

NOTE

## Refining the Methodology of Rights-Based Monitoring: The Role of Human Rights Indicators

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### INTRODUCTION

How can one hold a government accountable for its human rights obligations? What is the best way to assess or monitor the implementation of various international Human Rights Conventions? Civil society groups, inter-governmental organizations, UN treaty-bodies, charter-bodies and individual states have been grappling with these questions over the past three decades or more. What is relatively new, however, is the recourse these groups have begun to take in the use of quantitative indicators.

This Note surveys the role of human rights indicators in the ongoing quest for implementation and accountability. Section I summarizes a history of the development of Human Rights indicators; Section II assesses some strengths and weaknesses in the use of indicators; and Section III examines whether or not the entry of quantitative indicators into human rights discourse is a desirable phenomenon.

In the post-Second World War period, the evolution of International Human Rights Law has been impressive. Under the aegis of the United Nations, over 70 legally binding Conventions were adopted to deal either with specific themes<sup>1</sup> or groups of people.<sup>2</sup> There are nine core international human rights conventions the implementation of which is reviewed by a committee of experts called a treaty-monitoring body or in short, a treaty-body. The treaty-bodies, among other functions, consider reports submitted by the States parties, individual complaints, inter-state complaints, and issue general comments and recommendations.

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1. Torture, racial discrimination, genocide, enforced disappearances etc. For details, see the website of the Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org>

2. Women, children, migrant workers, persons with disabilities etc. For details see the website of the Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org>

Over the past three decades, the reporting process has served several useful functions but it is not without limitations. In many countries, it has led to changes in laws, provided relief to victims and contributed significantly to engaging with States through a "constructive dialogue" approach. On the other hand, there are also instances of incomplete coverage in the reports of States parties, with quantitative information replaced by abstraction. The reports can tend towards the superficial and the nationalistic, with delays in reporting not uncommon. The States also often do not promote an active domestic debate over the reports.<sup>3</sup>

In 2001, India submitted a report of nearly 500 pages to the Committee on the Rights of the Child.<sup>4</sup> Some NGOs termed it as an attempt to mislead the treaty-body.<sup>5</sup> It is not uncommon for the States to stress constitutional provisions and other human rights legislations though the de facto ground realities are different.

Frustrated and concerned with the inadequacy of state reports, many treaty bodies have issued a number of General Comments on procedures associated with the filing of reports, reporting guidelines, and elaboration of normative content of rights mentioned in various treaties.<sup>6</sup> It is in this context that the role of human rights indicators has acquired increased relevance.

#### I. SHORT HISTORY ON THE DEVELOPMENT OF HUMAN RIGHTS INDICATORS

Human rights indicators are defined as "specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights."<sup>7</sup> Although UN Specialized institutions, treaty-bodies and other entities had been using this type of statistical information for years, it was really only in the last five years that work on evolving a suitable conceptual and methodological framework for Human Rights indicators gained momentum. In the first sixty years of its existence, the United Nations led the effort in standard-setting by way of adoption of international treaties on many key issues. In the recent past, the emphasis has shifted from standard-setting to enforcement. The efforts of civil society, UN agencies and others to hold governments accountable for their human rights

3. For a comment on the overall UN Human Rights Treaty body system, see generally, HENRY STEINER, PHILIP ALSTON, RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT LAW POLITICS MORALS* (2007).

4. The Convention on the Rights of the Child: Second India Periodic Report, available at <http://www.ohchr.org>

5. See NGO Alternative Reports associated with the 35th Session of the Committee on the Rights of the Child (12-30 January, 2004), available at [http://www.crin.org/resources/find\\_altrep.asp?CRCID=37&country=96](http://www.crin.org/resources/find_altrep.asp?CRCID=37&country=96)

6. In the context of right to food, the Committee on Economic, Social and Cultural Rights has in its General Comment No. 12 [hereinafter *general comment*] emphasized on the adequacy, availability and accessibility. As regards right to health, the ESCR Committee in its General Comment No. 14, identified four key elements of availability, accessibility, acceptability and quality. For details, see treaty bodies database on the website of the Office of the High Commissioner for Human Rights, available at <http://www.ohchr.org>.

7. Report On Indicators For Monitoring Compliance With International Human Rights Instruments, *UN Document HRI/MC/2006/7* (11 May 2006), available at <http://www2.ohchr.org/english/issues/indicators/docs/HRI-MC-2006-7.pdf>.

commitments also led to increased focus on human rights indicators.

The inter-committee meeting of treaty bodies (ICM) in June 2006 asked the UN Secretariat to undertake an evaluation on the use of statistical information in States parties' reports and to develop a reference list of indicators. Accordingly, the Office of the High Commissioner for Human Rights [OHCHR] initiated work on indicators to help ICM make use of statistical information in States parties' reports in assessing the implementation of human rights. OHCHR undertook an extensive survey of literature and prevalent practices among national and international organizations on the use of quantitative information in monitoring human rights.<sup>8</sup> These indicators were then subjected to a validation process involving, at the first stage, discussions with an identified panel of experts and consultation with States parties.

