

# HUMAN RIGHTS AND INDICATORS: RATIONALE AND SOME CONCERNS



*Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.*

Eleanor Roosevelt<sup>1</sup>

Human rights are the language of basic human wants, in keeping with the notion of dignity and equality of the human person. They help in articulating wants and the response of those who have to address those wants. They are a universal lan-

guage of humanity to which a creative use of tools like indicators, both qualitative and quantitative, can contribute by strengthening its understanding and implementation. In developing this facet of human rights, the chapter addresses the following:

## LEARNING OBJECTIVES

1

What are human rights, their characteristic features, obligations and the international normative framework?

2

What are the United Nations human rights mechanisms?

3

What are human rights indicators: quantitative/qualitative, fact- and judgement-based; performance and compliance indicators, and benchmarks?

4

Common concerns and some misconceptions on using indicators

5

Use of indicators in the international legal framework

1. Chair of the committee created by the United Nations Commission on Human Rights to draft the Universal Declaration of Human Rights, at the presentation of *IN YOUR HANDS: A Guide for Community Action for the Tenth Anniversary of the Universal Declaration of Human Rights*, United Nations, New York, 27 March 1958.

## A. What are human rights?

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.<sup>2</sup> Human rights are inherent in all human beings and are founded on respect for the dignity and worth of each person. They stem from cherished human values that are common to all cultures and civilizations. Human rights have been enshrined in the Universal Declaration of Human Rights and codified in a series of international human rights treaties ratified by States and other instruments adopted after the Second World War. There are also regional human rights instruments, and most States have adopted constitutions and other laws that formally protect basic human rights and freedoms. While international treaties and customary law, together with interpretive practice by treaty organs, form the backbone of international human rights law, other non-binding instruments such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development.

### 1 **Human rights characteristics**

Human rights are *universal, inalienable, interrelated, interdependent* and *indivisible*. Taken together, these characteristics, briefly outlined in figure III, ensure that all human rights are to be realized, whether they are civil and political rights (e.g., the right to participate in public affairs, freedom from torture and arbitrary detention), economic, social and cultural rights (e.g., the rights to food, social security and education) or collective rights (e.g., the right to development, the rights of indigenous peoples), for

all people and at all times, except in specific situations of derogation and according to due process. The level of enjoyment of one right is dependent on the realization of other rights. For instance, the rights to vote and participate in public affairs may be of little importance to someone who has nothing to eat. Furthermore, their meaningful enjoyment is dependent, for instance, on the realization of the right to education. Similarly, improvement in the enjoyment of any human right cannot be at the expense of the enjoyment of any other right. Thus, the realization of civil rights is as important as the realization of economic rights.

### 2 **Human rights obligations**

The underlying feature of human rights is the identification of rights holders, who, by virtue of being human, have a claim to certain entitlements, and duty bearers, who are legally bound to *respect, protect* and *fulfil*<sup>3</sup> the entitlements associated with those claims (box 2). In invoking rights, it is important not only to identify the elements that are considered to be entitlements, but also to specify the agents that have the duty to bring about the enjoyment of those entitlements.<sup>4</sup> Thus, there are rights of individuals and group(s) and there are correlated obligations, primarily for States—individually and collectively. Human rights law obliges the State and other duty bearers not to infringe on or compromise the fundamental freedoms and rights of people, and to take action to realize them.

A distinction is made in international human rights law between a State's *immediate* obligations and those

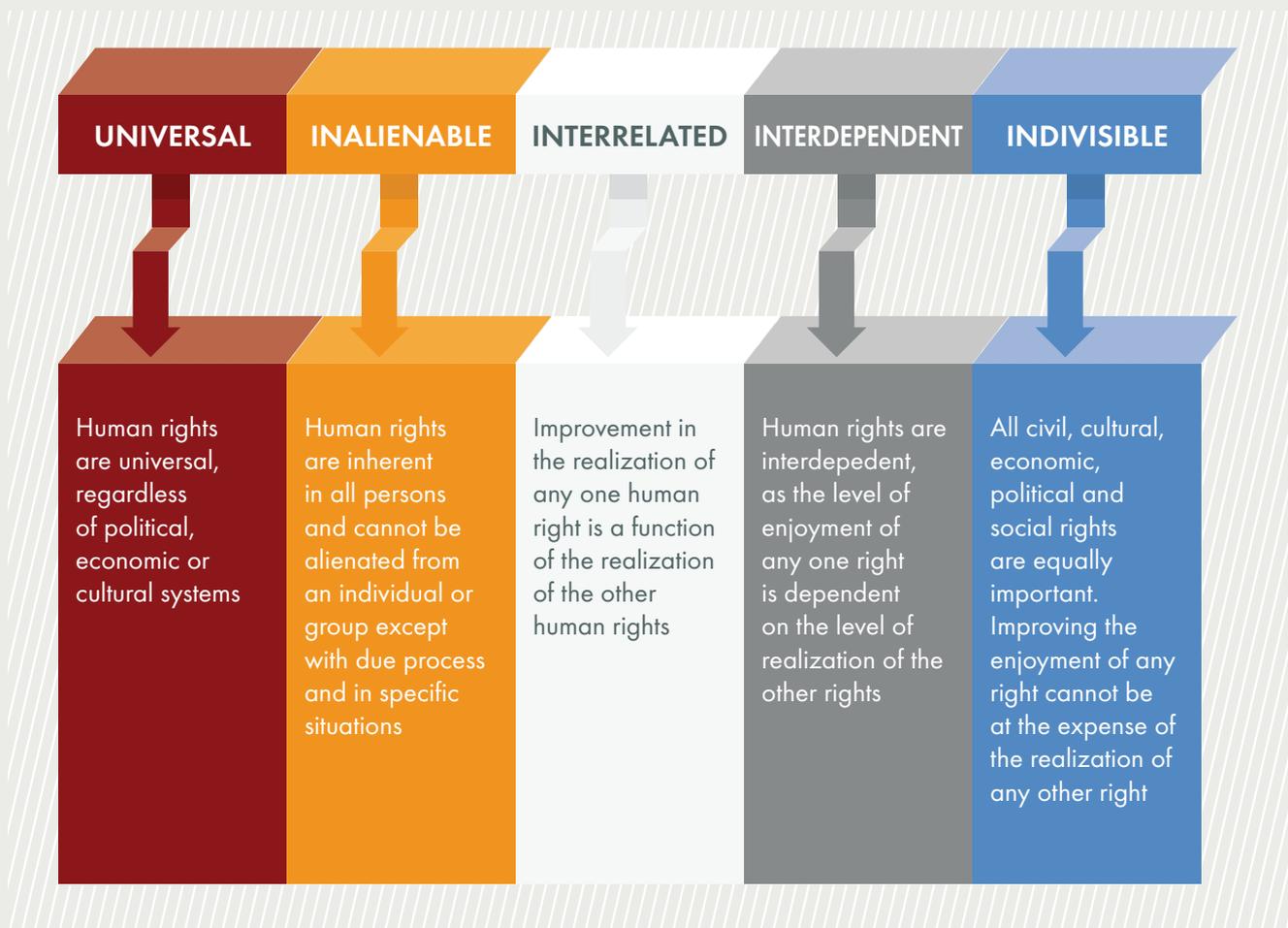
2. *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation* (United Nations publication, Sales No. E.06.XIV.10), p. 1.
3. In the human rights literature, these are referred to in the Maastricht Guidelines, which define the scope of State obligations in relation to economic, social and cultural rights, but are equally relevant to civil and political rights. See *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* (Maastricht, Netherlands, 22–26 January 1997).
4. Amartya Sen, *Development as Freedom* (Oxford, Oxford University Press, 1999), pp. 227–248.

