

# POLICY NOTE

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## Human Rights Indicators: From Theoretical Debate to Practical Application

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### Abstract

Human rights indicators are an instrument that has received great attention in recent years. They provide a way of monitoring compliance with international human rights treaties with a view to evaluating progress towards the realization of human rights. However, most sets of human rights indicators have never been applied. Although there are a few examples of using such indicators, discussions on them seem not to leave the conceptual sphere, a problem which to date has not been discussed. This policy note aims to provide a methodology for developing human rights indicators with a view to their subsequent application and to elaborate strategies to facilitate this application.

The paper is divided into three sections. The first section examines the origin, purpose and evolution of human rights indicators. The second section concerns the development of human rights indicators. After examining the reasons for their infrequent application, it proposes a methodology for their development divided into different steps, and then applies this methodology to the right to education. The third section discusses questions to be addressed in order to facilitate the application of human rights indicators.

*Keywords:* application; framework; human rights indicators; right to education

### Introduction

Human rights indicators are an instrument that has received great attention in recent years. Their purpose is to monitor compliance with international human rights treaties with a view to evaluating progress towards the realization of human rights. However, most sets of human rights indicators have never been applied and, while there are a few examples of using such indicators, discussions on them seem not to leave the conceptual sphere. This is a problem, since the actual application of human rights indicators is necessary in order to adapt them and make them operational. This policy note aims to provide a methodology for developing human rights indicators with a view

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to their subsequent application and to elaborate strategies to facilitate this application.

While the policy note is mainly addressed to those who are developing human rights indicators, it also aims to help practitioners to understand them better. It explains in clear terms not only how human rights indicators can be developed but also what is necessary to make them work.

The paper is divided into three sections. The first section introduces human rights indicators by examining their origin, purpose and evolution. The second section concerns the development of human rights indicators. After examining the reasons for their infrequent application, it proposes a methodology for their development divided into different steps, and then applies this methodology to the right to education. The third section discusses questions to be addressed in order to facilitate the application of human rights indicators.

## 1. Background

Human rights indicators were first developed in the 1990s, following a suggestion of Danilo Türk, at the time the United Nations (UN) Special Rapporteur on the realization of economic, social and cultural rights. The 1993 Vienna Declaration and Programme of Action stressed their potential role in measuring progress towards the realization of human rights.<sup>1</sup> Paul Hunt then developed a few right to education indicators ([UN Committee on Economic, Social and Cultural Rights, 1998a](#)) and, later, as UN Special Rapporteur on the right to health, a comprehensive set of indicators relating to the right to health ([UN Commission on Human Rights, 2006](#); [Hunt and MacNaughton, 2007](#)). UN treaty bodies also invited states to develop human rights indicators in order to monitor their compliance with international human rights treaties and recommended the establishment of benchmarks, progress towards which could be measured by these indicators.

The Office of the UN High Commissioner for Human Rights (OHCHR) has been a pioneer in developing human rights indicators. At the request of UN treaty bodies, it has developed a framework for human rights indicators as well as lists of illustrative indicators relating to several human rights ([OHCHR, 2006, 2008](#)). It set up a group of experts and collaborated actively with international agencies and non-governmental organizations (NGOs) in order to develop these indicators. The OHCHR uses three categories of human rights indicators: structural, process, and outcome indicators. This methodology has become generally accepted by all experts in the area of human rights indicators. Structural, process, and outcome indicators together address the essential aspects of human rights implementation, that is,

1 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993, A/Conf.157/23, endorsed by UN General Assembly resolution 48/121, 20 December 1993, Part II, para. 98.

intention, effort, and result. First, structural indicators measure a state's intention to abide by international human rights law, examining the ratification of international human rights treaties and their incorporation into domestic legislation. Secondly, process indicators measure the efforts undertaken by states to implement human rights, identifying what steps states have taken to meet their human rights obligations. Thirdly, outcome indicators measure a state's human rights performance, evaluating the results of its human rights policies. While structural indicators measure *de jure* compliance with international human rights treaties, process and outcome indicators measure *de facto* compliance (de Beco, 2008: 42–3).

