Access Guide to Human Rights Information

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edited by Maddalena Vivona, Markus Möstl and Klaus Starl
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Access Guide to Human Rights Information
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<td>Elif Erken, Lena Kähler, Kristoffer Marslev, Isabella Meier, Hans-Otto Sano, Helmut Sax, Lorena P. A. Sosa and Maddalena Vivona; edited by Maddalena Vivona, Markus Möstl and Klaus Starl</td>
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http://www.fp7-frame.eu
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A. Think-piece on the human rights information on the prohibition of torture

1. Introduction

2. The prohibition of torture in international law

jus cogens
aut dedere aut judicare
3. Defining torture, (cruel,) inhuman and degrading treatment or punishment

**Definition**
Deliverable No. 13.2

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.

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.

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.

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; 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.

Art. 1 UNCAT

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


20

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


21

11 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 remains: 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.


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’.


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.

ex officio

*non-refoulement*

C. v. Australia

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C. v. Australia

Edriss El Hassy v. The Libyan Arab Jamahiriya
4. Assessing the prohibition of torture
   a) Human rights indicators following the OHCHR methodology

   b) Measuring the prohibition of torture

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).

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.

Furthermore, do they not consider a state’s responsibility for the

Peers v. Greece

de jure de facto

\[\text{same sources}\]

\[\text{normative content}\]

\[\text{private actors}\]

\[\text{de facto}\]

\[\text{de jure}\]

\[\text{Peers v. Greece}\]

\[\text{de jure de facto}\]

\[\text{:}\]
lawful sanctions

Sadiq Shek Elmi v. Australia

Hajrizi Dzemajl et al. v. Yugoslavia

A. v. The United Kingdom

A. v. The United Kingdom

The United Nations Convention Against Torture. A Commentary
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

Reference source not found.  Error! Reference source not found.

bind all of these monitoring bodies to confidentiality.

it is difficult to rely on the availability of this up-to-date information
5. What are the limitations of the sources on the realization of the prohibition of torture?
B. Overview of the relevant sources on the prohibition of torture

1. Human rights indicators following the OHCHR methodology
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)

<table>
<thead>
<tr>
<th>Structural</th>
<th>Conditions of detention</th>
<th>Use of force by law enforcement officials outside detention</th>
<th>Community and domestic violence</th>
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</thead>
<tbody>
<tr>
<td>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 at the constitution or other forms of supranational law; Date of entry into force and coverage of domestic laws for implementing the right not to be tortured, including codes of conduct on medical 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</td>
<td>Date of entry into force and coverage of formal procedure governing inspection of police cells, detention centres and prisons by independent inspection institutions; Legal regimes for incommunicado detention</td>
<td>Date of entry into force and coverage of specific legislation on community and domestic violence</td>
<td>Number of rehabilitation centres for victims of domestic violence, including women and children</td>
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<th>Process</th>
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<tr>
<td>Proportion of received complaints on the right not to be tortured investigated and adjudicated by the national human rights institution, human rights ombudsman or other mechanisms and the proportion of these responded to effectively by the Government; Proportion of communications sent by the Special Rapporteur 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</td>
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<th>Outcome</th>
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<tr>
<td>Proportion of detained or imprisoned persons held incommunicado or in prolonged military confinement; Reported cases of inference methods of execution and treatment of persons sentenced to death; Incarcerated in the reporting period; Incidence and prevalence of death, physical injury and communicable and non-communicable disease (e.g., HIV/AIDS, malaria and tuberculosis, mental impairment) in custody</td>
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Human Rights

Indicators: A Guide to Measurement and Implementation
2. Existing human rights and human rights related indicators schemes
   a) The Political Terror Scale (PTS)

   Type of Author
   Geographical range
   Time span

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Which information can I expect to find here?</td>
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<td>What does it measure?</td>
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<td>How often does it measure?</td>
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<tr>
<td>What sources does it use?</td>
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<tr>
<td>How is this indicator scheme build?</td>
<td>Level 1)</td>
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*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.


Measuring Human Rights
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<td>Level 4)</td>
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<tr>
<td>Level 5)</td>
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### Disaggregation

### Discussion

### Website

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b) **The Cingranelli-Richards data project (CIRI)**

**Type of Author**

**Geographical range**

**Time span**

<table>
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<th>Question</th>
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<td>How often does it measure?</td>
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<td>What sources does it use?</td>
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**How is this indicator scheme build?**

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**Disaggregation**

**Discussion**
The PTS, taking into account the range and patterns of violence experienced 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.

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.

Website

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

<table>
<thead>
<tr>
<th>Type of Author</th>
<th>Geographical range</th>
<th>Time span</th>
</tr>
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<tbody>
<tr>
<td>Academic</td>
<td>Worldwide</td>
<td>1995-2005</td>
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**Which information can I expect to find here?**

**What does it measure?**

- Scarring Torture
- Stealth Torture
- Unstated Torture

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Torture and Democracy
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<th>Question</th>
<th>Answer</th>
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<tr>
<td>How often does it measure?</td>
<td>The unit of measurement is a year, however it is unclear if data will be available after 2005.</td>
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<tr>
<td>What sources does it use?</td>
<td>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.</td>
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<tr>
<td>How is this indicator scheme build?</td>
<td>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.’ 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. 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.’ Both data sets are coded using the Hathaway five point ordinal scale 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.</td>
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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 collects 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.

Disaggregation

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. Both databases offer information on the governmental agency considered responsible for an alleged abuse (police, prison, military, immigration detention, intelligence and paramilitary), on the types of victims (criminal, political dissident, member of a marginalized group 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.

Discussion

Since the ITT is a relatively recent endeavour, there is very little literature related to it. Richard Carver, states that:

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

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| Which information can I expect to find here? | 
| What does it measure? | 
| How often does it measure? | 
| What sources does it use? | 
| How is this indicator scheme build? | 

| Country Reports on Human Rights.90 |

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The Persistent Power of Human Rights: from Commitment to Compliance
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**Disaggregation**

**Discussion**

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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:

3. **Human rights compliance information**

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

**Type of Author**

**Geographical range:**

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### 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)

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

Figure 1

Step 1
Step 2
Step 3
Step 4
Step 5

1. **Step 1: Understanding the topic**

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

   **Aim**

   **Procedure**

   **Content**

*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;...

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.’

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.

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.
b) **Analyse the normative content**

**Aim**

**Procedure**
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

who is entitled to this right
all persons deprived of their liberty

at the outset
In order for the right of access to a lawyer to be effective, detainees also need to be informed about their rights. The Special Rapporteur on Torture for example refers to the Basic Principles on the Role of Lawyers 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.' 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; (...) Having access to a lawyer also means having access to legal aid whenever a detainee does not have sufficient means to pay for it. 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.' 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
lawyers are present during police interrogations

restrictions

c) **Considering cross-cutting human rights norms**

*Aim*

*Process*
Content

informed about their right

2. Step 2: Retrieving information stemming from SPO indicators
3. **Step 3: Retrieving other indicators based information**

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

a) *The Political Terror Scale*

*Aim*

*Procedure*
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

Procedure

Content France
Content South Africa

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

Aim

Procedure

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

Mobilizing for Human Rights
4. **Step 4: Retrieving human rights compliance information**

   a) *...in the UN system*

---

**Figure 5: Retrieving torture related information in the UN system**

1. **Identifying the status of treaties ratification**

2. **Retrieving the information**

3. **What information can still be expected?**

---

(1) **Identifying the sources of human rights compliance information**

*Aim*

*Procedure*
Content

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

<table>
<thead>
<tr>
<th>Treaty</th>
<th>France</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>OPCAT</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>ICCPR</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>CRC</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>CEDAW</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>CPED</td>
<td>yes</td>
<td>no</td>
</tr>
</tbody>
</table>

Aim

Procedure

Content related to France

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

<table>
<thead>
<tr>
<th>Annotation</th>
<th>States/Entities</th>
<th>Rights</th>
<th>Affected Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT/C/FRA/CO/4-6 (CAT, 2010)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Deliverable No. 13.2  


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 (garde à vue), before they are brought before a judge to be placed under judicial investigation or released without charge.

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.

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).

