

REFGOV

Reflexive Governance in the Public Interest

Fundamental Rights

**The Monitoring of Fundamental Rights
in the Union as a Contribution to the
European Legal Space (V): Monitoring
the Protection of Human Rights in the
Union: an evaluation of mechanisms
and tools,**

By M. Nowak & V. Wagner.

Working paper series : REFGOV-FR-9

The Monitoring of Fundamental Rights in the Union as a contribution to the European legal space (V): Monitoring the Protection of Human Rights in the European Union: An Evaluation of Mechanisms and Tools

Viktoria Wagner

viktoria.wagner@univie.ac.at

Manfred Nowak

manfred.nowak@univie.ac.at

Ludwig Boltzmann Institute of Human Rights, Vienna, Austria.

1	INTRODUCTION	5
2	THE OPEN METHOD OF COORDINATION	6
3	MONITORING THE PROTECTION OF HUMAN RIGHTS: CONCEPTS, INSTRUMENTS, AND INITIATIVES	10
3.1	UN initiatives for the development of monitoring instruments	11
3.2	European initiatives for the development of monitoring instruments	13
3.3	What is it that we measure? State obligations relating to human rights and freedoms	14
3.4	Measurement instruments: Indicators	15
	3.4.1. TYPES OF HUMAN RIGHTS INDICATORS	16
	3.4.2. TYPES OF DATA USED FOR HUMAN RIGHTS INDICATORS	18
	i.	E
	vents-based data	18
	ii.	S
	tatistical data	22
	iii.	H
	ousehold perception and opinion surveys	29
	iv.	D
	ata based on expert judgment	30
3.5	Measurement instruments: Benchmarks	34
3.6	Measurement instruments: Case law	35
3.7	An overview of comprehensive human rights monitoring initiatives	36
3.8	Analysis	40
4	MONITORING THE PROTECTION OF HUMAN RIGHTS IN THE EUROPEAN UNION	41
4.1	European Monitoring Centre on Racism and Xenophobia (EUMC)	41
	4.1.1. NATIONAL REPORT	42
	4.1.2. RAXEN BULLETIN	43
	4.1.3. RAPID RESPONSES	44
	4.1.4. DATABASE	44
	4.1.5. THE EUMC AND A PROSPECTIVE EU FUNDAMENTAL RIGHTS AGENCY	44
4.2	EU Network of Independent Experts on Fundamental Rights	46
4.3	European Statistics Office (Eurostat)	47
		3

4.4	Regional human rights institutions	48
4.5	National human rights institutions	49
4.6	Analysis: Developing a European Union human rights monitoring system	51
5	<u>MONITORING IN PRACTISE: HOW TO MEASURE THE PROTECTION OF LIBERTY OF PERSON</u>	<u>53</u>
5.1	What are State obligations?	53
5.2	Proposed indicators for the protection of personal liberty – theoretical considerations	59
5.3	Proposed indicators for the protection of personal indicators – structure	62
5.4	Stakeholders involved in monitoring personal liberty	63
5.5	Available and necessary data	64
6	<u>CHARTER ARTICLE 6 - LIBERTY OF PERSON INDICATORS</u>	<u>67</u>

1 Introduction

Monitoring the protection of human rights is a powerful tool in the struggle for human rights. On the one hand, it enables individuals and organisations to identify important governmental and non-governmental actors and assess their performance in respecting, protecting and fulfilling human rights and freedoms. On the other hand, it helps governments to identify the impact of their laws and policies, and highlights issues that may have been neglected. Moreover, the collection of quantitative and qualitative human rights data reveals the progress that is made in meeting human rights obligations, but also gives early warning of potential retrogression or violation.¹

Within European Union law, human rights occupy an increasingly high profile. The inclusion of the European Union Charter of Fundamental Rights in the Draft Constitutional Treaty has reaffirmed the Union's commitment to the protection of human rights throughout its territory. By virtue of Article 6(2) TEU, the Union respects fundamental rights as general principles of Community law. Finally, all Member States are parties to the European Convention on Human Rights (ECHR) and must thereby abide by a comprehensive set of human rights obligations.

However, despite the prominence of human rights issues in the political debate at Union level, the EU's effective power in the field is limited. While it has jurisdiction to act in relation to particular human rights issues such as equal treatment,² the *acquis communautaire* does not grant express and general jurisdiction in this policy field. Thus, the protection of human rights falls essentially within the responsibility of Member States. As a result, the European Union currently lacks a comprehensive and uniform system of monitoring the protection of human rights and freedoms as stipulated by the Charter of Fundamental Rights within its territory, nor are there any common, uniform mechanisms for quantitative and qualitative data collection. For certain areas over which the Union does have jurisdiction, it has established monitoring mechanisms, such as those administered by the European Monitoring Centre on Racism and Xenophobia (EUMC).

The project to which this paper contributes examines the applicability of the Open Method of Coordination (OMC) to the field of fundamental rights, in the absence of generic Union jurisdiction in this area. As will be explained below, monitoring presents a crucial element of the OMC, which, as a soft-law instrument, does not provide for any enforcement mechanism other than peer pressure based on performance results obtained through monitoring. As a consequence, in order for the OMC to produce effective results when applied to the area of fundamental rights, a comprehensive human rights monitoring system must be set up. This paper presents a starting point for the potential development of such a European Union system.

Firstly, we will shortly explain what the OMC is all about and how monitoring fits into the framework of this governance tool.

¹ See *Human Development Report 2000 – Chapter 5: Using indicators for human rights accountability*, online: UNDP http://hdr.undp.org/reports/global/2000/en/pdf/hdr_2000_ch5.pdf (date accessed: 16 January 2006), 89.

² See Articles 13 and 141 EC.

Secondly, we will provide an overview of methods and tools for monitoring the protection of human rights presently available and used around the world. In doing so, we will explain the conceptual framework upon which most human rights monitoring efforts are built.

Thirdly, we will examine human rights measurement mechanisms already in use in the European Union.

Fourthly, we will highlight the shortcomings of the Union's present monitoring instruments and will discuss how available institutions and tools could fit into a future European Union human rights monitoring system. The development of a comprehensive monitoring system is evidently beyond the scope of this paper. The ideas presented in the following are merely a first impetus to an endeavour which requires in-depth research, as well as a vivid discussion and consultation process.

Fifthly, we will illustrate our ideas by examining the 'right to liberty and security of person' as stipulated in Article 6 of the Charter of Fundamental Rights, in greater detail. We will determine the scope and content of the right; present suitable indicators for each state obligation arising from the right; identify the requisite data and discuss the feasibility of data collection in the European Union; and describe the mutual relationships between, and tasks of different actors within a European Union human rights monitoring system.

2 The Open Method of Coordination

The *acquis communautaire* distinguishes between the Union's supranational jurisdiction in areas where Member States deem common action to benefit all, and national competence over the politically most sensitive fields. However, the effects of globalisation and a rapidly changing economic and political environment has in recent years presented the Union with challenges which require common action even in policy areas that are outside Union jurisdiction. Thus, the Open Method of Coordination (OMC) was developed as a governance instrument which is sensitive to Member States' quest to retain control over specific policy areas, while allowing for a certain degree of policy coordination.

The OMC was introduced at the Lisbon Summit of March 2000 as a governance tool to put into practise the Lisbon Strategy for Growth and Jobs. The Lisbon Strategy, among others, had set the goal for the European Union to become the "world's most competitive and dynamic knowledge-based economy, capable of sustainable economic growth with better jobs and greater social cohesion."³ The OMC presented the culmination of a process which had started with the Delors Commission's White Paper *Growth, Competitiveness and Employment* back in 1993.⁴ The White Paper's key idea was that unemployment in Europe has common roots and can be best addressed through common action, i.e. coordinated macro-economic policies. Since macro-economic and employment policy were entirely

³ *Lisbon Extraordinary European Council – Presidency Conclusions: I. Employment, Economic Reform and Social Cohesion* (23-24 March 2000), online: Council of the European Union http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100-r1.en0.htm (date accessed: 21 January 2006), point 5.

⁴ See European Commission, *Growth, Competitiveness and Employment – The challenges and ways forward into the 21st century*, Bull. E.C. Suppl. 6/93 (Luxembourg: Office for Official Publications, 1993). The Commission's findings led to the adoption of the European Employment Strategy and the introduction, by virtue of the Amsterdam Treaty, of Title VIII: Employment, Articles 125 to 130, to the EC Treaty.

within national jurisdiction, a mechanism needed to be developed to allow for coordinated action while leaving the distribution of powers between the Union and Member States intact. Over a series of European Councils, the Open Method of Coordination was devised as a “process of mutual learning on the basis of diverse national experiences with reform experiments. While there are fixed guidelines and timetables for achieving goals at the EU level, policies and specific targets are spelled out on the national level. National performance is constantly monitored and evaluated through peer review and benchmarking – mechanisms which act as ‘soft law’ catalysts for greater convergence towards European ‘best practice.’”⁵ While the OMC was originally developed in the context of growth and employment, it has since been applied to other policy fields, such as information society, research, company policy, social policy, education, social exclusion, social protection and the environment.⁶

Participation and partnership are at the very heart of the OMC. In formulating national action plans to translate the EU guidelines, the OMC envisages an ongoing dialogue between stakeholders at the Union, national and local levels, including social partners and civil society actors. Leaving the choice of the most appropriate means for implementing the common guidelines to the Member States, is meant to enable them to take account of specific national concerns and peculiarities, and thereby maximise the impact of the national plans. Moreover, the participatory process aims at honouring the principles of subsidiarity and democracy. Finally, the approach helps to ‘map’ local actors and gives them visibility and recognition.⁷

Of particular relevance to the subject of this paper is the central role that monitoring plays in the OMC. In the absence of any binding rules or enforcement mechanisms, peer pressure presents the main incentive for Member States to participate in the process and live up to the commitments made in the guidelines. Thus, the establishment of qualitative and quantitative indicators to allow an effective assessment of Member State policies and performance as well as the development of common methods of statistical evaluation, have become constitutive elements of the OMC. Further, the development of methods to select and review good practises, as well as the setting of benchmarks against best practises and tailored to the needs of Member States and sectors, should help Member States to progressively design their own policies and achieve the objectives set.⁸

To illustrate the EU approach to the development of indicators, let us look at two policy fields to which the OMC has been applied, more closely.

⁵ J. Lenoble, “Open Method of Coordination and Theory of Reflexive Government” in O. de Schutter, S. Deakin, eds., *Social Rights and Market Forces: Is the open coordination of employment and social policies the future of social Europe?* (Brussels: Bruylant, 2005), 21.

⁶ See S. Collignon et al., “The Lisbon Strategy and the open method of co-ordination. 12 recommendations for an effective multi-level strategy” (Notre Europe Etudes & Recherches Policy Paper No. 12), online: Notre Europe <http://www.notre-europe.asso.fr/IMG/pdf/Polycypaper12.pdf> (date accessed: 4 January 2006), 3.

⁷ See S. Régent, “The Open Method of Co-ordination: A supranational form of governance?” (Discussion paper DP/137/2002), online: International Institute for Labour Studies <http://www.ilo.org/public/english/bureau/inst/download/dp13702.pdf> (date accessed: 4 January 2006), 17.

⁸ *Lisbon European Council – Presidency Conclusions: I. Employment, Economic Reform and Social Cohesion* (23-24 March 2000), online: European Parliament http://www.europarl.eu.int/summits/lis1_en.htm (date accessed: 21 January 2006), point 37.

The European Employment Strategy has used indicators since its launch in 1997, as part of the assessment of member states' progress in implementing the Employment Guidelines. These indicators, the Commission emphasises, "provide a way to relate policy efforts with outcome and enhance the transparency of the results of policies." They thereby assess the performance and efforts of member states on employment.

The Employment Committee, assisted by the working group on indicators, agrees on the indicators on an annual basis.⁹ The set of indicators is constantly developed, revised and improved in light of statistical developments and new policy priorities. When selecting appropriate indicators, their policy relevance, comparability, as well as the reliability, timeliness, and freshness of statistical data are considered. Moreover, the chosen indicators should be easy to understand and interpret.

Employment indicators are classified into key indicators and context indicators. Key indicators measure progress in relation to the objectives of the Employment Guidelines, while context indicators support the analysis of the National Reform Programs (formerly called National Action Plans) by putting national policies and performance into perspective.¹⁰

In the field of social exclusion, the Social Protection Committee and its technical subgroup on indicators takes responsibility for the development of indicators. These indicators are designed so as to monitor progress towards the goal of making a decisive impact on the eradication of poverty by 2010, to improve the understanding of poverty and social exclusion in the European context, and to identify and exchange good practises between the member states.

When selecting the indicators, the Social Protection Committee focuses on indicators that address social outcomes rather than the means by which these outcomes are achieved. Moreover, the set of indicators should be responsive to policy interventions, comparable, transparent, accessible, mutually consistent, and timely. The weight of single indicators should be proportionate. Finally, data collection should not impose too much of a burden on member states, enterprises, or citizens.

The Committee agreed on three categories of indicators. Primary indicators are lead indicators that cover the broad fields considered to be the most important elements in leading to social exclusion; secondary indicators support the lead indicators and describe other dimensions of the problem. Finally, each member state may develop a set of country-specific indicators within a third category which highlight national peculiarities in specific areas, and help interpret the primary and secondary indicators.¹¹

⁹ For the indicators endorsed by the Employment Committee in 2005, see *Indicators to monitor the Employment Guidelines (2005-2008)*, online: European Commission http://europa.eu.int/comm/employment_social/employment_strategy/indicators_emco_en.pdf (date accessed: 8 May 2006). For data on some of these indicators, visit the Eurostat website.

¹⁰ See *European Employment Strategy: Monitoring and Indicators*, online: European Commission http://europa.eu.int/comm/employment_social/employment_strategy/indic_en.htm (date accessed: 8 May 2006). For national progress reports and the annual joint report, as well as other documents on the European Employment Strategy, see online: European Commission http://europa.eu.int/comm/employment_social/employment_strategy/index_en.htm (date accessed: 10 May 2006).

¹¹ See Social Protection Committee, "Report on Indicators in the field of poverty and social exclusion" (October 2001), online: http://europa.eu.int/comm/employment_social/news/2002/jan/report_ind_en.pdf (date accessed: 8

For both fields, employment and social exclusion, the Commission and Eurostat cooperate in collecting the data needed to feed the indicators. Unfortunately, we were unable to locate the indicator results per country and year. Both the Eurostat website, and the analytical documents relating to social exclusion and the European Employment Strategy available on the Commission website, offer some data for some indicators, however not the complete list of agreed indicators in a structured and easily accessible manner.

The European Commission and Council play a central role in this monitoring process, by reviewing and reporting on the performance of Member States, based on annual reports submitted by the Member States. In the context of employment, Art. 128(1) EC empowers the European Council to adopt conclusions on the employment situation within Member States on the basis of a joint annual report from the Commission and the Council. Pursuant to Art. 128(2) EC it may then draft annual employment guidelines in collaboration with various actors such as the Commission, the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee, thereby assuring broad participation.

Unfortunately, the mid-term review of the Lisbon Strategy for Growth and Jobs of spring 2005 revealed, in addition to Member States' failure to properly implement guidelines and objectives, important shortcomings of the OMC.

Firstly, Member States proved to be reluctant to share information on domestic policies before their implementation, thereby undermining the very purpose of the OMC, namely mutual learning and cross-fertilisation.¹²

Secondly, Member States were unwilling to name and shame their peers and to exert pressure in relation to issues they do not consider to be a top domestic priority.¹³ In the absence of enforcement mechanisms other than peer pressure, the OMC is thereby rendered ineffective. Moreover, many of the indicators established at European level appeared to represent the smallest common denominator between countries, and due to their inadequacy often did not measure what they were supposed to measure. In addition, there was a heavy emphasis on collecting quantitative data, thereby neglecting a qualitative assessment. More generally, it was criticised that while monitoring is crucial for transparency and learning, the OMC's heavy reliance on indicators and targets bears the danger of Member States to focus on the achievement of short term targets rather than serious, long term reforms.¹⁴

Thirdly, major shortcomings in relation to organising debating and networking procedures were identified, resulting in a failure to analyse the lessons learnt and progressively develop a body of knowledge.

In addition to the weaknesses of the OMC that were revealed by the mid-term review of the Lisbon Strategy, scholars have expressed concern that there is a danger of the OMC being abused as a mechanism to steer 'competitive federalism.'

May 2006). For data on some of these indicators, visit the Eurostat website or the European Commission's Social Inclusion site online: European Commission http://europa.eu.int/comm/employment_social/social_inclusion/index_en.htm (date accessed: 10 May 2006).

¹² See *supra* note 6, 7.

¹³ See *supra* note 6, 9.

¹⁴ See *supra* note 6, 11.

The principles of market economy would be extended to the organisation of the political structure by decentralising regulatory interventions.¹⁵ Since economic operators in a global economy ‘vote with their feet,’ it has been argued, national policymakers will be induced to engage in downwards competition in fields governed by the OMC rather than traditional, hierarchical instruments such as regulations or directives.¹⁶ This would counteract the very objective of the OMC, which is to encourage a ‘race to the top,’ through Member States pressuring each other to compare, exchange and adopt best practises.

3 Monitoring the protection of human rights: concepts, instruments, and initiatives

It has been a fairly recent realisation among the human rights community that the traditional method of ensuring the protection of human rights, judicial monitoring, on its own is ineffective, and that consequently, additional, non-judicial monitoring mechanisms need to be employed. Only in the 1990s has the importance, for the establishment of a genuine culture of human rights, of disseminating human rights information based on comprehensively collected, disaggregated and comparable human rights data, and of involving non-governmental actors in monitoring efforts, been increasingly highlighted. As a consequence, while the collection of socio-economic data by national statistics offices as well as international organisations such as the OECD, the World Bank, the UNDP, to name just a few, has been in place for decades, a coordinated, comprehensive and global effort at permanently collecting and analysing qualitative and quantitative human rights data does not exist. This does not mean that data are not collected at all. There are innumerable initiatives, both by state and non-state actors, to collect human rights-related information in the context of particular rights and freedoms, or in compliance with obligations arising from a particular treaty or law. However, only recently have scholars begun to review these different monitoring mechanisms with a view to establishing a comprehensive conceptual framework for monitoring human rights and freedoms in their entirety.

There are many reasons for the inadequacy of human rights monitoring. On the one hand, the enjoyment of human rights and freedoms depends largely on States’ performance regarding their obligations to respect, protect, and fulfil human rights. Since States are usually reluctant to publicise their own failures, they will not be overly ambitious to comprehensively record human rights violations, to research the shortcomings of their own policies and programmes, or to name and shame their peers. On the other hand, especially in those States where human rights violations are particularly prevalent, non-state actors will not be able to count on authorities’ cooperation in their attempt to document violations of rights, or even have to fear repercussions when doing so. Moreover, the accurate collection of quantitative and

¹⁵ See A. Andronico, A. Lo Faro, “Defining Problems: The Open Methods of Coordination, Fundamental Rights and the Theory of Governance” in O. de Schutter, S. Deakin, eds., *Social Rights and Market Forces: Is the open coordination of employment and social policies the future of social Europe?* (Brussels: Bruylant, 2005), 47-48.

¹⁶ See *ibid.*, 48.

qualitative data requires considerable financial and human resources, as well as expert knowledge of statistical methods, all of which NGOs often lack.

3.1 UN initiatives for the development of monitoring instruments

The work of the UN Treaty Bodies who monitor observance of the seven core international human rights treaties has made human rights measurement an issue on the international level. Each Committee consists of a multi-member expert body that performs a normative assessment of a set of facts established by a State Party against the human rights obligations of that Party. Thus, it is States Parties who are under an obligation to assess the implementation of the treaties within their jurisdictions and periodically report to the Committees. The quality of submitted reports reveals the shortcomings involved in requesting States to monitor their own human rights performance, which manifests itself in the lack or inconsistency of information on the enjoyment of human rights in a particular country. However, while each of the Committees provides reporting guidelines, the degree to which they expressly request from States Parties the submission of indicators with State reports, is far from uniform. The Committee on Economic, Social and Cultural Rights (CESCR Committee), the Committee for the Elimination of Discrimination Against Women (CEDAW Committee), and the Committee on the Rights of the Child (CRC Committee) place much more emphasis on the use of indicators than do the other treaty bodies. For example, the CRC Committee undertook to draft detailed instructions for States, including a discussion of each substantive treaty article on which data would have to be provided along with State reports.¹⁷ To the same effect, the UNICEF Implementation Handbook for the Convention on the Rights of the Child provides an implementation checklist for each of the rights stipulated in the Convention.¹⁸ Moreover, some Committees use so-called General Comments as a medium to discuss in great detail the meaning and content of rights, including the use of indicators for monitoring their implementation, much more than others do.¹⁹ The

¹⁷ For example, in relation to Article 28 of the Convention on the Rights of the Child, on education including vocational training and guidance, State reports shall include data on budgetary allocations to the education system; measures to ensure access of all children to quality education including girls and children with special needs; teacher/student ratios; data on educational facilities; literacy rates below and over 18; enrolment rates in literacy classes by age, gender, region, rural/urban area, social and ethnic origin; changes in the education system such as legislative or budgetary changes or changes in enrolment; education outcomes. Thus, by requesting a comprehensive body of disaggregated quantitative and qualitative data, the Committee expressly identifies the collection of such data as a State duty. See Committee on the Rights of the Child, *General guidelines regarding the form and contents of periodic reports to be submitted by States Parties*, UNCR/C, 13th Sess., UN Doc. CRC/C/58 (20 November 1996), online: OHCHR [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.58.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.58.En?Opendocument) (date accessed: 4 January 2006), para 106.

¹⁸ See R. Hodgkin, P. Newell, *Implementation Handbook for the Convention on the Rights of the Child* (New York: UNICEF, 2002).

¹⁹ For example, the CESCR Committee in its General Comment No. 13: The right to education (Art.13) imposes a duty on States Parties to develop mechanisms, such as indicators and benchmarks, to monitor progress. See Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 13: The right to education (Art.13)*, UN ESCOR, 21st Sess., UN Doc. E/C.12/1999/10 (8

absence of detailed monitoring instructions on the part of the Committees has been due partly to the limited research on human rights indicators available, and the fact that the Committees have been ill-equipped, in terms of their mandate, financial and human resources, to conduct in-depth research about human rights indicators and monitoring by themselves.

As a first impetus to remedying the absence of effective monitoring instruments, in January 1993, the UN Centre for Human Rights held a seminar on the identification of indicators to measure the progressive realisation of economic, social and cultural rights, upon the recommendation of Special Rapporteur on Economic, Social and Cultural Rights Danilo Türk.²⁰ The clarification of the scope and content of specific rights, and the nature of State obligations, was identified as an area for further work.²¹ In September 1999, a workshop was convened to discuss the development of indicators on civil and political rights.²²

An expert consultation on indicators for monitoring compliance with international human rights instruments, convened by the OHCHR in August 2005, marked the beginning of UN efforts to develop a common approach for monitoring all human rights. Rajeev Malhotra and Nicolas Fasel, in a background paper prepared on this occasion, propose a solid and comprehensive conceptual framework for the design and identification of human rights indicators. They explain the notion and rationale of indicators, describe categories and types of indicators, and highlight

December 1999), online: OHCHR
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument)
(date accessed: 20 January 2006), para 52. General Comment No. 14: The right to the highest attainable standard of health (Art. 12) issued by the same Committee makes the inclusion of monitoring methods such as indicators and benchmarks a core obligation under Article 12 of the CESCR. See Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, UN ESCOR, 22nd Sess., UN Doc. E/C.12/2000/4 (11 August 2000), online: OHCHR
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument)
(date accessed: 20 January 2006), para 43(f). However, the General Comments leave the choice of indicators to States Parties.