A report on operational human rights indicators was presented to the ICM in June 2008.<sup>9</sup> Lists of illustrative indicators were elaborated on a number of human rights - both civil and political rights as well as economic, social and cultural rights. The human rights on which indicators have already been elaborated are the right to life, the right to liberty and security of person, the right to participate in public affairs, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the right to freedom of opinion and expression, the right to a fair trial, the right to enjoyment of the highest attainable standard of physical and mental health, the right to adequate food, the right to adequate housing, the right to education, the right to social security, and the right to work.

<sup>10</sup> The report categorized indicators as follows:<sup>11</sup>

1. Quantitative indicator [viz. numbers, percentages, indices]
2. Qualitative indicator [Viz. appraisals, assessments and opinions]
3. Expert Survey-based indicators [generated by expert judgments]
4. Opinion Survey-based indicators [generated by polling a representative sample of individuals on their personal views on a given issue]
5. Standard based indicators [based on socio-economic statistics and other administrative standards].
6. Events based data on human rights violations (or events-based data for short) refer to qualitative or quantitative data that can be linked to events characterized by the occurrence of human rights violations.

Recognizing the need to gather data from these various sources, the OHCHR has underscored a particular methodology in organizing data into meaningful

8. For details of survey, See R. Malhotra & N. Fasel, Quantitative Human Rights Indicators - A survey of major initiatives, Paper presented at the Turku expert meeting on 10-13 March 2005 (paper on file with the editors-in-Chief).

9. See Report on Indicators for promoting and monitoring the implementation of Human Rights, UN document HRI/MC/2008/3 dated 6 June 2008 [hereinafter RIPMIHR].

10. *Id.*, at p.4.

11. Malhotra & Fasel, *supra* note 8.

indicators.<sup>12</sup> The “structural-process-outcome” indicator framework is intended to adopt a common approach to identifying indicators for monitoring civil and political rights, and economic, social and cultural rights.<sup>13</sup> According to OHCHR, the primary objective in using this framework is to comprehensively translate the narrative on human rights standards with the help of indicators that can reflect the commitment-effort-results aspect of the realization of human rights through available quantifiable information. It has emphasized that working with such a configuration of indicators simplifies the selection of indicators, encourages the use of contextually relevant information, facilitates a more comprehensive coverage of the identified attributes of a right, and, perhaps, also minimizes on the overall number of indicators required to monitor the realization of the concerned human right standards.

Under this conception, structural indicators represent the start—not the end point—for monitoring human rights. According to the Report,

Structural indicators reflect the ratification/adoption of legal instruments and existence of basic institutional mechanisms deemed necessary for facilitating realization of the human right concerned. They capture the intent or acceptance of human rights standards by the State in undertaking measures for the realization of the human right concerned. Structural indicators have to focus foremost on the nature of domestic law as relevant to the concerned right – whether it incorporates the international standards – and the institutional mechanisms that promote and protect the standards. Structural indicators also need to look at the policy framework and indicated strategies of the State as relevant to the right.<sup>14</sup>

Unlike structural indicators, process indicators focus on measures being taken by States to realize human rights. They relate

State policy instruments to milestones that become outcome indicators, which in turn can be more directly related to the realization of human rights. State policy instruments refer to all such measures including public programmes and specific interventions that a State is willing

12. GENERAL COMMENT, *supra* note 6, at 1.

13. RIPMIHR, *supra* note 9, at 10-14

14. *Id.* 7. For instance, in the context of right to food, Mannheim University and FIAN international suggested the following structural indicators: Recognition of the right to adequate food and related rights, Independent national human rights institutions, administrative, quasi-judicial and judicial mechanisms to provide adequate, effective and prompt remedies, national strategy on implementing the right to food, food safety and consumer protection legislation, instruments to ensure cultural or traditional food use and nutrition, nutrition and nutrition adequacy legislation and programs, mechanisms to ensure a functioning market system, program for disaster management, National policy statement on agricultural production, protection and enhancement of access to productive resources and assets, protection of labour conditions and enhancement of access to labour, social transfer scheme Sven Söllner, Right to Food Indicator Description, IBSA [Indicators, Benchmarks Scoping Assessment] Project, (13 July, 2010), available at <http://ibsa.uni-mannheim.de/>.

to take in order to give effect to its intent/acceptance of human rights standards to attain outcomes identified with the realization of a given human right."<sup>15</sup>

Structural indicators as well as process indicators measure aspects of the state obligations of conduct. On the other hand, outcome indicators measure the state's obligations of result.