Content related to South Africa

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

<table>
<thead>
<tr>
<th>Annotation</th>
<th>State/Entity</th>
<th>Rights</th>
<th>Affected Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT/C/ZAF/CO/1 (CAT, 2006)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(3) Check what information can still be expected

**Aim**

*Procedure*

________________________________________________________________________

________________________________________________________________________
Content

Table 4: 2015 expected date of consideration for France

<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>Treaty</th>
<th>Document type</th>
<th>Sessions</th>
<th>Start Date</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europe and Central Asia</td>
<td>France</td>
<td>CAT</td>
<td>List of issues</td>
<td>CAT Session 56</td>
<td>09 Nov 2015</td>
<td>09 Dec 2015</td>
</tr>
<tr>
<td>Europe and Central Asia(^5)</td>
<td>France</td>
<td>CCPR</td>
<td>Concluding observations</td>
<td>CCPR Session 114</td>
<td>29 Jun 2015</td>
<td>24 Jul 2015</td>
</tr>
<tr>
<td>Europe and Central Asia</td>
<td>France</td>
<td>CEDAW</td>
<td>List of issues</td>
<td>CEDAW Pre-Sessional Working Group 64</td>
<td>23 Nov 2015</td>
<td>27 Nov 2015</td>
</tr>
<tr>
<td>Europe and Central Asia</td>
<td>France</td>
<td>CERD</td>
<td>Concluding observations</td>
<td>CERD Session 86</td>
<td>27 Apr 2015</td>
<td>15 May 2015</td>
</tr>
<tr>
<td>Europe and Central Asia</td>
<td>France</td>
<td>CESCRI</td>
<td>List of issues</td>
<td>CESCRI Pre-Sessional Working Group 55</td>
<td>09 Mar 2015</td>
<td>13 Mar 2015</td>
</tr>
<tr>
<td>Europe and Central Asia</td>
<td>France</td>
<td>CRC</td>
<td>List of issues</td>
<td>CRC Pre-Sessional Working Group 71</td>
<td>08 Jun 2015</td>
<td>12 June 2015</td>
</tr>
</tbody>
</table>

Source: OHCHR, Calendar of country reviews by treaty bodies

Table 5: 2015 expected date of consideration for South Africa

<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>Treaty</th>
<th>Document Type</th>
<th>Sessions</th>
<th>Start Date</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>South Africa</td>
<td>CCPR</td>
<td>List of issues prior to reporting (LoiPR)</td>
<td>CCPR Session 114</td>
<td>29 Jun 2015</td>
<td>24 Jul 2015</td>
</tr>
</tbody>
</table>

Source: OHCHR, Calendar of country reviews by treaty bodies

(4) ...in the regional human rights systems
(a) Council of Europe

(i) Identifying the status of treaty ratification

Procedure

(ii) Retrieving the information


Content France

Table 6: Observations and recommendations made by the CPT\textsuperscript{155} and response of the French government\textsuperscript{156}
procureur ne doit permettre gardée à vue sans attendre

exceptionnels clairement définis, tels que la prévention personnes.

toujours pouvoir intervenir audition ou confrontation,

mauvais traitements (y compris des menaces pouvant constituer un manquement à la déontologie de la sécurité et/ou une infraction pénale) à assiste.

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

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
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, que commise ou tenté de

assistée par un avocat dès le début de la mesure. La possibilité, pour le procureur ou un avocat, y compris lors des auditions et confrontations, ne de la personne gardée à vue; en cas de recours à cette
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.).

Source: HUDOC and CPT website

(iii) Look for possible information updates

ad hoc
(b) *African Union*

(i) *Identifying the status of treaty ratification*

(ii) *Retrieving the information*

(c) *... at national level*

_Procedure_
### Content France

<table>
<thead>
<tr>
<th>Topic</th>
<th>Observations</th>
<th>Recommendations</th>
</tr>
</thead>
</table>

"Documents" in the broad sense are a source of difficulties in prison. 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. 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). 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.

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. 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.

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

Contrôle Général
As well as with regard to the issues that they pass over in silence.
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Current laws only reflect this requirement in an imperfect manner. Such is indeed the case with regard to waiting areas.

Period of Detention of Foreigners in Police Stations without controls

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.

Detention Facilities for Illegal Immigrants

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.


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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 / Conseils départementaux de l'accès au droit). 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 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.

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.

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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 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
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

Defence also constitutes a major issue.

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When the latter is not held by means of videoconferencing, 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.

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.

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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 (ASPDT) 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 Representative

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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...
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**

a) **Compiling the information for France**

<table>
<thead>
<tr>
<th>commitment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>actions</td>
<td>Asylum Seekers</td>
</tr>
</tbody>
</table>

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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).

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.

Psychiatric Hospitals

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.

A clearer notification system and provision of information concerning means of remedy appears to be also an issue in relation to psychiatric patients.

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.

III. Freedom of expression

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

1. The normative content

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

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, the dissemination of racist ideas, incitement to racial discrimination or financing of racist activities are indictable. The UNCRPD, the UNCRC 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. 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.

The provisions in the ECHR contain a longer list of exceptions than those in:

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.


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).
Deliverable No. 13.2

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 9 of the African Charter on Human and Peoples' Rights (also known as the Banjul Charter) and Article 13 of the American Convention on Human Rights 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...

---

**scope of the right**

Charter of Fundamental Rights: A Commentary

The EU
Restrictions


195 Groppera Radio AG and Others v Switzerland
De Haes and Gijsels v. Belgium
Novo Nordisk AS v. Ravimiamet,

Charter of Fundamental Rights: A Commentary

196 Yong-Joo Kang v. Republic of Korea
Charter of Fundamental Rights: A Commentary
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.

A example for this protection would be rights against dismissal of employees, be they active in trade unions or not.

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

Monitoring

compliance

Measuring

structural indicators monitor
process indicators monitor
outcome indicators measure

Charter of Fundamental Rights: A Commentary Özgür Gündem v. Turkey
3. **What are the limitations of existing assessments?**

monitoring information
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.

Many comparative measurements 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 international 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


212 Such as the Freedom of the World Survey, the Press Freedom Index, the African Media Barometer and the Media Sustainability Index.
Deliverable No. 13.2

The 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 (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

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

<table>
<thead>
<tr>
<th>Freedom of opinion and to impart information</th>
<th>Access to information</th>
<th>Special duties and responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• International human rights treaties reflect the right to freedom of opinion and expression (freedom of expression) protected by the State</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• 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</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Number of registered and/or active NGOs (per 10,000 persons) involved in the promotion and protection of the right to freedom of expression</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Date of entry into force and coverage of codes of conduct/ethics for journalists and other media persons</td>
<td></td>
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</tr>
</tbody>
</table>

#### Structural

- Date of entry into force and coverage of legislation for the protection of the freedom of the media, including abolition 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, television and TV broadband 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"

#### Process

- Proportion of received complaints on the right to freedom of expression investigated and adjudicated by the national human rights institution, human rights ambassadors or other mechanisms and the proportion of those responded to effectively by the Government
- Proportion of communications from the special rapporteur (e.g., Special Rapporteur on the promotion and protection of the right to freedom of expression) responded to effectively by the Government
- Number of newspapers, magazines, radio stations, TV broadcasts, Internet sites by ownership (public, private) and audience figures
- Number of mergers or acquisitions by media companies investigated, adjudicated, and resolved 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 other media persons investigated, adjudicated, and resolved 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

#### Outcome

- Number of journalists and any other media persons who reported sanctions, political or corporate pressures for the publication of information
- Reported cases of non-disclosure of documents, archives and corporate 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

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

* MDG-related indicators
2. Human rights related data/indicator schemes

a) Freedom House Report

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
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</thead>
<tbody>
<tr>
<td>What does it measure?</td>
<td></td>
</tr>
<tr>
<td>How often does it measure?</td>
<td></td>
</tr>
<tr>
<td>What sources does it use?</td>
<td>Freedom in the World</td>
</tr>
</tbody>
</table>

Type of Author

Geographical range

Time span


<table>
<thead>
<tr>
<th align="left">How does it rate?</th>
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</table>
| 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).

<table>
<thead>
<tr>
<th align="left">Who rates?</th>
</tr>
</thead>
</table>
| 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.

<table>
<thead>
<tr>
<th align="left">How is this indicator scheme build?</th>
</tr>
</thead>
</table>
| 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 belief are available.