²⁰ See D. Türk, "The new international economic order and the promotion of human rights: realization of economic, social and cultural rights. Progress Report," UNCHR, 42nd Sess., UN Doc. E/CN.4/Sub.2/1990/19 (6 July 1990), online: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1990.19.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1990.19.En?Opendocument) (date accessed: 23 January 2006), para 220.

²¹ See A. Chapman, "Indicators and Standards for Monitoring Economic, Social, and Cultural Rights" (Paper presented at the 2nd Global Forum on Human Development, Candido Mendes University, Rio de Janeiro, Brazil, 9-10 October 2000), online: UNDP http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf (date accessed: 30 January 2006). See also *Expert Seminar on Appropriate Indicators to Measure the Realization of Economic, Social and Cultural Rights. Final Report* (Geneva, 25-29 January 1993), UN Doc. A/CONF.157/PC/73 (20 April 1993). The recommendations made at this seminar are also summarised in *Report of Other Meetings. Report of the Secretary General, World Conference on Human Rights Preparatory Committee, 4th Sess.*, UN Doc. A/CONF.157/PC/42/Add.1 (30 April 1993), online: http://www.un.org/russian/hr/conf/docs/a_conf157_pc42add1e.pdf (date accessed: 30 January 2006), paras. 133-159.

²² See Chairpersons of the Human Rights Treaty Bodies, *Status of the Plans of Action: Establishment of Indicators/Benchmarks to Assess the Realization of Human Rights*, 12th meeting, UN Doc. HRI/MC/2000/3 (16 June 2000), online: [http://www.unhchr.ch/tbs/doc.nsf/0/fc5cbcc5e6ed773ac125692000377226/\\$FILE/G0042744.doc](http://www.unhchr.ch/tbs/doc.nsf/0/fc5cbcc5e6ed773ac125692000377226/$FILE/G0042744.doc) (date accessed: 23 January 2006), paras. 35-37.

issues that must be considered when devising indicators. Finally, they exemplify the proposed methodology by offering lists of indicators for the right to life, and the right to food respectively.²³

At the same time, the piecemeal efforts of different UN agencies and officials to develop indicator sets for the purpose of measuring specific human rights and freedoms, continue. In response to the CESCR Committee's call for the identification of appropriate right to health indicators and benchmarks in its General Comment 14 on the right to the highest attainable standard of health,²⁴ issued in 2000, the World Health Organisation, for example, convened two workshops in May 2003 and April 2004, with the goal of "advancing the process to identify relevant indicators," and "bringing multi-disciplinary actors in health and human rights together."²⁵ UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, has since invested considerable efforts at developing a conceptual framework for developing right to health indicators.²⁶

3.2 European initiatives for the development of monitoring instruments

In Europe, the IAOS²⁷ Conference on "Statistics, Development and Human Rights" held in Montreux, Switzerland in September of 2000 marked the beginning of a process aimed at pooling resources and encouraging cooperation and exchange between specialists from different fields for improved human rights monitoring. This first meeting brought together 700 statisticians, development specialists and human rights experts who discussed the potential of statistical information and methods for monitoring human development and human rights.²⁸

A Eurostat/CDG Munich Centre seminar on "Measuring Democracy and Good Governance" which took place in Munich in January 2002, followed up on the needs

²³ See R. Malhotra, N. Fasel, "Indicators for Monitoring the Implementation of Human Rights – A Conceptual Framework" (Background paper prepared for the OHCHR expert consultation on indicators for monitoring compliance with international human rights instruments, Geneva, 29 August 2005) [unpublished].

²⁴ See Committee on Economic, Social and Cultural Rights, *CESCR General Comment No. 14: The right to the highest attainable standard of health (Art. 12)*, UN ESCOR, 22nd Sess., UN Doc. E/C.12/2000/4 (11 August 2000), online: OHCHR [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument) (date accessed: 20 January 2006), para 57.

²⁵ For workshop reports, see *Research and Other Basic Building Blocks on Health and Human Rights*, online: WHO <http://www.who.int/hhr/activities/indicators/en/print.html> (date accessed: 30 January 2006).

²⁶ See below, section "3.7. An overview of comprehensive human rights monitoring initiatives."

²⁷ International Association for Official Statistics, online: <http://www.stats.govt.nz/iaos/home.htm> (date accessed: 30 January 2006).

²⁸ See C. Malaguerra, "Summary of the Conference's Conclusions" (Statistics, Development and Human Rights, Montreux, 4-8 September 2000), online: United Nations Statistics Division <http://unstats.un.org/unsd/statcom/doc01/montreux.pdf> (date accessed: 15 December 2005). For more information, see also the Conference website online: IAOS <http://www.portal-stat.admin.ch/iaos2000/index2.htm> (date accessed: 23 January 2006).

identified in Montreux.²⁹ It resulted in the establishment of a network to realise the Montreux recommendations for closer cooperation between stakeholders.

At a seminar on “Statistics and Human Rights” hosted by Eurostat and the European Commission in Brussels in November 2002, statisticians, human rights experts and development specialists met again to exchange information and best practises, to consolidate the network established in Munich, and to make statistical project proposals.³⁰ Further, participants substantially discussed why, what and how to measure in the fields of (i) civil and political rights, (ii) economic, social and cultural rights, and (iii) vulnerable group rights.

The Montreux/Munich/Brussels process culminated in the launching of the Metagora³¹ (Measuring Democracy, Human Rights and Good Governance) project, which will be examined in greater detail below. It is designed as a 2-year project running from 2003 to 2005, and is financed jointly by the European Commission, France, Sweden and Switzerland with a budget amounting to € 2,25 mio. Metagora aims at “testing statistical methods, tools and indicators that would allow assessment of human rights and governance in its various dimensions, including accountability, distributive development and participatory democracy.”³² Moreover, Metagora wants to provide a forum for exchange and mutual learning between stakeholders in developed and developing countries. Thus, each pilot activity is implemented in close interaction with the other activities, and subsequent activities benefit from the lessons learnt in previous ones. The Metagora Partners Group allows representatives of all partner organisations, independent experts and the coordinating team to meet on a regular basis, exchange best practises and provide feedback.³³

3.3 What is it that we measure? State obligations relating to human rights and freedoms

The above mentioned initiatives have provided fora for discussion and exchange among academics, human rights lawyers and activists, statisticians, and policy-makers. This discourse resulted in the identification of the requirements and purposes of an effective human rights monitoring system. The framework thus developed will be sketched in the following.

Effective monitoring requires the systematic collection and analysis of appropriate data. The determination of which data are relevant depends on translating the abstract legal norms into operational standards. To accomplish this

²⁹ See *Measuring Democracy and Good Governance* (Munich, 21-23 January 2002), online: <http://www.inwent.org/imperia/md/content/bereich4-intranet/abteilung4-06/d1.pdf> (date accessed: 23 January 2006).

³⁰ See *Statistics and Human Rights. Final Report* (Brussels, 27-29 November 2002), online: http://www.paris21.org/pages/events/all-events/list/index.asp?id_event=197&tab=doc (date accessed: 20 January 2006).

³¹ See online: Metagora <http://www.metagora.org> (date accessed: 17 January 2006).

³² See *Statistics and Indicators in the Fields of Human Rights and Governance* (3 March 2003), online: United Nations Statistics Division <http://unstats.un.org/unsd/statcom/doc03/montreux.pdf> (date accessed: 15 December 2006), 2.

³³ See *Cross-fertilization*, online: Metagora http://www.metagora.org/html/activities/act_cross.html (date accessed: 17 January 2006).

operationalisation, specific enumerated rights need to be adequately conceptualised and developed to measure implementation or to identify potential violations.³⁴

Thus, a first step towards developing a comprehensive monitoring system is the clarification of what State obligations are in respect of a particular right. One must ask questions such as ‘What are a State’s duties in respect of its obligation to respect, protect and fulfil the right?’ ‘What is the right’s relationship to other rights?’ State obligations can also be determined in terms of a right’s adequacy, availability and accessibility dimensions.³⁵ The General Comments³⁶ issued by the UN Treaty Bodies overseeing the implementation of the seven main international human rights treaties provide an authoritative starting point when it comes to identifying the content of these human rights, as does the massive body of case law and doctrine relating to international human rights law. The OHCHR Draft Guidelines for a Human Rights Approach to Poverty Reduction Strategies, which will be discussed in greater detail below, also provide a good example of how rights can be broken down into their constitutive elements following an analysis of their sources and content, and based thereon, translated into targets, i.e. State obligations.³⁷

3.4 Measurement instruments: Indicators

Once we know what State obligations are in respect of a particular right, we can proceed to developing indicators. The general purpose of a qualitative or quantitative indicator is to provide specific information on the state or condition of an event, activity or outcome.³⁸ An indicator must be policy relevant in that it relates to a specific target, collectable, comparable, consistently measurable over time, possible to disaggregate,³⁹ valid in that it is based on identifiable criteria that measure what they are intended to measure, reliable in that it is replicable by different persons, and its methodology must be transparent.⁴⁰

³⁴ See A. Chapman, “A ‘Violations Approach’ for Monitoring the International Covenant on Economic, Social and Cultural Rights” (1996) 18 Human Rights Quarterly 24.

³⁵ See *Report of Turku Expert Meeting on Human Rights Indicators* (Turku/Åbo: 10-13 March 2005), online: <http://www.abo.fi/instut/imr/research/seminars/indicators/Report.doc> (date accessed: 21 December 2005), 5.

³⁶ See General Comments section on the website of each Treaty Body, online: OHCHR <http://www.ohchr.org/english/bodies/index.htm> (date accessed: 20 January 2006).

³⁷ See *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (September 2002), online: OHCHR <http://www.ohchr.org/english/issues/docs/guidelinesfinal-poverty.doc> (date accessed: 22 January 2006).

³⁸ See *supra* note 35, 2.

³⁹ With respect to disaggregating data on all prohibited grounds for discrimination enumerated in international human rights instruments, the concern was raised that such disaggregation would be unreasonable, unfeasible, and very cost-intensive. It was therefore proposed to “screen” indicators for their relevance to vulnerable population groups, or alternatively, choose indicators which are pertinent for their impact on vulnerable groups, and thereby ensure due regard of equal treatment as a key human rights principle. See *Consultation on Indicators for the Right to Health. Meeting Report* (Château de Penthes, Geneva, 1-2 April 2004), online: WHO <http://www.who.int/hhr/activities/Report%20indicatorsmtg04%20FINAL.pdf> (date accessed: 3 February 2006), 6.

⁴⁰ See *supra* note 1, 90; see also R. Malhotra, N. Fasel, “Quantitative Human Rights Indicators – A survey of major initiatives” (Discussion paper presented at the Turku Expert Meeting on Human Rights Indicators, Turku/Åbo, 10-13 March 2005), online: <http://www.abo.fi/instut/imr/research/seminars/indicators/Background.doc> (date accessed: 15 December 2006), 5-6.

Indicators can be quantitative or qualitative. Quantitative indicators provide statistical information, while qualitative indicators cover any information relevant to the observance or enjoyment of a particular right. In addition to this categorisation, we can also distinguish between objective and subjective indicators. Objects, facts, or events that can be directly observed or verified, such as the weight of children or the number of violent deaths, qualify as objective indicators. Indicators based on perceptions, opinions, assessments or judgments expressed by individuals, are subjective indicators. This does not mean that quantitative indicators result only from objective information, and qualitative indicators from subjective data. For example, indices may be produced using opinion surveys, and qualitative information can be translated into statistics.

In contrast to development indicators, human rights indicators focus on rights, rather than needs and the achievement of goals. “Needs...are usually seen to be eminently flexible and relative...Rights, on the other hand, belong to individuals, who can and will assert them and strive to give them meaning and substance.”⁴¹ Moreover, rights are normatively specific. There exists a legal obligation and a corresponding redress in case of violation, as well as mechanisms of accountability.⁴² Similarly, the Draft Guidelines for A Human Rights Approach to Poverty Reduction Strategies identify as the main difference between a development indicator and a human rights indicator the latter’s derivation from a specific human rights norm, and its purpose of “[monitoring] realisation of a specific human rights norm, usually with a view to holding a duty bearer to account.”⁴³

Of course, human rights indicators will never, on their own, give a complete picture of the human rights situation in a country. At best, they provide useful background indications regarding the protection of human rights in a particular national context.⁴⁴ In any event, it is important that a set of indicators is designed upon a common conceptual basis where the chosen indicators relate to and complement each other. Ideally, a set of indicators should reveal linkages between means and policy instruments on one hand, and the desired outcomes, on the other hand. This will be of prime importance especially if one does not want to merely quantify the status of human rights protection, but to further the implementation of human rights.

3.4.1. Types of human rights indicators

There are three categories of human rights indicators which inform about the human rights situation in a State: outcome, process, and structural indicators.⁴⁵ Outcome indicators capture attainments, individual and collective, that reflect the status in the realisation of human rights. Process indicators measure the degree to which activities or policies necessary for the realisation of human rights are carried out. Thus, process indicators monitor effort, not outcome. Structural indicators,

⁴¹ M. Green, “What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement” (2001) 23 Human Rights Quarterly 1095.

⁴² See *ibid.*

⁴³ See *supra* note 37, para. 37.

⁴⁴ See *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Note by the Secretary General*, UN GA, 58th Sess., UN Doc. A/58/427 (10 October 2003), online: UN www.un.org/doc/a58427.pdf (date accessed: 6 February 2006), para. 5.

⁴⁵ For a more thorough discussion, see *ibid.*, paras. 14-29; *supra* note 23, paras. 30-33.

finally, assess whether or not a State has ratified international human rights treaties and properly implemented them through national legislation. They also measure whether basic institutional mechanisms deemed necessary for facilitating the concerned human right, are present.⁴⁶ In other words, they monitor the performance of obligation bearers in respecting, protecting and fulfilling a human right through their action or inaction.⁴⁷

Some human rights experts, however, feel uneasy with the categorisation of indicators into outcome, process, and structural indicators. They argue that this division does not necessarily fit within the overall conceptual framework relating to the normative scope and content of human rights as reflected in the obligations to respect, protect, and fulfil, nor their adequacy, availability, and accessibility dimensions.⁴⁸

The literacy rate among 15-year-old children, for example, presents an outcome indicator for the right to education. If 75% of children in a State do not know how to read and write, we may conclude that only the minority of children enjoy the right to education. The number of daily newspapers in a country points to the level of diversity of views on political, societal, or cultural issues and thereby indicates the enjoyment of freedom of expression.

Process indicators measuring the protection of the right to health and child survival, are, for example, the “proportion of infants 6-9 months who receive breast milk and complementary food,” and “the proportion of one-year-old children immunized against measles.”⁴⁹

Process indicators, but also outcome indicators, require corresponding benchmarks in order for them to provide meaningful information about the progress made in the protection of human rights. For example, one must be able to compare over time an outcome indicator, such as the percentage of undernourished under-5-year-old children in the total number of under-5-year-olds, to a maximum permissible percentage of undernourished under-5-year-olds set for a State, in order to form an opinion about the progress made towards full protection of the right to adequate food.

Whether or not a State constitutionally protects the right to life, is a structural indicator for the realisation of that right.⁵⁰ A tool for the assessment of the de jure

⁴⁶ See *supra* note 23, paras. 18-21.

⁴⁷ Some authors distinguish between structural indicators and a further category of indicators, which are input indicators. According to these authors, structural indicators describe the degree to which a State has ratified international human rights law and implemented it in domestic legislation. Input indicators, meanwhile, are preoccupied with a State’s de facto actions or omissions in protecting, respecting, and fulfilling human rights, through the establishment of institutional mechanisms required for the protection of human rights, as well as the provision of pecuniary and non-pecuniary resources. See *supra* note 30, 7-8; T. Landman, J. Häusermann, “Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance” (24 July 2003), online: <http://www.oecd.org/dataoecd/0/28/20755719.pdf> (date accessed: 10 December 2005), 5-6.

⁴⁸ See *supra* note 39, 5-6.

⁴⁹ See *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Note by the Secretary General*, UN GA, 59th Sess., UN Doc. A/59/422 (8 October 2004), online: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/543/38/PDF/N0454338.pdf?OpenElement> (date accessed: 6 February 2006), 23-24.

⁵⁰ However, while the examination of a State’s legislation presents an indispensable starting point for monitoring human rights protection in a country, there is often a huge gap between legislation and its implementation.

protection of human rights in a State is, for example, the UNDP Human Rights Index for the Arab Countries. It is a repository of Arab countries' adoption of the main international human rights instruments, including accession dates, reservations, as well as periodic reports and responses to Treaty Bodies' comments. This repository facilitates cross-country comparisons of progress and also provides information about NGOs working in the field of human rights.⁵¹ However, the Index only counts ratifications and the existence of laws, but omits a substantive analysis of legislation, to the effect of highlighting the mechanisms and means by which the protection of human rights is guaranteed. The American Bar Association Central and East European Law Initiative (ABA-CEELI) developed the ICCPR Legal Implementation Index,⁵² a tool for examining the extent to which a State's laws, administrative procedures and policies comply with and facilitate the implementation of the ICCPR. It offers an article-by-article commentary of the Covenant, as well as a checklist, for each of the constitutive elements of each article, of mechanisms/instruments/procedures the legislation of a State should include.

Moreover, the remuneration of judges in a State is a structural indicator for the right to a fair trial. A reasonable salary has a major impact on judges' willingness to accept bribes in exchange for favourable decisions, and thus their impartiality. As a consequence, a State's pecuniary investment in judges points to its eagerness for protecting the right to a fair trial.

It soon becomes clear that comprehensive human rights monitoring requires a multidisciplinary approach. A mix of quantitative and qualitative data must be employed. The analysis of legislation and programmes designed to protect the right to education, is just as important as counting the number of children attending school. The ILO, for example, measures just and favourable working conditions among others by asking: "What procedures exist to ensure that men and women are actually paid equal remuneration for equal work?"⁵³ Likewise, similar quantitative data obtained in two States may constitute a violation in one State but not the other, once put into context and complemented with background information. For these reasons, human rights monitors must be capable not only of collecting and processing such data accurately with the assistance of adequate information management systems, but of analysing and putting it into context. Thus, experts in data collection and analysis, as well as lawyers, political scientists, human rights activists and policy-makers must share their expertise, learn from each other, and work together.⁵⁴

3.4.2. Types of data used for human rights indicators

Generally we distinguish between four categories of human rights data used, in combination or directly, for human rights indicators.

Events-based data

⁵¹ See *Arab Human Rights Index*, online: UNDP <http://www.arabhumanrights.org/en/> (date accessed: 13 January 2006).

⁵² See *The ICCPR Legal Implementation Index*, online: American Bar Association http://www.abanet.org/ceeli/special_projects/iccpr/home.html (date accessed: 18 January 2006).

⁵³ See *supra* note 41, 1078.

⁵⁴ See *supra* note 28, 2-3.

This kind of data provides quantitative or qualitative information which can be linked to specific events. It describes a particular act of human rights violation, identifying the time, place, and nature of the violation, as well as victims and perpetrators, based upon victims' and witnesses' testimonies, media and NGO reports. The most obvious shortcoming of events-based data is its inclination to underestimate the prevalence of human rights violations, since some States will try to hide their failures in observing human rights, and unreported events are not taken into account. This may also prevent valid comparisons between States and over time.

The most authoritative instrument for recording events-based data is the HURIDOCS⁵⁵ Events Standard Format for the documentation and communication of information on human rights violations. It is available online.⁵⁶ The Standard Format is a template which asks for details about location, date, and time of the violation, as well as about the persons involved, biographical data, and sources of information. In order to enable a precise categorisation of data, controlled vocabulary is used. An accompanying handbook provides comprehensive guidelines about what are the main elements of data to be collected. Thus, an event is "something that happens with a beginning and an end. It can be a single act or a series of related acts or a combination of related acts happening together which contain a human rights violation."⁵⁷ An act is "a piece of action, usually involving force, committed by a person against another. It can also be an omission."⁵⁸

Events-based data is also the primary category of information human rights NGOs, such as Amnesty International or Human Rights Watch, and media use to inform about violations and analyse patterns of abuse. In most instances, narratives of individual human rights violations are published, or used to support and illustrate

⁵⁵ Human Rights Information and Documentation Systems International. HURIDOCS is a loose network of human rights organisations concerned with human rights information. Its mission is to familiarise human rights NGOs with information and communication technologies in order to increase the effectiveness of these organisations' information work. At the heart of HURIDOCS' activities lies the development and provision of tools for monitoring, information handling and document control, as well as training and the building of training capacities in the use of such tools. The development of state-of-the-art monitoring tools benefits from HURIDOCS member organisations exchanging best practises and feedback, thereby guaranteeing constant improvement of HURIDOCS tools. In addition to the aforementioned Events Standard Format which is the most widely known and tested HURIDOCS tool, Tools for Monitoring Economic, Social and Cultural Rights; a Classification Scheme; a Directory of NGOs in OECD Countries concerned with Human Rights, Refugees, Migrants and Development; the Human Rights Monitoring and Documentation Series teaching basic monitoring skills; as well as links to other tools particularly in relation to statistical methods are available online. See , online: HURIDOCS <http://www.huridocs.org/tools.htm> (date accessed: 31 January 2006).

⁵⁶ See J. Dueck, M. Guzman, B. Verstappen, "HURIDOCS Events Standard Format. A Tool for Documenting Human Rights Violations" (Versoix: HURIDOCS, 2001), online: HURIDOCS www.huridocs.org/tools/esfen.pdf (date accessed: 23 January 2006). For related tools, such as "Micro-Thesauri: A Tool for Documenting Human Rights Violations," see *Tools and Techniques Development*, online: HURIDOCS <http://huridocs.org/tools.htm> (date accessed: 6 January 2006).

⁵⁷ See M. Guzman, "The Investigation and Documentation of Events as a Methodology in Monitoring Human Rights Violations," (paper presented at the IAOS Conference on Statistics, Development and Human Rights, Montreux, 4-8 September 2000), online: <http://www.huridocs.org/nl25eeve.htm> (date accessed: 23 January 2006).

⁵⁸ See *ibid.*

qualitative analyses.⁵⁹ The library section of Amnesty International's website, for example, produces events-based data on violations when searched by themes, such as 'detention/arrest,' 'disappearances,' 'extrajudicial executions,' 'trials' etc.⁶⁰ Moreover, Amnesty International country sites discuss country-specific violations concerning different human rights and freedoms.⁶¹ The 'search' section of the International Helsinki Foundation's website also permits a search by topic, such as 'death penalty, extra-judicial killings, disappearance;' 'fair trial and detainee's rights;' 'torture, ill-treatment, and misconduct by police,' country, and year.⁶² Moreover, their Annual Report presents country analyses for all OSCE Member States.⁶³ The International Commission of Jurists' website allows for a search of the Commission's press releases, reports, legal documents, and key external legal materials by country, human rights topic such as 'torture,' 'independence of judges and lawyers,' 'counterterrorism and human rights,' or 'discrimination and apartheid,' and keyword.⁶⁴

While the US State Department's Country Reports on Human Rights Practises⁶⁵ use a variety of sources, events-based data are an important element for their analysis of the overall human rights situation in a given country. For each country separately, these reports cover civil, political and workers' rights. US Embassy staff around the world gather information throughout the year from government officials, jurists, armed forces sources, journalists, human rights monitors, academics, and labour activists, but also launch their own investigations. Based upon the information thus collected, they prepare the initial draft of a report. Using their own sources of information, such as human rights groups, foreign government officials, UN representatives, international and regional organisations, academic experts, and media, this draft is then corroborated, analysed and edited by the officers at the US State Department's Bureau of Democracy, Human Rights and Labor.⁶⁶

The 'Special Procedures' mechanism helps the UN Commission on Human Rights to stay informed about particular issues of concern by way of rapporteurs, experts, and working groups specially mandated to monitor the situation in respect of these issues. To this end, 28 thematic and 13 country rapporteurs, experts, and working groups supply country visit reports, annual reports, and other documents containing qualitative data relating to the area of their preoccupation.⁶⁷

⁵⁹ See for example *Human Rights Watch World Report 2003 – Middle East & Northern Africa Overview*, online: Human Rights Watch <http://www.hrw.org/wr2k3/mideast.html> (date accessed: 21 January 2006).

