect censorship, self-censorship, attempts to influence media content, libel and security laws for critics on the government or scrutinizing corruption, threats of journalists or public banning of arts.</p>
How often does it measure?	Annually.
What sources does it use?	<p><i>Freedom in the World</i> is produced each year by a team of in-house and external analysts and expert advisers from the academic, think tank and human rights communities. The 2015 edition involved more than 60 analysts and nearly 30 advisers.</p> <p>The analysts on site, who prepare the draft reports and scores, use a broad range of sources, including news articles, academic analyses, reports from nongovernmental organizations (resources are e.g. the World Gazetteer, the United States Central Intelligence Agency (CIA) World Factbook, British Broadcast Corporation (BBC) Country Profiles, and the Unrepresented Nations and Peoples Organization (UNPO) and individual professional contacts. The webpage provides a list of selected sources.²¹⁵ All gross national income data are drawn from the World Bank's World Development Indicators. Population data for most countries and territories are drawn from the Population Reference Bureau.²¹⁶</p> <p>Additionally they use reports and statements from travellers, research results by staff members, expert inquiries, analyses of reports from aid organizations and public agencies and current reports of NGOs and they analyze local and international media. The data collected around the</p>

²¹⁴ Freedom House, 'Freedom in the World. Highlights from the Freedom House Annual Report on Political Rights and Civil Liberties' (2015), available at <https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf> accessed 19 October 2015.

²¹⁵ Freedom House, 'Selected Sources', available at <<https://freedomhouse.org/report/freedom-world-2001/selected-sources#.VZ93ok0cGUk>> accessed 20 October 2015.

²¹⁶ Freedom House, 'Data Sources', available at <<https://freedomhouse.org/report/data-source>> accessed 20 October 2015.

How does it rate?

world are sent to New York and evaluated there. However, the exact basis of the data and the concrete procedure of evaluation are not public.²¹⁷

Freedom House states that the rights and liberties evaluated are understood in large measure based on the Universal Declaration of Human Rights. Measuring political rights and civil liberties is based on checklist questions, such as: Does the government directly or indirectly censor print, broadcast, and/or internet-based media? Rating of political rights and civil liberties is divided into practices and laws, which both adhere to international human rights standards (from none=0 to most/all practices and corresponding laws=4). The practices have more weight in rating than the laws. This is in line with the Freedom House method of rating countries primarily based on the “on the ground” reality, rather than rating laws or government intentions.

The ratings are determined by the total number of points (up to 100) each country receives on 10 political rights checklist questions and 15 civil liberties checklist questions. The average of the political rights and civil liberties ratings determines the overall status: Free (1.0 to 2.5), Partly Free (3.0 to 5.0), or Not Free (5.5 to 7.0).²¹⁸ Freedom House also assigns upward or downward trend arrows to countries which saw trends during the year, but these trends were not significant enough to result in a ratings change.²¹⁹

Who rates?

The findings are reached after a multilayered process of analysis and evaluation by a team of in-house and consultant regional experts and scholars. These analysts score countries based on the conditions and events within their borders. The analysts’ proposed scores are discussed and defended at annual review meetings. These review meetings are organized by the regions Asia-Pacific, Central and Eastern Europe and the Former Soviet Union, Latin America and the Caribbean, Middle East and North Africa, Sub-Saharan Africa and Western Europe. The meetings involve the analysts, academic advisors with expertise in each region and Freedom House staff. The final scores represent the consensus of the analysts, advisers, and Freedom House staff. The final scores are compared to the previous year’s findings and any major proposed numerical shifts or category changes were subjected to more intensive scrutiny. The advisers also review and comment on a number of key country and territory reports also in order to ensure consistency and comparability. Anyway, an element of subjectivity is unavoidable in such an enterprise.

How is this indicator scheme build?

The Index covers 25 indicators based on 27 checklist questions. The issues of these checklist questions are called “practices” for scoring. The corresponding laws to these practices are analysed in accordance. The checklist questions for freedom of expression and believe are available.²²⁰

The methodology is reviewed periodically by an advisory committee of political scientists with expertise in methodological issues.

Level of Disaggregation?

Freedom in the World survey data are disaggregated along socio-demographic characteristics, not along vulnerable groups such as journalists, human rights activists, etc. Specific reports on their situation are available at Freedom House’s webpage.

Discussion

The Freedom House Index is reported to be the most used tool for measuring democracy and the ranking is highly correlated with several other ratings of democracy, which are also frequently used by researchers. One example for the usage of Freedom House ratings is the Index of Freedom in the World. Freedom House data is used for this proximate measure for the concept of negative freedom around the world.²²¹ Critics on the Press Freedom Index of Freedom House refer to scoring: The scale ranges from 0 to 100 with 0 being the best rating. In countries scoring

²¹⁷ Markus Behmer, ‘Measuring Media Freedom: Approaches of International Comparison’ in Czepek A. and others (eds.), *Press Freedom and Pluralism in Europe. Concepts and Conditions* (Intellect Books 2009), pp. 23-36.

²¹⁸ Freedom House, ‘Methodology’, available at: <<https://freedomhouse.org/report/freedom-world-2015/methodology>> accessed on 20 October 2015.

²¹⁹ Freedom House, ‘Freedom in the World. Highlights from the Freedom House Annual Report on Political Rights and Civil Liberties’ (2015), available at <https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf> accessed 19 October 2015, p. 2.

²²⁰ Freedom House, ‘Methodology’, available at: <<https://freedomhouse.org/report/freedom-world-2015/methodology>> accessed on 20 October 2015.

²²¹ Ian Vasquez and Tanja Štumberger, ‘An Index of Freedom in the World’ in Fred McMahon (ed.), *Towards a Worldwide Index on Human Freedom* (Fraser Institute 2012), p. 61.

0 to 30 the media are classified as free, which is a wide range that hides great differences within the category free. Smaller categories for ranking would provide a more differentiated picture of the situation. Furthermore, Freedom House uses broadly defined categories to assess the status of press freedom in each country. The categories are legal environment, political influence and economic pressure. These categories are roughly defined in the methodology.

There exists methodological criticism, referring to the “systematic measurement error” and subjectivity in scoring because scoring relies on the opinion of experts or judges to a large extent.²²² Additionally, critics refer to a neo-liberal and neo-conservative bias towards countries with pro-US positions. Freedom House was initially founded by the US government and it still receives most funding from the US government. Furthermore, prominent, most notably neo-conservative US government officials reside on its board. Thus, changes in the Freedom House checklists are criticized for being linked to the neoliberal paradigm – the context in which they have been conceived.²²³ An emphasis on formal and procedural rather than substantive aspects of freedom and democracy is criticized too. These critics point out that the Freedom House approach focuses on individuals’ rights as private economic actors. This focus predetermines the most favourable rating for the US political system and neglects equality issues in the enjoyment of political and civil rights.²²⁴ In addition, “freedom” in the checklist questions only includes the freedoms to be respected and not government’s responsibility to promote these rights.²²⁵

There are cultural differences in the criteria for assessing the implementation of the right to freedom of opinion and expression between Europe and the US. The Spanish constitution guarantees all social and political groups access to the public media and thereby aims at securing diversity. For the Freedom House rating, these regulations represent state interventions on the media market. Germany received unfavourable marks for prohibiting Nazi propaganda and obscene content through the internet. French journalism was criticized because the French press is extensively supported by the state. In the US cultural context, the market is seen as the best guarantor of media independence, while West European countries examine the problems that arise from an unregulated media market much closer.

These problems are not only pointed out with regard to the Freedom House’s measurement but rather as general difficulties of developing a standardized instrument to measure freedom of the press that is applicable across continents.²²⁶

Critics on the rating of Russia²²⁷ or Burma/Myanmar²²⁸ mainly criticise that the Index follows a globally dominant Western human rights discourse. It thereby neglects democratic or economic changes and media development in Non-Western societies. Therefore, the Freedom House Index is not sufficiently able to reflect national changes in an adequate manner. Critics on the Russian rating mention that it does not adequately refer to systematic, nationwide annual data on public activism and NGO activity. Furthermore, political choices made by the Freedom House’s rating in the 1990s led to an over-generous rating of the Russian democracy. As earlier assessments cannot

²²² Tatu Vanhanen, ‘A New Dataset for Measuring Democracy, 1810-1998’ (2000) 37 (2) *Journal of Peace Research* 251.

²²³ Diego Giannone, ‘Political and Ideological Aspects in the Measurement of Democracy: the Freedom House Case’ (2010) 17 *Democratisation* 68.

²²⁴ Diego Giannone, ‘Political and Ideological Aspects in the Measurement of Democracy: the Freedom House Case’ (2010) 17 *Democratisation* 68. See also: H.M. Scoble and L.S. Wiseberg, ‘Problems of Comparative Research on Human Rights’, in V.P. Nanda and others (eds.), *Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies* (Westview Press 1981).

²²⁵ H.M. Scoble and L.S. Wiseberg, ‘Problems of Comparative Research on Human Rights’, in V.P. Nanda and others (eds.), *Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies* (Westview Press 1981).

²²⁶ Christina Holtz-Bacha, ‘What is “good” Press Freedom? The Difficulty of Measuring Freedom of the Press Worldwide’ (2004), available at <www.kowi.wiso.uni-erlangen.de/publikationen/docs/good_press_freedom.pdf> accessed 17 November 2015, pp. 3-9.

²²⁷ Nicolai Petro, ‘How Accurate is Freedom House?’ (2014), available at <www.opednews.com/articles/How-Accurate-is-Freedom-Ho-by-Nicolai-Petro-Freedoms_People-Putin-Vladimir_Post-soviet-Russia_Russia-140116-452.html> accessed on 20 October 2015.

²²⁸ Lisa Brooten, ‘The Problem with Human Rights Discourse and Freedom Indices: The Case of Burma/Myanmar Media’ (2013) 7 *International Journal of Communication* 681.

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be revised, there is little choice but to push Russia's rankings ever lower.²²⁹ Other critics refer to the political activities of Freedom House.²³⁰

www.freedomhouse.org

Data: Freedom in the World Comparative and Historical Data:²³¹

- Global country status overview, FIW 1973-2015.
- Individual country ratings and status, FIW 1973-2015.)
- Individual Territory ratings and status, FIW 1973-2015.
- Yearly country status breakdown by region.
- Regional country status breakdown by year.
- Link to Aggregate and Subcategory Scores.

Electoral Democracy Data:

- Number and percentages of electoral democracies, FIW 1989-2015.
- List of Electoral Democracies, FIW (1989-2015).

Other Information:

- Population trends.

b) *Media Development Indicators developed by UNESCO*

Type of Author: intergovernmental organisation.

Geographical range: UN member states.

Time span: still in development, scarce application.

Which information can I expect to find here?	All information that relates to a transparently organised, independent and pluralistic media landscape can be found here. Concretely, you find info on the media environment, transparency, the situation of media professionals and on institutions supporting freedom of expression.
What does it measure?	<p>The plurality of the media in terms of quantity (number of media actors in a country) and quality (types of media and specialisations, i.e. commercial, public). Indicators do not explicitly refer to freedom of expression but on the circumstances fostering it. The Media Development Index (MDI) monitors whether media development is in line with the priority areas of the International Programme for the Development of Communication (IPDC). The programme has the following goals: promotion of freedom of expression and media pluralism; development of community media; and human resource development (capacity building of media professionals and institutions).</p> <p>It measures the relevant factors to media development, including those internal to the media sector. Furthermore it addresses relevant context factors and environment issues, influencing</p>

²²⁹ Nicolai Petro, 'How Accurate is Freedom House?' (2014), available at <www.opednews.com/articles/How-Accurate-is-Freedom-Ho-by-Nicolai-Petro-Freedoms_People-Putin-Vladimir_Post-soviet-Russia_Russia-140116-452.html> accessed on 20 October 2015.

²³⁰ United Nations, 'NGO Committee hears Arguments for, against Freedom House', Press Release NGO/432 of 25 May 2001, available at <www.un.org/press/en/2001/ngo432.doc.htm> accessed 20 October 2015.

²³¹ Freedom House, 'Selected Sources', available at <<https://freedomhouse.org/report/freedom-world-2001/selected-sources#.VZ93ok0cGUK>> accessed 20 October 2015.

	media pluralism. This measurement takes into account the legal and policy environment, regulatory issues, commercial and technical considerations, the nature of media players in a given country and education and training of media workers. ²³² Structural and process indicators cover media regulation and freedom of expression and the support of pluralism and diversity of the media by law and in practice. Furthermore, process indicators measure states' activities in promoting the plurality and diversity of media and transparency of ownership. In this measurement, the media is perceived as a platform for democratic discourse and the professional and infrastructure capacity of the media to build and support institutions underpinning freedom of expression, pluralism and diversity is measured too. Media professionals, media managers, media workers and civil society organisations are perceived as media.
How does it measure?	<p>It suggests a number of techniques to be used for data collection/indicator population, while quantitative data are perceived as most suitable. For qualitative methods UNESCO suggests interviews with media actors, as they are perceived as experts, furthermore secondary analysis of existing data and surveys among the general population.</p> <p>In order to ensure the accuracy, quality and credibility of the assessment reports, peer review by one or even better by several experts is recommended. These experts should combine expertise in media development, in particular in relation to legal issues, with a good knowledge of the media situation in the country. UNESCO reports are usually published initially as a beta version, with a call for comments before a final report is issued.²³³</p>
How often does it measure?	The MDI have been endorsed by the IPDC Intergovernmental Council at its 26 th session in 2008. The MDI have been applied rather scarcely, in a few studies in Bhutan, Brazil, Croatia, Ecuador, Egypt, the Maldives, Mauritania, Mozambique and Nepal.
What sources does it use?	International and regional reports of the UN special rapporteurs, treaty ratifications, national surveys, NGOs data.
How is this indicator scheme build?	<p>The framework revolves five main media development categories (such as a system of regulation conducive to freedom of expression, pluralism and diversity of the media). These are broken down into more detailed issues (such as legal and policy issues). These issues are addressed by key indicators (such as freedom of expression is guaranteed by law and respected in practice) and sub-indicators (such as country has signed and ratified relevant treaty obligations, with no significant exemptions). For each indicator, means of verification are provided, e.g. any law or policy on the right to free expression that accords with international standards, reports from credible agencies about freedom of expression (concrete reports are not mentioned), reports in national media about freedom of expression, legal cases concerning freedom of expression, evidence of an independent and functioning judicial system with clear rights of appeal.</p> <p>The tool also provides a guide to international data sources, which does not include all the different kinds of data available at national level or in national languages. The guide rather focuses on international data. National data resources should be used to supplement those offered in the report.</p>
Level of Disaggregation?	The guide suggests to – whenever possible – stratify data according to gender and age.
Discussion	These indicators are not designed to provide a longitudinal analysis over time, or a means for comparing different countries; they are an analytic tool designed to help stakeholders assess the state of the media and to measure the impact of media development programmes. Additionally,

²³² Toby Mendel, 'Applying UNESCO's Media Development Indicators. A practical Guidebook to assist Researchers', available at <www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/guidelines_mdi_final.pdf> accessed 20 October 2015, p. 2.

²³³ Toby Mendel, 'Applying UNESCO's Media Development Indicators. A practical Guidebook to assist Researchers', available at <www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/guidelines_mdi_final.pdf> accessed 20 October 2015, pp. 4-7.

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it does not prescribe a fixed methodological approach, but prefers a “toolkit” approach in which indicators can be tailored to the particularities of the national context. It is work in process.²³⁴

Some challenges derived from the already made application of the MDI, in particular on **collection and reliability of data**. Many of the indicators are inevitably based on qualitative or subjective assessments of experts in the media field. Many of the indicators address **issues** that are **subjective** and some may be even considered to be “**political**” in nature.

www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/media-development-indicators-a-framework-for-assessing-media-development

c) *Press Freedom Index*

Type of Author: NGO.

Geographical range: worldwide (180 countries).

Time span: Annually since 2002 (only 2011 was combined with 2012).

Which information can I expect to find here?	You can find overall information on the freedom of the media (media pluralism, media independence, environment and self-censorship, legislative framework, transparency of institutions, and infrastructure of news and information production). Furthermore, data on abuses, violence and harassment on journalists and attacks on the media like censorship per country and year. This index registers the active protection of press freedom by the state and not only the absence of state influence. It is not clear whether economic variables are considered in the index too. ²³⁵
What does it measure?	It reflects the degree of freedom that journalists, news organizations and netizens enjoy in each country, and the efforts made by the authorities to respect and ensure the respect for this freedom. The Reporter Without Borders (RWB) World Press Freedom Index ranks the performance of 180 countries according to a range of criteria, including media pluralism and independence, respect for the safety and freedom of journalists, and the legislative, institutional and infrastructural environment in which the media operate. It measures the development of countries from year to year
How does it measure?	The press freedom index is based partly on a questionnaire that is sent to the partner organizations of RBW (18 freedom of expression NGOs located in all five continents), to its network of 150 correspondents, and to journalists, researchers, jurists and human rights activists. The 180 countries ranked in this year's index are those for which RBW received completed questionnaires from various sources. Some countries were not included because of lacking reliable and confirmed data. Other than the Freedom House Report, the Press Freedom Index does not group the countries but only lists them in the order of their achieved rank. Thus RBW avoid the task to decide about thresholds between free and not free. ²³⁶ There has been a major change in the method used to compile the index in 2013, including the use of a new questionnaire. ²³⁷ Quantitative questions about the number of violations of different

²³⁴ UNESCO, *Media Development Indicators: A Framework for assessing Media Development* (UNESCO 2010), available at <<http://unesdoc.unesco.org/images/0016/001631/163102e.pdf>> accessed 17 November 2015, p. 7.

²³⁵ Christina Holtz-Bacha, 'What is "good" Press Freedom? The Difficulty of Measuring Freedom of the Press Worldwide' (2004), available at <www.kowi.wiso.uni-erlangen.de/publikationen/docs/good_press_freedom.pdf> accessed 17 November 2015, p. 9.

²³⁶ Christina Holtz-Bacha, 'What is "good" Press Freedom? The Difficulty of Measuring Freedom of the Press Worldwide' (2004), available at <www.kowi.wiso.uni-erlangen.de/publikationen/docs/good_press_freedom.pdf> accessed 17 November 2015, p. 9.

²³⁷ Reporters without Borders, 'World Press Freedom Index, Questionnaire', available at <<http://rsf.org/index/qEN.html>> accessed 20 October 2015.

	<p>kinds are handled by the staff of RWB. They include the number of journalists, media assistants and netizens who were jailed or killed in connection with their activities. Furthermore the number of journalists abducted, the number that fled into exile, the number of physical attacks and arrests, and the number of media censored. In case of one or more territories are occupied by military forces, any violations by representatives of the occupying force are treated as violations of the right to information in foreign territory. They are incorporated into the score of the occupying force's country.</p> <p>The rest of the questionnaire was sent to external experts and members of the RWB network. This part concentrates on issues that are difficult to quantify, such as the degree to which news providers censor themselves, or government interference in editorial content, or the transparency of government decision-making. Legislation and its effectiveness is subject of more detailed questions. In the course of the revision questions have been added or expanded. Examples for newly added questions are: questions about concentration of media ownership and favouritism in the allocation of subsidies or on state advertising. Furthermore, questions on discrimination in access to journalism and journalism training have been included into the revised questionnaire.</p>
How often does it measure?	Annually.
What sources does it use?	Quantitative questions are answered by RBW staff. Issues difficult to quantify, i.e. degrees of self-censorship or transparency of governmental decision making are subject of more detailed questions and answered by external experts and members of the RWB network.
How is this indicator scheme build?	<p>The online questionnaire includes 6 criteria:</p> <ul style="list-style-type: none"> • Pluralism (measures the degree of representation of opinions in the media landscape); • Media Independence (measures the degree to which the media are able to function independently of the authorities); • Environment and self-censorship (analyses the environment in which journalists work); • Legislative framework (analyses the quality of the legislative framework and measures its effectiveness); • Transparency (measures the transparency of the institutions and procedures that affect the production of news and information); • Infrastructure (measures the quality of the infrastructure that supports the production of news and information). <p>They are complementary indicators that together assess the state of press freedom. A system of weighing is used for each possible response. Countries are given a score between 0 (best) and 100 (worst) for each of the six overall criteria. Additionally RWB calculate a score of between 0 and 100. This score reflects the level of violence against journalists during the period considered. This quantitative measurement is based on the monitoring carried out by RWB's own staff and it includes the length of imprisonment of journalists, netizens or media assistants as a coefficient. The above mentioned 6 scores + the quantitative measurement of violence against journalists are then used as indicators in calculating each country's final score. Thereby the "violence against journalists" indicator has a weight of 20%. Each country is assigned a position in the final ranking based on the overall score.</p>
Level of Disaggregation?	None.
Discussion	<p>The index measures the endangerment of journalists at work. The index is has a limited explanatory ability regarding general media freedom and the plurality of media. Having the African situation in mind, Fesmedia Africa criticizes that the Press Freedom index concentrates on press freedom violations and thereby neglects measuring factors, which enable the environment for an independent media.²³⁸</p>

²³⁸ Rolf Paasch, 'Perceptions and Realities in Assessing Media Landscapes. The African Media Barometer (AMB) in Practice' (2009), available at <www.fesmedia-africa.org/fileadmin/user_upload/pdf/AMB_Methodology/Paasch_PerceptionsAndRealitiesInAssessingMediaLandscapes__2009_Final.pdf> accessed 20 October 2015, p. 3.

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Furthermore, it is criticized that the outcome of the ranking tends to result in similar findings to the Freedom House survey on Press Freedom but the Freedom House survey is more precise.²³⁹

The press freedom index is included into the Social Progress Index.²⁴⁰

<https://en.rsf.org>

Database link: <https://index.rsf.org/#!/index-details> (excl data)

Codebook link/Methodology: <http://fr.rsf.org/IMG/pdf/methodology-en.pdf>

d) **Media Pluralism Monitor**

Type of Author: academic.

Geographical range: EU member states.

Time span: still in development.

Which information can I expect to find here?	<p>It is a monitoring tool based on a set of indicators for the assessment of risks for media pluralism (current affairs and news) in the EU Member States and for identifying threats to such pluralism.</p> <p>The final report describes the method used to design indicators and their integration into a risk-based framework.²⁴¹ The user guide explains how the monitor can be applied in practice (how to install the software, calculate indicator scores, interpret results, etc.)²⁴² and the Media Pluralism Monitor itself is an excel file containing the indicators embedded in a risk-based scoring system.²⁴³</p> <p>This is an EU Instrument developed in the course of a study commissioned by the European Commission and carried out in 2009 by a group of three academic institutes: the Interdisciplinary Centre for Law and ICT (Katholieke Universiteit Leuven), Centre for Media, Data and Society (Central European University), and Media Management and Transformation Centre (Jönköping International Business School).</p>
What does it measure?	Media independence including freedom of expression. It measures media pluralism in four risk domains including freedom of expression. 20 legal, economic and social indicators form the basis.
How does it measure?	<p>The data collection follows a detailed User Guide (see Appendix 2 User Guide in the project report for details), which provides instructions on the data collection procedure, on the calculation and on the estimation of the operational scores of risk indicators. The User Guide includes a short description of each indicator, the method of its measurement, the data sources, and a detailed score grid listing all of the variables included in the respective risk.</p> <p>The User Guide applies a standardised and consistent scoring-grid structure throughout all of the indicators. The scoring grid is constructed either as three scores points (low, medium or high risk), or as “yes” (existent; related to low risk) or “no” (non-existent; related to high risk) scores. Precise</p>

²³⁹ Markus Behmer, ‘Measuring Media Freedom: Approaches of International Comparison’ in Czepek A. and others (eds.), *Press Freedom and Pluralism in Europe. Concepts and Conditions* (Intellect Books 2009).

²⁴⁰ Social Progress Imperative, ‘Social Progress Index – Data Definitions’, available at <www.socialprogressimperative.org/data/spi/definitions> accessed on 20 October 2015.

²⁴¹ ICRI and K.U. Leuven, ‘Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach: Final Report’ (2009), available at <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/final_report_09.pdf> accessed 20 October 2015.

²⁴² ICRI and K.U. Leuven, ‘Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach: Final Report – Annex 1 User Guide’ (2009), available at <https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/user_guide_09.pdf> accessed 20 October 2015.

²⁴³ European Commission, ‘The Media Pluralism Monitor’, available at <<http://ec.europa.eu/digital-agenda/en/independent-study-indicators-media-pluralism>> accessed on 20 October 2015.

	<p>thresholds and criteria are provided for each score. Additionally, a small-scale content analysis of media production has been applied experimentally, in order to measure indicator 29, which is political bias in the media.</p> <p>The creation of an online platform to collect data from the country teams is one of the practical key innovations of the MPM2014, and this gives an added value to the feasibility and transparency of the project itself. The innovations to the platform developed by Centre for Media Pluralism and Media Freedom (CMPF) are several:</p> <ul style="list-style-type: none"> • it allows an automatic scoring of the risks, as it links the final value of any given indicator to the formula for creating a joint score for the included variables, provided by the User Guide to assess the value of the indicator itself; • it allows an on-going monitoring of a country's implementation and the possibility to check and compare the data collection in real time, and provide feedback; • it provides a database and thorough record of the collected data.
How often does it measure?	<p>It is still in development and implementation phase. Since 2009 the concept has been elaborated and pilot tested. The Centre pilot tested the Monitor in a sample of nine EU countries, namely Belgium, Bulgaria, Denmark, Estonia, France, Greece, Hungary, Italy and the UK. The final report of the pilot is available online.²⁴⁴ The results of the pilot-test implementation provisionally assess the risk to media pluralism through different risk domains. According to the CMPF, these results proved to be very useful, in particular in order to further enhance the tool in terms of applicability, universality and comparability. After pilot testing, the Centre reduced the scope of application of the MPM to news and current affairs and further simplified the risk indicators. It is expected that the 19 remaining EU Member States will be part of a forthcoming testing of the MPM tool.²⁴⁵ Brief information about the methodology, data collection and the online-tool is available at the webpage of the CMPF.²⁴⁶</p> <p>The second MPM pilot-project is a follow-up to the MPM2014 project (the revision and test implementation of the 2009 Media Pluralism Monitor). MPM2014 specifically focused on news and current affairs. It used streamlined procedures to collect data and was implemented in a sample of nine EU Member States. The first phase of the MPM2015 project was devoted to the fine-tuning of the indicators on the basis of the previous project. The overall aim was to enhance the potential of the indicators in providing valuable and comparable data on risks media pluralism may face in any given EU member state and beyond. The fine-tuning exercise involved streamlining the overall structure of the MPM. The previous MPM tool had six risk domains and 34 macro-indicators, while the current one has been slimmed down to four risk domains (basic, ownership, inclusiveness and political) and 20 indicators.</p> <p>The CMPF has refined the research instrument and is implementing it in the 19 Member States, which were not covered during the previous pilot-testing phase. Following a kick-off meeting, local teams are now actively collecting data on media pluralism across 19 EU Member States.</p>
What sources does it use?	<p>Data collection is administered by the local research teams, under the instruction, supervision and quality control of the CMPF. There is an attempt to rely only on official data sources, and/or sources with a high level of reliability and trust, all of which are thoroughly documented and archived.</p>
How is this indicator scheme build?	<p>For each of five core domains (basic legal protection and recognition of freedom of expression and media pluralism, inclusiveness in access to media, transparency of media ownership and politicization of media) indicators measure media pluralism. Such indicators are: protection of freedom of expression, media literacy, independence of news agencies, availability of media platforms for community media, etc.²⁴⁷.</p>

²⁴⁴ Centre for Media Pluralism and Media Freedom (CMPF), 'Monitoring Media Pluralism in Europe - Testing and Implementation of the Media Pluralism Monitor 2014 (#MPM2014)' of 22 January 2015, available at <<http://ec.europa.eu/digital-agenda/en/news/monitoring-media-pluralism-europe-testing-and-implementation-media-pluralism-monitor-2014>> accessed 20 October 2015.

²⁴⁵ European Commission, 'The Media Pluralism Monitor', available at <<http://ec.europa.eu/digital-agenda/en/independent-study-indicators-media-pluralism>> accessed on 20 October 2015.

²⁴⁶ European University Institute, 'MPM 2015: Methodology' available at <<http://monitor.cmpf.eui.eu/methodology/>> accessed on 20 October 2015.

²⁴⁷ European University Institute, 'MPM 2015: Methodological Optimization and Implementation', available at <<http://monitor.cmpf.eui.eu/mpm2015/implementation/>> accessed 20 October 2015.

Level of Disaggregation?	No issue yet.
Discussion	It is still in progress, there are no experiences of implementation and application available yet.
Website	http://monitor.cmpf.eui.eu/ Database: link to database is available but do not work Information on methodology: http://monitor.cmpf.eui.eu/methodology/

e) *African Media Barometer*

Type of Author: academic and NGO.

Geographical range: African and South East Asian countries.

Time span: since 2004.

Which information can I expect to find here?	Information on the independency of the media in Africa can be found. The AMB provides information on media policy, regulation and public broadcasting that is measured against African declarations, protocols and principles, positive and negative developments and recommendations to promote media reforms.
What does it measure?	<p>It measures the protection and promotion of freedom of expression and the media, media pluralism, independence and transparency of media ownership and standards of media professionals.</p> <p>The AMB is an in-depth and comprehensive description system for national media environments on the African continent. It is a self-assessment based on home-grown criteria. The benchmarks are to a large extent taken from the African Commission for Human and Peoples' Rights (ACHPR) 1 "Declaration of Principles on Freedom of Expression in Africa", adopted in 2002. The AMB identifies and analyses the shortcomings and best practices in the legal as well as practical media environment.</p> <p>The recommendations of the AMB-reports are integrated into the work of the 19 country offices of the Friedrich-Ebert-Stiftung (FES) in sub-Saharan Africa and into the advocacy efforts of other media organisations like the Media Institute of Southern Africa (MISA).</p>
How does it measure?	<p>The AMB consists of benchmarks for a society in which freedom of expression is effectively protected and promoted. These benchmarks cover four sectors; one of them is freedom of expression. The sector on freedom of expression includes freedom of the media. A panel of 10 to 12 local experts, half of them represent the media and other half present other parts of civil society, meet every two or three years. They assess the media situation in their own country. For one and a half days the panellists discuss the national media environment according to the 39 indicators of the barometer.²⁴⁸ The panellists can remain anonymous if they want.</p> <p>Each panel participant can allocate one to five points to each of the four areas of benchmarks. Scoring happens in an anonymous vote and after a discussion. It should reflect the personal conclusion each panellist draws from the foregone exchange. The discussion and scoring is moderated by an independent consultant who also edits the draft report.</p>

²⁴⁸ Fesmedia Africa, 'List of AMB Indicators' available at <www.fesmedia-africa.org/fileadmin/user_upload/pdf/amb_indicators/2013_List_with_new_Indicators.pdf> accessed 20 October 2015.

	<p>The report is written by a trained AMB rapporteur, who follows the AMB Panel discussion.²⁴⁹ Additionally there exists a qualitative report, which summarises the general content of the discussion.</p>
How often does it measure?	<p>The measurement has been developed in 2004. In 2009 the indicators were reviewed, amended and some indicators (e.g. those addressing Information and Communication Technology - ICT) were added. By the end of 2012, 29 sub-Saharan countries have been covered by the AMB, 80 AMB reports have been produced. Countries (such as Botswana, Kenya, Tanzania, Zimbabwe) which started the exercise in 2005, were revisited providing for the first time comparable data to measure developments in a country over a two-year period. On the other hand, some countries have so far hosted only one AMB panel discussion, such as Ethiopia or the Democratic Republic of the Congo.²⁵⁰</p> <p>By the end of 2013 the African Media Barometer has been applied in 30 African countries, in some of them already for the fourth time. The AMB methodology has been recently adopted in other regions, namely in Asia, the Middle East, and Eastern Europe.</p>
What sources does it use?	<p>A panel of 10 to 12 experts is formed in each country. It includes representatives of media and civil society at large in equal numbers. Members are serving in their personal capacities, not as representatives of their respective organisations. The panellists meet bi-annually and retreat to go in a self-assessment process through the indicators in a qualitative discussion and determine (quantitative) scores for each indicator. The meetings are chaired by an independent consultant to ensure comparable results. Panel members allocate their individual scores to the respective indicators after the qualitative discussion in an anonymous vote. The resulting reports are made public.</p>
How is this indicator scheme build?	<p>Sector 1 Freedom of expression, including freedom of the media is effectively protected and promoted (including 11 indicators), sector 2: The media landscape, including new media, is characterised by diversity, independence and sustainability (including 13 indicators), sector 3: Broadcasting regulation is transparent and independent; the state broadcaster is transformed into a truly public broadcaster (including 7 indicators); sector 4: the media practise high levels of professional standards. The indicators are formulated as goals which are derived from the African political protocols and declarations. If a country does not meet the indicator, the score would be one, if the country meets all aspects of the indicator, it would be five.</p>
Level of Disaggregation?	<p>Most results are qualitative, some indicators are scored on the basis of certain facts (e.g. the existence of legislation).</p>
Discussion	<p>The advantage of the AMB is that the indicators are populated with on-site expert information, no external scoring or evaluation by outside experts is added.²⁵¹ In contrast to other Media Studies or monitoring, which mainly quote e.g. the number of community radio stations from UNESCO-reports, the AMB check these numbers with the collective and practical experience of the panellists. Thereby they not only report the number of stations, but rather are able to figure out to what extent they are still broadcasting. Thus, the inbuilt reality check and the continuous character of the AMB are pointed out as its big advantage over similar studies or indices. Shortcomings are a neglect of the quality of coverage in the media.²⁵² Anecdotal discussions, unprepared panellists, and rapporteurs, who lack necessary skills or proved to be unreliable are disadvantages too. Furthermore, it is mentioned that the AMB seems to take on an explorative</p>

²⁴⁹ Rolf Paasch, 'Perceptions and Realities in Assessing Media Landscapes. The African Media Barometer (AMB) in Practice' (2009), available at <www.fesmedia-africa.org/fileadmin/user_upload/pdf/AMB_Methodology/Paasch_PerceptionsAndRealitiesInAssessingMediaLandscapes__2009_Final.pdf> accessed 20 October 2015, p. 3.

²⁵⁰ Mareike Le Pelley, 'The African Media Barometer. Not just another Media Index' (2013), available at: <www.fesmedia-africa.org/fileadmin/user_upload/pdf/AMB_Methodology/Rhodes_Journalsim_Review_2013_Not_just_another_media_index.pdf> accessed 14 July 2015.

²⁵¹ Peter Schellschmidt, 'Das African Media Barometer – ein Instrument zur Selbsteinschätzung der Freiheit von Meinung und Medien in Afrika' (2007), available at <<http://library.fes.de/pdf-files/iez/04252.pdf>> accessed 5 August 2015.

²⁵² Markus Behmer, 'Measuring Media Freedom: Approaches of International Comparison' in Czepek A. and others (eds.), *Press Freedom and Pluralism in Europe. Concepts and Conditions* (Intellect Books 2009).

Website

approach, which is criticized as superficial.²⁵³ Much comes out of the discussion and depends on its quality and mutual interaction or manipulation of the panel participants cannot be ruled out. Thus, a combination with less reactive methods is suggested as well as the integration of foreign experts into the panels and scoring.²⁵⁴

In order to deal with the critics, the procedure has been standardized. Standardisation had the purpose to reduce the "subjectivity factor" in scoring, reporting, writing and editing. Fesmedia Africa created a 20 page "Moderators Guide" to ensure a more standardized practice from country to country and year to year. Additionally the methodology has been tested in India and Pakistan and other parts of South-East Asia.²⁵⁵

www.fesmedia-africa.org/uploads/media/Scoring_Sheets.pdf

f) *Media Sustainability Index*

Type of Author: NGO.

Geographical range: Europe, Eurasia and Africa.

Time span: annually since 2000.

Which information can I expect to find here?	The index provides information on the ability of the media to provide the public with useful, timely and objective information and to act as a facilitator of public discussion. It is also a benchmark study, which assesses media systems change over time and across borders. It also provides information on areas of improving citizens' access to news and information by media development assistance. It reflects the expert opinions of media professionals in each country. The Media Sustainability Index (MSI) has been developed by the International Research and Exchanges Board (IREX) an internationally active NGO based in the US.
What does it measure?	The MSI measures a number of contributing factors of a well-functioning media system and considers both traditional media types and new media platforms. The term "sustainability" refers to the ability of media to play a vital role as the "fourth estate". To measure this, the MSI assesses five "objectives" that shape a media system: freedom of speech, professional journalism, plurality of news, business management, and supporting institutions. The MSI aims to understand to which degree journalism acts professional, whether media firms can sustain robust news operations and whether civil society supports the fourth estate. ²⁵⁶
How often does it measure?	Since the Europe and Eurasia MSI was first conceived in 2000 in cooperation with the United States Agency for International Development (USAID), the MSI has evolved into an important benchmark study to assess how media systems change over time and across borders. IREX added a study for the Middle East and North Africa in 2005, and launched the Africa MSI in 2007.
What sources does it use?	A panel of local experts score the indicators in each country. These experts are drawn from the country's media outlets, NGOs, professional associations, academic institutions. Panellists may be editors, reporters, media managers or owners, advertising and marketing specialists, lawyers, professors or teachers or human rights observers. The composition of panels reflects a variety

²⁵³ Markus Behmer, 'Measuring Media Freedom: Approaches of International Comparison' in Czepek A. and others (eds.), *Press Freedom and Pluralism in Europe. Concepts and Conditions* (Intellect Books 2009).

²⁵⁴ Markus Behmer, 'Measuring Media Freedom: Approaches of International Comparison' in Czepek A. and others (eds.), *Press Freedom and Pluralism in Europe. Concepts and Conditions* (Intellect Books 2009).

²⁵⁵ Rolf Paasch, 'Perceptions and Realities in Assessing Media Landscapes. The African Media Barometer (AMB) in Practice' (2009), available at <www.fesmedia-africa.org/fileadmin/user_upload/pdf/AMB_Methodology/Paasch_PerceptionsAndRealitiesInAssessingMediaLandscapes__2009_Final.pdf> accessed 20 October 2015, pp. 7-11.

²⁵⁶ IREX, 'Media Sustainability Index', available at <www.irex.org/projects/media-sustainability-index-msi> accessed 20 October 2015.

How is this indicator scheme build?

along gender, rural-urban, age, ethnicity and other diversity aspects. From year to year, at least half of the previous year's experts are nominated again for consistency reasons. IREX, the organisation behind the index, works with local or regional organisations or individuals to oversee the process.

The panellists are required to consider not only laws but even more practices in scoring. A country without a formal freedom of information law that enjoys customary government openness may outperform a country that has a strong law on the books but frequently ignores it. All types of media are considered equally.

The MSI assesses five important aspects in shaping a sustainable and professional independent media system. These objectives are freedom of speech, professional journalism, plurality of news, business management, and supporting institutions and they serve as criteria against which the countries are rated. By rating between seven and nine indicators per objective, a score is attained. This score determines how well a country meets that objective (the lower the score the lesser the objective is met).