<table>
<thead>
<tr>
<th align="left">Level of Disaggregation?</th>
</tr>
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</table>
| 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.

<table>
<thead>
<tr>
<th align="left">Discussion</th>
</tr>
</thead>
</table>
| 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.

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Press Freedom and Pluralism in Europe. Concepts and Conditions

Worldwide Index on Human Freedom


Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies

Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies
Website

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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?**

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).

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...
| How does it measure?                                                                 |                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------|                                                                                                                                                                                                                                                                                                                                 |
| How often does it measure?                                                         |                                                                                                                                                                                                                                                                                                                                 |
| What sources does it use?                                                          |                                                                                                                                                                                                                                                                                                                                 |
| How is this indicator scheme build?                                                |                                                                                                                                                                                                                                                                                                                                 |
| Level of Disaggregation?                                                            |                                                                                                                                                                                                                                                                                                                                 |
| Discussion                                                                        | not designed to provide a longitudinal analysis                                                                                                                                                                                                                                                                           |
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?**

- 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).
- Data on abuses, violence and harassment on journalists and attacks on the media like censorship per country and year.

**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.

**How does it measure?**

- The press freedom index is based partly on a questionnaire that is sent to the partner organizations of RWB (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 RWB 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 RWB avoid the task to decide about thresholds between free and not free.

- There has been a major change in the method used to compile the index in 2013, including the use of a new questionnaire.

---

Media Development Indicators: A Framework for assessing Media Development
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.

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.

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?
The online questionnaire includes 6 criteria:

- 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).

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.

Level of Disaggregation?
None.

Discussion
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.

d) **Media Pluralism Monitor**

<table>
<thead>
<tr>
<th>Type of Author</th>
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<tbody>
<tr>
<td>Geographical range</td>
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<tr>
<td>Time span</td>
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<th>Which information can I expect to find here?</th>
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<tr>
<td>What does it measure?</td>
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<td>How does it measure?</td>
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</table>

Press Freedom and Pluralism in Europe. Concepts and Conditions
How is this indicator scheme build?

What sources does it use?

How often does it measure?

| 19 Member States | • | • | • |
### e) African Media Barometer

**Type of Author**
- Academic and NGO.

**Geographical range**
- African and South East Asian countries.

**Time span**
- Since 2004.

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<td>What does it measure?</td>
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<td>How does it measure?</td>
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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) "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.

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).

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. The panellists can remain anonymous if they want. 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.

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<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>How often does it measure?</td>
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<tr>
<td>What sources does it use?</td>
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<tr>
<td>How is this indicator scheme build?</td>
<td></td>
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<tr>
<td>Level of Disaggregation?</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td></td>
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</table>
f) Media Sustainability Index

<table>
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<th>Which information can I expect to find here?</th>
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<tr>
<td>What does it measure?</td>
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<tr>
<td>How often does it measure?</td>
</tr>
<tr>
<td>What sources does it use?</td>
</tr>
</tbody>
</table>

Type of Author

Geographical range

Time span

Press Freedom and Pluralism in Europe. Concepts and Conditions

Press Freedom and Pluralism in Europe. Concepts and Conditions
How is this indicator scheme build?

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.

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?

G) CIRI human rights database

Type of Author

Geographical range

Time span

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 specific year.
What does it measure?

How often does it measure?

What sources does it use?

How is this indicator scheme build?

Level of Disaggregation?

Discussion

---


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.

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.

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.

Website 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.


3. Human rights compliance information

a) United Nations Treaty based monitoring
What procedural steps are taken to come to the final report?

Duration of the reporting cycle

Website

b) **Universal Periodic Review**

**Type of Author**

**Geographical range:**

Which information can I expect to find here?
What procedural steps are taken to come to the final report?

Duration of the reporting cycle

Website


c) **Special Rapporteur on Freedom of Expression**

**Type of Author**

**Geographical range:**

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
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</table>

<table>
<thead>
<tr>
<th>What procedural steps are taken to come to the report?</th>
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</table>

Understanding Human Rights: Manual on Human Rights Education
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.

**Duration of the reporting cycle**

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.

The majority of the Special Rapporteurs also report 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](http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx)

---


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

Step 1: Understanding the topic
- Identify the relevant/applicable human rights norms
- Analyse the normative content
- Reflect on cross-cutting human rights norms

Step 2: Have SPO-indicators been applied for your area of interest?
- Yes: use these materials
- No: proceed with Step 3 to 5

Step 3: Retrieving human rights compliance information
- Identify the relevant sources
- Retrieve human rights compliance information
- Check if you need further info and proceed with steps 4 and 5

Step 4: Retrieving other indicators based on information
- Assess the credibility of the source
- Assess the timeliness of information
- Assess the closeness to the normative content

Step 5: Compiling the information
- Assess the implementation of the right/norm based on information available
1. **Step 1: Understanding the topic**

Identify the applicable human rights norms

**Figure 7: Freedom of expression at UN and Council of Europe level**
Box 1: Treaty Body Database, Turkey

Turkey

•

Box 2: Treaty Body Database, Russia

Russia

•

Analyse the normative content
Reflect on cross-cutting human rights norms

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

3. **Step 3: Retrieving human rights compliance information**
Box 3: Relevant keywords for searching information on freedom of expression

<table>
<thead>
<tr>
<th>Key words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our experience shows that the following keywords bring useful results:</td>
</tr>
<tr>
<td>1. <strong>Freedom</strong> (use this solely and you will find purely all information, but also information on freedom of assembly and freedom of religion)</td>
</tr>
<tr>
<td>2. <strong>Expression/speech</strong> (speech is more common in US websites and resources, while expression is more common in European and African sources)</td>
</tr>
<tr>
<td>3. <strong>Media</strong> (if you have specific interests in media pluralism or media regulation or media censorship or media infrastructure)</td>
</tr>
<tr>
<td>4. <strong>Journalists and human rights defenders</strong> (if you have interest in vulnerable groups)</td>
</tr>
<tr>
<td>5. <strong>Article 19</strong> (in treaty based compliance monitoring)</td>
</tr>
</tbody>
</table>

The Universal Human Rights Index

The UN Treaty Body Database

Region/Country: Russian Federation  Treaty Committee: CCPR
Document Type: Jurisprudence, Report, session, date or Inquiry
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.

The most recent concluding observations are of 2015 from the HRC ICCPR.

Criminal law on defamation, (LGBT) issues, regulations for bloggers

2013 from the CERD CERD/C/RUS/CO/20-22).

Key words: speech, hate speech

Increase in extremist groups

Xenophobic and racist rhetoric

Negative stereotypes against minority groups

Results for Russia

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.

the freedom of opinion and to impart information

state duties and responsibilities
the freedom to seek information

Box 5: UN Treaty Body Database search results on freedom of expression in Turkey

Results for Turkey
- most recent country report of Turkey concluding observations ICCPR 2012
- CRC 2012
  - invites cancel its reservation on Art. 17 Art. 29 Art. 30
- the freedom of opinion and to impart information
- the freedom to seek information
- state duties and responsibilities
Special Procedures

Box 6: Special Procedures search results on freedom of opinion and expression in Turkey

Results for Turkey

- report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
  
- annual report of the Special Rapporteur

Restrictions of the right to expression and to impart information.

- the access to information
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

Results for the Russian Review of April 2013

- **national report**
  
  recently implemented legal regulations in Russia

- **compilation of UN information**

- **impunity for attacks and threats against journalists**

- **prohibition of LGBT propaganda**

- defamation lawsuits against media representatives.

  self-censorship by media outlets

- **Civil society and other submissions**

  failure to protect the life and physical integrity of journalists and to investigate cases of murders and assaults concerning them
Box 8: Universal Periodic Review search results on freedom of expression in Turkey

Results for the Turkey review of January 2015.

- National report

- Compilation of UN information

- Review in the working group report

- Adoption in the plenary session

UPR Info's ZRP
The European Court of Human Rights

4. **Step 4: Retrieving indicator based information**
Box 9: Indicator based information on freedom of expression in Turkey and Russia

**Freedom Report (Freedom House 2015)**
- Russia: "not free"
- Turkey: "partly free"

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.