The right to education in particular has served as an example to demonstrate how to develop human rights indicators. This was the case with the initial human rights indicators of Paul Hunt as well as those of Isabelle Kempf, who proposed that human rights indicators take the form of a three-level pyramid (UN Committee on Economic, Social and Cultural Rights, 1998b: 3). More recently, sets of right to education indicators have been proposed by Audrey Chapman (2007) as well as a group of researchers under the aegis of the UNESCO Institute for Lifelong Learning (Friboulet, Niamégo, Liechti, et al., 2006). The Robert F. Kennedy Memorial Center for Human Rights also developed indicators to monitor the right to education of Afro-descendant and indigenous peoples in the Americas (Robert F. Kennedy Memorial Center for Human Rights, 2008). In addition, a comprehensive set of right to education indicators was designed by the author of this policy note for the Right to Education (RTE) Project, which will be presented in the second part of the paper. Other scholars have also attempted to propose such indicators in order to identify violations of the right to education (for instance, Kalantry, Getgen, and Koh, 2010).

## 2. Methodology for the development of human rights indicators

Despite the numerous initiatives, most human rights indicator sets have never been applied. This is a problem which until now has not been discussed. There are various reasons for the infrequent application to date of human rights indicators. The main reason is probably their great complexity. As will be seen in this section, the development of human rights indicators requires linking these indicators with the provisions of international human rights treaties. This is a complicated exercise because the indicators have to cover many interrelated issues and to measure human rights obligations. However, in order to capture human rights concepts it is necessary to take many factors into account and make a great amount of information available. The result is that human rights indicators are generally inaccessible to non-experts who find them unworkable, not useful, and even sometimes suspect. Indeed, such indicators seem more popular in academic circles than with practitioners. While academics have shown great interest in them and have been developing human rights indicator sets, practitioners are less

enthusiastic about using them and find it difficult to overcome the obstacles to their application. The problem has been exacerbated by the fact that methodologies have to date focused on their development, leaving their subsequent application for a later stage. Another reason could be that the expectations placed on human rights indicators are too high. Although they can strengthen human rights monitoring and can give a more concrete picture of a state's human rights situation, they will not replace all other existing tools and be the only tool for monitoring compliance with international human rights treaties. Other ways of monitoring such compliance, like case studies or interviews, should not be neglected, because they can provide a good insight into problems encountered by people affected by human rights violations.

The methodology explained in this section aims to increase the prospect of applying human rights indicators by addressing the problem of their infrequent application from the start. To this end, it not only aims to provide a clear process for their development but also proposes to use them as a toolbox.

This section is divided into two parts. The first provides a methodology, divided into different steps, to develop human rights indicators. The second section takes the right to education as an example, drawing on the author's work for the RTE Project.

### *2.1 Developing human rights indicators*

Human rights indicators are the translation of human rights standards into measurable units (Landman, 2005: 1) with a view to determining the extent to which states abide by international human rights law. In order to do this, they need to be linked to the provisions of international human rights treaties (ECOSOC, 2011: para. 12). These provisions should also be analysed in the light of the relevant jurisprudence of international human rights bodies. Attention should also be paid to the relevant provisions of regional human rights treaties which, while repeating standards already provided for by international human rights treaties, might also establish some new standards, and might therefore provide stronger protection than international human rights treaties.

In practice, human rights indicators are built by capturing human rights concepts with quantifiable information. The information can focus on either quantitative or qualitative aspects of human rights and should ideally focus on both. However, the information itself should always be quantitative (which does not mean it cannot capture qualitative aspects of human rights). It can take the form of percentages, ratios, or yes or no answers, but not subjective statements which are not quantifiable. Nevertheless, this does not mean that comments, such as stories or the description of events, are not useful; they can complement the indicators by putting them into perspective and by illustrating the issue under examination. Indeed, the story of a single

individual, for instance, can sometimes be more explanatory – not to mention more vivid – than quantifiable information. Quantitative and qualitative information, therefore, are complementary, although they have different functions.

Human rights indicators will also have to be adapted according to the national context in which they will be applied, and should take into account factors which may vary from one state to another, including their capacity to progressively realize human rights. While there will always need to be universal indicators, country-specific indicators will be necessary to measure those obligations that are subject to progressive realization according to a state's maximum available resources,<sup>2</sup> where indicators common to all states would actually measure more a state's level of development than its compliance with international human rights treaties. There might also be specific human rights issues which are relevant to certain states only, as is the case with minorities living in particular states. A balance therefore has to be found between universal and country-specific indicators (OHCHR, 2006: para. 26; OHCHR, 2008: para. 16; ECOSOC, 2011: para. 14).