Panellists in charge of scoring assemble to discuss the population of the objectives and indicators. They can change their initial ratings in the course of these discussions. IREX does not promote consensus among the panellists. The panel moderator (a representative of the host-country, an institutional partner or a local individual) prepares a written analysis of the discussion, which IREX staff members edit subsequently. The panellists are usually named in the reports. They remain anonymous only in cases of threat.

Indicator scoring is divided as follows: the lowest 0 means country does not meet the standard expressed in the indicator and the highest 4 means that a country meets all aspects of the indicator. Regarding the overall scoring, the lowest 0-1 means an unsustainable, anti-free press and 3-4 means that the country has media that are considered generally professional, free and sustainable or to be approaching these objectives.²⁵⁷

IREX editorial staff members review the panellists' scores and then provide a set of scores for the country. This set of scores is basically independent from the panels scoring and carries the same weight as the scoring of an individual panellist. The average of all individual indicator scores determines the objective score and the average of all objective scores determines the country score.

Level of Disaggregation?

n.a.

Discussion

It mostly focuses on the economic aspects of free media and speech. Geographical scope is limited.

Website

www.irex.org/projects/media-sustainability-index-msi

g) *CIRI human rights database*

Type of Author: Academic.

Geographical range: 195 countries.

Time span: 1981-2011.

Which information can I expect to find here?

CIRI provides standard-based information on government human rights practices, including civil rights and liberties (including the right of free speech). It provides information on fifteen separate human rights practices and two indices in 195 countries. It is one of the largest human rights data sets in the world. The basic unit coded is a "country year", which is a particular country in a

²⁵⁷ IREX, 'Media Sustainability Index', available at <www.irex.org/projects/media-sustainability-index-msi> accessed 20 October 2015.

	particular year, e.g. Canada 1998. ²⁵⁸ The information is standards-based. CIRI rates actual government practices relating to international law standards and not countries relative to countries.
What does it measure?	It measures government respect for human rights including freedom of speech and press, grounded in Art. 19 of the ICCPR. Concretely it measures the extent to which freedoms of speech (including arts, music and press) are affected by government censorship or public ownership of media outlets. Censorship is understood as any form of restriction that is placed on freedom of the press, speech or expression. ²⁵⁹ There are different degrees of censorship. Censorship denies citizens freedom of speech and limits or prevents the media (print, online or broadcast) from expressing critical views. ²⁶⁰ The variable freedom of speech indicates the extent to which the freedoms of speech and press are affected by government censorship, including ownership of media outlets. CIRI data allow for the exploration of a variety of questions, such as: what types of human rights are most and least respected by governments and why? How have patterns of respect for different types of human rights changed over time? How have specific policies, such as trade liberalisation, bi-lateral foreign aid affected governmental human rights practices? Do human rights crises have measurable effects on the human rights practices of neighbouring governments? ²⁶¹
How often does it measure?	Yearly, but probably discontinued.
What sources does it use?	CIRI requires systematic qualitative information, which is standardised information about the same rights for each country, annually. For this CIRI uses the US State Department Country Report on Human Rights Practices as it is perceived as the only such existing source. CIRI's coders use it to code all variables. ²⁶²
How is this indicator scheme build?	Government censorship and ownership of the media is scored in three categories, namely complete (0) if the government owns all of any one aspect of the media, such as all radio stations or all television stations; some (1) if the government places some restrictions yet does allow limited rights to freedom of speech and the press and none (3) freedom to speak freely and to print opposing opinions without the fear of prosecution. No does not mean absolute freedom since even in democracies there are restrictions placed to freedom of expression if these rights infringe on the rights or the welfare of others. Information about this indicator will be contained in the United States State Department Reports. ²⁶³ The unit of measurement of the CIRI index are country's internationally recognized borders. No information is offered on areas smaller than a country. ²⁶⁴
Level of Disaggregation?	None.
Discussion	The authors of the CIRI project emphasise that their database covers only governmental human rights practices, meaning 'human rights-related actions of a government and any and all of its

²⁵⁸ David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395.

²⁵⁹ David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395.

²⁶⁰ David L. Cingranelli and David L. Richards, 'The Cingranelli-Richards (CIRI) Human Rights Data Project Coding Manual Version 5.20.14', available at <<https://drive.google.com/file/d/0BxDpF6GQ-6fbWkpxTDZCQ01jYnc/edit?pli=1>> accessed 11 October 2015. p. 27.

²⁶¹ David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395.

²⁶² David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395.

²⁶³ US State Department, Diplomacy in Action, Country Reports, available at <<http://www.state.gov/j/drl/rls/hrrpt/>> accessed on 21 October 2015.

²⁶⁴ David L. Cingranelli and David L. Richards, 'The Cingranelli-Richards (CIRI) Human Rights Data Project Coding Manual Version 5.20.14', available at <<https://drive.google.com/file/d/0BxDpF6GQ-6fbWkpxTDZCQ01jYnc/edit?pli=1>> accessed 11 October 2015, p. 27.

Website

agents, such as police or paramilitary forces.²⁶⁵ Whenever there is any lack of a central authority (state collapse) or the state is under foreign occupation, the CIRI Project does not provide scores for the country in question. To evaluate state failure and foreign occupation, the CIRI project utilizes the data from the Polity IV project.²⁶⁶

The Fraser Institute's Index of Freedom in the World uses CIRI Human Rights Data in its freedom of speech indicator. The freedom of speech indicator measures the extent to which speech or expression are affected by the government ownership of the media or censorship.²⁶⁷

Cingranelli and Richards state that their data project is an independent non-governmental organisation, data and analyses are independent of governmental influence or the influence of any other external entity.

www.humanrightsdata.com

Codebook: <https://drive.google.com/file/d/0BxDpF6GQ-6fbWkpxTDZCQ01jYnc/edit?pli=1>

Database: www.humanrightsdata.com/p/data-documentation.html

Users can either download the entire dataset at once or create a custom dataset for download by choosing only those indicators, years and countries they are interested in.

²⁶⁵ David L. Cingranelli and David L. Richards, 'The Cingranelli-Richards (CIRI) Human Rights Data Project Coding Manual Version 5.20.14', available at <<https://drive.google.com/file/d/0BxDpF6GQ-6fbWkpxTDZCQ01jYnc/edit?pli=1>> accessed 11 October 2015, p. 27.

²⁶⁶ David L. Cingranelli and David L. Richards, 'The Cingranelli and Richards (CIRI) Human Rights Data Project' (2010) 32 Human Rights Quarterly 395, p. 407.

²⁶⁷ Ian Vasquez and Tanja Štumberger, 'An Index of Freedom in the World' in Fred McMahon (ed.), *Towards a Worldwide Index on Human Freedom* (Fraser Institute 2012), p. 61.

3. Human rights compliance information

a) United Nations Treaty based monitoring

Provisions on freedom of expression and opinion can be found in the ICCPR (Art. 19), UNCRC (Art. 13), ICERD (Art. 5), United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (Art. 21) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (Art. 13). The information provided in this chapter refers to all these provisions. The implementation of these treaties is monitored by the respective Committees.

Type of Author: intergovernmental organizations.

Geographical range: UN Member States; depends on the treaty.

<p>Which information can I expect to find here?</p>	<p>Initial reports by states parties provide information on an article-by-article basis. Every initial report must contain information on freedom of expression. All other periodic reports are focused on the committees/monitoring bodies' concluding observations on the previous reports. In the periodic reports, states parties do not need to report on every single article of the treaties, but only on those provisions identified by the committee/monitoring bodies in their concluding observations. Furthermore, they provide information on articles in respect of which there have been significant developments since the submission of the previous report. This means: periodic reports do not necessarily contain information on freedom of expression. This information is only provided if there is something new or as a response to requests of the committees. Mostly, this information consists of justifications and explanations of policies implemented (and criticized by the committee) and arguments on why it is in line with the provisions of the respective treaty.</p> <p>Monitoring committees on treaties dealing with discrimination or having specific target groups such as the CERD or the CRPD address the balance of freedom of expression and assembly against the right to protection from racial discrimination or obstacles to the exercise and enjoyment by persons with disabilities. Any problems in this connection and legislative or other measures to overcome them are requested.²⁶⁸</p> <p>Periodic reports on the ICCPR should include an examination of the progress made and the current situation of implementing the ICCPR. Article 40 of the Covenant requires that reports indicate the factors and difficulties, if any, affecting the implementation of the Covenant. Explanations should be provided regarding the nature, extent of, and reasons for every such factor. Where difficulties exist, details should be provided on the steps taken to overcome them.²⁶⁹</p> <p>E.g. in the special issues paper on Cambodia of August 2014 it is required that Cambodia comments on how freedom of expression is guaranteed since the entry into force of the new Criminal Code. Reporting on the changes introduced by the new Criminal Code in respect of defamation, disinformation and incitement are required. Comments on allegations that human rights activists and journalists continue to be subjected to intimidation and harassment, including politically motivated accusations are requested too. Cambodia is thereby also requested to indicate the number of criminal proceedings against human rights</p>
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²⁶⁸ United Nations Committee on the Rights of Persons with Disabilities, 'Guidelines on Treaty-specific Document to be submitted by States Parties under Article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities', CRPD/C/2/3 of 19–23 October 2009.

²⁶⁹ United Nations Human Rights Committee, 'Guidelines for the Treaty Specific Document to be submitted by States Parties under Article 40 of the Covenant on Civil and Political Rights', CCPR/C/2009/1 of 22 November 2010, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CCPR%2fC%2f2009%2f1&Lang=en accessed on 21 October 2015.

What procedural steps are taken to come to the final report?

defenders, journalists and other civil society actors for defamation, malicious denunciation and incitement.²⁷⁰

Some bodies, such as the HRC,²⁷¹ have elaborated general guidelines on the form and content of reports. They provide for comprehensive initial reports, prepared on an article-by-article basis. Other monitoring bodies have no such guidelines. Monitoring bodies and committees consist of independent experts, who examine each state report and address their concerns and recommendations to the state party in the form of "concluding observations". Also here, some monitoring bodies have guidelines or a structure (containing of conclusions, positive and negative aspects, subjects of concern and suggestions and additional information requested), while others do not.

The main sources are the state parties' official reports. These are supplemented by NGO and Intergovernmental Organizations (IGO) information. In the course of United Nations treaty based monitoring procedures; Human Rights NGOs submit assessments on the human rights situation in the countries to be assessed. They are published as information from civil society. NGOs are invited to the Committee sessions to provide additional information orally before the examination of the state report by the Committee.

Primary information on laws and policies is required, related to structural and process oriented information. When it comes to outcome-specific information, meaning the enjoyment of the right within the population, quantitative data are required. However, e.g. in the guideline for the reports on the implementation of the CERD, it is assumed that many states will have no quantitative data and in such cases it may be appropriate to report the opinions of representatives of disadvantaged groups.²⁷²

Duration of the reporting cycle

For monitoring, all states parties are obliged to submit regular reports to the treaty monitoring bodies. States must report initially one year to two years after acceding to the treaty on how the rights are being implemented. Then they have reporting obligations within a certain period depending on the Treaty and starting from every two (CERD) years up to every five years (CRC/CMW).

Website

www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx

b) *Universal Periodic Review*

Type of Author: intergovernmental organisation.

Geographical range: worldwide.

Which information can I expect to find here?

The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Human Rights Council, the UPR is designed to ensure equal

²⁷⁰ United Nations Human Rights Committee, 'List of Issues in relation to the Second Periodic Report of Cambodia', CCPR/C/KHM/Q/2 of 19 August 2014.

²⁷¹ United Nations Human Rights Committee, 'Guidelines for the Treaty Specific Document to be submitted by States Parties under Article 40 of the Covenant on Civil and Political Rights', CCPR/C/2009/1 of 22 November 2010, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f2009%2f1&Lang=en accessed on 21 October 2015.

²⁷² United Nations Committee on the Elimination of Racial Discrimination, 'General Guidelines regarding the Form and Contents of Reports to be submitted by States Parties under Article 9, Paragraph 1 of the Convention', CERD/C/70/Rev.5, p. 5.

What procedural steps are taken to come to the final report?

treatment for every country to be reviewed. Currently, no other universal mechanism of this kind exists.²⁷³

The UPR provides information on actions that states have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe.

The UPR assesses the extent to which States respect their human rights obligations set out in: (1) the UN Charter; (2) the UDHR; (3) human rights instruments to which the state is party; (4) voluntary pledges and commitments made by the state (e.g. national human rights policies and/or programmes implemented); and, (5) applicable international humanitarian law.

The following is available per country: the national report, compilation of UN information, summary of stakeholders' information (including NHRI and NGO information), questions submitted in advance, the outcome of the review and the report of the working group.

The reviews are conducted by the UPR Working Group which consists of the 47 Council members; any UN member state can take part in the discussion/dialogue with the reviewed states. Each state review is assisted by groups of three states, known as "troikas", who serve as rapporteurs. The selection of the troikas for each state is done through a drawing of lots following elections for the Council membership in the General Assembly (GA).

The review itself takes place in Geneva in a session of the Working Group on the UPR, which is composed of the 47 member states of the Human Rights Council.

The documents on which the reviews are based are: 1) information provided by the state under review; 2) information contained in the reports of independent human rights experts and groups, namely the special procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including national human rights institutions and non-governmental organizations.

The UPR is based among others on information provided by "other relevant stakeholders", which are summarized by the OHCHR in a document. Stakeholders include NGOs, NHRIs, human rights defenders or academic institutions. Particularly those, based in the country to be reviewed provide important information. The role of NGOs in the Human Rights Council is considered important to bring to its attention the situation on the ground in particular as regards reporting on human rights violations and the contribution of their own particular and local expertise.²⁷⁴

The review takes the form of an interactive dialogue between the state under review and the member and observer states of the Council. During this discussion any UN member state can pose questions, comments and/or make recommendations to the states under review. The troikas may group issues or questions to be shared with the state under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review is three hours and thirty minutes. At the end of each review, the working group adopts an outcome document, which is subsequently considered and adopted by the Human Rights Council at a later session.

Duration of the reporting cycle

4 years.

Website

www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

²⁷³ Office of the High Commissioner on Human Rights, 'Universal Periodic Review', available at <www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> accessed 21 October 2015.

²⁷⁴ Lucia Nader, 'The Role of NGOs in the Human Rights Council' (2007) 4 (7) SUR – International Journal of Human Rights 6, available at <www.scielo.br/pdf/sur/v4n7/en_a02v4n7.pdf> accessed 10 November 2015.

c) *Special Rapporteur on Freedom of Expression***Type of Author:** expert body of an intergovernmental organization.**Geographical range:** worldwide.

Which information can I expect to find here?	<p>Legal and practical information on the realization of the right to freedom of expression per country, trends, violations and measures to combat challenges are available. Annual reports on the activities of the special rapporteur are provided, including a discussion of pressing issues, a brief summary of urgent appeals and communications to and from the governments, conclusions and recommendations.²⁷⁵ Annual reports are submitted to the Human Rights Council. E.g. the 2011 annual report focused on the challenges created by the internet, because the special rapporteur found increasing violations in the form of blocking and filtering by states.²⁷⁶</p> <p>The Special Rapporteur is particularly interested in receiving information on specific problems and violations related to detention, discrimination, threats, violence or harassment against persons seeking to exercise the right of freedom of expression. Activities of political opposition parties and trade union activists, actions against the media or publishers and performers in media like books, magazines, film and theatre, activities of human rights defenders, specific situation of women, e.g. their participation in the decision-making process, the right to seek and receive information on matters of particular relevance to them such as family planning or obstacles to access to information.²⁷⁷</p> <p>Furthermore reports on country visits and country missions are available. These reports contain information on the domestic legal framework, the situation of the right to freedom of opinion and expression, issues of concern, conclusion and recommendations.²⁷⁸ The special rapporteurs carry out visits on the basis of information received from governments. During the visits, the experts interact with governmental and non-governmental actors. They request from the government that no persons (official and private) who have been in contact with them will be subjected by threats, juridical proceedings or any other disadvantage.²⁷⁹</p>
What procedural steps are taken to come to the report?	<p>With the support of the OHCHR, special rapporteurs undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to state parties and local stakeholders in which they bring alleged violations or abuses to their attention; conduct thematic studies and convene expert consultations, contribute to the development of international human rights standards, engage in advocacy, raise public awareness, and provide advice for technical cooperation.</p> <p>The special rapporteur is supported by other UN and OSCE Bodies, as well as by NGOs, which are specialized in the protection of freedom of the press and the media. Examples for these NGOs are Article 19 or Reporters without Borders, Amnesty International or the International Council on Human Rights Policy.²⁸⁰</p>

²⁷⁵ Office of the High Commissioner for Human Rights, 'Freedom of Opinion and Expression - Annual reports', available at <www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx> accessed 23 November 2015.

²⁷⁶ Wolfgang Benedek W., 'Freedom of Expression and Freedom of the Media' in Wolfgang Benedek (ed.), *Understanding Human Rights: Manual on Human Rights Education* (NWV 2012).

²⁷⁷ United Nations Commission on Human Rights, 'Report of the Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression, Mr. Abid Hussain', E/CN.4/1999/64 of 29 January 1999, available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/107/66/PDF/G9910766.pdf?OpenElement>> accessed 23 November 2015.

²⁷⁸ United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, 'Country Visits', available at <<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Visits.aspx>> accessed 3 December 2015.

²⁷⁹ United Nations Human Rights Council, 'Special Procedures', available at <<http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>> accessed 3 December 2015.

²⁸⁰ Wolfgang Benedek W., 'Freedom of Expression and Freedom of the Media' in Wolfgang Benedek (ed.), *Understanding Human Rights: Manual on Human Rights Education* (NWV 2012).

Duration of the reporting cycle

The quality of the experts' output depends to a large extent on the quality of support they receive from OHCHR and the amount of time staff invest in this work. Currently, the OHCHR can provide a staff member to assist each Special Rapporteur for an equivalent of approximately three full-time months a year. Human rights situations sometimes dictate the creation of new mandates for Special Rapporteurs. The increase in the number of mandates, without a corresponding increase in resources to support them, places additional burdens on OHCHR.²⁸¹

The Special Rapporteur on the Promotion and Protection of the Freedom of Opinion and Expression annually reports to the UN Human Rights Council on the situation worldwide, visits countries and provides observations, recommendations and a commentary on elements of the human right.²⁸²

The majority of the Special Rapporteurs also reports to the General Assembly. Their tasks are defined in the resolutions creating or extending their mandates.

Website

www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx

²⁸¹ Office of the High Commissioner for Human Rights, 'Fact Sheet on the Commission of Human Rights', available at <www.ohchr.org/Documents/Publications/FactSheet27en.pdf> accessed on 21 October 2015, p. 17.

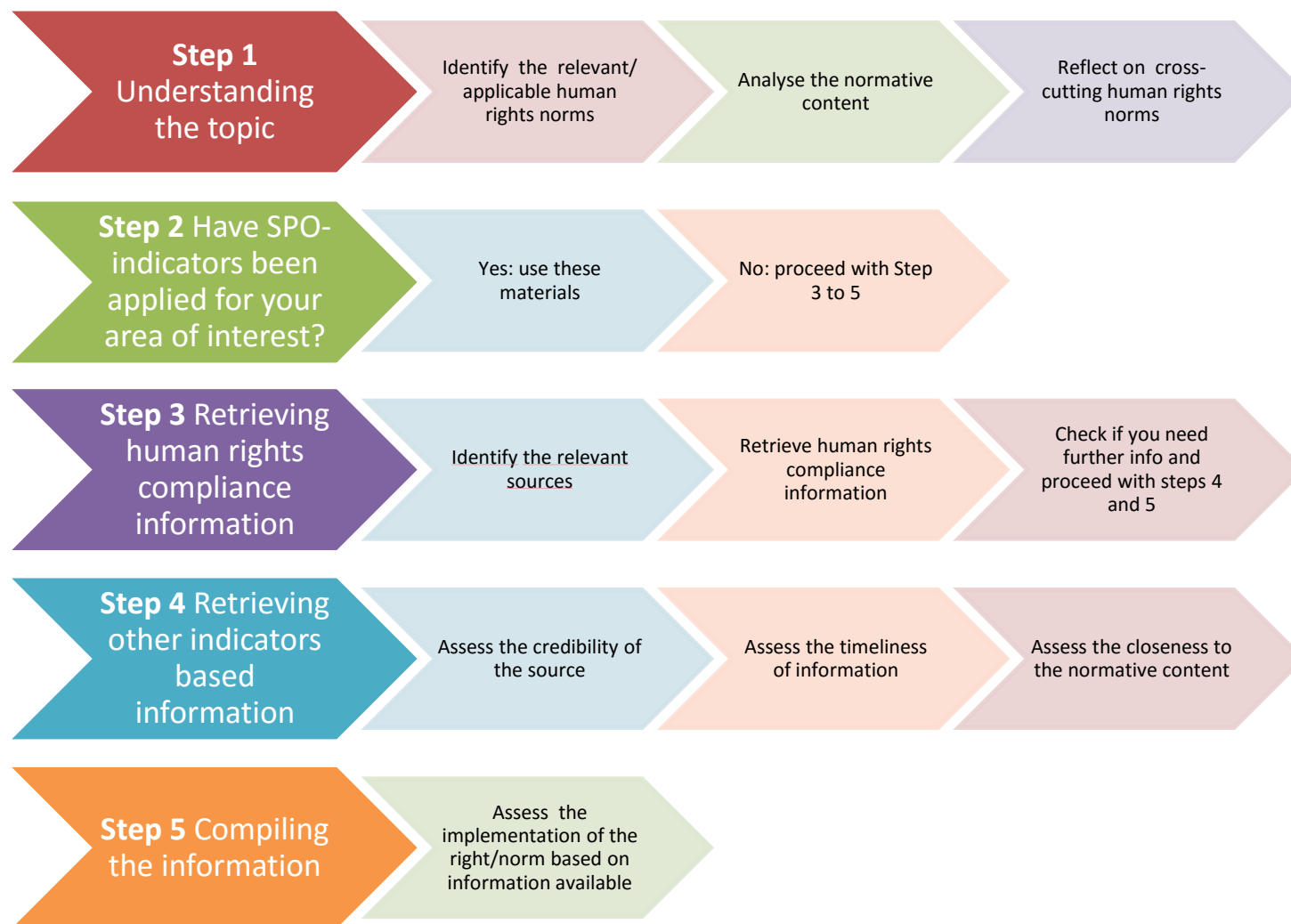
²⁸² Wolfgang Benedek W., 'Freedom of Expression and Freedom of the Media' in Wolfgang Benedek (ed.), *Understanding Human Rights: Manual on Human Rights Education* (NWV 2012).

C. Workflow for exemplary information requests

This section demonstrates how to retrieve information on freedom of expression from the sources listed in part B. This will be outlined along country case studies on Russia and Turkey. During the editing of this section, Russia and Turkey were covered by the media due to infringements of the right to freedom of opinion and expression: Turkey as a result of forceful evicting the Taksim Gezi Park protests and Russia due to implementing the LGBT propaganda law. Both countries are members of the Council of Europe and the United Nations and have ratified the relevant treaties. Based on these countries, the available information on freedom of expression will be exemplified. The explanations cannot be extensive and the links need to be constantly updated. The target group of this report is EU officials, who have some expertise in human rights research and retrieving human rights information. The report is too basic for human rights experts with longstanding experience on researching and retrieving human rights information.

For the purpose of using the information systems discussed in part B, we developed an ideal-typical four-step procedure, which is applicable for all types of human rights information. The order of these steps and tasks will vary in practice.

Figure 6: Workflow's structure for researching information on the right of freedom of expression



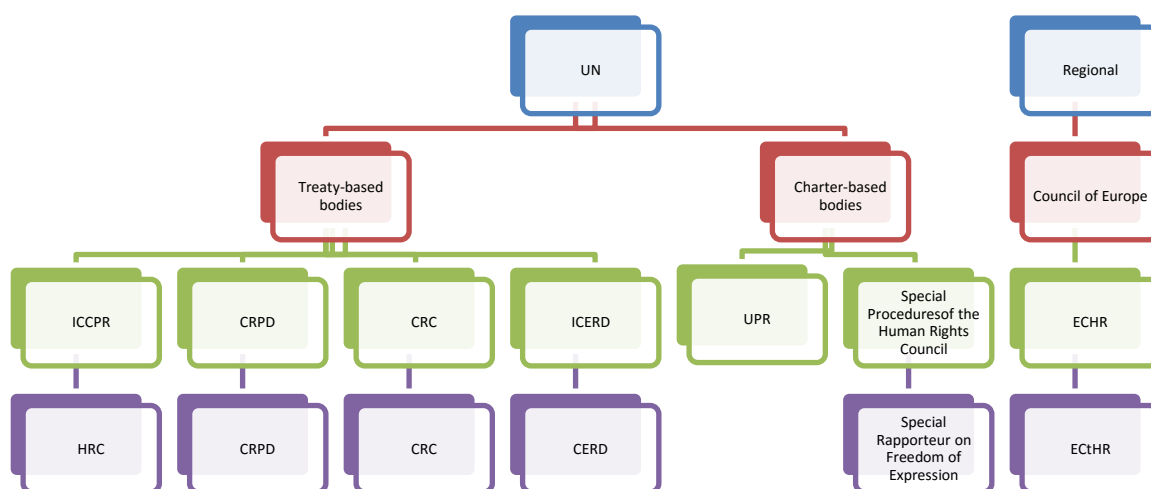
1. Step 1: Understanding the topic

When accessing human rights information, the applicable human rights norms need to be identified.

Identify the applicable human rights norms

The treaties and bodies relevant for monitoring freedom of expression in Turkey and Russia are depicted in Figure 7: Freedom of expression at UN and Council of Europe level. Other regional instruments and bodies have been excluded as they are not relevant for the country cases. Information on these instruments and bodies are provided in chapter III.A.1.

Figure 7: Freedom of expression at UN and Council of Europe level



The UN Treaty Body Database contains all public documents adopted or received by the human rights treaty bodies. It allows for searches by treaty or country. The information is very well prepared, the design and the search options are very user-friendly.²⁸³ The Database is updated regularly and it aims to ensure accuracy and reliability of the data.

²⁸³ Office of the High Commissioner for Human Rights, 'Treaty Body Search', available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en> accessed on 6 November 2015.

Box 1: Treaty Body Database, Turkey

Regarding **Turkey**, you will find the following:

- Ratified all treaties relevant for freedom of expression as well as the Optional Protocol to the ICCPR.
- ➔ Turkey committed to implement the content of these treaties and to be monitored by treaty bodies in doing so.

Box 2: Treaty Body Database, Russia

Regarding **Russia**, you will find the following:

- Ratified all treaties relevant for freedom of expression as well as the Optional Protocol to the ICCPR.
- ➔ Russia committed to implement the content of these treaties and to be monitored by treaty bodies.

Turkey ratified the ECHR in 1954 and the Russian Federation in 1998. Thus, both states committed themselves to implement the provisions on freedom of expression, to report about it and to be monitored on the implementation. Both countries' ratifications are followed with reservations. The normative content of the right to freedom of opinion and expression needs to be clear in order to assess the reservations.

Analyse the normative content

The normative content explains the human rights standards and the obligations deriving from the treaty. Treaty bodies monitor the implementation of the state parties' obligations and provide general comments and recommendations on how to best implement the treaty's provisions. In addition, case law from the ECtHR, the reports of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression provide valuable information. They fill the legal provisions with life and provide information on the interpretation of the right. ECtHR case law can be accessed from the HUDOC-database.²⁸⁴

²⁸⁴ Council of Europe, 'HUDOC Database – European Court of Human Rights', available at <

The normative content of the right to freedom of opinion and expression has already been briefly outlined in the Think-piece on human rights information on freedom of opinion and expression. The central elements of right to freedom of opinion and expression are:²⁸⁵

- Freedom of opinion and to impart information (including a broad variety of media);
- Freedom to seek information (including a broad variety of media);
- States' duties and responsibilities (including legitimate forms of interference).

Reflect on cross-cutting human rights norms

Cross cutting human rights norms, such as non-discrimination need to be addressed here. Certain groups of persons, such as minorities, children or persons with disabilities have special needs regarding freedom of expression, i.e. in terms of media or language. Other groups of persons are vulnerable to hate speech, e.g. due to ethnicity. The provisions on these needs are either part of treaties dealing specifically with these groups (such as CRC, CRPD, ICERD) or part of the provisions on freedom of expression in the ICCPR or the ECHR.

Apart from these groups, there are topic-specific vulnerabilities, mainly affecting human rights defenders, journalists, media professionals or other media users. Their right to freedom of opinion and expression might be more easily violated. When accessing human rights information, these vulnerabilities need to be taken into account.

2. Step 2: Have SPO indicators been applied for your area of interest?

If the OHCHR indicator framework has been already applied to the country of interest, the process of gathering information is simplified substantially. Thus, this has to be checked firstly. The UN website provides an overview and a manual on the application of structure, process and outcome indicators.²⁸⁶ Furthermore, the respective country offices of the OHCHR can be contacted. The contact details are available on the UN country pages and at the overview of OHCHR field presences.²⁸⁷ If this framework has not been applied for the specific interest, we need to combine different sources of information.

3. Step 3: Retrieving human rights compliance information

As we already know, the following treaties are relevant for freedom of expression: ICCPR, CERD, CRC, CMW and CRPD. In terms of Charter based monitoring mechanisms, the UPR and the Special Rapporteur on the Right to Freedom of Opinion and Expression are relevant as well.

²⁸⁵ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), p. 97 available at <www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf> accessed 19 October 2015.

²⁸⁶ Office of the High Commissioner for Human Rights, 'A Best-seller: the Users' Manual for Implementation of Human Rights Indicators', available at <www.ohchr.org/EN/NewsEvents/Pages/HumanRightsIndicators.aspx> accessed 24 November 2015.

²⁸⁷ Office of the High Commissioner for Human Rights, 'Country Page Russia', available at <www.ohchr.org/EN/countries/ENACARRegion/Pages/RUIndex.aspx> accessed 21 October 2015; Office of the High Commissioner for Human Rights, 'Making a Difference where it matters Most: OHCHR's Support to Implementation at Country Level', available at <www.ohchr.org/EN/Countries/Pages/MapOfficesIndex.aspx> accessed 24 November 2015.

The sources for compliance information become available via search engines (such as the HUDOC, the UHRI or treaty body databases), UN body websites and reports. Information on state parties' reservations is provided at the United Nations Treaty Collection database. For almost all search engines, the interest needs to be narrowed down through key words. This is particularly valid for freedom of opinion and expression, as the most relevant treaties dedicate one article to this right.

Box 3: Relevant keywords for searching information on freedom of expression

Key words

Our experience shows that the following key words bring useful results:

- **Freedom** (use this solely and you will find surely all information, but also information on freedom of assembly and freedom of religion)
- **Expression/speech** (speech is more common in US websites and resources, while expression is more common in European and African sources).
- **Media** (if you have specific interests in media pluralism or media regulation or media censorship or media infrastructure)
- **Journalists and human rights defenders** (if you have interest in vulnerable groups)
- **Article 19** (in treaty based compliance monitoring)

The following part will provide information on the outcomes of consulting all these sources with the specific information request freedom of opinion and expression in Russia and Turkey. The outcomes are reported in boxes in a very brief, summarized and exemplary way.

The Universal Human Rights Index

The OHCHR Universal Human Rights Index (UHRI) offers a search engine for all human rights monitoring bodies and mechanisms. Filter categories are country, right, body, relevance, key words, affected persons, and recommendations. Search includes annotations or complete documents.

As the indexing methodology is provided in the UHRI, the selection of key words is simpler. However, the more specific a search is carried out in terms of criteria, the higher the probability that no results are obtained. In this case, either search with fewer criteria can be carried out or a more basic search at the Bodies' database and Procedures' websites. We recommend this in case of procedure- or body-specific information needs, as the results in the treaty body database are more up-to-date. For exploring the issue, we recommend remaining at the Universal Human Rights Indicators website and selecting fewer criteria.

The UN Treaty Body Database

Let us assume we need procedure- or body-specific information on Turkey and Russia. In the Treaty Body Database, we can select *Region/Country: Russian Federation, Treaty Committee: CCPR* and *Document Type: Jurisprudence, Report, session, date or Inquiry*. As the most relevant treaties dedicate just one article to freedom of opinion and expression, key words *in* the documents is recommended. As information on many treaties is requested on an article-per article base, search for the key word "Article 19". The most up-to-date UN treaty based information for Russia and Turkey will be presented in the boxes.

Box 4: UN Treaty Body Database search results on freedom of expression in Russia

Results for Russia

- **The most recent concluding observations are of 2015 from the HRC** on Russia's reporting on the implementation of the ICCPR.
 - The concluding observations address legal regulations and public authorities' practices affecting freedom of expression in Russia. Criminal offenses, such as terrorism are defined vaguely, leaving room for the restriction of freedom of expression. Further examples are the **criminal law on defamation**, punishing it with imprisonment, **the law prohibiting "propaganda" for lesbian, gay, bisexual and transsexual (LGBT) issues**, strict **regulations for bloggers**, insufficient prosecution and impunity in case of violence against journalists, who are critical of the government.
- Concluding observations of **2013 from the CERD (CERD/C/RUS/CO/20-22)**.
- Search in the document for the **key words: speech, hate speech** provides the following results.
 - The CERD is concerned about the **increase in extremist groups**, expressing racist or xenophobic statements that are not always condemned publicly by officials.
 - Politicians increasingly use **xenophobic and racist rhetoric**; media and internet disseminate **negative stereotypes against minority groups**.
 - The CERD requests Russia to establish effective mechanisms to combat hate speech, while ensuring that appropriate safeguards are in place to prevent any undue interference with the right to freedom of expression.

To briefly sum up: according to the treaty bodies' information, the Russian government faces challenges related to all three attributes of the right to freedom of opinion and expression.

Regarding **the freedom of opinion and to impart information**, the Russian government's legal provisions foresee thematic restrictions, e.g. on LGBT issues and leaves room for illegitimate interference into freedom of expressions through criminalising defamation and poorly defining criminal offenses such as terrorism. Furthermore, the Russian government complicate media use, i.e. through treating individual bloggers like huge media enterprises. In terms of **state duties and responsibilities**, we found that the Russian government encounters challenges in respecting and protecting its human rights obligations related to legitimate limitations of freedom of expression (CERD) and in respecting and fulfilling the obligations related to freedom of expression (ICCPR). Insufficient prosecution and impunity in case of violence against journalists, who are critical of the

government has been addressed in the concluding observations. In regards to **the freedom to seek information**, the Russian government restricts access to information technology.

Box 5: UN Treaty Body Database search results on freedom of expression in Turkey

Results for Turkey

- The **most recent country report of Turkey** on the implementation of the ICCPR is of 2011 and the **concluding observations** by the HRC are of **2012**.
 - The HRC is concerned that human rights defenders and media professionals continue to be subjected to convictions for the exercise of their profession, in particular through the criminalisation of defamation.
 - The HRC requests Turkey to report on the prosecution of individuals (including media professionals) for criticizing state institutions, particularly regarding expressions of opinions on the armed forces, ethnic groups (e.g. the Kurds, the Armenians) and LGBTI persons.
- Also concluding observations by the **CRC** have been published in **2012**.
 - In the section “Main areas of concern” the CRC **invites** Turkey to **cancel its reservation on Art. 17** of the CRC (which is on the child’s right to access information), **Art. 29** (which is on human rights education) and **Art. 30** (which is on children of ethnic minorities).
- So far, there is no report available on the CRPD. The concluding observations of the CERD do not provide information on freedom of expression.

The most up-to-date treaty based human rights compliance information for Turkey is three years old.

Regarding **the freedom of opinion and to impart information**, the Turkish government prosecutes human rights defenders, who criticise the government or express opinions different to the government. In regards to **the freedom to seek information**, the Turkish government restricts access to information technology, particularly social media. It furthermore denies children their right to information (e.g. media, books) through its reservation on Art. 17 of the UNCRC and it denies that the education of the child shall be directed to the development of the child’s personality, of respect for human rights and fundamental freedoms and for the principles enshrined in the UN Charter. In terms of **state duties and responsibilities**, we found that the Turkish government denies ethnic or religious minorities the right to enjoy their culture and to profess and practice their religion in their own language.

Special Procedures

UN Charter based bodies' information is relevant, particularly if the UN treaty based information is not comprehensive or not up-to-date. Special Procedures' reports and concluding observations of the Human Rights Committee are available for Turkey²⁸⁸ and Russia²⁸⁹.

Box 6: Special Procedures search results on freedom of opinion and expression in Turkey

Results for Turkey

- The most recent information on freedom of expression in Turkey is the **report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**.
 - It provides a summary of cases transmitted to governments and replies received from 27 May 2011 (Addendum). It contains one urgent appeal and allegation letter because of restricted freedom of expression in Turkey (p. 305-307).
 - The **annual report of the Special Rapporteur** focuses on child's freedom of opinion and expression and thus contains information on freedom of expression in connection with child rights. The report addresses **restrictions of the right to expression and to impart information**. The Turkish government illegitimately interferes into child rights of expression and justifies it by referring to child protection. This confirms the information on Turkey provided in the CRC-monitoring (see rmaton technology).
- Box 5: UN Treaty Body Database search results on freedom of expression in Turkey).
- On 28 March 2014, a group of UN experts expressed serious concern over governmental measures to restrict **the access to information**. In the context of forthcoming elections, the Turkish government prevented access to YouTube a week after Twitter was shut down. The Special Rapporteur on the right to freedom of opinion and expression and the one on the situation of human rights defenders clearly criticized this. Independent experts noted that they stand ready to cooperate with the Turkish government with a view to ensure that it meets its obligations under international human rights law.

²⁸⁸ Office of the High Commissioner for Human Rights, 'Country Page Turkey', available at <www.ohchr.org/EN/HRBodies/UPR/PAGES/TRSession8.aspx> accessed 21 October 2015.

²⁸⁹ Office of the High Commissioner for Human Rights, 'Country Page Russia', available at <www.ohchr.org/EN/countries/ENACARegion/Pages/RUIndex.aspx> accessed 21 October 2015.

The charter based UN information on Turkey mainly deals with governmental restrictions of the right to freedom of information and expression. No up-to-date information on freedom of expression is available for Russia at the special procedures.

Box 7: Universal Periodic Review search results on freedom of expression in Russia

At the UPR you can select according to country and session.