⁶⁰ See *Library - online documentation archive*, online: Amnesty International <http://web.amnesty.org/library/engindex> (date accessed: 18 January 2006).

⁶¹ Amnesty International's website provides links to its 'world-wide sites.'

⁶² See *Human rights search*, online: International Helsinki Foundation http://www.ihf-hr.org/search/?sec_id=7 (date accessed: 19 January 2006).

⁶³ See *Annual Reports*, online: International Helsinki Foundation http://www.ihf-hr.org/cms/cms.php?sec_id=46 (date accessed: 19 January 2006).

⁶⁴ See *ICJ Legal Resource Center*, online: International Commission of Jurists <http://www.icj.org/recherche.php3?lang=en&country=&topic=27§ion=&keywords=&go=Search> (date accessed: 6 February 2006).

⁶⁵ See *Country Reports*, online: US Department of State Bureau of Democracy, Human Rights, and Labor <http://www.state.gov/g/drl/hr/c1470.htm> (date accessed: 19 January 2006).

⁶⁶ See *Country Reports on Human Rights Practices – Overview and Acknowledgements*, online: US Department of State, Bureau of Democracy, Human Rights, and Labor <http://www.state.gov/g/drl/rls/hrrpt/2004/41585.htm>.

⁶⁷ See *Special Procedures of the Commission on Human Rights*, online: OHCHR <http://www.ohchr.org/english/bodies/chr/special/index.htm> (date accessed: 30 January 2006).

If diligently collected at large scale in relation to a particular right, events-based data also serve the production of statistics and allow for important conclusions not only as to the magnitude of human rights violations, but also about patterns of and trends in violations. Due to the availability of detailed qualitative information about single events, issues such as discrimination, actors, or systematic violations of human rights may be discerned.

In Sri Lanka, Metagora developed quantitative approaches and statistical tools for the systematic collection, analysis, and reporting of human rights violations.⁶⁸ The Human Rights Accountability Coalition (HRAC), a network of local NGOs, worked with Metagora to create a standard documentation methodology, ensuring uniform data collection across Sri Lanka and the pooling of data and resources. This methodology includes a common systematic framework for collecting, processing and coding data; the establishment of controlled vocabulary; standardised data collection forms; and a quality control mechanism for the entire procedure. The project is now in its second phase, where the tools and methods are applied in the field.

The Science and Human Rights Program of the American Association for the Advancement of Science (AAAS), particularly the Human Rights Data Analysis Group, has conducted in-depth research on the collection and statistical analysis of events-based data. It researched the use of controlled vocabulary in producing human rights statistics, developed a human rights data model, looked into the use of source information, and designed computerised information management and analysis systems.⁶⁹ The AAAS has also used its expertise to assist human rights institutions with the development of capabilities for the management and analysis of events-based data. For example, Human Rights Watch, in cooperation with the AAAS, in 1999 conducted its first large-scale data project when interviewing more than 600 individuals in relation to international human rights and humanitarian law violations in Kosovo. The comprehensive report entitled “Under Orders: War Crimes in Kosovo” includes a chapter presenting statistics derived from the interviews “to examine trends and patterns of crimes committed that may not be evident from narrative information. The numbers and graphs deal in a systematic and substantive way with the reports of who was killed, when, where, and by whom.”⁷⁰ It explains the methodology used, thereby making it transparent, and offers a database of the interviews coded for violation type, time and place of violation, victims and perpetrators.⁷¹ This project also provides a successful example of mutual learning of human rights and humanitarian law monitoring methods between human rights activists, i.e. Human Rights Watch, and experts in statistical measurement and analysis, i.e. the AAAS.

The AAAS moreover helped the Honduran National Human Rights Commission to develop a full text-based documentation system of press clippings dating back to 1980, as well as a computerised system to record, classify and

⁶⁸ See *Pilot activity in Sri Lanka*, online: Metagora http://www.metagora.org/html/activities/act_srilanka.html (date accessed: 17 January 2006).

⁶⁹ See *AAAS Science and Human Rights Program – Human Rights Data Analysis Group*, online: AAAS <http://shr.aaas.org/hrdag> (date accessed: 13 January 2006).

⁷⁰ See *Under Orders – War Crimes in Kosovo. Chapter 15: Statistical Analysis of Violations* (New York: 2001), online: Human Rights Watch <http://www.hrw.org/reports/2001/kosovo/undword2a.htm>.

⁷¹ See *ibid.*

process complaints of human rights violations.⁷² They are currently working on the establishment of a thesaurus of economic, social and cultural rights in collaboration with HURIDOCS, to identify and link terms referring to specific violations.⁷³

Further, AAAS assisted the Truth and Reconciliation Commission of Sierra Leone to build a systematic data coding system, electronic database, and secure data analysis process to manage the approximately 8.000 statements which have been given to the Commission.⁷⁴

The ABA-CEELI, in collaboration with the AAAS Human Rights Data Analysis Group and Kosovar partners, has implemented the Kosovo War Crimes Documentation Project.⁷⁵ To date, over 2000 interviews with Kosovar Albanians have been conducted and statistically analysed. The project also encompasses the development of database technology to catalog war crimes documentation data.

The Research and Documentation Centre Sarajevo's project 'Population losses in Bosnia and Herzegovina 1992-1995' aims at collecting events-base data for the compilation of statistics on the number of persons, both civilians and members of armed forces, killed or missing in the territory of Bosnia and Herzegovina during the war of the 1990s. As of December 2005, the number of cases documented amounts to 95.000.⁷⁶ To this end, a questionnaire, also accessible online, asks witnesses for data such as name of the victim; date and place of victim's birth; his or her place of residence; religion; gender; nationality; profession; military unit if applicable; place and date of decease if applicable; perpetrator if applicable; as well as the identity of other witnesses.⁷⁷ In addition, data are sought from municipal registers, hospitals, relevant government ministries, NGOs, religious communities, undertakers, and news agencies. The data collected are processed and analysed so as to produce databases in the categories civilians, missing persons, members of armed forces, offering data on victims disaggregated by municipality; ethnicity; place of birth and death; age; gender; educational background.⁷⁸

Statistical data

Socio-economic statistics are aggregated data sets related to standards of living and based on objective quantitative or qualitative information which can be observed and verified. While these data are not collected for the specific purpose of

⁷² See *AAAS Science and Human Rights Program - Focus on Honduras*, online: AAAS <http://www.shr.aas.org/honduras> (date accessed: 13 January 2006).

⁷³ See *Other Tools for Human Rights Information Handling*, online: HURIDOCS <http://www.huridocs.org/othtools.htm> (date accessed: 6 January 2006).

⁷⁴ See *AAAS Science and Human Rights Program – Technical assistance to the Truth and Reconcilian Commission of Sierra Leone*, online: AAAS <http://shr.aas.org/hrdag/project-15.php> (date accessed: 13 January 2006).

⁷⁵ See *Kosovo: War Crimes Documentation Project*, online: Rights Consortium <http://www.rightsconsortium.org/action/program.cfm?program=8> (date accessed: 16 January 2006).

⁷⁶ See *The Status of the Database: April 2004-December 2005*, online: Research and Documentation Center Sarajevo http://www.idc.org.ba/aboutus/Overview_of_jobs_according_to_%20centers.htm (date accessed: 30 January 2006).

⁷⁷ See *Victim's Record*, online: Research and Documentation Center Sarajevo http://www.idc.org.ba/fmail/victims_record.html (date accessed: 30 January 2006).

⁷⁸ See *Population Losses in Bosnia and Herzegovina 1992-1995*, online: Research and Documentation Center Sarajevo <http://www.idc.org.ba/project/populationlosses.html#results> (date accessed: 30 January 2006).

monitoring human rights protection, it is regarded by human rights experts as a very important source to assist in the assessment of States' human rights performance. This is due to the fact that the collection of comprehensive socio-economic data both on the national level and by international organisations, has been firmly established for decades, including neutral, objective, and impartial methods for data collection and the requisite infrastructure. National statistics institutes collecting data in collaboration with various departments of government, research institutes and NGOs, have played a particularly notable role in the process.

Socio-economic statistics allow for conclusions about the quality of people's enjoyment of human rights, as well as about governments' failures, more generally, to invest in the realisation of rights. For example, the number of children attending primary school in conjunction with the number and funding of educational facilities most probably bears a direct relation to whether or not a government regards education as a policy priority. Socio-economic data may be obtained through public registers, household surveys or household and agricultural censuses, for example. Data on population composition and change, housing, nutrition, education, income, and social security, for example, may be used to assess the implementation of economic, social and cultural rights.

Most international organisations collect socio-economic data in collaboration with national statistics institutes, with a view to analysing developments in the specific field of the organisation's work. Thus, the World Health Organisation operates the WHO Statistical Information System⁷⁹ which is a guide to health and health-related epidemiological and statistical information. It includes core health indicators from the annual World Health Report⁸⁰ for 192 countries, divided by topic and country/region, as well as research and links to related websites. WHO also offers statistics by disease or condition, a mortality database, and a global atlas of the health workforce.⁸¹

The UNESCO Institute for Statistics compiles, analyses,⁸² and disseminates elaborate data on UNESCO fields of activity.⁸³ Most notable among its efforts is the World Education Indicators Programme. In collaboration with the OECD and national coordinators, policy-relevant education indicators have been developed.⁸⁴

UNICEF develops and maintains databases on a comprehensive set of indicators related to children's rights, including indicators for child nutrition, survival and health, maternal health, water and sanitation, HIV/AIDS, immunisation, and child

⁷⁹ See *WHOSIS*, online: WHO <http://www3.who.int/whosis/menu.cfm> (date accessed: 16 January 2006).

⁸⁰ See *World Health Report*, online: WHO <http://www.who.int/whr/en/> (date accessed: 16 January 2006).

⁸¹ See *WHO Research Tools*, online: WHO <http://www.who.int/research/en/> (date accessed: 16 January 2006).

⁸² See online: UNESCO Institute for Statistics http://www.uis.unesco.org/ev_en.php?ID=2867_201&ID2=DO_TOPIC (date accessed: 16 January 2006).

⁸³ See *Statistical Tables*, online: UNESCO Institute for Statistics http://www.uis.unesco.org/ev.php?URL_ID=5275&URL_DO=DO_TOPIC&URL_SECTION=201 (date accessed: 16 January 2006).

⁸⁴ See *World Education Indicators*, online: UNESCO Institute for Statistics http://www.uis.unesco.org/ev.php?URL_ID=5263&URL_DO=DO_TOPIC&URL_SECTION=201 (date accessed: 16 January 2006).

protection, which may be searched online by country.⁸⁵ UNICEF also designed the Multiple Indicator Cluster Survey (MICS) methodology, to assist in the timely and affordable generation of high-quality data.⁸⁶

The ILO develops and monitors international labour standards among others by compiling and analysing labour statistics in its Bureau of Statistics. In doing so, it uses input and outcome indicators, and complements statistics on labour markets with data obtained from household perception and opinion surveys.⁸⁷

The UNDP annual Human Development Report (HDR), first published in 1990, provides a comprehensive assessment of human development around the world. Each report offers both an in-depth analysis of a particularly topical development issue, and a wealth of socio-economic data as indicators of development, including data on progress towards the Millennium Development Goals. The data used are collected and compiled by specialised international agencies such as the OECD, ILO, UNESCO, UNICEF or WHO. In addition to calculating the Human Development Index (HDI), which is a summary measure of the average development achievements in a country, the Report analyses socio-economic data for 175 countries in depth.⁸⁸ Indicators and indices compiled by the HDR Unit are available online.⁸⁹

The Food and Agriculture Association's FAOSTAT is an online, multilingual database containing over 3 million time-series records covering, among others, data on agriculture, fisheries, and nutrition. The nutrition section permits, for example, a search of Food Balance Sheets by country, year, and nutritional item. A Food Balance Sheet indicates overall domestic supply and utilisation, as well as per capita supply, of a particular nutritional item. The nutrition section also offers data on food aid, as well as pesticide and veterinary drug residues in food.⁹⁰ In its annual State of Food Insecurity (SOFI) Report, the FAO informs of the progress in global and national efforts to reach the goal set by the 1996 World Food Summit, to reduce by half the number of undernourished people in the world by the year 2015.⁹¹ The Report provides indicators of the protection of the right to adequate food in all countries of the world, such as the number of undernourished persons in absolute numbers and as a proportion in the total population; the prevalence of underweight children under five years of age; the proportion of the population below US\$ 1 purchasing parity power per day.⁹² Since 2000, the FAO has also published an annual World Food Survey which includes a wealth of data on trends in food supply,

⁸⁵ See *Monitoring and Statistics*, online: UNICEF <http://www.unicef.org/statistics/index.html> (date accessed: 17 January 2006).

⁸⁶ See *Monitoring the Situation of Children and Women*, online: UNICEF <http://www.childinfo.org/> (date accessed: 17 January 2006).

⁸⁷ See *ILO Statistics*, online: International Labour Organisation <http://www.ilo.org/public/english/bureau/stat/portal/index.htm> (date accessed: 17 January 2006).

⁸⁸ See for example *Human Development Report 2005*, online: UNDP <http://hdr.undp.org/reports/global/2005/> (date accessed: 16 January 2006).

⁸⁹ See *Human Development Reports – Statistics*, online: UNDP <http://hdr.undp.org/statistics/> (date accessed: 16 January 2006).

⁹⁰ See *FAOSTAT Nutritional Data*, online: FAO <http://faostat.fao.org/faostat/collections?version=ext&hasbulk=0&subset=nutrition> (date accessed: 30 January 2006).

⁹¹ See *Eradicating world hunger – Key to achieving the Millennium Development Goals*, online: FAO <http://www.fao.org/sofi/sofi/> (date accessed: 30 January 2006).

⁹² See for example *The State of Food Insecurity in the World 2005*, online: FAO <ftp://ftp.fao.org/docrep/fao/008/a0200e/a0200e.pdf> (date accessed: 30 January 2006), 30-34.

with a view to assisting national governments and international agencies in their effort to eliminate food inadequacy and undernutrition.⁹³

The Organisation for Economic Cooperation and Development (OECD) offers social and welfare statistics, as well as data on education/training, health, and labour.

The Education Online Database provides internationally comparable data on key aspects of education systems. The Education at a Glance tables offer indicators looking at who participates in education; what is spent on it; how education systems operate; and the results achieved. The indicators range from comparisons of student performance in key subject areas to the impact of education on earnings and adults' chances of employment. The OECD also conducts the PISA survey, which assesses students' skills and knowledge at the end of compulsory education in OECD countries. The PISA database contains survey results fully comparable between countries. The *OECD Handbook for Internationally Comparative Education Statistics: Concepts, Standards, Definition and Classifications* offers a set of comparative indicators which provide insight to the functioning of education systems.⁹⁴

The OECD annual Health at a Glance report offers the latest comparable data and trends on different aspects of the performance of health systems in OECD countries, including data on health status; health care resources and utilisation; health expenditure and financing; non-medical determinants on health, as well as information on the economic and demographic context of a country's health situation.⁹⁵ Indicators for health spending and resources are, for example, total expenditure on health as a proportion of the GDP; the public share in such health spending; health expenditure per capita; acute care beds per 1000 population; and practising physicians per 1000 population.⁹⁶

The OECD Labour section provides data on civilian employment, hourly earnings for manufacturing, and labour force data and indicators.⁹⁷ The annex of the annual Employment Outlook moreover offers standardised unemployment rates in 27 OECD countries; employment/population ratios, activity and unemployment rates by gender, selected age groups, by educational attainment; indices and composition of part-time employment; average annual hours worked per person in employment; indices of long-term unemployment by gender; public expenditure on labour market programmes.⁹⁸

⁹³ See *The Sixth World Food Survey*, online: FAO <http://www.fao.org/es/ess/for-e.asp> (date accessed: 30 January 2006).

⁹⁴ See *Education and Skills – Statistics, Data and Indicators*, online: OECD http://www.oecd.org/topicstatsportal/0,2647,en_2825_495609_1_1_1_1_1,00.html (date accessed: 30 January 2006).

⁹⁵ See *Health at a Glance – OECD Indicators 2005*, online: OECD http://www.oecd.org/document/11/0,2340,en_2825_495642_16502667_1_1_1_1,00.html#TOC (date accessed: 30 January 2006).

⁹⁶ See *Health Spending and Resources*, online: OECD <http://ocde.p4.siteinternet.com/publications/doifiles/012005061T002.xls> (date accessed: 30 January 2006).

⁹⁷ See *Labour Statistics, Data, and Indicators*, online: OECD http://www.oecd.org/topicstatsportal/0,2647,en_2825_495670_1_1_1_1_1,00.html (date accessed: 30 January 2006).

⁹⁸ See *OECD Employment Outlook 2005 – Statistical Annex*, online: OECD <http://www.oecd.org/dataoecd/36/30/35024561.pdf> (date accessed: 30 January 2006).

The World Bank's annual World Development Report (WDR)⁹⁹ informs of the economic, social and environmental state of the world. Each WDR provides in-depth analysis of a specific aspect of development, such as the role of the state, labour, health, or poverty. An annex to the Report presents the World Development Indicators (WDI), which report on the progress towards the Millennium Development Goals in more than 120 countries. The 2005 WDI includes more than 800 indicators, modelled on Millennium Development Goals and targets, in 83 tables organised in six sections: World View, People, Environment, Economy, States and Markets, and Global Links. All indicators are available on the World Bank website, either in full text version,¹⁰⁰ or searchable by country and indicator.¹⁰¹ The World Bank's Data & Statistics site¹⁰² also offers country profiles, databases on education, gender, health, nutrition, population, as well as links to other major organisations engaged in socio-economic data collection and analysis.

The data used by the World Bank are collected at national level. To improve the quality and quantity of statistical data, the World Bank operates a variety of statistical system assessment tools and capacity building programs. For example, the General Data Dissemination System (GDSS) is a framework for assessing national statistical systems. It encourages states to improve the quality of official statistics, and guides countries in the dissemination of comprehensive, timely, accessible, and reliable data. The Data Quality Assessment Framework (DQAF) is a methodology for assessing data quality. It brings together best practises and internationally accepted concepts and definitions in statistics. The Country Statistical Information Database contains information on various aspects of national statistical systems and operations, including a country-level statistical capacity indicator. It aims to assess statistical capacity and monitor progress in statistical capacity building in 144 countries. The PARIS21 Consortium and the Trust Fund for Statistical Capacity Building, finally, in collaboration with worldwide partners assist developing countries in the establishment of effective statistical systems.¹⁰³

The World Bank Institute has also conducted extensive research on measuring governance, available online.¹⁰⁴ It developed Worldwide Governance Research Indicators and has since 1996 collected corresponding datasets.¹⁰⁵ For 209 countries and territories, six aggregate indicators of governance are constructed

⁹⁹ See *World Development Reports*, online: World Bank <http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/0,,contentMDK:20227703~pagePK:478093~piPK:477627~theSitePK:477624,00.html> (date accessed: 16 January 2006).

¹⁰⁰ See *World Development Indicators 2005*, online: World Bank <http://devdata.worldbank.org/wdi2005/index2.htm> (date accessed: 16 January 2006).

¹⁰¹ See *World Development Indicators Data Query*, online: World Bank <http://devdata.worldbank.org/data-query/> (date accessed: 16 January 2006).

¹⁰² See *Data & Statistics – Data*, online: World Bank <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20535285~menuPK:1192694~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html> (date accessed: 16 January 2006).

¹⁰³ See *Data & Statistics – About Data*, online: World Bank <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20173256~menuPK:64133152~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html> (date accessed: 16 January 2006).

¹⁰⁴ See *Working Papers and Articles: Governance*, online: World Bank Institute <http://www.worldbank.org/wbi/governance/wp-governance.html> (date accessed: 19 January 2006).

¹⁰⁵ See *Governance Indicators: 1996-2004*, online: World Bank Institute <http://www.worldbank.org/wbi/governance/govdata/index.html> (date accessed: 19 January 2006).

from over 300 individual variables drawn from 37 separate data sources constructed by 31 different organisations. These indicators are voice and accountability (measuring civil and political rights), political stability (measuring the likelihood of violent threats to, or changes in government, including terrorism), government effectiveness (measuring the competence of the bureaucracy and the quality of public service delivery), regulatory quality (measuring the incidence of market-unfriendly policies), rule of law (measuring the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence), control of corruption (measuring the exercise of public power for private gain, including both petty and grand corruption and state capture).¹⁰⁶ The Governance Research Indicator Country Snapshot (GRICS) tool enables a country-by-country search of governance indicators.¹⁰⁷

The UN Statistics Division (UNSD) develops standardised statistical methods, classifications and definitions. UNSD has also been quite active in the field of indicator development, although its efforts concern economic and social issues more than human rights. Upon a request made by the UN Statistical Commission in 2001, the Advisory Committee on Indicators worked on the development of statistical indicators derived from UN summits and major conferences held between 1991 and 2001. This project resulted from the realisation that the statistical indicators used to monitor different policy areas had been uncoordinated and their quality questionable. The Advisory Committee conducted an in-depth technical analysis of about 280 conference indicators, and made recommendations regarding a limited list of conference indicators.¹⁰⁸ It also noted that for the areas of human rights and governance, tried and tested indicators simply do not exist.¹⁰⁹ An indicator database including their detailed description is available on the UN Statistics Division's website.¹¹⁰ Upon the Advisory Committee's recommendation, UNSD researched the availability of data for the proposed list of indicators in all countries of the world, using the UNSD Millennium Indicator Database, the UNSD Common Database,¹¹¹ as well as databases of specialised agencies and international organisations, usually based on national reporting.¹¹²

¹⁰⁶ See D. Kaufmann, A. Kraay, M. Mastruzzi, "Governance Matters IV: Governance Indicators 1996-2004" (2005), online: World Bank Institute http://www.worldbank.org/wbi/governance/pdf/GovMatters_IV_main.pdf (date accessed: 19 January 2006), 4. For a discussion on the variables from which the aggregate indicators are constructed, as well as data sources used, see also D. Kaufmann, A. Kraay, P. Zoido-Lobaton, "Governance Matters" (1999), online: World Bank Institute <http://www.worldbank.org/wbi/governance/pdf/govmatrs.pdf> (date accessed: 19 January 2006).

¹⁰⁷ See *Governance Research Indicator Country Snapshot*, online: World Bank Institute <http://info.worldbank.org/governance/kkz2004/> (date accessed: 19 January 2006).

¹⁰⁸ See Statistical Commission, *Report of the Friends of the Chair of the Statistical Commission on an assessment of the statistical indicators derived from United Nations summit meetings*, 18 December 2001, UN Doc. E/CN.3/2002/26, online: <http://unstats.un.org/unsd/statcom/doc02/2002-26e.pdf> (date accessed: 13 January 2006).

¹⁰⁹ See *ibid.*, 2.

¹¹⁰ See *Advisory Committee on Indicators – Search metadata*, online: UN Statistics Division <http://unstats.un.org/unsd/indicatorfoc/default.asp> (date accessed: 16 December 2005).