Human rights indicators need a framework which can be established in two ways. The first is a framework applicable in the same way to all human rights. This is the approach used by the OHCHR, which divides all human rights indicators into structural, process and outcome indicators. In this way, it has sought to establish a standard framework for monitoring compliance with all international human rights treaties. The advantage of this approach is that it creates a uniform method of measuring human rights, thereby facilitating the task of the users of the indicators. The second way is to have a framework tailored to the right being measured. As with the right to education, economic, social and cultural rights are divided into a '4-A framework' consisting of availability, accessibility, acceptability and adaptability (the last of which is sometimes replaced by quality, thereby making it a '3-A + Q framework') (Tomaševski, 2006; UN Commission on Human Rights, 2002: 12–13). Another possibility is to mix a standard framework with a specific framework by combining the 4-A framework with the structural–process–outcome division. While this includes advantages from both approaches, it might result in impracticable indicators with too many divisions.

Human rights indicators have to be organized visually in a way that allows all issues to be covered and avoids overlaps as much as possible. For this purpose headings have to be provided in a table. In order to define these headings, it is necessary to break down human rights into their constitutive

2 According to article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), a state 'undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'.

elements, determined according to the relevant provisions of international human rights treaties and jurisprudence of international human rights bodies. The OHCHR has thus divided human rights into their several attributes, ranging from three to five for each human right, and established indicators for each attribute as well as indicators relevant to several attributes (see OHCHR, 2006: Annex; OHCHR, 2008: Annex I).

Human rights indicators should also address transversal issues, the most essential of which are participation, accountability, and non-discrimination (OHCHR, 2006: paras 21–2; OHCHR, 2008: paras 10–11; ECOSOC, 2011: para. 21).

First, participation in public affairs is a right protected by international human rights law.<sup>3</sup> This can lead to empowerment, if it allows people to contribute to their own development. The right to participate in public affairs has been stressed by UN treaty bodies<sup>4</sup> and also by the European Court of Human Rights.<sup>5</sup> Measuring participation requires that the indicators examine whether procedures have been established to involve affected people in the realization of human rights.

Secondly, accountability is essential to international human rights law. Assessing accountability is one of the most important characteristics of human rights indicators. Human rights limit states' powers over their citizens by giving them entitlements and allowing them to make claims. Being rights-based, human rights indicators can in themselves help actors to question states in relation to their human rights obligations. Specific indicators can also evaluate whether states have established appropriate mechanisms to make their human rights commitments effective.

Thirdly, non-discrimination is one of the most fundamental principles of human rights and central to both civil and political rights and economic, social and cultural rights. With respect to civil and political rights, it is not necessary to examine whether the alleged discrimination concerns the enjoyment of a right protected by the International Covenant on Civil and Political Rights (ICCPR), because the prohibition of discrimination has an independent status in the Covenant (UN Human Rights Committee, 1989: para. 12). With respect to economic, social and cultural rights, the prohibition of discrimination is not subject to progressive realization in the International

3 According to article 25 of the International Covenant on Civil and Political Rights (ICCPR), citizens have the right 'to take part in the conduct of public affairs, directly or through freely chosen representatives'.

4 Human Rights Committee, *Ilmari Lämsmäen et al. v. Finland* (communication no. 511/1992), 8 November 1994, CCPR/C/52/D/511/1992, para. 9.5.

5 European Court of Human Rights, *Guerra and others v. Italy* (application no. 14967/89), 19 February 1998, para. 60; *Hatton and others v. United Kingdom* (application no. 36022/97), 8 July 2003, para. 128.

Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>6</sup> It is therefore an immediate obligation which, if not met, automatically results in a human rights violation. Any discrimination revealed by a human rights indicator will therefore point to a state's failure to meet its human rights obligations.