Results for the Russian Review of April 2013

- A **national report** containing information on freedom of expression. Here you find mainly information on **recently implemented legal regulations in Russia**, which protect freedom of expression. But you find also other measures, not explicitly addressing freedom of expression, but indirectly influencing it, such as human rights education.
- A **compilation of UN information**, in which you find limited information on the freedom of expression. Only two paragraphs deal with this issue and one of them addresses the prohibition of “LGBTI-propaganda” in Russia.
- In the **summary of other stakeholders’ information**, you find a lot of information on violations of freedom of expression. The most recent downloadable document is introduced by the HRC. It is a report of the NGO “Article 19” in the Twenty-seventh session on Agenda item 4 “Human rights situations that require the Council’s attention”. In the paper it states that Russia must end **impunity for attacks and threats against journalists**, it provides recommendations to the Russian Federation and to the UN GA on how to improve the situation and it names and portrays media professionals who became victims of freedom of expression violations. Also trends since the last review (2009) are reported there. The NGO “Article 19” also addresses the **prohibition of LGBT propaganda**, but in more detail than the UN information. It contains qualitative and quantitative information about direct violations, e.g. on the large number of **defamation lawsuits against media representatives**. Furthermore, it is reported that media enterprises fear defamation lawsuits, which restrains alternative critical voices and the practice of **self-censorship by media outlets**. It also contains information on indirect violations, such as the inconcise definitions of criminal offenses, such as “extremism” or “hooliganism”, which are in practice used to punish government-critics.
- **Civil society and other submissions** also include reports from NGOs, such as AI or “Article 19”. Search in the documents for the keywords: freedom, expression, speech, media, human rights defenders, journalists. Mostly these reports include information on freedom of expression. The submission of the NGO “Article 19” focuses on it and reports about developments and implementations made since the last session. Article 19 reports on the **failure to protect the life and physical integrity of journalists and to investigate cases of murders and assaults concerning them**. Actually this report provides a lot of information on the developments in Russia regarding freedom of expression.

UPR Info's 2RP (responses to recommendations) focus on suggestions for ratifications and the implementation of certain action points as part of action plans. Many of these recommendations deal with freedom of expression. In the documents make use of the key words: freedom, expression, speech, media, human rights defenders, journalists. You can select statistics according to issue (freedom of expression) and then you find figures on the numbers of recommendations on this issue and state information.

Box 8: Universal Periodic Review search results on freedom of expression in Turkey

Results for the Turkey review of January 2015.

- The **National report** addresses freedom of expression on pp. 8-10. It names legal regulations, which protect freedom of expression and describes how it is protected by the constitution and the institutional framework. The Turkish government also refers to developments, which have been made in the country since the last review. These are e.g. a narrowed down and more concrete definition of legitimate interference into freedom of expression. An example is "making propaganda on behalf of a terror organization", are including more concrete criteria through the addition of the term: "making the propaganda for the methods of a terrorist organization constituting coercion, violence or threats" (p. 9).
- The **compilation of UN information** is from the United Nations Country Team Turkey (UNCT), the UNESCO and HCR and provides an overview on the ratification and reporting status in Turkey. On p. 6 of the submission, the UNCT addresses freedom of expression. It welcomes the narrower definition of terror crimes, which makes a distinction between the imparting of ideas through publications, statements, speeches and the use of threat or violence. On the same page it recommends the following: 'Legislative measures should be strengthened in order to enhance freedom of the press and make unnecessary the self-censorship that has recently been growing within the Turkish press.' Furthermore, it critically addresses the censorship and ban of certain internet portals.
- The **summary of other stakeholders' information** provides submissions from organisation per organisation and joint submissions. On page 1 of the submission, AI reports a decrease of the realization of freedom of expression in Turkey since the last review, referring that self-censorship is common in mainstream media, as they are funded by the government and that censorship is common in internet media. Particularly social media, such as YouTube and Twitter are affected. HRW reports similar issues as AI and additionally provides information on the detention of journalists and artists, who express themselves critically on Islam or Turkey. Information on freedom of expression is available on page 2 of the submission. Joint submissions of stakeholders deal with specific topics, such as Human Rights of LGBT individuals in Turkey. This submission explains violations of the right to freedom of expression when addressing LGBT issues.
- The **review in the working group report** provides information on how the reviewing member states perceive the developments in Turkey since the last reporting period and what they suggest. If you filter the above named key words, you will find some information on freedom of expression.
- The **adoption in the plenary session** section contains the final report of the review, the addendum (recommendations accepted or not and other views on them), comments of the state party and oral comments of NGOs and other stakeholders. The outcome includes conclusions and recommendations, which have been formulated during the interactive dialogue. They have been examined by Turkey and enjoy its support. These materials include remarks on freedom of expression, while the rest of the report does not.

In the **UPR Info's 2RP** (responses to recommendations) you find a list of all recommendations made towards Turkey and Turkey's responses.

The European Court of Human Rights

The European Court of Human Rights has created a database, which provides access to the case law of the Court, the European Commission of Human Rights and the Committee of Ministers (resolutions). In the database you can filter according to application number, case number, case title and keywords. A comprehensive User Manual provides detailed information on how to search in the data base.²⁹⁰ The ECtHR assumes responsibility only when all national remedies have been exhausted. Thus, depending on the countries concerned, cases are not up-to-date. The case-law of the European Court of Human Rights provides valuable information when it comes to the understanding the normative content of human rights and legislation building on ECtHR decisions. However, when it comes to monitoring compliance with international human right standards, the HUDOC does not provide the most up-to-date information.

4. Step 4: Retrieving indicator based information

For an overall assessment/rating and when comparing countries, human rights related measurements have to be used. A central feature of indicator schemes is country comparability. Thus, country specific findings can be compared with each other. This is one of the central advantages of indicator schemes.

There are many academic and non-academic organisations developing indicator based information. Important quality criteria when assessing this information are: credibility of the source, timeliness of information, closeness to the normative content. Credibility of the source with regard to freedom of expression can be assessed through a check of funding and sponsors. Almost all elaborated indicator based measurements on freedom of expression offer timeliness information as they are applied once a year. The closeness of indicator based information on freedom of expression to the normative content varies. Particularly European measurements focus on media pluralism (as indicator for freedom of opinion and expression) and thus focus on the freedom to seek and access information. Some indicator based measurements (particularly those that are applied worldwide) deal with the freedom of opinion and to impart information. Some measurements deal with vulnerable groups, such as the Press Freedom Index does with journalists. The states' duties and responsibilities are hardly measured by indicator schemes.

The following case specific explanations take into account worldwide measurements, dealing with the freedom of opinion and to impart information and those dealing with vulnerable groups (namely journalists and human rights defenders). These measurements are relevant for Turkey and Russia.

²⁹⁰ European Court of Human Rights, 'HUDOC User manual', available at <http://www.echr.coe.int/Documents/HUDOC_Manual_2012_ENG.pdf> accessed 15 December 2015.

Box 9: Indicator based information on freedom of expression in Turkey and Russia

Freedom Report (Freedom House 2015)

- **Russia** is rated with “**not free**” while **Turkey** is rated with “**partly free**”. You can compare the two countries and you will see that Freedom House reports **a rise in freedom in Turkey until 2012 and since then a small decline**, while the **freedom in Russia is reported to be constantly declining**.

If you want to learn more about each country, first go to “regions”, select “Eurasia” and then “Russia” respectively “Europe” and then “Turkey”. There you find country specific information, such as news and updates, research and reports and programs on freedom of expression. It mainly consists of press releases, which report violations of freedom of speech or attacks against media professionals. The information is up-to-date.

Freedom of the Press (Freedom House 2015)

- **Russia** is rated “**not free**” with a score of 83 (being 0 the best and 100 the worst), **Turkey** is rated with “**not free**” too, having a score of 65. Both are reported to have a decline in freedom of the press.

Freedom on the Net (Freedom House 2015)

- **Russia** is rated “**not free**” with a total score of **62** (0 being best and 100 worst), with 10 in terms of obstacles to access (0=best, 25=worst), with 23 in limits on content (0=best, 35=worst) and with 29 in violations of user rights (0=best, 40=worst). **Turkey** is rated “**partly free**” with a total score of **58**, with 13 in terms of obstacles to access (0=best, 25=worst), with 20 in limits on content (0=best, 35=worst) and with 25 in violations of user rights (0=best, 40=worst).

Press Freedom Index (RWB 2015)

- **Russia’s** ranking is **position #152** (total score 44.97) out of 180 countries (180 being the worst). In 2014 it was #148 out of 180 countries (total score 42.78). **From 2014 to 2015 Russia dropped 4 positions**. One journalist and no net-citizen were killed in Russia in 2014. **Turkey’s** ranking is **position #149** (total score 44.16) out of 180 countries, in 2014 it was #154 (total score 45.87). **From 2014 to 2015 Turkey rose by 5 positions**. No killings in Turkey in 2014.

RWB provide short explanations on country specific ratings compared to the one of the previous year. Country pages report specific information about recent developments on press freedom and violations of the right to freedom of expression.

Media Development Index (UNESCO)

- has neither been applied for Turkey nor for Russia.

Media Pluralism Monitor (EU)

- applicable for EU Member States only.

African Media Barometer/Asian Media Barometer (Fesmedia)

- has neither been applied for Turkey nor for Russia.

5. Step 5: Compiling the information

Generally, all information accessed (be it compliance information, indicator based information or NGO information) needs to be evaluated according to criteria such as: credibility of source, accuracy, timeliness and scope of assessment. Central factors for valuable information are proximity to the normative content of the human rights in question and the covering of the time-period and region of interest. Of course, the findings of evaluation will influence the further steps taken.

The following subchapter very briefly compiles the information gathered through the case studies. The compilation generally follows the Structure-Process-Outcome of the OHCHR model as this proved to be the most comprehensive and clear way to present human rights information. The compilation takes into account only up-to-date information. Depending on the different reporting, this is the period of 2012 to 2015 for Russia and the period of 2011 to 2012 for Turkey.

Table 7: Compilation of information on the right to freedom of expression for Russia (2012-2015)

State's Commitment	The Russian Federation has ratified all UN Treaties, relevant to freedom of expression (ICCPR, ICERD, CRPD, CRC, CMW).
State's Actions	<p>The Russian government faces challenges in respecting, fulfilling and protecting its obligations related to the implementation of freedom of expression as enshrined in the above named treaties.</p> <p>The Russian government directly and indirectly supports controversial expressions, such as hate speech (CERD), while prohibiting legitimate expressions, i.e. connected to LGBTI issues (CCPR). Evidence shows that critical journalists/media professionals are at high risk of attacks and threats without being prosecuted by the Russian government. There are a number of defamation lawsuits against media representatives, which leads to self-censorship. Terms, such as "terrorism" and "hooliganism" are defined poorly by the criminal law.</p>
Situation on the ground	<p>Freedom: not free.</p> <p>Freedom of the Press: not free.</p> <p>Freedom of the Net: not free.</p> <p>Press Freedom Index: position 152 out of 180 (killings included, position went down).</p> <p>Trend: downward.</p>

Table 8: Compilation of information on the right to freedom of expression for Turkey (2011-2012)

State's Commitment	Turkey has ratified all UN Treaties, relevant for freedom of expression (ICCPR, ICERD, CERPD, CRC, CMW).
State's Actions	<p>Narrowed down definition of terror crimes.</p> <p>The Turkish government faces challenges in respecting, fulfilling and protecting its obligations related to the implementation of freedom of expression as enshrined in the above named treaties.</p> <p>The Turkish government prohibits legitimate expressions, such as issues connected with LGBT, the Kurds or the Armenians (CCPR). Critical journalists, human rights defenders and media professionals are at high risk of being convicted for the exercise of their profession. Censorship and self-censorship are common in Turkey.</p> <p>The Turkish government's reservations to the CRC deny important parts connected to freedom of expression (such as freedom to receive information, human rights related education and minority rights). Further restrictions to children's right to information and expression are reported. The government additionally restricts internet access (social media) during pre-election time.</p>
Situation on the ground	<p>Freedom: partly free.</p> <p>Freedom of the Press: not free.</p> <p>Freedom of the Net: partly free.</p> <p>Press Freedom Index: position 149 out of 180 (killings included) position rose.</p> <p>Trend: downwards. Evidence on trends connected to press freedom varies: the Freedom of the Press index (Freedom House) reports a decline in press freedom, while the Press Freedom Index (Reporters without Borders) reports an upward trend.</p>

IV. Rights of the child

A. Think-piece on the rights of the child as cross-cutting issue²⁹¹

1. Introduction and background

... to reaffirm the strong commitment of all EU institutions and of all Member States to promoting, protecting and fulfilling the rights of the child in all relevant EU policies and to turn it into concrete results.

... it is now the time to move up a gear on the rights of the child and to transform policy objectives into action.

An EU Agenda on the Rights of the Child (2011)

Strong words, indeed, used by the European Commission in 2011 when describing the need for more concerted action by the European Union in ensuring the rights of the child. In fact, children and young people constitute a major social group in all societies, with more than 100 million people below the age of 20 living in the European Union.²⁹² There is no shortage of commitments by decision-makers to ensure children protection to their best interests and rights, considering that all EU member states have ratified the UN Convention on the Rights of the Child. As in other regions of the world, however, significant gaps between principles and practice remain, in relation to children's living conditions and inadequate measures to address poverty, persistent practices of violence against children, abuse and exploitation, and lack of opportunities and adequate procedures to gain access to justice and to respect the child's right to be heard and participate in decision-making, exist.²⁹³

Over the last 15 years, the EU has started to address these problems in both normative and practical ways. The EU Fundamental Rights Charter of 2000 includes distinct provisions on rights of the child,²⁹⁴ and the Charter itself became legally binding through the Treaty of Lisbon in 2009; the Treaty of the European Union now even declares "protection of the rights of the child" one of the EU's fundamental objectives, both internally and in its external relations.²⁹⁵ On the policy level, a first Communication of

²⁹¹ This contribution was provided by Helmut Sax, Ludwig Boltzmann Institute of Human Rights.

²⁹² Eurostat, *Being young in Europe today* (Publications Office of the European Union 2015), available at <<http://ec.europa.eu/eurostat/documents/3217494/6776245/KS-05-14-031-EN-N.pdf/18bee6f0-c181-457d-ba82-d77b314456b9>> accessed 12 October 2015.

²⁹³ In its last annual report, the FRA has highlighted three major challenges in relation to child's rights in the EU member states: poverty, protection of children, including against violence, and access of children to judicial proceedings; European Union Agency for Fundamental Rights, *Fundamental Rights: Challenges and Achievements in 2014* (Publications Office of the European Union 2015), available at <http://fra.europa.eu/sites/default/files/fra-annual-report-2014_en.pdf> accessed 12 October 2015, pp. 127-144.

²⁹⁴ Consolidated Version of the Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

²⁹⁵ Consolidated Version of the Treaty on European Union [2012] OJ C326/13, Art. 3 (3) and (5).

the European Commission ‘Towards an EU Strategy on the Rights of the Child’²⁹⁶ in 2006 paved the way for a more structured and coherent approach on the subject, followed by an EU Agenda on the Rights of the Child in 2011.²⁹⁷ Specific policy issues are debated annually through a European Forum on the Rights of the Child, organised by the European Commission, and bringing together hundreds of child rights specialists and policy-makers.²⁹⁸ On the structural and operational level, DG Justice has established a Children’s Rights Coordinator and an inter-service group, with a mandate to coordinate and mainstream action on the rights of the child throughout Commission services.²⁹⁹ The Council of the EU has adopted EU Human Rights Guidelines on various issues for EU political and operational guidance, including on children and armed conflict (2003/08)³⁰⁰ and, specifically, on the rights of the child (2008).³⁰¹ The European Parliament, in turn, has decided in 2014 to create an Inter-Group on Children’s Rights with a key mainstreaming function for the Parliamentary term 2014-2019.³⁰²

As a result of all these activities, a multifaceted picture of children³⁰³ as target groups, right holders and beneficiaries of EU politics and policies has emerged, producing a wealth of child-focused and relevant information resources, through funding programmes,³⁰⁴ topic-specific information hubs and

²⁹⁶ European Commission, ‘Towards an EU Strategy on the Rights of the Child’ COM(2006) 367 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF>> accessed 12 October 2015.

²⁹⁷ European Commission, ‘An EU Agenda for the Rights of the Child’ COM(2011) 60 final, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0060&from=en>> accessed 12 October 2015.

²⁹⁸ For an overview of the latest discussion see: European Commission, ‘European Forum on the Rights of the Child’, available at <http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index_en.htm> accessed 12 October 2015.

²⁹⁹ This includes, for instance, coordination and cooperation between DG Justice and Consumers (e.g. in relation to Victim’s Rights Directive, integrated child protection systems) with DGs on Education and Culture (e.g. EU Youth Policy), Information Society and Media (e.g. Safer Internet Programme), Health and Food (e.g. healthy environment), Employment, Social Affairs and Inclusion (e.g. Investing in Children, poverty and social inclusion), Home Affairs (e.g. child trafficking, sexual abuse and exploitation), Enterprise (e.g. Corporate Social Responsibility) as well as the whole area of external relations/European External Action Service and EuropeAid/Development and Cooperation (e.g. child labour, armed conflict).

European Commission, ‘Rights of the Child’, available at <http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm> accessed 12 October 2015.

³⁰⁰ Council of the European Union, ‘EU Guidelines on Children and Armed Conflict’ of 16 June 2008, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:r10113>> accessed 12 October 2015.

³⁰¹ Council of the European Union, ‘EU Guidelines for the Promotion and Protection of the Rights of the Child’ of 10 December 2007, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l33604>> accessed 12 October 2015.

³⁰² See, for instance: EurActive, ‘European Parliament agrees on new Intergroups’, available at <www.euractiv.com/sections/eu-elections-2014/european-parliament-agrees-new-intergroups-310736> accessed 31 October 2015; Eurochild, ‘New Intergroup on Children’s Rights at the European Parliament’, available at <www.eurochild.org/fr/news/d/article/new-intergroup-on-childrens-rights-at-the-european-parliament/> accessed 31 October 2015.

³⁰³ For an impressively rich and comprehensive compilation of the child-focused EU *acquis*, see: European Commission, ‘EU *acquis* and Policy Documents on the Rights of the Child’ (last updated January 2015), available at <http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf> accessed 31 October 2015.

³⁰⁴ For funding programmes dedicated to the rights of the child and the prevention of violence against children see: European Commission, ‘Rights, Equality and Citizenship Programme 2014-2020’, available at <http://ec.europa.eu/justice/grants1/programmes-2014-2020/rec/index_en.htm> accessed 31 October 2015.

dedicated EU websites,³⁰⁵ research findings of the FRA,³⁰⁶ or statistics compiled by EUROSTAT.³⁰⁷ In order to offer some practical guidance on how to retrieve such information most efficiently, this chapter first discusses some essential concepts and terminology in relation to children and child rights protection as a cross-cutting issue for EU action, followed by an overview of existing key rights-focused data and indicators, and concluding with an illustrative workflow presentation on identifying relevant data on the rights of the child.

2. The normative framework

The protection of human rights constitutes a cornerstone of all EU legislation, policies and practice, as evidenced in the CFR 2000/2009, institutions such as the EU Special Representative on Human Rights or the FRA and instruments such as EU human rights dialogues with more than 40 countries, including China or Russia, and the European Instrument for Democracy and Human Rights (EIDHR) for project funding abroad. As mentioned above, ratification of the UNCRC by all 28 EU member states, shows a particularly strong commitment to child rights protection. Rights of the child form part of the broader international human rights framework, which was largely shaped by the UDHR of 1948, and its following human rights treaties, as well as – on the European regional level – by the 1950 ECHR.

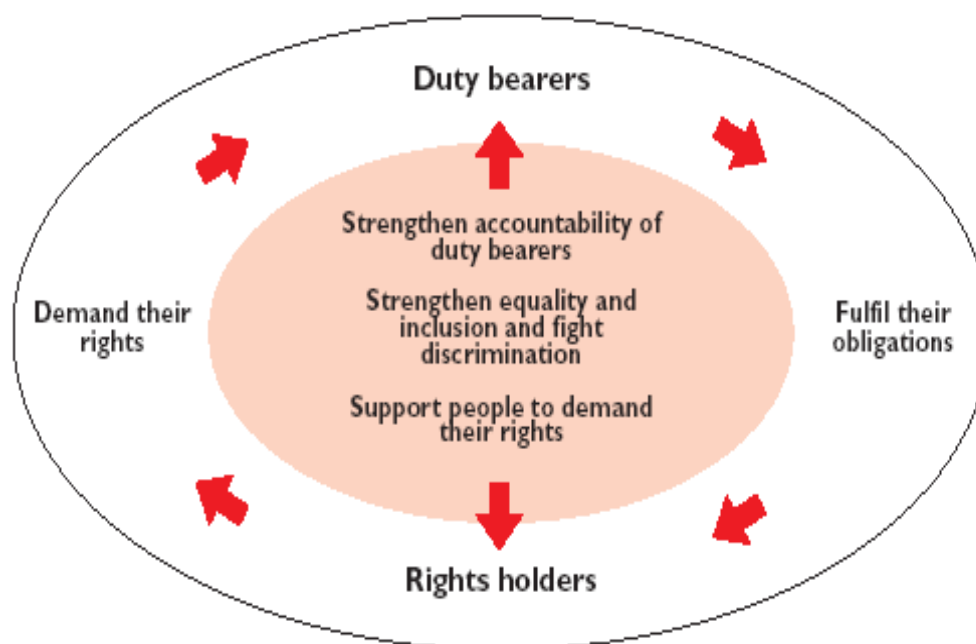
Principles such as universality of human rights, indivisibility, interdependence and inter-relatedness of its standards, equality and non-discrimination, with particular emphasis on vulnerable groups, participation of those concerned by decisions, and concepts of empowerment of right holders and accountability of duty-bearers are common to all these documents, and thus, guide also the implementation of human rights of children.

³⁰⁵ See, for instance, the EU Anti-Trafficking Website, with a listing of more than 170 EU-funded anti-trafficking projects: European Commission, 'Together against Trafficking in Human Beings', available at <<http://ec.europa.eu/anti-trafficking/>> accessed 31 October 2015.

³⁰⁶ See Rights of the Child as one of the nine thematic areas of the current FRA five-year Multi-Annual Framework: European Agency for Fundamental Rights, 'Rights of the Child', available at <<http://fra.europa.eu/en/theme/rights-child>> accessed 31 October 2015.

³⁰⁷ For example see data on migration or education, Eurostat, 'Eurostat - Home' available at <<http://ec.europa.eu/eurostat/web/main>> accessed 31 October 2015.

Figure 8: Human rights capacity building and the right holder – duty bearer relationship



Source: Joachim Theis, *Promoting Rights-Based Approaches: Experiences and Ideas from Asia and the Pacific* (Save the Children 2004).

Far too long children have been considered as weak, passive objects in the care of adults, mostly parents, in constant need of protection and direction, leading to various degrees of dependency and threats of manipulation and abuse. Over the 20th century a more comprehensive understanding of the unique challenges and needs associated with the child's full biological, emotional, intellectual and social development has emerged, which complements protection with self-determination and participation in decision-making. Ultimately, children's rights, as eventually established through international treaties, with the 1989 UNCRC at its core,³⁰⁸ accept children as competent, active subjects, balancing self-determination with protection, as gaining autonomy and self-assurance as a young person only succeeds in a safe, enabling environment.

Formally speaking, in terms of recognition by governments, the CRC is the most 'successful' of all international human rights treaties, with currently 196 states parties. Such almost universal acceptance adds strongly to the legitimacy of EU action, particularly in its external relations; on the

³⁰⁸ In addition to the UNCRC, three Optional Protocols provide for further standards and instruments: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted by General Assembly resolution of 54/263 of 25 May 2000 (entered into force on 12 February 2002; ratified by all EU member states); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by General Assembly resolution 54/263 of 25 May 2000 (entered into force on 18 January 2002; ratified by all EU member states except Ireland); Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, adopted by General Assembly resolution 66/138 of 19 December 2011 (entered into force on 14 April 2014; ratified by only eight EU member states so far: BE, DE, DK, ES, FI, IE, PT, SK). For a current list of ratifications of all UN instruments, see the UN Treaty Collection website, at <<https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>>.

other hand, its equally important internal dimension for assessing EU member states own performance in respecting, protecting and fulfilling children's rights must not be underestimated.

Implementation comprises of both obligations of conduct (e.g. develop policies for unaccompanied asylum-seeking children) and of result (e.g. guardians are consistently appointed for those children) for states parties; it is not limited to legal reforms or informative websites, but may also entail budget review, setting up coordination structures, investment in data collection and research, training and awareness-raising, cooperation with civil society, including child rights-based organisations and children; and constant monitoring of all these actions.

On the international level, the UNCRC establishes an independent expert panel – the UN Committee on the Rights of the Child - for monitoring compliance with the UNCRC obligations by states parties, which issues country-specific concluding observations, may deal with individual complaints under its most recent communication procedure³⁰⁹ and provides guidance in interpretation of UNCRC provisions through thematic general comments.³¹⁰

Before highlighting some more specific child rights concepts necessary to retrieve rights-based information, the holistic and inter-related nature of the existing normative framework in the field of children's rights should be emphasized. For example, when the EU in 2008 adopted its key child rights-focused guiding document for its external relations - A Special Place for Children in EU External Action – it made reference not only to the UNCRC, but also to the International Labour Organisation (ILO) Conventions on forced labour and on worst forms of child labour,³¹¹ next to political commitments declared in the Millennium Development Goals (MDG) and the global Education for All initiative.³¹² Similarly, in the preamble, the 2011 EU Directive on sexual abuse and sexual exploitation of children³¹³ links to the respective provisions of the UNCRC, its 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography³¹⁴ and also to the 2007 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.³¹⁵

³⁰⁹ Following the entry into of the Third Optional Protocol to the Convention of the Rights of the Child: Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, adopted by General Assembly resolution 66/138 of 19 December 2011 (entered into force on 14 April 2014).

³¹⁰ For further details, see: Office of the High Commissioner for Human Rights, 'Committee on the Rights of the Child', available at <www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> accessed 31 October 2015.

³¹¹ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted by the General Conference of the International Labour Organization on 17 June 1999 (entered into force on 19 November 2000).

³¹² European Commission, 'A Special Place for Children in EU External Action' COM(2008) 55 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0055:FIN:EN:PDF>> accessed 12 October 2015, pp. 2-6.

³¹³ European Parliament and Council Directive 2011/93/EU of 13 December 2011 on combating Sexual Abuse and Sexual Exploitation of Children, and Child Pornography, replacing the Council Framework- Decision 2004/68/JHA [2011] OJ L 335/1, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>> accessed 28 October 2015.

³¹⁴ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by General Assembly resolution 54/263 of 25 May 2000 (entered into force 18 January 2002).

³¹⁵ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed on 25 October 2007 (entered into force on 1 July 2010).

Especially in the area of children's rights, concurrence - and hopefully complementarity - of efforts should be noted between the EU and the CoE, which is important also in terms of availability and accessibility of relevant information: for instance, both regional bodies have adopted legislation/treaties on sexual abuse and exploitation of children, and on trafficking of human beings, which include specific standards also for measures against child trafficking; moreover, on the policy level, the CoE adopted Guidelines on Child-friendly Justice in 2010,³¹⁶ which have been further promoted for implementation also by the EU in the 2011 EU Agenda on the Rights of the Child;³¹⁷ the latest EU Forum on the Rights of the Child in June 2015 was dedicated to 'coordination and cooperation in integrated child protection systems', which aimed to add momentum not least to the CoE's 2009 Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence.³¹⁸

As for the guiding framework for the EU itself, mention has already been made of the CFR, which in its Art. 24 contains provisions which follow key CRC standards, including primary consideration of the child's best interests, child participation as well as rights to maintain contact with parents (e.g. after divorce). Other child-relevant standards include the right to education (Art. 14), prohibition of child labour (Art. 32) and reconciliation of family and professional life (Art. 33). On the policy level, the EU Agenda on the Rights of the Child was adopted in 2011, and it contains a set of 11 actions to be implemented, covering topics such as victims' rights, child-friendly justice, empowering children for safe use of the internet, cooperation in case of missing children, Roma integration and further implementation of the EU Guidelines on the Rights of the Child (focus on violence) and on children in Armed Conflict/Child Soldiers.³¹⁹ More detailed guidance on EU external policies in relation to children's rights can still be found in the 2008 Communication A Special Place for Children in EU External Action, which enumerates options for measures to be taken in the context of EU development cooperation, trade policies, political dialogue, regional cooperation and humanitarian aid (separated children, children associated with armed forces, education in emergencies).³²⁰ The EU Action Plan on Human Rights and Democracy 2015-2019, adopted by the Foreign Affairs Council in July 2015, reiterates child protection (systems), child labour and children and armed conflicts as key areas for EU child rights-focused external policy implementation.³²¹ A remaining challenge for EU institutions

³¹⁶ Council of Europe, 'Child-friendly Justice', available at <www.coe.int/en/web/children/child-friendly-justice> accessed 31 October 2015.

³¹⁷ European Commission, 'An EU Agenda for the Rights of the Child' COM(2011) 60 final, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0060&from=en>> accessed 12 October 2015.

³¹⁸ For the European Commission see: European Commission, 'European Forum on the Rights of the Child', available at <http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index_en.htm> accessed 12 October 2015; Council of Europe, 'Adoption of the Guidelines for the Protection of Children from Violence', available at <www.coe.int/t/dg3/children/News/Guidelines/Adoption_guidelines_en.asp> accessed 31 October 2015.

³¹⁹ Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' of 10 December 2007, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l33604>> accessed 12 October 2015; Council of the European Union, 'EU Guidelines on Children and Armed Conflict' of 16 June 2008, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:r10113>> accessed 12 October 2015.

³²⁰ European Commission, 'A Special Place for Children in EU External Action' COM(2008) 55 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0055:FIN:EN:PDF>> accessed 12 October 2015, pp. 7-8.

³²¹ Council of the EU, Council Conclusions on the Action Plan on Human Rights and Democracy 2015 – 2019, 10897/15 (20 July 2015).

throughout all these efforts lies with the question as to how ensure consistency in approaches between the internal and the external dimension of EU policies.

3. Key child rights concepts

When searching for information on the rights of the child, one particular clarification is needed: who is a ‘child’? In this context, the UNCRC provides its own definition: ‘a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier’.³²² It is important to stress the age limit of 18 years, as this definition – and all human rights targeting this group – includes infants as well as young people seeking employment, pre-school children and teenage mothers alike. The common ground for this immensely diverse social group lies in their domestic legal status, which defines childhood (and partly, youth) as a period of time below the age of majority – in most countries set at the age of 18. Consequently, not only when designing projects or evaluating child-focused programmes, a clear understanding of the respective age group is essential, but also when searching for information and data on “children”. When EUROSTAT³²³ in 2014 sought out member states for data on trafficked children, only 23 out of 28 member states were able to make a distinction between adult and child victims; only 17 could provide information on two age sub-groups (0-11, 12-18); and only six member states offered further insights on the ways of recruitment of children. There is a strong case for child-centred (and not e.g. only household-centred) and disaggregated data on children, including distinct data on different age groups, sex, nationality, location (urban/rural) and other parameters within children as a group.

This requirement is actually anchored in one of the four “General Principles” – non-discrimination of children (Art. 2 UNCRC) - which have been identified by the Committee as overarching rights and standards guiding the interpretation of all other UNCRC provisions.³²⁴ In line with general human rights concepts, addressing equality and non-discrimination entails an obligation to identify those groups most vulnerable, marginalised and excluded from protection of their rights. A human/child rights-based approach is not satisfied if the “mainstream” of a group of persons enjoys basic guarantees, but strives to ensure “human rights for all”. In order to understand mechanisms of poverty, eventually leading to school drop-outs, data is needed on age groups, enrolment rates, but also on qualitative information on socio-economic background, situation of parents etc.

The child right to life, survival and development (Art. 6 UNCRC) has been named another “General Principle” under the UNCRC, clearly addressing conditions securing not only physical existence but also full development of the child’s personality and capacities. UNICEF collects a wealth of information on

³²² Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990), Art. 1.

³²³ Eurostat, *Trafficking in Human Beings* (Publications Office of the European Union 2015), available at <https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf> accessed 31 October 2015.

³²⁴ United Nations Committee on the Rights of the Child, ‘General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, para. 6)’, CRC/GC/2003/5 of 27 November 2003, available at <www.unicef-irc.org/portfolios/general_comments/GC5_en.doc.html> accessed 31 October 2015, para. 12.

child survival, health and other development issues and publishes annual and topical statistics and research findings.³²⁵

Two further General Principles are of particular cross-cutting relevance for an understanding of children's rights: the obligation to give 'a primary consideration to the best interests of the child'³²⁶ and the child right to participation.³²⁷ The first adds an element of prioritisation and urgency to any decision-making process, which may affect (groups of) children, be it decisions by parliaments, administrative authorities, judges in child custody cases or even private care institutions. This includes also, on a procedural level, the need for a process to actually assess what the best interests of children at stake are – and this is where the right to participation comes into play: to ensure appropriate opportunities for the child her/himself to be heard, be given a chance for explanations, motivations, considerations, and, then, "giving due weight" to these considerations by the child. The right to participation therefore exceeds mere freedom of speech, yet requires possibilities to effectively influence decisions affecting children. There is no age restriction for participation and no limit in terms of spheres for participation: this right needs to be ensured in schools, residential care facilities, prisons for juveniles, in the political arena and in family decision-making alike. Data and information on compliance with both the best interests principle and the right to participation might be difficult to obtain, but generally, information on child impact assessments (in legislation, in quality assurance and evaluations), as well as on consultation processes with children (surveys, Eurobarometer, direct involvement of children in the development of EU policies, such as the EU Agenda consultation in 2010), together with subjective indicators capturing attitudes and assessments from children, will be most important sources in this regard.³²⁸ Increasing attention has been given in recent years to direct involvement of children in research processes.³²⁹

Next to these underlying principles, the UNCRC contains detailed provisions setting standards which may be grouped along "three p" categories: *participation* rights (e.g. Art. 12 as well as further political rights of children, such as freedom of speech, assembly and association),³³⁰ *protection* rights (from any

³²⁵ See, for instance: UNICEF, *The State of the World's Children 2015: Reimagine the Future* (UNICEF 2015), available at <www.unicef.org/publications/files/SOWC_2015_Summary_and_Tables.pdf> accessed 31 October 2015; general data on children from UNICEF and publications of the UNICEF Innocenti Research Centre at the website.

³²⁶ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Art. 3 (1).

³²⁷ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Art 12.

³²⁸ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), available at <www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf> accessed 19 October 2015; European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union* (European Union Agency for Fundamental Rights 2010).

³²⁹ See, for instance: Save the Children, *So You Want to Involve Children in Research? A Toolkit Supporting Children's Meaningful and Ethical Participation in Research relating to Violence against Children* (Save the Children 2004), available at <www.savethechildren.org.uk/sites/default/files/docs/So_you_want_to_involve_children_in_research_SC_2004_1.pdf> accessed 31 October 2015; Children's Rights Erasmus Academic Network, 'What we do', available at <www.crean-home.net/what-we-do/conferences/children-s-rights-research-from-theory-to-practice/preview/> accessed 31 October 2015.

³³⁰ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Arts. 13-15.

form of violence and exploitation)³³¹ and *provision* rights (e.g. right to adequate standard of living, right to health, right to education).³³²

Finally, when looking for information specifically on children, information and data on families/households/parents should be taken into consideration as well. There is clear evidence for e.g. linkages between level of education of mothers and access to health care for children; at the same time, as the 2006 global UN Study on Violence against Children has highlighted, family homes can be some of the most dangerous places for children, with estimates at that time of up to 275.000.000 children witnessing domestic violence (incl. partner violence, violence directly against children) every year.³³³ In such cases, the UNCRC is not “anti-family” or “anti-parents”, on the contrary: Art. 5 clearly considers the primary responsibility of parents to care for the child and provide guidance and direction, in line with the “evolving capacities” of the child and all the rights guaranteed by the CRC, including prohibition of violence as a means of education. If parents, however, are not willing or capable of providing such quality of education, then there is a subsidiary responsibility of the state to investigate, consider options in the best interests of the child, and eventually remove it from the parents if necessary.³³⁴

4. **Mainstreaming and targeted approaches – some examples from EU practice**

As for any approach targeting specific groups of persons, be it women or refugees or persons with disabilities, the need for a dual strategy of mainstreaming and more specific, targeted measures exists. This is applicable, needless to say, also for the context of children and protection for the rights, e.g. when looking for information on empowerment measures for children (information activities, child rights information at school, existence of counselling services) and for accountability mechanisms available to children in order to address potential violations of their rights (e.g. availability of child and youth ombudspersons/complaint procedures, child-friendly justice programmes, teacher sensitization programmes to counter bullying at schools).

On a mainstreaming level, when developing new EU legislation or preparing the agenda of meetings on topics relevant also to children, one should check, first of all, for explicit references to the UNCRC and/or other child rights standards, i.e. to what extent have policy development or programming taken a child rights framework as a reference and starting point for analysis. Furthermore, such approach

³³¹ See especially: Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Arts. 19 and 32-39, 28 (2)).

³³² Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Art. 27; Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Art. 24; Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Arts. 28 and 29).

Helpful information on the substance of all CRC provisions, including practical check-lists for assessing implementation may be found at: United Nations Committee on the Rights of the Child, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007), available at <www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf> accessed 1 November 2015.

³³³ Violence Study, ‘Home’, available at <www.violencestudy.org> accessed 1 November 2015.

³³⁴ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990, Arts. 9 and 3 (2)).

should continue to inform the full process/programme cycle of design (including situation analysis and impact assessments), implementation, monitoring and follow-up. Linked to this is the question of capacities needed to ensure such approach, whether there are specific training needs, for instance. Such mainstreaming activities should also strive to include consultations with relevant child-focused stakeholders, be it member states administrations for child/youth/family affairs, or education or health ministries, be it civil society organisations and international agencies such as UNICEF. Distinct consideration should be given to the direct involvement of children. Finally, all such efforts require political will and leadership by those initiating such processes, in order to ensure that children as a group and their rights are recognised as particular stakeholders and interests taken into account.³³⁵

On a practical level, examples for such successful mainstreaming efforts can be seen in child-specific provisions of the 2012 EU Victim's Rights Directive (e.g. safeguards concerning interviewing children at court, representation)³³⁶ and the 2011 EU-Anti-Trafficking Directive (e.g. access to child-specific assistance services, protection at court, representation when unaccompanied).³³⁷

On the other hand, there are issues, which need a more specific approach, addressing children as a very distinct target group. One typical example is the concern for guardianship, i.e. in cases of separation of children from parents/legal guardians (e.g. during flight, migration, contexts of exploitation/trafficking), where both the UNCRC and domestic legislation require the appointment of guardians by state authorities, in order to ensure full legal representation of such unaccompanied children. In terms of quality standards for guardianship, especially in relation to trafficking victims, the FRA issued a guidance report in 2014 on this matter.³³⁸

Another area requiring specific recognition of circumstances linked to the status of children and eventual vulnerabilities and dependencies concerns prevention of and protection from violence against children. As mentioned above, systemic approaches are now being promoted in international development and domestic contexts, leading to the establishment of "child protection systems", i.e. a comprehensive set of mechanisms and tools for cooperation and referral between a variety of stakeholders (parents, communities, schools, doctors, police, judiciary etc.) in order to address violence. Over the last two years the European Commission devoted resources to the development of

³³⁵ Eurochild, 'Mainstreaming Children's Rights in EU Legislation, Policy and Budget – Lessons from Practice' (2014), available at <www.eurochild.org/fileadmin/public/02_Events/2014/Mainstreaming_Childrens_Rights_Discussion-paper_Feb2014.pdf> accessed 31 October 2015.

³³⁶ European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L315/57, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>> accessed 31 October 2015, Art. 24.

³³⁷ European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision [2011] OJ L101/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>> accessed 28 October 2015.