¹¹¹ See *UN Common Database*, online: UN Statistics Division http://unstats.un.org/unsd/cdb/cdb_help/cdb_quick_start.asp (date accessed: 21 January 2006).

¹¹² See *Background Paper: Preliminary study on the availability of data for indicators (March 2003)*, online: UN Statistics Division <http://unstats.un.org/unsd/statcom/doc03/indicators-study.pdf> (date accessed: 16 December 2005).

Also noteworthy are the efforts undertaken by Social Watch, a network of NGOs in sixty countries, and the South African Human Rights Commission, to report on the enjoyment of economic and social rights. Social Watch monitors the effectiveness of social policies in 50 countries to fulfil the commitments made by States at the 1995 Copenhagen World Summit on Social Development. In addition to country reports and in-depth analyses of selected issues examined in Social Watch Annual Reports, their website offers an elaborate set of specially designed development indicators, as well as statistical analyses of countries' progress and setbacks in the areas of education, children's health, food security and infant nutrition, reproductive health, gender equality, health & life expectancy, safe water and sanitation. Social Watch also measures countries' performance with regard to increase of social spending, decrease of military spending, increase in development aid, availability of information, and ratification of key agreements. Methodology and sources are discussed in detail.¹¹³

The South African Human Rights Commission uses socio-economic statistics in the areas of housing, health, food, water, social security, education and the environment, but also analyses budgetary allocations devoted to these areas based on questionnaire responses obtained from responsible ministries.¹¹⁴

Statistics relating to civil and political rights are collected, for example, by the UN Working Group on Enforced or Involuntary Disappearances. In its annual reports, the Working Group provides statistical data on the number and status of disappeared persons per country, as well as graphs showing trends in disappearances per country.¹¹⁵

The US Department of Justice's Bureau of Statistics provides especially thorough and elaborate statistics on the administration of justice and law enforcement which are easily accessible online. The annual 'Compendium of Federal Justice Statistics',¹¹⁶ for example, describes all aspects of processing in the federal justice system, including numbers of persons prosecuted, convicted, incarcerated, sentenced to probation, released pre-trial, and under parole or other supervision. The annual 'Prosecutors in State Courts' report informs of the number and activities of prosecutors in the federal justice system. The Bureau of Statistics also collects and analyses data on law enforcement. For example, the annual 'Federal Law Enforcement Officers' report provides national data on federal officers with authority to make arrests and carry firearms, including their number, gender, ethnic origin, kind of duties, and training. A research study entitled 'Contacts between Police and Public: Findings from the 2002 National Survey,' looked into the nature and characteristics of citizen contact with the police, and discussed, among others, the

¹¹³ See online: Social Watch <http://www.socialwatch.org/en/portada.htm> (date accessed: 17 January 2006).

¹¹⁴ See *Economic and Social Rights Report*, online: South African Human Rights Commission http://www.sahrc.org.za/sahrc/cms/publish/cat_index_28.shtml (date accessed: 17 January 2006).

¹¹⁵ See for example Commission on Human Rights, *Report of the Working Group on Enforced or Involuntary Disappearances*, Commission on Human Rights, UN ESCOR, 61st Sess., UN Doc. E/CN.4/2005/65 (23 December 2004), online: UN <http://daccessdds.un.org/doc/UNDOC/GEN/G04/169/65/PDF/G0416965.pdf?OpenElement> (date accessed: 30 January 2006), 65-83.

¹¹⁶ See *Publications*, online: US Department of Justice Bureau of Justice Statistics <http://www.ojp.usdoj.gov/bjs/pubalp2.htm#C> (date accessed: 19 January 2006).

relevance of the survey findings to the issue of racial profiling. Finally, the 'National Data Collection on Police Use of Force' summarises prior research on police use of force and lists the difficulties inherent in collecting use-of-force data, including definitional problems, reluctance of police agencies to provide reliable data, concerns about the misapplication of reported data, and the degree of detail needed on individual incidents.

The British Department for Constitutional Affairs issues monthly reports on time intervals for criminal proceedings in the Magistrate's Courts.¹¹⁷ Therein, it reports on the time periods between offence and completion of criminal proceedings in different counties. It also analyses whether the respective time benchmarks have been met.

Household perception and opinion surveys

Important conclusions about the protection of human rights in a given State may also be drawn from people's opinions about the respective state of affairs. Thus, obtaining qualitative, subjective information on people's personal views about the functioning of government and its policies is a widely used means in monitoring. Of key importance are the design of questionnaires, interviewing skills, and the representativeness of the sample. Moreover, due to their subjectivity, results obtained from opinion surveys are no reliable and valid indicators of the human rights situation in a country, unless complemented by other sources of information.

The Gallup International Millennium Survey¹¹⁸ is the largest survey ever made on world opinion. 50,000 people in 60 countries were polled about their views on governance and democracy, religion, 'what matters most in life,' crime, women's rights, the environment, the United Nations, human rights and torture in their respective States. An overview of the questionnaire design, and survey results including their analysis is available on Gallup International's website.

Metagora developed strategies and tools for the effective collection and analysis of data on governance, democracy and subjective poverty, together with national statistics offices in francophone Africa and the Andean Community.¹¹⁹ Specific modules on these issues were attached to questionnaires of regular household surveys, producing both objective indicators and subjective opinions. The strength of the survey was that it not only produced a combination of socio-economic and such data, but kept the cost of collecting human rights/governance data to a minimum.

In Mexico, South Africa and the Philippines, Metagora aimed at developing and testing survey-based measurement methods to assess the fulfilment of human rights.¹²⁰ For each of the three countries, a specific issue of major public concern was chosen, and pilot surveys designed in such a way as to produce data allowing for an assessment of key policies related to this issue. In the Philippines, indigenous people's rights to ancestral domain were looked into. Quantitative and qualitative

¹¹⁷ See *Criminal justice time interval surveys*, online: Department for Constitutional Affairs <http://www.dca.gov.uk/statistics/crjust.htm#part1> (date accessed: 19 January 2006).

¹¹⁸ *Survey Archive – Millenium Survey*, online: Gallup International <http://www.gallup-international.com> (date accessed: 16 January 2006).

¹¹⁹ See *Modules attached to household survey*, online: Metagora http://www.metagora.org/html/activities/act_modules.html (date accessed: 17 January 2006).

¹²⁰ See *Pilot surveys on human rights issues in Mexico, the Philippines and South Africa*, online: Metagora http://www.metagora.org/html/activities/act_hr.html (date accessed: 17 January 2006).

methods to determine awareness of indigenous people's rights, violations of these rights and corresponding remedies, as well as measures to enhance enjoyment of these rights, were developed with a view to assessing and improving public policy and stimulating dialogue. The South African team dealt with the realisation of democracy and human rights in the context of land reform. The survey methodology took into account the diverse nature of South Africa's land question, as well as policy makers' and civil society's need for information on people's experiences and interests. It sought to contribute, by providing indicators and analysis based on high-quality data, to the making of better, human rights-sensitive policies. Finally, in Mexico, the object of examination was ill-treatment by public authorities in Mexico City.

For the purpose of drafting the World Bank's 'World Development Report 2000/2001: Attacking Poverty,' the World Bank launched an opinion survey entitled 'Voices of the Poor.' Based on the conviction that poverty strategies must be responsive to the experiences, priorities, reflections and recommendations of poor people, it considered the voices of 60.000 men and women in 60 countries on perceptions of a good life and a bad life; their most pressing problems and priorities; the quality of their interactions with key public, market, and civil society institutions in their lives; and changes in gender and social relations. To this end, participatory poverty studies conducted in the 1990's covering 40,000 poor people in 50 countries around the world were reviewed. In addition, a series of new studies were undertaken in 1999 in 23 countries, engaging over 20,000 poor men and women.¹²¹ The survey findings have been published in a three volume series. 'Can Anyone Hear Us?' and 'Crying Out for Change' analyses the voices of poor men and women from participatory poverty studies and reports on fieldwork; 'From Many Lands' offers regional patterns and country case studies.¹²²

Data based on expert judgment

Using diverse sources of information such as media, government and NGO reports, and statistical data, informed experts undertake a qualitative assessment of the protection of human rights in a given State. Such expert judgment may then result in narrative reports, such as published by Amnesty International, Human Rights Watch or the US State Department.

However, number, type and degree of human rights violations, first and foremost in the area of civil and political rights, may also be counted and converted into quantitative indicators, i.e. scores on a standards-based scale.

¹²¹ See *Voices of the Poor: Study Purpose and Design*, online: World Bank <http://www1.worldbank.org/prem/poverty/voices/study.htm> (date accessed: 20 January 2006). For detailed information on the methodology used see also Poverty Group, *Consultations with the Poor: Methodology Guide for the 20-Country-Study for the World Development Report 2000/2001* (Washington D.C.: World Bank, February 1999), online: World Bank <http://www1.worldbank.org/prem/poverty/voices/reports/method/method.pdf> (date accessed: 30 January 2006).

¹²² For Global Studies, Background Reports, and National Reports, see *Voices of the Poor: Reports*, online: World Bank <http://www1.worldbank.org/prem/poverty/voices/reports.htm#cananyone> (date accessed: 30 January 2006).

The Political Terror Scale¹²³ has been produced since the early 1980s by a group of human rights scholars at Purdue University, and covers 191 countries. 15 questions relating mostly to civil and political rights are answered using information from Amnesty International and US State Department Country Reports. States are then coded on a five-level scale to which degree different rights are protected. Level 1 countries are under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. In level 5 countries, political imprisonment, executions, political murders and brutality affect the entire population, unlimited detention for political views is accepted, and leaders place no limits on the means with which they pursue personal or ideological goals.

The UNDP Human Freedom Index¹²⁴ has been discontinued, but used to employ Charles Humana's methodology as explained in his 'World Human Rights Guide'.¹²⁵ Humana's Guide covers 104 countries and deals predominantly with the protection of civil and political rights. Thus, out of 40 questions, 24 are based upon the rights and freedoms guaranteed in the Universal Declaration of Human Rights, 13 questions derived from the International Covenant on Civil and Political Rights, and only 3 questions relate to the International Covenant on Economic, Social and Cultural Rights. One to four points are awarded in respect of each question according to whether a State fully respects rights or constantly violates them; seven questions which concern violations involving physical abuse receive a heavier weight, using a 3 to 1 ratio. Humana uses a variety of sources including Amnesty International, UN agencies and journalists. He also requests the concerned State's authorities to complete a questionnaire. The UNDP justified the discontinuation of the Human Freedom Index, saying that complex issues were analysed with summary answers of 'yes' and 'no,' which failed to empower readers to understand the judgments in the absence of supporting data and examples.¹²⁶

The UNDP Human Development Index (HDI) is a summary composite index which measures a country's average achievements in three basic aspects of human development: longevity, knowledge, and a decent standard of living. Longevity is measured by life expectancy at birth; knowledge is measured by a combination of the adult literacy rate and the combined primary, secondary, and tertiary gross enrolment ratio; and standard of living by GDP per capita in purchasing power parity (US\$). It is calculated every year for 175 countries.¹²⁷ An index is created for each of the three dimensions of human development, and the HDI then calculated as a simple average of the dimension indices. An HDI of 0.800 or above equals high human development,

¹²³ See M. Gibney, M. Dalton, "The Political Terror Scale" (1996) 4 Policy Studies and Developing Nations 73-84, online: University of North Carolina Asheville <http://www.unca.edu/politicalscience/faculty-staff/gibney.html> (date accessed: 16 January 2006). See also L. Cornett, M. Gibney, "Tracking Terror: The Political Terror Scale 1980-2001" (August 2003), online: Human Security Center http://www.humansecurityreport.info/background/Cornett-Gibney_Political_Terror_Scale_1980-2001.pdf (date accessed: 3 February 2006).

¹²⁴ See *Human Development Report 1991 – Chapter 1: Measuring human development and freedom*, online: UNDP http://hdr.undp.org/reports/global/1991/en/pdf/hdr_1991_ch1.pdf (date accessed: 20 February 2006), 19-21.

¹²⁵ See O. Yasuaki, "The Need for an Intercivilizational Approach to Evaluating Human Rights" online: Carnegie Council on Ethics and International Affairs <http://www.cceia.org/printerfriendlymedia.php/prmID/574> (date accessed: 13 January 2006). The latest version of Humana's 'World Human Rights Guide' was published in 1992.

¹²⁶ See *supra* note 1, 91.

¹²⁷ See *Human Development Report 2005 – Human Development Indicators*, online: UNDP http://hdr.undp.org/reports/global/2005/pdf/HDR05_HDI.pdf (date accessed: 17 January 2006), 214.

a score of 0.500 to 0.799 means medium human development, and an HDI of less than 0.500 describes low human development.¹²⁸ The 2005 Human Development Report explored two new ways of using the HDI. It looked at relative contributions of the different HDI components to HDI progress, and incorporated inequality by focusing on the difference between the poorest and the population as a whole in HDI scores.¹²⁹

Freedom House's Freedom of the World survey¹³⁰ provides an annual evaluation of the state of global freedom as experienced by individuals. The survey includes both analytical reports and numerical ratings for 192 countries and 14 select territories. Survey findings are reached by a team of regional experts who analyse a broad range of information sources, including foreign and domestic news reports, academic analyses, NGO and think tank reports, individual professional contacts, and visits to the region. Once the ratings are reached, they are reviewed in a series of regional meetings. The ratings process is based on a checklist of 10 political rights questions and 15 civil liberties questions. These questions are based on standards derived largely from the Universal Declaration of Human Rights, although they are not modelled on specific human rights. Raw points on a scale of zero to four are awarded to each question, where zero points represents the smallest degree of rights or liberties present. The highest number that can be awarded to the political rights checklist is 40 and to the civil liberties checklist is 60. Each pair of political rights and civil liberties ratings is then averaged to determine the overall status on a 7 point scale of 'Free,' 'Partly Free,' or 'Not Free.'

The Freedom House index is a measure of democratisation as much as it is a measure of the enjoyment of civil and political rights. Questions such as "Is there a significant opposition vote, de facto opposition power, and a realistic possibility for the opposition to increase its support or gain power through elections?" are very broad and emphasise procedural democracy, thus focussing on the voting process and political parties. It fails to take a broader perspective on participation, which happens not only through political parties.

Freedom House also prepares an annual Freedom of the Press survey,¹³¹ including analytical reports and numerical ratings in 194 countries and territories. Based on a set of 23 methodology questions divided into the subcategories of legal environment, political environment, economic environment, countries are given a total score from zero (best) to 100 (worst). The questions seek to encompass the varied ways in which pressure can be placed upon the flow of information and the ability of print, broadcast, and internet-based media to operate freely. Data come from correspondents overseas, staff and consultant travel, international visitors, findings of human rights and press freedom organisations, governments and international organisations, and a variety of domestic and international news media. The degree to which a country permits the free flow of news and information determines the classification of its media as 'Free,' 'Partly Free,' or 'Not Free.'

¹²⁸ See *ibid.*, 212.

¹²⁹ See *Human Development Report 2005 - Technical Notes*, online: UNDP http://hdr.undp.org/reports/global/2005/pdf/HDR05_backmatter.pdf (date accessed: 17 January 2006), 333.

¹³⁰ See *Freedom in the World survey - Methodology*, online: Freedom House <http://www.freedomhouse.org/template.cfm?page=35&year=2005> (date accessed 13 January 2006).

¹³¹ See *Freedom of the Press survey - Methodology*, online: Freedom House <http://www.freedomhouse.org/template.cfm?page=56&year=2005> (date accessed 13 January 2006).

Researchers at Binghamton University have since 1981 compiled the Cingranelli-Richards Human Rights Dataset,¹³² known as the CIRI Index, which is updated annually. The index contains standards-based quantitative data on government respect for 13 internationally recognised human rights, including physical integrity rights (the right not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs), civil liberties (free speech, freedom of association and assembly, freedom of movement, freedom of religion, and the right to participate in the selection of government leaders), workers' rights, and rights of women to equal treatment politically, economically, and socially, for 195 countries.¹³³ Data sources are US State Department Country Reports on Human Rights Practises and Amnesty International annual reports.¹³⁴ It is designed for use by scholars, policy makers, and analysts "who seek to estimate the human rights effects of a wide variety of institutional changes and public policies including democratization, economic aid, military aid, structural adjustment, and humanitarian intervention."¹³⁵ Individual datasets and indices can be created on the website which permits selection by right, country, and year. The Cingranelli-Richards (CIRI) Human Rights Database Coder Manual, accessible online, clarifies the coding rules in great detail. For example, a score of 0, 1, 2, or -999 is awarded for 'extrajudicial killings,' where 0 stands for frequent practise of extrajudicial killings, 1 stands for occasional practise, 2 tells us that extrajudicial killings have not occurred, and -999 is awarded if the sources do not provide any information on the right in issue. If 50 or more extrajudicial killings occur during a year, the country will score 2, anywhere between 1 and 49 killings will result in a score of 1. The manual offers a definition of 'extrajudicial killing' and provides guidance about what to do when sources disagree.¹³⁶

Indices¹³⁷ do not provide an in-depth analysis of the human rights situation in a given State, nor do they explain interrelationships between certain conditions and human rights violations, or disaggregate and contextualise the collected information. Awarding one overall score for the human rights situation in a country may not present a very useful or authoritative monitoring method. Maria Green criticises that "given the notorious unavailability and unreliability of human rights data, especially for the more repressive regimes, small differences in human rights 'scores' between countries, or across time within one country, are not ever likely to be very credible as an accurate indicator of real change; on the other hand, large differences will likely be obvious before detailed and reliable statistics are available."¹³⁸ In addition,

¹³² See *The CIRI Human Rights Data Project*, online: <http://ciri.binghamton.edu/index.asp> (date accessed: 8 May 2006).

¹³³ See *CIRI Frequently Asked Questions*, online: The CIRI Human Rights Data Project <http://ciri.binghamton.edu/faq.asp> (date accessed: 8 May 2006),

¹³⁴ See *ibid.*

¹³⁵ *Supra* note 132.

¹³⁶ See D. Cingranelli, D. Richards, "The Cingranelli-Richards (CIRI) Human Rights Database Coders Manual" (2004), online: The CIRI Human Rights Data Project http://ciri.binghamton.edu/documentation/web_version_7_31_04_ciri_coding_guide.pdf (date accessed: 8 May 2006), 8-9.

¹³⁷ For a general discussion of indices, see for example R.L. Barsh, "Measuring Human Rights: Problems of Methodology and Purpose" (1993) 15 *Human Rights Quarterly* 87-121; K.A. Bollen, "Political Rights and Political Liberties in Nations: An Evaluation of Human Rights Measures, 1950-1984" (1986) 8 *Human Rights Quarterly* 567-591. For criticism of indices, see for example Landman, *supra* note 47, 22-23; *supra* note 30, 14.

¹³⁸ *Supra* note 41, 1083.

analyses are based on secondary sources only, which must be carefully checked for accuracy. Newspaper reports, for example, are often biased towards a certain political attitude.

However, indices, through their global coverage, long time series, common source material for coding, and transparency of methodology, may provide a first indication of the human rights situation in a country. It is also argued that it allows for comparisons between countries and a determination of trends, but in light of wholly different background situations and contexts of human rights violations in various countries, rankings should be employed cautiously.

3.5 Measurement instruments: Benchmarks

Benchmarks can be defined as goals or targets that are specific to the individual circumstances of each country. On one hand, they present a useful tool for States to assess their progression towards full compliance with human rights obligations, and on the other hand, when used in conjunction with indicators, serve monitoring purposes by presenting yardsticks for orientation as to whether or not a State breaches its obligations. Qualitative benchmarks are concrete, normative criteria to which the actual situation in a country is compared. Qualitative benchmarks such as “minority groups’ access to justice” or “gender equality on the labour market” often appear in checklists used to assess for example, a State’s implementation of ratified human rights treaties.¹³⁹ In contrast, performance benchmarks set objectives and timeframes. The Millenium Development Goals (MDGs) and corresponding targets, while not specific to the situation of a particular country, are often used as performance benchmarks for a minimum level of development that all countries should achieve. The UN Statistics Division established indicators corresponding to the targets set for each of the eight MDGs, and is assembling respective country data from leading agencies.¹⁴⁰ Thus, the target for realising Goal 2: Achieve universal primary education, is to “ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.” Indicators for the implementation of this target are, for example, the net enrolment ration in primary education, or the literacy rate of 15-24 year-olds.¹⁴¹ The World Bank also offers a website dedicated to the MDGs,¹⁴² where data are searchable by target, time period, and region.¹⁴³ A special tool enables the tracking of progress and setbacks per country. Moreover, research and background studies in relation to the MDGs, as well as in-depth analyses of statistical data, are available on the website.

¹³⁹ See A. Würth, F. Seidensticker, „Indices, Benchmarks und Indikatoren: Zur Gestaltung und Auswertung von Menschenrechtsdialogen“ (November 2005), online: Deutsches Institut für Menschenrechte http://files.institut-fuer-menschenrechte.de/488/d45_v1_file_438eb315584b8_FLS_AW_Menschenrechtsdialoge_Nov_2005.pdf (date accessed: 20 January 2006), 22.

¹⁴⁰ See *Millenium Development Goals Indicator Database*, online: UN Statistics Division http://millenniumindicators.un.org/unsd/mi/mi_goals.asp (date accessed: 19 January 2006).

¹⁴¹ See *Millenium Development Goals Indicator Database – Goals, targets and indicators*, online: UN Statistics Division http://unstats.un.org/unsd/mi/mi_goals.asp (date accessed: 19 January 2006).

¹⁴² See *Millenium Development Goals*, online: World Bank <http://ddp-ext.worldbank.org/ext/GMIS/gdmis.do?siteId=2&menuId=LNAV01> (date accessed: 19 January 2006).

¹⁴³ See *Millenium Development Goals – Data*, online: World Bank <http://ddp-ext.worldbank.org/ext/GMIS/gdmis.do?siteId=2&menuId=LNAV01HOME3> (date accessed: 19 January 2006).

3.6 Measurement instruments: Case law

A well-established mechanism for monitoring State performance in relation to the protection of human rights is the administration of justice on the national and international levels. It assembles comprehensive qualitative events-based data, identifies rights-holders and duty bearers, elaborates on the specific content of rights and the corresponding State obligations, all summarised and analysed in judgments. It moreover provides redress. Judicial decisions may also prompt governments to reconsider their policies. However, judicial monitoring at national level depends on a rule of law based system of government, which particularly those States who struggle with meeting their human rights obligations often lack. Judicial monitoring at the international level depends on States' submission to a court's jurisdiction. While being capable to document human rights violations, international judicial bodies often lack mechanisms of enforcement.

At international level, the UN Treaty Bodies monitoring the observance of the seven core human rights treaties make available information and analyses relating to their mandate through the online Treaty Body Database.¹⁴⁴ In addition to State Party Reports and Treaty Body Concluding Observations/Comments to these reports, the database offers the Treaty Bodies' decisions under the individual complaints procedure in its 'jurisprudence' section.

At regional level, the Inter-American Court of Human Rights monitors the observance by States Parties, mostly Latin and Central American countries, who have submitted to the Court's jurisdiction, of the American Convention of Human Rights.¹⁴⁵ It makes available its judgments on individual complaints online, searchable chronologically¹⁴⁶ or by country.¹⁴⁷ The Inter-American Commission on Human Rights' database¹⁴⁸ may, however, be more useful, since the Court has decided only a very small number of cases since its establishment in 1979. The Commission, by virtue of the Organisation of American States' Charter, oversees the protection in the 35 Member States, of human rights as set out in the American Declaration of the Rights and Duties of Man. It also observes whether States Parties to the American Convention on Human Rights abide by their obligations under the treaty. Under the individual complaints procedure, the Commission decides on the admissibility and merits of cases and makes recommendations to the accused State. The State or the Commission may also address the Court in such cases where it has jurisdiction.¹⁴⁹

¹⁴⁴ See *Treaty Body Database*, online: Office of the High Commissioner of Human Rights <http://www.unhchr.ch/tbs/doc.nsf> (date accessed: 20 January 2006).