Measuring discrimination is one of the main characteristics of human rights indicators. It is probably the most important contribution that can be made by these indicators, as it is a straightforward way to hold states accountable for their human rights obligations. Measuring discrimination can be achieved by dividing human rights indicators by specific categories of vulnerable groups. To do this, the information collected for the indicators must be disaggregated by gender, 'race', ethnicity, age, minority, region, and so on (de Beco, 2008: 30). This, however, is not without problems. It is costly, since disaggregating information entails obtaining more information at the individual level. Determining whether people belong to vulnerable groups might also be problematic; while this might be easy for some categories which are determined according to objective criteria, such as gender and age, other categories depend on less clearly identifiable criteria, such as ethnicity and 'race'.

While developing human rights indicators, strategies should be devised to facilitate their application. The best way of achieving this is to use these indicators as a toolbox. This will help to make them not only more practicable but also more relevant. The exercise should take place with the agreement of those actors who wish to apply them, as this will ensure their ownership. It should also take into account states' particular characteristics, including their capacity to progressively realize human rights, as explained above.

Using human rights indicators as a toolbox means that these indicators have to be selected and adapted to address specific issues. The list of choices is broad, ranging from categories of vulnerable groups to situations or topics. Focusing on vulnerable groups is probably the best way to apply the human rights indicators. Not only does it limit the amount of data required but it also ensures that the selected indicators can easily identify human rights violations, as non-discrimination is an immediate obligation. Examples of vulnerable groups include women, persons with disabilities, migrants, refugees, prisoners, indigenous peoples, and minority groups. This requires selecting and developing indicators applicable to these categories specifically and dividing the other indicators by these categories. Evaluating particular situations such as armed conflict, natural disasters, HIV, and poverty, or addressing particular topics such as teachers, plans of action, and out-of-school children, is also a good way of using human rights indicators. Besides allowing a selection to be made from among the indicators, it brings

6 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, para. 11, [http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html). (The Guidelines can also be found at Annex 5 of OHCHR, Economic, Social and Cultural Rights: Handbook for National Human Rights Institutions (Professional Training Series No. 12), and, accompanied by a commentary, in *Human Rights Quarterly* 20(3): 691–704.)



them closer to reality since it requires that they be related to particular questions instead of applied in abstract terms. This requires selecting indicators applicable to these specific situations and topics, and developing those indicators in order to address them.

## 2.2 *Illustration: indicators on the right to education*

The right to education serves to illustrate how human rights indicators can be developed. The methodology outlined in the previous section will thus be applied to the right to education, explaining how the author developed more than 200 indicators on the right to education for the RTE Project. These indicators, which are available online, will be referred to in this paper as the RTE Project indicators.<sup>7</sup>

The first step was to identify the relevant provisions of international human rights treaties and jurisprudence of international human rights bodies.<sup>8</sup> Two international human rights treaties deserve particular attention: the ICESCR and the Convention on the Rights of the Child (CRC). The ICESCR contains the most developed and comprehensive provisions on the right to education. Article 13 ICESCR outlines human rights obligations relating to primary, secondary and tertiary education, covering both the content of education (that is, the social aspect of the right to education) and the right of parents to choose the education of their children according to their religious and moral convictions and the right to establish private schools (that is, the freedom aspect of the right to education). Article 14 ICESCR also provides for the obligation to set up a plan of action, in case the right to free and compulsory education is not achieved within two years after the ratification of the ICESCR. In addition, the Committee on Economic, Social and Cultural Rights has issued two general comments on the right to education, one on the right to education and another on plans of action for primary education (UN Committee on Economic, Social and Cultural Rights, 1999b, 1999a).

The CRC also includes detailed provisions on the right to education which have a wide impact, since it is the most widely ratified international human rights treaty. Articles 28 and 29 CRC repeat most of the rights protected under article 13 ICESCR and even add new standards (including the

7 The RTE Project indicators can be found at <http://www.right-to-education.org/node/860>.

8 These include: article 5, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); article 18(4), ICCPR; articles 13 and 14, ICESCR; article 10, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); articles 28 and 29, Convention on the Rights of the Child (CRC); article 30, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); article 24, Convention on the Rights of Persons with Disabilities (CRPD); article 22, Convention relating to the Status of Refugees; article 38, Geneva Convention relative to the Treatment of Prisoners of War; article 50, Geneva Convention relative to the Protection of Civilian Persons in Time of War; UNESCO Convention against Discrimination in Education.



obligations to provide educational and vocational information, to encourage school attendance, to administer school discipline in conformity with the child's dignity, and to promote respect for the natural environment). The Committee on the Rights of the Child has also issued one general comment on the right to education, on the aims of education ([UN Committee on the Rights of the Child, 2001](#)).