³³⁸ European Union Agency for Fundamental Rights, *Guardianship for Children deprived of Parental Care: A Handbook to reinforce Guardianship Systems to cater for the Specific Needs of Child Victims of Trafficking* (Publications Office of the European Union 2014), available at <http://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf> accessed 31 October 2015.

guiding principles for implementing such integrated child protection systems in EU and member states action.³³⁹

5. Types of relevant information

The main purpose of this Guide is facilitating access to relevant human rights information, more specifically, in this chapter, focusing on protection of the rights of the child. Consequently, the following overview aims to provide some practical examples of information sources grouped along key principles of child rights/human rights empowerment and accountability.

Empowerment of children

Access to child-friendly information

Ombudspersons specifically for children and child hotlines/helplines play an essential role as first responders to children seeking advice and assistance, see, for instance:

- European Network of Ombudspersons for Children (ENOC), comprising of 41 independent child rights institutions in Europe (22 of them in EU member states) – www.enoc.eu,
- Child Helpline International, covering 192 child help-lines in 145 countries world-wide: www.childhelplineinternational.org.

Child participation

- See, for instance, hundreds of relevant documents, including on self-organisation of children and child-led organisations, collected by Save the Children Sweden's Resource Centre Library - www.resourcecentre.savethechildren.se.

Inclusion of children

Here, only a few specific groups of children may be highlighted, such as:

- UNICEF's International Day of the Girl Child (11 October) website - www.unicef.org/gender/gender_66021.html,
- European Disability Forum - Youth Committee - www.edf-feph.org; and Light for the World, Inclusive education focus - www.light-for-the-world.org/what-we-do/inclusive-education/,
- Eurochild works with a focus also on child poverty - www.eurochild.org/childpoverty/.

Child rights education

As a key instrument to raise awareness among children about rights and claiming them, see for instance:

- the work of the CoE in relation to education for democratic citizenship - www.coe.int/en/web/edc/home.

³³⁹ See the latest EU Forum on the Rights of the Child and its reflection paper, European Commission, 'European Forum on the Rights of the Child', available at <http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/index_en.htm> accessed 12 October 2015; see also the FRA project mapping child protection systems in the EU: European Union Agency for Fundamental Rights, 'Mapping Child Protection Systems in the EU', available at <<http://fra.europa.eu/en/project/2014/mapping-child-protection-systems-eu>> accessed 31 October 2015.

Accountability to children

Monitoring of the rights of the child

- On the international level, the CRC's work is central to this accountability aspect, which also adopts General Comments, hosts annual Days of General Discussion on specific child rights issues and provides country-specific information through its state party reporting procedure, including civil society reports and its own assessment through Concluding Observations - www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx.
- Furthermore, findings on child rights protection should be consulted also from other UN treaty-based (e.g. UN Committee on Rights of Persons with Disabilities) and charter-based monitoring mechanisms (e.g. Special Rapporteurs and other specialised procedures of the UN Human Rights Council, or under the Universal Periodic Review mechanism), see www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.
- On the European level, the various treaty bodies monitoring the CoE's human rights treaties in fields relevant to children (such as human rights in general, including social and cultural rights, protection from sexual abuse and exploitation; gender-based violence; trafficking in human beings; torture and other inhuman treatment etc.) should be consulted – www.coe.int/children.
- In relation to development of human rights-based indicators, the OHCHR has developed a methodological framework for such indicators - www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx.³⁴⁰ For an example of child-rights based indicators, see the 2010 FRA Study - fra.europa.eu/en/publication/2012/developing-indicators-protection-respect-and-promotion-rights-child-european-union.

Access to justice and complaint mechanisms

- International campaign for ratification of the 2011 Third Optional Protocol to the CRC (individual complaint procedure, inquiry procedure) – www.ratifyop3crc.org.
- ECtHR case law, including HUDOC database and Theseus database for child-focused decisions – www.echr.coe.int/hudoc, and www.coe.int/t/dg3/children/caselaw/CaseLawChild_en.asp.
- CoE child friendly-justice website - www.coe.int/childjustice/.
- Child Rights Information Network (CRIN) Legal Database – www.crin.org/en/library/legal-database, and CRIN access to justice country reports - www.crin.org/en/home/law/access.

Data collection and child (rights)-focused research

- FRA / Rights of the child thematic area – fra.europa.eu/en/theme/rights-child.
- UNICEF Office of Research Innocenti - www.unicef-irc.org.

³⁴⁰ For an in-depth analysis on human rights measurement see: Klaus Starl and others, 'Baseline Study on Human Rights Indicators in the Context of the European Union' (2015), Frame Deliverable 13.1, available at <www.fp7-frame.eu/wp-content/materiale/reports/12-Deliverable-13.1.pdf> accessed 8 October 2015.

- UNICEF Data: Monitoring the situation of women and children - data.unicef.org.
- ChildWatch International Research Network - www.childwatch.uio.no.
- For academic debate about children's rights, see for instance, the International Journal of Children's Rights at Brill Online - <http://booksandjournals.brillonline.com>.

Child-related legislation and policy development

In relation to relevant standards developed in Europe, both by the EU and the CoE, see, in particular,

- the comprehensive 2015 FRA/CoE Handbook on European law relating to the rights of the child, including key case-law references - <http://fra.europa.eu/en/publication/2015/handbook-european-law-child-rights>.

For a specific focus on EU legislation and policies, see the child-rights dedicated websites of:

- DG Justice and Consumers - http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm, which also contains the most comprehensive compilation of the
 - EU *acquis* concerning children and protection of their rights - http://ec.europa.eu/justice/fundamental-rights/files/acquis_rights_of_child.pdf,
 - and a Guide on relevant EU funding opportunities - http://ec.europa.eu/justice/fundamental-rights/files/roc_funding_mechanisms_2014.pdf.
- European External Action Service - http://eeas.europa.eu/human_rights/child/index_en.htm.

Provision of services to children

On a general level, covering e.g. access to basic health services, food, education, see, for instance:

- UNICEF's State of the World's Children annual reports - www.unicef.org/sowc/.
- More specifically, in relation to the situation of refugee children, see, for instance - www.unhcr.org/children; concerning the situation of child victims of trafficking, see, for instance, country reports by the Council of Europe Expert Group on Action against Trafficking in Human Beings (GRETA) – www.coe.int/trafficking.
- Concerning institutional care of children, see, for instance - www.sos-childrensvillages.org.

International (development) cooperation

- For a general overview, for instance, on the achievements of the MDGs until 2015 and continuing challenges for the Sustainable Development Goals (SDGs), including in relation to child-specific goals, see the latest MDG Global Monitoring Reports - www.un.org/millenniumgoals/reports.shtml; and discussions at the youth-focused stakeholder platform for the SDG preparation - childrenyouth.org/process/post2015/.
- In 2014, UNICEF and the European Commission jointly launched the Child Rights Toolkit as a comprehensive set of resources to ensure child rights-oriented programming in international development assistance - www.unicef.org/eu/crtoolkit/.

Child protection policies and standards

- Concerning ethical research with children, see the collection of resources at www.childethics.com.
- In relation to practical standards for child protection, see, for instance, the Keeping Children Safe Website - www.keepingchildrensafe.org.uk/resources/child-safeguarding-standards-and-how-implement-them.
- In relation to prevention of sexual abuse and exploitation of children, see, for instance the Website of ECPAT International (End child prostitution, child pornography and the trafficking of children for sexual purposes) – www.ecpat.net.
- In relation to prevention of corporal punishment, see, for instance, the Global Initiative to End All Corporal Punishment to Children - www.endcorporalpunishment.org.

Cooperation with civil society

- In this regard, reference may be made to the large collection of publications, guides, databases, event information and news available at the international Child Rights Information Network (CRIN), in cooperation with Child Rights Connect; it also hosts an online database with civil society Alternative Reports submitted to the CRC – www.crin.org, www.childrightsconnect.org.
- On the European level Eurochild constitutes a child rights network with 161 members in 35 countries - www.eurochild.org.

6. Conclusion

Both the presentation of the relevant framework for the protection of the rights of the child, and the practical examples of available information on its actual implementation on the ground have hopefully contributed not only to further understanding of complexities in relation to children as a unique target group in policy-making and monitoring, but also offered some insights on relevant principles as well as actors with helpful guidance on how to retrieve relevant information material. At this stage, once again, the need to understand human rights of children as a cross-cutting issue, spanning, basically, across all sectors of society is essential. It might be easier to find information on child-focused topics like violence against children or child “sex tourism”, but the challenge lies more on this transversal level, not to overlook children in broader areas with less visible immediate concern for child rights protection: to look into EU and member states labour market policies in order to identify measures taken against youth unemployment; into health policies in order to monitor child’s access to psychosocial care and rehabilitation, and into criminal justice to learn about child-friendly justice and EU victims’ rights standards for children.

The following sections will offer further examples of child rights-relevant information and tools as well as illustrate the process of retrieving such information through practical workflow presentations.

B. Overview of relevant sources on the rights of the child³⁴¹

1. Human rights indicator schemes

The following measurements are developed and partly applied by the FRA and measure the states' obligations and activities to protect, promote and fulfil child rights as well as their outcomes. They build on the OHCHR's framework for human rights indicators.

a) *FRA Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union*

Type of Author: EU body.

Geographical range: EU.

Time span: Developed, not yet applied.

Which information can I expect to find here?	The information is relevant for EU officials who assess the effectiveness of EU legislative and other actions affecting children in the EU. The FRA promotes the usage of these indicators by member states. It aims at developing a more coordinated approach to data collection and improving data comparability. ³⁴²
What does it measure?	The indicators measure the <i>protection, promotion and fulfilment</i> of the rights of the child in areas of EU competence. They are based on the UNCRC, which has been ratified by all EU member states. The indicator scheme should also improve the data collection and research on the impact of EU activities on children.
How often does it measure?	Not yet applied.
What sources does it use?	The indicators have been developed through an extensive expert consultation (online discussion forum, online survey, consultation meetings, and interviews). Data availability and comparability are important issues in the development and refinement process. The indicators need to be populated with qualitative and quantitative national level data. Subjective data, namely the children' perspective should be included too. The indicators are designed to fully use existing data sources and to use most reliable data. Basic sources are: EUROSTAT, statistical data of member states, reports to monitoring bodies, UN agencies, NGO shadow reports, data and reports from other international organisations.
How is this indicator scheme created?	Indicators are developed only for areas of EU competence with direct relevance to children. On the basis of this and more criteria, the following core areas were identified: ³⁴³ family environment and alternative care; protection from exploitation and violence; education, citizenship and cultural activities; adequate standard of living. ³⁴⁴

³⁴¹ This contribution was provided by Isabella Meier, European Training and Research Centre for Human Rights and Democracy.

³⁴² European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union – Summary Report* (Publications Office of the European Union 2009), available at <http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf> accessed 28 October 2015, p. 16.

³⁴³ European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union – Summary Report* (Publications Office of the European Union 2009), available at <http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf> accessed 28 October 2015, p. 7.

³⁴⁴ European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union – Summary Report* (Publications Office of the European Union 2009), available at <http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf> accessed 28 October 2015, p. 16.

**Level
Disaggregation?**

of

The indicators are mapping and reviewing the conceptual framework: legal, sociological, methodological, ideological and ethical issues of child rights. They are grounded in the UNCRC and based on child rights indicator research, EU child law and policy.³⁴⁵

Structural, procedural and outcome indicators are part of the indicator system. For some areas, such as “Adequate Standard of Living and Education” the focus is on outcome indicators, while for others (i.e. “Family Environment and Alternative Care”) the focus is on process indicators. The scheme consists of more than 80 different indicators.

The indicators accommodate the diversity of age, ethnic origin, socio-economic situation, disability, gender and other factors. They respect financial, physical and cultural differences.³⁴⁶ The outcome indicators require disaggregated data along a variety of variables, such as household size, work intensity of parents, single parents or ethnic origin.³⁴⁷

Discussion

It is work in progress and the indicator scheme must be seen as a starting point rather than a definitive result. As such it requires ongoing refinement and expansion according to data availability and legal and policy developments.³⁴⁸

The data is gathered from EU member states and all possible other sources. Therefore, quality varies, but is generally perceived as rather accurate. Comparability across countries is intended and should be possible because of the use of a huge variety of data sources.

Website

<http://fra.europa.eu/en/publication/2012/developing-indicators-protection-respect-and-promotion-rights-child-european-union>

³⁴⁵ European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union* (European Union Agency for Fundamental Rights 2010), p. 10.

³⁴⁶ European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union* (European Union Agency for Fundamental Rights 2010), p. 21.

³⁴⁷ European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union* (European Union Agency for Fundamental Rights 2010), from p. 16.

³⁴⁸ European Union Agency for Fundamental Rights, *Developing Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union* (European Union Agency for Fundamental Rights 2010), p. 4.

b) *EU – Child-friendly Justice Indicators***Type of Author:** EU body.**Geographical range:** 10 EU Member States.³⁴⁹**Time span:** The data covers the legislation, regulations and policies as of 1 June 2012.

Which information can I expect to find here?	Information on perspectives and experiences of professionals on children's participation in court proceedings in 10 EU member states. Data is disaggregated by court specialization (criminal or civil). ³⁵⁰ The developed and partly populated indicators provide information on the right to be heard , the right to information , the right to protection and privacy , the right to non-discrimination and the principle of best interest of the child . In addition to indicator population, you find information on promising practices in EU member states and activities of the FRA related to the issue.
What does it measure?	Inter alia the indicators are measuring the implementation of the CFR (Article 24) and the UNCRC (Art. 12). The FRA is referring to the CoE Guidelines on child-friendly justice, the Brussels IIa regulation ³⁵¹ and the three EU directives on victims ³⁵² , human trafficking ³⁵³ and combating sexual abuse, sexual exploitation of children and child pornography. ³⁵⁴
How often does it measure?	No regular application.
What sources does it use?	The structural indicators refer to national legal provisions and policies; they are populated through an analysis of European Commission data on legislation and policies in the EU member states as of 1 June 2012. Process indicators refer to measures taken to implement legal and policy provisions; they are populated with evidence provided through the interviews with professionals about their perspectives and experiences on children's participation as victims, witnesses or parties in civil and criminal judicial proceedings.

³⁴⁹ Bulgaria, Croatia, Estonia, Finland, France, Germany, Poland, Romania, Spain and the United Kingdom.

³⁵⁰ European Union Agency for Fundamental Rights, *Child-friendly Justice: Perspectives and Experiences of Professionals on Children's Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States* (Publications Office of the European Union 2015), available at <http://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals_en.pdf> accessed 26 November 2015, p. 7

³⁵¹ Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' of 10 December 2007, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:l33604>> accessed 12 October 2015.

³⁵² European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L315/57, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>> accessed 31 October 2015.

³⁵³ European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision [2011] OJ L101/1, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>> accessed 28 October 2015.

³⁵⁴ European Parliament and Council Directive 2011/93/EU of 13 December 2011 on combating Sexual Abuse and Sexual Exploitation of Children, and Child Pornography, replacing the Council Framework- Decision 2004/68/JHA [2011] OJ L 335/1, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>> accessed 28 October 2015.

How is this indicator scheme created?

Outcome indicators refer to the actual situation of the children; they are partly populated with evidence provided through interviews with professionals and will be further populated through interviews with children after the second part of the research has been completed.³⁵⁵

For each right, structure, process and outcome indicators are formulated, i.e. the right to protection and privacy is covered by the following indicators:³⁵⁶

Structural

- Keeping children safe from harm and protecting them when involved in judicial proceedings specifying procedural safeguards.
- Ensuring the right to privacy and confidentiality at all stages of the proceedings, including through state regulation of the media and by prohibiting the publication of information or personal data of the children, ensuring that police officers, other officials, judges and legal practitioners working with children abide by strict rules of confidentiality, except where there is a risk of harm to the child.

Process

- Ensuring the protection of children's identity and privacy.
- Keeping children safe from such wrongs as reprisals, intimidation and re-victimization by implementing special procedural safeguards, preventing contact with alleged offender and regulating contact with parents as alleged perpetrators (criminal only).
- Making protective support and guidance available to children before, during and after proceedings (criminal only).

Outcome

- Assessing the measures in place and their impact.
- Evidence for the extent of children who felt protected and safe during the proceedings.
- Evidence for the extent of children who have been supported by specialists/services during court proceedings.
- Evidence for the extent of cases where police, other officials, judges and legal practitioners working with children have not breached the data protection policy.
- Evidence for the extent of cases where the media has published personal data.
- Evidence for the extent of cases where children have had no contact with the alleged offender/perpetrator.

Level of Disaggregation?

Data is collected separately for criminal and civil proceedings. Outcome indicators are not yet fully populated, thus no further information on disaggregation is available.

Discussion

Because the children's interviews have not taken place yet, limited information on the outcome indicators is available in the first report. Information is limited to EU member states and to the competencies of the EU.

Website

<http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens>

The data for structural and process indicators are available in annex 2 to the Child-friendly Justice report, available at http://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals-annex-2_en.pdf

³⁵⁵ European Union Agency for Fundamental Rights, *Child-friendly Justice: Perspectives and Experiences of Professionals on Children's Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States* (Publications Office of the European Union 2015), available at <http://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals_en.pdf> accessed 26 November 2015, p. 10.

³⁵⁶ European Union Agency for Fundamental Rights, *Child-friendly Justice: Perspectives and Experiences of Professionals on Children's Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States* (Publications Office of the European Union 2015), available at <http://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals_en.pdf> accessed 26 November 2015, p. 78

2. Human rights related data and indicator schemes

a) *The State of the World's Children – Multiple Indicator Cluster Survey programme (MICS)*

Type of Author: intergovernmental organisation.

Geographical range: worldwide.

Time span: annually since 1996.

Which information can I expect to find here?	<p>This is the UNICEF annual flagship publication. It gathers data on health, education and child protection, using indicators such as: birth registration, years of school completed, early learning opportunities, access to healthcare, malaria and breastfeeding rates.³⁵⁷</p> <p>So it provides information on child survival and health, child nutrition, maternal health, newborn care, water and sanitation, education, child protection, child disability.³⁵⁸ UNICEF carries out single surveys for different issues related to child rights, such as violence against children³⁵⁹ or the situation of children with disabilities³⁶⁰. These surveys partly resort to MICS data.</p>
What does it measure?	<p>It measures the life and health situation of women and children all over the world. The measurement is based on UNCRC and includes indicators for children's and women's rights. UNICEF headquarters maintains a series of global databases on key indicators for monitoring the situation of children and women all over the world. This compilation of data is facilitated by the wide network of UNICEF field offices which submit updated information to headquarters on an annual basis. This data is complemented by information obtained through the ongoing collaboration with other relevant UN organizations, as well as through other sources such as the MICS and the Demographic and Health Surveys (DHS). Prior to inclusion in the UNICEF global databases, the data is rigorously evaluated against a set of objective criteria to ensure an evidence base of the highest quality.</p> <p>Measuring progress concerning rights of disabled children, as well as disclosing still existing gaps between laws and reality. Measurement is based on the UNCRC, CRPD and their optional protocols</p>
How often does it measure?	Annually, since 1996.
What sources does it use?	Data used depends on the indicator. Typical data is gathered by UNICEF itself, the World Bank, the Official Development Assistance (ODA), the UNESCO Institute for Statistics, World Health Organisation (WHO), the United Nations Population Fund (UNFPA), and other UN agencies.
How is this indicator scheme build?	<p>Indicators were developed in consultations with experts groups, national statistical offices and data collection agencies, academics, practitioners, organisations for persons with disabilities and other stakeholders.</p> <p>This survey has 13 main indicators. Basic indicators include information on e.g. nutrition, health, HIV/Aids, education, demographic indicators, economic indicators, women, child protection, adolescents or disparities by residence the rate of progress and equity. These main indicators are</p>

³⁵⁷ UNICEF, *The State of the World's Children 2015: Reimagine the Future* (UNICEF 2015), available at <www.unicef.org/publications/files/SOWC_2015_Summary_and_Tables.pdf> accessed 31 October 2015.

³⁵⁸ UNICEF, 'UNICEF Data: Monitoring the Situation of Children and Women', available at <<http://data.unicef.org/index-2.html>> accessed 28 October 2015.

³⁵⁹ United Nations General Assembly, 'Rights of the Child – Note by the Secretary-General', A/61/299 of 29 August 2006, available at <www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf> accessed 28 November 2015.

³⁶⁰ UNICEF, *The State of the World's Children 2015: Reimagine the Future* (UNICEF 2015), available at <www.unicef.org/publications/files/SOWC_2015_Summary_and_Tables.pdf> accessed 31 October 2015.

Level of Disaggregation?

subdivided into sub indicators. The number of sub-indicators varies from 4 - 18. According to the OHCHR report, outcome indicators are used (e.g. exclusive breastfeeding <6 months, overweight, antimalarial treatment among febrile children, youth literacy rate, etc.)

Focus on specific target groups (e.g. children with disabilities) change per year.

Discussion

Since its inception in 1995, the MICS have become the largest source of statistically sound and internationally comparable data on women and children worldwide. Trained fieldwork teams conduct face-to-face interviews with household members on a variety of topics – focusing mainly on issues that directly affect the lives of children and women. MICS has been a major source of data on the MDG indicators and will be a major data source in the post-2015 era. The information obtained through MICS surveys – on topics ranging from maternal and child health, education and child mortality to child protection, HIV/AIDS and water and sanitation – is fundamental to sound decision-making and advocacy. Countries also use MICS results to report on their progress towards international goals. For example, MICS generates data on the majority of MDG indicators that can be measured through household surveys. Data collected in the fifth and current round of MICS will play a critical role in the final assessment of the MDGs in September 2015 and subsequent surveys in MICS6 will provide the baselines for the SDG that will follow.

Although coverage is improving, there are still some gaps in the databases. Not all countries collect the data used for global monitoring, and in some cases, submissions cannot be included, e.g. if the indicator definitions are not aligned with the standard, or if the survey sample is not nationally representative. There are also, increasingly, demands for sub-national data analysis. Although UNICEF's databases include disaggregation by sex, residence and wealth quintile, geographical sub-regions for each country are not yet part of the databases. Data coverage for high-income countries also tends to be less complete for many indicators, especially those for which standardized household survey data are the primary source.³⁶¹

Website

<http://mics.unicef.org/about>

Data: <http://data.unicef.org/index-2.html>

The questionnaire and additional methodological information: <http://mics.unicef.org/tools>

Country and year based data are accessible for registered persons only: <http://mics.unicef.org/surveys>

³⁶¹ Colleen Murray and Holly Newby, 'Data Resource Profile: United Nations Children's Fund (UNICEF)' (2012) 41 International Journal of Epidemiology 1595, available at <www.ncbi.nlm.nih.gov/pmc/articles/PMC3535745/> accessed 28 October 2015.

b) *Indicators for Children in Formal Care***Type of Author:** intergovernmental organisation.**Geographical range:** worldwide.**Time span:** Not regularly applied, framework for application by national authorities etc.

Which information can I expect to find here?	The indicators offer information on monitoring policy and practice of formal care systems for children at the national level. Information on improvements of individual care services at national level; in particular on the implementation of the UNCRC regarding formal care and the UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children.
What does it measure?	The rationale is to generate data for monitoring progress in formal care systems for children, preventing separation of children, promoting re-unification with parents and ensuring provision of appropriate care of children in formal care.
How often does it measure?	Not regularly applied.
What sources does it use?	Existing administrative, registry based records and data, complaint mechanisms. If they do not exist or are not collected regularly, information is supplemented by surveys. Additionally the indicators require information on the legal and policy framework and complaint mechanisms. Data is gathered from individuals or institutions responsible for initially placing children in formal care settings. These are social work departments, courts of law, police, military forces, religious institutions and heads of formal care services. Furthermore, census data is included. The main sources are national authorities and national institutions –but quality differs highly.
How is this indicator scheme build?	Indicators 1-12 are quantitative indicators and provide numerical information on children in formal care. Indicators 1 to 4 are core indicators, e.g. on the number of children entering formal care or living in formal care during a 12-month period per 100,000 child population.
Level of Disaggregation?	Indicator population with disaggregated data is recommended, particularly along: sex, age, ethnicity, disability status, type of formal care setting, family placements, country of origin, category of staff, category of adoption, assaults on children.
Discussion	Most critics deal with the limited scope of the indicators. The indicators are not designed to provide complete information on all possible aspects of children in care and they do not replace case management and casework recording system. ³⁶² The indicators do not cover the situation of children living outside all forms of care. ³⁶³
Website	www.unicef.org/protection/Formal_Care20Guide20FINAL.pdf www.crin.org/en/library www.crin.org/docs/CoreIndicatorsforMonitoringChildWell-Being-SouthAfrica.pdf Database: http://data.unicef.org/index-2.html (Same as for The State of the World's Children – Multiple Indicator Cluster Survey programme (MICS))

³⁶² Better Care Network and UNICEF, *Manual for the Measurement of Indicators for Children in Formal Care* (UNICEF 2008), available at <www.unicef.org/protection/Formal_Care20Guide20FINAL.pdf> accessed 28 October 2015, pp. 2-3.

³⁶³ Better Care Network and UNICEF, *Manual for the Measurement of Indicators for Children in Formal Care* (UNICEF 2008), available at <www.unicef.org/protection/Formal_Care20Guide20FINAL.pdf> accessed 28 October 2015.

3. Human rights compliance information

a) *Committee on the Rights of the Child*

Type of Author: Intergovernmental Organisation.

Geographical range: Worldwide (195 states).

Which information can I expect to find here?	<p>The CRC is a body of 18 independent experts. It monitors the implementation of the UNCRC (plus two Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict), by its state parties.³⁶⁴ The state reports, as well as the concluding observations, are covering a wide range of child rights. Their structure is not strictly following the structure of the Convention, it is divided into following chapters: measures of general application; definition of the child; general principles; civil rights and freedoms; family environment and alternative care; health and well-being; education, leisure and cultural activities; special protection measures as regulated by the Optional Protocols to the CRC.</p> <p>The CRC offers extensive structural (legislative measures, ratification of, or accession to international conventions etc.) and procedural (institutional and policy measures, e.g. the introduction of cost-free compulsory pre-school education attendance) information. Measures taken by its member states to full fill their obligations are discussed and recommendations for the future are given.</p>
What procedural steps are taken to come to the report?	<p>The member states to the convention have to regularly (two years after entry into force and thereafter every 5 years) submit their reports to the CRC. Prior to the Committee-session, at which these report are reviewed, a pre-sessional working group, which includes UN bodies, NGOs, NHRI, etc., discusses the reports and prepares a LOI. This list is intended to give the government a preliminary indication of the priority issues for the discussion and the Committee the chance to request additional or updated information in writing from the government prior to the session. Afterwards the state reports are discussed in open and public meetings of the Committee. During this process relevant UN bodies and agencies are represented, journalists and NGOs, etc. have unlimited access too. These meetings are intended to give sufficient time for the discussions, as the whole process is a constructive one.³⁶⁵</p> <p>After the discussion with the state party, the Committee agrees on written concluding observations, which include suggestions and recommendations and may also request additional information from the state party, in order to be able to better assess the situation in the country.³⁶⁶</p>
Duration of the reporting cycle	Designated 5 years, but in fact the periodic reporting cycle is disregarded by many state parties. Therefore the timeliness of data varies.
Website	<p>www.ohchr.org/EN/HRBodies/CRC/Pages/WorkingMethods.aspx</p> <p>Database: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en</p>

³⁶⁴ Office of the High Commissioner for Human Rights, 'Committee on the Rights of the Child', available at <www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> accessed 31 October 2015.

³⁶⁵ United Nations Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child', CRC/C/66/2 of 16 October 2014, available at <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/WorkingMethods.aspx>> accessed 29 October 2014, pp. 2-3.

³⁶⁶ United Nations Committee on the Rights of the Child, 'Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child', CRC/C/66/2 of 16 October 2014, available at <<http://www.ohchr.org/EN/HRBodies/CRC/Pages/WorkingMethods.aspx>> accessed 29 October 2014, p. 3.

b) *Council of Europe Expert Group on Action against Trafficking in Human Beings (GRETA) Country Reports*

Type of Author: intergovernmental organisation.

Geographical range: Council of Europe (43 member states to the convention).

Which information can I expect to find here?	GRETA monitors the implementation of the CoE Convention on Action against Trafficking in Human Beings by the parties. As part of its monitoring task GRETA regularly publishes reports evaluating the measures taken or necessary to be taken by the parties. ³⁶⁷ In these reports children are treated as a special group of trafficking victims and therefore child specific information in this context is available.
What procedural steps are taken to come to the report?	<p>The evaluation procedure is divided into cycles. At the beginning of each cycle GRETA autonomously defines the provisions to be monitored and determines the most appropriate means to carry out the evaluation. This commences with requesting information from the parties. If GRETA considers it necessary, further information from civil society and/or organized country visits is gathered in order to obtain more information.³⁶⁸</p> <p>Thereafter GRETA prepares its draft report and delivers it to the party concerned for comments. When the comments have been received GRETA prepares its final report and conclusions and sends it to the party concerned and the committee of the parties. The final report together with the party's comments is published and is not subject to modification by the committee of the parties.³⁶⁹</p> <p>As a final step, the committee of the parties adopts recommendations indicating the measures to be taken and if necessary sets a date for the submission of information on their implementation, and promotes cooperation to ensure the proper implementation of the Convention.³⁷⁰</p>
Duration of the reporting cycle	4 years.
Website	www.coe.int/t/dghl/monitoring/trafficking/default_en.asp

³⁶⁷ Council of Europe, 'Action against Trafficking in Human Beings – Information about GRETA', available at <www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp> accessed 29 October 2015.

³⁶⁸ Council of Europe, 'Action against Trafficking in Human Beings – Information about GRETA', available at <www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp> accessed 29 October 2015.

See also: Council of Europe Convention on Action against Trafficking in Human Beings, adopted by the Committee of Ministers on 3 May 2005 (entered into force on 1 February 2008), Art. 38.

³⁶⁹ Council of Europe, 'Action against Trafficking in Human Beings – Monitoring bodies and procedure', available at <http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/Monitoring_en.asp#TopOfPage> accessed 15 December 2015.

³⁷⁰ Ibid. 369.

C. Workflow for information requests in UN human rights compliance information³⁷¹

1. Introduction

The purpose of this section is to provide a “guide” for EU officials on how to use the available human rights databases in order to access concrete information for assessing state compliance with human rights norms. It describes, in a user-guide-friendly style, by means of workflows and screenshots, how information needs can be tackled in order to access and retrieve relevant data. In this particular case, the focus is on retrieving information on a cross-cutting issue, namely children’s rights.

In order to identify a search request as practice-oriented as possible, the EU Guidelines for the Promotion and Protection of the Rights of the Child³⁷² served as a starting point for defining realistic search requests for EU officials. From an operative point of view, they highlight what the EU deems most relevant for its policy in this regard. Section 2 is dedicated to defining the search for information on children’s rights and narrowing it down. For the purpose of this report, one specific issue was selected to illustrate how to access and retrieve children’s rights information. The selected topic features high in the European and international agenda, allowing for multiple levels of analysis. The selected topic was also broad enough to allow for different domestic strategies. To make the example more illustrative, we narrowed down the scope to two countries, one EU member state and one non-member state.

Section 3 below describes the basic process for fulfilling information requests in relation to state compliance with human rights norms. It is divided into four main steps taken in order to complete the information request. A suggestion on how to handle data in order to establish state compliance dynamics over time is provided in section 4. Finally, section

Concluding remarks includes some concluding observations.

2. Defining our search for children’s right information

There exists a large corpus of international and European legal human rights instruments devoted to the promotion and protection of the rights of the child.³⁷³ However, despite this elaborate framework, many of the provisions enshrined in these documents are not effectively implemented and enforced, and do not represent the daily reality for millions of children across the globe.³⁷⁴ Many children face, inter alia, threats to survival, abuses, diseases, violence and lack opportunities for (quality) education

³⁷¹ This contribution was provided by Elif Erken and Lorena P. A. Sosa, Utrecht University.

³⁷² Council of the European Union, ‘EU Guidelines for the Promotion and Protection of the Rights of the Child’ (2010), available at <www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 12 November 2015.

³⁷³ See for example: United Nations General Assembly, ‘Universal Declaration of Human Rights’, adopted by General Assembly resolution 217 A III of 10 December 1948; European Convention on Human Rights [1950] signed on 4 November 1950 (entered into force on 3 September 1953); Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990); etc.

³⁷⁴ Council of the European Union, ‘EU Guidelines for the Promotion and Protection of the Rights of the Child’ (2010), available at <www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 12 November 2015, p. 4.

and health care.³⁷⁵ In order to combat this, the EU adopted the EU Guidelines for the Promotion and Protection of the Rights of the Child (hereinafter 'EU Guidelines' or 'Guidelines') in December 2007, encouraging sustained and systematic action to advance children's rights.³⁷⁶ The Guidelines 'stress the importance of key international and European legal human rights instruments, norms and standards [...] relevant to the promotion and protection of the rights of the child.'³⁷⁷

The EU Guidelines aim to promote and protect all the rights of the child through the adoption of general measures as well as undertaking specific action in priority areas. For instance, the first priority area focuses on "Violence Against Children" (VAC). Consequently, this topic might commonly arise as one area in need of assessing for EU officers. VAC calls for advocacy for ratification and the implementation of international human rights instruments relevant for combating violence against children. It also calls for the development of country-specific strategies to prevent and fight all forms of violence against children. VAC, comprising domestic violence, sexual abuse, bullying, corporal punishment, among other forms of violence, is a topic thoroughly explored both by human rights bodies, legal scholars and social scientists.

The area of child-friendly or juvenile justice is, as violence against children, prioritized in both the international and European agenda. Having adopted the Guidelines on Child Friendly Justice, the Committee of Ministers of the CoE observes that there still exist 'obstacles for children within the justice system'.³⁷⁸ The obstacles the Committee notes are, for instance, the right to access to justice and the diversity in and complexity of procedures.³⁷⁹

Although child-friendly justice has not been elaborated upon in the EU Guidelines the EU Agenda on the Rights of the Child of 2011³⁸⁰ makes explicit reference to the CoE Guidelines on Child Friendly Justice as a key area for implementation. This is a topic, thus, in which the CoE and the EU policies converge, and where vast cooperation between the two international organizations exists. A proper analysis of state compliance in relation to child friendly justice requires the EU officer to pay attention beyond the EU towards the UN and CoE. In addition, child-friendly justice offers a narrower focus of analysis, yet remains a sufficiently broad topic amongst those covered in the selected document. For

³⁷⁵ Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' (2010), available at <www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 12 November 2015, p. 4.

³⁷⁶ Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' (2010), available at <www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 12 November 2015, p. 3, para. 5.

³⁷⁷ Council of the European Union, 'EU Guidelines for the Promotion and Protection of the Rights of the Child' (2010), available at <www.consilium.europa.eu/uedocs/cmsUpload/16031.07.pdf> accessed 12 November 2015, p. 4.

³⁷⁸ Committee of Ministers, 'Guidelines on Child Friendly Justice' (2010), available at <[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1098/10.2abc&Language=lanEnglish&Ver=app6&ndSite=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1098/10.2abc&Language=lanEnglish&Ver=app6&ndSite=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)> accessed 12 November 2015, p. 3

³⁷⁹ Committee of Ministers, 'Guidelines on Child Friendly Justice' (2010), available at <[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1098/10.2abc&Language=lanEnglish&Ver=app6&ndSite=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1098/10.2abc&Language=lanEnglish&Ver=app6&ndSite=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)> accessed 12 November 2015, preamble.

³⁸⁰ European Commission, 'An EU Agenda for the Rights of the Child' COM(2011) 60 final, available at <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0060&from=en>> accessed 12 October 2015.

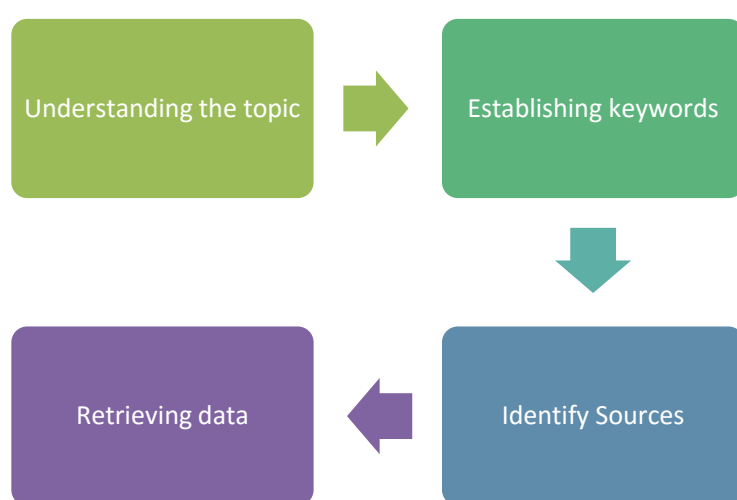
these reasons, child-friendly justice appears as a particularly useful topic to illustrate how to access, retrieve and understand children's rights information by means of information workflows.

3. Workflows

The basic process for fulfilling information requests in relation to state compliance with human rights norms, illustrated in

Figure 9, entails four steps: comprehending the topic, translating the topic into searchable keywords, identifying the sources of information and retrieving the data. Below, each of these steps is described in detailed by focusing on the topic of child friendly justice.

Figure 9: Overall process of accessing human rights information



(1) Step 1: Understanding the topic

The first step in order to fill an information request is to familiarize with the topic being studied. In doing so, it is necessary to identify the relevant international and regional norms dealing with the topic. This will serve as a starting point for the research, revealing the areas where information needs to be retrieved. After identifying the norms, an analysis of the interpretation of the norms should follow. In this analysis, cross-cutting issues will probably emerge. Ideally, each of these elements should be assessed in order to obtain a comprehensive view of state compliance with the selected issue.

In relation to child-friendly justice, there exists a large body of international and regional instruments. Important in this regard is the UNCRC, adopted by the GA in 1989.³⁸¹ The UNCRC is the first legally binding instrument that offers guidance on the protection and recognition of the rights of the child under international law. Within the topic of child friendly justice, one of the areas that emerge relates to “children in conflict with the law,” that is, “anyone under 18 who comes into contact with the justice

³⁸¹ Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990).

system as a result of being suspected or accused of committing an offence”.³⁸² These normative documents describe the rights to which such children are entitled.³⁸³ The UNCRC provides for a comprehensive system for children in conflict with the law. Art. 37 and 40 of the UNCRC enshrine, together with General Comment No. 10 of the CRC,³⁸⁴ elaborate on the rights and entitlements of children involved in criminal justice proceedings. Additionally, particular guidance on juvenile justice can be found in three key international documents,³⁸⁵ namely the ‘Beijing Rules’,³⁸⁶ the ‘Havana Rules’³⁸⁷ and the ‘Riyadh Guidelines’.³⁸⁸ These instruments are to be implemented in conjunction with the provisions of the UNCRC.³⁸⁹ The rights of children facing criminal proceedings are, thus, one of the relevant areas of child friendly justice.

Also at the European level, several instruments that describe the rights and entitlements of children in conflict with the law have been developed. General human rights treaties, such as the ECHR address the rights of young offenders,³⁹⁰ but also more specific human rights bodies, such as the CPT comment on the treatment of children in conflict with the law.³⁹¹ The CoE Guidelines on child-friendly justice also affirm their commitment to safeguarding the rights of children in conflict with the law.