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that may be discharged *progressively* if resources are lacking. For instance, the obligation not to discriminate between different population groups in the realization of human rights, whether civil, political, economic, social or cultural rights, is an immediate obligation. Similarly, the legal obligations of the State to *respect* (e.g., the freedom of expression by not using unnecessary or disproportionate force against demonstrators) and *protect* (e.g., the right to work or to just and favourable conditions of work by

ensuring that private employers comply with basic labour standards) are seen essentially as immediate obligations. In most instances, civil, cultural, economic, political and social rights entail immediate obligations as well as aspects of progressive realization. Immediate obligations, especially in relation to civil and political rights, have traditionally been better known and enforced, principally through judicial processes.

**Fig. III** Human rights characteristics

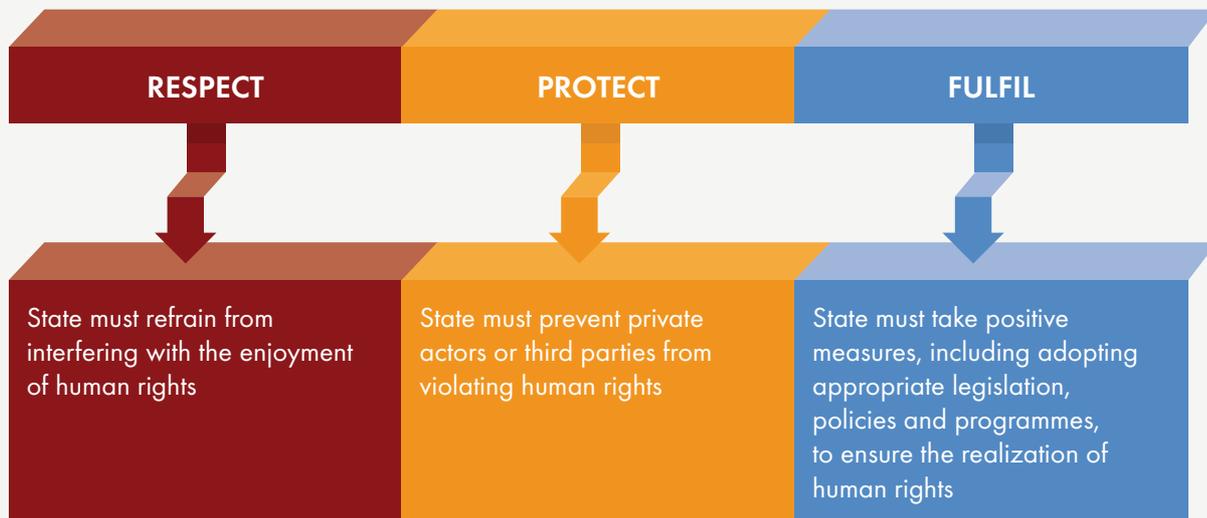


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There are also legal obligations of a more positive nature that States must meet, like the adoption of legislative, judicial and administrative measures critical for the realization of civil, cultural, economic, political and social rights. It relates to the obligation to *fulfil* human rights, which includes the obligations to promote (e.g., by creating an institutional and policy framework to support the enjoyment of rights) and to provide (e.g., allocating appropriate public resources). Here the right holder's claims relate to the implementation of the duty bearer's commitments to pursuing certain policies for achieving a set of desired results that can be related to the realization of human rights. While such obligations are often seen as less easily justiciable, recent developments show that they can also be subjected to judicial review. Moreover, the obligation to fulfil relates to economic, social and cultural rights as well as to civil and political rights (e.g., legal aid for indigent defendants).

Even when the full realization of rights, such as the rights to food, housing, education and health, is likely to be achieved only progressively, States have an immediate obligation to satisfy a "minimum essential level" of those rights and to take deliberate, concrete and targeted steps towards their full realization. In addition, States have the duty to demonstrate that all their available resources, including through requests for international assistance, as needed, are being called upon to fulfil economic, social and cultural rights.<sup>5</sup> Furthermore, any deliberate retrogressive measures also require the most careful consideration and need to be fully justified by reference to the totality of the rights guaranteed in the International Covenant on Economic, Social and Cultural Rights and in the context of the full use of the maximum available resources.