Outcome indicators capture attainments, individual and collective, that reflect the status of realization of human rights in a given context. It is not only a more direct measure of the realization of a human right but it also reflects the importance of the indicator in assessing the enjoyment of the right.<sup>16</sup>

## II. STRENGTHS AND WEAKNESSES

Despite many positive features of the structural-process-outcome approach, there remain concerns for all three stages of analysis. One of the most prevalent is need to sensitize indicators at structural (legislative), process (policy and regulatory implementation) and outcome (measuring) stages to systemic discrimination. For instance, if India were to claim significant improvement in literacy rate as per 2001 census [at 64.8%], the disaggregated data might reveal significant gaps in educational attainments of women, persons belonging to Scheduled Castes, Scheduled Tribes, minorities and persons with disabilities. For this reason, many treaty bodies had been emphasizing the need to collect disaggregated data relating to rights. In other words there is a genuine need for disaggregation of Human Rights indicators on the prohibited grounds of discrimination. This point has also been stressed repeatedly by OHCHR in its reports on Human Rights indicators.<sup>17</sup>

It is important to remember that identification of appropriate Human Rights indicators is only the first step. In dialogue with the treaty body following indicator-based reporting, State parties are asked to set up quantitative benchmarks in

15. *Supra* note 6, at 7. For instance, the process indicators in the context of the right to adequate food could include: "land and environmental laws conducive to efficient food production by smallholder farmers, food safety and consumer protection laws and regulations, food and nutrition programs targeted at vulnerable population groups, rural infrastructure programs, targeted food prices subsidies, and improving access to food among the resource-poor by means of income generation programs. For details, see *supra* note, 14, p.150-151.

16. *Supra* note 6, at 7-8.

17. According to OHCHR, "in order to be meaningful, human rights indicators must be: i) relevant, valid and reliable; ii) simple, timely and few in number; iii) based on objective information and data-generating mechanisms; iv) suitable for temporal and spatial comparison and following relevant international statistical standards; and v) amenable to disaggregation in terms of sex, age and other vulnerable or marginalized population segments." CEDAW General Recommendation No. 19 has emphasized that social and economic surveys should formulate their questionnaire in such a way that data can be disaggregated according to gender; that state parties should encourage the compilation of statistics on domestic violence. CEDAW General Recommendation No. 23 has asked states parties to provide quantitative data showing the percentage of women enjoying the rights in relation to political and public life; and encourage the implementation of time use surveys. Other treaty bodies have also made similar General Comments.

relation to each indicator. In this way, appropriate targets could be fixed, which can be reviewed in the next reporting cycle.

According to OHCHR, the opportunity cost of the compilation of relevant information on an indicator could be useful in selecting indicators for use in human rights assessments.

Referring to the importance of contextual relevance of indicators, the OHCHR has emphasized the need to strike a balance between universally relevant indicators and contextually specific indicators, as both kinds of indicators are needed in designing a set of human rights indicators. According to OHCHR, though disaggregated data is essential for addressing human rights concerns, it is not practical or feasible always to undertake disaggregation of data at the desired level. Disaggregation by sex, age, regions or administrative units may, for instance, be less difficult than by ethnicity, as the identification of ethnic groups often involves objective (e.g. language) and subjective (e.g. self-identity) criteria that may evolve over time.

The collection of extensive data should not strain the resources of poor countries. Already many countries are claiming that reporting system under human rights treaties imposes great burden on them.

### III. THE QUANTITATIVE TURN IN HUMAN RIGHTS: IS IT A GOOD DEVELOPMENT?

According to OHCHR, this methodological framework of structural, process and outcome indicators can ensure greater accountability. It can help assess the steps being taken by States in addressing their obligations – from commitments and acceptance of international human rights standards (structural indicators) to efforts being made to meet the obligations that flow from the standards (process indicators) and on to the results of those efforts (outcome indicators).

The collection of human rights indicators open up many possibilities. Firstly, one can evaluate a country's progress in the realization of human rights over a period of time. Secondly, countries could be ranked in terms of realization of any right using time-series data. Every country knows where it stands vis-à-vis other countries. While top five or ten countries can rest on their laurels, the naming and shaming of ten worst performing countries would have a salutary effect on them and thereby nudge them to action. There are certain problematic assumptions, however, regarding international comparisons. The data collected in different countries must adhere to rigorous standards for reliability and validity or else they do not become amenable to comparison.

### CONCLUSION

The propensity on the part of some states to hide information on their failure to fulfill their human rights obligations is fairly well-known and well-documented.

When collected using a rigorous statistical design which can ensure data quality, reliability and validity, Human Rights indicators can capture the overall situation with regard to fulfillment of human rights obligations on the part of states and are potent tools in monitoring. Relevant information compiled on national and sub-national level and indicators disaggregated according to all marginalized and disadvantaged groups will go a long way in the protection and promotion of human rights.