Within the topic of “children in conflict with the law”, these international and regional documents draw particular attention to the rights and entitlements of “children deprived of their liberty”.³⁹² These

³⁸² United Nations Committee on the Rights of the Child, ‘General Comment No. 10: Children’s rights in juvenile justice’, CRC/C/GC/10 of 25 April 2007, available at <www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> accessed 27 November 2015, para 1; according to the UNICEF, ‘Child Protection Information Sheet: Children in Conflict with the Law’ of May 2006, available at <http://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf> accessed 4 December 2015, p. 1.

³⁸³ Ursula Kilkelly, ‘Youth Justice and Children’s Rights: Measuring Compliance with International Standards’ (2008) Youth Justice 187.

³⁸⁴ United Nations Committee on the Rights of the Child, ‘General Comment No. 10: Children’s rights in juvenile justice’, CRC/C/GC/10 of 25 April 2007, available at <www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> accessed 27 November 2015.

³⁸⁵ Commissioner for Human Rights, ‘Children and Juvenile Justice: Proposals for Improvements’, CommDH/IssuePaper (2009)1 of 19 June 2009, available at <www.refworld.org/docid/4a3f7ecf2.html> accessed 27 November 2015, p. 9.

³⁸⁶ United Nations General Assembly, ‘United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘Beijing Rules’), A/RES/40/3 of 29 November 1985.

³⁸⁷ United Nations General Assembly, ‘Rules for the Protection of Juveniles Deprived of their Liberty (‘The Havana Rules’), A/Res45/113 (b) of 14 December 1990.

³⁸⁸ United Nations General Assembly, ‘Guidelines for the Prevention of Juvenile Delinquency, (‘Riyadh Guidelines’), A/RES/45/112 (a) of 14 December 1990.

³⁸⁹ United Nations Committee on the Rights of the Child, ‘Decision of the Administration of Juvenile Justice’, CRC/C/90 of 7 December 1999, pp. 3-4, available at <www.ohchr.org/EN/HRBodies/CRC/Pages/Decisions.aspx#dec2> accessed 12 November 2015.

³⁹⁰ See European Convention on Human Rights [1950] signed on 4 November 1950 (entered into force on 3 September 1953), Art. 6(1) and 5(1)(d).

³⁹¹ See, for instance: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ‘Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 June 2013’, CPT/Inf (2015) 6 of 15 January 2015, available at <www.refworld.org/docid/54b788ff4.html> accessed 12 November 2015, para. 13.

³⁹² See, inter alia: Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989 (entered into force on 2 September 1990), Art. 37(b); United Nations General Assembly, ‘United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘Beijing Rules’), A/RES/40/3 of 29 November 1985, rule 13 (1); United Nations General Assembly, ‘Rules for the Protection of Juveniles Deprived of

documents stress that the detention of a child shall be used as a last resort and for the shortest period of time only. At the European level, this standard is echoed and has been reinforced by judgments of the ECtHR³⁹³ and in many CoE instruments, such as in Recommendation CM/Rec(2008) on the European Rules for juvenile offenders subject to sanctions or measures,³⁹⁴ and in Recommendation Rec(2006)2 on the European Prison Rules.³⁹⁵ Similarly, the CoE Guidelines on Child-friendly Justice specifically draw attention to the treatment of children deprived of their liberty.³⁹⁶

Having established child detention as a specific area of attention, an analysis of the interpretation of the relevant norms, for instance, by exploring the case law of the ECtHR on the topic, would provide insight on cross-cutting issues and specific requirements. Since the purpose of the current section is to provide the reader with an illustration on “how to proceed with an information request”, case law analysis has not been included in this exercise.

(2) Step 2: Translating the main research topic into keywords that will be used for the data collection.

In order to better understand the different aspects of the topic under study it is useful to deconstruct the topic into keywords. This is also useful in practice, since most databases allow for a keyword search. In our case, the topic of “children in detention” was translated into keywords derived from the wording of Art. 37 of the UNCRC, the core article dealing with children in detention. The selected terms are thus, normative elements that states must comply with. In some cases, the monitoring bodies may have interpreted the topic at hand, or may have been elaborated more in detail in general recommendations, for instance. In such cases, keywords should be selected in line with those documents. The process of selecting the research topic, identifying specific aspects and translating it into keywords is illustrated in

their Liberty (‘The Havana Rules’), A/Res45/113 (b) of 14 December 1990, rule 17; United Nations Committee on the Rights of the Child, ‘General Comment No. 10: Children’s rights in juvenile justice’, CRC/C/GC/10 of 25 April 2007, available at <www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> accessed 27 November 2015, para 10, 28 and 70.

³⁹³ See, for instance: *Guvec v. Turkey* App no 70337/01 (ECtHR, 20 January 2009); *Nart v. Turkey* App no 20817/04 (ECtHR, 6 August 2008); *Selçuk v. Turkey* App no 21768/02 (ECtHR, 10 April 2006).

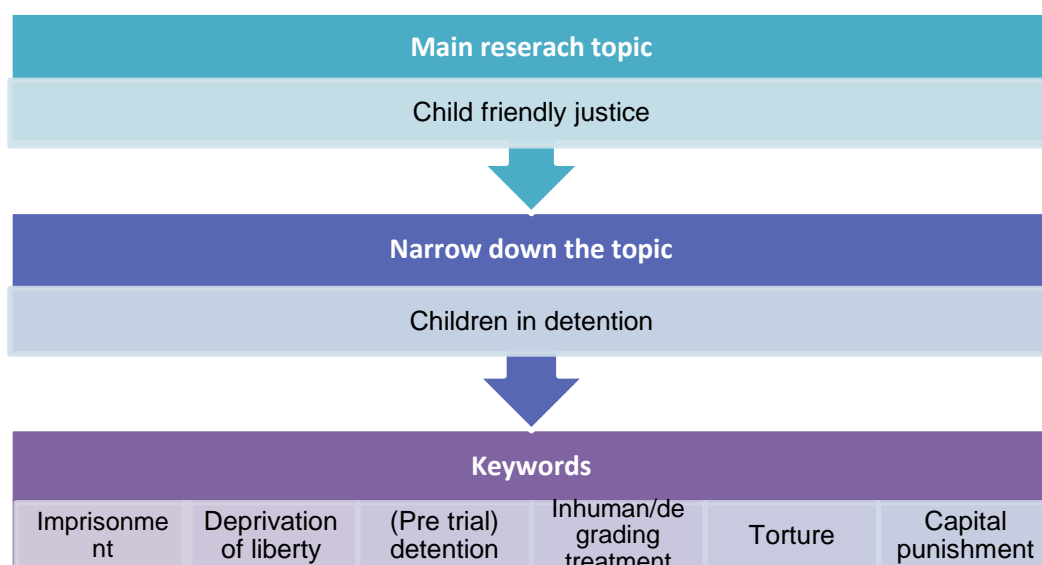
³⁹⁴ Committee of Ministers, ‘Recommendation CM/Rec(2008)11 of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures’, CM/Rec(2008)11 of 5 November 2008, available at <www.refworld.org/docid/4a7058c02.html> accessed 12 November 2015.

³⁹⁵ Committee of Ministers, ‘Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules’, Rec(2006)2 of 11 January 2006, available at <www.refworld.org/docid/43f3134810.html> accessed 12 November 2015.

³⁹⁶ Committee of Ministers, ‘Guidelines on Child Friendly Justice’ (2010), available at <[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2010\)1098/10.2abcandLanguage=lanEnglishandVer=app6andSite=CMandBackColorInternet=C3C3C3andBackColorIntranet=EDB021andBackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2010)1098/10.2abcandLanguage=lanEnglishandVer=app6andSite=CMandBackColorInternet=C3C3C3andBackColorIntranet=EDB021andBackColorLogged=F5D383)> accessed 12 November 2015.

Figure 10: .

Figure 10: Understanding the topic and establishing keywords



(3) Step 3: Identifying relevant sources of information on state compliance with children's rights

In relation to the identification of the sources of information on state compliance with standards on children in detention, it is necessary to determine which human rights norms are binding on the states being studied. In doing so, the Interactive Dashboard on State Ratification of OHCHR,³⁹⁷ is useful. In addition, the database of the Human Rights Library of the University of Minnesota, which includes regional treaties as well, is also relevant.³⁹⁸ For this report, two countries were selected as test-subjects, Turkey and the Netherlands. While both countries are members of the UNCRC, only Turkey adheres to all additional protocols.³⁹⁹ Indeed, the Netherlands is not subject to the communication procedure of the UNCRC, and therefore, communications will be excluded as a source of information. Both countries are also party to human rights treaties that make reference to children's rights: the CEDAW, CERD, ICCPR and CAT. Turkey, however, is not party to the IESCR. Both countries are party to the ECHR. These differences in ratification must be taken into account when choosing the sources of information of state compliance.

Once the binding documents have been determined, the next step is to explore the work of the bodies monitoring compliance with those human rights documents. Also, the UPR of the Human Rights Council is another mechanism providing relevant information on state compliance with human rights. Consequently, we divided our search into two clusters, UN and Europe. The UN cluster was divided

³⁹⁷ Office of the High Commissioner for Human Rights, 'Status of Ratification of the Convention against Torture', available at < <http://indicators.ohchr.org> > accessed 16 July 2015.

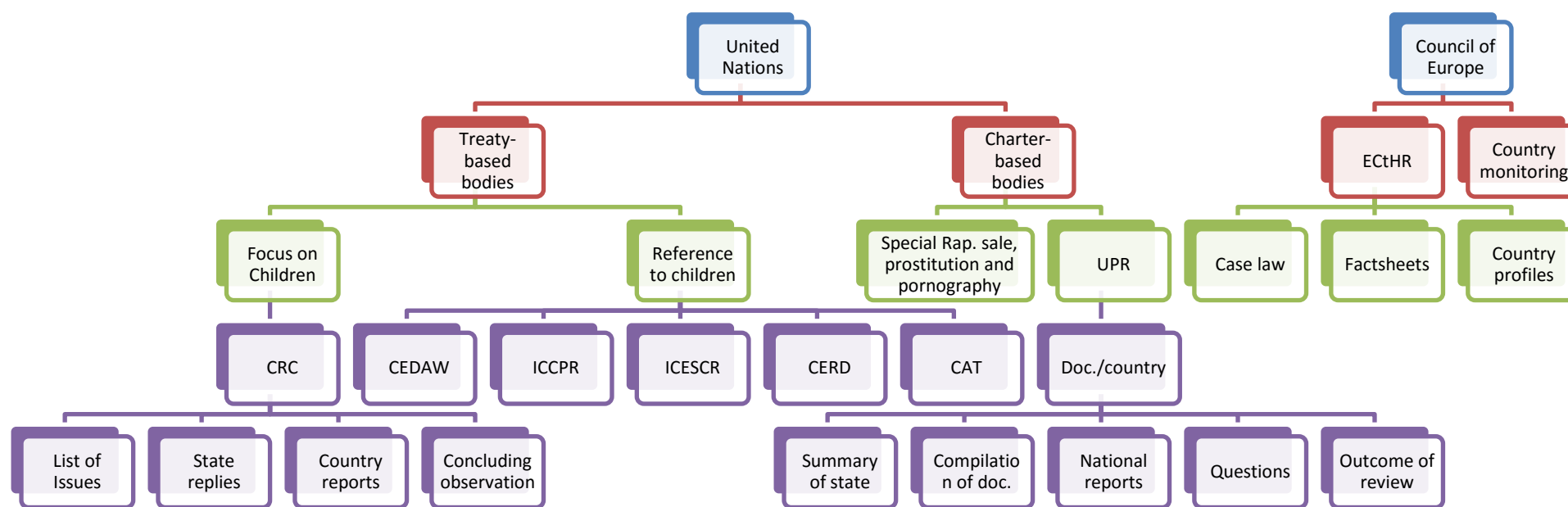
³⁹⁸ University of Minnesota Human Rights Library, 'Ratification of International Human Rights Treaties Edited and updated by İlhan Isik (2004) and Taobo Zheng (2008)', available at <<https://www1.umn.edu/humanrts/research/ratification-index.html>> accessed 12 November 2015.

³⁹⁹ For a general overview of the EU member states that have ratified the Additional Protocols to the CRC, see: <http://indicators.ohchr.org/>.

into UN charter-based information, with a special focus on UPR information, and treaty-based information. The second cluster focuses on CoE information. In each cluster, the different documents introducing information on children's rights were included. This process is illustrated in Figure 11: Identification of relevant sources of information.

Each of these clusters provides one or more institutional search engines in order to access the data. Step 4 of the process, in the section below, describes the process of accessing and retrieving the data by using the search engines available from each of these clusters.

Figure 11: Identification of relevant sources of information for the rights of the child



(4) Step 4: Accessing and retrieving data

This section illustrates how to use the existing human rights databases in order to access information on State compliance from the relevant information sources identified in Figure 11: Identification of relevant sources of information. As illustrated in

Figure 10: there are four key stages in the process of accessing state compliance information: understanding the topic, translating the topics into keywords, identifying sources, and finally, accessing and retrieving data.

Regarding accessing and retrieving the information, we assessed compliance information gathered during the monitoring processes by the UPR, the treaty bodies and collected in the Universal Human Rights Index. Next, we assessed databases of the CoE, particularly regarding the ECtHR. We used the selected keywords, which were entered separately or in combination into the search engines, depending on the possibilities of the specific engine.

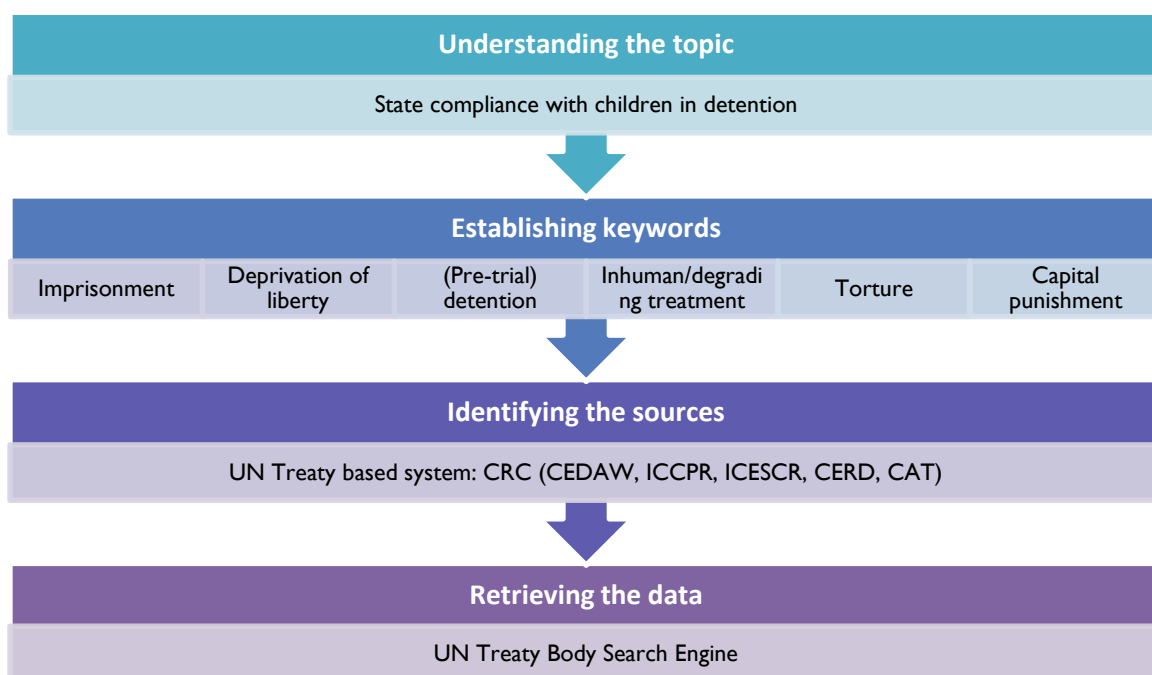
In the parts below we illustrate that process in each of the clusters. General information regarding the search engine is provided in boxes, highlighting the advantages and disadvantages of using such particular tool. In addition, a workflow with the steps taken is presented, followed by screenshots explaining how to access and retrieve information from the databases.

(a) *Cluster 1: The United Nations*

(i) *United Nations Treaty-based system*

Figure 12: Treaty Bodies information search illustrates the basic steps to take when searching information in regards to state compliance with children in detention. In the examination of state compliance with UN treaties, the starting point was the UN Treaty Body Search Engine. Box 10: UN Treaty Bodies search engine provides some general information regarding this engine and the accessing links. Figure 13: UN Treaty Based search engine shows the different parameters that can guide the query in this search engine.

Figure 12: Treaty Bodies information search



We started by the normative document with special focus on the topic at hand, the UNCRC, and selected its corresponding monitoring mechanism, the CRC. Then, we selected the region and countries, in this case, “Europe and Central Asia”, and “Turkey”. Next, we chose the type of documents to include in the query. The same type of search should be followed for each relevant treaty monitoring committee. Figure 14: Results page treaty based search shows the results page and the available options for conducting a new search.

Box 10: UN Treaty Bodies search engine

Website

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en

This database allows the user to find documents produced by United Nations Treaty Bodies, such as the CRC. When searching for human rights information, the user may select a country, a committee, a document type and a document. For instance, the user may select ‘concluding observations’ or ‘state party’s reports’.

Advantages: Facilitates search for specific documents.

Disadvantages: No keyword search.

Figure 13: UN Treaty Based search engine

The screenshot shows the 'Treaty bodies Search' page of the United Nations Human Rights Office. The page has a blue header with the UN logo and navigation links: Home, Your human rights, Countries, Human rights bodies, News and events, Human rights - New York, Publications and resources, and About us. Below the header, there are four main filter sections:

- Filter by State/Entity or Geographic Region:** Contains two lists of regions and countries. An annotation 'Select Geographic Region and/or State' points to these lists.
- Filter by Committee:** Contains a list of committees (CCPR, CED, CEDAW, CERD, CESC, CHAIRPERSONS). An annotation 'Tick box to select the Committee' points to this list.
- Filter by Document Type:** Contains two lists of document types. An annotation 'Select Document Type' points to the first list, and another 'Select Document' points to the second list.
- Filter by Symbol/Dates:** Contains a 'Symbol' field and 'From Date'/'To Date' fields. An annotation 'UN documents have a unique symbol in the top right of the Document, e.g. A/69/100' points to the 'Symbol' field.

At the bottom of the filters, there are 'SEARCH' and 'RESET' buttons. An annotation 'Click 'search' to confirm query' points to the 'SEARCH' button, and another 'Click 'reset' to reset query' points to the 'RESET' button.

Figure 14: Results page treaty based search

The screenshot shows the 'Results' page of the UN Treaty Based search engine. The page has a blue header with the UN logo and navigation links: Home, Your human rights, Countries, Human rights bodies, News and events, Human rights - New York, Publications and resources, and About us. Below the header, there is a 'Rights Bodies' section with a 'results' table. The table has columns: Document type, Treaty, COUNTRY, Symbol/Title, Publication Date, and Download. There are two rows of results. Annotations include:

- 'Choose criteria for a new search' pointing to the filter dropdowns.
- 'Click to execute a new search' pointing to the 'NEW SEARCH' button.
- 'Choose number of results per page' pointing to the 'Page size' dropdown.
- 'Click to view document' pointing to the 'View document' link in the 'Download' column.

At the bottom of the page, there is a 'Disclaimer' section.

(ii) *United Nations Charter-based system: The Universal Periodic Review*

The UPR of the Human Rights Council is another instrument providing relevant information on state compliance with human rights. The OHCHR provides a search engine for accessing information from the UPR. A general description of this search engine is provided in Box 11 Universal Periodic Review website.

Figure 15: UPR information search illustrates the process to access information gathered by the UPR with regard to compliance with children's rights in Turkey and the Netherlands. Again, four main stages can be distinguished: comprehending the topic, establishing keywords, source identification, and retrieving data. The workflow and the screenshots show the search and results regarding the Netherlands. Figure 16: Universal Periodic Review website shows the different search options that can be chosen, and indicates additional useful information on the UPR. We focused our search on "documentation" and "implementation". The results of this query are displayed in Figure 17: [Results of UPR search](#). On the left side, the screenshot shows available documentation on the different periodic review cycles of the Netherlands, and on the right side, the reader can see the resulting documents addressing "implementation".

Website: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

This link directs the user to all the documentation (by country) of the UPR and the UPR implementation. With respect to documentation, the user may select a country after which the user may view the countries national report, a compilation of UN information, the summary of stakeholders' information, the questions submitted in advance and the outcome of the review. With respect to UPR implementation, the user may select the implementation report for a country.

Advantages: Provides access to a compilation of UN information, resulting in a concrete overview of the state's compliance to human rights norms in general.

Disadvantages: No keyword search.

Box 11 Universal Periodic Review website

Figure 15: UPR information search

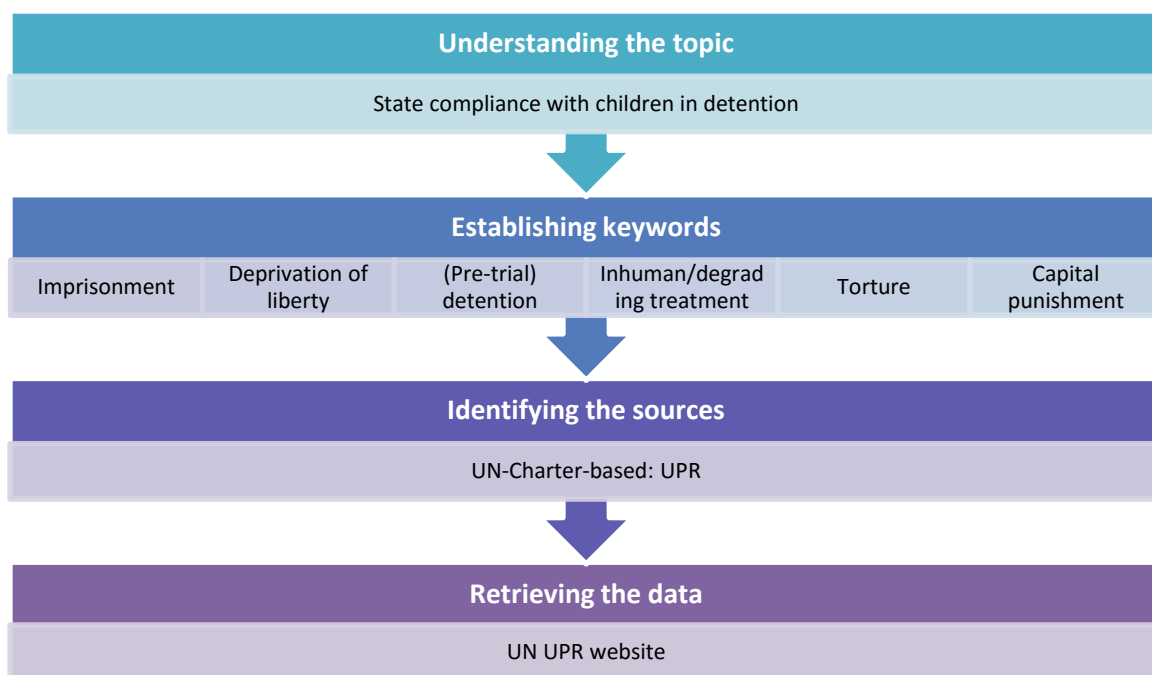


Figure 16: Universal Periodic Review website

United Nations Human Rights
Office of the High Commissioner for Human Rights

English FRANÇAIS ESPAÑOL РУССКИЙ العربية 中文

Home Your human rights Countries Human rights bodies News and events Human rights - New York Publications and resources About us

English > Human Rights Bodies > UPR

Universal Periodic Review

The Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world." – Ban Ki-moon, UN Secretary-General

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights situation in all countries. The UPR is a State-driven process, under the auspices of the Human Rights Council, which allows States to declare what actions they have taken to improve the human rights situations in their countries. As one of the main features of the Council, the UPR is designed to ensure that human rights situations are assessed.

The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251. It is a cooperative process which, by October 2011, has reviewed the human rights situation in all countries. Currently, no other universal mechanism of this kind exists. The UPR is one of the most innovative mechanisms of the Council. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.

Documentation by country and UPR implementation provide general information

Latest News
Calendar of reviews for the 2nd cycle (2012-2016)
For latest press releases related to the UPR, please click [here](#)

Meetings and Events
23rd session (2-13 November 2015) (timetable / list of troikas)
Selection of troikas for 21st, 22nd and 23rd session -- 13 January 2015 at 3 pm

See also
UPR home
UPR Sessions
Documentation (search by **country**)
UPR implementation (information provided by States)
UPR Fund for Participation
UPR Voluntary Fund for Financial and Technical Assistance
Calendar of reviews for 1st cycle (2008 to 2011)
Calendar of reviews for the 2nd cycle (2012 to 2016)
Background documents
Basic Facts about the UPR
NGOs and NHRIs
Contact information
Media information
Webcast

Keep an eye on upcoming sessions!

Useful information about the UPR

Figure 17: Results of UPR search

Universal Periodic Review Second Cycle - Netherlands

For first cycle reports of Netherlands, please see [here](#)

Only contributions submitted in one of the United Nations official languages are admissible and posted on this webpage

Date of consideration: Thursday 31 May 2012, 9:00 am - 12:30 am

National report¹: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Compilation of UN information²: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Summary of stakeholders' information³: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Corrigendum 1: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Contributions submitted in advance: [E](#)

Addendum 1: [E](#)

Addendum 2: [E](#)

Outcome of the review:

Report of the Working group: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Addendum 1: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Decision on the outcome: [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Related webcast archives

UPR implementation (information provided by States)

Documents posted as received

Country	Implementation report
Argentina	S Second cycle report S and Addendum S
Armenia	E
Australia	1, 2, 3
Austria	1, 2
Azerbaijan	E
Bahrain	E
Belgium	F
Belarus	E and R (1-2)
Benin	F
Bulgaria	E
Chile	S Addendum E and S
Colombia	S and 1, 2 S
Costa Rica	S
Croatia	E, Cover
Czech Republic	E, Cover
Democratic Republic of Congo	F
Ecuador	S

(iii) Combined information: The Universal Human Rights Index

The Universal Human Rights Index provides access to human rights recommendations issued by three key pillars of the UN human rights protection system: the treaty bodies, the special procedures and the UPR. It is the only online tool compiling recommendations from all three systems, and, for that reason, highly recommended. Box 12: Universal Human Rights Index provides more information on this search engine.

The Universal Human Rights Index provides the option to conduct a “document search”, designed for searching within specific documents by using specific keywords, or an “annotation search”, designed for searching specific keywords across “recommendations” or “observations”.

The “annotation search” is the default search option, as Figure 18: Universal Human Rights Index annotation search shows, giving the possibility to choose between that “basic search” and an “advanced search”. When the “advanced annotation search” is selected, specific annotations (observations or recommendations) and type of documents (concluding observations, country visits, etc.) can be selected. The search can also be narrowed down by selecting the type of body (treaty bodies, special procedures or UPR) and/or choosing specific bodies. The documents can also be filtered by UPR session and by “persons affected” (children, girls, indigenous peoples, etc.), as Figure 19: Universal Human Rights Index advanced annotation search illustrates.

The “Document search” option of the Universal Human Rights Index is more general, and provides less filtering options, as Figure 19: Universal Human Rights Index advanced annotation search illustrates. In this case, all the selected keywords were used, focusing on Turkey and the Netherlands.

Box 12: Universal Human Rights Index

Website: uhri.ohchr.org

The Universal Human Rights Index provides user-friendly access to country-specific human rights information originating from international human rights mechanisms in the UN system: the treaty bodies, the special procedures and the UPR.

This database gives the option to conduct a “document search”, designed for searching within specific documents by using specific keywords, or an “annotation search”, designed for searching specific keywords across “recommendations” or “observations”. In the annotation search, the user may enter keywords, symbols, the year of publication and annotation type. Also, the user may filter by state, entity or geographic region, right, affected persons and by UPR recommendations. With respect to the document search, the user may enter keywords, symbols and the year of publication. Also a state, entity or geographic region, body or body type may be selected.

Advantage: Multiple sources and keyword search. The result of the search provides an easy to access overview of relevant human rights information.

Disadvantage: This search might yield a wealth of results; hence the search has to be very precise to avoid an overflow of non-relevant information.

Figure 18: Universal Human Rights Index annotation search

Annotation search

SEARCH BY KEYWORD, SYMBOL AND YEAR OF PUBLICATION

Enter keyword(s)

Symbol

Select search type

Annotation type

Select annotation type

Year of publication

Press to select year

FILTER BY STATE/ENTITY OR GEOGRAPHIC REGION

Region

- ☐ Africa
- ☐ All
- ☐ Asia-Pacific
- ☐ Eastern Europe
- ☐ Latin America and the Caribbean
- ☐ Western Europe & Others

Select Region

State/Entity

- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados

Enter keyword(s). If 'reference only' is ticked, one may select 'match only'. Select State/Entity

FILTER BY RIGHT

Select Right

- ☐ I. Right to self-determination
 - ☐ 1 Right of self-determination
- ☐ II. General Framework of Implementation
 - ☐ 2 Scope of international obligations
 - ☐ 2.1 Acceptance of international norms
 - ☐ 2.2 Reservations
 - ☐ 2.3 Derogation
 - ☐ 3 Cooperation with human rights mechanisms and UN institutions
 - ☐ 3.1 Cooperation with treaty bodies
 - ☐ 3.2 Cooperation with special procedures
 - ☐ 3.3 Cooperation with other international mechanisms and institutions

FILTER BY DOCUMENT TYPE, BODY OR BODY TYPE

Document type

- ☐ Addendum
- ☐ Addendum to the working paper
- ☐ Comments of the State under review
- ☐ Comments on concluding observations
- ☐ Concluding observations
- ☐ Country visit report
- ☐ Country visit report - SPT
- ☐ Decision under early-warning and urgent action procedures

Tick box to select Document type

Body type

- ☐ Others
- ☐ Special procedures
- ☐ Treaty bodies
- ☐ Universal Periodic Review

Select Body type

Body

- ☐ Ad hoc Missions
- ☐ CAT
- ☐ CED
- ☐ CEDAW
- ☐ CERD
- ☐ CESC
- ☐ CMW
- ☐ Commission of Inquiry

Select Body

Figure 19: Universal Human Rights Index advanced annotation search

Figure 20: Universal Human Rights Index document search

FILTER BY AFFECTED PERSONS

Affected persons

- ☐ children
- ☐ children in street situations
- ☐ disappeared persons
- ☐ general
- ☐ girls
- ☐ human rights defenders
- ☐ indigenous
- ☐ internally displaced persons
- ☐ judiciary

Select affected persons

FILTER BY UPR RECOMMENDATIONS

UPR Recommending State/Entity

Select UPR Recommendation State/Entity

UPR Position of examined State/Entity

Select UPR Position of examined State/Entity

UPR Session

Select UPR Session

Confirm query

SEARCH

English Français Español русский العربية 中文

UNIVERSAL HUMAN RIGHTS INDEX
OHCHR.org

Annotation search | Document search

Document search

SEARCH BY KEYWORD

Keyword

Search type

All of these words

Year of publication

Any to Any

Press to select year

FILTER BY STATE/ENTITY OR GEOGRAPHIC REGION

Region

Africa

All

Asia-Pacific

Eastern Europe

Latin America and the Caribbean

Western Europe & Others

State/Entity

Afghanistan

Albania

Algeria

Andorra

Angola

Antigua and Barbuda

Argentina

Armenia

Australia

Select State/Entity

FILTER BY BODY OR BODY TYPE

Body type

Others

Special procedures

Treaty bodies

Universal Periodic Review

Body

Ad hoc Missions

CAT

CED

CEDAW

CERD

CESCR

CMW

Commission of Inquiry

CRC

Select Body

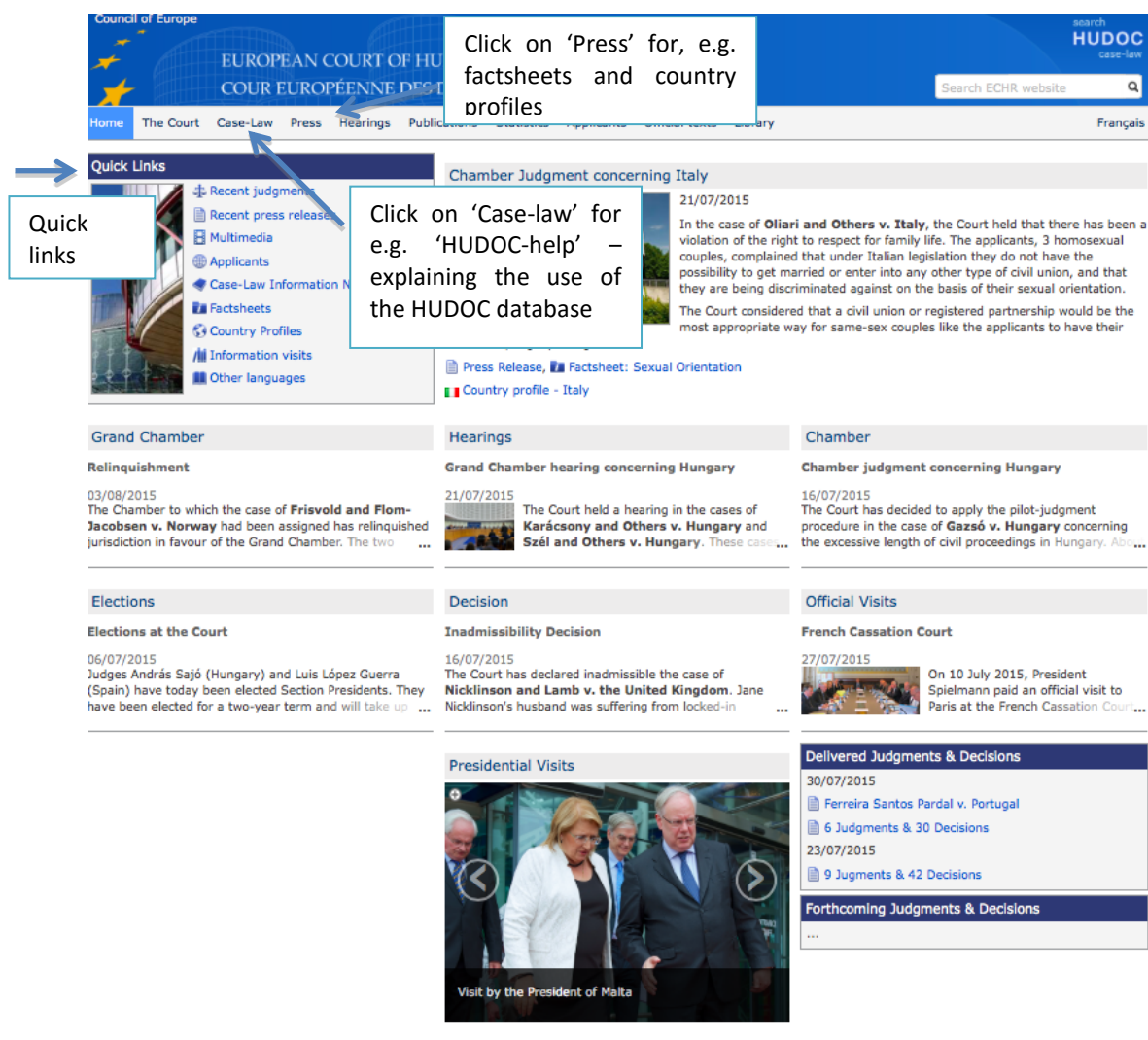
Press 'search' to confirm

SEARCH

(b) *Cluster 2: The Council of Europe*

The general website of the ECtHR provides easy access to useful information on state compliance with the ECHR, as illustrated by Figure 21: Council of Europe website. This could be a starting point for the retrieval of general human rights information at European level.

Figure 21: Council of Europe website



However, the CoE has provided a search engine focusing on children specifically, illustrated in Figure 22: Council of Europe Theseus database. This seems advantageous given our interest in particular. Nevertheless, this search engine does not provide access to the entire document, as

Box 13: Theseus Database explains.

Figure 22: Council of Europe Theseus database

The screenshot shows the Council of Europe Theseus database search interface. The top navigation bar includes links to 'The Council in brief', 'Human Rights', 'Democracy', 'Rule of Law', 'Organisation', '47 Countries', 'Topics', and 'Newsroom'. The main header reads 'Council of Europe > Democracy > Building a Europe for and with children'. The left sidebar contains a menu with categories: 'HOME', 'THE PROGRAMME', 'CHILDREN'S RIGHTS', and 'CHILDREN AND VIOLENCE'. The main search area is titled 'Search' and includes a 'Reference / Keywords' section with a text input field. A callout box points to this field with the text: 'Enter keyword(s). If 'reference only' is ticked, one may select 'match only'.' Below the input field, there is a 'Search on' section with radio buttons for 'every word' (selected) and 'any word'. A callout box points to these buttons with the text: 'Choose 'every word' or 'any word''. Below this, there is a 'Search period' section with 'Between' and 'and' date pickers, and a 'Year or date (eg. 2003 or 31/12/2002)' input. A callout box points to the date input with the text: 'Enter date'. Below the date input, there is a 'Document' section with a dropdown menu set to 'English'. A callout box points to this dropdown with the text: 'Select Language'. Below the document dropdown, there is a 'Subject' section with a dropdown menu set to 'All Countries and Regions'. A callout box points to this dropdown with the text: 'Select country'. At the bottom of the search area, there are 'Clear all' and 'Search' buttons. A callout box points to the 'Clear all' button with the text: 'Click 'clear all' to reset query'.

Box 13: Theseus Database

Website: www.coe.int/t/dg3/children/WCD/simpleSearch_en.asp

The Theseus database contains the case law of the ECtHR on children's rights. The user may enter keywords, date(s), language of the document and a specific country.

Advantages: The list of results provides the user with the facts and ruling of the case in one or two sentences.

Disadvantages: The entire decision is not available. For accessing the full text of the ruling, the user is required to enter the case details in the HUDOC database of the ECtHR. It is important to note that Theseus includes cases up to 2014 only.

The process of data collection, divided into four stages, followed in relation to the CoE is illustrated by Figure 23: Council of Europe information search. We focused on the ECHR as the main document, and the ECtHR as the main monitoring body. The information search was narrowed down by using the selected keywords, the language of the results (English), and the countries in question (Turkey and The Netherlands).

Nevertheless, in order to access the full document, a new search has to be conducted in HUDOC, the search engine of the ECtHR. The search can be conducted according to a variety of parameters, displayed in Figure 24: HUDOC search engine.