**Box 2** Scope of State human rights obligations



5. Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant and Committee on Economic, Social and Cultural Rights general comment No. 3 (1990) on the nature of States parties obligations (art. 2, para. 1).

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The obligations to respect, protect and fulfil also contain elements of *the obligation of conduct* and *the obligation of result*. The obligation of conduct requires action reasonably calculated to realize the enjoyment of a particular right. For the right to health, for example, it could involve the adoption and implementation of a plan of action to reduce maternal mortality. The obligation of result requires States to achieve specific targets to satisfy a substantive standard, such as an actual reduction in maternal mortality, which can be measured by a statistical indicator like the maternal mortality ratio.<sup>6</sup> Another type of obligation that also calls for the development of indicators is the obligation to monitor and report on the progress made towards the realization of the human rights set out in the core international human rights treaties, an immediate obligation particularly emphasized in relation to economic, social and cultural rights and in the context of the rights of persons with disabilities.

### 3 **Cross-cutting human rights norms or principles**

The international human rights normative framework, including the international human rights treaties and the general comments and recommendations adopted by the bodies monitoring their implementation (sect. B below), embodies cross-cutting human rights norms or principles, *such as non-discrimination and equality, participation, access to remedy, access to information, accountability, the rule of law and good governance*. These cross-cutting norms are expected to guide the State and other duty bearers in their implementation of human rights. For instance, securing the

right to health requires non-discriminatory practices by providers of health services, access to information on the main health problems, access to remedy and due process in the event of malpractice or ill-treatment by health-care personnel, and participation in political decisions relating to the right to health at both the community and the national levels.<sup>7</sup> Accountability and rule of law are closely related to the notion of access to remedy, which is a critical element in the human rights framework. In the event of a violation or denial of rights, the human rights approach emphasizes the need to have available appropriate means to seek and support redress, including by invoking the right to remedy and to due process, and the right to information.

Non-discrimination is at the heart of all work on human rights. It is a cross-cutting human rights norm that is invoked in all the international human rights treaties and provides the central theme of several international human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of Persons with Disabilities. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>8</sup> The principle of non-discrimination is complemented by the principle of equality, which, as stated in article 1 of the Universal Declaration on Human Rights, lays down that *all human beings are born free and equal in dignity and rights*.

6. General comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights and the Maastricht Guidelines.
7. Equality and non-discrimination, participation, accountability and rule of law are also listed in "The human rights based approach to development cooperation: Towards a common understanding among UN agencies" of the United Nations Development Group (2003) (for details, see *Frequently Asked Questions*, annex II).
8. Several prohibited grounds of discrimination have been identified in the international human rights instruments and case law by their monitoring bodies. See, for example, the International Covenant on Civil and Political Rights, articles 2.1, 3 and 26, and the International Covenant on Economic, Social and Cultural Rights, articles 2.2 and 3, Committee on Economic, Social and Cultural Rights general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, and the cases of *Ibrahima Gueye et al. v. France* (nationality) and *Nicolas Toonen v. Australia* (sexual orientation) by the Human Rights Committee.

#### 4 **International human rights normative framework**

The international human rights normative framework has evolved since the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on 10 December 1948.<sup>9</sup> Drafted as “a common standard of achievement for all peoples and nations”, it spelled out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has been widely accepted as an instrument containing the fundamental norms of human rights that should be respected, protected and realized. The Declaration together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights form the International Bill of Human Rights. The other conventions adopted by the United Nations to address the situation of specific populations or issues in the promotion and protection of human rights are:

- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- The Convention on the Rights of Persons with Disabilities; and
- The International Convention for the Protection of All Persons from Enforced Disappearance.

These nine conventions and their optional protocols constitute the core international human rights instruments of the United Nations. Their provisions form the

essence of the normative human rights framework of the United Nations. The treaty bodies (sect. B below) that review their implementation have developed the normative basis of the standards reflected in the treaties and the obligations of the duty bearers that follow from those standards through treaty-specific general comments and recommendations. Other human rights mechanisms, such as the special procedures of the Human Rights Council, have also contributed to the normative understanding of human rights standards.

While covenants, statutes, protocols and conventions are legally binding on those States that ratify or accede to them, there are many other universal human rights instruments with a different legal status. Declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but have an undeniable moral force and provide practical guidance to States in their conduct.<sup>10</sup>

As the human rights standards have become codified in international as well as regional and national legal systems, they provide a set of performance measures to hold duty bearers—primarily States—to account.

The normative standards on rights, as well as their correlated legal obligations discussed above should be translated into policies and measures that define and facilitate the implementation of human rights. However, policymakers, development and sometimes even human rights practitioners find it difficult to link these concepts with implementation practices. This makes it difficult to directly use such standards in policymaking and in pursuing the realization of human rights. It is this gap that the work on indicators for human rights is trying to address.<sup>11</sup>

9. Since 1948, the Declaration has been translated into more than 370 languages (see [www.ohchr.org/EN/UDHR/Pages/Introduction.aspx](http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx) (accessed 25 April 2012)).

10. For example, the United Nations Declaration on the Rights of Indigenous Peoples elaborates on existing international human rights as they apply to indigenous peoples.

11. See also United Nations Non-Governmental Liaison Service, *The United Nations Human Rights System: How To Make It Work For You* (2008).

## B. United Nations human rights mechanisms

The *Human Rights Council* is an intergovernmental body consisting of 47 Member States elected by the United Nations General Assembly for a period of three years. The Council was created in 2006 by the General Assembly and replaced the Commission on Human Rights. The Council's functions are, inter alia, to promote the full implementation of human rights obligations undertaken by States, to contribute to the prevention of human rights violations and to respond promptly to human rights emergencies.<sup>12</sup>

The *universal periodic review* (UPR) is a key mechanism of the Human Rights Council to review the human rights situation of all United Nations Member States in a four and a half year cycle. The review of each country is based on three reports. One is a national report prepared by the Government, while the other two are a compilation of United Nations information and a summary of stakeholders' information, both produced by OHCHR. United Nations agencies and programmes, civil society organizations and others participate in the process by submitting information, which is then included in the reports prepared by OHCHR and discussed during the review. The review is a cooperative mechanism based on an interactive dialogue between the State reviewed and the Human Rights Council. It provides an opportunity for each State to declare what actions it has taken to improve the human rights situation and to fulfil its human rights obligations.