**Freedom of the Press (Freedom House 2015)**
- Russia: not free
- Turkey: not free

**Freedom on the Net (Freedom House 2015)**
- Russia: not free, total score 62
- Turkey: partly free, total score 58

**Press Freedom Index (RWB 2015)**
- Russia: position #152

From 2014 to 2015 Russia dropped 4 positions to position #148, and from 2014 to 2015 Turkey rose by 5 positions.

**Media Development Index (UNESCO)**
- 

**Media Pluralism Monitor (EU)**
- 

**African Media Barometer/Asian Media Barometer (Fesmedia)**
- 

5. **Step 5: Compiling the information**

Table 7: Compilation of information on the right to freedom of expression for Russia (2012-2015)

<table>
<thead>
<tr>
<th>Commitment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Situation on the ground</td>
<td></td>
</tr>
</tbody>
</table>
Table 8: Compilation of information on the right to freedom of expression for Turkey (2011-2012)

| Commitment | State's Commitment | Turkey has ratified all UN Treaties, relevant for freedom of expression (ICCPR, ICERD, CERPD, CRC, CMW). |
| Situation on the ground | State's Actions | Narrowed down definition of terror crimes. 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. 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. 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. |

Freedom: partly free.
Freedom of the Press: not free.
Freedom of the Net: partly free.
Press Freedom Index: position 149 out of 180 (killings included) position rose. 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.
IV. Rights of the child

A. Think-piece on the rights of the child as cross-cutting issue

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.

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Being young in Europe today

Fundamental Rights: Challenges and Achievements in 2014
2. The normative framework
Figure 8: Human rights capacity building and the right holder–duty bearer relationship

Promoting Rights-Based Approaches:
Experiences and Ideas from Asia and the Pacific
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 children's 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 procedure and provides guidance in interpretation of UNCRC provisions through thematic general comments.

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, next to political commitments declared in the Millennium Development Goals (MDG) and the global Education for All initiative. Similarly, in the preamble, the 2011 EU Directive on sexual abuse and sexual exploitation of children 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 Pornography and also to the 2007 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.


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, which have been further promoted for implementation also by the EU in the 2011 EU Agenda on the Rights of the Child; 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.

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.

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).


A remaining challenge for EU institutions
3. **Key child rights concepts**

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**Trafficking in Human Beings**
child survival, health and other development issues and publishes annual and topical statistics and research findings.

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' and the child right to participation.

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 herself/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.

Increasing attention has been given in recent years to direct involvement of children in research processes.

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), protection rights (from any


4. Mainstreaming and targeted approaches – some examples from EU practice

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Handbook for the Convention on the Rights of the Child
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.

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) and the 2011 EU Anti-Trafficking Directive (e.g. access to child-specific assistance services, protection at court, representation when unaccompanied).

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.

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...
5. **Types of relevant information**

**Empowerment of children**
Access to child-friendly information

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Child participation

- 

Inclusion of children

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- 
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Child rights education

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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.

- 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.


Access to justice and complaint mechanisms


Data collection and child (rights)-focused research


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Child-related legislation and policy development

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- 
- 

Provision of services to children

- 
- 
- 

International (development) cooperation

- 

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.


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 child

1. Human rights indicator schemes

   a) **FRA Indicators for the Protection, Respect and Promotion of the Rights of the Child in the European Union**

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
</tr>
</thead>
<tbody>
<tr>
<td>What does it measure?</td>
</tr>
<tr>
<td>Protection, promotion and fulfilment</td>
</tr>
<tr>
<td>How often does it measure?</td>
</tr>
<tr>
<td>How sources does it use?</td>
</tr>
<tr>
<td>How is this indicator scheme created?</td>
</tr>
</tbody>
</table>

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


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.

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.

Level of Disaggregation?

The indicators accommodate the diversity of age, ethnic origin, socio-economic situation, disability, gender and other factors. They respect financial, physical and cultural differences.

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.

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


b) **EU – Child-friendly Justice Indicators**

**Type of Author**

EU body

**Geographical range**

10 EU Member States

**Time span**

The data covers the legislation, regulations and policies as of 1 June 2012.

**Which information can I expect to find here?**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heard</td>
<td>Right to be heard</td>
</tr>
<tr>
<td>Right to information</td>
<td>Right to information</td>
</tr>
<tr>
<td>Right to protection and privacy</td>
<td>Right to protection and privacy</td>
</tr>
<tr>
<td>Right to non-discrimination</td>
<td>Right to non-discrimination</td>
</tr>
<tr>
<td>Principle of best interest of the child</td>
<td>Principle of best interest of the child</td>
</tr>
</tbody>
</table>

**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 and the three EU directives on victims, human trafficking and combating sexual abuse, sexual exploitation of children and child pornography.

**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.

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**How is this indicator scheme created?**

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**Level of Disaggregation?**

**Discussion**

**Website**

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**Child-friendly Justice: Perspectives and Experiences of Professionals on Children’s Participation in Civil and Criminal Judicial Proceedings in 10 EU Member States**


**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**

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
   
   Geographical range
   
   Time span

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What does it measure?</td>
<td></td>
</tr>
<tr>
<td>How often does it measure?</td>
<td></td>
</tr>
<tr>
<td>What sources does it use?</td>
<td></td>
</tr>
<tr>
<td>How is this indicator scheme build?</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Level of Disaggregation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discussion</td>
</tr>
<tr>
<td>Website</td>
</tr>
</tbody>
</table>
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 reunification 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. The indicators do not cover the situation of children living outside all forms of care.

**Website**

www.unicef.org/protection/Formal_Care20Guide20FINAL.pdf

www.crin.org/en/library


Database: http://data.unicef.org/index2.html (Same as for The State of the World's Children – Multiple Indicator Cluster Survey programme (MICS))

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Manual for the Measurement of Indicators for Children in Formal Care

Manual for the Measurement of Indicators for Children in Formal Care
### 3. Human rights compliance information

a) **Committee on the Rights of the Child**

**Type of Author**

**Geographical range:**

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
</tr>
</thead>
<tbody>
<tr>
<td>What procedural steps are taken to come to the report?</td>
</tr>
<tr>
<td>Duration of the reporting cycle</td>
</tr>
<tr>
<td>Website</td>
</tr>
</tbody>
</table>
b) *Council of Europe Expert Group on Action against Trafficking in Human Beings (GRETA) Country Reports*

**Type of Author**

**Geographical range:**

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>Duration of the reporting cycle</td>
</tr>
<tr>
<td>Website</td>
</tr>
</tbody>
</table>

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368 Ibid.

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.


370 Ibid.
C. Workflow for information requests in UN human rights compliance information

1. Introduction

2. Defining our search for children’s right information
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.

The Guidelines 'stress the importance of key international and European legal human rights instruments, norms and standards' [...].

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'.

The obstacles the Committee notes are, for instance, the right to access to justice and the diversity in and complexity of procedures.

Although child-friendly justice has not been elaborated upon in the EU Guidelines the EU Agenda on the Rights of the Child of 2011 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.
3. **Workflows**

![Figure 9: Overall process of accessing human rights information](image)

(1) **Step 1: Understanding the topic**

---

These normative documents describe the rights to which such children are entitled. 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, 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, namely the 'Beijing Rules', the 'Havana Rules' and the 'Riyadh Guidelines'. These instruments are to be implemented in conjunction with the provisions of the UNCRC. 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, but also more specific human rights bodies, such as the CPT comment on the treatment of children in conflict with the law. 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".

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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.

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 ECtHR and in many CoE instruments, such as in Recommendation CM/Rec(2008) on the European Rules for juvenile offenders subject to sanctions or measures, and in Recommendation Rec(2006)2 on the European Prison Rules. Similarly, the CoE Guidelines on Child-friendly Justice specifically draw attention to the treatment of children deprived of their liberty.

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.

