

# IMPLEMENTING HUMAN RIGHTS

ESSAYS IN HONOUR OF MORTEN KJÆRUM

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# Implementing human rights. What kind of record?

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IMPLEMENTING  
HUMAN RIGHTS.  
WHAT KIND OF RECORD?

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## Introduction

Since the UN World Conference on Human Rights in Vienna 1993 much emphasis and attention has been devoted to human rights implementation while the development of standard-setting has been somewhat less in focus<sup>1</sup>.

But how do we know whether human rights implementation has progressed? There is no commonly accepted methodology of analyzing this question. A lot of attention has been devoted to human rights impact assessment methodologies<sup>2</sup> and human rights indicators<sup>3</sup>, but a common approach has not yet been established. It is not the purpose of this article to strive to establish a common methodology, but rather to pursue one line of thinking, using quantitative and comparative indicators in an effort to answer the question of whether human rights implementation has progressed.

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1) One exception is the Convention of the Rights of Persons with Disabilities adopted by the General Assembly in December 2006 and open for ratification since January 2007. The most recent core human rights treaty, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, was adopted in 1990. In terms of standard setting, the 1990s and early years of 2000 were marked by the adoption of optional protocols to the CEDAW convention on women's rights in 1999, and to the Convention on the Rights of the Child with two optional protocols adopted during 2000. Finally, the optional protocol to the Convention of Torture was adopted during 2002.

2) See for instance the Human Rights Impact Resource Centre, an internet database developed and maintained by Humanist Committee on Human Rights in Utrecht, the Netherlands: [www.humanrightsimpact.org](http://www.humanrightsimpact.org).

3) A number of publications deal with this subject, see for instance OHCHR 2006. Fifth inter-committee meeting of the human rights treaty bodies, 2006. *Report on Indicators for Monitoring Compliance with International Human Rights Instruments*. HRI/MC/20006/7. – UNDP 2006. *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users' Guide*. – Danida, Ministry of Foreign Affairs, Denmark, 2006. *Monitoring at Programme and Project Level – General Issues*. – Vera Institute of Justice, 2003. *Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector*. – Sakiko Fukuda-Parr, 2001. *Indicators of Human Development and Human Rights – Overlaps, Differences... and What about the Human Development Index? Statistical Journal of the United Nations Economic Commission for Europe*, vol. 18, no. 2/3. – Ducek, Judith, Manuel Guzman, and Bert Verstappen, 2001. *Huridocs Events Standard Formats. Documenting Human Rights Violations*. Second Revised Edition, Huridocs.

There are many levels at which human rights indicators can be used; this is part of the challenge that human rights measurement is not only measurement at a national level. Discussions about human rights indicators often disregard that different purposes are involved. One example of a type of indicator measurement is one which focuses attention on project or program *performance* of human rights projects. This entry point is highly relevant for NGOs, national human rights institutions, and for the individual organization supporting a number of human rights activities<sup>4</sup>.

A variant of *performance* assessment is the analysis of corporate conduct with respect to human rights. Do business organizations comply with human rights standards? Examples of indicators have been developed by the Danish Institute for Human Rights<sup>5</sup>.

Indicators measuring progress of human rights compliance at the country level represent a different scale of measurement from the performance based measures. Hitherto no common set of indicators have been defined, but such indicators may be underway. Work undertaken as part of an initiative of the Office of the High Commissioner for Human Rights may in fact lead to the definition of indicators that can be employed to measure compliance of states. Convening a working group of experts, OHCHR developed during 2005-06 a framework of assessment that may inspire the development of a common approach to compliance assessment at the level of states. This approach is also relevant when monitoring changes of state conduct over time.

In the article, I shall use these indicators for two purposes. First, I shall use the emergence of these indicators for a discussion about *how to assess positive or inadequate progress in human rights*, i.e., to a discussion about the methodology of assessment. Second, I shall use a

4) While state and non-state actors supporting human rights work are interested in assessing the returns on investment made or their results, a broader analytical and diagnostic purpose of human rights measurement is to monitor human rights change over time and to identify priorities of human rights support by e.g. assessing the systematicity or the severity of human rights non-compliance. For a summary of the indicator types, see Carr Center for Human Rights Policy in collaboration with the Program in Criminal Justice Policy and Management Kennedy School of Government, Harvard University, 2006. *Workshop on Measurement and Human Rights*, July 6-8, 2006. See also Andersen, Erik André and Hans-Otto Sano, 2006, *Human Rights Indicators at Programme and Project Level. Guidelines for Defining Indicators, Monitoring and Evaluation*. The Danish Institute for Human Rights.

5) See [www.humanrightsbusiness.org](http://www.humanrightsbusiness.org).

selection of the OHCHR and other indicators as a means to discuss *trends in human rights implementation*.

### The Type of Indicators and Methods of Assessment

The approach to compliance assessment which was endorsed by the UN inter-committee meeting of the treaty bodies during June 2006 incorporates the following conceptual framework:

*Structural indicators* reflect human rights intent or acceptance and include ratification/adoption of legal instruments and existence of basic international mechanisms deemed necessary for facilitating realization of the human rights concerned.

*Process indicators* relate to efforts by duty bearers to realize human rights. State policy instruments and specific interventions of the state undertaken to give effect to its intent or acceptance of human rights in order to attain outcomes identified with the realization of a given human right.

*Outcome indicators* capture attainments that reflect the status of realization of human rights. This indicator assesses the enjoyment of a specific right and therefore also the ultimate assessment of duty-bearer respect for the right in question<sup>6</sup>.