*Special procedures* is the general name given to the mechanisms of the Human Rights Council to examine, monitor, advise and publicly report on human rights situations in specific countries or territories (country mandates) or on major phenomena of human rights

violations worldwide (thematic mandates). Special procedures are either individuals (special rapporteurs or independent experts) or working groups. All are prominent independent experts working on a voluntary basis and are appointed by the Human Rights Council. At the time of writing, there are 35 thematic mandates and 10 country mandates. Special procedures mandate holders report to the Human Rights Council on their findings and recommendations, including on their country visits and the communications they receive on alleged human rights violations.

There are currently nine human rights committees, commonly called *treaty bodies*, for each of the nine international human rights treaties in force.<sup>13</sup> These bodies are composed of independent experts mandated to review State parties' compliance with their treaty obligations. They are created in accordance with the provisions of the treaty that they monitor. State parties are obliged to report regularly to these treaty bodies. Some treaty bodies are also empowered to examine individual complaints.

Created in 1993, OHCHR is mandated to promote and protect the enjoyment and full realization of all human rights by all people. The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining United Nations human rights work.<sup>14</sup> OHCHR is the secretariat of the Human Rights Council, the special procedures mandate holders, the treaty bodies and the universal periodic review.

12. The Human Rights Council Advisory Committee and a confidential complaint procedure are two additional mechanisms of the Human Rights Council.

13. There is also a Subcommittee on Prevention of Torture under the Optional Protocol to the Convention against Torture.

14. The United Nations human rights programme started in the 1940s as a small division at United Nations Headquarters. The division later moved to Geneva and was upgraded to the Centre for Human Rights in the 1980s. At the World Conference on Human Rights in Vienna in 1993, the international community decided to establish a more robust human rights mandate with stronger institutional support. Consequently, Member States of the United Nations created OHCHR by General Assembly resolution 48/141.

Although not part of the United Nations, *regional and national human rights systems* are key instruments for the protection and promotion of human rights at country level. There are several regional intergovernmental organizations that have set human rights standards and established monitoring mechanisms. National human rights institutions (NHRIs) are national bodies established for the

protection and promotion of human rights. There are many types of NHRIs. The United Nations adopted the so-called Paris Principles to guide their work. The Paris Principles also form the basis for their accreditation by the International Coordinating Committee of National Institutions,<sup>15</sup> for which OHCHR also serves as the secretariat.

## C. Human rights indicators - notion and rationale

In the context of this work, a human rights indicator is *specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights*. Defined in this manner, some indicators could be unique to human rights because they owe their existence to specific human rights norms or standards and are generally not used in other contexts. This could be the case, for instance, with an indicator like the number of extrajudicial, summary or arbitrary executions, or the reported number of victims of torture by the police and the paramilitary forces, or the number of children who do not have access to primary education because of discrimination by the authorities. At the same time, there could be a large number of other indicators, such as commonly used socioeconomic statistics (e.g., human development indicators used in the *Human Development Reports* of the United Nations Development Programme (UNDP)), that could meet (at least implicitly) all the definitional requirements of a human rights indicator as laid out here. In all these

cases it is helpful to consider them as human rights indicators, to the extent that they relate to human rights standards and principles and could be used for human rights assessments.<sup>16</sup>

Such a broad understanding of the term indicator allows it to assume various forms, of a qualitative or a quantitative nature. This, in turn, may lead to plurality in the understanding of the concept and methodologies to identify and develop indicators, which can sometimes be a source of confusion. It becomes necessary, therefore, to have a minimum common understanding of the types of indicators that are the focus of this *Guide*.

### 1 Quantitative and qualitative indicators

Indicators can be *quantitative* or *qualitative*. The former are narrowly viewed as equivalent to “statistics”, while the latter cover any information articulated as a narrative or in a “categorical” form. Unless otherwise specified, the term “quantitative indicator” is used in this publication to designate

15. Further information on the Paris Principles is provided in annex I (indicator 5) and <http://nhri.ohchr.org>.

16. The conceptual, methodological and operational criteria relevant to the identification and use of indicators for human rights implementation and assessment are outlined in the different chapters of this *Guide*. These criteria contribute to clarifying further the distinction between common indicators or statistics and “human rights indicators”.

any kind of indicator that is expressed primarily in quantitative form, such as numbers, percentages or indices.<sup>17</sup> Thus, indicators related to enrolment rates for school-age children, indicators on the number of ratifications of treaties, the time frame for implementation and coverage of policies relevant to human rights, the proportion of seats in the national parliament held by women, and the incidence of enforced or involuntary disappearance are all examples of quantitative indicators. At the same time, “checklists” or sets of questions, narrative and categorical data that seek to complement or elaborate on information—numerical or otherwise—related to the realization of human rights are also widely used. These checklists are seen as useful indicators of the situation being monitored or analysed. In such cases, the use of the word “indicator” refers to information beyond statistics that is qualitative in nature. Experts in many agencies in the United Nations system and within the human rights community have often favoured such an interpretation of the word indicator, implicitly emphasizing the qualitative aspect.

These two main uses of the word “indicator” in the human rights community do not reflect two opposed approaches. Given the complexity of assessing compliance with human rights standards, all relevant qualitative and quantitative information is potentially useful. Quantitative indicators can facilitate qualitative evaluations by measuring the magnitude of certain events. Similarly, qualitative information can complement the interpretation of quantitative indicators. Similar complementarities can be highlighted between subjective and objective indicators.