The right to education indicators should also take into account the relevant provisions of regional human rights treaties.<sup>9</sup> The human rights standards provided for in these treaties reinforce or extend the right to education but of course are binding only on those states that are parties to them.

The second step was to establish a framework for the RTE Project indicators. The 4-A framework was chosen for this purpose, because it was considered the best way to cover all the aspects of the right to education.<sup>10</sup> The 4-A framework was developed by Katarina Tomaševski, the former UN Special Rapporteur on the right to education, and subsequently taken over by the Committee on Economic, Social and Cultural Rights. This framework not only enables all obligations relating to the right to education to be classified but also to have a classification that is easily understandable to practitioners. It also emphasizes both the quantitative and qualitative aspects of the right to education, by measuring not only the right to education but also respect for human rights *in* education and enhancing human rights *through* education.

The 4-A framework has been interpreted as follows. First, availability examines whether education is generally available in terms of schools, infrastructure and teaching materials. Secondly, accessibility focuses on the

9 These include, in Europe: article 2, Protocol No. 1 to the European Convention of Human Rights; article 17(2), (Revised) European Social Charter; articles 13 and 14, Framework Convention for the Protection of National Minorities; article 8, European Charter for Regional or Minority Languages; article 14, European Convention on the Legal Status of Migrant Workers; article 14, EU Charter of Fundamental Rights; in the Americas: article 49, Charter of the Organization of American States; article 26, American Convention on Human Rights; article 13, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador); and in Africa: article 17(1), African Charter on Human and Peoples' Rights; article 12, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; article 11, African Charter on the Rights and Welfare of the Child.

10 Other initiatives have however chosen another approach. The OHCHR divided its right to education indicators into structural, process, and outcome. Audrey Chapman also based her indicators on the OHCHR's structural–process–outcome division, with an emphasis on General Comment No. 13 of the [Committee on Economic, Social and Cultural Rights \(1999b\)](#). The UNESCO Institute for Lifelong Learning based its right to education indicators on the 4-A framework, but somewhat differently to the way in which that framework is usually interpreted traditionally, as will be explained in section 3. The right to education indicators established by the Robert F. Kennedy Memorial Center for Human Rights are based on the 4-A framework to which accountability is added (thereby making it a '5-A framework') and were again divided into structural, process, and outcome indicators.

various obstacles to accessing education by vulnerable groups. Thirdly, acceptability evaluates the various aspects of the content of education. Fourthly, adaptability concerns the needs of special categories of children. A fifth category called governance framework, mainly consisting of structural indicators, was also added to the 4-A framework.

This resulted in a table divided into five parts, with each part further divided into several headings taking into account the issues covered by the different parts of the 4-A framework. Table 1 shows the five parts of the table with the headings into which the constitutive elements of the right to education were broken down.

The third step was to deal with transversal issues – that is, participation, accountability, and non-discrimination – which were addressed by adding sub-categories in the headings.

Participation in public affairs is the first transversal issue. The RTE Project indicators verify whether special procedures have been put in place allowing children to participate in a way that takes their age into account. These indicators evaluate not only whether children have the possibility to be involved in decision-making but also whether special procedures have been established for this. Examples are whether parents, children, and community leaders can participate in defining school curricula and whether those belonging to minorities can contribute to ensuring that education takes their needs into account.

Accountability is the second transversal issue. It is dealt with by the right to education indicators in themselves but was also examined in two specific ways. The first way is the governance framework which is specifically related to accountability, since it examines the mechanisms established by states to make their human rights commitments effective. The second way was establishing specific indicators addressing accountability as a transversal issue alongside the other indicators. Examples are whether there is a complaints mechanism for costs related to education and whether there is a monitoring body controlling whether minimum educational standards are met.