¹⁴⁵ For the Convention text, see online: Inter-American Court of Human Rights <http://www.oas.org/juridico/english/Treaties/b-32.htm> (date accessed: 31 January 2006).

¹⁴⁶ See *Decisions and Judgments*, online: Inter-American Court of Human Rights http://www.corteidh.or.cr/seriec_ing/index.html (date accessed: 31 January 2006).

¹⁴⁷ See *Jurisprudence by Country*, online: Inter-American Court of Human Rights http://www.corteidh.or.cr/paises_ing/index.html (date accessed: 31 January 2006).

¹⁴⁸ See *Cases published by the IACHR*, online: Inter-American Commission on Human Rights <http://www.cidh.org/casos.eng.htm> (date accessed: 31 January 2006).

¹⁴⁹ See M. Nowak, "Introduction to the International Human Rights Regime" (Leiden: Martinus Nijhoff Publishers, 2003), 192-201.

The European Court of Human Rights' database HUDOC,¹⁵⁰ permits full-text searches, as well as searches by case title; respondent State; application number; ECHR Article; and date.

The Council of Europe's European Committee of Social Rights (ECSR) decides collective complaints of violations of the European Social Charter. Decisions on the merits and corresponding resolutions adopted by the Committee of Ministers are available online.¹⁵¹ Moreover, a Digest of the Case Law of the ECSR presents the interpretation that the European Committee of Social Rights has given to the different articles of the European Social Charter.¹⁵²

At national level, most EU Member States maintain databases of judgments rendered at all court levels, in most cases searchable by keyword or legal provision.¹⁵³

Moreover, some countries have established 'Truth and Reconciliation Commissions.' Their function is to investigate and document large-scale human rights violations, and to promote reconciliation and peaceful coexistence between different groups - perpetrators and victims - after years of conflict.¹⁵⁴ The first Truth and Reconciliation Commission was created subsequent to the end of apartheid in South Africa. Transcripts of victim and perpetrator statements, as well as statements of political parties and NGOs, are available on the South African Truth and Reconciliation Commission's website.¹⁵⁵ The Sierra Leone Truth and Reconciliation Commission also makes transcripts of hearings available online.¹⁵⁶

3.7 An overview of comprehensive human rights monitoring initiatives

There are innumerable governmental and non-governmental activities to monitor the protection of human rights in one form or another, using the above methods of data collection and analysis, alone or in combination. It is obviously beyond the scope of this paper to name and explain them all. Therefore, we will focus our discussion on some of the more interesting initiatives which, while not

¹⁵⁰ See HUDOC - Database of the case-law of the European Convention on Human Rights, online: European Court of Human Rights <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (date accessed: 19 January 2006).

¹⁵¹ See *List of complaints and advancement of the procedures*, online: Council of Europe http://www.coe.int/t/e/human_rights/esc/4_Collective_complaints/List_of_collective_complaints/default.asp#TopOfPage (date accessed: 31 January 2006).

¹⁵² See Digest of Case Law of the ECSR, online: Council of Europe http://www.coe.int/T/E/Human_Rights/Esc/2_ECSR_European_Committee_of_Social_Rights/Digest.pdf (date accessed: 31 January 2006).

¹⁵³ See for example, *Rechtsinformationssystem*, online: Bundeskanzleramt Österreich <http://ris.bka.gv.at/> (date accessed: 19 January 2006); *Legifrance*, online: Le Gouvernement Français <http://www.legifrance.gouv.fr/html/index.html> (date accessed: 31 January 2006); *Rechtssprechung*, online: Bundesministerium der Justiz-Deutschland <http://www.justiz.de/Onlinedienste/Rechtssprechung/index.php> (date accessed: 31 January 2006).

¹⁵⁴ For information about truth commissions worldwide see *Truth Commissions Digital Collection*, online: United State Institute of Peace <http://www.usip.org/library/truth.html> (date accessed: 31 January 2006).

¹⁵⁵ See *Human Rights Violations – Hearings and Submissions*, online: South African Truth and Reconciliation Commission <http://www.doj.gov.za/trc/hrvtrans/index.htm> (date accessed: 31 January 2006).

¹⁵⁶ See online: Sierra Leone Truth and Reconciliation Commission <http://www.trcsierraleone.org/drwebsite/publish/index.shtml> (date accessed: 31 January 2006).

addressing the entire body of human rights instruments, have worked on developing comprehensive monitoring mechanisms sensitive to the needs and purposes of monitoring as previously outlined. We selected these initiatives for their potential property of inspiring the design of a future European Union human rights monitoring system.

In its piecemeal approach to advancing research on human rights monitoring mechanisms, the OHCHR developed Draft Guidelines for a Human Rights Approach to Poverty Reduction Strategies.¹⁵⁷ The respective report identifies the main elements of select human rights relevant to poverty reduction, through analysing the sources and content of each right. On the basis of these elements, targets representing State obligations are developed for each right, and appropriate indicators, capable of describing the condition of the poor, designed. These indicators serve to assess the state of progression towards each target and to hold States accountable for their performance.

Human Right Relevant to Poverty Reduction	Target 1 (of 5)	Indicators
Right to Adequate Food	All people to be free from chronic hunger	<ul style="list-style-type: none"> • proportion of people with inadequate intake of dietary energy • proportion of adults and adolescents with low body mass • proportion of underweight among under-five children

The report emphasises that targets and indicators must be adapted to the situation of the poor in the particular country, requiring an in-depth analysis of the identity and structure of the poor. Further, in realising targets, the basic human rights principles of non-discrimination, procedural rights including the right to an effective remedy, as well as participation and empowerment shall be observed.

UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, has invested considerable efforts at advancing the development of a conceptual framework for developing right to health indicators.¹⁵⁸ Formally classifying indicators into structural, process, and outcome indicators, he substantively distinguishes between health indicators, which resemble development indicators, and right to health indicators, which resemble human rights indicators purported to monitor the right to health with a view to holding duty-bearers to account. They primarily consider the observance of the key human rights principles of equal treatment, participation and accessibility, empowerment, and the right to an effective remedy. In addition to indicators monitoring the national right to health situation, he proposes international level indicators providing information about international assistance and cooperation in ensuring the enjoyment of the highest attainable standard of health. In a 2004 report to the UN General Assembly, Paul Hunt illustrates his methodology by proposing a list of indicators purported to monitor one aspect of children’s right to health, namely

¹⁵⁷ See *supra* note 37.

¹⁵⁸ See *supra* note 44.

child survival.¹⁵⁹ A variety of structural and process indicators aim at providing information on international assistance and cooperation of donors; whether a national strategy and plan of action including the right to health exists; whether individuals and groups, especially the vulnerable and disadvantaged, may participate in relation to health policies and programmes; and whether accessible and effective monitoring and accountability mechanisms exist. For example, one right to health indicator asks if the government regularly consults with NGOs, representatives of health professional organisations, local governments, and representatives of vulnerable groups, when formulating, implementing and monitoring its child health policies.¹⁶⁰ Health indicators, again, are taken from an ongoing inter-agency consultative process that is drafting a set of core child survival indicators. One such indicator is, for example, “proportion of low-birth-weight live births (below 2500 grams).”¹⁶¹

The UN Common Country Assessment (CCA) merits examination particularly for its comprehensive indicator system. The CCA was adopted in the late 1990s as an “instrument of the UN system to analyse the national development situation and identify key development issues with a focus on the Millennium Development Goals and the other commitments, goals and targets of the Millennium Declaration and international conferences, summits, conventions and human rights instruments of the UN system.”¹⁶² So far, more than 100 CCAs have been completed.¹⁶³ The CCA is meant to determine whether and where development challenges exist, and to analyse their interrelated root causes, while paying particular attention to potential regional disparities and the impact of poverty on disadvantaged and vulnerable groups. Each CCA includes an assessment of rights holders’ capacity to make claims, and duty bearers capacity to meet obligations. It highlights citizens’ opportunities to participate or the lack thereof. Thus, key aspects of a CCA are the effects of policies, legislation and the governance system, access to and quality of services, discrimination, participation, and the identification of stakeholders.¹⁶⁴

As a general principle, the entire process is conducted in cooperation with national governments and a broad range of local stakeholders in order not only to create a sense of ownership, but to build capacities and to respond to national needs and priorities.

For each conference goal, targets have been set, and corresponding indicators developed. Indicators assist the gathering of information upon which the CCA is based. They help to measure progress towards the MDGs, reflect key goals of the development process, but are also used to identify trends, data gaps and constraints in the capacity of national statistical systems. Of course, these indicators are designed so as to be adaptable to the particular national situation, to make efficient use of existing data, and to allow for disaggregation. Different categories of indicators relate to development goals, governance, democracy, justice administration, and security of persons. In addition, contextual and thematic

¹⁵⁹ See *supra* note 49, 14-29.

¹⁶⁰ See Indicator 14, *supra* note 49, 20.

¹⁶¹ See Indicator 39, *supra* note 49, 25.

¹⁶² See *CCA and UNDAF Guidelines for UN Country Teams*, online: UN Development Group http://www.undg.org/documents/4874-CCA_UNDAF_Guidelines-1.doc (date accessed: 18 January 2006), 11.

¹⁶³ For a database, see *Completed CCAs*, online: UN Development Group <http://www.undg.org/content.cfm?id=237> (date accessed: 21 January 2006).

¹⁶⁴ See *supra* note 162, 11-12.

indicators tell about demographic and economic conditions in a country, or specific national priorities, and are particularly susceptible to disaggregation.

Conference goal	Target	Indicators
Reduce child mortality	Reduce by 2/3, between 1990 and 2015, the under-five mortality rate	<ul style="list-style-type: none"> • under-five mortality rate • infant mortality rate • proportion of one year old children immunised against measles

The American Bar Association Central and East European Law Initiative (ABA-CEELI) developed a comprehensive assessment tool based on the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW).¹⁶⁵ The assessment tool measures the status of women de jure, as reflected in a country’s laws, and de facto, based on the degree to which women can in practise enjoy the rights and protections guaranteed by the Convention. Findings are made available in an online database¹⁶⁶ searchable by country, CEDAW article, topic area, among others. The tool consists of four components. The first component entitled “CEDAW Commentary and Guidelines,” explains the meaning of each CEDAW article and offers guidance from the CEDAW Committee on how to interpret certain language. It also includes examples of compliance and non-compliance with CEDAW by States Parties. The second component, “De Jure Assessment Questions and Report Template,” presents a basis upon which to review how closely the legislation of a country adheres to the requirements of CEDAW, article-by-article. A score between one (worst) and 5 (best) must be assigned to each question, and an analysis justifying the score provided. A third component called “Suggested De Facto Assessment Questions,” contains a comprehensive list of questions, article-by-article, to guide in-person interviews with representatives of NGOs, government, trade unions, media, women’s health clinics, as well as law enforcement officials, judges, prosecutors, law professor and lawyers, social workers, and men and women reflecting all geographical areas and spectra of society in a country. Again, a score must be assigned to each question, and an analysis justifying the score provided. The assessment process is to be conducted in collaboration with local organisations and experts active in the area of women’s rights. It is emphasised that scoring is not the goal and most important aspect of the tool, but should merely serve shorthand and comparative purposes and to track progress in a given country over time. After the assessment is completed, CEELI checks the thoroughness of the assessment, including whether an appropriate cross-section of people have been interviewed and whether the scores appear to be the product of a sufficiently rigorous analysis.

The ABA-CEELI recently developed a Human Trafficking Assessment Tool, based on the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons,

¹⁶⁵ See *The CEDAW Assessment Tool: An Assessment Tool Based on the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW)* (January 2002), online: ABA-CEELI <http://www.abanet.org/ceeli/publications/cedaw/home.html> (date accessed: 18 January 2006).

¹⁶⁶ See online: ABA-CEELI <http://www.abanet.org/ceeli/publications/cedaw/home.html> (date accessed: 18 January 2006).

Especially Women and Children (Trafficking Protocol).¹⁶⁷ The tool, similarly to the CEDAW tool, measures a country's de jure and de facto compliance with the Trafficking Protocol, and has so far been used in Moldova.

3.8 Analysis

The absence of a conceptual framework underlying a comprehensive system of human rights targets, indicators, data collection, analysis, and presentation methods, capable of identifying violations and the actors involved, as well as of guiding public policy, presents the most important shortcoming of human rights measurement as it is presently conducted. Since quantitative and qualitative approaches to human rights monitoring are indissociable, cooperation and mutual learning between experts in the fields of statistics, human rights law and political science is of particular importance in this context. Todd Landman points out that "political scientists have been engaged in what they consider to be the measurement of human rights frequently without any real reference to the international law of human rights."¹⁶⁸

Especially the potential of statistical data in defending human rights has not yet been sufficiently exploited. Currently, human rights monitoring is conducted primarily by means of events-based data and data obtained from judicial decisions.¹⁶⁹ If statistical data are used, they are mostly socio-economic data, rather than quantitative information collected for the particular purpose of human rights measurement. This is partly due to the fact that human rights activists especially at the grass-roots level lack knowledge of professional quantitative data collection and analysis techniques.¹⁷⁰ However, especially the systematic collection, analysis and dissemination of data, as well as the existence of large, objective and undeniable statistical records would help NGOs' efforts to highlight human rights violations and advocate policy change.¹⁷¹

When developing the required system of indicators covering all major human rights instruments, in addition to the aforementioned experts, a broad range of stakeholders, including UN treaty body members, governments, civil society organisations, as well as the particular addressees of rights, should be involved.¹⁷² This will not only create a sense of ownership and build capacities, but allow for a contextual design of indicators, taking into account the situation and perceptions of target populations as well as assumptions and expectations of stakeholders.¹⁷³

The development of appropriate indicators should be undertaken with a view to their purpose. Human rights measurement consists of the documentation, classification over space and time, and contextual description of violations, followed

¹⁶⁷ See *The Human Trafficking Assessment Tool* (June 2005), online: ABA-CEELI <http://www.abanet.org/ceeli/publications/htat/home.html> (date accessed: 21 January 2006).

¹⁶⁸ Landman, *supra* note 47, 34.

¹⁶⁹ See *What is Metagora Accomplishing? Summary of Intermediary Project's Results as of May 13th 2005.*, online: Metagora http://www.metagora.org/html/downloads/Summary_Intermediary.pdf (date accessed: 10 January 2006), 5.

¹⁷⁰ See *supra* note 28, 2.

¹⁷¹ See *supra* note 169, 5.

¹⁷² See *supra* note 35, 11.

¹⁷³ See *supra* note 169, 4.

by an analysis and the drawing of inferences to make better policies.¹⁷⁴ To allow for contextual description, the body of indicators should consist both of universal and contextually relevant/adaptable/flexible indicators which are adjustable to the particular circumstances of a State.¹⁷⁵ In substance, they should reflect key human rights principles (equal treatment, participation and empowerment, accessibility, the availability of an effective remedy), and the specific content of the human right to be monitored. Generally, there should be a focus on indicators providing information about accessibility and discrimination in the enjoyment of the right. For this purpose, vulnerable groups in the particular State need to be identified in order to facilitate the design of indicators sensitive to their needs. Moreover, when fashioning appropriate indicators, the collectability of data in a time- and cost-efficient, accurate, and sustainable way must be considered. Indicators depend on data assembled first and foremost at national level, and especially developing countries will lack the capacities for collecting elaborate and complex data sets.

When it comes to data collection, open and transparent methods should be applied. Data should be collected in the most disaggregated form possible. To date, available resources and opportunities for cooperation have not been sufficiently exploited. Existing administrative data and socio-economic statistics should be mapped and used to the maximum for human rights measurement.¹⁷⁶ On the one hand, official statistical agencies, equipped with the necessary infrastructure and expertise, could provide technical assistance, field logistics, and cooperate with NGOs in the development of human rights measurement programs. The attachment of human rights opinion polls to regular household surveys conducted by official statistical agencies, as done in the Metagora project described above, would bear the advantages of a large sample size, effectiveness of data collection and moderate cost.¹⁷⁷ On the other hand, national human rights institutions and civil society organisations could bring in their expertise in analysing and interpreting information thus collected.¹⁷⁸

Finally, to honour the human rights principles of participation and empowerment, strategies of how to make the data collected easily and publicly available should be considered.

4 Monitoring the protection of human rights in the European Union

As explained above, the European Union systematically collects and analyses data only in respect of certain human rights issues over which it has jurisdiction.

4.1 European Monitoring Centre on Racism and Xenophobia (EUMC)

The EUMC is based in Vienna and was established by Council Regulation 1035/1997, based on Articles 284 and 308 EC.¹⁷⁹ The primary objective of the EUMC

¹⁷⁴ See *supra* note 30, 6.

¹⁷⁵ See *supra* note 35, 5.

¹⁷⁶ See *supra* note 35, 10.

¹⁷⁷ See *supra* note 119.

¹⁷⁸ Malhotra, *supra* note 40, 25.

¹⁷⁹ See Regulation (EC) 1035/97 of the Council of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, OJ L 151 of 10 June 1997.

is to provide the Community and its Member States with objective, reliable and comparable data at European level on the phenomena of racism and xenophobia in order to help them take measures or formulate courses of action within their respective spheres of competence. The EUMC also studies the extent and development of the phenomena and manifestations of racism and xenophobia, analyses their causes, consequences and effects and highlights examples of good practise in dealing with them.¹⁸⁰ At the core of the EUMC's activities is RAXEN, the European Information Network on Racism and Xenophobia. RAXEN is designed to collect data and information on racism, xenophobia and anti-Semitism in the Member States, working through a network of National Focal Points.¹⁸¹ These Focal Points, usually leading non-governmental human rights institutions, provide statistics, descriptive and analytical data based upon research and opinion polls, as well as information on events, campaigns and conferences in the field. Relying upon these data collected at national level, the EUMC prepares comparative studies on particular issues in the five priority areas of RAXEN: employment, education, housing, racist violence and crime, and legislation.¹⁸² The EUMC's annual report provides information on the respective situation in the Union and its Member States, including analyses of good practises and trends. Each annual report also discusses a specific, topical issue in greater detail.¹⁸³ Finally, the EUMC offers a publicly accessible online documentation archive.¹⁸⁴ This archive maps information on organisations including their contact data, and describes good practises, research, and data collected by these organisations.

Four major tasks carried out by National Focal Points are key to the fulfilment of the EUMC's mandate.

4.1.1. National Report¹⁸⁵

This report forms the basis of the EUMC's annual report. Its aim is to "describe the existing situation, and the steps, measures and initiatives taken to address the problems by public authorities and civil society actors." In selecting and analysing information, Focal Points should use as guidelines the content of reports by the *Committee on the Elimination of Racial Discrimination, Council of Europe documents*, reports within the framework of the *European Charter for Regional and*

¹⁸⁰ See *The PHARE RAXEN_CC Project*, online: EUMC http://eumc.eu.int/eumc/material/doc/3f9e3ceda060a_doc_EN.pdf (date accessed: 10 January 2006), 2.

¹⁸¹ See *RAXEN Introduction*, online: EUMC http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3e4a71f3d0ab8 (date accessed: 5 November 2005).

¹⁸² See *RAXEN Data Collection*, online: EUMC http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3e4fcb4d6e824 (date accessed: 5 November 2005).

¹⁸³ See *Annual Reports*, online: EUMC http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=41bf16ffcf4ae (date accessed: 5 November 2006).

¹⁸⁴ See *Database*, online: EUMC http://eumc.eu.int/eumc/index.php?fuseaction=content.dsp_cat_content&catid=3e1d560732625 (date accessed: 21 January 2006).

¹⁸⁵ See EUMC, "Unit 2 – Research & Data Collection: Supplement B – Guidelines for the National Report 2005" [unpublished].

Minority Languages and the Framework Convention for the Protection of National Minorities, as well as *European Commission* documents.

Each annual report begins with an executive summary, followed by a chapter on trends and developments and reports on the five priority areas employment, education, legislation, housing and racist violence and crime. At the end of each report, there is one chart each for antisemitism and islamophobia, displaying, divided by government and non-governmental sources, the number of incidents, complaints and court cases. Incidents must also be disaggregated into violence, verbal abuse/threat, and violence against property.

Focal Points are instructed to consider the following issues when reporting on the five priority areas:

- new sources of data regarding the situation of immigrants, refugees, asylum seekers, minorities
- the most significant governmental and non-governmental statistical data
- the most significant reports by public authorities, academia, NGOs, social partners
- special bodies that record and process complaints
- official body monitoring the five main areas
- significant initiatives or good practices by public authorities, social partners, enterprises, NGOs

With regard to employment, they should moreover include information on trafficking, potential immigrant trade unions and initiatives for religious minorities in the workplace. For education, potential statutory provisions for minority and multicultural education are to be discussed. In the area of legislation, Focal Points are instructed to discuss any legal provisions to combat trafficking, any new legislation transposing the Union's anti-discrimination directives and the Minimum Standards for Asylum Directive, legal provisions and administrative regulations concerning religious congregations, legal provisions and administrative regulations limiting health services for asylum seekers and refugees, as well as legal provisions and administrative regulations regarding voting rights for immigrants, asylum seekers and refugees in municipal elections. Any new provisions for reception centres for asylum seekers as well as reports in this respect are to be included in the section on housing. With regard to racist violence and crime, finally, the report shall include information on any proactive responses on the part of police, criminal justice agencies to victims of racist crime.

4.1.2. RAXEN Bulletin¹⁸⁶

Focal Points must also submit a bi-monthly report of no more than 10.000 characters on national developments in the area of racism and xenophobia. This report shall include "headlines," i.e. significant issues publicly debated in a given Member State, significant cases of racism, xenophobia, antisemitism, islamophobia, discrimination of immigrants, refugees or asylum seekers, significant national reports,

¹⁸⁶ See EUMC, "Unit 2 – Research & Data Collection: Supplement H – Guidelines for the RAXEN Bulletin" [unpublished].

as well as an annex of governmental and non-governmental data on racist violence and crime, antisemitism and islamophobia.

4.1.3. Rapid Responses¹⁸⁷

Further, Rapid Responses serve to quickly provide the EUMC with information about a specific issue.

4.1.4. Database¹⁸⁸

Finally, Focal Points must regularly update the EUMC's database which contains information about national anti-discrimination legislation (criminal, civil, administrative provisions), national statutory equality bodies, national action plans to fight discrimination, and information about the political participation of non-nationals. The database provides a comparable overview of qualitative data on the 25 Member States.

4.1.5. The EUMC and a prospective EU Fundamental Rights Agency

In December of 2003, the representatives of the Member States, meeting in Brussels within the European Council, decided to extend the mandate of the EUMC, and to convert it into a Fundamental Rights Agency. The importance of "human rights data collection and analysis with a view to defining Union policy in this field,"¹⁸⁹ was stressed. The Brussels European Council of December 2004, called for further implementation of the agreement to establish an EU Human Rights Agency.¹⁹⁰ Thus, in June 2005, the Commission, subsequent to a public consultation, submitted proposals for a Council Regulation establishing a European Union Agency for Fundamental Rights, and a Council Decision empowering this Fundamental Rights Agency to act in areas of Title VI TEU.¹⁹¹ These proposals are currently subject to negotiation within the European Council; a consultation process between the Commission, Council, and European Parliament is also ongoing.