## 2 **Fact-based and judgement-based indicators**

Human rights indicators could also be categorized as fact-based and judgement-based indicators, which corresponds to the category of objective and subjective indicators in the literature on statistics and development indicators. This distinction is not necessarily based on the consideration of using, or not using, reliable or replicable methods of data collection for defining the indicators. Instead, it is ideally seen in terms of the information content of the indicators concerned. Thus, objects, facts or events that can, in principle, be directly observed or verified (for example, weight of children, number of violent deaths, nationality of a victim) are categorized as objective indicators. Indicators based on perceptions, opinions, assessment or judgements expressed by individuals are categorized as subjective indicators. In practice and in the context of certain human rights, this distinction between objective and subjective information is often difficult to make. Elements of subjectivity in the identified category of objective indicators cannot be fully excluded or isolated. The characterization of the nature of the information captured can in itself be seen as a subjective exercise. Nevertheless, the use of transparent, specific and universally recognized definitions for particular events, facts and objects contributes, in a general sense, to greater objectivity when identifying and designing any type of indicator, be it a quantitative, a qualitative, a subjective or an objective one. Moreover, fact-based or objective indicators, in contrast with judgement-based or subjective indicators, are verifiable and can be easier to interpret when comparing the human rights situation in a country over time and across populations.

17. The three expressions, namely quantitative, statistical or numerical indicators, are often used interchangeably.

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**Fig. IV** Categories of indicators used for human rights



Consider figure IV, which presents a cross-tabulation of the four categories of indicators: quantitative, qualitative, fact-based and judgement-based. It illustrates the opportunities for using different categories of indicators in undertaking human rights assessments. Each category has its potential use (see also discussion in chap. III on data-generating mechanisms), yet ideally if there is a choice the preference would be for indicators from quadrant A over C, and B over D, or AC over BD, and A over the rest. In other words, when each of the four quadrants has something to offer by way of relevant information and indicators on the subject being assessed, the said order of preference is likely to make the assessment more objective and acceptable to the parties involved. However, in general, in the context of this *Guide* there is a tendency to use information from quadrant A, C and to some extent B. Regarding the indicators in quadrant B, the focus is on the category of subjective indicators that can be more easily obtained through statistically representative surveys like the “percentage of individuals who feel safe walking alone at night” (example 1).<sup>18</sup> Moreover, information and indicators that are fact-based and quantitative in nature (quadrant A) can provide a sense of magnitude and overcome certain bias in information generation and its interpretation that other non-quantitative and judgement-based information and indicators may not. This makes it worthwhile to use further fact-based and quantitative information and indicators, to the extent that their use adds value to the human rights assessments.

### 3 **Performance and compliance indicators**

In recent years, having accepted the objective of mainstreaming human rights in their mandated activities, including development cooperation activities, the United Nations system’s agencies and programmes have been seeking tools and monitoring methodologies that could help them in assessing their performance on the said objective. A need for such tools and related indicators has also been expressed by donors who want to use human rights standards to guide their assistance programmes in the recipient countries. The approach, in such cases, has been to bring in human rights cross-cutting norms of non-discrimination and equality, participation and accountability in supporting the implementation of the ongoing activities. There have also been some attempts at modifying the mandates or stated programming objectives by referring to specific human rights standards.

As a result, indicators have been identified and toolkits developed that use what are essentially *performance indicators*. The primary objective of performance indicators is to allow the verification of changes produced by development intervention relative to what was planned. They are based on programming principles and terminologies (such as *input-output-outcome-impact* categorization of indicators, see also chap. V, sect. A 2) and anchored essentially in the respective programme activities. Such indicators can be used to monitor the performance of programme activities and to assess their conformity to some of the cross-cutting human rights norms.<sup>19</sup> However, performance indicators, though helpful in furthering an approach based on human rights in development programming, capture only some aspects of the cross-cutting human rights

18. The importance and meaning of surveys based on representative population samples and statistically sound methodology are highlighted further in chapter III.

19. UNDP, “Indicators for human rights based approaches to development in UNDP programming: a users’ guide”, March 2006. Available from <http://web.undp.org/oslocentre/docs06/HRBA%20indicators%20guide.pdf>.

norms. Their coverage of the human rights standards as laid out in various instruments remains limited and often only incidental.<sup>20</sup> Therefore, the use of performance indicators, as articulated in the literature and applied in current practice, does not in itself provide an adequate way forward for developing and encouraging the use of indicators in the implementation of human rights.

Unlike performance indicators, *compliance indicators* in the human rights context are explicitly anchored in human rights standards. Such indicators are meant to capture the extent to which the obligations flowing from those standards are being met and are yielding outcomes that can be associated with improved enjoyment of human rights. The work undertaken in this *Guide* relates to the identification of indicators that can be used to promote and monitor the compliance of duty bearers with their human rights obligations (see chap. II for more details). However, in specific contexts, where programmes have been tailored to furthering the realization of human rights, or are contributing to the implementation of specific human rights obligations such as extending free primary education, programme-specific performance indicators will also help in assessing the programme's compliance with human rights standards.

#### 4 **Indicators and benchmarks**

Benchmarks are predetermined values for indicators that can be based on normative or empirical considerations. For instance, an indicator for measuring nutrition adequacy can be normatively based on sociocultural factors like tastes and religious restrictions, or empirically estimated taking into account people's work profile, and the energy and nutrient

requirements of the body. Often, normative considerations are based on international or national standards (e.g., treatment of prisoners of war) or on people's political and social aspirations. The empirical considerations are primarily related to issues of feasibility and resources. Consider, for example, the indicator "proportion of one-year-olds immunized against vaccine-preventable diseases". Using a benchmark may require setting a specific value for the indicator, say, raising it to 90 per cent, or improving the existing coverage by 10 percentage points, so that the efforts of the implementing agency can be focused on attaining that value in the reference period. In the first case, a 90 per cent benchmark for measles inoculation could be based on a normative consideration or on an empirical observation that, at a 90 per cent vaccination rate, the probability of an epidemic drops significantly. Similarly, a 10 percentage point increase in coverage could be based on considerations of resource availability and local capacity.