Non-discrimination is the third transversal issue. As with human rights indicators in general, measuring discrimination is one of the main characteristics of the right to education indicators. These indicators must therefore be divided as far as possible by specific categories of vulnerable groups. All the RTE Project indicators were divided by the following categories of vulnerable groups: gender; region; rural/urban; minority; and income. Additional discrimination grounds were taken into account depending on the state or the indicator in question. These include: age; status (that is, regular or irregular migrant, refugee, citizen and so on); origin; disability; sexual orientation; opinion; and ‘race’. Examples are Gross Enrolment Ratio (GER) and literacy rate, numerical skills, problem solving, and expression, all of which were disaggregated by gender, region, rural/urban, minority and income.

Table 1. RTE Project indicators table

Governance framework	Availability indicators	Accessibility indicators	Acceptability indicators	Adaptability indicators
Normative framework	Early childhood care and education	Physical obstacles	Skills	Child labour
Educational policy	Primary education	Economic obstacles	Tolerance	Child soldiers
Plan of action	Secondary education (including training and vocational education)	Administrative obstacles	Qualification of teachers	Minorities
Recourses	Tertiary education (including training and vocational education)	Gender obstacles	Gender	Disabled
Monitoring	Fundamental education	Sociocultural obstacles	Discipline	Prisoners
Budget	Adult basic and literacy education	Out-of-school children	Religion	Armed conflict
International assistance and cooperation	Educational and vocational information and guidance		Language	
	Private schools			
	Closing schools School infrastructure			
	Working conditions of teachers			

Indicators should also address multiple – or intersectional – discrimination which takes place when vulnerable people are discriminated against several times because they belong simultaneously to different categories. An example is girls living in rural areas (who belong thus to both the female and rural categories). It is therefore necessary to re-disaggregate data which have already been disaggregated, and indicators that have been divided by specific categories have to be divided once more by other categories. Although the operation is costly, it is probably the most effective way of holding states accountable for meeting their human rights obligations.

This is a simple fictional example:

- net enrolment ratio for primary school: 60 per cent
- divided by gender: 40 per cent (female) / 80 per cent (male)
- divided by rural/urban: 30 per cent (rural) 50 per cent (urban) (female) / 70 per cent (rural) 90 per cent (urban) (male)

This means that if 60 per cent of children go to primary school, 40 per cent of girls go to primary school and 30 per cent of girls in rural areas go to primary school, whereas 80 per cent of boys go to primary school and 90 per cent of boys in urban areas go to primary school. As a result, girls living in rural areas are the group which is most discriminated against in achieving primary education, as they are discriminated against twice in comparison with boys living in urban areas.

### 3. Application of human rights indicators

There are various contexts in which human rights indicators can be used for monitoring compliance with international human rights treaties. One way of doing this is to use them in the reporting process as an annex to the reports states have to submit to UN treaty bodies. This would allow these bodies to examine closely the human rights situation in the countries concerned and to make recommendations to states on how to implement human rights. NGOs could also use them in their monitoring activities, including in their ‘shadow reports’ submitted, besides the reports submitted by states, to UN treaty bodies, in order to identify human rights violations and to urge governments to remedy them. The general public could also use human rights indicators to make arguments based on international human rights law, to identify states’ failure to meet their human rights obligations and to make claims to obtain changes from public authorities.

Human rights indicators can also be useful in judicial proceedings by informing courts before they make their decisions. Statistical data helped the European Court of Human Rights in resolving cases of alleged discrimination in education, for instance, in the case of *D.H. and others v. Czech*

*Republic*,<sup>11</sup> where Roma parents argued successfully that the placement of their children in ‘special schools’ violated article 14 of the European Convention on Human Rights (prohibition of discrimination) in conjunction with article 2 of Protocol No. 1 to the Convention (right to education). On the basis of questionnaires, they demonstrated that 56 per cent of children enrolled in ‘special schools’ were Roma and that less than three per cent of Roma children were enrolled in mainstream primary school. The Court considered that this established a presumption of indirect discrimination which shifted the burden of proof to the respondent state. The state, however, was unable to demonstrate that the difference in treatment had an objective and reasonable justification unrelated to ethnic origin.