Figure 23: Council of Europe information search

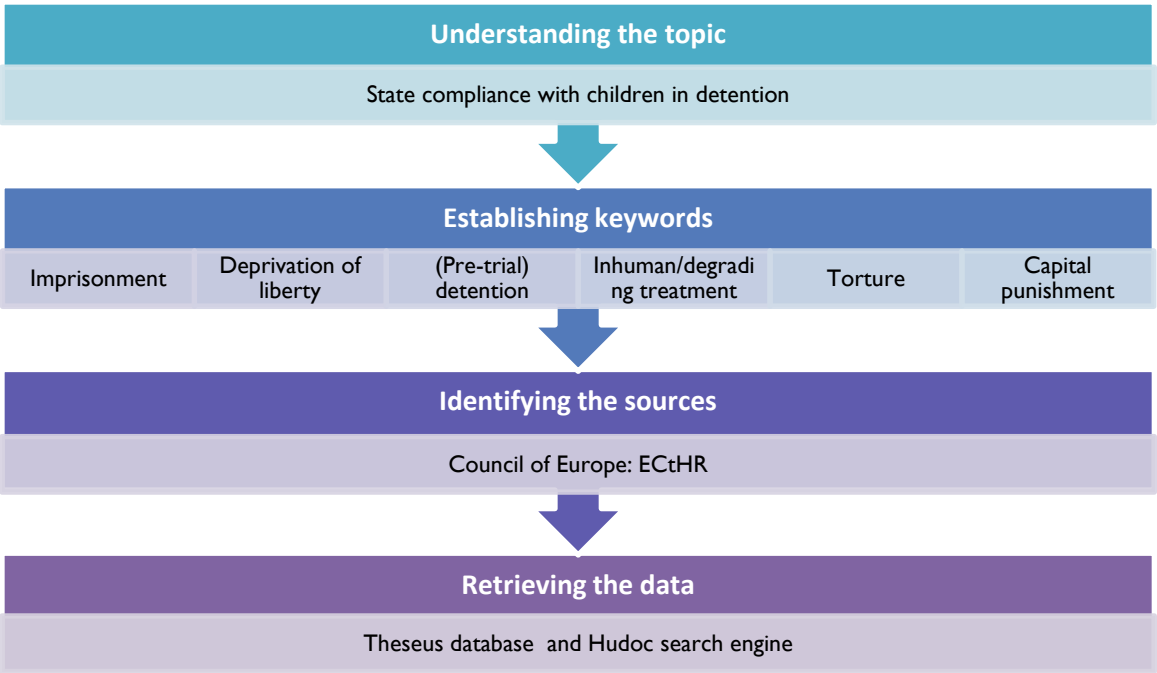


Figure 24: HUDOC search engine

The screenshot displays the HUDOC search engine interface with several annotations highlighting key features:

- Click on 'clear all' to reset query:** Points to the 'CLEAR ALL' button in the search criteria section.
- Enter key words:** Points to the search input field at the top.
- Click on 'search' to confirm query:** Points to the 'SEARCH' button at the top right.
- Select case-law collection:** Points to the 'COLLECTIONS' sidebar on the left, which lists various document types like Grand Chamber, Chamber, Committee, etc.
- Select sorting order:** Points to the 'Sort by: Relevance' dropdown menu.
- Enter case details:** Points to the 'ADVANCED SEARCH' modal window, which includes fields for Case Title, Application Number, Date, Conclusion, Resolution Number, and Keywords.
- Narrow down the search with filters:** Points to the 'FILTERS' sidebar on the left, which includes sections for LANGUAGE, IMPORTANCE, ARTICLE, VIOLATION, KEYWORDS, and ORGANISATION.
- Enter symbol:** Points to the 'KEYWORDS' section in the filters sidebar.

The main search results area shows a list of cases, including 'CASE OF ZAMMIT AND ATTARD CASSAR v. MALTA', 'CASE OF FERREIRA SANTOS PARDAL v. PORTUGAL', 'CASE OF VORONKOV v. RUSSIA', 'AFFAIRE FERREIRA v. PORTUGAL', 'CASE OF E.A. v. G.R.', 'AFFAIRE ZAMMIT E', and 'CASE OF LOISEL v. FRANCE'. Each entry includes a brief description of the case and links for 'Case Details', 'Press Release', and 'Related'.

4. Dynamics over time

In order to establish the dynamics of state compliance, it is useful to conduct a systematic search in relation to the research topic throughout the documents, comparing different periods of time (sessions, cases, etc.). A first approximation to the dynamics of state compliance over time could be to conduct a frequency analysis of the “concerns” and “urges”, in relation to the “welcomes”.

Generally speaking, when “concerns” and “urges” outnumber the “welcomes”, there is obvious reason to believe that state compliance requires improvements. However, systematically exploring the substance of the “welcomes”, “concerns”, “urges” and “recommendations” made by the bodies will provide a more accurate and detailed overview of the situation within a state in relation to a specific research topic. In this regard, the reader should take special note of the “concerns”, “recommendations” and “urges”, since consequent state action is expected. In subsequent documents, complying measures adopted by the state should appear among the “welcomed” measures.

For the present report, due to time constraints and because its mere illustrative purpose, a frequency analysis of the use of those words was conducted with NVIVO, a software program designed to assist qualitative data analysis. In this analysis, stem and derived words were included. It is important to note that the results do not provide information about content or context in which these terms were used. For a substantial analysis, the quotation containing these terms should be analysed, and all references to the specific topic at hand highlighted. A comparison then, of the relevant quotes could then provide information of the dynamics of state compliance with such topic over time.

The tables below are an illustration of the compilation of the words “concerns”, “welcomes”, “urges” and “recommendations” found in the concluding observations of the CRC of the Netherlands and Turkey. An examination of the substantial issues raising concern, which would provide an overview of the extent of the compliance of Turkey and the Netherlands with the human rights of children in detention, exceeds the purpose of this report.

Table 9: Frequency analysis for Turkey

	Welcomes	Recommends	Urges	Concerns
Concluding Observations Turkey 2001	3	45	0	45
Concluding Observations Turkey 2012	12	52	7	48

Table 10: Frequency analysis for the Netherlands

	Welcomes	Recommends	Urges	Concerns
Concluding Observations Netherlands 1999	8	17	8	23
Concluding Observations Netherlands 2004	10	39	3	39
Concluding Observations Netherlands 2009	15	67	8	45
Concluding Observations Netherlands 2015	19	46	8	41

5. Concluding remarks

This report provides a 'guide' for EU officials on how to use the available human rights databases in order to access concrete information for assessing state compliance with the rights of the child. It describes, in a user-friendly style, basic steps to successfully complete information requests and retrieve relevant data. It suggested ways for defining and narrowing down the search for information. Although different ways are possible, Section Defining our search for children's right information provides a general and user-friendly approach. Section IV.C.3 outlined a basic process for fulfilling information requests in relation to state compliance with human rights norms, divided into a theoretical exploration (understanding the topic), a practical deconstruction of the topic (defining searching keywords), identifying the relevant sources of information, and finally, retrieving the data through search engines. Concluding, a suggestion on how to handle data in order to explore the dynamics of state compliance over time was provided in Section Dynamics over time.

V. Social indicators⁴⁰⁰

A. Think-piece on the social indicators as human rights indicators

1. Introduction

The think-piece provides an analysis of social indicators/data and the extent to which they contribute relevant human rights information. What can be said about the relationship between the normative content of social rights and the information available? Is relevant information available? What has to be taken into account when using social indicators as human rights information? Are the indicators in use in the social domain living up to the ambition of the EU of mainstreaming human rights externally and internally and of intensifying work on social rights in all efforts?⁴⁰¹

The analysis of this section departs in the strategies of the European Union on social development generally and poverty and social exclusion specifically. In 2010, the Europe 2020 Strategy was established. The Council set up a target of reducing poverty by 20 million people by 2020. Three main indicators were used to assess whether this goal of promoting social *inclusion* through the reduction of poverty was on track or being achieved: measuring households at risk of poverty, material deprivation (nine sub-indicators), and joblessness.⁴⁰² In addition to these social indicators which related to the 2020 target of poverty and social exclusion reduction, a number of standard of living indicators have been used by the EU in its monitoring of social development.⁴⁰³ Both of these indicator sets are labelled the European Social Indicators. The additional standard of living indicators also include indicators on access to health services. However, the monitoring of both indicator sets is undertaken by the Social Protection Committee and its Sub-Group on Indicators.

The portfolio of European Social Indicators, maintained by the Indicators Sub-Group of the SPC, is the object of this think-piece. Against the backdrop of the EU commitment to mainstream human rights in all its internal and external policies, the think-piece examines how relevant and comprehensive the SPC portfolio is in monitoring the enjoyment of social and economic rights, as specified in the international human rights framework. How consistent is the SPC portfolio in its coverage of social and economic rights? What gaps can be identified? And how can the indicators be adjusted or re-

⁴⁰⁰ This contribution was provided by Lena Kähler, Kristoffer Marslev and Hans-Otto Sano, Danish Institute for Human Rights.

⁴⁰¹ The Council of the European Union Stated that: 'The EU will intensify its efforts to promote economic, social and cultural rights; the EU will strengthen its efforts to ensure universal and non-discriminatory access to basic services, with a particular focus on poor and vulnerable groups'. Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' 11855/12 of 25 June 2012, pp. 2-3.

⁴⁰² Eva Maria Lassen and others, 'Report on Factors which enable or hinder the Protection of Human Rights' (2014), Frame Deliverable 2.1, available at <<http://www.fp7-frame.eu/wp-content/materiale/reports/03-Deliverable-2.1.pdf>> accessed 8 October 2015, p. 69.

⁴⁰³ The EU-SILC project (statistics on income and living conditions) was launched in 2003 on the basis of a "gentlemen's agreement" in six Member States (Belgium, Denmark, Greece, Ireland, Luxembourg and Austria) and Norway. The start of the EU-SILC instrument was in 2004 for the EU-15 (except Germany, the Netherlands, the United Kingdom) and Estonia, Norway and Iceland. After 2007, EU SILC became the reference source of statistics on income and social exclusion in the European Union.

Eurostat, 'European Union Statistics on Income and Living Conditions (EU-SILC)', available at <<http://ec.europa.eu/eurostat/web/microdata/european-union-statistics-on-income-and-living-conditions>> accessed 8 October 2015.

conceptualized to enhance their human rights relevance? To shed light on these questions, the SPC portfolio has been assessed against three social and economic rights that are closely related to the areas covered by the SPC: the right to an adequate standard of living, the right to health and the right to social protection. In each case, the authors assess the correspondence between the SPC indicators and the substantive contents of the specific right, as specified in the International Covenant on Social, Economic and Cultural Rights (ICESCR) and interpreted by the Committee on Social, Economic and Cultural Rights (CESCR), relevant Special Rapporteurs and other authoritative sources.

2. The European social indicators and the Social Protection Committee

An advisory committee to the Employment and Social Affairs Council (EPSCO), the Social Protection Committee (SPC) is mandated to monitor social conditions and trends in social policies in EU member States. For this purpose, an Indicators Sub-Group was set up in 2001, with the purpose to develop and define a portfolio of EU social indicators. The portfolio is in continuous process, but currently covers three policy areas: social inclusion, pensions and health care and long-term care. In addition, a number of indicators have been developed for the purpose of monitoring the Europe 2020 target on poverty and social exclusion: three components on respectively the risk of monetary poverty, severe material deprivation and (quasi-)joblessness together make up the headline indicator on the target of reducing the number of people in or at risk of poverty and social exclusion by 20 million.⁴⁰⁴

3. The poverty and inclusion indicators and human rights

The European Social Indicators and the related monitoring by the Social Protection Committee have not been seen as a form of human rights monitoring by SPC.⁴⁰⁵ The objectives of social policy are not defined in human rights terms. Accordingly, the indicator portfolio of SPC refers only occasionally to human rights.⁴⁰⁶ The overriding question is why the SPC shies away from conceptualizing these

⁴⁰⁴ Monetary poverty is measured as household income at less than the 60% of the country average of household income. Material deprivation by measuring access to a washing machine, a car, a telephone or by capability measures such as ability to heat one's home or ability to face unexpected expenses. See also Table 11: SPC indicators relevant to living standards below. Joblessness is measured by the employment status of household members. By 2011, close to 9% of Europeans lived in severe material deprivation, 17% lived in income poverty, and 10% of Europeans lived in households where no one had a job. See: European Commission, 'Poverty and social exclusion', available at <<http://ec.europa.eu/social/main.jsp?catId=751&langId=en>> accessed on 17 December 2015.

⁴⁰⁵ Starl K. and others, 'Baseline Study on Human Rights Indicators in the Context of the European Union' (2015), Frame Deliverable 13.1, available at <<http://www.fp7-frame.eu/wp-content/materiale/reports/12-Deliverable-13.1.pdf>> accessed 8 October 2015, p. 33.

Interviewees of the members of the sub-group on indicators believed that comparable fundamental rights indicators would be useful, but also indicated that such indicators were not really established. The Annual Report of the Social Protection Committee 2014 refers to rights (child rights, social security rights, pension rights, and rights of persons with disabilities, and unemployment rights, but human or fundamental rights are not terms used in the report.

Social Protection Committee, *Social Europe - Aiming for inclusive growth* (Publications Office of the European Union 2014).

⁴⁰⁶ The European Commission stated that:

Social inclusion policies need to dovetail with effective **antidiscrimination policies**, as for many groups and individuals the roots of poverty and hardship very often lie in restrictions from opportunities and rights that are available to other groups. Antidiscrimination and upholding human rights have gained increasing importance in the EU legal order, but full implementation of EU antidiscrimination legislation at national level needs to be supported by relevant policies and

indicators as human rights indicators. Path dependency may answer part of the question: because of the fact that these indicators were not originally conceptualized as human rights indicators, the SPC prefers to stick to this line because a reconceptualization may raise demands for new indicators (as illustrated below). Challenges may thus not only be discursive - what nomenclature to use - but also political and practical: States may prefer not to raise the bar of legal accountability that such a reconceptualization may imply. To the SPC sub-group of indicators challenges may also be practical: new normative angles will provide new challenges of measurement. In the following, the purpose is not to explain *why* this practice of a relatively marginal positioning of human rights in the social field prevails; rather to analyse the European Social Indicators and identify gaps and overlaps with human rights, assessing opportunities of identifying a closer linkage at a discursive and a practical level.

4. The human rights gaps of existing measurement tools

Indicators related to material living conditions occupy a central position in the portfolio of European Social Indicators developed by the SPC. A number of relevant indicators are listed under the heading of “social inclusion”, including indicators on housing space and costs. Moreover, the material deprivation component of the headline indicator on the Europe 2020 target contains relevant information on housing conditions, food consumption, ownership of material goods etc. These components of the SPC overlap with the right to an adequate standard of living under the Covenant on Economic, Social and Cultural Rights. The following section provides an assessment of the extent to which the SPC indicators in use provide relevant information on normative content of the right to an adequate standard of living.

a) Adequate living standards and poverty and social inclusion

Table 11: SPC indicators relevant to living standards

Indicator	Definition
Severe material deprivation rate	Share of population living in households lacking at least 4 items out of the following 9 items: i) to pay rent or utility bills, ii) keep home adequately warm, iii) face unexpected expenses, iv) eat meat, fish or a protein equivalent every second day, v) a week holiday away from home, or could not afford (even if wanted to) vi) a car, vii) a washing machine, viii) a colour TV, or ix) a telephone.
Depth of material deprivation	Unweighted mean of the number of items lacked by the population concerned out of the nine items retained for the definition of the “material deprivation” indicator.
Housing costs	Percentage of the population living in a household where total housing costs (net of housing allowances) represent more than

concrete actions. Closer integration between social and antidiscrimination policies is crucial to address the specific disadvantages affecting large.

European Commission, ‘The European Platform against Poverty and Social Exclusion: A European Framework for Social and Territorial Cohesion’ COM(2010) 758 final, p. 9.

Overcrowding	40% of the total disposable household income (net of housing allowances).
	Percentage of people living in an overcrowded household.

Despite the fact that the portfolio of SPC indicators includes information relevant to an assessment of the right to an adequate standard of living, significant gaps and challenges can be identified. In some cases, these shortcomings may be mitigated by adding existing data, already available through Eurostat, while in others, additional data collection is required. In the following, five shortcomings will be discussed.

Limited coverage of certain aspects of the right to housing

While some of the European Social Indicators are relevant to the right to housing, the coverage of certain important aspects remains somewhat limited (see Table 13: Right to housing). To start with, the *availability* dimension only incorporates heating and washing facilities, neglecting other facilities that may be ‘essential for health, security, comfort and nutrition’, such as availability of safe drinking water, lighting and sanitation.⁴⁰⁷

No data on security of tenure, homelessness and housing location

A number of aspects, which the CESCR has emphasized as important to the right to housing, are not covered by the European Social Indicators (see Table 13: Right to housing). Neither the *security of legal tenure* nor the issues of *accessibility* or *location* can be gauged from the SPC portfolio. In the case of the two former, this may reflect a general lack of available data. Eurostat contains no data on housing-related legal-administrative procedures, such as the number of forced evictions or the access to redress mechanisms. Moreover, information on the extent and nature of homelessness is a glaring omission from the portfolio, again reflecting a lack of comprehensive data on the issue. Without reliable data on homelessness, and not least on its possible discriminatory biases, a full assessment of the accessibility to housing services cannot be made.

Inadequate data on the right to food

Although the only right-to-food-relevant information contained in SPC portfolio overlaps with both the availability and accessibility aspects, it is, arguably, a somewhat narrow measure. According to General Comment No. 12 of the CESCR, dietary needs implies that ‘diet as a whole contains a mix of nutrients for physical and mental growth’,⁴⁰⁸ and thus requires an assessment that is broader than the ability to eat meat, fish or a protein equivalent every second day. In this case, Eurostat contains some relevant data, in particular on consumption of fruits and vegetables. Furthermore, information on the financial

⁴⁰⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015, para. 8b.

⁴⁰⁸ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en> accessed 7 October 2015, para. 9.

burden of food consumption is lacking from the SPC portfolio - an indicator, which could provide valuable insight into the economic aspect of food accessibility (see Table 14: Right to food).

No information on the right to water

None of the aspects identified by the CESCR as critical to the right to water can be assessed through the SPC portfolio (see Table 15: Right to water). This omission, however, may reflect a general lack of data in the European statistical system. The only data relevant to the right to water that can be identified in the Eurostat database relates to the availability of water, specifically data on the quantity of “water made available for use” and “population connected to public water supply”. Although these indicators are relevant in principle, the inability to disaggregate below the national level, arguably, makes them less well suited in e.g. detecting discrimination. Moreover, no data on the quality of water, including safety, or on the various aspects of accessibility is provided. For these reasons, existing data provides an inadequate basis for a comprehensive assessment of the right to water. Improving the coverage of this aspect of the right to an adequate standard of living is, therefore, likely to require additional data collection.

Use of composite indicator

Finally, although the composite indicator on material deprivation certainly contains information that is relevant to the right to an adequate standard of living, the fact that it lumps together nine different deprivations into one metric arguably poses a challenge. Specifically, it obscures the interpretation of observed changes. For instance, it is impossible to assess whether a fall in material deprivation reflects, say, improvements in the access to food or falling prices on televisions. This is particularly problematic in the case of food, for which the only relevant information in the entire SPC portfolio is contained as a sub-component of the material deprivation indicator, thus precluding any useful assessment of the right to adequate food.

b) *The right to health and poverty and social inclusion*

Overall, the SPC indicators cover well the multiple dimensions of the right to health. The majority of core obligations are covered by the SPC indicators and the *Availability, Accessibility, Acceptability, and Quality* criteria is appropriately reflected. Many of the indicators are disaggregated on age and gender. Some of the important outcome indicators (life expectancy and healthy life years) are disaggregated by socio-economic status (education and income), thus enhancing the possibilities of detecting potential discrimination.

The large number of “self-reported” SPC indicators may relate to the human rights principle of participation. Including people in the assessment of their health and thereafter basing health planning on data to which people have contributed tallies well with General Comment No. 14, which sets out that ‘effective provision of health services can only be assured if people's participation is secured by States’.⁴⁰⁹ The many SPC outcome indicators provide solid information on health status as well as the impact of the health services provided. The indicators assessing *healthy life years* further contribute to

⁴⁰⁹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 54.

the understanding of health as concerning “conditions in which to lead a healthy life” and not merely a race towards the highest life expectancy, which is also in line with the General Comment No. 14.

However, gaps remain between the right to health and the SPC indicators. For this gap analysis, three gaps will be highlighted. However, suggestions for improvement of other SPC indicators not included in this analysis can be found in Table 19: The right to health and SPC indicators - gap assessment and suggested improvements. Three gaps are elaborated in the text below. In section e, suggestions are given to alternative indicators, which may increase the right to health relevance of the SPC indicators.

Mental health

Among the SPC indicators there is not an indicator reflecting mental health and well-being. This is a serious gap, as the ICESCR explicitly recognises ‘The right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.⁴¹⁰ The issue of mental health remains under-prioritised in many health systems, yet it poses a significant burden of disease in Europe.⁴¹¹

Reproductive, maternal and child health care

In the context of SPC indicators, the core obligation to ensure reproductive, maternal and child health is covered only by a couple of outcome indicators on child and perinatal mortality. However, to reflect on the fact that the issue of reproductive health pertains to more than mortality rates, additional structure and process indicators on reproductive, maternal and child health would be beneficial. General Comment No. 14 describes reproductive, maternal and child health as including, yet not limited to, access to family planning, pre- and post-natal care and emergency obstetric services.⁴¹²

Accountability

The right to health requires that there are effective, transparent and accessible monitoring and accountability mechanisms available to ensure that those bearing obligations to the right to health are being held accountable for their conduct. Monitoring peoples’ State of health is in itself a means to accountability as the monitoring of health and progress over time enables States to recognize when policy adjustments are required. In order to reflect the right to health, the Special Rapporteur on the Right to Health has suggested an indicator which measures ‘the degree to which accessible and effective monitoring and accountability mechanisms are available’.⁴¹³

⁴¹⁰ International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 3 January 1976), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 7 October 2015, Art. 12 (1).

⁴¹¹ United Nations Human Rights Council, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras, A/HRC/29/33 of 2 April 2015, available at <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>> accessed 7 October 2015, paras. 83-84.

⁴¹² United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015.

⁴¹³ United Nations Commission on Human 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 of 3 March 2006, available at <<http://daccess-dds->

c) *The right to social security*

The SPC indicators are categorised in two portfolios; one on *social inclusion* and one on *pension*. The majority of the indicators consist of outcome indicators on poverty such as poverty rate, material deprivation rate etc. (see Table 23: SPC indicators on social inclusion and pension). While not explicitly framed as social security indicators, the SPC portfolios include aspects of social security. As General Comment No. 19 points out, social security is meant to protect people from situations of risk, which could otherwise lead to poverty. Thus, the solid SPC outcome indicators on poverty could serve as right to social security outcome indicators as well.

However, despite of the numerous strong SPC outcome indicators, the overall coverage of the normative aspects of the right to social security among the SPC indicators is limited. As it appears from Table 24: The right to social security and SPC indicators. Gap assessment and suggested improvements, only a few of the SPC indicators fall under the normative aspects of the right to social security. While many SPC indicators on poverty offer a comprehensive list of outcome indicators for the right to social security, structure and process indicators are not well reflected, for instance core obligations to ensure access to social security schemes or measurements of the affordability of a social insurance.

The gap between the SPC indicators and the right to social security extends beyond the normative aspect of the right to also include the underlying human rights principles of non-discrimination and accountability. The core obligations of the right to social security stress these principles; however, they are only scarcely reflected in the SPC indicators.

Non-discrimination

Many of the SPC indicators are disaggregated by age and gender, which enhances the possibility of detecting potential discrimination towards these groups. However, further disaggregation by for example socio-economic status (income and/or education), disability or employment status – in accordance with the General Comment No. 19 - would benefit the process of ensuring non-discrimination to social security.⁴¹⁴ Additionally, to ensure access to social security on a non-discriminatory basis, disaggregating SPC data by geographical area would be relevant.

Accountability

As outlined in the initial part of this analysis, the SPC indicators may serve to monitor the potential outcomes of an insufficient social security system; however, the lack of SPC process and structure indicators reflecting the core obligations and key elements of the right to social security limit the extent to which monitoring based on the SPC indicators can be used for accountability purposes. Another aspect of accountability, redress mechanisms, is absent among the SPC indicators as well. Inspiration for a supplementary indicator to include this aspect could be found at the OHCHR, which suggests to assess the 'proportion of received complaints on the right to social security investigated and

ny.un.org/doc/UNDOC/GEN/G06/114/69/PDF/G0611469.pdf?OpenElement> accessed 7 October 2015, para. 49 c (v).

⁴¹⁴ European Commission, 'The European Platform against Poverty and Social Exclusion: A European Framework for Social and Territorial Cohesion' COM(2010) 758 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0758:FIN:EN:PDF>> accessed 7 October 2015.

adjudicated by the national human rights institution, human rights ombudsperson or other relevant mechanisms and the proportion of these responded to effectively by the Government'.⁴¹⁵

⁴¹⁵ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012).

Box 14: Opportunities using Eurostats data to enhance the rights-based focus of European social indicators

Housing

Relevant indicators are available in Eurostat, many of which are also included in the SPC's indicative list of contextual information to supplement the core indicators. These include the "share of total population having neither a bath, nor a shower in their dwelling", the "share of total population not having indoor flushing toilet for the sole use of their household" and the "share of total population considering their dwelling as too dark". **Elevating these to core indicators could be one way to ensure that the coverage of the availability aspect of the right to housing is better covered by the European Social Indicators.** Likewise, the habitability dimension, which is present in the SPC portfolio in the form of the indicator on overcrowding, could be supplemented by a Eurostat indicator, currently proposed as contextual information, on the "share of total population living in a dwelling with a leaking roof, damp walls, floors or foundation, or rot in window frames of dwelling".

Housing location

The absence of location-related indicators in the SPC portfolio could partly be mitigated by existing data. In particular, Eurostat provides relevant data on the share of households experiencing "pollution, grime or other environmental problems" and "crime, violence or vandalism in the area". **Data on the locational access to social facilities such as hospitals and schools - which according to the CESCR represents an important dimension of housing adequacy - seems to be lacking and would require additional data collection.**

Right to food

In this case, Eurostat contains some relevant data, in particular on consumption of fruits and vegetables. Furthermore, information on the financial burden of food consumption is lacking from the SPC portfolio - an indicator, which could provide valuable insight into the economic aspect of food accessibility (see Table 14: Right to food).

Composite indicator on the right to food

Two improvements to the use of the composite indicator can be considered in order to improve its human rights relevance. **First, sub-components could be systematically included as separate indicators in the portfolio, allowing for a more nuanced interpretation; second, and in parallel, the mix of elements contained in the material deprivation indicator could be adjusted to better reflect the normative content of the right to an adequate standard of living, which would require integration of additional data on the right to food and the right to water.**

Mental health

Eurostat offers an indicator, which includes mental health in an assessment of occupational health: 'Self-reported consultation of a psychologist or psychotherapist'. This indicator could be added to the SPC indicators in order to reflect also mental health. Additionally, WHO collects data on mental health for example "Government expenditures on mental health as a percentage of total government expenditures on health."

Reproductive and maternal health

The Eurostat indicators offer little to add on this issue; however, **several of the proposed SDG indicators could be taken into account. Both Goal 3 on health and Goal 5 on women empowerment include proposed indicators, which could be applied** (see Table 19: The right to health and SPC indicators - gap assessment and suggested improvements).

On accountability and health rights

Eurostat assesses Europeans' "awareness of redress"¹, thus investigating the extent to which people know their rights and know about institutions or mechanisms to turn to in case of breached rights.

Social security in general

The last column of the Table 24: The right to social security and SPC indicators. Gap assessment and suggested improvements suggests a number of supplementary indicators, which could increase the SPC indicators' relevance to the right to social security. **The suggested additional indicators derive from Eurostat, OHCHR¹ and the proposed indicators for the Sustainable Development Goals¹ (SDGs) and include indicators such as the "percentage of population covered by social protection floors/systems"¹ as an indicator to assess one of the core obligations of the right to social security. Furthermore, this particular proposed SDG indicator includes sub-indicators on pension, child support, unemployment support, disability benefits, maternity benefits, occupational injury insurance and poverty benefits. The included causes for support are in line with the "principal branches of social security" Stated in General Comment No. 19 on the right to social security with reference to standards adopted in the International Labour Organisation.**

5. **Suggestions for how to address the gaps**

In this section, we reflect about the data availability if human rights indicators were to be employed and added to the European Social Indicators. This feeds into a broader discussion on a need for a reconceptualization of social monitoring in the EU.

a) *In terms of available statistics from Eurostat*

Drawing on the briefs to this document⁴¹⁶ box 14 summarizes how Eurostat data may supplement the SPC indicators in the effort of mainstreaming human rights in social inclusion monitoring. The Eurostat data would include availability, affordability, acceptability, and accessibility dimensions as well as dimensions of accountability and participation. The deployment of available Eurostat data would not cover every aspect and dimension of a human rights-based monitoring, but the analysis above shows how indicators on housing, on right to food, on health rights, and on social security rights can improve a human rights-based monitoring compared to the prevailing practice. In addition, the current efforts to define Sustainable Development Goal indicators also present opportunities in terms of health and social security rights. We shall return to these longer term dimensions below.

⁴¹⁶ See section Briefs on assessing social indicators.

b) *In terms discursive change*

While the SPC and its sub-group on indicators do not focus much on human rights as evidenced in the *SPC Annual Report*,⁴¹⁷ there are several overlapping metrics between the European Social Indicators and human rights with respect to adequate living standards and concerning poverty and health measurements under the indicators in use by SPC and its sub-group on indicators. The decision not to refer to these indicators as human rights metrics can therefore be interpreted as either an omission due to lack of knowledge or to resistance to integrate human rights thinking. Irrespective of which justification among these two prevails, there seems to be a clear need of better guidance in terms of improved human rights thinking as far as the European Social Indicators are concerned. A discursive change is warranted as a first step.

6. **Concluding perspectives**

The analysis above has attempted to document overlaps between the existing nature of social measurement under the EU SPC metrics and human rights. Such overlaps are clearly present with respect to adequate living, standards, social security rights, poverty and the right to health. However, the analysis has also shown that the existing European Social Indicators exhibit deficits in terms of human rights to adequate living standards and in terms of health and social security rights. One weakness of the existing measurements is that they are not vocal on human rights issues. The reader may even suspect that there is a lack of commitment to linking human rights and social development. A situation of discursive and practical negligence on human rights can be said to exist.

The analysis has also shown that it would be relatively easy to cover some of the gaps which exist between the substantive contents of adequate living standards rights, health rights and social security rights and the prevailing SPC practices, using available data from Eurostat.

However, on a longer term basis, the analysis also indicates that a field relevant to explore further in measuring human rights social development of the EU is to use the SDG indicators and the data underpinning these indicators. These indicators can become (they are to be fully defined by March 2016) particularly important regarding health and social security rights. On a longer term basis, the SDG indicators may also be instrumental in offering information with respect to equality and non-discrimination within the Union. The effort to disaggregate data according to social markers or according to sub-national administrative units may be important in documenting equality of opportunity for citizens of the Union and for indicating where issues of discriminatory practices may require further examination.

⁴¹⁷ See footnote 403.

B. Briefs on assessing social indicators

1. The right to an adequate standard of living

Indicators related to material living conditions occupy a central position in the portfolio of European Social Indicators developed by the Social Protection Committee (SPC). A number of relevant indicators are listed under the heading of “social inclusion”, including indicators on housing space and costs. Moreover, the material deprivation component of the headline indicator on the Europe 2020 target contains relevant information on housing conditions, food consumption, ownership of material goods, etc. This brief provides an assessment of the extent to which these indicators present useful information on the normative content of the right to an adequate standard of living.

The ICESCR recognises ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’.⁴¹⁸ The right to an adequate standard of living thus comes with a number subsidiary rights, including a right to food and a right to housing; and the CESCR, responsible for monitoring the Covenant, has added a right to water to the portfolio. So how comprehensive are the SPC indicators in assessing the enjoyment of these rights? Are the indicators valid as an approximate measure of aspects of adequate standard of living rights, and where are the gaps? Do the SPC indicators in any way distort the normative core of adequate living standards rights? What is the relationship between outcome and process measurements in the SPC context?

a) *Conceptualizing the right to an adequate standard of living*

As noted above, the right to an adequate standard of living encompasses a number of subsidiary rights, including the right to adequate housing, the right to adequate food and the right to water. The CESCR has elaborated on the normative content of these rights in, respectively, General Comments No. 4 (1991),⁴¹⁹ No. 12 (1999)⁴²⁰ and No. 15 (2002).⁴²¹

The right to adequate housing

In its General Comment No. 4, the CESCR draws attention to a number of issues, which it considers important when assessing to what extent housing conditions can be considered adequate.⁴²² These

⁴¹⁸ International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 3 January 1976), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 7 October 2015, Art. 11.

⁴¹⁹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015.

⁴²⁰ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en> accessed 7 October 2015.

⁴²¹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002): The Right to Water, E/C.12/2002/11 of 20 January 2003, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en> accessed 7 October 2015.

⁴²² United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at

include *legal security of tenure* (legal protection against forced eviction etc.); *availability of services, materials, facilities and infrastructure* (such as safe drinking water, sanitation and heating); *affordability* (housing costs should not risk compromising the satisfaction of other basic needs); *habitability* (adequate space and protection from cold, damp, heat, rain, wind or other threats to health); *accessibility* (that law and policy should take fully into account the special housing needs of disadvantaged groups); *location* (environmental issues and access to schools, healthcare etc.); and *cultural adequacy*. Moreover, the Committee emphasises that the right to adequate housing applies to everyone,⁴²³ but that States must give due priority to social groups living in unfavourable conditions.⁴²⁴ As part of this, States must ensure effective monitoring, including the provision of detailed information on homelessness.⁴²⁵

The right to adequate food

General Comment No. 12 specifies the aspects that the CESCR finds significant in relation to the right to adequate food. As with the right to adequate housing, the CESCR specifies that the question of adequacy relates to both the *availability* and *accessibility* of food.⁴²⁶ The former relates to the availability of food in a quantity and quality that is sufficient to satisfy dietary needs, and which is free from adverse substances.⁴²⁷ The latter refers to food accessibility in both physical and economic terms in ways which do not compromise the enjoyment of other rights.⁴²⁸

The right to water

Finally, with regard to the right to water, the CESCR has specified its normative content in General Comment No. 15. Aspects, which the CESCR finds essential in assessing this right, include: *availability* (sufficient water supply); *quality* (safe and free from micro-organisms, chemical substances and

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015, para. 8.

⁴²³ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015, para. 6.

⁴²⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015, para. 11.

⁴²⁵ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015, para. 13.

⁴²⁶ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5a&Lang=en> accessed 7 October 2015, para. 8.

⁴²⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5a&Lang=en> accessed 7 October 2015, paras. 9-12.

⁴²⁸ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5a&Lang=en> accessed 7 October 2015, para. 13.

radiological hazards); and *accessibility* (comprising four dimensions: physical, economic, non-discrimination and information accessibility).⁴²⁹

In the following, these interpretations of the normative content of the rights to adequate housing, adequate food and water serve as basis for an assessment of the human rights relevance of the European Social Indicators.

b) *SPC indicators and the right to an adequate standard of living*

Overall, the portfolio of European Social Indicators provides useful information on several of the key aspects of the right to an adequate standard of living and the subsidiary rights derived from it (see Table 12: SPC indicators relevant to living standards). Important information on the right to adequate housing is contained in the composite indicator on material deprivation, included in the headline indicator related to the Europe 2020 target on poverty and social exclusion. This indicator measures the share of the population deprived of at least four out of nine components. One of these (that the household “cannot afford to pay rent or utility bills”) is highly relevant to the *affordability* aspect of the right to adequate housing, while two others (“cannot keep home adequately warm” and “could not afford a washing machine”) are relevant to the availability of services and facilities. The affordability aspect, moreover, can be examined through a relevant indicator on “housing costs overburden”, defined as the share of the population living in a household where total housing costs exceed 40% of the household’s total disposable income. As for the *habitability* aspect, the portfolio contains an indicator on overcrowding, which relates to the number of rooms available for different household types. Thus, the SPC portfolio does contain information that is highly relevant to an assessment of the right to housing. Yet, as will be clear below, other aspects are only vaguely present or missing altogether.

Compared to housing, the SPC portfolio is somewhat less informative on the right to adequate food. In fact, the only relevant reference is a component of the material deprivation indicator, namely the inability to afford to “eat meat, fish or a protein equivalent every second day”. When it comes to the right to water, the portfolio does not contain any relevant information at all.

The SPC indicators that are relevant to the right to an adequate standard of living can be disaggregated by sex and age groups and in some cases even by income quintiles, poor/non-poor, tenure status, household type, degree of urbanization etc. From a human rights perspective, this is crucial for identifying potential lines of discrimination in the enjoyment of the right to an adequate standard of living. Moreover, as all these indicators are measured regularly over time, the Covenant’s provision on progressive realisation, i.e. “the continuous improvement of living conditions”, can readily be examined.

⁴²⁹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002): The Right to Water, E/C.12/2002/11 of 20 January 2003, available at <[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2002%2f11&Lang=en)> accessed 7 October 2015, para. 12.

Table 12: SPC indicators relevant to living standards

Indicator	Definition
Severe material deprivation rate	Share of population living in households lacking at least 4 items out of the following nine items: i) to pay rent or utility bills, ii) keep home adequately warm, iii) face unexpected expenses, iv) eat meat, fish or a protein equivalent every second day, v) a week holiday away from home, or could not afford (even if wanted to) vi) a car, vii) a washing machine, viii) a colour TV, or ix) a telephone.
Depth of material deprivation	Unweighted mean of the number of items lacked by the population concerned out of the nine items retained for the definition of the “material deprivation” indicator.
Housing costs	Percentage of the population living in a household where total housing costs (net of housing allowances) represent more than 40% of the total disposable household income (net of housing allowances).
Overcrowding	Percentage of people living in an overcrowded household.

c) *Gaps and challenges*

Despite the fact that the portfolio of SPC indicators includes information relevant to an assessment of the right to an adequate standard of living, significant gaps and challenges can be identified. In some cases, these shortcomings may be mitigated by adding existing data, already available through Eurostat, while in others, additional data collection is required. In the following, five shortcomings will be discussed.

Limited coverage of certain aspects of the right to housing

While some of the European Social Indicators are relevant to the right to housing, the coverage of certain important aspects remains somewhat limited (see Table 13: Right to housing). To start with, the *availability* dimension only incorporates heating and washing facilities, neglecting other facilities that may be “essential for health, security, comfort and nutrition”, such as availability of safe drinking water, lighting and sanitation.⁴³⁰ However, relevant indicators are available in Eurostat, many of which are also included in the SPC’s indicative list of contextual information to supplement the core indicators. These include the “share of total population having neither a bath, nor a shower in their dwelling”, the “share of total population not having indoor flushing toilet for the sole use of their household” and the “share of total population considering their dwelling as too dark”. Elevating these to core indicators could be one way of ensuring that the coverage of the availability aspect of the right

⁴³⁰ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (1991), 1 January 1992, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en> accessed 7 October 2015, para. 8 (b).

to housing is better covered by the European Social Indicators. Likewise, the *habitability* dimension, which is present in the SPC portfolio in the form of the indicator on overcrowding, could be supplemented by a Eurostat indicator, currently proposed as contextual information, on the “share of total population living in a dwelling with a leaking roof, damp walls, floors or foundation, or rot in window frames of dwelling”.