Guvec v. Turkey
Selçuk v. Turkey
Nart v. Turkey
Step 3: Identifying relevant sources of information on state compliance with children’s rights

(3) Step 3: Identifying relevant sources of information on state compliance with children’s rights
Deliverable No. 13.2

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
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*
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 12: Treaty Bodies information search**

<table>
<thead>
<tr>
<th>Understanding the topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>State compliance with children in detention</td>
</tr>
</tbody>
</table>

**Establishing keywords**

<table>
<thead>
<tr>
<th>Imprisonment</th>
<th>Deprivation of liberty</th>
<th>(Pre-trial) detention</th>
<th>Inhuman/degrading treatment</th>
<th>Torture</th>
<th>Capital punishment</th>
</tr>
</thead>
</table>

**Identifying the sources**

UN Treaty based system: CRC (CEDAW, ICCPR, ICESCR, CERD, CAT)

**Retrieving the data**

UN Treaty Body Search Engine

**Box 10: UN Treaty Bodies search engine**

**Website**

**Advantages**

**Disadvantages**
Figure 13: UN Treaty Based search engine

Figure 14: Results page treaty based search
(ii) United Nations Charter-based system: The Universal Periodic Review

Website

Advantages:

Disadvantages:

Box 11 Universal Periodic Review website
Figure 15: UPR information search

Understanding the topic

Establishing keywords

Identifying the sources

Retrieving the data

Figure 16: Universal Periodic Review website
(iii) Combined information: The Universal Human Rights Index
Box 12: Universal Human Rights Index

Website: uhri.ohchr.org

Advantage

Disadvantage
Figure 18: Universal Human Rights Index annotation search
Figure 19: Universal Human Rights Index advanced annotation search
Figure 20: Universal Human Rights Index document search
### 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.

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.

**Quick Links**
- Recent judgments
- Recent press release
- Multimedia
- Applicants
- Case-Law Information
- Factsheets
- Country profiles
- Information visits
- Other languages

**Chamber Judgment concerning Italy**
- 21/07/2015
- In the case of Gilli and Others v. Italy, the Court held that there has been a violation of the right to privacy for family life. The applicants, 3 homosexual couples, complained that under Italian legislation they do not have the possibility to get married or enter into any other type of civil union, and that they are being discriminated against on the basis of their sexual orientation. The Court considered that a civil union or registered partnership would be the most appropriate way for same-sex couples like the applicants to have their...

**Hearings**
- Grand Chamber hearing concerning Hungary
- 21/07/2015
- The Court held a hearing in the case of Kereskényi and Others v. Hungary and Bodi and Others v. Hungary. Press Co...

**Decision**
- Inadmissibility Decision
- 16/07/2015
- The Court has declared inadmissible the case of Nicollas and Lamb v. the United Kingdom. John Nicollas’s husband was suffering from locked-in...

**President Visits**
- Used by the President of Malta
Figure 22: Council of Europe Theseus database

Box 13: Theseus Database

Website

Advantages

Disadvantages
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

<table>
<thead>
<tr>
<th>Understanding the topic</th>
<th>Establishing keywords</th>
<th>Identifying the sources</th>
<th>Retrieving the data</th>
</tr>
</thead>
<tbody>
<tr>
<td>State compliance with children in detention</td>
<td>Imprisonment</td>
<td>Deprivation of liberty</td>
<td>(Pre-trial) detention</td>
</tr>
<tr>
<td>Council of Europe: ECtHR</td>
<td>Theseus database and Hudoc search engine</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Figure 24: HUDOC search engine
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

<table>
<thead>
<tr>
<th></th>
<th>Welcomes</th>
<th>Recommends</th>
<th>Urges</th>
<th>Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Concluding Observations</strong></td>
<td>3</td>
<td>45</td>
<td>0</td>
<td>45</td>
</tr>
<tr>
<td><strong>Turkey 2001</strong></td>
<td>12</td>
<td>52</td>
<td>7</td>
<td>48</td>
</tr>
<tr>
<td><strong>Concluding Observations</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Turkey 2012</strong></td>
<td>12</td>
<td>52</td>
<td>7</td>
<td>48</td>
</tr>
</tbody>
</table>
**Table 10: Frequency analysis for the Netherlands**

<table>
<thead>
<tr>
<th></th>
<th>Welcomes</th>
<th>Recommends</th>
<th>Urges</th>
<th>Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concluding Observations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands 1999</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concluding Observations</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands 2004</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Concluding Observations</td>
<td></td>
<td></td>
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<tr>
<td>Netherlands 2009</td>
<td></td>
<td></td>
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<tr>
<td>Concluding Observations</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Netherlands 2015</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. **Concluding remarks**
V. Social indicators

A. Think-piece on the social indicators as human rights indicators

1. Introduction
2. The European social indicators and the Social Protection Committee

3. The poverty and inclusion indicators and human rights

Social Europe - Aiming for inclusive growth

antidiscrimination policies,
why

4. The human rights gaps of existing measurement tools

a) Adequate living standards and poverty and social inclusion

Table 11: SPC indicators relevant to living standards

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</table>
40% of the total disposable household income (net of housing allowances).

Overcrowding
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.

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’, 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
No information on the right to water

Use of composite indicator

b) The right to health and poverty and social inclusion

Availability, Accessibility, Acceptability, Quality

healthy life years
Mental health

Reproductive, maternal and child health care

Accountability
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 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—according to the General Comment No. 19—would benefit the process of ensuring non-discriminatory access to social security.

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..."
Box 14: Opportunities using Eurostats data to enhance the rights-based focus of European social indicators

Housing

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 in a dwelling with a leaking roof, damp walls, floors or foundation, or rot in window frames of

Housing location

Data on the locational access to social facilities such as hospitals and schools - which according to the CESC R represents an important dimension of housing adequacy - seems to be lacking and would require additional data collection.

Right to food

Composite indicator on the right to food

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 . 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 governme
Reproductive and maternal health

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 section 1).

On accountability and health rights

Eurostat assesses Europeans’ “awareness of redress” through their “awareness of access to redress data” 

Social security in general

The suggested additional indicators derive from Eurostat, OHCHR\(^1\) and the proposed indicators for the Sustainable Development Goals\(^1\) (SDGs) 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 those 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**

a) *In terms of available statistics from Eurostat*
b) \textit{In terms discursive change} \\
Annual Report

6. \textbf{Concluding perspectives}
B. Briefs on assessing social indicators

1. The right to an adequate standard of living

a) Conceptualizing the right to an adequate standard of living

The right to adequate housing
Deliverable No. 13.2

legal security of tenure
materials, facilities and infrastructure
affordability
habitability
accessibility
location
cultural adequacy

The right to adequate food

availability accessibility

The right to water

quality

availability
b)  **SPC indicators and the right to an adequate standard of living**

affordability

habitatibility
c) **Gaps and challenges**

**Limited coverage of certain aspects of the right to housing**

availability
No data on security of tenure, homelessness and housing location

tenure accessibility location security of legal

Inadequate data on the right to food

No information on the right to water
Use of composite indicator

d) **Summary**
Table 13: Right to housing

<table>
<thead>
<tr>
<th>Dimension</th>
<th>SPC Indicators</th>
<th>Gaps</th>
<th>Possible Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

- Additional data collection.
- Supplement with existing Eurostat data:
  - "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."
Table 14: Right to food

<table>
<thead>
<tr>
<th>Dimension</th>
<th>SPC Indicators</th>
<th>Gaps</th>
<th>Possible Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability</td>
<td>No coverage</td>
<td></td>
<td>Supplement with existing Eurostat data:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• “Consumption of fruits”;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• “Consumption of vegetables”;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• “Body Mass Index (BMI)”</td>
</tr>
<tr>
<td>Accessibility(Physical)</td>
<td>No coverage</td>
<td></td>
<td>Limited coverage. Supplement with existing Eurostat data:</td>
</tr>
<tr>
<td>Accessibility(economic)</td>
<td>Component of “material deprivation”: cannot afford to “eat meat, fish or a protein equivalent every second day”</td>
<td></td>
<td>Limited coverage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Supplement with existing Eurostat data:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• “Structure of consumption expenditure (choice, COICOP level 2: “food and non-alcoholic beverages”)”</td>
</tr>
</tbody>
</table>
Table 15: Right to water

<table>
<thead>
<tr>
<th>Dimension</th>
<th>SPC Indicators</th>
<th>Gaps</th>
<th>Possible Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>
2. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health

a) Conceptualizing the right to health

- objectives
- means
- core obligations
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

<table>
<thead>
<tr>
<th>The General Comment No. 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;</td>
</tr>
<tr>
<td>To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;</td>
</tr>
<tr>
<td>To ensure equitable distribution of all health facilities, goods and services;</td>
</tr>
<tr>
<td>To adopt and implement a national public health strategy and plan of action;</td>
</tr>
<tr>
<td>To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;</td>
</tr>
<tr>
<td>To provide immunization against the major infectious diseases occurring in the community;</td>
</tr>
<tr>
<td>To take measures to prevent, treat and control epidemic and endemic diseases;</td>
</tr>
<tr>
<td>To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;</td>
</tr>
<tr>
<td>To provide appropriate training for health personnel, including education on health and human rights.</td>
</tr>
</tbody>
</table>

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.