It is universally recognised that the European Union is currently faced with serious shortcomings in the systematic observation of the fundamental rights situation in the Union and its Member States, and that there is insufficient comparable and high-quality human rights data available. Stakeholders also agree that the mandate and resources of the EUMC are ill-suited to comprehensively

¹⁸⁷ See EUMC, "Unit 2 – Research & Data Collection: Supplement C – Guidelines for the Rapid Response Function" [unpublished].

¹⁸⁸ See EUMC, "Unit 2 – Research & Data Collection: Supplement F – Revised guidelines for the INFO-SHEETS (June 2005)" [unpublished].

¹⁸⁹ See *Brussels European Council - Presidency Conclusions* (12-13 December 2003), online: Council of the European Union http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/78364.pdf (date accessed: 7 February 2006), 27.

¹⁹⁰ See *Brussels European Council – Presidency Conclusions* (16-17 December 2004), online: Council of the European Union http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/83201.pdf (date accessed: 7 February 2006), para 70.

¹⁹¹ See *Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights*, and *Proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union*, COM (2005) 280 final (Brussels, 30 June 2005).

monitor the human rights situation in the European Union, and that the establishment of a Fundamental Rights Agency is indispensable. However, the scope of the prospective Agency's mandate, its missions and tasks, have been subject to a lively debate over the past years. A major issue of disagreement has been whether the Agency should be empowered to act under Article 7 TEU. This article equips EU institutions with the means to ensure that all Member States respect the common principles stipulated in Article 6 TEU, including observance of human rights and freedoms, irrespective of whether a Member State acts under Community law or not. Such empowerment would enable the Agency to systematically observe the protection in the Union, of all rights and freedoms stipulated in the Charter.

In the end, the Commission proposal suggested that the Agency should conduct 'focused observation and assessment limited to Union law.' The Agency's substantive mandate would accordingly be the collection and analysis of data on fundamental rights with reference to all rights listed in the Charter, however restricted to such thematic areas within the scope of Union law¹⁹² that would periodically be defined for the Agency's work.¹⁹³ In addition, the Agency would have the power to act in respect of third pillar matters relating to police and judicial co-operation in criminal matters.¹⁹⁴ It would not "carry out systematic and permanent monitoring of the Member States for the purposes of Article 7 TEU." The territorial scope of its work would be the Union and its Member States, as well as those candidate countries and potential candidate countries which participate in the Agency.¹⁹⁵ The Commission foresees the Agency to begin operation on 1st January 2007, with a staff of approximately 100 and a budget of €16 mio. in the first year, increasing gradually to €29 mio. in 2013.¹⁹⁶

In terms of practical work, the most important task of the Agency would be the collection, analysis, and dissemination of reliable and comparable human rights data. This includes the development of a proper methodology for data collection, including indicators, in cooperation with national statistics institutes and concerned government departments, as well as the preparation of reports and research studies. Further, the Agency would advise the Union and its Member States on human rights policies. Finally, the Agency would network with stakeholders at the Union, national and local levels, promote dialogue, and raise awareness in the field of human rights.¹⁹⁷

If the Commission's view of the mandate, mission, and tasks of a prospective EU Fundamental Rights Agency is supported by the Council and Parliament, the Agency will fail to ensure comprehensive human rights monitoring in the European Union. This is due to the fact that the proposal limits the Agency's power to collect, analyse, and disseminate information on the human rights situation in Europe to such thematic areas as will be periodically defined. The Commission proposal reflects national positions and shows that at this time, it cannot realistically be expected from Member States to submit to a mandatory EU mechanism fashioned to

¹⁹² The legal basis of the Agency will be Article 308 TEC which empowers the Union to take appropriate measures if necessary for the attainment of Community objectives.

¹⁹³ See *supra* note 191, 5.

¹⁹⁴ The legal bases are Articles 30, 31, and 34 TEU.

¹⁹⁵ See *supra* note 191, 6.

¹⁹⁶ See *supra* note 191, 8.

¹⁹⁷ See *Annex to COM (2005) 280 final: Impact Assessment Report*, SEC (2005) 849 (Brussels, 30 June 2005), 18-19.

comprehensively monitor national human rights situations. This state of affairs makes it all the more important to employ the Open Method of Coordination in the field of fundamental rights.

4.2 EU Network of Independent Experts on Fundamental Rights

In September 2002, the European Commission created the Network in response to a recommendation of the European Parliament.¹⁹⁸ The Network is headed by a coordinator and consists of one human rights expert per Member State, as well as one expert representing the European Union. Its mandate is “to ensure a high degree of [human rights] expertise in relation to each of the Member States and the EU as a whole.”¹⁹⁹ The Network’s most important activity is the drafting of an annual report which assesses the protection in each of the 25 Member States of the rights set out in the EU Charter of Fundamental Rights.

For this purpose, each expert submits a national report²⁰⁰ every year on the basis of which the Network’s annual report is drafted. Each of these national reports must be fully comparable with one another. For each of the Charter articles separately, it identifies and evaluates the developments during the period under scrutiny, including positive developments, good practises and reasons for concern. The sources to be used are international case law relating to the state under examination, findings of expert bodies (UN, Council of Europe) and whether these findings have been followed up by national authorities, developments in legislation, national case-law, and practises of national authorities. To support the comparability of national reports, reporting guidelines include a detailed commentary of each Charter article. It discusses the *ratione materiae* of the article in issue, describing its nature, content, constitutive elements, as well as international and European law sources upon which it is based.²⁰¹ The guidelines also instruct the structure of analysis. Thus, the expert should, for each of the constitutive elements of each article, first examine developments concerning the Member State in respect of international and national case law, observations of expert committees, legislative initiatives, and the practise of national authorities, and then evaluate these developments, discussing positive aspects, good practises and reasons for concern.²⁰²

¹⁹⁸ See European Parliament, *Report on the state of fundamental rights in the European Union* (2000) (2000/2231(INI)).

¹⁹⁹ See *A network of independent experts to assess the safeguarding of fundamental rights by the European Union Member States*, online: European Commission – Justice and Home Affairs http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm (date accessed: 5 November 2005).

²⁰⁰ See for example, *Report on the situation of fundamental rights in the European Union and the Member States in 2004*, online: Online documentation – EU Network of independent experts on fundamental rights <http://cridho.cpdf.ucl.ac.be/index.php?pageid=15> (date accessed: 19 January 2006).

²⁰¹ See *Report on the Situation of Fundamental Rights – Guidelines, CFR-CDF 2005* [unpublished].

²⁰² See *Explanatory Note to the Independent Experts Relating to the Preparation of the Country Reports on the Year 2005, CFR-CDF2005* [unpublished].

Moreover, the Network issues opinions on specific fundamental rights issues upon the request of the Commission, and assists the Commission and the Parliament in developing fundamental rights policy.²⁰³

4.3 European Statistics Office (Eurostat)

Eurostat's legal basis is Article 285 EC, introduced at the Amsterdam European Council, which empowers the Council of the EU to "adopt measures for the production of statistics where necessary for the performance of the activities of the Community." The Statistical Law of February 1997²⁰⁴ determines the division of responsibility between national and Union statistical authorities, and defines the basic conditions, procedures and general provisions governing official statistics at Union level.

Eurostat's mandate is to provide the EU with high-quality statistical data at European level which enable comparisons between countries and regions as well as the definition, implementation and analysis of Union policies.²⁰⁵

Eurostat receives data relating to areas of Union jurisdiction from national statistical authorities, consolidates them and ensures their comparability. Eurostat also works with Member States for the development of a common methodology in data collection, including concepts, structures and technical standards, in order that data are comparable. For example, unemployment rates will be identified using the same questions and method of calculation.²⁰⁶

To this end, the European Statistical System (ESS) has been created. It is a network consisting of Eurostat, national statistics offices, central banks, and ministries who collect data in the Member States, as well as in Iceland, Norway and Liechtenstein. The ESS also cooperates with international organisations such as the OECD, UN, IMF and the World Bank. Through the ESS, Eurostat coordinates Member States' efforts at harmonisation in the field of statistics. To this end, the ESS Statistical Programme Committee, chaired by Eurostat, brings together the heads of national statistics offices to develop joint actions and programmes, as well as common classifications, methodology and definitions. The Programme Committee also organises the implementation of common statistical surveys based on harmonised methods.²⁰⁷

²⁰³ See *supra* note 199.

²⁰⁴ See Regulation (EC) 322/97 of the Council of 17 February 1997 on Community Statistics, OJ L 052 of 22 February 1997.

²⁰⁵ See *About Eurostat*, online: Eurostat http://epp.eurostat.cec.eu.int/portal/page?_pageid=1153,47169267,1153_47182790&_dad=portal&_sc_hema=PORTAL (date accessed: 5 November 2005).

²⁰⁶ See *ibid.*

²⁰⁷ See *European Statistical System*, online: Eurostat http://epp.eurostat.cec.eu.int/portal/page?_pageid=1153,47169267,1153_47183518&_dad=portal&_sc_hema=PORTAL (date accessed: 5 November 2005).

All data collected and processed by Eurostat is available on its website.²⁰⁸ This website also provides links to and contact information of national statistics offices, research institutions collecting data, as well as national central banks.

Eurostat does not collect human rights data. However, it has developed and collected data relating to sustainable development indicators, some of which are relevant to the protection of human rights in the EU.²⁰⁹ Thus, within the category of 'economic development' employment rates are disaggregated by gender, age group, highest level of education attained and region. The section 'poverty and social exclusion' provides at-risk-of-poverty rate by gender, age group, highest level of education attained, household type, as well as information on inequality of income distribution, poverty mobility (probability to enter/exit poverty), gender pay gap, people living in jobless households by age group, at-risk-of-poverty rate after social transfers, persons with low educational attainment by age group, and adequacy of housing conditions. The theme 'public health' includes a wealth of data on healthy life years at age 65 by gender, health care expenditure as % of GDP, cancer incidence rate by gender and type, suicide death rate by gender and age group, serious accidents at work, percentage of overweight people, deaths due to infectious food-borne diseases, dioxins and PCBs in food and feed, heavy metals in fish and shellfish, pesticides residues in food, and population exposure to air pollution by ozone. Moreover, the heading 'good governance' includes the indicators voter turnout in national parliamentary elections, and voter turnout in EU parliamentary elections by gender, age group, highest level of educational attainment.

4.4 Regional human rights institutions

The coordination and pooling of resources between the European Union and human rights institutions of the OSCE and the Council of Europe will considerably enhance the efficiency and thoroughness of monitoring efforts.

The Council of Europe has created a number of institutions monitoring the protection of specific human rights and freedoms, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Advisory Committee of the Framework Convention for the Protection of National Minorities, and the European Committee of Social Rights (ECSR). The CPT's independent experts make regular visits to Council of Europe Member States' detention centres and prepare reports. Its database allows a search of reports and documents by document type; full-text; keyword; person, state; and date.²¹⁰ The 'CPT Visits' section provides a list of documents either by state or by date.²¹¹ Under

²⁰⁸ See http://epp.eurostat.cec.eu.int/portal/page?_pageid=1090,30070682,1090_33076576&_dad=portal&_schema=PORTAL (date accessed: 21 January 2006). online: Eurostat

²⁰⁹ See *Sustainable Development Indicators*, online: Eurostat http://epp.eurostat.cec.eu.int/portal/page?_pageid=1998,47433161,1998_47437052&_dad=portal&_schema=PORTAL (date accessed: 5 November 2005).

²¹⁰ See *CPT Database*, online: Council of Europe <http://www.cpt.coe.int/en/hudoc-cpt.htm> (date accessed: 31 January 2006).

²¹¹ See *CPT Visits*, online: Council of Europe <http://www.cpt.coe.int/en/visits.htm> (date accessed: 31 January 2006).

the Framework Convention for the Protection of National Minorities, States must submit periodic report, in response to which the Advisory Committee prepares comments and the Committee of Ministers adopts resolutions. The respective documents are available online.²¹² The ECSR reviews periodic State Reports on the implementation of the European Social Charter, and prepares conclusions.²¹³ It also decides collective complaints about alleged violations of the European Social Charter.²¹⁴

In addition, a Commissioner for Human Rights was established in 1999 as a non-judicial institution to “promote education in, awareness of, and respect for human rights.”²¹⁵ Present Commissioner Mr. Alvaro Gil-Robles fulfils this mandate by cooperating closely with national human rights institutions and national ombudspersons, periodically visiting the Council of Europe Member States, convening seminars, and drafting recommendations, opinions, visit reports, annual reports and research studies.²¹⁶

The OSCE has empowered the Representative on Freedom of the Media,²¹⁷ the High Commissioner on National Minorities,²¹⁸ and the Special Representative on Combating Trafficking in Human Beings²¹⁹ to monitor and promote the human rights situation in their areas of expertise. Moreover, OSCE Chairman-in-Office Representatives focus their efforts to improve the human rights situation in specific thematic areas, such as racism, xenophobia, and discrimination; anti-Semitism; or intolerance and discrimination against Muslims.²²⁰

4.5 National human rights institutions

Close cooperation with national human rights institutions is, in addition to being an inherent feature of the OMC, mandatory for effective human rights monitoring in Europe. All EU Member State have established institutions and

²¹² See *FCNM Monitoring Mechanism*, online: Council of Europe http://www.coe.int/T/e/human_rights/Minorities/2_FRAMEWORK_CONVENTION_%28MONITORING_%29/2_Monitoring_mechanism/ (date accessed: 31 January 2006).

²¹³ See *ECSR Reporting Procedure*, online: Council of Europe <http://www.coe.int/t/e/human%5Frights/esc/3%5FReporting%5Fprocedure/> (date accessed: 31 January 2006).

²¹⁴ See *List of complaints and advancement of the procedures*, online: Council of Europe http://www.coe.int/t/e/human_rights/esc/4_Collective_complaints/List_of_collective_complaints/default.asp#TopOfPage (date accessed: 31 January 2006).

²¹⁵ Council of Europe, C.M., 104th Sess., *Resolution No. 50 on the Council of Europe Commissioner for Human Rights* (1999), online: Council of Europe http://www.coe.int/T/f/commissaire_d.h/unit%E9_de_communication/Commissaire/Mandat/Resolution_%281999%2950_E.asp#TopOfPage (date accessed: 17 January 2006), Art. 1(1).

²¹⁶ For documents, see *Commissioner for Human Rights*, online: Council of Europe http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/ (date accessed: 17 January 2006).

²¹⁷ See *Representative on Freedom of the Media*, online: OSCE <http://www.osce.org/fom/> (date accessed: 17 January 2006).

²¹⁸ See *High Commissioner on National Minorities*, online: OSCE <http://www.osce.org/hcnm/> (date accessed: 17 January 2006).

²¹⁹ See *Special Representative on Combating Trafficking in Human Beings*, online: OSCE <http://www.osce.org/cthb/13000.html> (date accessed: 17 January 2006).

²²⁰ See *Chairman-in-Office Representatives*, online: OSCE <http://www.osce.org/about/13392.html> (date accessed: 17 January 2006).

mechanisms for the promotion and protection of human rights, in one form or another. The mandate and functions of these human rights commissions, ombuds-institutions, and/or research institutes,²²¹ however, vary considerably between States. The powers of the Irish Human Rights Commission, for example, which was established in 2000 pursuant to the Human Rights Commission Act,²²² are extensive. Not only does it monitor the human rights situation in Ireland and publishes reports and research studies, but may “take legal proceedings to vindicate human rights in the State or provide legal assistance to persons in this regard,”²²³ conduct enquiries, or offer its expertise to courts. The German Institute for Human Rights’ activities focus on documentation and research.²²⁴ In Austria, the Human Rights Advisory Council monitors police services’ respect of human rights, makes recommendations to the Minister of Interior, and prepares reports and studies on related issues.²²⁵ The Austrian equal treatment commission may decide allegations of discrimination based on gender, sexual orientation, religion, ethnic origin, and disability.²²⁶ The French *Commission Nationale Consultative des Droits de l’Homme* is an independent body which reports on the state of human rights protection in France, makes recommendations to government agencies, and works with stakeholders for the promotion of human rights.²²⁷ The United Kingdom operates the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission to investigate and report on discrimination in these fields. While the British government passed a Human Rights Act²²⁸ in 1998 which transposes into domestic law the European Convention of Human Rights, the Secretary of State’s announcement to establish a Commission for Equality and Human Rights²²⁹ has to

²²¹ For an overview and contact information, see online: National Human Rights Institutions Forum <http://www.nhri.net/NationalDataList.asp?MODE=1&ID=1> (date accessed: 17 January 2006); see also *Office of the Commissioner for Human Rights, 3rd Round Table of National Human Rights Institutions*, online: Council of Europe http://www.coe.int/t/e/commissioner_h.r/communication_unit/documents/pdf.CommDH-NHRI%282004%292_E.pdf (date accessed: 18 January 2006). The German Institute for Human Rights has also prepared a study on the subject of national human rights institutions in Europe, describing their legal basis and mandate in great detail. See V. Aichele, “Nationale Menschenrechtsinstitutionen in Europa” (Berlin: German Institute for Human Rights, April 2004), online: GIHR http://files.institut-fuer-menschenrechte.de/488/d24_v1_file_40a3494192f4b_Aichele_2004.pdf (date accessed: 31 January 2006).

²²² See *Human Rights Commission Act*, online: Irish Human Rights Commission http://www.ihrc.ie/legal_documents/l1_ihrcacts.asp (date accessed: 17 January 2006).

²²³ *Introduction*, online: Irish Human Rights Commission http://www.ihrc.ie/powers_&_functions/default.asp (date accessed: 17 January 2006).

²²⁴ See online: German Institute for Human Rights http://www.institut-fuer-menschenrechte.de/webcom/show_article.php/c-419/i.html (date accessed: 17 January 2006).

²²⁵ See online: Menschenrechtsbeirat <http://www.menschenrechtsbeirat.at/index2.html> (date accessed: 17 January 2006).

²²⁶ See online: Bundes-Gleichbehandlungskommission <http://www.bmgf.gv.at/cms/site/detail.htm?thema=CH0270&doc=CMS1083763196544> (date accessed: 17 January 2006).

²²⁷ See online: Commission Nationale Consultative des Droits de l’Homme <http://www.commission-droits-homme.fr/fr.htm> (date accessed: 17 January 2006).

²²⁸ See *Human Rights Act 1998*, online: Office of Public Sector Information <http://www.opsi.gov.uk/acts/acts1998/19980042.htm> (date accessed: 17 January 2006).

²²⁹ See *Secretary of State’s announcement on the Government’s plans to set up a Commission for Equality and Human Rights*, online: Department for Constitutional Affairs <http://www.humanrights.gov.uk/sosannouc.htm> (date accessed: 17 January 2006).

date not been put into practise. The Danish Institute of Human Rights makes serious efforts at comprehensively and systematically monitoring the human rights situation in Denmark. Among others, it publishes an annual report on the status of human rights in Denmark. Therein, it discusses events and developments in relation to specific rights and freedoms such as the right to liberty and security, the right to life, the right to a fair trial, freedom of religion, or freedom of expression, but also analyses rights of certain groups, such as women, children, refugees, or persons with disabilities. Moreover, the report lists domestic judgments and legislation relating to the protection of human rights.²³⁰ In addition, the Danish Institute of Human Rights makes available on its website judgments of international courts and views of international monitoring bodies, such as the UN Treaty Bodies, the ECHR, or the ILO Committee on Freedom of Association, which involve Denmark.²³¹

4.6 Analysis: Developing a European Union human rights monitoring system

The institutions, tools, and mechanisms used in the European Union to collect data and monitor the protection of those human rights over which it has jurisdiction, if properly organised, developed, extended and adjusted, may serve as a firmly established, tried and tested basis of a future European Union human rights monitoring system.

The EUMC offers an elaborate stock of thought-through monitoring instruments. Collaborating with independent national institutions who are familiar with the peculiarities and specific concerns of their Member States ascertains that data are accurate and pays due attention to a country's political and historical background. Detailed reporting guidelines not only offer valuable guidance in the preparation of well-structured and substantive information, but ensure a certain degree of uniformity and comparability. The use of both qualitative and quantitative data and analysis methods in research studies and reports, as well as the maintenance of databases, leaves a comprehensive impression of discrimination, antisemitism, islamophobia, and xenophobia in the European Union. The major challenge to the EUMC's work is the lack of uniform and thus comparable human rights data for each of the 25 Member States. The Centre has so far not invested efforts into defining a universally applicable set of indicators and corresponding data to be used by the National Focal Points. As we will see below, of course, the use of such indicators depends on a consensus among Member States on which data are collected and how they are collected, in conjunction with Member States' facilitation of data collection. For example, Austria currently fails to maintain proper and publicly accessible statistics of the administration of justice, while in Germany, each of the provincial Justice Ministries' offers detailed and highly aggregated statistics in this respect.²³² Particularly relevant to the issue of equality is also the fact that privacy legislation in many member states prohibits the collection of sensitive data, such as data on

²³⁰ See for example *Human Rights in Denmark – Status 2003*, online: Danish Institute of Human Rights http://www.humanrights.dk/upload/application/24ee200a/status2003_eng.pdf (date accessed: 31 January 2006).

²³¹ See *Case law of international courts and views of monitoring committees*, online: Danish Institute of Human Rights http://www.humanrights.dk/frontpage/RogM/Case_law_and_views/ (date accessed: 31 January 2006).

²³² See for example *Statistik*, online: Land Brandenburg Ministerium für Justiz <http://www.mdj.brandenburg.de/cms/detail.php/lbm1.c.277834.de> (date accessed. 19 January 2006).

religion or ethnicity, the lack of which prevents conclusions about patterns of discrimination.

The EU Network of Fundamental Rights Experts has begun to look into state obligations corresponding to each of the rights and freedoms guaranteed by the EU Charter of Fundamental Rights. Both a commentary prepared by the Network and the reporting guidelines given to national experts for the preparation of their annual reports contain a discussion of the sources, scope and meaning of these rights and freedoms, including a definition of state obligations. This research may present the foundation for the development of a system of human rights indicators that on one hand respond to the Charter guarantees, and on the other hand bear in mind the key human rights principles of non-discrimination, effective remedies, empowerment and participation. Similarly to the EUMC, the lack of a comprehensive system of indicators presents a major weakness of the Network's monitoring efforts, the same as the absence of uniform and accurate human rights data sets for the entire Union.

A future EU Human Rights Monitoring System must strongly involve Eurostat and the European Human Rights Agency to be created in the near future. Eurostat may offer not only its effective data collection infrastructure, but also the networks and Member State cooperation procedures it operates. The ESS could serve as an effective forum to discuss and develop a quantitative indicator system and data collection methodology to be applied throughout the Union in respect of the rights and freedoms guaranteed by the Charter. When identifying indicators, constraints presented by national legislation and the diversity of national situations must be taken into account. Mapping all relevant human rights organisations in Europe and creating a database of their monitoring activities, similar to the one maintained by the EUMC in relation to equal treatment, will in this context be useful for the determination of best practises and human rights information already available. Using the ESS will also satisfy the OMC's requirement of involving a broad range of stakeholders, including EU officials, national statistics institutes and civil society representatives, among others, in devising an indicator system and guaranteeing its appropriateness. Close collaboration and exchange of expertise between Eurostat and the Human Rights Agency is absolutely necessary to reach valid conclusions on the human rights situation in the Union. While Eurostat makes available high-quality quantitative data, the Human Rights Agency together with National Focal Points will use its expertise to generate qualitative data, report, analyse, draw conclusions, and develop human rights policies.