In the context of assessing the compliance of State parties, the use of a benchmark for an indicator strengthens their accountability by making them commit to a certain performance standard on the issue under assessment. The Committee on Economic, Social and Cultural Rights, in particular, has called for the setting of benchmarks to accelerate human rights implementation.<sup>21</sup> However, the first step in arriving at a meaningful benchmark is to have a general consensus on the choice of an indicator to be used for human rights assessment. Only then can the task of setting performance benchmarks for the selected indicators be fruitful (see also chap. V, sect. A).

20. Part of the reason for this lies in the unequal time horizons: a few years in respect of development programmes and much longer for promoting and protecting human rights. Moreover, programmes by definition have to be sharply focused on one or a few objectives at a time and are unlikely to address the various facets, complexities and the large expanse of human rights standards.

21. In its general comment No. 1 (1989) on reporting by States parties, the Committee called for the setting of benchmarks with respect to quantitative indicators, such as the extent of vaccination of children and the intake of calories per person. See also its general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 57–58.

## D. Some concerns and misconceptions

### 1 Quantification of qualitative information

A frequently voiced concern is that it is not feasible to quantify and measure human rights compliance. Moreover, human rights relate to qualitative aspects of life, which may not be amenable to being captured by statistical information. For example, in administering justice, the competence of judges may be more relevant than their number. In addition, it is often said that quantitative human rights data may not exist or may be unreliable.

Such a concern may be the result of a misunderstanding of what is sought to be measured. In using indicators for human rights, the primary interest is in measuring a few relevant features that could be related to an improvement in the realization and the enjoyment of human rights, or in assessing the efforts being made by the duty bearer in meeting its human rights obligations. The focus is not on identifying an extensive list of indicators, based on statistical surveys, on all human rights standards or treaty provisions. Indeed, that would be unnecessary. Indicators are tools that add value to assessments with a strong qualitative dimension; they do not replace them. At the same time, by making appropriate use of commonly available statistical information, for example on access to legal aid by different population groups or school enrolment of children from specific social groups, indicators could help to assess some qualitative aspects of human rights enjoyment more objectively and comprehensively. Once this distinction in the use of indicators is clear, it is much easier to identify indicators for human rights assessments.<sup>22</sup>

### 2 Data availability and disaggregation

The use of indicators as a human rights assessment tool depends critically on the availability of relevant and reliable data. While there will always be some constraints in finding such data, it is the objective of this publication to demonstrate how diverse information, from different types of sources, could be successfully combined to develop indicators for human rights assessments (see chap. III for details). More importantly, in many instances commonly available statistical information and administrative records could be reconfigured into suitable indicators to highlight the human rights aspects of a situation.

A related concern is the lack of appropriate statistics at the required level of disaggregation to support analysis of non-discrimination and equality—a principal focus in any human rights assessment. It is, therefore, argued that unless there are adequate data to capture the enjoyment or violation of human rights across context-relevant population groups, it is meaningless to rely on indicators in such assessments.

Although the lack of disaggregated statistics is indeed a limiting factor, it does not undermine the potential usefulness of suitable indicators in facilitating objective assessments. At best, it will merely delay their use until the relevant data become available. Moreover, beyond the use of commonly available socioeconomic statistics at a disaggregated level, such as those used in monitoring human development,<sup>23</sup> it is equally important to

22. As discussed in section C, the distinction between qualitative and quantitative indicators is not necessarily straightforward. Typical *quantitative* indicators like the proportion of fully qualified and trained primary schoolteachers, dropout rates or literacy rates are also relevant for assessing the *quality* of the education system or, in other words, the qualitative aspects of the realization of the right to education.

23. The UNDP *Human Development Reports*. Available from <http://hdr.undp.org>.

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identify and develop specific human rights indicators, both qualitative and quantitative, that reflect the unique aspects of human rights standards and cross-cutting norms.<sup>24</sup> That process also contributes to clarifying the content of the right and making it more concrete.

While disaggregated data are essential for addressing human rights concerns, it may not be practical or feasible always to disaggregate data at the desired level. Disaggregation by sex, age, region or administrative unit, for example, may be easier than by ethnicity, as identifying ethnic groups often involves objective (e.g., language) and subjective criteria (e.g., self-identification) that may evolve over time. Although many population groups call for more visibility (for themselves) in statistics to inform on prevalent discrimination or disparities and to support targeted policy measures, being identified as a distinct group may be a politically sensitive issue, which may discourage disaggregation of data (chap. III, box 9). The production of any statistical data also has implications for the right to privacy, data protection and confidentiality, and may, therefore, require consideration of appropriate legal and institutional standards (see chap. III for further details).

### 3 **Statistical averages vis-à-vis information on individual cases**

The use of statistical averages in human rights assessments or data relating to the enjoyment of human rights by specific population groups, such as the most vulnerable or marginalized groups in a society, may seem paradoxical. Moving from national averages towards data that capture the enjoyment of rights by every single individual would appear more in line with a human rights approach.

It would enable an assessment of the extent of discrimination and inequality in the enjoyment of human rights for every individual in a society. Besides the fact that this is not generally feasible, focusing on a subset of the population by using averages is not in conflict with the notion of universality and inalienability of human rights. Indeed, both kinds of data may be useful in undertaking human rights assessments. For example, data reflecting the efforts made by a State to provide legal aid or public health and sanitation free of charge to people could easily and meaningfully be captured at an aggregate level of a community or an administrative unit of a province. While data on torture would have to be primarily captured through information on individual cases, statistical surveys representative of the affected populations (e.g., prison population) can be a complementary source of information to measure the incidence of torture and other ill-treatment in the country.