The core obligations listed above are subject to the Availability, Accessibility, Acceptability and Quality (AAAQ) criteria. Accessibility in this case encompasses four interdependent dimensions: physical accessibility, which refers to distance, economic accessibility, also named affordability, non-economic accessibility, and non-physical accessibility.
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

<table>
<thead>
<tr>
<th>Availability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessibility</td>
</tr>
<tr>
<td>Non-discrimination</td>
</tr>
<tr>
<td>Physical accessibility</td>
</tr>
<tr>
<td>Economic accessibility</td>
</tr>
<tr>
<td>Information accessibility</td>
</tr>
<tr>
<td>Acceptability</td>
</tr>
<tr>
<td>Quality</td>
</tr>
</tbody>
</table>

b) **SPC indicators and the right to health**
Deliverable No. 13.2

A possible approach 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'.

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'.

The issue of mental health remains underprioritised in many health systems, yet it poses a significant burden of disease in Europe.

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". 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.

---


Reproductive, maternal and child health care

Health  Women empowerment

Accountability
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>
<thead>
<tr>
<th>Indicators</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-reported unmet need for medical care</td>
<td>Total self-reported unmet need for medical care for the following three reasons: financial barriers + waiting times + too far to travel.</td>
</tr>
<tr>
<td>Self-reported unmet need for dental care</td>
<td>Total self-reported unmet need for dental care for the following three reasons: financial barriers + waiting times + too far to travel.</td>
</tr>
<tr>
<td>% of population covered by public health insurance</td>
<td>Includes tax-based public health insurance and income-related payroll taxes including social security contribution schemes as well as private health insurances.</td>
</tr>
<tr>
<td>Life expectancy (by socioeconomic status)</td>
<td>The mean number of years that a newborn 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).</td>
</tr>
<tr>
<td>Healthy Life years (by socioeconomic status)</td>
<td>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).</td>
</tr>
<tr>
<td>Self-perceived limitations in daily activities</td>
<td></td>
</tr>
<tr>
<td>Self-perceived general health</td>
<td></td>
</tr>
<tr>
<td>Infant mortality (by socioeconomic status)</td>
<td>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).</td>
</tr>
<tr>
<td>Vaccination coverage in children</td>
<td>% of infants reaching their 1st and 2nd birthday who have been fully vaccinated against a range of diseases.</td>
</tr>
<tr>
<td>Cervical cancer screening</td>
<td>Defined as the % of women aged 20-69 that were screened for cervical cancer using a cervical smear test over the past 3 years.</td>
</tr>
<tr>
<td>Cervical cancer survival rates</td>
<td>The % of those still alive 5 years after the disease has been diagnosed.</td>
</tr>
<tr>
<td>Health Indicator</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Colorectal cancer survival rate</td>
<td></td>
</tr>
<tr>
<td>Satisfaction with health care services</td>
<td></td>
</tr>
<tr>
<td>Influenza vaccination for adults over 65+</td>
<td></td>
</tr>
<tr>
<td>Breast cancer screening</td>
<td></td>
</tr>
<tr>
<td>Breast cancer survival rate</td>
<td></td>
</tr>
<tr>
<td>Perinatal mortality</td>
<td></td>
</tr>
<tr>
<td>Total health expenditure per capita</td>
<td></td>
</tr>
<tr>
<td>Total health care expenditure as a % of GDP</td>
<td></td>
</tr>
<tr>
<td>Total long-term care expenditure as a % of GDP</td>
<td></td>
</tr>
<tr>
<td>Projections of public expenditure on health care as % of GDP</td>
<td></td>
</tr>
<tr>
<td>Projections of public expenditure on long-term care as % of GDP</td>
<td></td>
</tr>
<tr>
<td>Hospital inpatient discharges</td>
<td></td>
</tr>
<tr>
<td>Hospital day cases</td>
<td></td>
</tr>
<tr>
<td>Obesity</td>
<td></td>
</tr>
<tr>
<td>Sales of generics</td>
<td></td>
</tr>
<tr>
<td>Acute care bed occupancy rates</td>
<td></td>
</tr>
<tr>
<td>Indicator</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Hospital average length of stay</td>
<td></td>
</tr>
<tr>
<td>Regular smokers</td>
<td></td>
</tr>
<tr>
<td>Alcohol consumption</td>
<td></td>
</tr>
<tr>
<td>Physicians (per 100,000 inhabitants)</td>
<td></td>
</tr>
<tr>
<td>Nurses and midwives (per 100,000 inhabitants)</td>
<td></td>
</tr>
<tr>
<td>Public and private expenditure as % of total health expenditure</td>
<td></td>
</tr>
<tr>
<td>Total expenditure on main types of activities or functions of care</td>
<td></td>
</tr>
</tbody>
</table>
**Table 19: The right to health and SPC indicators - gap assessment and suggested improvements**

<table>
<thead>
<tr>
<th>Dimension</th>
<th>SPC Indicators</th>
<th>Gaps</th>
<th>Possible Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Comment No. 14 on the right to health</td>
<td>Retrieved from the Social Protection Committee</td>
<td>Discrepancies between right to health dimensions and SPC indicators</td>
<td>Suggestions which can strengthen right to health relevance</td>
</tr>
</tbody>
</table>

**Core Obligations**

- 
- 
-
To ensure equitable distribution of all health facilities, goods and services; May be monitored through disaggregation of data.

Coverage Enhancement

Disaggregation of data based on prohibited grounds of discrimination to detect potential discrimination.

To adopt and implement a national public health strategy.

Supplement with OHCHR indicators:

- "Timeframe and coverage of national policy on physical and mental health".

Limited coverage. Solid outcome indicators, but lack of process indicators.

Supplement with potential SDG indicators:

- "Proportion of births attended by skilled health personnel";
- "% of women of reproductive age (15-49 years) who have their need for family planning satisfied with modern methods";
- "Adolescent birth rate (10-14; 15-44 years)".

Proposed SDG indicator for target 3b.


Proposed SDG indicator for target 3.1.

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.
Dr. 13.2

19) per 1,000 women in that age group.

- Proportion of women (aged 15-49) who make their own sexual and reproductive decisions.
- % of countries with laws and regulations that guarantee all women and adolescents access to sexual and reproductive health services, information and education.

To provide immunization against the major infectious diseases occurring in the community:

- Vaccination coverage in children.
- Influenza vaccination for adults over 65+.

To take measures to prevent, treat and control epidemic and endemic diseases:

- Broad coverage.
- 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.
- Supplement with indicator suggested by the Special Rapporteur on the Right to 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.
To provide appropriate training for health personnel, including education on health and human rights.

---

### AAAQ criteria

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Nb. of Physicians</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nb. of Nurses and midwives</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Self-reported unmet need for medical care.

### Coverage.

Supplement with Eurostat data:

- 'Didn't know any good doctor or specialist'.

---

**Accessibility**

Economic:

Coverage.

Supplement with potential SDG indicators and OHCHR indicators:

- 'Coverage of tracer interventions' + 'Fraction of the population protected against catastrophic/impoverishing out-of-pocket health expenditure';

- 'Proportion of population that was extended access to affordable health care, including essential...'

---


---

Eurostat (information accessibility).

---

Proposed SDG indicators for target 3.8.
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhance disaggregation of data based on prohibited grounds of discrimination to detect potential discrimination.</td>
<td></td>
</tr>
</tbody>
</table>

See core obligation related to information.

Acceptability

Satisfaction with health care services.

Coverage.

See core obligation related to information.

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".