No data on security of tenure, homelessness and housing location

A number of aspects, which the CESCR has emphasised as important to the right to housing, are not covered by the European Social Indicators (see Table 13: Right to housing). Neither the *security of legal tenure* nor the issues of *accessibility* or *location* can be gauged from the SPC portfolio. In the case of the former two cases, this may reflect a general lack of available data. Eurostat contains no data on housing-related legal-administrative procedures, such as the number of forced evictions or the access to redress mechanisms. Moreover, information on the extent and nature of homelessness is a glaring omission from the portfolio, again reflecting a lack of comprehensive data on the issue. Without reliable data on homelessness, and possible related discriminatory practices, a full assessment of the accessibility to housing services cannot be made. In contrast, the absence of location-related indicators in the SPC portfolio could partly be mitigated by existing data. In particular, Eurostat provides relevant data on the share of households experiencing “pollution, grime or other environmental problems” and “crime, violence or vandalism in the area”. Nonetheless, data on the locational access to social facilities such as hospitals and schools - which according to the CESCR represents an important dimension of housing adequacy - seems to be lacking and would require additional data collection.

Inadequate data on the right to food

Although the only right-to-food-relevant information contained in SPC portfolio overlaps with both the availability and accessibility aspects, it is, arguably, a somewhat narrow measure. According to General Comment no. 12, dietary needs implies that ‘diet as a whole contains a mix of nutrients for physical and mental growth’,⁴³¹ and thus requires an assessment that is broader than the ability to eat meat, fish or a protein equivalent every second day. In this case, Eurostat contains some relevant data, in particular on consumption of fruits and vegetables. Furthermore, information on the financial burden of food consumption is lacking from the SPC portfolio - an indicator, which could provide valuable insight into the economic aspect of food accessibility (see Table 14: Right to food).

No information on the right to water

None of the aspects identified by the CESCR as critical to the right to water can be assessed through the SPC portfolio (see Table 15: Right to water). This omission, however, may reflect a general lack of data in the European statistical system. The only data relevant to the right to water that can be identified in the Eurostat database relates to the availability of water, specifically data on the quantity of “water made available for use” and “population connected to public water supply”. Although these indicators are relevant in principle, the inability to disaggregate below the national level, arguably, makes them less well-suited in e.g. detecting discrimination. Moreover, no data on the quality of

⁴³¹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5a&ndLang=en> accessed 7 October 2015, para. 9.

water, including safety, or on the various aspects of accessibility is provided. For these reasons, existing data provides an inadequate basis for a comprehensive assessment of the right to water. Improving the coverage of this aspect of the right to an adequate standard of living is, therefore, likely to require additional data collection.

Use of composite indicator

Finally, although the composite indicator on material deprivation certainly contains information that is relevant to the right to an adequate standard of living, the fact that it lumps together nine different deprivations into one metric, arguably poses a challenge. Specifically, it obscures the interpretation of observed changes. For instance, it is impossible to assess whether a fall in material deprivation reflects, say, improvements in the access to food or falling prices on televisions. This is particularly problematic in the case of food, for which the only relevant information in the entire SPC portfolio is contained as a sub-component of the material deprivation indicator, thus precluding any useful assessment of the right to adequate food.

Two improvements to the use of the composite indicator can be considered in order to enhance its human rights relevance. First, sub-components could be systematically included as separate indicators in the portfolio, allowing for a more nuanced interpretation; second, and in parallel, the mix of elements contained in the material deprivation indicator could be adjusted to better reflect the normative content of the right to an adequate standard of living, which would require integration of additional data on the right to food and the right to water.

d) *Summary*

The above analysis shows that the portfolio of European Social Indicators provides information that is highly relevant for an assessment of the right to an adequate standard of living. In particular, the coverage of the right to adequate housing is well-developed, especially when it comes to affordability and the availability of facilities and services. Important aspects of the right to housing, however, are underexposed. This is not least the case for security of tenure, homelessness and housing location. As for the right to adequate food, the SPC portfolio in its current form is only marginally relevant, while it contains no information relevant to the right to water. In some cases, these shortcomings may be mitigated by adding existing data, already included as context information or otherwise available through Eurostat. In these cases, although the SPC portfolio contains useful information in its current form, its human rights relevance could be improved by consistently incorporating available data, thus ensuring a greater correspondence between the SPC indicators and the normative content of the right to an adequate living standard, including the rights to housing, food and water, as detailed by the CESCR. In other instances, additional data collection is necessary.

Table 13: Right to housing

Dimension	SPC Indicators	Gaps	Possible Improvements
Legal security of tenure		No coverage.	Additional data collection.
Availability of services, materials, facilities and infrastructure	<p>Component of "material deprivation": cannot afford "keep home adequately warm".</p> <p>Component of "material deprivation": "cannot afford a washing machine".</p>	Limited coverage.	<p>Supplement with existing Eurostat data:</p> <ul style="list-style-type: none"> • "Share of total population having neither a bath, nor a shower in their dwelling"; • "Share of total population not having indoor flushing toilet for the sole use of their household."
Affordability	<p>Component of "material deprivation": cannot afford "to pay rent or utility bills".</p> <p>Component of "material deprivation": cannot afford "keep home adequately warm".</p> <p>Housing costs (housing costs represent more than 40% of total household disposable income).</p>	Broad coverage.	
Habitability	Overcrowding rate.	Limited coverage.	<p>Supplement with existing Eurostat data:</p> <ul style="list-style-type: none"> • "Share of total population living in a dwelling with a leaking roof, damp walls, floors or foundations, or rot in window frames of dwelling".
Accessibility		No coverage.	Additional data collection, in particular on homelessness.
Location		No coverage.	<p>Supplement with existing Eurostat data:</p> <ul style="list-style-type: none"> • "Share of households experiencing pollution, grime or other environmental problems";

		<ul style="list-style-type: none"> • “Share of households experiencing crime, violence or vandalism in the area”. <p>Additional data collection on the locational access to social services.</p>
Cultural adequacy	No coverage.	Additional data collection.

Table 14: Right to food

Dimension	SPC Indicators	Gaps	Possible Improvements
Availability		No coverage .	Supplement with existing Eurostat data: <ul style="list-style-type: none"> • “Consumption of fruits”; • “Consumption of vegetables”; • “Body Mass Index (BMI)”.
Accessibility (Physical)		No coverage .	
Accessibility (economic)	Component of "material deprivation": cannot afford to "eat meat, fish or a protein equivalent every second day".	Limited coverage .	Supplement with existing Eurostat data: <ul style="list-style-type: none"> • “Structure of consumption expenditure (choice, COICOP level 2: “food and non-alcoholic beverages”)”.

Table 15: Right to water

Dimension	SPC Indicators	Gaps	Possible Improvements
Availability		No coverage.	Supplement with existing Eurostat data: <ul style="list-style-type: none"> • “Water made available for use”; • “Population connected to public water supply”.
Quality		No coverage.	
Accessibility (Physical)		No coverage.	
Accessibility (economic)		No coverage.	
Accessibility (non-discrimination)		No coverage.	
Accessibility (information)		No coverage.	

2. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health

This brief provides an assessment of the SPC indicators in relation to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (the right to health) (list of indicators – Table 18: SPC indicators relevant to the right to health). SPC indicators on health are applied to monitor health status in the EU and are included in the European Social Indicators. Additionally, the SPC indicators on health are included in the establishment of a Joint Assessment Framework on health with the purpose of strengthening health monitoring in the EU.

The right to health is recognised in Art. 12 of the ICESCR⁴³². The CESCR General Comment No. 14 on the right to health, issued in 2000, outlines an interpretation of Art. 12 in which the right to health is defined as an inclusive right ‘extending not only to timely and appropriate health care, but also to the underlying determinants of health’.⁴³³ Thus, the right to health should not be considered a right to be *healthy*, but rather as a right that ‘embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life’.⁴³⁴ The right to health is, as the broad definition in the General Comment No. 14 reveals, a comprehensive and complex right, difficult to operationalize by developing indicators for realization. So how comprehensive are the SPC indicators in assessing the right to health? Are the indicators valid as an approximate measure of aspects of health rights, and where are the gaps? Do the SPC indicators in any way distort the normative core of the right to health? The following section introduces a simplistic conceptualization of the right to health, which will serve as a “check list” when assessing SPC indicators of relevance for the right to health.

a) Conceptualizing the right to health

Following the recognition of the right to health in Art. 12(1) of the ICESCR, in Art. 12(2) States commit to take certain steps to realize the right to health, including those necessary for (a) the reduction of child mortality, (b) the improvement of environmental hygiene, (c) management of diseases, (d) conditions to assure medical services. If one considers provision 12(2)(a-d) as *objectives* of the right to health – “what” is to be achieved in order to realize the right to health, the General Comment No. 14 can to some extent be said to outline “how” to achieve the objectives - what *means* are needed to realize the right to health. Among other aspects of the right to health, the General Comment No. 14 presents a list of *core obligations* of States⁴³⁵ as well as a list of criteria to which health activities must

⁴³² International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 3 January 1976), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 7 October 2015, Art. 12.

⁴³³ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, paras. 43-44.

⁴³⁴ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 12.

⁴³⁵ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, paras. 43-44.

comply.⁴³⁶ The core obligations relate to both dimensions of the right to health - health care and services as well as the underlying determinants of health such as food, water, housing and sanitation. For the purpose of this brief, only those core obligations related to health care and services are included in the analysis.

Table 16: Core obligations of the right to health

The General Comment No. 14

To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;

To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;

To ensure equitable distribution of all health facilities, goods and services;

To adopt and implement a national public health strategy and plan of action;

To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;

To provide immunization against the major infectious diseases occurring in the community;

To take measures to prevent, treat and control epidemic and endemic diseases;

To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;

To provide appropriate training for health personnel, including education on health and human rights.

All obligations are subject to the principle of non-retrogression, meaning that States should refrain from taking backward steps in the enjoyment of the right to health, by complying to the principles of respecting, protecting and fulfilling the right to health.⁴³⁷ The core obligations listed above are – as with all other aspects of the right to health - subject to the *Availability, Accessibility, Acceptability and Quality (AAAQ) criteria*. *Accessibility* in this case encompasses four inter-dependent dimensions: *physical* accessibility, which refers to distance, *economic* accessibility, also named affordability, *non-*

⁴³⁶ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 12.

⁴³⁷ United Nations Committee on Economic, Social and Cultural Rights, General comment No. 3: The Nature of States Parties' Obligations (1991), 1 January 1991, available at <http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_4758_E.doc> accessed 7 October 2015, para. 9.

discrimination, which examines barriers for access related to discrimination and lastly *information accessibility*, which analyses whether access to information on for example one's health status is ensured. The AAAQ criteria is listed and outlined in more details in the table below.

Table 17: The AAAQ criteria of the right to health

General Comment No. 14	
Availability	Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity.
Accessibility	
Non-discrimination	Health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.
Physical accessibility	Health facilities, goods and services must be within safe physical reach for all sections of the population.
Economic accessibility	Health facilities, goods and services must be affordable for all.
Information accessibility	The right to seek, receive and impart information and ideas concerning health issues.
Acceptability	Health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements.
Quality	Health facilities, goods and services must also be scientifically and medically appropriate and of good quality.

In the following assessment General Comment No. 14 will serve as the conceptual framework and the core obligations and AAAQ criteria as “proxies” on the right to health.

b) ***SPC indicators and the right to health***

Overall, the SPC indicators cover well the multiple dimensions of the right to health as conceptualized in this analysis. The majority of the core obligations are covered by the SPC indicators and the AAAQ criteria is appropriately reflected. Many of the indicators are disaggregated on age and gender and some of the important outcome indicators (life expectancy and healthy life years) are disaggregated by socio-economic status (education and income), thus enhancing the possibilities of detecting potential discrimination. To further ensure that access to health facilities, goods and services occur on a non-discriminatory basis, disaggregating health data by geographical area is advisable. This

procedure may help to detect potential issues of discrimination if certain areas of a country or region are underserved in terms of health services.

The large number of “self-reported” SPC indicators may relate to the human rights principle of participation. Including people in the assessment of their health and thereafter basing health planning on data to which people have contributed tallies well with General Comment No. 14, which sets out that ‘effective provision of health services can only be assured if people's participation is secured by States’.⁴³⁸ The many SPC outcome indicators provide solid information on health status as well as the impact of the health services provided. The indicators assessing *healthy life years* further contribute to the understanding of health as concerning “conditions in which to lead a healthy life” and not merely a race towards the highest life expectancy, which is also in line with the General Comment No. 14.

However, gaps remain between the right to health and the SPC indicators. For this gap analysis, three gaps will be highlighted. However, suggestions for improvement of other SPC indicators not included in this analysis can be found in Table 19: The right to health and SPC indicators - gap assessment and suggested improvements. The gaps in focus of this analysis pertain to two important aspects of the right to health: mental health as well as reproductive, maternal and child health care. Additionally, the human rights principle of accountability is not reflected among the SPC indicators. The three gaps are elaborated in the text below and suggestions are given to alternative indicators, which may increase the right to health relevance of the SPC indicators.

Mental health

Among the SPC indicators there is not an indicator reflecting mental health and well-being. This is a serious gap, as the ICESCR explicitly recognises, in Art. 12 (1): ‘The right of everyone to the enjoyment of the highest attainable standard of physical and mental health’.⁴³⁹ The issue of mental health remains under-prioritised in many health systems, yet it poses a significant burden of disease in Europe.⁴⁴⁰ Eurostat offers an indicator, which includes mental health in an assessment of occupational health: ‘Self-reported consultation of a psychologist or psychotherapist’. This indicator could be added to the SPC indicators in order to reflect also mental health. Additionally, WHO collects data on mental health for example “Government expenditures on mental health as a percentage of total government expenditures on health”.⁴⁴¹ Unfortunately, inspiration for mental health indicators cannot be found among the proposed indicators for the Sustainable Development Goals (SDGs) as mental health assessment also in this context has been left out despite including the issue in target 3.4.

⁴³⁸ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 54.

⁴³⁹ International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 3 January 1976), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 7 October 2015, Art. 12 (1).

⁴⁴⁰ United Nations Human Rights Council, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Dainius Pūras, A/HRC/29/33 of 2 April 2015, available at <<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx>> accessed 7 October 2015, paras. 83-84.

⁴⁴¹ World Health Organization, Global Health Observatory Data Repository, available at <<http://www.who.int/gho/database/en/>> accessed 7 October 2015.

Reproductive, maternal and child health care

In the context of SPC indicators, the core obligation to ensure reproductive, maternal and child health is covered only by a couple of outcome indicators on child and perinatal mortality. However, to reflect that the issue of reproductive health pertains to more than mortality rates additional structure and process indicators on reproductive, maternal and child health would be beneficial. General Comment No. 14 describes reproductive, maternal and child health as including, yet not limited to, access to family planning, pre- and post-natal care and emergency obstetric services. The Eurostat indicators offer little to add on this issue; however, an idea could be to apply one or several of the proposed SDG indicators. Both goal 3 on *health* and goal 5 on *women empowerment* include proposed indicators, which could be applied (see Table 19: The right to health and SPC indicators - gap assessment and suggested improvements).

Accountability

The right to health requires that there are effective, transparent and accessible monitoring and accountability mechanisms available to ensure that all duty bearers are to be held accountable for their conduct. Monitoring peoples' State of health is in itself a means to accountability as the monitoring of health and progress over time enables States to recognize when policy adjustments are required. In order to reflect the right to health, SPC indicators would benefit from including an indicator specifically on accountability. The Special Rapporteur on the Right to Health has suggested an indicator which measures 'the degree to which accessible and effective monitoring and accountability mechanisms are available'.⁴⁴² Such mechanisms may be of different nature ranging from judicial, quasi-judicial, to administrative and political.⁴⁴³ The Office of the High Commissioner for Human Rights has suggested a number of structural indicators with the purpose of monitoring ratification and adoption into national law of international human rights such as the right to health. Such indicators may also contribute in reflecting the principle of accountability among the SPC indicators.⁴⁴⁴ Finally, Eurostat assesses Europeans' "awareness of redress",⁴⁴⁵ thus investigating the extent to which people know their rights and know about institutions or mechanisms to turn to in case of breached rights.

⁴⁴² United Nations Commission on Human 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 of 3 March 2006, available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/114/69/PDF/G0611469.pdf?OpenElement>> accessed 7 October 2015, para. 49 c (v).

⁴⁴³ United Nations General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/62/214 of 8 August 2007, available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/453/79/PDF/N0745379.pdf?OpenElement>> accessed 7 October 2015, para. 88.

⁴⁴⁴ For example: "International human rights treaties relevant to the right to the enjoyment of the highest attainable standard of physical and mental health (right to health) ratified by State" and "Date of entry into force and coverage of the right to health in the constitution or other forms of superior law". United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), p. 90.

⁴⁴⁵ Eurostat, *Special Eurobarometer 411: Patient Safety and Quality of Care* (Publications Office of the European Union 2014), available at <http://ec.europa.eu/public_opinion/archives/ebs/ebs_411_sum_en.pdf> accessed 7 October 2015.

c) *Summary*

On the basis of the above analysis the SPC health indicators are, on an overall level, deemed to be 'right to health' relevant. The complementary mix of SPC process and outcome indicators and the relevance of these to the core obligations and AAAQ principles of the right to health compose key strengths. However, important gaps exist in relation to mental health, reproductive, maternal and child health care as well as in relation to the human rights principle of accountability. SPC indicators may increase their human rights relevance by extending their thematic focus (mental health and reproductive health), enhance the number of process indicators to assess service delivery and by including accountability indicators. Geographically disaggregated data to enhance monitoring of access to services for vulnerable groups is also warranted.

For inspiration on supplementary indicators, Eurostat, OHCHR as well as the preliminary SDG indicators are a good place to start. The Danish Institute for Human Rights has produced a comprehensive analysis of the human rights relevance of the latter indicators, which can be accessed from the Institute's website www.humanrights.dk.

Table 18: SPC indicators relevant to the right to health

Indicators	Definition
Self-reported unmet need for medical care	Total self-reported unmet need for medical care for the following three reasons: financial barriers + waiting times + too far to travel.
Self-reported unmet need for dental care	Total self-reported unmet need for dental care for the following three reasons: financial barriers + waiting times + too far to travel.
% of population covered by public health insurance	Includes tax-based public health insurance and income-related payroll taxes including social security contribution schemes as well as private health insurances.
Life expectancy (by socioeconomic status)	The mean number of years that a new-born child (or that of a specific age) can expect to live if subjected throughout life to the current mortality conditions. May be presented by socioeconomic status (such as level of education or income quintile).
Healthy Life years (by socioeconomic status)	Number of years that a person is expected to live in a healthy condition (free of activity limitations). May be presented by socioeconomic status (such as level of education or income quintile).
Self-perceived limitations in daily activities	Defined as the percentage sum of people reporting to be limited or very limited.
Self-perceived general health	The % sum of people reporting bad or very bad health.
Infant mortality (by socioeconomic status)	The ratio of the number of deaths of children under one year of age during the year to the number of live births in that year. May be presented by socioeconomic status (such as level of education or income quintile).
Vaccination coverage in children	% of infants reaching their 1 st and 2 nd birthday who have been fully vaccinated against a range of diseases.
Cervical cancer screening	Defined as the % of women aged 20-69 that were screened for cervical cancer using a cervical smear test over the past 3 years.
Cervical cancer survival rates	The % of those still alive 5 years after the disease has been diagnosed.

Colorectal cancer survival rate	Defined as the % of those still alive 5 years after the disease has been diagnosed.
Satisfaction with health care services	Defined as the % of the population satisfied with GPs/family doctors, specialists, hospitals and dental care services.
Influenza vaccination for adults over 65+	% of those aged 65+ that have been vaccinated against influenza in the last year.
Breast cancer screening	Defined as the % of women aged 50-69 that were screened for breast cancer using a mammography over the past year.
Breast cancer survival rate	Defined as the % of those still alive 5 years after the disease has been diagnosed.
Perinatal mortality	Defined as number of foetal deaths (over 1000g) plus neonatal deaths (0-6 days) per 1000 live births.
Total health expenditure per capita	Total health expenditure per capita in PPP.
Total health care expenditure as a % of GDP	Total, public and private expenditure on health as % of GDP.
Total long-term care expenditure as a % of GDP	Defined as expenditure on long-term nursing care plus expenditure with administration and provision of social services.
Projections of public expenditure on health care as % of GDP	Age-related projections of health care.
Projections of public expenditure on long-term care as % of GDP	Age-related projections of long-term care.
Hospital inpatient discharges	Hospital inpatient discharges per 100 000 inhabitants.
Hospital day cases	Hospital day cases per 100 000 inhabitants.
Obesity	% of the population with BMI $\geq 30\text{kg/m}^2$.
Sales of generics	Defined as the % of generics sales in all prescribed medicine Sales.
Acute care bed occupancy rates	Defined as the number of acute care beds occupied divided by the Nb. of acute care beds.

Hospital average length of stay	Dividing the number of days stayed in the hospital by the number of hospital discharges or deaths in hospital.
Regular smokers	The % of daily cigarette smokers in the population aged 15+.
Alcohol consumption	Defined as the number of litres of pure alcohol per person per year.
Physicians (per 100.000 inhabitants)	Total number of practising physicians per 100.000 inhabitants.
Nurses and midwives (per 100.000 inhabitants)	Total number of practising nurses and midwives per 100.000 inhabitants.
Public and private expenditure as % of total health expenditure	Total public expenditure plus total private expenditure as % of total health expenditure.
Total expenditure on main types of activities or functions of care	The proportion of total current health care expenditure that is allocated to a range of health services as % of total current health expenditure.

Table 19: The right to health and SPC indicators - gap assessment and suggested improvements

Dimension	SPC Indicators	Gaps	Possible Improvements
<i>General Comment No. 14 on the right to health</i>	<i>Retrieved from the Social Protection Committee</i>	<i>Discrepancies between right to health dimensions and SPC indicators</i>	<i>Suggestions which can strengthen right to health relevance</i>
Core Obligations			
To ensure the right of access to health facilities, goods and services on a non - discriminatory basis, especially for vulnerable or marginalized groups;	<p>The proportion of the population covered by health insurance.</p> <p>Self-reported unmet need for medical care.</p> <p>Self-reported unmet need for medical care.</p> <p>Nb. of physicians.</p> <p>Nb. of nurses and midwives.</p>	<p>Limited coverage.</p> <p>Lack of indicators addressing mental health + need for further disaggregation to detect potential lack of access of vulnerable groups e.g. ethnic minorities, migrants or persons with disability.⁴⁴⁶</p>	<p>Supplement with existing Eurostat and WHO data:</p> <ul style="list-style-type: none"> • 'Self-reported consultation of a psychologist or physiotherapist'.⁴⁴⁷ • 'Government expenditures on mental health as a percentage of total government expenditures on health'.⁴⁴⁸
To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;	Sales of generics.	Limited coverage.	<p>Supplement with potential SDG indicators:</p> <ul style="list-style-type: none"> • 'Proportion of population with access to affordable essential

⁴⁴⁶ See list of often marginalized and vulnerable groups in: United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 12(b).

⁴⁴⁷ Eurostat data.

⁴⁴⁸ World Health Organisation, Global Health Observatory Data Repository, available at <<http://www.who.int/gho/database/en/>> accessed 7 October 2015.

			medicines on a sustainable basis'. ⁴⁴⁹
To ensure equitable distribution of all health facilities, goods and services;	May be monitored through disaggregation of data.	Coverage	Enhance disaggregation of data based on prohibited grounds of discrimination to detect potential discrimination. ⁴⁵⁰
To adopt and implement a national public health strategy		No coverage.	Supplement with OHCHR indicators: <ul style="list-style-type: none"> • "Timeframe and coverage of national policy on physical and mental health".⁴⁵¹
To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;	Infant mortality (by socio-economic status).	Limited coverage	Supplement with potential SDG indicators: <ul style="list-style-type: none"> • 'Proportion of births attended by skilled health personnel',⁴⁵² • '% of women of reproductive age (15-49 years) who have their need for family planning satisfied with modern methods.'⁴⁵³ • 'adolescent birth rate (10-14; 15-
	Perinatal mortality.	Solid outcome indicators, but lack of process indicators.	
	Cervical cancer screening.		

⁴⁴⁹ Proposed SDG indicator for target 3b.

⁴⁵⁰ See list of often marginalized and vulnerable groups in: United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 12(b).

⁴⁵¹ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), p. 90.

⁴⁵² Proposed SDG indicator for target 3.1.

⁴⁵³ Proposed SDG indicator for target 3.7; According to UNDESA and UNFPA, data are available for 138 countries and territories for the period 1990-2014.

		<p>19) per 1,000 women in that age group'.⁴⁵⁴</p> <ul style="list-style-type: none"> • 'Proportion of women (aged 15-49) who make their own sexual and reproductive decisions'.⁴⁵⁵ • '% of countries with laws and regulations that guarantee all women and adolescents access to sexual and reproductive health services, information and education'.⁴⁵⁶
To provide immunization against the major infectious diseases occurring in the community	<p>Vaccination coverage in children. Broad coverage.</p> <p>Influenza vaccination for adults over 65+.</p>	
To take measures to prevent, treat and control epidemic and endemic diseases	No coverage.	Broad obligation - may be addressed through other obligations e.g. access to essential medicines and immunization.
To provide education and access to information concerning the main health problems in the community, including methods of	No coverage	<p>Supplement with indicator suggested by the Special Rapporteur on the Right to Health:</p> <ul style="list-style-type: none"> • 'The degree to which health

⁴⁵⁴ Proposed SDG indicator for target 3.7; According to UNDESA, data are available for 225 countries and territories for the period 1990-2014.

⁴⁵⁵ Proposed SDG indicator for target 3.7.

⁴⁵⁶ Proposed SDG indicator for target 5.6.

preventing and controlling them				information is available and accessible to all'. ⁴⁵⁷
To provide appropriate training for health personnel, including education on health and human rights	No coverage.			Broad obligation – may be monitored elsewhere.
AAAQ criteria				
Availability	Nb. of Physicians Nb. of Nurses and midwives	Self-reported unmet need for medical care.	Coverage.	Supplement with Eurostat data: <ul style="list-style-type: none">• 'Didn't know any good doctor or specialist'.⁴⁵⁸
Accessibility		Self-reported unmet need for medical care.		
Economic			Coverage.	Supplement with potential SDG indicators and OHCHR indicators: <ul style="list-style-type: none">• 'Coverage of tracer interventions' + 'Fraction of the population protected against catastrophic/impoverising out-of-pocket health expenditure',⁴⁵⁹• 'Proportion of population that was extended access to affordable health care, including essential

⁴⁵⁷ United Nations Commission on Human 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 of 3 March 2006, available at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/114/69/PDF/G0611469.pdf?OpenElement>> accessed 7 October 2015.

⁴⁵⁸ Eurostat (information accessibility).

⁴⁵⁹ Proposed SDG indicators for target 3.8.

			drugs, on a sustainable basis'. ⁴⁶⁰
Physical		Coverage.	
Non-discrimination		Coverage.	Enhance disaggregation of data based on prohibited grounds of discrimination to detect potential discrimination. ⁴⁶¹
Information		No coverage.	<i>See core obligation related to information.</i>
Acceptability	Satisfaction with health care services.	Coverage.	
Quality	Hospital inpatient discharges. Hospital day cases. Acute care bed occupancy rates. Hospital average length of stay.	Coverage.	Supplement with Eurostat data: • 'Assessment of quality of health care'. ⁴⁶²

⁴⁶⁰ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012), p. 90.

⁴⁶¹ See list of often marginalized and vulnerable groups in: United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000), E/C.12/2000/4 of 11 August 2000, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4a&ndLang=en> accessed 7 October 2015, para. 12(b).

⁴⁶² Eurostat, *Special Eurobarometer 411: Patient Safety and Quality of Care* (Publications Office of the European Union 2014), available at <http://ec.europa.eu/public_opinion/archives/ebs/ebs_411_sum_en.pdf> accessed 7 October 2015.

Table 20: Over-all health related outcome indicators applicable to the right to health

Over-all health related outcome indicators applicable to the right to health	
Life expectancy	
Life expectancy by socio-economic status	
Healthy Life years	
Healthy life years by socio-economic status	
Self-perceived limitations in daily activities	
Self-perceived general health	
Colorectal cancer survival rate	
Breast cancer survival rate	
Public and private expenditure as % of total health expenditure	
Total expenditure on main types of activities or functions of care	
Total health expenditure per capita	
Total health care expenditure as a % of GDP	
Total long-term care expenditure as a % of GDP	
Projections of public expenditure on health care as % of GDP	
Projections of public expenditure on long-term care as % of GDP	
Obesity	
Regular smokers	Reflecting important determinants of health
Alcohol consumption	

3. The right of everyone to social security

This brief provides an assessment of SPC indicators in relation to the right of everyone to social security (list of indicators – Table 23: SPC indicators on social inclusion and pension). The SPC indicator on social inclusion and monitoring on this issue are the core focus of the Social Protection Committee. Social inclusion is also among the crucial subjects of the Europe 2020 strategy – the main policy framework in the field of EU on social protection. The indicators assess social inclusion from a range of perspectives from risk of poverty and unemployment to material deprivation rate. The right to social security is recognised in Art. 22 of the Universal Declaration of Human Rights⁴⁶³ and in Art. 9 of the International Covenant on Economic, Social and Cultural Rights.⁴⁶⁴ General Comment No. 19 on the right to social security, issued in 2008, outlines an interpretation of Art. 9 of the ICESCR in which the right to social security is defined as ‘the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection’.⁴⁶⁵ The systems and mechanisms in place to issue such benefits may vary in character; however, they must address the situations - listed in the General Comment no. 19 - in which protection is needed: a) lack of work-related income b) unaffordable access to health care c) insufficient family support. These situations encompass a broad range of issues, hence calling for equally broad mechanisms of social security. The question is thus how the SPC indicators cover the multiple dimensions of the right to social security? Are the indicators valid as an approximate measure of the right to social security, and where are the gaps? Do the SPC indicators in any way distort the normative core of the right to social security? It is clear that the redistributive character of the right to social security positions the right as a key driver for poverty prevention and reduction, thus also placing it as pivotal to human dignity and the realization of other human rights. The following section introduces a simplistic conceptualization of the right to social security, which will serve as a “check list” in the endeavour of assessing SPC indicators right to social security relevance.

a) Conceptualizing the right to social security

The Committee on Economic, Social and Cultural Rights – the monitoring body of the ICESCR – outlines in the General Comment No. 19 on the right to social security the CESCR’s interpretation of the guarantees contained in Art. 9 ICESCR. Among the normative interpretations, General Comment No. 19 presents a list of *core obligations* of States⁴⁶⁶ as well as a list of *key elements* to which social security schemes are applicable.⁴⁶⁷ The right to social security is a fundamental human right, which entails that

⁴⁶³ United Nations General Assembly, Universal Declaration of Human Rights, adopted by General Assembly resolution 217 A III of 10 December 1948.

⁴⁶⁴ International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 (entered into force on 3 January 1976), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 7 October 2015.

⁴⁶⁵ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security, E/C.12/GC/19 of 4 February 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19andLang=en> accessed 7 October 2015, para. 2.

⁴⁶⁶ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security, E/C.12/GC/19 of 4 February 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19andLang=en> accessed 7 October 2015, para. 59.

⁴⁶⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security, E/C.12/GC/19 of 4 February 2008, available at

it should be enjoyed without any discrimination. Founded in the ICESCR, the right to social security is also subject to State’s obligations to respect, protect and fulfil.⁴⁶⁸ In addition to these underlying principles, the right to social security include the core obligations listed in Table 21: Core obligations of the right to social security.

Table 21: Core obligations of the right to social security

General Comment No. 19
To adopt a national social security strategy and plan of action.
To take targeted steps to implement social security schemes.
To ensure access to a social security scheme (...)that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.
To monitor the extent of the realization of the right to social security.

General Comment No. 19 recognises that the elements of the right to social security may vary according to different conditions. States have different resources to allocate for social security schemes, yet “targeted” steps must be taken towards the realization of the right to social security. Additionally, a number of key elements apply to the right to social security in all circumstances. The key elements are: *Availability, Adequacy, Affordability and Accessibility*, which are listed and outlined in more details in Table 22: Key elements of the right to social security.⁴⁶⁹

Table 22: Key elements of the right to social security

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19andLang=en> accessed 7 October 2015, Section A (*Elements of the right to social security*).

⁴⁶⁸ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security, E/C.12/GC/19 of 4 February 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19andLang=en> accessed 7 October 2015, para. 43.

⁴⁶⁹ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security, E/C.12/GC/19 of 4 February 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19andLang=en> accessed 7 October 2015.

General Comment No. 19

Availability	The availability of a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies (health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, survivors and orphans).
Adequacy	Benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care.
Affordability	If a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other Covenant rights.
Accessibility	All persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited. Social security services must be affordable, and should have physical access. Additionally, beneficiaries of social security schemes have the right to seek, receive and impart information on all social security entitlements.

In the following assessment, General Comment No. 19 will serve as conceptual framework of the analysis and the core obligations and key elements as “proxies” on the right to social security.

b) ***SPC indicators and the right to social security***

The SPC indicators are categorised in two portfolios; one on *social inclusion* and one on *pension*. The majority of the indicators consist of outcome indicators on poverty such as poverty rate, material deprivation rate etc. (see Table 23: SPC indicators on social inclusion and pension). While not explicitly framed as social security indicators, the SPC portfolios draw lines to social security. As General Comment No. 19 points out, social security is meant to protect people from situations of risk, which could otherwise lead to poverty. Thus, the solid SPC outcome indicators on poverty could serve as right to social security outcome indicators as well.

However, despite of the numerous strong SPC outcome indicators, the overall coverage of the normative aspects of the right to social security among the SPC indicators is deemed limited. As it appears from the table summarising this analysis (Table 24: The right to social security and SPC indicators. Gap assessment and suggested improvements) only a few of the SPC indicators falls under the normative aspects of the right to social security. While the many SPC indicators on poverty offer a comprehensive list of outcome indicators for the right to social security there is a serious lack of structure and process indicators, which can reflect the components of the right to social security; core obligations, for example the availability and performance of a social security scheme, and the key

elements, for example the affordability of a social insurance. The last column of Table 24: The right to social security and SPC indicators. Gap assessment and suggested improvements suggests a number of supplementary indicators, which could increase the SPC indicators' relevance to the right to social security. The suggested additional indicators stem from Eurostat, OHCHR⁴⁷⁰ and the proposed indicators for the Sustainable Development Goals (SDGs)⁴⁷¹ and include indicators such as the "percentage of population covered by social protection floors/systems"⁴⁷² as an indicator to assess one of the core obligations of the right to social security. Furthermore, this particular proposed SDG indicator includes sub-indicators on pension, child support, unemployment support, disability benefits, maternity benefits, occupational injury insurance and poverty benefits. The included causes for support are in line with the "principal branches of social security" Stated in General Comment No. 19 on the right to social security with reference to standards adopted in the International Labour Organisation.⁴⁷³

The gap between the SPC indicators and the right to social security extends beyond the normative aspect of the right to also include the underlying human rights principles of non-discrimination and accountability. The core obligations of the right to social security stress these principles; however, they are only scarcely reflected in the SPC indicators.

Non-discrimination

Many of the SPC indicators are disaggregated by age and gender, which enhances the possibility of detecting potential discrimination towards these groups. However, further disaggregation by for example socio-economic status (income and/or education), disability or employment status – in accordance with General Comment No. 19 - would benefit the process of ensuring non-discrimination to social security. For many people, the roots of poverty and hardship lies in restrictions from rights and opportunities available to other people; thus, effective measures to detect discrimination are pivotal.⁴⁷⁴ Additionally, to ensure access to social security on a non-discriminatory basis, disaggregating SPC data by geographical area would be recommendable. This procedure may help to detect if certain areas of a country or region are underserved in terms of social security.

Accountability

As outlined in the initial part of this analysis on *SPC indicators and the right to social security*, the SPC indicators may serve to monitor the potential outcomes of an insufficient social security system; however, the lack of SPC process and structure indicators reflecting the core obligations and key elements of the right to social security limit the extent to which monitoring based on the SPC indicators can be used for accountability purposes. Another aspect of accountability, redress mechanisms, is

⁴⁷⁰ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012).

⁴⁷¹ Proposed SDG indicators of 11 August 2015.

⁴⁷² Proposed SDG indicator for target 1.3.

⁴⁷³ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 19: The right to social security, E/C.12/GC/19 of 4 February 2008, available at <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f19andLang=en> accessed 7 October 2015, para. 12.

⁴⁷⁴ European Commission, 'The European Platform against Poverty and Social Exclusion: A European Framework for Social and Territorial Cohesion' COM(2010) 758 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0758:FIN:EN:PDF>> accessed 7 October 2015.

absent among the SPC indicators as well. Inspiration for a supplementary indicator to include this aspect could be found at the OHCHR, which suggests to assess the ‘proportion of received complaints on the right to social security investigated and adjudicated by the national human rights institution, human rights ombudsperson or other relevant mechanisms and the proportion of these responded to effectively by the Government’.⁴⁷⁵

c) *Summary*

It is clear that the redistributive character of the right to social security positions the right as a key driver for poverty prevention and reduction, thus also placing it as pivotal to human dignity and the realization of other human rights. While the SPC indicators offer a comprehensive list of solid outcome indicators, the lack of process and structure indicators assessing the core obligations and key elements of the right to social security constitute a crucial gap. For the SPC indicators to serve as an approximate measure of the right to social security this gap has to be addressed. To further increase the human rights relevance of the SPC indicators attention to the principles of non-discrimination (further disaggregation) and accountability (redress mechanism) is needed.

⁴⁷⁵ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012).

Table 23: SPC indicators on social inclusion and pension

Indicators	Definitions
At-risk-of poverty rate.	Share of persons aged 0+ with an equivalised disposable income below 60% of the national equivalised median income.
Persistent at-risk of poverty rate.	Share of persons aged 0+ with an equivalised disposable income below the at-risk-of-poverty threshold in the current year and in at least two of the preceding three years.
Relative median poverty risk gap.	Difference between the median equivalised income of persons aged 0+ below the at-risk-of-poverty threshold and the threshold itself.
Long term unemployment rate.	Total long-term unemployed population (≥ 12 months' unemployment; ILO definition) as a proportion of total active population aged 15 years or more.
Population living in jobless households.	Proportion of people living in jobless households, expressed as a share of all people in the same age group.
Early school leavers not in education or training.	Share of persons aged 18 to 24 who have only lower secondary education.
Employment gap of immigrants.	% difference between the employment rate for non-immigrants and that for immigrants.
Material deprivation rate.	Share of population living in households lacking means to afford at least 3 of the following 9 items: a) unexpected expenses b) 1week annual holiday away c) to pay for arrears (mortgage etc.) d) a meal with meat, chicken or fish every second day e) to keep home adequately warm f) a washing machine g) a colour TV h) a telephone i) a personal car.
Self reported unmet need for medical care.	Total self-reported unmet need for medical care for the following three reasons: financial barriers + waiting times + too far to travel.