As emphasised above, the foregoing recommendations are conditional on Member States' commitment to participate in an open process of coordinating their human rights policies, including the monitoring of human rights protection. Fundamental rights is a sensitive policy area, and Member States may be reluctant to facilitate the publication of their failures by empowering the Union to monitor their performance. Thus, preceding the implementation of a monitoring system must be a political process of discussion and negotiation. An indispensable prerequisite for effective monitoring will be the separation of the monitors from those monitored. Member States must allow human rights measurement to be conducted independently, so as to avoid the imperfections resulting from States assessing their own performance.

5 Monitoring in practise: how to measure the protection of personal liberty

5.1 *What are State obligations?*

In order to determine an appropriate strategy for monitoring the right to liberty of person, including adequate indicators and methods of data collection, we first need to look into the content and scope of the right.

The EU Charter of Fundamental Rights protects the right to liberty in Article 6, where it plainly states that “everyone has the right to liberty and security of person.” Article 3 of the Universal Declaration of Human Rights, Article 9 of the International Covenant of Civil and Political Rights, and Article 5 of the European Convention of Human Rights (ECHR) also guarantee liberty of person.

Article 52(3) of the Charter stipulates that “insofar as [the] Charter contains rights which correspond to rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention.” Since the wording of Charter Article 6 is identical with the wording of the first sentence of Article 5 ECHR, in defining the constitutive elements of Charter Article 6, we must first and foremost look into the interpretation given to Article 5 ECHR. The Council of Europe’s Directorate General of Human Rights, for example, has published a handbook on Article 5,²³³ intended as a very practical guide to how this particular article of the European Convention on Human Rights has been applied and interpreted by the European Court of Human Rights in Strasbourg. Moreover, Clare Ovey & Robin White’s commentary on the Convention provides valuable insight into the meaning of Article 5.²³⁴ Further, the European Court of Human Rights Portal HUDOC permits for a search of case law by article, and will therefore produce all ECHR judgments relating to liberty of person. Also of use may be the European Parliament’s commentary on Charter Article 6, available online. It not only provides European Union policy, national, European, and international law sources including case law, relating to liberty of person, but also informs of international and non-governmental organisations working in the field, and offers an elaborate set of weblinks.²³⁵ For further enlightenment as to the content of the right to liberty of person protected by international law, both doctrine²³⁶ and the UN Human Rights Committee’s General Comment No.8²³⁷ present a good starting point.

²³³ M. Macovei, “Handbook No. 5: The right to liberty and security of the person. A guide to the implementation of Article 5 of the European Convention on Human Rights” (Strasbourg: Council of Europe, 2002), online: http://www.coe.int/T/E/Human_rights/hrhb5.pdf (date accessed: 18 January 2006).

²³⁴ See C. Ovey, R. White, “European Convention on Human Rights” (Oxford: Oxford University Press, 2002).

²³⁵ See *Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs, Article 6: Right to liberty and security*, online: European Parliament http://www.europarl.eu.int/compar/libe/elsj/charter/art06/default_en.htm (date accessed: 18 January 2006).

²³⁶ See for example, M. Nowak, “UN Covenant on Civil and Political Rights – CCPR Commentary,” 2nd ed., (Kehl/Strasbourg/Arlington: NP Engel Publishers, 2005).

²³⁷ Human Rights Committee, *CCPR General Comment No. 8: Right to liberty and security of person (Art. 9)*, UN ESCOR, 16th Sess. (30 June 1982), online: OHCHR

Liberty of person is a key element in the protection of an individual's human rights. Deprivation of liberty is likely to have a direct and adverse effect on the enjoyment of many other human rights, such as the right to family and private life or the right to freedom of movement. Detained persons are also put into an extremely vulnerable position, subjected to the risk of torture or other inhuman or degrading treatment or punishment. As a consequence, Article 5 establishes a presumption that everyone should enjoy liberty, and that any deprivation of liberty must be exceptional, objectively justified and of no longer duration than absolutely necessary.²³⁸ Article 5 begins with an unqualified assertion of the right: "Everyone has the right to liberty and security of person," and continues by spelling out an exhaustive list of circumstances where persons may be deprived of liberty. Two important requirements result from this wording. Firstly, there is a clear burden of proof on those who have taken away a person's liberty to justify such deprivation. Secondly, it will be essential for the competent legal authority reviewing the admissibility of deprivation of liberty, to start from the proposition that the person detained should be free.²³⁹

The focus of Article 5 is on deprivation of liberty, rather than on security of person.²⁴⁰ The guarantees afforded concern arrest and detention; generally, they do not deal with the conditions of detention. Only in relation to the detention of minors or mentally ill persons Article 5 requires certain conditions of detention. Thus, the detention of minors and mentally ill persons must take place in institutions appropriately equipped to meet the special needs of these groups.²⁴¹

Deprivation of liberty must be lawful

Article 5(1) stipulates that any deprivation of liberty shall be "in accordance with a procedure prescribed by law." The European Court of Human Rights ('the Court') understands this as follows: "Any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness."²⁴² Thus, authorities shall not use the power to make arrests conferred on them by law arbitrarily, and must not deprive anyone of his or her liberty unless absolutely necessary.²⁴³ Further, the Court requires legislation relating to Article 5 to be accessible (published and not secret), foreseeable (sufficiently precise to allow a person to reasonably foresee the consequences of a given action), and certain (clearly interpreted, which may be achieved by associated rules or case law).²⁴⁴

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f4253f9572cd4700c12563ed00483bec?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f4253f9572cd4700c12563ed00483bec?Opendocument)
(date accessed: 18 January 2006).

²³⁸ See *supra* note 233, 6.

²³⁹ See *supra* note 233, 8.

²⁴⁰ See *supra* note 234, 103; see also Eur. Ct. H.R., *Bozano v. France*, judgment of 18 December 1986, Series A No. 111.

²⁴¹ See *supra* note 234, 127.

²⁴² Eur. Ct. H.R., *Kurt v. Turkey* (App. 24276/94), judgment of 25 May 1998, para. 122.

²⁴³ Eur. Ct. H.R., *Withold Litwa v. Poland* (App. 26629/95), judgment of 4 April 2000, paras. 78-80.

²⁴⁴ See *supra* note 233, 14-16; see also Eur. Ct. H.R., *Baranowski v. Poland* (App. 28358/95), judgment of 28 March 2000, para.52; Eur. Ct. H.R., *Jecius v. Lithuania* (App. 34578/97), judgment of 31 July 2000, para. 56.

What acts qualify as ‘arrest and detention’?

The terms ‘arrest and detention’ are used interchangeably by the Court. In determining whether or not an act amounts to arrest or detention within the meaning of Article 5, the Court will consider the nature of the confinement, and carefully look at factors such as type, duration, effects, and manner of implementation of the measures in question.²⁴⁵ Of particular importance is whether the elements of constraint and isolation are present. Thus, the Court decided that Article 5 applied in the case *Guzzardi v. Italy*, where a person suspected of being involved in organised crime was required to live on a remote island with his wife and child.²⁴⁶ It also held in *Ashingdane v. the United Kingdom* that a man compulsorily kept in a mental hospital was covered by Article 5, even though he was free to leave the institution during the day and at weekends without supervision.²⁴⁷ In contrast, the confinement to a particular village or district without isolation would rather be qualified as a restriction of freedom of movement than a deprivation of liberty.

Under which circumstances may someone be deprived of his or her liberty?

A. As part of the criminal process

A person may be deprived of his or her liberty in three situations related to the criminal process:²⁴⁸ if he or she is suspected to have committed an offence or to be about to commit an offence; to punish him or her for having committed an offence;²⁴⁹ and to extradite him or her pursuant to a request by a foreign country.

In the first situation, falling within Article 5(1)(c), the objective of arrest and detention must in any event be to bring the suspect before the ‘competent legal authority.’²⁵⁰ Thus, deprivation of liberty without a view to try the detainee is unlawful. Further, there must be a reasonable suspicion that the offence has been committed by that person or is about to be committed. Finally, the offence in issue must actually exist under national legislation, and must be specific and concrete.²⁵¹

Once the person has been detained, he or she is under Article 5(3) entitled to prompt presentation before ‘a judge or other officer authorized by law to exercise judicial power’ in order to have the lawfulness of detention reviewed. The first review of detention must check whether or not detention was justified in the first place.

²⁴⁵ See *supra* note 234, 104.

²⁴⁶ See Eur. Ct. H.R., *Guzzardi v. Italy*, judgment of 6 November 1980, Series A No. 39.

²⁴⁷ See Eur. Ct. H.R., *Ashingdane v. United Kingdom*, judgment of 28 May 1985, Series A No. 93.

²⁴⁸ See Article 5(1)(a)(c)(f) European Convention of Human Rights.

²⁴⁹ „A person convicted at first instance, whether or not he has been detained up to this moment, is in the position provided for by Article 5(1)(a), which authorises deprivation of liberty ‚after conviction.‘“ Eur. Ct. H.R., *Wemhoff v. Germany*, judgment of 27 June 1968, Series A No. 7, paras. 6-9. Article 5(1)(a) applies to convictions in both criminal and disciplinary proceedings. See M. Nowak, “Article 6: Right to liberty and security” in *Commentary of the EU Charter of Fundamental Rights* (Brussels: European Commission, 2006) [forthcoming], 4.

²⁵⁰ See Eur. Ct. H.R., *Lawless v. Ireland*, judgment of 1 July 1961, Series A No. 3, paras. 13-14.

²⁵¹ See *supra* note 234, 110.

Thereafter, periodical reviews must decide if detention continues to be appropriate. The reviewing authority must consider whether the period of detention is excessive in light of the complexity of the case, and the activities of authorities to prepare the case.²⁵²

The meaning of 'prompt presentation' must be determined with due regard to the individual circumstances of a case.²⁵³ A period of no longer 24-48 hours between arrest and a first review of detention, resp. not more than a month or two between consecutive periodical reviews seems reasonable in most cases.²⁵⁴ However, the Court held that the fact of a detainee being a terrorism suspect may have an impact on the interpretation of the term 'prompt'.²⁵⁵ Moreover, States can invoke Article 15 of the Convention to justify a prolonged period between arrest and presentation before a judicial authority.²⁵⁶

In order for an 'officer authorized by law to exercise judicial power' to satisfy the requirements of Article 5(3), it must first and foremost be impartial and independent. The Court decided that a prosecutor cannot decide the lawfulness of detention, since there is a possibility that he or she will have a role in subsequent proceedings and therefore lacks impartiality.²⁵⁷

Pursuant to the Court's interpretation of Article 5(1)(c), the existence of a reasonable suspicion that the detainee has committed an offence or is about to commit an offence is a condition *sine qua non* for detention. However, the longer detention lasts, the heavier the burden of proof on the authorities gets to show that prolonged detention is really necessary.²⁵⁸ Article 5(3) establishes an explicit right to release pending trial, conditioned by a potential requirement of guarantees to appear for trial, such as bail. The Court held that the amount of bail must be determined with a view to its purpose which is to assure that the accused appears at trial.²⁵⁹ The right to release can be overcome only if there is (i) a risk of flight, (ii) a risk of interference with the administration of justice such as by destruction of evidence, (iii) or the risk of commission of a further offence. Thus, the Court explained that "continued detention may be justified in a given case only if there are clear indicators of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty."²⁶⁰ Such public interest may, under certain circumstances, justify the detention of terrorism suspects for longer periods.²⁶¹

B. For non-compliance with a court order or an obligation prescribed by law

Under Article 5(1)(b), persons may be detained for non-compliance with a court order or an obligation prescribed by law. The obligation in issue must be a specific and concrete obligation, such as a duty to carry out military or civilian

²⁵² See *supra* note 234, 117.

²⁵³ See *supra* note 233, 53.

²⁵⁴ See Nowak, *supra* note 249, 8-9.

²⁵⁵ See Eur. Ct. H.R., *Brogan and others v. United Kingdom*, judgment of 29 November 1988, Series A No. 145-B, para. 61.

²⁵⁶ See *supra* note 234, 111-112.

²⁵⁷ See Eur. Ct. H.R., *Huber v. Switzerland*, judgment of 23 October 1990, Series A No. 188, paras. 42-43; Eur. Ct. H.R., *Brincat v. Italy*, judgment of 26 November 1992, Series A No. 249-A, paras. 20-21. See also *supra* note 234, 112.

²⁵⁸ See Eur. Ct. H.R., *Scott v. Spain* (App. 21335/93), judgment of 18 December 1996, para. 74.

²⁵⁹ See Eur. Ct. H.R., *Neumeister v. Austria*, judgment of 27 June 1968, Series A No. 8, paras. 13-14.

²⁶⁰ Eur. Ct. H.R., *Punzelt v. Czech Republic* (App. 31315/96), judgment of 25 April 2000, para. 73.

²⁶¹ See Nowak, *supra* note 249, 5.

service, a duty to carry an identity card, or a duty to make a customs or tax return,²⁶² not a mere duty to abide by the law.²⁶³

C. Detention of minors

Article 5(1)(d) permits the detention of minors “by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority.” In any event, detention of minors must be in the child’s best interest, should be applied only as a measure of last resort, and for the shortest possible period.²⁶⁴ ‘Minors’ within the meaning of Article 5(1)(d) are persons under 18 years of age.²⁶⁵ In *Bouamar v. Belgium*, the Court held that it is admissible under this paragraph to detain a minor in a prison for a short period in order to facilitate his or her speedy transfer to a reformatory institution. However, for prolonged periods, minors may only be detained in appropriate facilities where the necessary staff and equipment for achieving the educational objectives pursued, are available.²⁶⁶ Detention for the purpose of bringing a minor before competent legal authorities does not cover the detention of crime suspects. This sentence refers to presentation before legal authorities empowered to decide whether or not a minor should be removed from harmful surroundings.²⁶⁷

D. Detention for health or social control

Further, Article 5(1)(e) stipulates the possibility of detaining “persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics and drug addicts, or vagrants.” The term ‘alcoholic’ includes anyone under the influence of alcohol, and not only persons addicted to alcohol.²⁶⁸ In order for such detention to be lawful, a number of requirements must be met. Firstly, the condition must be sufficiently extreme to warrant detention, because the person affected presents a danger to him- or herself, or to others. Secondly, the detention should only last as long as the condition persists and must be periodically reviewed. Thirdly, detention must take place in an appropriate institution, such as in a hospital.²⁶⁹ In the case of mental illness, in addition, a medical certificate must establish the person’s condition in order for him or her to be detained, except for emergencies where medical examination is impossible.²⁷⁰

E. Detention of persons awaiting deportation

If an alien is entering the territory of a State party to the ECHR without a valid visa or other authorisation, or if expulsion proceedings are pending, he or she may be detained in accordance with Article 5(1)(f). There is no need for a State to establish that the detention of persons to be deported is reasonably necessary. It suffices that the person detained is an alien and the object of deportation, and that

²⁶² See Eur. Ct. H.R., *Engel and others v. Netherlands*, judgment of 8 June 1976, Series A No. 22, para. 69.

²⁶³ See Eur. Com. H.R., *Lawless v. Ireland*, Report of the Commission, 19 December 1959.

²⁶⁴ See Nowak, *supra* note 249, 6.

²⁶⁵ See Nowak, *supra* note 249, 6.

²⁶⁶ See *Bouamar v. Belgium*, judgment of 29 February 1988, Series A No. 129, paras. 50-53.

²⁶⁷ See *supra* note 233, 43.

²⁶⁸ See *Withold Litwa v. Poland* (App. 26629/95), judgment of 4 April 2000, para. 61.

²⁶⁹ See Eur. Ct. H.R., *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A No. 33, para. 39.

²⁷⁰ See Nowak, *supra* note 249, 6.

detention is lawful.²⁷¹ Accordingly, in *Chahal v. Belgium*, the Court found that Mr. Chahal's detention of more than six years did not violate Article 5(1)(f).²⁷² However, if the authorities unnecessarily prolong the detention by not pursuing the expulsion proceedings with due diligence, the Court will decide that the detainee concerned is not truly the object of deportation for some part of his detention, and therefore find a violation of Article 5(1)(f).²⁷³ Moreover, detained aliens must be afforded all of the procedural guarantees under Article 5 ECHR. In *Amuur v. France*, the Court found a violation because asylum seekers had been detained in the international departures area of a French airport for almost three weeks without any possibility to challenge their detention.²⁷⁴

Duty to give reasons for arrest and detention promptly

Article 5(2) imposes a duty on authorities to inform the detainee promptly, and in a language which he or she understands, of the reasons for detention, and if the detention in issue takes place within the criminal process, of any charges against him or her.

This duty arises whenever a person is deprived of his or her liberty. Whether or not the explanation given was sufficiently comprehensible will be judged by the subjective requirements of the detainee: it must be in non-technical words, matched to his or her capacities, and provided in a language which the detainee understands.²⁷⁵ The content of the information given must include the essential factual and legal grounds for the deprivation of liberty.²⁷⁶ The meaning of the term 'promptly' in Article 5(2) again depends on the circumstances of the case. However, unless practical difficulties arise, for example with locating a suitable interpreter, it is unlikely that a period of more than a day between arrest and information of the reasons for detention, is acceptable.²⁷⁷

Right to challenge the legality of detention (*habeas corpus* proceedings)

Article 5(4) offers a remedy to any person deprived of his or her liberty, and guarantees the right to "take proceedings by which the lawfulness of his detention shall be decided." This means a continuing possibility to apply for a review of the legality of detention so long as one is in detention, within reasonable limits, of course. This guarantee is particularly relevant for minors detained for educational supervision, and mentally ill detainees.²⁷⁸ The requirements under the fourth

²⁷¹ See *supra* note 234, 129.

²⁷² See Eur. Ct. H.R., *Chahal v. United Kingdom* (App. 22414/93), judgment of 15 November 1996.

²⁷³ See Eur. Ct. H.R., *Kolompar v. Belgium*, judgment of 24 September 1992, Series A No. 235-C, paras. 40-43. See also Eur. Comm. H.R., *Lynas v. Switzerland* (App. No. 7317/75), decision of 6 October 1976. The Commission made clear that if "the proceedings are not conducted with requisite diligence or if the detention results from some misuse of authority it ceases to be justifiable under 5(1)(f). Within these limits the Commission might therefore have cause to consider the length of time spent in detention pending extradition."

²⁷⁴ See Eur. Ct. H.R., *Amuur v. France*, judgment of 25 June 1996, Reports 1996-III.

²⁷⁵ See *supra* note 233, 48.

²⁷⁶ See Eur. Ct. H.R., *Fox, Campbell and Hartley v. United Kingdom*, judgment of 30 August 1990, Series A No. 182, para. 40.

²⁷⁷ See *supra* note 233, 48.

²⁷⁸ See Nowak, *supra* note 249, 6.

paragraph of Article 5 are more exacting than those under Article 5(3).²⁷⁹ Thus, reviews under Article 5(4) must be undertaken by a court, the detainee must be entitled to legal representation and his or her presence at an oral hearing. Further, the proceedings must be adversarial, and must take place speedily, i.e. within some weeks of application.²⁸⁰ Naturally, the proceedings must meet fair trial requirements, most importantly judicial independence and impartiality.

Enforceable right to compensation

Finally, Article 5(5) grants detainees a right to sue for compensation if their detention was unlawful. Thus the national legislator is required to introduce the remedy and an accompanying procedure. Compensation must be granted only if detention was unlawful, in the sense that authorities violated Article 5 or respective domestic legal provisions. If authorities' decision to deprive someone of his or her liberty was reasonable, but the suspect was later found to be innocent, compensation need not be granted.²⁸¹

5.2 Proposed indicators for the protection of personal liberty – theoretical considerations

Based on the above discussion of the right to liberty of person as stipulated by the EU Charter of Fundamental Rights, we formulated State obligations in relation to the right. For each State obligation, we then looked for suitable structural, process, and outcome indicators that would provide information about whether or not the State abided by the obligation in issue.

Originally, our set of indicators was meant to consist of personal liberty indicators already tested and used by other organisations, complemented by our own indicators. However, we were not able to locate many indicators already in use that we deemed useful for our purposes and objectives. The questions used by Freedom House to produce their Freedom in the World index do not concern any aspect of personal liberty specifically.²⁸² Likewise, we found the Governance indicators in the category 'Voice and Accountability' which concern political freedoms and civil rights, developed by the World Bank Institute, too vague and therefore inappropriate.²⁸³ The test used to rank countries on the Political Terror Scale is also too general - or intransparent - for our purposes, asking merely about whether people are imprisoned

²⁷⁹ For a discussion of these requirements, see Eur. Ct. H.R., *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A No. 12.

²⁸⁰ See Eur. Ct. H.R., *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A No. 107, para. 51; Eur. Ct. H.R., *Kampanis v. Greece*, judgment of 12 July 1995, Series A No. 318-B, para. 47; Eur. Ct. H.R., *Bezicheri v. Italy*, judgment of 25 October 1989, Series A No. 164, paras. 23-26. See also *supra* note 234, 135

²⁸¹ See Nowak, *supra* note 249, 10.

²⁸² See *Freedom in the World survey – Methodology*, online: Freedom House <http://www.freedomhouse.org/template.cfm?page=35&year=2005> (date accessed 13 January 2006).

²⁸³ See D. Kaufmann, A. Kraay, P. Zoido-Lobaton, "Governance Matters" (1999), online: World Bank Institute <http://www.worldbank.org/wbi/governance/pdf/govmatrs.pdf> (date accessed: 19 January 2006), 54-55.

for their views, whether they are tortured, or whether political murders happen.²⁸⁴ Charles Humana's 'World Human Rights Guide' judges freedom from 40 criteria capturing key civil and political rights. One of these criteria is "freedom from unlawful detention." However, Humana does not propose any more specific indicators for the degree to which personal liberty is protected.²⁸⁵ Only for structural indicators, we found some guidance in the ICCPR Legal Implementation Index handbook, published by the American Bar Association. However, the handbook does not establish a set of indicators uniformly applicable across countries, but provides guidelines, for the production of a qualitative analysis, as to which aspects of national legislation a monitor should scrutinise. The Index is not fashioned so as to enable comparison between countries. It rather aims at facilitating an in-depth study of the legal protection of personal liberty in a particular country.

Since there were no suitable and tested personal liberty indicators available, we developed our own indicators. To do so, we first thought about a conceptual framework for the design of indicators that, taken together, provide a comprehensive picture of the protection of the right to personal liberty in a given EU member state.

Our first question concerned the goal of measuring the protection of the right to personal liberty. The European Council of December 2003 declared that human rights data collection and analysis in the European Union shall happen "with a view to defining Union policy in this field." In order to identify needs for policy change in a given member state and the Union, we decided that counting only outright violations of the right to personal liberty will not suffice and that we must also look at the way in which people, and different categories of people, are deprived of personal liberty in Europe. For the right of personal liberty especially, it is often difficult to say what constitutes a violation, if it is not an obvious violation such as forced disappearance or arbitrary detention. At which point does a period of detention become so long that it violates someone's right to personal liberty? For which categories of criminal offences is it illegitimate to impose prison sentences? These are often very complex, and also political, questions, for which international standards are lacking. However, looking at the overall performance of a country, even if violations may not be clearly discerned, and comparing such performance with that of other member states, may help in drawing conclusions as to a government's effort – or shortcoming – in minimising deprivations of liberty, and in avoiding discriminatory deprivations of liberty.²⁸⁶ For example, very long average periods of pre-trial detention may point to a government's failure to conduct criminal proceedings speedily so that criminal suspects are tried as soon as possible. A high number of pre-trial detainees as

²⁸⁴ See M. Gibney, M. Dalton, "The Political Terror Scale" (1996) 4 Policy Studies and Developing Nations 73-84, online: University of North Carolina Asheville <http://www.unca.edu/politicalscience/faculty-staff/gibney.html> (date accessed: 16 January 2006).