---

Measurement and Implementation

Human Rights Indicators: A Guide to

Special Eurobarometer 411: Patient Safety and Quality of Care
Table 20: Over-all health related outcome indicators applicable to the right to health

<table>
<thead>
<tr>
<th>Over-all health related outcome indicators applicable to the right to health</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Life expectancy</strong></td>
</tr>
<tr>
<td><strong>Life expectancy by socio-economic status</strong></td>
</tr>
<tr>
<td><strong>Healthy Life years</strong></td>
</tr>
<tr>
<td><strong>Healthy life years by socio-economic status</strong></td>
</tr>
<tr>
<td><strong>Self-perceived limitations in daily activities</strong></td>
</tr>
<tr>
<td><strong>Self-perceived general health</strong></td>
</tr>
<tr>
<td><strong>Colorectal cancer survival rate</strong></td>
</tr>
<tr>
<td><strong>Breast cancer survival rate</strong></td>
</tr>
<tr>
<td><strong>Public and private expenditure as % of total health expenditure</strong></td>
</tr>
<tr>
<td><strong>Total expenditure on main types of activities or functions of care</strong></td>
</tr>
<tr>
<td><strong>Total health expenditure per capita</strong></td>
</tr>
<tr>
<td><strong>Total health care expenditure as a % of GDP</strong></td>
</tr>
<tr>
<td><strong>Total long-term care expenditure as a % of GDP</strong></td>
</tr>
<tr>
<td><strong>Projections of public expenditure on health care as % of GDP</strong></td>
</tr>
<tr>
<td><strong>Projections of public expenditure on long-term care as % of GDP</strong></td>
</tr>
<tr>
<td><strong>Obesity</strong></td>
</tr>
<tr>
<td><strong>Regular smokers</strong></td>
</tr>
<tr>
<td><strong>Alcohol consumption</strong></td>
</tr>
</tbody>
</table>
3. The right of everyone to social security

a) Conceptualizing the right to social security

core obligations key elements
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.

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>
<thead>
<tr>
<th>General Comment No. 19</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Table 21: Core obligations of the right to social security

<table>
<thead>
<tr>
<th>Availability, Adequacy, Affordability and Accessibility, which</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

Table 22: Key elements of the right to social security

<table>
<thead>
<tr>
<th>Elements of the right to social security</th>
</tr>
</thead>
</table>
General Comment No. 19

Availability

Adequacy

Affordability

Accessibility

b) **SPC indicators and the right to social security**

social inclusion             pension
Non-discrimination

Accountability

SPC indicators and the right to social security

Measurement and Implementation

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.

---

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>At-risk-of poverty rate.</td>
<td></td>
</tr>
<tr>
<td>Persistent at-risk of poverty rate.</td>
<td></td>
</tr>
<tr>
<td>Relative median poverty risk gap.</td>
<td></td>
</tr>
<tr>
<td>Long term unemployment rate.</td>
<td></td>
</tr>
<tr>
<td>Population living in jobless households.</td>
<td></td>
</tr>
<tr>
<td>Early school leavers not in education or training.</td>
<td></td>
</tr>
<tr>
<td>Employment gap of immigrants.</td>
<td></td>
</tr>
<tr>
<td>Material deprivation rate.</td>
<td></td>
</tr>
<tr>
<td>Self reported unmet need for medical care.</td>
<td></td>
</tr>
</tbody>
</table>
### At-risk-of poverty rate.

#### Poverty risk by household type.

#### Poverty risk by the work intensity of households.

#### Poverty risk by most frequent activity status.

#### Poverty risk by accommodation tenure status.

#### Dispersion around the at-risk-of-poverty threshold.

#### Persons with low educational attainment.

#### Low reading literacy performance of pupils.

#### Depth of material deprivation.

#### Housing costs.

#### Overcrowding.

#### Pension portfolio
<table>
<thead>
<tr>
<th>Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>At-risk-of-poverty rate of older people.</td>
</tr>
<tr>
<td>Median relative income of elderly people.</td>
</tr>
<tr>
<td>Aggregate replacement ratio.</td>
</tr>
<tr>
<td>Change in projected theoretical replacement ratio.</td>
</tr>
<tr>
<td>At-risk-of-poverty rate of older people.</td>
</tr>
<tr>
<td>EU Median relative income of elderly people (60+).</td>
</tr>
<tr>
<td>EU Aggregate replacement ratio (incl. other social benefits).</td>
</tr>
<tr>
<td>Income inequality.</td>
</tr>
<tr>
<td>Risk of poverty gap of elderly people.</td>
</tr>
<tr>
<td>Risk of poverty of pensioners</td>
</tr>
<tr>
<td>Incidence of risk of elderly poverty by the housing tenure status.</td>
</tr>
<tr>
<td>Risk of poverty calculated at 50% and 70% of median national equivalised income for elderly.</td>
</tr>
<tr>
<td>Total Current Pension expenditure (% of GDP).</td>
</tr>
<tr>
<td>Employment rate.</td>
</tr>
</tbody>
</table>
Effective labour market exit age.

| Projections of Pension expenditure, public and total, 2004-2050 (% of GDP). |
| Decomposition of the projected increase in public pension expenditure. |
| Gender differences in the risk of poverty. |
| Gender differences in the relative income of older people. |
| Gender differences in aggregate replacement ratio. |
| Gender differences in the relative income older people. |
Table 24: The right to social security and SPC indicators. Gap assessment and suggested improvements

<table>
<thead>
<tr>
<th>Dimensions</th>
<th>SPC Indicators</th>
<th>Gaps</th>
<th>Possible Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Comment No. 19 on the right to social security</td>
<td>Retrieved from the Social Protection Committee</td>
<td>Discrepancies between right to social security dimensions and SPC indicators</td>
<td>Suggestions which can strengthen right to social security relevance</td>
</tr>
</tbody>
</table>

**Core obligations**

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

To ensure access to social security systems or schemes on a non-discriminatory basis

- [ ]

| **To respect existing social security schemes and protect them from unreasonable interference** |
| **To adopt and implement a national social security strategy and plan of action** |
| **To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups** |

To adopt and implement a national social security strategy and plan of action. Supplement with OHCHR indicator: “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”.

To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups.

Measurement and Implementation
<table>
<thead>
<tr>
<th>AAAQ criteria</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Availability</strong></td>
<td>•</td>
</tr>
</tbody>
</table>

To monitor the extent of the realization of the right to social security

Proposed SDG indicator for target 8.b.

EUROstat.
<table>
<thead>
<tr>
<th>Affordability</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-reported unmet need for medical care.</td>
<td></td>
</tr>
</tbody>
</table>

- Supplement with OHCHR indicator:
  - "% of household expenditure (food, health, day care, education, housing) on children and dependent adults covered by public support".
C. **Overview of relevant sources on social rights**

1. **Millennium Development Goals Indicators**

   **Type of Author**
   - Intergovernmental organisation.

   **Geographical range**
   - Worldwide.

   **Time span**
   - Periodicity of measurement varies from indicator to indicator (from annually to every 10 yrs).

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Millennium Development Goals (MDG) Indicators have been developed by the Intergovernmental 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 follows:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What does it measure?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 1: Eradicate extreme poverty and hunger / Right to adequate standard of living</td>
</tr>
<tr>
<td>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.</td>
</tr>
<tr>
<td>- Right to work</td>
</tr>
<tr>
<td>Measured by the growth rate of GDP per person employed, the employment-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.</td>
</tr>
<tr>
<td>- Right to food</td>
</tr>
<tr>
<td>The prevalence of underweight children under five years of age and the proportion of population below minimum level of dietary energy consumption.</td>
</tr>
</tbody>
</table>

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.

**What does it measure?**

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.

---

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.


<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>How often does it measure?</td>
<td></td>
</tr>
<tr>
<td>What sources does it use?</td>
<td></td>
</tr>
<tr>
<td>How is this indicator scheme build?</td>
<td></td>
</tr>
<tr>
<td>Level of Disaggregation?</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td></td>
</tr>
<tr>
<td>Website</td>
<td></td>
</tr>
</tbody>
</table>

A Million Voices: The World We Want 4 A sustainable future with dignity

for all
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?**  

**What does it measure?**  

- **right to an adequate standard of living:**
  - right to health
  - right to water and sanitation
  - right to work
  - right to food
  - right to life
  - right to equality
<table>
<thead>
<tr>
<th>How often does it measure?</th>
<th>Right to social security</th>
</tr>
</thead>
<tbody>
<tr>
<td>What sources does it use?</td>
<td>Right to education</td>
</tr>
<tr>
<td>How is this indicator scheme build?</td>
<td>Right to environmental health</td>
</tr>
<tr>
<td>Level of disaggregation?</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td></td>
</tr>
<tr>
<td>Website</td>
<td></td>
</tr>
</tbody>
</table>

2012 World Development Indicators
3. **International Human Development Indicators**

**Type of Author**

**Geographical range**

**Time span**

---

**Which information can I expect to find here?**

- right to an adequate standard of living
- right to work
- right to health
  - right to life
- right to equality
- right to adequate housing
- right to education
- right to environmental health

---

**What does it measure?**

The HDI measure the achievement in the basic dimensions of human development across countries.