At-risk-of poverty rate.	Share of persons aged 0+ with an equivalised disposable income below 60% of the national equivalised median income.
Poverty risk by household type.	Poverty risk for the total population aged 0+ in different types of households.
Poverty risk by the work intensity of households.	Poverty risk for the total population aged 0+ in different work intensity categories and broad household types.
Poverty risk by most frequent activity status.	Poverty risk for the adult population in employment; unemployment; retirement; other inactivity
Poverty risk by accommodation tenure status.	Poverty risk for the total population aged 0+ in full ownership, owner still paying mortgage; tenants at market price; tenants at subsidized; price or rent free.
Dispersion around the at-risk-of-poverty threshold.	Share of persons aged 0+ with an equivalised disposable income below 40%, 50% and 70% of the national equivalised median income.
Persons with low educational attainment.	Share of the adult population whose highest level of education or training is ISCED 0, 1 or 2 (Eurostat values).
Low reading literacy performance of pupils.	Share of 15 years old pupils who are at level 1 or below of the PISA combined reading literacy scale.
Depth of material deprivation.	Unweighted mean of the number of items lacked by the population concerned out of the nine items retained for the definition of the “material deprivation” indicator.
Housing costs.	% of the population living in a household where total housing costs represent more than 40% of the total disposable household income.
Overcrowding.	% of people living in an overcrowded household (adults living in the same room of a house).
Pension portfolio	

At-risk-of-poverty rate of older people.	Risk of poverty for people aged 0-64 , 65+.
Median relative income of elderly people.	Median equivalised disposable income of people aged 65+ as a ratio of income of people aged 0-64.
Aggregate replacement ratio.	Median individual pensions of 65-74 relative to median individual earnings of 50-59, excluding other social benefits.
Change in projected theoretical replacement ratio.	Change in the theoretical level of income from pensions at the moment of take-up related to the income from work in the last year before retirement for a hypothetical worker.
At-risk-of-poverty rate of older people.	Risk of poverty for people aged 0-59, 0-74, 60+ , 75+.
EU Median relative income of elderly people (60+).	Median equivalised disposable income of people aged 60+ as a ratio of equivalised disposable income of people aged 0-59.
EU Aggregate replacement ratio (incl. other social benefits).	Median individual pensions of 65-74 relative to median individual earnings of 50-59, including other social benefits.
Income inequality.	among population aged 65+.
Risk of poverty gap of elderly people.	Poverty gap by age brackets (for 65+ and 75+) at the 60% threshold
Risk of poverty of pensioners	Art risk of poverty rate restricted to the field of people whose main activity status is 'retired'.
Incidence of risk of elderly poverty by the housing tenure status.	Incidence of risk of poverty for people belonging to the 60+, 65+ and 75+ a.
Risk of poverty calculated at 50% and 70% of median national equivalised income for elderly.	Risk of poverty calculated at 50% and 70% of median national equivalised income for people aged 60+, 65+ and 75+.
Total Current Pension expenditure (% of GDP).	Sum of different categories of benefit such as disability pension, early retirement benefit due to reduced capacity to work etc.
Employment rate.	% persons employed in relation to the total number of people in a given age group.

Effective labour market exit age.	The average age of withdrawal from the labour market.
Projections of Pension expenditure, public and total, 2004-2050 (% of GDP).	Specific assumptions – see the EU 2009 Ageing report.
Decomposition of the projected increase in public pension expenditure.	Decomposition with the old age dependency ratio, the employment effect, the take-up ratio and the benefit ratio.
Gender differences in the risk of poverty.	At-risk of poverty rate split by gender.
Gender differences in the relative income of older people.	Relative income for 65+, in relation to the 0-64 population split by gender.
Gender differences in aggregate replacement ratio.	Aggregate replacement ratio split by gender.
Gender differences in the relative income older people.	Relative income for 65+, in relation to the 0-64 population split by gender.

Table 24: The right to social security and SPC indicators. Gap assessment and suggested improvements

Dimensions	SPC Indicators	Gaps	Possible Improvements
<i>General Comment No. 19 on the right to social security</i>	<i>Retrieved from the Social Protection Committee</i>	<i>Discrepancies between right to social security dimensions and SPC indicators</i>	<i>Suggestions which can strengthen right to social security relevance</i>
Core obligations			
<i>To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education</i>	Material deprivation rate.	Limited coverage. Outcome indicators, but lack of structure and process indicators.	Supplement with OHCHR indicator: <ul style="list-style-type: none"> “Proportion of population in specific situations of need receiving social assistance for food, housing, health care, emergency or relief services”.⁴⁷⁶
<i>To ensure access to social security systems or schemes on a non-discriminatory basis</i>		No coverage.	Supplement with proposed SDG indicator: <ul style="list-style-type: none"> “% of population covered by social protection floors/systems”, disaggregated by sex, composed of the following: a) % of older persons receiving a pension; b) % of households with children receiving child support;

⁴⁷⁶ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012).

			<p>c) % of working-age persons without jobs receiving support;</p> <p>d) % of persons with disabilities receiving disability benefits;</p> <p>e) % of women receiving maternity benefits at childbirth;</p> <p>f) % of workers covered against occupational injury; and</p> <p>g) % of poor and vulnerable people receiving benefits).⁴⁷⁷</p>
<i>To respect existing social security schemes and protect them from unreasonable interference</i>	No coverage.		
<i>To adopt and implement a national social security strategy and plan of action</i>	No coverage.		<p>Supplement with OHCHR indicator:</p> <p>“Time frame and coverage of policy for universal implementation of the right to social security” and “Time frame and coverage of national policy on unemployment”.⁴⁷⁸</p>
<i>To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups</i>	<p>Total Current Pension expenditure (% of GDP).</p> <p>Total social Protection</p>	<p>Limited coverage.</p> <p>Outcome indicators, but lack of structure and process indicators.</p>	<p>Supplement with proposed SDG indicator and Eurostat data:</p> <ul style="list-style-type: none"> • “Total government spending in social

⁴⁷⁷ Proposed SDG indicator for target 1.3.

⁴⁷⁸ United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012).

	expenditures (% of GDP).	protection and employment programmes as percentage of the national budgets and GDP and collective bargaining rates” and “Timeframe and coverage of social assistance programmes and non-contributory schemes for persons in specific situations of need (e.g. internally displaced populations, refugees, war victims, long term unemployed persons, homeless persons” ⁴⁷⁹
<i>To monitor the extent of the realization of the right to social security</i>	Limited coverage. Outcome indicators, but lack of structure and process indicators.	<ul style="list-style-type: none"> • “Pensions beneficiaries”.⁴⁸⁰
AAAQ criteria		
<i>Availability</i>	No coverage.	Supplement with OHCHR indicator: <ul style="list-style-type: none"> • “Date of entry into force and coverage of insurance or taxed based social security scheme”.
<i>Adequacy</i>	No coverage.	

⁴⁷⁹ Proposed SDG indicator for target 8.b.

⁴⁸⁰ EUROstat.

<i>Affordability</i>	Self-reported unmet need for medical care.	Supplement with OHCHR indicator: <ul style="list-style-type: none"> • “% of household expenditure (food, health, day care, education, housing) on children and dependent adults covered by public support”.
<i>Accessibility</i>	No coverage.	

C. Overview of relevant sources on social rights⁴⁸¹

1. Millennium Development Goals Indicators⁴⁸²

Type of Author: Intergovernmental organisation.

Geographical range: worldwide.

Time span: Annual reports since 2005 and a summary report on the development between 1990 and 2005. Periodicity of measurement varies from indicator to indicator (from annually to every 10 yrs).

Which information can I expect to find here?	<p>The Millennium Development Goals (MDG) Indicators have been developed by the Inter-Agency and Expert Group on MDG Indicators, led by the UN Secretariat Department of Economic and Social Affairs. The indicators provide information on the achievement of the 8 Millennium Development Goals (MDG). The achievement of each target is measured by different indicators. These indicators offer human rights related information based on country specific and global data. The human rights, related to the indicators are for example as follows⁴⁸³:</p> <p>Goal 1: Eradicate extreme poverty and hunger / Right to adequate standard of living</p> <p>Indicators are measuring the proportion of population below the poverty line (in 2005 \$1.25 purchasing power parity per day) in %, the poverty gap ratio and the share of poorest quintile in national consumption.</p> <ul style="list-style-type: none"> - Right to work <p>Measured by the growth rate of GDP per person employed, the employment-to-population ratio, the proportion of employed people living below the poverty line and the proportion of own-account and contributing family workers in total employment.</p> <ul style="list-style-type: none"> - Right to food <p>The prevalence of underweight children under-five years of age and the proportion of population below minimum level of dietary energy consumption.</p> <p>The Sustainable Development Goals build on the Millennium Development Goals (MDGs). They are eight anti-poverty targets that the world committed to achieving by 2015. The MDGs, adopted in 2000, aimed at an array of issues that included slashing poverty, hunger, disease, gender inequality, and access to water and sanitation. Enormous progress has been made on the MDGs, showing the value of a unifying agenda underpinned by goals and targets. Despite this success, the indignity of poverty has not been ended for all.</p>
What does it measure?	<p>The indicators measure the progress towards the MDG. They are normatively based on the UN-Millennium Declaration. The Declaration is explicitly mentioning the respect for all internationally recognized human rights and fundamental freedoms. It refers directly to the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.⁴⁸⁴ As the MDG</p>

⁴⁸¹ This contribution was provided by Isabella Meier, European Training and Research Centre for Human Rights and Democracy.

⁴⁸² For more detailed information on the human rights relevance of some Millennium Development Goals Indicators, see the Briefs on assessing social indicators.

⁴⁸³ Office of the High Commissioner for Human Rights, 'Millennium Development Goals and human rights standards', available at <www.ohchr.org/EN/Issues/MDG/Pages/MDGsStandards.aspx> accessed 13 November 2015.

⁴⁸⁴ United Nations General Assembly, 'United Nations Millennium Declaration', A/RES/55/2 of 18 September 2000, available at <http://mdgs.un.org/unsd/mdg/Resources/Static/Products/GAResolutions/55_2/a_res55_2e.pdf> accessed 26 November 2015, pp. 6-7.

	are offering information on various human rights, the implementation of parts of other treaties and conventions, such as the ICCPR, the ICESCR or the ECHR are indirectly measured as well.
How often does it measure?	The first set of indicators was developed in 2002 (following the Millennium Declaration) and used until 2007. Now a revised set with two new indicators is in place (following the World Summit). The percentage change of values since 1990 is used to measure progress. To help track progress on the commitment made in the year 2000 in the United Nations Millennium Declaration, international and national statistical experts selected relevant indicators to be used to assess progress over the period from 1990 to 2015, when targets are expected to be met. The results and their interpretation are published as an annual report.
What sources does it use?	Where reasonable country data (e.g. national surveys, country statistics, censuses, estimates from sample surveys, direct and indirect estimation techniques) is available, it is used. Key stakeholders (such as governments, national statistical offices, ministries, central banks) decide upon the usage of data sources. For global reporting, indicators compiled by international organizations, such as the World Bank, the United Nations Educational, Social and Cultural Organization Institute for Statistics (UIS), the ILO, UNICEF or the WHO are used. Indicators, compiled by internationally operating organisations facilitate cross-country comparisons.
How is this indicator scheme build?	For measuring progress towards the MDG quantitative indicators have been established by the UN Secretary-General under advice from experts from IMF, OECD, World Bank, DAC (OECD).
Level of Disaggregation?	Depends on the indicator populated. E.g.: Employment-to-population ratio: disaggregation along gender. Net enrolment ratio in primary education: disaggregation along gender of kids.
Discussion	Some indicators (such as the health MDG) are very difficult to populate with sufficient and reliable information. Furthermore, it is also criticised that measurement draws a stronger focus on poverty measurement than on measuring health. E.g. even data on the most basic life indicators, such as birth and deaths are not directly registered in the poorest countries. Most of the available data, used for measuring the achievement of the health MDGs derives from censuses, specialised household surveys or is rather estimation. ⁴⁸⁵ Easterly criticizes that the MDG, in their first form, were set up in a way that made it more unlikely that Africa will attain them than other regions. His critique includes the measurement of percentage change instead of absolute change, what makes many of the African countries look bad in comparison to other regions with better starting conditions. ⁴⁸⁶ The concrete and measurable goals are welcomed by the UN Development Group but not always way of measurement has to be improved. The use of quantitative targets is criticized, as they are only measuring the access to and not the quality of, for example, education or health care facilities. Economic inequalities and social exclusion is suggested to be integrated into a new development concept. A more holistic approach is required to deal with the complexity and interrelation of social challenges. More desegregated data should help including all groups of people. ⁴⁸⁷
Website	MDG Indicators http://mdgs.un.org/unsd/mdg/Default.aspx

⁴⁸⁵ Amir Attaran, 'An Immeasurable Crisis? A Criticism of the Millennium Development Goals and Why They Cannot Be Measured', PLoS Med 2(10) 2005, available at <<http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.0020318>> accessed 26 November 2015.

⁴⁸⁶ Easterly W., 'How the Millennium Development Goals are Unfair to Africa' (2009) 37 (1) World Development 26, available at <www.sciencedirect.com/science/article/pii/S0305750X08001022> accessed 26 November 2015.

⁴⁸⁷ United Nations Development Group, *A Million Voices: The World We Want – A sustainable future with dignity for all* (United Nations Development Group 2013).

SDG Indicators www.unstats.un.org/sdgs

Database <http://mdgs.un.org/unsd/mdg/DataAvailability.aspx>

The data available includes: country data, regional data, metadata per goal and information on trends. Graphs are available online, and the whole data set can be downloaded, but the statistic software STATA (excl-file is unreadable) is necessary.

2. World Bank Indicators, World Development Indicators

Type of Author: IGO

Geographical range: Worldwide, covers 214 economies.

Time span: Annual application since 1960

Which information can I expect to find here?	<p>The indicators have been developed by the World Bank Development Data Group. They mainly provide economic information, e.g. on agriculture, economy and growth, energy and mining, external debt, the financial sector, poverty, the private and the public sector, labor and trade. The World Development Indicators were developed to measure the effectiveness of financial and technical assistance for developing countries. Some of the indicators are related to human rights.</p>
What does it measure?	<p>Indicators on the right to an adequate standard of living:</p> <p>The national income share, poverty gap at \$1.25/\$2 a day PPP, poverty gap at national poverty lines, poverty headcount ratio at \$1.25/\$2 a day PPP (% of population), poverty headcount ratio at national poverty lines (% of population), rural/urban poverty gap at national poverty lines and rural/urban poverty headcount ratio at national poverty lines (% of rural population)</p> <p>For the right to health a large scope of relevant indicators is available. These indicators reach from fertility rates, birth rates, births attended by skilled health staff; contraceptive prevalence, death rates over health expenditure, immunization against measles and DPT (diphtheria, pertussis, and tetanus) and improved sanitation facilities to life expectancy, infant mortality rates, prevalence of HIV, population ages and some more.</p> <p>The right to water and sanitation is covered by indicators for the annual freshwater withdrawals of agriculture, domestic and industry (% of total freshwater withdrawal), improved water source for urban and rural areas (% of population with access), renewable internal freshwater resources and improved sanitation facilities (% of population with access).</p> <p>The right to work is measured by the following indicators: Labor force participation rate, female/male (% of female/male population ages 15+); share of women in wage employment in the nonagricultural sector (% of total nonagricultural employment); unemployment, female/male; vulnerable employment, female/male (% of employment); employment in agriculture, industry and service; employment to population ratio; GDP per person employed (constant 1990 PPP \$); Labor force participation rate; unemployment (male/female/youth) and long-term unemployment.</p> <p>The right to food is only covered by one indicator. The indicator of depth of the food deficit (kilocalories per person per day).</p> <p>For the right to life the indicators for life expectancy at birth, mortality rate, under-5/infants (per 1,000 live births), maternal mortality ratio, birth and death rate are of relevance.</p> <p>The right to equality is measured by the proportion of seats held by women in national parliaments, the share of women in wage employment in the nonagricultural sector (% of total nonagricultural employment), teenage mothers (% of women ages 15-19 who have had children or are currently pregnant), a CPIA (Country Policy and Institutional Assessment) gender equality rating (1=low to 6=high) and further the disaggregated data of men and women for most of the employment and education indicators.</p>

	<p>Information on the right to social security can be drawn from the indicators for social contribution (% of revenue), a CPIA social protection rating (1=low to 6=high), adequacy of social insurance programs/protection and labor programs/safety net programs (% of total welfare of beneficiary households), CPIA policies for social inclusion/equity cluster average (1=low to 6=high), coverage (%) of all social protection and labor/assistance/insurance and benefits incidence in poorest quintile (%) minus all social protection and labor/assistance/insurance. For most of these indicators very little data for very few countries is available.</p> <p>Concerning the right to education a long list of indicators is accessible to measure its implementation. This includes indicators for children out of school, government expenditure on education/students, gross intake ratio in first grade of primary education (% of relevant age group), literacy rate, persistence to last grade of primary, primary completion rate, progression to secondary school, pupil-teacher ratio (primary), repeaters (primary), school enrollment (preprimary, primary, secondary, tertiary) and trained teachers in primary education (% of total teachers).</p> <p>The right to environmental health is measured by the following indicators: Indicators for agricultural emissions, CO2 emission indicators, such as sources of electricity production, forest area and other forms of emissions (Nitrous oxide, Methane).</p>
How often does it measure?	Regular application, updated quarterly.
What sources does it use?	Primarily official sources and surveys are used. The World Development indicators rely on country data, International and governmental agencies (i.e. the UN Food and Agricultural Organization) and private and nongovernmental organisations (i.e. Containerization International). ⁴⁸⁸ All of these organisations provide information on different indicators, in relation to their range of task; i.e. the WHO offers information of relevance for the health related indicators.
How is this indicator scheme build?	The World Bank Indicators are based on quantitative data with more than 8000 indicators. These indicators are, divided into following areas: ⁴⁸⁹ agriculture and rural development; aid effectiveness; climate change; economy and growth; education; energy and mining; environment; external debt; financial sector; gender; health; infrastructure; poverty; private sector; public sector; science and technology; social development; social protection and labor; trade; urban development.
Level of disaggregation?	Depends on the indicator populated. For most of the education and employment indicators disaggregated data for men and women exist. Very little disaggregation by age is applied. Some indicators are populated with disaggregated data along work status. For some indicators, like the improved access to water, the data is disaggregated by rural and urban areas.
Discussion	<p>Comparability across countries is intended, but depends on the quality of data provided by the countries and their national statistical agencies. Since for the most countries times series from 1970 onwards are existing, comparability over time is possible.</p> <p>Shalda Baddie, the Director of the Development Economics Data Group, notices that the World Development Indicators rely heavily on national statistics. She admits that there has been a substantial increase of the availability and quality of the data since the first edition of the World Development Indicators in 1997. But still the '[...]capacity to use statistical data remains weak', greater disaggregation of data (like sex, age and geography) is necessary and '[...]data in key areas, such as agriculture, are missing or outdated.'⁴⁹⁰</p>
Website	http://data.worldbank.org

⁴⁸⁸ World Bank, 'World Development Indicators Partners', available at <<http://data.worldbank.org/about/wdi-partners>> accessed 26 November 2015.

⁴⁸⁹ World Bank, 'Data', available at <<http://data.worldbank.org/>> accessed 26 November 2015.

⁴⁹⁰ World Bank, *2012 World Development Indicators* (The World Bank 2012), p. v.

Database: <http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators>

3. International Human Development Indicators

Type of Author: IGO.

Geographical range: International, regional, national and local Human Development Regions (over 600 reports in over 140 countries).

Time span: regular application.

<p>Which information can I expect to find here?</p>	<p>The international Human Development Indicators (HDI) have been developed by the Human Development Report Office (HDRO). They offer worldwide information on various human rights, which are important for the human development. Human rights related indicators, such as literacy rate, school enrolment, adult mortality rate, gender inequality index, etc., are used.</p> <p>The HDI provide information on the following human rights:</p> <p>The right to an adequate standard of living is covered by the indicators for the estimated GNI (Gross National Income) per capita (purchasing power parity (PPP)), the GDP (Gross Domestic Product) per capita (2011 PPP \$), the GNI per capita in PPP terms, the HDI, the inequality-adjusted HDI, the multidimensional poverty index, the population in multidimensional poverty (%), the population living below \$1.25 PPP per day (%) and the population living on degraded land (%).</p> <p>For the right to work the income Gini coefficient, the Income index, the Income quintile ratio, the Inequality-adjusted income index and the labour force participation rate (female-male ratio) is of relevance.</p> <p>The right to health is measured by the indicators for children under-five who are stunted (moderate and severe) (%), the expenditure on health, total (% of GDP), a health index, the intensity of deprivation and overweight children (moderate or severe) (% under age 5).</p> <p>Concerning the right to life the following indicators are of relevance: The homicide rate (per 100,000), the inequality-adjusted life expectancy index, the life expectancy at birth (years), the maternal mortality ratio (deaths per 100,000 live births) and the under-five mortality rate (per 1,000 live births).</p> <p>The right to equality is covered by the adolescent birth rate (women aged 15-19 years) (births per 1,000 women ages 15-19), the gender development index (female to male ratio of HDI), the gender inequality index, the inequality-adjusted education index, the inequality-adjusted HDI, the inequality-adjusted income index, inequality-adjusted life expectancy index and the parliamentary seats, female to male ratio.</p> <p>The only indicator which could be seen as related to the right to adequate housing is the one for the population living on degraded land.</p> <p>The right to education is measured by various indicators. This includes the adult literacy rate, both sexes (% ages 15 and older), the combined gross enrolment in education (both sexes) (%), the education index, the expected years of schooling (years), the expenditure on education, public (% of GDP) (%), the inequality-adjusted education index, the mean years of schooling, the population with at least secondary education (female/male ratio) and primary school teachers trained to teach (%).</p> <p>For the right to environmental health information is provided by the indicators for carbon dioxide emissions per capita (tonnes), change in forest area, 1990/2011 (%) and the population living on degraded land (%).</p>
<p>What does it measure?</p>	<p>The HDI measure the achievement in the basic dimensions of human development across countries. It is "[...] a simple unweighted average of a nation's longevity, education and income</p>

	<p>and is widely accepted in development discourse,⁴⁹¹ and was modified and refined over the years.⁴⁹²</p> <p>The HDI was created to emphasize that people and their capabilities should be the ultimate criteria for assessing the development of a country and not only economic growth. The HDI can also be used to question national policy choices, asking how two countries with the same level of GNI per capita can end up with different human development outcomes.⁴⁹³</p>
How often does it measure?	Regular application.
What sources does it use?	The Human Development Reports are based on data from international agencies and independent studies. ⁴⁹⁴ The HDRO does not collect data directly from national statistical systems but uses indicators produced by United Nations Agencies and affiliates with data collection, compilation and dissemination mandates.
How is this indicator scheme build?	<p>The Human Development Indicators are a weighting of income, health and education. Indicators are presented as absolute values, rates or percentages. They are included in weighted indices, such as:</p> <ul style="list-style-type: none"> - Human Development Index; - Inequality-adjusted HDI; - Gender Inequality Index; - Multidimensional Poverty Index.
Level of Disaggregation?	Overall, very little disaggregated data is available and used. Some of the education and economic indicators are disaggregated along gender.
Discussion	<p>The comparability among countries is a major goal of the HDI. The UNDP presents an annual country ranking. However, because national and international data agencies continually improve their data series, the reports — including the HDI data, values and ranks — are not comparable, neither with each other nor to those published in earlier editions. The findings of national and international data can also vary because international agencies harmonize national data for comparability across countries, produce an estimate of missing data or do not always incorporate the most recent national data.</p> <p>Bryan Caplan criticise the measurement of education. He agrees with the 2/3rds of the weight coming from the literacy rate, but disagrees with the remaining 1/3. This “[...] comes from the Gross Enrollment Index - the fraction of the population enrolled in primary, secondary, or tertiary education.” His critique is aimed at the goal to achieve: “To max out your education score, you have to turn 100% of your population into students!⁴⁹⁵” Initially he stipulates, that the HDI “[...] gives “equal weights” to GDP per capita, life expectancy, and education. But it's more complicated than that, because scores on each of the three measures are bound between 0 and 1.” Caplan states, that this is a “bias against GDP”. While the GDP per capita “[...] has grown fantastically during the last two centuries, and will continue to do” this progress is especially in rich countries not sufficiently respected, because they are already</p>

⁴⁹¹ United Nations Development Program, ‘Human Development Reports, About Human development’, available at <<http://hdr.undp.org/en/humandev>> accessed 26 November 2015.

⁴⁹² Ibid. footnote 491.

⁴⁹³ United Nations Development Program. ‘Human Development Index: Frequently Asked Questions’, available at <<http://hdr.undp.org/en/faq-page/human-development-index-hdi#t292n36>> accessed 13 November 2015.

⁴⁹⁴ United Nations Development Program, *Human Development Report 2013 - The Rise of the South: Human Progress in a Diverse World* (UNDP 2013), available at <http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf> accessed 15 December 2015, p. 199.

⁴⁹⁵ Caplan B., ‘Against the Human Development Index’ (22 May 2009), available at <http://econlog.econlib.org/archives/2009/05/against_the_hum.html> accessed 26 November 2015.

Website

close to the upper limit. For Caplan the same goes for life expectancy and therefore he considers the HDI as not ambitious enough.⁴⁹⁶

<http://hdr.undp.org>

Database <http://hdr.undp.org/en/content/exporting-data-and-understanding-api>

4. KILM - Key indicators of the labour market

Type of Author: IO.

Geographical range: worldwide.

Time span: Since 1999; 8th edition in 2015.

Which information can I expect to find here?	The KILM is the International Labour Organisation's research tool for labour market information. The KILM are not directly referring to human rights, but some of the indicators offer relevant information on the rights to employment, equality and social security .
What does it measure?	The KILM are composed of 18 different indicators and monitoring the equity in labour market and the progress towards the Millennium Development Goals. Further they are assessing employment and identifying "best practices". Most of the 18 indicators are measurements for the right to work and because they are broken down by gender and age group information on the right to equality and non-discrimination is available too. One indicator deals with the right to education . Indicator 18. "Poverty, income distribution and the working poor" provides relevant information on the right to social security . It incorporates two MDG indicators: The proportion of the population living below the international poverty line of US\$1.25 and the proportion of persons living with their families below the poverty line, the "working poor". Additionally other measures of economic well-being, including the employed population living in different economic class groups, estimates of the population living below nationally defined poverty lines and the Gini index as a measure of the degree of inequality in income distribution are used for KILM 18. ⁴⁹⁷
How often does it measure?	On a yearly basis.
What sources does it use?	Quantitative data including mathematical calculation and qualitative information for each indicator. The ILO concentrates on bringing together information from international repositories and rarely collects information directly from national sources. However, these organisations (such as the ILO Department of Statistics, the OECD, EUROSTAT, World Bank or the UNESCO Institute of Statistics) rely heavily on national sources and/or official national publications.
How is this indicator scheme build?	The 18 KILM are quantitative indicators, mostly outcome indicators and the results are annually presented in the form of a report.
Level of Disaggregation?	Depending on the indicator, disaggregation of women and men and age groups.

⁴⁹⁶ Ibid, footnote 495.

⁴⁹⁷ International Labour Organisation, 'Key Indicators of the Labour Market (KILM) 2015', available at <www.ilo.org/global/statistics-and-databases/research-and-databases/kilm/lang--en/index.htm> accessed 26 November 2015.

Discussion

The quality of the data varies, because of its dependence on national statistical agencies providing the data (230 countries and territories). The comparability across countries is intended and even a criterion for the selection of KILM indicators with an own section about the comparability for each KILM indicator.

In the “Guide to understanding the KILM” it is acknowledged, that “[...] national statistics programmes and in the efficiency of collection on the part of the KILM, many holes still exist whereby data are not available.”⁴⁹⁸ This problem is of greater concern particularly in African countries.

Regarding the comparability it is stated that, “[...] the precision of the measurements made for each country and year, and systematic differences in the type of source, related to the methodology of collection, definitions, scope of coverage and reference period, will certainly affect comparisons.”⁴⁹⁹

To counter this problem “[...] detailed notes are provided that identify the repository, type of source [...], and changes or deviations in coverage, such as age groups and geographical coverage [...] and so on.”⁵⁰⁰

Website

www.ilo.org/empelm/what/WCMS_114240/lang--en/index.htm

Database: <http://kilm.ilo.org/2011/Installation/Application2013/kilm13install.htm>

5. The State of Food Insecurity in the World Indicators

Type of Author: IGO.

Geographical range: International.

Time span: It depends on the indicator. For most of the indicators for food security data is available for the years of 1990 onwards.

Which information can I expect to find here?	The State of Food Insecurity in the World Indicators have been developed by the Food and Agriculture Organization (FAO) of the United Nations in 2013. They introduced a complex form of indicators to measure food security. The FAO Indicators provide detailed and extensive information on the right to food .
What does it measure?	FAO developed an indicator system which measures the four dimensions of food security (availability, accessibility, stability and utilisation) to allow a nuanced assessment of food insecurity. Most of the indicators provide information on the right to food . Information on the right to water and the right to health is available as well.
How often does it measure?	The statistics are updated annually and a State of Food Insecurity in the World report is published. Additionally, different reports and articles are published on specific topics frequently.
What sources does it use?	The data provided for the FAO reports comes from FAO data sources and non-FAO data sources.

⁴⁹⁸ ILO, ‘Guide to understanding the KILM’, available at <<http://kilm.ilo.org/2011/download/GuidEN.pdf>> accessed 26 November 2015, p. 10.

⁴⁹⁹ Ibid, footnote 498, p. 12.

⁵⁰⁰ Ibid, footnote 498, p. 12.

How is this indicator scheme build?

Examples of sources are the Aquastat Country Profiles, the Country Office Information Network (COIN), Family Farming Knowledge Platform, FAO-GeoNetwork, FAOSTAT, Food and Agriculture Policy Decision Analysis (FAPDA), Gender and Land Rights database, the Nutrition Country Profiles and more.⁵⁰¹

Altogether 31 Indicators were developed for the four dimensions of food security:

- Availability: e.g. average dietary energy supply adequacy and average value of food production;
- Access: e.g. percentage of paved roads over total roads and prevalence of undernourishment;
- Stability: e.g. value of food imports over total merchandise exports and per capita food supply variability;
- Utilization: e.g. percentage of children under 5 years of age who are stunted and percentage of adults who are underweight or prevalence of anemia among pregnant women.

Level of Disaggregation?

Some indicators are disaggregated by age, such as percentage of children under 5 years of age affected by wasting.

Discussion

One of the major limitations of this measurement concerns the timeliness of the FAOs reporting. There is often a large time-span (years) between the data and the publication of findings. This affects indicators like the Prevalence of Undernourishment-Indicator. Connected to this problem is the lack of recent reliable survey data to update the estimates.⁵⁰²

Website

www.fao.org/home/en

Database: The FAOSTAT is the FAO's corporate database. It covers a broad spectrum of topics related to food security and agriculture. These include e.g. AQUASTAT, CountrySTAT, Gender and land rights database, Global Information and Early Warning System (GIEWS) and Global Livestock Production and Health Atlas (GLiPHA)

www.fao.org/statistics/databases/en

<http://faostat3.fao.org/home/E>

http://faostat3.fao.org/download/D/*/E

⁵⁰¹ Food and Agriculture Organisation of the United Nations, 'Catalog of data sources', available at <www.fao.org/countryprofiles/data-sources/en/> accessed 26 November 2015.

⁵⁰² FAO Statistics Division, 'Advances in Hunger Measurement: Traditional FAO Methods and recent Innovations' (2014) Working Paper Series ESS 14-04, available at <www.fao.org/3/a-i4060e.pdf> accessed 15 December 2015, p. 19.

6. The Fragile State Index (FSI)

Type of Author: NGO.

Geographical range: International (178 states).

Time span: Annual since 2005.

Which information can I expect to find here?	The FSI has been developed by the NGO Fund for Peace. It includes civil and political rights, the prohibition of discrimination, minority rights and economical rights are covered by the FSI.
What does it measure?	The FSI aims at giving an early warning for state failure. It uses the software "The Fund for Peace's Conflict Assessment System Tool" (CAST), which analyses and scores the information collected per country. ⁵⁰³ The index is guided by twelve main indicators (each split into an average of 14 sub-indicators). These indicators touch on human rights, but do not focus on them. One indicator e.g. focuses on Suspension or Arbitrary Application of the Rule of Law and Widespread Human Rights Abuse, including press freedom, civil liberties, political freedom, human trafficking, torture or executions.
How often does it measure?	Annually.
What sources does it use?	The FSI use qualitative and quantitative data, which are evaluated through content analysis (electronic scanning). Qualitative data are mainly reports from all over the world, such as news articles, essays, magazine pieces, speeches, and government and non-government reports. It does not use social media. The scores produced by the software CAST are compared with a comprehensive set of vital statistics as well as human analysis. ⁵⁰⁴
How is this indicator scheme build?	<p>The FSI is based on 12 primary social, economic and political indicators with over 100 sub-indicators.⁵⁰⁵ Social Indicators are for instance demographic pressures, refugees and internally displaced people, group grievance or brain drain. Economic indicators are i.e. uneven economic development, poverty and economic decline. Political and military indicators are i.e. state legitimacy, public services, human rights and rule of law, security apparatus, factionalized elites, external intervention.</p> <p>Rating: 1-10 points per indicator. 1 constitutes the best value. The total of these values is the basis for the ranking and the classification from "Very High Alert" to "Very Sustainable".</p>
Level of Disaggregation?	Not applicable.
Discussion	<p>The quality of data providers varies, but it is reliable due to the diversification and number of sources. Comparability across countries and over time is intended and possible.</p> <p>Through the additive index construction information might get lost and it may lead to erroneous conclusions as high score(s) in certain indicator(s) may be leveled off by low scores in other indicator(s), without taking into account that these indicators point towards different topics.⁵⁰⁶ Another point of critique is that all indicators are given the equal weight.</p>
Website	http://fsi.fundforpeace.org

⁵⁰³ Fund for Peace, 'The methodology behind the Index', available at <<http://fsi.fundforpeace.org/methodology>> accessed 26 November 2015.

⁵⁰⁴ Ibid, footnote 503.

⁵⁰⁵ Fund for Peace, 'The Indicators', available at <<http://fsi.fundforpeace.org/indicators>> accessed 26 November 2015.

⁵⁰⁶ Lars Carlsen and Rainer Bruggemann, 'The "Failed State Index" offers more than just a Simple Ranking' (2014) 115 Social Indicators Research 525.

7. World Income Inequality Database

Type of Author: Academic.

Geographical range: UN member states.

Time span: The WIID was applied for the very first time in 1997, last updated in September 2014 (WIID V3.0B).

Which information can I expect to find here?	The United Nations University, World Institute for Development Economics Research (UNU/WIDER) World Income Inequality Database (WIID) provides information on income inequality for developed, developing and transition countries.
What does it measure?	The database does not provide information on human rights in a narrow sense. However, one may assume that this World Income Inequality Database is suitable to measure the human rights compliance of UN member states, seeing income (in) equality as an indicator for the human rights situation in a country.
How often does it measure?	No frequent application.
What sources does it use?	The administrative socioeconomic data is quantitative and gathered through household surveys, questionnaires and statistics of other organizations, such as Transmonee Database, Swiss Federal Statistical Office, Statistics Netherlands, Bank of Italy, Statistics Norway, World Bank, Maxwell Center for Policy Research and Luxembourg Income Study, Deiniger and Squire database.
How is this indicator scheme build?	The results are presented in excel tables and the countries at stake can be compared cross national.
Level of Disaggregation?	Not applicable.
Discussion	The database has been compiled to allow for comparisons of income inequality across time and space, but several factors may nonetheless affect the comparability of the data. The data are collected from a variety of sources, frequently using different definitions and methods of data collection. Users must therefore examine the documentation carefully before using the data. ⁵⁰⁷

⁵⁰⁷ NSD, 'The Macro Data Guide – An International Social Science Resource, World Income Inequality Database', available at <www.nsd.uib.no/macrodataloguide/set.html?id=49andsub=1> accessed 26 November 2015.

8. WHO World Health Statistics/Global Health Observatory

Type of Author: IGO.

Geographical range: 194 member states worldwide.

Time span: annually.

Which information can I expect to find here?	The WHO statistics provide information on the right to life and the right to health .
What does it measure?	<p>The Global Health Observatory (GHO) covers 194 states, provides access to over 1000 indicators on priority health topics and aims to track progress related to the MDGs.⁵⁰⁸</p> <p>The used indicators are measuring the implementation of the right to life and the right to health.</p> <p>The GHO is a data repository, which provides access to the following resources⁵⁰⁹: World Health Statistics, Millennium Development Goals (MDGs), mortality and global health estimates, health systems, public health and environment, Health Equity Monitor, urban health, neglected tropical diseases, non-communicable diseases, substance use and mental health, infectious diseases, injuries and violence, child health, HIV/AIDS and other Sexually Transmitted Infections (STIs), malaria, tuberculosis, International Health Regulations (2005) monitoring framework.</p>
How often does it measure?	Annually.
What sources does it use?	Main sources are statistics and household surveys, administrative data, socioeconomic data and census, death-registration records, special studies on deaths due to HIV and conflict, immunization coverage rates for vaccine-preventable diseases; questionnaires on health service use (like the UNICEF Multiple Indicator Cluster Survey, the Demographic and Health Survey, country health and economic surveys), labour-force and employment surveys, health-facility assessments, routine administrative information systems, surveys conducted using WHO/Health Action International standard methods, the National Health Accounts (NHAs).
How is this indicator scheme build?	<p>The indicator scheme was developed through expert meetings at the WHO. The WHO website offers different opportunities of navigation through its complex indicator system. There are 17 categories of indicators. Each of them contains further subcategories.</p> <p>For example the category of World Health Statistics includes the following subcategories: mortality and global health estimates, cause-specific mortality and morbidity, selected infectious diseases, health service coverage, risk factors, health systems, health equity monitor, demographic and socioeconomic statistics. Indicators and statistics are available for each of these subcategories. The results of the indicators are presented in a table which makes a cross-national comparison easier.</p>
Level of Disaggregation?	Depends on the indicator populated. Some indicators disaggregate by gender and age, e.g. life expectancy.
Discussion	It is intended to be applied cross-national, therefore a comparability is considered, although one has to be careful with this, since not all the 194 states observed in this statistics have the means to provide sufficient data. It has to be taken into account that not all data is very high

⁵⁰⁸ WHO, 'Global Health Observatory – Resources, About the Observatory', available at <<http://apps.who.int/gho/data/node.resources>> accessed 26 November 2015.

⁵⁰⁹ WHO, 'Global Health Observatory - Data Repository', available at <<http://apps.who.int/gho/data/node.main>> accessed 26 November 2015.

Website

in quality. Some states may have an insufficient way of gathering a certain type of information, i.e. due to missing birth registration etc.

www.who.int/en/

Database: <http://apps.who.int/gho/data/?theme=home>

Reports: http://www.who.int/gho/publications/world_health_statistics/en/

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European Parliament and Council Directive 2012/29/EU of 25 October 2012 establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L315/57, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>> accessed 31 October 2015.

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