### 4 **Universal vis-à-vis contextually relevant indicators**

Indicators can be more meaningful and are more likely to be used when they are contextually relevant. It may not be crucial to collect information on mortality rates for malaria in a Scandinavian country, where malaria is rare. However, in South Asia or parts of Africa, the incidence of malaria may be a good indicator for assessing the State's public health efforts in addressing critical right-to-health concerns. At the same time, a case of torture or forced eviction or information on the homeless is likely to be relevant in most parts of the world. While human rights are universal and every individual, regardless of location, has the right to enjoy them equally, there will be instances where indicators

24. In its general comment No. 3 (1990), the Committee on Economic, Social and Cultural Rights recognized that "in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures".

may have to be tailored to the contextual needs of a country. In general, both globally applicable as well as context-specific indicators will be useful in human rights assessments so long as they are anchored in the universally applicable human rights standards. As highlighted in chapter V, the development of relevant indicators will also depend on the type of process, in particular participatory processes involving human rights actors, that the country adopts to define, collect and disseminate them.

**5** **Relevance of indicators for both civil and political rights and economic, social and cultural rights**

A major concern with the use of indicators for human rights assessments stems from the fact that there is no significant body of work in the literature, or in practice, that uses a consistent and coherent framework to identify and develop those indicators. For historical reasons and, perhaps, for the sake of analytical convenience, two distinct approaches have been used to monitor the realization of civil and political rights on the one hand and economic, social and cultural rights on the other. This has contributed to an artificial dichotomy that is neither desirable nor tenable in the face of the indivisibility and interdependence of all human rights. The resulting ambiguity and complexity of the approaches may have contributed to a certain scepticism about the use of quantitative indicators for human rights assessments, perhaps even holding back progress in this area of work.

Traditionally, a *violation approach* has been used for civil and political rights. It is based on the consideration that the normative content of these rights is explicit, the claims and duties are well

known, and the rights can be enjoyed as soon as they are guaranteed by the State (see sect. A 2). Thus, any outcome that violates the treaty provisions related to a human right can be used as an indicator to monitor the implementation of that right. For instance, the incidence of disappearance or arbitrary detention can be seen as a lack of enjoyment or, more precisely, a violation of a certain aspect of the right to liberty and security of the person and, therefore, be used to monitor the implementation of that right. The focus is essentially on monitoring the absence of negative outcomes. As a result, such rights are often categorized as “negative” human rights.

For economic, social and cultural rights, the general practice has been to monitor outcomes related to the *progressive realization* of these rights in accordance with article 2 (1) of the International Covenant on Economic, Social and Cultural Rights.<sup>25</sup> Such rights are perceived as resource-intensive and therefore difficult to guarantee, particularly in developing countries. Therefore, it is logical to monitor such outcomes that can be related to the progressive realization of these rights over time. Since the relevant outcomes in this case are desirable, positive and require proactive measures by States, these rights have been often associated with “positive” human rights obligations.

The use of distinct approaches and corresponding methodologies to monitor the two sets of rights has led to the presentation of human rights as positive or negative rights. However, in practice all human rights have positive and negative obligations and their implementation could be associated with both positive and negative outcomes. For instance, the proportion of specific positions (e.g., seats in parliament or senior official positions) held by women can

25. “Each State Party to the [International Covenant on Economic, Social and Cultural Rights] undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

help assess the realization of the right to participate in public affairs (International Covenant on Civil and Political Rights, art. 25). Similarly, a decline in the incidence of forced evictions can contribute to the realization of the right to adequate housing. Moreover, focusing solely on outcomes, whether positive or negative, undermines the importance of monitoring the *obligation of conduct*, accepted by States by ratifying the relevant human rights treaties. It is therefore necessary to focus not only on the realization of outcomes consistent with the implementation of human rights standards, but also

on the process of realizing such outcomes.

These concerns have not been adequately addressed and progress in the acceptance and use of indicators in human rights assessments has consequently been slow. Recognizing that it is important to address them provides the rationale for adopting a common, practical approach to identifying indicators and developing tools that can be used for assessing both civil and political rights and economic, social and cultural rights.

## E. Indicators in the international legal framework

The use of indicators and statistics is neither alien nor new to the United Nations human rights system. The human rights monitoring mechanisms, such as the treaty bodies, special procedures mandates holders and UPR, refer to and make use of a wide range of indicators, including statistical indicators (box 3). The demand for specific indicators is reflected in the human rights normative framework. While some quantitative indicators are explicitly mentioned in the human rights treaties, their type and role are further specified in general comments and recommendations adopted by the treaty bodies.<sup>26</sup>

Regarding the treaties, article 10 of the Con-

vention on the Elimination of All Forms of Discrimination against Women, on the right to education, provides for the reduction of “female student dropout rates”. In the International Covenant on Economic, Social and Cultural Rights, article 12 states that to achieve the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the steps to be taken by the States parties shall include those necessary for the provision for the reduction of the stillbirth rate and of infant mortality.<sup>27</sup> Article 24 (2) of the International Covenant on Civil and Political Rights states that “every child shall be registered immediately after birth and

26. Reports prepared by the special procedures mandate holders of the Human Rights Council (and its predecessor, the Commission on Human Rights) have also referred to and made use of specific indicators. See, for instance, the reports of Paul Hunt, Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health (A/58/427), and Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24).

27. The Vienna Declaration and Programme of Action, adopted in 1993, stated that “to strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights” (para. 98). In 2009, the Outcome Document of the Durban Review Conference recommended that States should “develop a system of data collection, including equal-opportunity and non-discrimination indicators, that, upholding the right to privacy and the principle of self-identification, makes it possible to assess and guide the formulation of policies and actions to eradicate racism, racial discrimination, xenophobia and related intolerance, and to consider, where appropriate, seeking the assistance of the Office of the United Nations High Commissioner for Human Rights” (para. 104).

shall have a name". A similar provision is contained in the Convention on the Rights of the Child (art. 7 (1)).<sup>28</sup> The Convention on the Rights of Persons with Disabilities has an article specifically devoted to statistical information.<sup>29</sup> Article 16 of the International Covenant on Economic, Social and Cultural Rights and article 40 of the International Covenant on Civil and Political Rights refer to the obligation for their State parties to report on the progress made in the enjoyment of human rights. Such references to quantitative indicators in treaties help to clarify the content of the right and to reinforce its operational aspects.