"[...] a simple unweighted average of a nation's longevity, education and income"
The Human Development Index (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.

**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. 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?**

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:

- 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**

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.

Bryan Caplan criticizes 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!"

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

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Ibid. footnote 491.


4. **KILM - Key indicators of the labour market**

**Type of Author**: ILO

**Geographical range**: Worldwide

**Time span**: Since 1999; 8th edition in 2015

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Which information can I expect to find here?</td>
<td>rights to employment, equality, social security.</td>
</tr>
<tr>
<td>What does it measure?</td>
<td>right to work, information on the right to equality and non-discrimination, right to education, right to social security</td>
</tr>
<tr>
<td>How often does it measure?</td>
<td>On a yearly basis</td>
</tr>
<tr>
<td>What sources does it use?</td>
<td>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.</td>
</tr>
<tr>
<td>How is this indicator scheme build?</td>
<td>The 18 KILM are quantitative indicators, mostly outcome indicators and the results are annually presented in the form of a report.</td>
</tr>
<tr>
<td>Level of Disaggregation?</td>
<td>Depending on the indicator, disaggregation of women and men and age groups.</td>
</tr>
</tbody>
</table>

Ibid, footnote 495.

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. This problem is of greater concern particularly in African countries.

Regarding the comparability it is stated that, “[...]

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 [...]

Website


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?

right to food

What does it measure?

right to water right to health right to food.

How often does it measure?

annually

What sources does it use?

FAO data sources and non-FAO data sources.
<table>
<thead>
<tr>
<th>How is this indicator scheme build?</th>
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</thead>
<tbody>
<tr>
<td>•</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Level of Disaggregation?</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Discussion</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td>Database</td>
</tr>
</tbody>
</table>
6. **The Fragile State Index (FSI)**

**Type of Author**

NGO

**Geographical range**

International (178 states)

**Time span**

Annual since 2005

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<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Which information can I expect to find here?</td>
<td></td>
</tr>
<tr>
<td>What does it measure?</td>
<td></td>
</tr>
<tr>
<td>How often does it measure?</td>
<td></td>
</tr>
<tr>
<td>What sources does it use?</td>
<td></td>
</tr>
<tr>
<td>How is this indicator scheme build?</td>
<td></td>
</tr>
<tr>
<td>Level of Disaggregation?</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td></td>
</tr>
<tr>
<td>Website</td>
<td></td>
</tr>
</tbody>
</table>

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**Fund for Peace, 'The methodology behind the Index', available at**

[http://fsi.fundforpeace.org/methodology](http://fsi.fundforpeace.org/methodology)  
*accessed 26 November 2015.*

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**Ibid, footnote 503.**

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**Fund for Peace, 'The Indicators', available at**

[http://fsi.fundforpeace.org/indicators](http://fsi.fundforpeace.org/indicators)  
*accessed 26 November 2015.*

---

**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

#### 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 nationally.

#### 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.
8. **WHO World Health Statistics/Global Health Observatory**

<table>
<thead>
<tr>
<th>Type of Author</th>
<th>IGO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geographical range</td>
<td>194 member states worldwide</td>
</tr>
<tr>
<td>Time span</td>
<td>Annually</td>
</tr>
</tbody>
</table>

**Which information can I expect to find here?**

<table>
<thead>
<tr>
<th>Which information can I expect to find here?</th>
<th>right to life</th>
<th>right to health</th>
</tr>
</thead>
</table>

**What does it measure?**

<table>
<thead>
<tr>
<th>What does it measure?</th>
<th>right to life</th>
<th>the right to health</th>
</tr>
</thead>
</table>

**How often does it measure?**

<table>
<thead>
<tr>
<th>How often does it measure?</th>
<th>right to life</th>
<th>the right to health</th>
</tr>
</thead>
</table>

**What sources does it use?**

<table>
<thead>
<tr>
<th>What sources does it use?</th>
<th>right to life</th>
<th>the right to health</th>
</tr>
</thead>
</table>

**How is this indicator scheme built?**

<table>
<thead>
<tr>
<th>How is this indicator scheme built?</th>
<th>right to life</th>
<th>the right to health</th>
</tr>
</thead>
</table>

**Level of Disaggregation?**

<table>
<thead>
<tr>
<th>Level of Disaggregation?</th>
<th>right to life</th>
<th>the right to health</th>
</tr>
</thead>
</table>

**Discussion**

It is intended to be applied cross-nationally, 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.
Some states may have an insufficient way of gathering a certain type of information, i.e. due to missing birth registration etc.

<table>
<thead>
<tr>
<th>Website</th>
</tr>
</thead>
<tbody>
<tr>
<td><a href="http://www.who.int/en/">www.who.int/en/</a></td>
</tr>
<tr>
<td>Database: <a href="http://apps.who.int/gho/data/?theme=home">http://apps.who.int/gho/data/?theme=home</a></td>
</tr>
</tbody>
</table>
Bibliography

A. Legal instruments


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).

B. Case-law

European Court of Human Rights:

- Ireland v. United Kingdom
- Groppera Radio AG and Others v. Switzerland
- De Haes and Gijsels v. Belgium
- A. v. The United Kingdom
- Özgür Gündem v. Turkey
- Peers v. Greece
- !Țũțv. Turkey
- Selçuk v. Turkey
- Nart v. Turkey
- Guvec v. Turkey
- Gäfgen v. Germany

Court of Justice of the European Union:

- Novo Nordisk AS v. Ravimiamet

UN Committee against Torture:

- Sadiq Shek Elmi v. Australia
- Hajrizi Dzemajl et al. v. Yugoslavia
UN Human Rights Committee:

- Yong-Joo Kang v. Republic of Korea

C. Policy instruments, reports and papers

1. African Union

2. Council of Europe

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

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Commissioner for Human Rights

Committee of Ministers

-
European Union

Council of the European Union

European Commission:
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**United Nations**

Commission on Human Rights

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Committee against Torture

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Committee on Economic, Social and Cultural Rights

Committee on Enforced Disappearances

Committee on the Elimination of Racial discrimination
Committee on the Rights of Persons with Disabilities

Committee on the Rights of the Child

Economic and Social Council

General Assembly
United Nations General Assembly, ‘Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, A/RES/30/3452 of 9 December 1975.


Human Rights Committee


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Human Rights Council

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Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

•
Universal Periodic Review

-


D. Literature

1. Books


Being young in Europe today

Special Eurobarometer 411: Patient Safety and Quality of Care

 Trafficking in Human Beings

World Report 2015

The Law of International Human Rights Protection

Measuring Human Rights


Minority Rights - Freedom of Expression and of the Media: Dynamics and Dilemmas

The United Nations Convention against Torture. A Commentary

The Eu Charter of Fundamental Rights: A Commentary

Torture and Democracy

The Persistent Power of Human Rights: from Commitment to Compliance

Meaningful and Ethical Participation in Research relating to Violence against Children

Social Europe - Aiming for Inclusive Growth

Promoting Rights-Based Approaches: Experiences and Ideas from Asia and the Pacific
Media Development Indicators: A Framework for assessing Media Development


World Bank, 2012 World Development Indicators.

2. Books chapters

Press Freedom and Pluralism in Europe. Concepts & Conditions

Human Rights: Manual on Human Rights Education

Global Human Rights: Public Policies, Comparative Measures, and NGO Strategies

The EU

Charter of Fundamental Rights: A Commentary

Towards a Worldwide Index on Human Freedom

The EU

Charter of Fundamental Rights: A Commentary

3. Journal articles and working papers


Carlson L. and Buggemann R., 'The "Failed State Index" offers more than just a Simple Ranking' (2014) 115 Social Indicators Research 525.


4. **Other secondary sources: statements, newspapers articles, press releases and internet websites**


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Erken, Elif

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