The application of human rights indicators is rare but there are a few practical examples. As far as the right to education is concerned, the right to education indicators of the UNESCO Institute for Lifelong Learning were applied in Burkina Faso (Friboulet, Niamégo, Liechti, et al., 2006). These indicators, which were based on the 4-A framework, were used in a field analysis, the outcomes of which were presented in a table together with the indicators. Although they interpret the 4-A framework to some extent differently than is normally done, inverting the meaning of acceptability and adaptability, they can be an inspiration, since their development was combined with their application in one country. The 47 indicators were thus developed and applied in Burkina Faso in dialogue with local actors. The RTE Project indicators were, similarly, selected and adapted for an independent case study involving a school for migrant and refugee children in Johannesburg. While the results of that study are not yet known at the time of writing, it has already been noted that changes in the approach, including a greater focus on adaptability by having more indicators addressing specific challenges for migrant and refugee children, might improve the indicators (Thom, undated: 17–18).

These isolated cases, however, show how difficult it is for discussions on human rights indicators to leave the conceptual sphere. While most sets of human rights indicators have never been applied, their application is necessary not only to avoid creating purely theoretical human rights indicators but also for developing these indicators as such. Human rights indicators are a learning-by-doing instrument, and problems encountered in their application should lead to their improvement, which is necessary if indicators are to be made a useful tool for monitoring compliance with international human rights treaties. For this reason, they should be applied repeatedly. This is also necessary to evaluate progress towards the realization of human rights, as mentioned earlier.

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11 European Court of Human Rights, *D.H. and others v. Czech Republic* (application no. 57325/00), 13 November 2007. See de Beco, 2009.

In order to ensure the practical application of human rights indicators, it is necessary to have their application in mind throughout their development, an aspect which often seems to be forgotten. To date, too much attention has been focused on conceptual issues and not enough on conditions to make the indicators work. To achieve this, human rights indicators must be as intelligible and user-friendly as possible. For example, the kind of answers needed for their application should be clearly indicated and, where different answers are possible, a non-exhaustive list of answers should be provided with the indicator. Also, they should not always use the exact expressions used in international human rights treaties. Most of the users of human rights indicators are not human rights lawyers, so the process of translating human rights standards into measurable units requires that the indicators use commonly understandable language. In addition, some human rights concepts are difficult to measure, at least in the way they are framed in international human rights treaties, so working definitions could be used if controversy arises around certain terms.<sup>12</sup>

Developers of human rights indicators should provide guidance on their use, with guidelines which should address questions that will inevitably come up in the process. This has been done by, for instance, the OHCHR which has elaborated meta-data sheets attached to each of its indicators (OHCHR, 2008: Annex II).<sup>13</sup> Four questions should be addressed in the guidance: data collection; indicator interpretation; benchmark setting; and actors concerned.

First, guidance should be provided regarding data which human rights indicators rely on and where they can be found, if already available. Data availability is probably the most delicate question with regard to human rights indicators. Human rights measurement will always remain incomplete, because it is impossible to collect all data relating to human rights (de Beco, 2007: 271–2), and this creates a dilemma. On the one hand, human rights indicators must not be established with too much emphasis on the data that are available; they must primarily be determined by international human rights treaties and be an incentive to gather human rights-related data. On the other hand, data availability should be taken into account in order to make sure the indicators can be applied effectively, and some data, particularly if it should be disaggregated, simply cannot be provided or will not be collected because of the disproportionate cost involved. The question is

12 An example relating to the right to education is the scope of primary, secondary and higher education levels. There must be an agreement on the period covered by these levels, otherwise it is impossible to evaluate the extent to which they are available. In the case of the RTE Project indicators, the International Standard Classification of Education (ISCED) was used as a common denominator to determine the duration of the levels of education.

13 The meta-data sheets attached to each of the OHCHR human rights indicators deal with the following issues: definition; rationale; method of computation; data collection and source; periodicity; disaggregation; and comments and limitations.

therefore whether human rights indicators should define which data are to be collected, or whether this should be the other way around.<sup>14</sup> While most initiatives seem to ignore this, data availability should constantly be kept in mind while establishing human rights indicators, because otherwise there is a real risk that the indicators will never be applied. For this reason, it is also preferable to start by focusing on specific issues, using them as toolbox, as it limits the amount of data needed for their application.