Concerning the general comments and recommendations adopted by treaty bodies, the Committee on Economic, Social and Cultural Rights recommends that State parties should set specific benchmarks or goals with respect to the reduction of infant mortality, the extent of vaccination of children, the intake of calories per person, the number of persons per health-care provider, etc.<sup>30</sup> Given the importance of the "progressive realization" of the rights concerned, it underlines the importance of qualitative as well as quantitative data to assess adequately the progress over time.

According to the Committee on the Elimination of Discrimination against Women, "statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention".<sup>31</sup> It recommends that social

and economic surveys should formulate their questionnaire in such a way that data can be disaggregated according to gender; that State parties should encourage the compilation of statistics on domestic violence; and that State parties should provide quantitative data showing the percentage of women enjoying their rights in relation to political and public life.<sup>32</sup> Similarly, the Committee on the Rights of the Child emphasizes the importance of detailed disaggregated data.<sup>33</sup> In its general comment on the prohibition of torture and other cruel treatment or punishment, the Human Rights Committee states that reports of State parties should provide statistics relating to the administration of justice: on the number of complaints and how those complaints have been addressed.<sup>34</sup> The Committee on the Elimination of Racial Discrimination recommended that Bolivia should "develop reliable, appropriate statistical tools to ensure self-identification in the 2012 census and to ensure the full and effective participation of indigenous original campesino peoples and Bolivians of African descent in all stages of the census process and the inclusion of peoples in geographically remote locations".<sup>35</sup> It also requested Cambodia to "include in its next periodic report disaggregated data on ethnic minorities, including indigenous minorities, and on their socioeconomic status."<sup>36</sup>

Finally, it is important to underline that the use of indicators, whether quantitative or qualitative and/or fact-based or judgement-based, in human rights assessments provides options that are, in

28. While recording births is of direct importance to delivering a birth certificate, which is often a condition for the enjoyment of other rights, the registration of all children represents an acknowledgment by the State of the importance attached to every individual and of their status under the law. The same is perhaps true for most other official statistics (e.g., causes of death, measures of income inequality and unemployment rates).

29. Its article 31 stipulates that "States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention".

30. The Committee points out that global benchmarks are of limited use, whereas national or other more specific benchmarks can provide an extremely valuable indication of progress (general comment No. 1 (1989)).

31. General recommendation No. 9 (1989) on statistical data concerning the situation of women.

32. General recommendations No. 9 (1989), No. 19 (1992) on violence against women and No. 23 (1997) on article 7 (political and public life).

33. General comments No. 4 (2003) on adolescent health and development in the context of the Convention and No. 5 (2003) on general measures of implementation of the Convention.

34. General comment No. 20 (1992).

35. CERD/C/BOL/CO/17-20, para. 12.

36. CERD/C/KHM/CO/8-13, para. 12.

## I. >> Human Rights and Indicators: Rationale and Some Concerns

>> Indicators in the international legal framework

most instances, complementary and mutually supportive. Indeed, no single indicator or category of indicator can provide a complete assessment of a given situation. They are and will always remain tools for approximating the reality, with the level of precision improving only with better information and methodologies for collecting and compiling that information. While qualitative and quasi-judicial assessments by independent human rights experts will continue to be the cornerstone of human rights assessment and monitoring, particularly for com-

plex human rights issues, there is merit in furthering the use of fact-based and quantitative indicators so as to better inform such assessments. Treaty interpretation will remain primarily a legal exercise; its quality can however be improved by securing the best possible factual basis for it. Moreover, quantitative indicators can potentially contribute to bridging the human rights discourse and the development policy discourse.

### Box 3 Indicators used by human rights monitoring mechanisms

Indicators have frequently been used in State party reports to the international human rights monitoring mechanisms such as the United Nations treaty bodies, human rights special procedures (special rapporteurs) and the universal periodic review (UPR) of the United Nations Human Rights Council, and in the recommendations of these bodies to the State parties. Reference to statistical and other indicators concerns economic, social and cultural rights, as well as civil and political rights. For instance, the Committee against Torture recommended that Honduras should develop disaggregated indicators to monitor and document incidents of inter-prisoner violence with a view to revealing root causes and designing appropriate prevention strategies (CAT/C/HND/CO/1, para. 17). The Committee on the Elimination of Discrimination against Women commended the Lao People's Democratic Republic for increasing considerably the proportion of women in its National Assembly, from 9.4 per cent in the third legislature (1992–1997) to 22.9 per cent in the fifth (2002–2007) (A/60/38, para. 85). The Committee on Economic, Social and Cultural Rights urged the United Kingdom to fulfil its commitment to reduce health inequalities by 10 per cent by 2010, measured by infant mortality and life expectancy at birth (E/C.12/GBR/CO/5, para. 32). The Human Rights Committee recommended that the Czech Republic should adopt indicators and benchmarks to determine whether anti-discrimination goals have been reached (CCPR/C/CZE/CO/2, para. 16).

Similarly, the use of indicators in the context of UPR is apparent in its documentation on the human rights situation in Member States. For instance, Brazil has committed to creating a national system of human rights indicators under the UPR (A/HRC/8/27, para. 85). In its national report, Brazil assessed racial inequalities between white and Afro-descendent people using disaggregated socioeconomic statistics and pointed out the high rate of homicide in the country, particularly among children (A/HRC/WG.6/1/BRA/1, paras. 26 and 81). The compilation of United Nations information referred to the Special Rapporteur on extrajudicial, summary or arbitrary executions, who had noted that homicide was the leading cause of death for persons aged 15 to 44 (A/HRC/WG.6/1/BRA/2, para. 10), and in the summary of stakeholders' information Amnesty International noted that figures released by the prison system showed that inmate deaths as a result of homicide were six times higher than the rate observed among the general population in Brazil (A/HRC/WG.6/1/BRA/3, para. 28).