²⁸⁵ See C. Humana, "World Human Rights Guide" (New York: Oxford University Press, 1992). See also *Human Development Report 1991 – Chapter 1: Measuring human development and freedom*, online: UNDP http://hdr.undp.org/reports/global/1991/en/pdf/hdr_1991_ch1.pdf (date accessed: 20 February 2006), 19-21.

²⁸⁶ We could also establish a state obligation which holds states to keep deprivations of liberty to a minimum. The European Court of Human Rights incessantly argues that an individual may only be deprived of his or her liberty if there is no less intrusive measure available to secure the objective in issue. Accordingly, countries would have to make every effort to minimise deprivations of liberty, by introducing legislative instruments, institutions, and programs, to promote, for example, non-custodial measures.

compared to a low number of convictions, may show that a government does not value personal liberty highly, and detains individuals light-heartedly. None of these data present violations of the right to personal liberty. Still, they indicate the quality of the right's protection in a given state.

Such an approach of analysing violations and deprivations will also serve the very purpose of the OMC, that is to encourage member states to improve their performance in a given policy field to an ever higher level, through peer pressure, mutual learning, and exchange of best practises. The goal of our set of indicators is not primarily to rank member states, but to document good practises. If one member state performs very well in a given category, the other member states might look at this state's policies and programs a little closer, and seek to incorporate the lessons learned into their own models. Of course, this approach requires the development of indicators that are comparable across countries and time. This brings along many challenges, as indicators fashioned so as to be universally applicable across the EU need to take account of and respond to, among others, local criminal law that may define and categorise offences quite differently; local privacy laws that may prohibit the collection of data on ethnicity, education, age, gender, nationality required to measure patterns of discrimination; the distribution of legislative and executive power between the federal and provincial levels (if applicable); the existence of very different human rights protection systems, institutions, and remedies; various levels of awareness and sensitivity regarding the protection of personal liberty.

The fact that we chose comparability as one of our priorities in the development of indicators, made particularly clear that indicators can always only give indications about the human rights situation in a country. Comparability requires succinct, straightforward data, such as 'yes/no' answers or numbers. Narrative information, while offering detail and allowing for conclusions as to complex interrelationships, cannot be compared, unless systematically coded and transformed into 'yes/no' answers or numbers. Therefore, we wish to emphasise that the proposed set of indicators is only part of the story, and must be analysed in the context of the particular situation of a given member state. Its results provide a quick overview of the protection of liberty of person in a State. This is really important, since often, one wants to get an overall idea without having to read through a 300-page report. At the same time, when looking at one indicator in the context of a number of other indicators, even quantitative data may give a quite accurate, in-depth – although not complete – picture of the situation. For example, looking at (i) the the number of aliens detained pending deportation, in the total number of aliens awaiting deportation; (ii) the number of aliens actually deported within 4 months of arrest, in the total number of aliens detained pending deportation; (ii) information on the number and nature of remedies available to aliens detained pending deportation; (iv) the number of complaints filed; (v) the number of complaints decided in favour of the plaintiff, in combination, will give a first impression of whether or not aliens' right to personal liberty is properly protected in a given member state.

It is also important to note that the purpose of protecting personal liberty is not to eliminate detention as such. States may legitimately deprive persons of their liberty in order to achieve certain ends, such as improving overall security by seeking out, trying, and sentencing criminals; securing the deportation of an alien residing illegally in a state; or ascertaining a suspect's appearance for trial. The right to personal liberty merely demands states to minimise the use of incarceration as a means to

secure the above-mentioned objectives, and to employ less intrusive means wherever possible, such as non-custodial measures. Thus, when developing indicators examining if a state abides by its obligations in respect of pre-trial detention, detention pending deportation, or incarceration as a result of a lawful conviction, for example, we must focus our attention on the question whether or not a state has done the utmost to keep deprivation of liberty to a minimum. In our examination, we must always bear in mind the ultimate purpose of a particular category of detention.

To exemplify our argument, let us look at an indicator relating to incarceration as a consequence of lawful conviction, which is the number of detainees per 1000 population, compared to the total number of criminal convictions. It is crucial to relate the number of persons deprived of their liberty to the crime rate, since a low number of detainees in the face of an exploding crime rate would point to instability and insecurity, rather than high standards of human rights protection. In fact, it would reveal a government's failure to locate and prosecute suspected criminals, potentially subjecting the general population to the danger of assault and murder, and thereby compromising their fundamental rights such as the right to life.

The corresponding chart of State obligations and indicators figures under heading 6 below 'Charter Article 6: Liberty of person indicators.' Since the proposed, and quite elaborate, set of indicators is meant to present a basis for discussion only, and is by no means foreseen to become the final list of indicators for this right, we did not pay too much attention, for the time being, to data availability and the feasibility of data collection. As will be discussed below, a considerable part of the data necessary for meaningfully monitoring personal liberty is at present unavailable, or not uniformly available across EU Member States. The issue of which data will be collected in the future, and which methodology is chosen for collecting such data, must form the subject of a separate debate between stakeholders, including governments, national statistics offices, civil society representatives, and human rights experts. The question arises in this context of what our priorities are in developing indicators. Should we insist on indicators which we believe are indispensable for effectively monitoring the right, even if they require the introduction of possibly expensive and complex data collection infrastructure, or will we satisfy ourselves with indicators that may offer only imperfect information but, then again, can rely on data pools already existing? The most probable answer to this question is that there will be some sort of compromise between data availability and necessity of information.

5.3 Proposed indicators for the protection of personal indicators – structure

As for the structure of the personal liberty indicator set, there are three categories of issues we wish to examine. These categories more or less correspond with the distinction between structural, process, and outcome indicators. Firstly, we will, with the help of structural indicators, find out if and what kind of legal provisions exist to protect the right to personal liberty. Secondly, we will use process and outcome indicators to look at the way in which the law is implemented. Thirdly, we will analyse if and how being a member of a certain group affects the protection of the right of personal liberty, in other words, if there are any patterns of discrimination. To do so, we will try to disaggregate data collected for indicators under categories one and two pursuant to specific grounds of discrimination.

When developing indicators, it is imperative to distinguish between the different grounds upon which an individual is deprived of his or her liberty, since the purpose of, and scope of guarantees attached to different categories of detention vary considerably. We did so by formulating separate state obligations for each of those categories of detention, and developing indicators for each state obligation separately, in addition to indicators which are universally applicable to all categories of detention. Such a categorisation pursuant to grounds of detention also allows for a comparison between the rights granted, and states' performance in each category, followed by an identification of needs for improvement. Broadly speaking, there are five categories of deprivation of liberty: prison sentences attached to criminal convictions; pre-trial detention; detention of aliens pending deportation; detention on social grounds; detention of minors.

5.4 Stakeholders involved in monitoring personal liberty

As mentioned above, meaningful monitoring of the right to personal liberty requires the cooperation and mutual learning between different stakeholders at Union, regional, national and local level. These stakeholders include Eurostat and a future EU Fundamental Rights Agency, at Union level; Council of Europe, OSCE and UN institutions at regional level; national human rights institutions, national governments particularly the Ministries of Justice and the Interior, national statistics offices, and civil society actors such as human rights NGOs, at national and local level. Involving criminologists and forensic sociologists particularly in the development of indicators for measuring discrimination, will also be a good idea. It is important that a consensus is reached among these stakeholders on which indicators will be used, which data will be collected, and which methodology will be employed to collect such data. In order to facilitate regular exchange, ensure participation of and equality between actors, a structured, institutionalised consultation and cooperation mechanism would be desirable, with defined roles and functions of each participant. This, of course, requires the mapping of relevant institutions across the Union, as well as of their monitoring and data collection activities. An institutionalised consultation and cooperation mechanism involving both governmental and non-governmental actors may also help dissolve the mutual mistrust between these categories of stakeholders. Governments are often reluctant to face and work on resolving their own failures, particularly in the sensitive field of fundamental rights. As a consequence of governments' reluctance to face and work on resolving their own failures in the sensitive field of human rights, they tend to dislike human rights NGOs who persistently bug them with accusations of neglecting human rights protection. A forum for both sides to get to know and understand each other better, and also each other's objectives and motivations, may ideally lead to the realisation that the protection of human rights is ultimately in everyone's best interest, and cooperation much more productive than confrontation.

As already emphasised, Eurostat and the Fundamental Rights Agency should assume agenda-setting roles in the context of monitoring the right to personal liberty, of course within the limits set by the European Commission who is by law mandated to safeguard observance of primary and secondary EU legislation in the Member

States. To coordinate and standardise monitoring efforts in all Member States, it must naturally be EU institutions who serve as focal points for information requests, as well as the organisation of the above mentioned consultation and cooperation process.

5.5 Available and necessary data

The right to liberty of person largely depends on government conduct in three fields: the administration of justice, policing, and the penal system. It is evident that the onus of collecting, processing, and disseminating respective data is on public authorities rather than on civil society actors. Justice statistics, penal statistics, and statistics on law enforcement and crime, which are in one form or another already routinely compiled in most Member States, may offer valuable data for measuring the protection of personal liberty in Europe. However, as previously mentioned, some Member States collect certain data, but others do not, or by different means and methods, which makes comparison impossible, and thus the data available rather useless. Major differences in criminal law between member states may also inhibit agreement on common definitions of offences, or offence categories. In addition, there are great variations as to who is authorised to collect and process data in different member states, often depending on the distribution of power between the federal and provincial levels.

The issue of disaggregation presents additional challenges, since privacy laws in certain member states are so strict that they make the collection of data required to identify discriminatory practises, such as ethnicity, nationality, educational background, virtually impossible. However, greater disaggregation of data is imperative in order for it to be useful to our indicator system.

Let's take justice statistics of different European countries to illustrate our view. In Austria, for example, the content and whereabouts of justice statistics is quite dubious. They are not easily accessible, such as for example, on the Federal Ministry of Justice's website. Moreover, crime statistics record reports filed only, but do not relate these reports to the number of pre-trial detentions, or convictions per category of offence. It would thus be necessary in Austria to intelligently merge crime and justice statistics. Finally, except for detention pending deportation, Austrian authorities do not collect any data whatsoever on the age, gender, nationality, ethnicity, etc. of detainees.

In contrast, all German provincial Justice Ministries compile justice statistics, where the average case processing periods, as well as the number of completed proceedings per year disaggregated by area of law and type of court, are indicated.²⁸⁷ The British Department for Constitutional Affairs goes so far as to issue monthly reports on time intervals for criminal proceedings in the Magistrate's Courts.²⁸⁸ Therein, it reports on the time periods between arrest and completion of criminal proceedings in different counties. It also analyses whether the respective time benchmarks have been met. The work of the US Department of Justice Bureau of Statistics's work, discussed above,²⁸⁹ presents an inspiring and good practise of

²⁸⁷ See for example *Statistik*, online: Land Brandenburg Ministerium für Justiz <http://www.mdj.brandenburg.de/cms/detail.php/lbm1.c.277834.de> (date accessed: 19 January 2006).

²⁸⁸ See *Criminal justice time interval surveys*, online: Department for Constitutional Affairs <http://www.dca.gov.uk/statistics/crjust.htm#part1> (date accessed: 19 January 2006).

²⁸⁹ See *supra* note 116.

easily accessible, comprehensive, and informative justice, penal, and law enforcement statistics. In any event, uniform methods of data collection need to be introduced, as well as agreement reached on which data will be uniformly collected.

The issue of disaggregation presents additional challenges, since privacy laws in certain member states are so strict that they make the collection of data required to identify discriminatory practises, such as ethnicity, nationality, educational background, virtually impossible.

We would also like to highlight problems emanating from the use of ‘number of complaints about violations of the right to personal liberty’ as a universally applicable indicator. This indicator is obtained from events-based data such as judicial decisions; complaints filed with national human rights institutions, other public agencies or the police; reports by human rights organisations such as Amnesty International; or reports by UN mechanisms such as the UN Working Group on Arbitrary Detention. The trouble with using the number of complaints as an indicator for the protection of the right to personal liberty is that this number will almost always fail to provide an accurate picture of the actual magnitude of abuse, and is hardly comparable between member states. Member states’ human rights complaints mechanisms, including the availability and nature of remedies as well as institutions receiving and handling such complaints, are very different. Data collection for this indicator must therefore be preceded by a thorough analysis of member states’ human rights protection mechanisms, to identify institutions which are comparable and whose complaints records may be used. Moreover, the level and quality of awareness of human rights issues varies considerably across the EU. Thus, a high number of complaints in a given member state may be a result of a quite positive human rights culture and people’s understanding of and sensitivity for the importance of human rights. In contrast, in states whose human rights record is rather poor, people may be reluctant to report violations of their rights, for mistrust of public authorities or fear of reprisals.

While counting complaints is thus problematic for purposes of comparing country performance, the qualitative analysis of complaints may serve the drawing of conclusions about structural problems relating to the protection of personal liberty within a country. A database informing of what exactly happened in a particular situation, the actors involved, the identity of the victim etc., could help in determining potential patterns of abuse, potential patterns of discrimination, potential structures and processes leading to abuse, and in highlighting the need for policy change in a specific area. To this end, the database could include both narrative information, i.e. tell stories, and quantify events-based data by coding it pursuant to a uniform methodology.

Sources of events-based data have been discussed at great length above, and include Amnesty International, Human Rights Watch, the International Helsinki Federation among NGOs most prominently. However, there are certainly innumerable local NGOs that could intelligently be involved in data collection efforts. As a result, it is strongly recommended to map civil society actors that could be of help in this respect in order to ensure that the most complete picture possible of incidents of Article 5 violations is drawn. The expertise of the EUMC and its collaborating national focal points could be exploited in this respect. In any event, a serious effort to establish a uniform system of data collection across the Union must

be preceded by a thorough screening and analysis of data collection activities and methods in all Member States.

Finally, we wish to mention that three groups of persons are, in the European context, particularly vulnerable to undue deprivation of their personal liberty: asylum seekers, migrants, and terrorism suspects. It would therefore be advisable to be sensitive to issues such as ethnic origin and status (citizen/alien, migrant worker/refugee) in data collection.²⁹⁰ A number of organisations in Europe collect data relating to arrest and detention of asylum seekers and foreigners exclusively. For example, the Austrian NGO ZARA collects events-based data on racist violence and abuse at the hands of the police, including arbitrary arrest and detention. It publishes an annual Racism Report, available online.²⁹¹ The European Council on Refugees and Exiles is a network of European NGOs concerned with refugees. Among others, it publishes statistics and country reports about the situation of refugees in Europe.²⁹²

²⁹⁰ As mentioned above, however, some European countries prohibit the collection of data on ethnicity by law. These issues must of course be resolved beforehand. See footnote 224.

²⁹¹ See *Racism Report*, online: ZARA <http://www.zara.or.at/materialien/racism-report/> (date accessed: 20 January 2006).

²⁹² See *factfile*, online: European Council on Refugees and Exiles <http://www.ecre.org/factfile/> (date accessed: 20 January 2006).

6 Charter Article 6 - Liberty of person indicators

	Indicator	Disaggregation	Comments
S	Availability of the following guarantees (yes/no): <ul style="list-style-type: none"> ✓ Constitutional protection of the right to personal liberty ✓ Statutory (or binding case law) protection of the right to personal liberty 		
S	Does a national human rights institution exist that is by law empowered to <ul style="list-style-type: none"> ✓ receive, and ✓ decide, as an independent and impartial tribunal complaints about violations of the right to personal liberty? (yes/no)		
O	Number of complaints, as a proportion of 1000 detainees, about a violation of the right to personal liberty filed with the following institutions: <ul style="list-style-type: none"> ✓ national human rights institution ✓ national courts ✓ UN Working Group on Arbitrary Detention ✓ Amnesty International 	by state obligation violated	
O	Number of judicial decisions in favour of the applicant, as a proportion of the total number of Art. 5 cases heard	by state obligation violated	
O	Average € amount of compensation granted	by state obligation violated	

	Indicator	Disaggregation	Comments
Substantive rights and guarantees under Art. 5 ECHR			
<p>Art. 5(1): Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <p>(a) the lawful detention of a person after conviction by a competent court;</p> <p>(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;</p> <p>(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;</p> <p>(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;</p> <p>(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;</p> <p>(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.</p>			
S	Do any legal, administrative or binding case law rules exist that permit deprivation of liberty on grounds other than those stipulated in Article 5(1) ECHR? (yes/no)		
State obligation: Imprisonment only after conviction by a competent court			
S	Do domestic legal provisions (or binding case law) exist that make imprisonment dependent on conviction by a competent court? (yes/no)		
S	Do domestic legal provisions (or binding case law) exist that establish a right to release upon sentence served? (yes/no)		
S	Do domestic legal provisions (or binding case law) exist that establish a right to apply for release prior to sentence served? (yes/no)		
S	Do domestic legal provisions (or binding case law) exist that offer non-custodial alternatives to imprisonment? (yes/no)	by offence category; citizen/alien; gender; educational background; ethnicity; age.	
P	Number of convicts on whom non-custodial measures have been imposed, as a proportion of the total number of convicts	by offence category; citizen/alien; gender; educational background; ethnicity; age.	
P	Number of prison inmates released prior to sentence served, as a proportion of the total number of	by offence category; citizen/alien; gender; educational	

	inmates	background; ethnicity; age.	
O	Number of prison inmates, as a proportion of the total number of convictions	by offence category; citizen/alien; gender; educational background; ethnicity; age.	
P	Average period of prison sentence imposed, per offence category	by offence category; citizen/alien; gender; educational background; ethnicity; age.	
P	Average period of prison sentence actually served, per offence category		
State obligation: Detention only after non-compliance with a lawful court order; for the purpose of securing a legal obligation			
S	Do domestic legal provisions (or binding case law) exist that permit imprisonment for non-compliance with specifically listed court orders / specifically listed legal obligations? (yes/no)		
S	Do domestic legal provisions (or binding case law) exist that prohibit imprisonment as a means to secure fulfilment of a contractual obligation? (yes/no)		
P	Number of detention for non-compliance with a court order / legal obligation, as a proportion of decisions finding non-compliance with a court order / legal obligation		
P	Average period of detention for non-compliance with a court order / legal obligation	by category of court order / legal obligation	
State obligation: Detention only when suspected of having committed an offence, or about to commit an offence (detention on remand)			
S	Do domestic legal provisions (or binding case law) exist that make detention on remand dependent on a reasonable suspicion that a person committed a criminal offence, or is about to commit a criminal offence? (yes/no)	exceptions for terrorism suspects?	
S	Do domestic legal provisions (or binding case law) exist that offer alternatives to detention on remand? (yes/no)	exceptions for terrorism suspects?	
S	Do domestic legal provisions (or		

	binding case law) exist that permit preventive/administrative detention of terrorism suspects?		
O	Average period of detention on remand?	by offence category; citizen/alien; gender; educational background; ethnicity; age; terrorism suspect	
P	Number of detention on remand, as a proportion of the number of criminal proceedings	by offence category; citizen/alien; gender; educational background; ethnicity; age; terrorism suspect	
P	Number of detention in remand, as a proportion of the number of convictions	by offence category; citizen/alien; gender; educational background; ethnicity; age.	
State obligation: detention of minors only for educational supervision, or to bring them before a competent legal authority			
S	Do domestic legal provisions (or binding case law) exist that permit detention of minors for reasons other than educational supervision, or to bring them before a competent legal authority? (yes/no)		
S	Statutory (or binding case law) age limit for qualifying as a minor?		
P	Number of minors detained for educational supervision per 1000 minors	By age, citizen/alien, ethnicity, gender.	
O	Average period of detention for educational supervision		
P	Number of closed educational supervision beds per 1000 minors		
P	Number of trained custodians per detained minor		
State obligation: detention of persons only for the purpose of health or social control			
S	Do domestic legal provisions (or binding case law) exist that make detention for health or social control (of persons carrying infectious diseases; mentally ill persons; drug addicts; alcoholics; vagrants) dependent on a need to protect the detainee or third persons? (yes/no)		

S	Do domestic legal provisions (or binding case law) exist that require proof of the person's condition as a precondition for detention? (yes/no)		
O	Number of persons detained on health or social grounds per 1000 population		
P	Number of closed psychiatric hospital beds per 1000 population?		
P	Number of medical/psychiatric professionals per person detained on health or social grounds		
State obligation: detention of aliens only for the purpose of securing deportation			
S	Maximum period of detention of aliens permitted by law (or binding case law) for the purpose of securing deportation?		
P	Average period of detention of aliens awaiting deportation?	Disaggregated by nationality, ethnicity, age, gender	
P	Number of aliens detained, as a proportion of the total number of aliens awaiting deportation?	Disaggregated by nationality, ethnicity, age, gender	
P	Number of deportations among detainees performed, as a proportion of the total number of detainees awaiting deportation?		
P	Number of detainees awaiting deportation released, as a proportion of the total number of detainees awaiting deportation?	Disaggregated by nationality, ethnicity, age, gender, ground for release (medical reasons; unfeasibility of deportation etc.)	
State obligation: impose non-custodial measures whenever reasonable and sufficient			
P	Existence of national human rights program which includes the development of non-custodial measures		
S	Existence of institutions assisting persons on whom non-custodial measures were imposed		

	Indicator	Disaggregation	Comments
Procedural rights and guarantees under Art. 5 ECHR			
<p>Art. 5(2): Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charges against him.</p> <p>Art. 5(3): Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.</p> <p>Art. 5(4): Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.</p> <p>Art. 5(5): Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.</p>			
S	<p>Availability by law (or binding case law) of the following rights and legal remedies, for each category of detention under Art. 5(1) ECHR separately (yes/no):</p> <ul style="list-style-type: none"> ✓ Right to counsel ✓ Right to periodic review of detention ✓ Right to periodic review of preventive/administrative detention of terrorism suspects ✓ Right to be informed of the reasons for arrest, or any charges against him or her ✓ Right to an interpreter ✓ Right to compensation for violation of Art. 5 ECHR 	Exceptions for terrorism suspects?	
State obligation: inform detainee promptly of the reasons for arrest, and any charges against him or her.			
S	Maximum statutory (or binding case law) period for informing detainee of the reasons for arrest, or any charges against him or her, for each category of detention under Art. 5(1) ECHR separately	Exceptions for terrorism suspect?	
State obligation: Provide interpreters to detainee, if needed			
P	Number of interpreters used, as a proportion of total number of detainees whose native tongue is not the official language?		
P	Does a procedure exist regulating the use of interpreting services? (e.g. list of interpreters; method of selection; professional qualifications) (yes/no)		

State obligation: bring detainee on remand before a judicial authority promptly after arrest			
S	Maximum statutory (or binding case law) period between arrest and presentation of a detainee on remand before a judicial authority?	Exceptions for terrorism suspect?	
O	Average period within which detainees on remand are presented before a judicial authority?		
State obligation: try detainee on remand within a reasonable time			
O	Average period between arrest and commencement of trial, by offence category	Disaggregated by citizen/alien; gender; educational background; ethnicity; age.	
State obligation: Grant detainee a right to have his or her detention periodically reviewed			
S	Maximum statutory (or binding case law) period between consecutive reviews of detention, for each category of detention under Art. 5(1) ECHR separately	Exceptions for terrorism suspects?	
P	Average period between consecutive reviews of detention, for each category under Art. 5(1) ECHR separately	Exceptions for terrorism suspects?	
State obligation: provide an enforceable right to compensation for violations of Art. 5 ECHR			
O	Number of claims for compensation, as a proportion of the total number of detainees?		
O	Number of claims for compensation granted, as a proportion of the number of claims for compensation?		

⇒ S means structural indicator; O means output indicator; P means process indicator