Secondly, guidance should be provided for interpreting the answers obtained with the collected data according to the human rights standards on which the indicators are based. These standards should be explained to the users,<sup>15</sup> although in itself this might not be sufficient. The problem is that human rights indicators give the false impression of providing a value-neutral assessment (Rosga and Satterthwaite, 2009: 304–6). This is because an assessment relying on quantifiable information is considered a purely technical matter. In reality, however, human rights indicators require practitioners to make judgements on whether states meet their human rights obligations, so developing human rights indicators requires elaborate guidelines to allow users to interpret their results when they are applied. Two issues should be addressed in particular. A first issue is the distinction between immediate obligations and obligations that are subject to progressive realization according to a state's maximum available resources. While for the former the failure to meet human right obligations will be clear-cut, the latter requires that human rights indicators be contextualized. In the case of obligations subject to progressive realization, the indicators will therefore have to be adapted, and it will only be possible to make judgements after applying them several times. A second issue is the combination of human rights indicators. While some of the indicators can provide significant information on their own, others need to be combined with other indicators to arrive at balanced conclusions.<sup>16</sup>

Thirdly, guidance is needed on setting benchmarks, which are the targets to be reached by states in order to meet their human rights obligations. Each indicator will therefore have a benchmark attached to it. Benchmarks are especially necessary to monitor obligations which are subject to progressive realization, and, because states do not have the same available resources, will usually differ from state to state. High benchmarks might be necessary in developed states, since their resources should allow them to do more than other states; low benchmarks could be sufficient in developing states, considering their limited capacity. Whether the failure to attain the benchmarks is

14 This dilemma can be summarized in the words of Albert Einstein: 'not everything that counts can be counted, and not everything that can be counted counts'.

15 The RTE Project indicators explicitly refer to the relevant provisions of international and regional human rights treaties.

16 The RTE Project indicators also explicitly refer to other indicators with which the indicators have to be combined.



a breach of a human rights obligation will depend on the circumstances and the explanation provided by the state in question (UN General Assembly, 2004: para. 27; UN Commission on Human Rights, 2006: para. 44). If this is due to reasons beyond its control, it will not be held responsible for it. However, if it stems from unwillingness, that state will have to account for its behaviour (Hunt and MacNaughton, 2007: 312). Once the benchmarks have been monitored, new benchmarks will have to be established which can be higher or lower than the ones set beforehand.

Fourthly, guidance should be provided on the actors involved, including both those who will contribute to the collection of data and those who will be involved in the application of human rights indicators. It should first be determined which actors can provide which data. Governments hold the principal responsibility for gathering the data, even though they might be reluctant to do so, and they can do so through their statistical institutes which could integrate human rights in their mandates. However, other actors should also provide information in order to check the veracity of that coming from governments. Civil society organizations should therefore be involved, although they cannot be relied on too much because of their limited resources. International agencies also hold human rights-related data. Then it should be determined who will have an interest in applying human rights indicators. While this will mainly depend on the purpose of the indicators, partnerships could be established with various actors. For example, UN treaty bodies can examine them during their evaluation of state reports and NGOs could use them in their monitoring activities. People generally can also use them in order to convince public authorities to take certain measures.

## Conclusion

This article has proposed a methodology for developing human rights indicators with a view to their subsequent application and strategies to facilitate this application. This methodology aims to provide a clear process for their development, consisting of identifying the relevant provisions of international human rights treaties and establishing a framework for the indicators. The indicators should be presented in a table with headings, while dealing with transversal issues, that is, participation, accountability and non-discrimination. They can be used as a toolbox from which they have to be selected and adapted to address specific issues.

In order to ensure the practical application of human rights indicators, it is important to have their use in mind throughout their development. This requires that they be made intelligible and user-friendly and use a commonly understandable language, with guidelines on the questions that will arise during their application, including on data collection, indicator interpretation, benchmark setting and the actors concerned. Most importantly, the human rights indicators have to be tested and subsequently adapted

following comments made during their application. This should be a continuous process, as human rights indicators are a learning-by-doing instrument.

To conclude, human rights indicators have for over a decade been the subject of a theoretical debate. While this helped to understand their characteristics, practical application is necessary to make them useful. This requires greater attention to practical issues.

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