These categories can be used to monitor human rights change over time and they can be employed to assess progress in human rights implementation. By using these indicators which so far have been identified for eight different rights<sup>7</sup>, it is possible to undertake a first analysis of progress in human rights implementation of states at the level of specific rights. However, I shall also argue that these indicators focusing more on *inadequate protection* than on *violations of human rights* need to be complemented by indicators analyzing human rights violations in order to gain sufficient insight on the nature of change over the last 15 years.

6) See Fifth Inter-Committee meeting of the human rights treaty bodies in Geneva, 19-21 June 2006. *Report on Indicators for Monitoring Compliance with International Human Rights Instruments*. HRI/MC/2006/7 11 May 2006.

7) The right to life, the right to judicial review of detention (right to liberty), the right to adequate food, the right to enjoyment of the highest attainable standard of health, the right to adequate housing, the right to education, the right to participate in public affairs, the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. Indicators for the last four rights have not been finally endorsed.

However, a number of methodological observations are pertinent relating to distinctions between *negative* and *positive* measures and between *inadequate protection* and *violations*. In using these indicators *in their totality*, the methodology chosen is one where there is a balance between *acceptance, effort and outcome*. The method selected is not a violations approach<sup>8</sup> as the composition of indicators reflects processes, as well as outcomes, but also because most of the *outcome* indicators selected do not lead to passing a judgment on whether violations occur or not. Some of the outcome indicators will immediately point to the fact that violations occur, but most of them will not.

Table 1. Indicators Assessing Duty-Bearer Compliance. Outcome indicators

	Assessing violations	Assessing potential lack of enjoyment of right	Assessing actual enjoyment of rights
Assessment departure	Departure in human rights threatening situation, e.g. arbitrary arrests	Departure in human rights threatening situation, e.g. HIV/AIDS	Departure in neutral or positive assessment, e.g. proportion of population with access to improved sanitation
Implication as regards formulation of indicator	Yes/No, or numbers of cases where rights have been violated	Inadequate protection or not: indicator points to whether processes of change are needed.	Measuring actual enjoyment/measuring inadequate protection by implication. indicator points to whether processes of change are needed

Source: OHCHR 2006. Fifth inter-committee meeting of the human rights treaty bodies, 2006. *Report on Indicators for Monitoring Compliance with International Human Rights Instruments*. HRI/MC/20006/7

Table 1 describes the three different pathways of assessment as regards the outcome indicators, starting with assessment of *human rights violations*, followed by assessment of the *potential lack of enjoyment* which in the last column is contrasted with an assessment of the

8) The "Violations Approach" was proposed by Audrey Chapman as a means to monitor state compliance with economic, social and cultural rights. See *Human Rights Quarterly* vol. 18 (1), 1996. In the article, Chapman contrasts "Progressive realization" with a "violations approach" and suggests that instead of monitoring "some notion of progressive realization, it seems more fruitful and significant to focus on identifying violations of the rights enumerated in the Covenant" (p. 36).

*actual enjoyment* of rights. The specific methods of assessment describe the types of questions which underpin the formulation of indicators<sup>9</sup>. In the first two categories departure is taken in a human rights threatening situation or perspective, e.g. are there cases of arbitrary arrests and detention, and to what degree is HIV/AIDS a threat to the right to life?

Despite the fact that the analysis departs from similar types of questions, there are two different scenarios of indicators, one which directly indicates the occurrence of violations, and another indicating whether *inadequate protection*, and with that, that processes of change are needed. What determines these different outcomes are substantial issues, i.e. matters pertaining to the contents of the different attributes of the rights. The attributes of the right to life of "arbitrary deprivation of life" or the attribute of "disappearances of individuals" lend themselves to interpretations of violations, e.g. "incidence of homicides..", "incidence of custodial deaths.." or "reported cases of disappearances..".

In the final column, the point of departure is neutral or positive, e.g. taking departure in actual positive enjoyment of rights, for instance, "proportion of population with access to improved sanitation"<sup>10</sup> or in a neutral question like "life expectancy at birth/age one". The negative respectively the positive or neutral departure may result in slightly different formulations of indicators. With a negative departure, the indicator will point directly to inadequacies like: "Proportion of population below minimum level of dietary energy consumption/proportion of undernourished population" (under the attribute Food accessibility). With a positive or neutral departure, the indicator will describe e.g. "the proportion of population with access to improved sanitation". For both of the cases, the main implication may be the identification of a *situation of inadequate protection*; however, the positive departure may refer back to a situation of positive efforts of measures, i.e. that duty-bearers have undertaken efforts to improve the situation of sanitation. In this regard, it is significant that of the 29 outcome indicators defined for the first four rights of the OHCHR, 25 of them are for-

9) The difference between a departure taken in actual enjoyment of rights or in potential lack of enjoyment is that in the former case indicators may measure what has been achieved, while in the latter case indicators may point to lack of or inadequate enjoyment.

10) This is an indicator suggested, not for the four rights under scrutiny here, but for the next four rights. Indicators for these rights: the right to education, the right to housing, the right not to be subject to torture or cruel, inhuman or degrading treatment, and the right to education are under definition.

mulated with a negative departure, for instance *"Proportion of live birth with low birth weight"* (under right to the enjoyment of the highest attainable standard of physical and mental health) or *"Incidence of homicides and life-threatening crimes reported per 100,000 population"* (under right to life).

A third observation as regards table 1 is that outcome indicators for economic, social and cultural rights are defined with the same wording as the indicators of the Millennium Development Goals. Thus, of the 16 outcome indicators formulated for the first two social rights, six of them are similar to the MDG indicators. All of these are formulated with a negative departure, *"maternal mortality ratio"*, *"Prevalence of death rates associated with communicable diseases (e.g. HIV/AIDS, malaria, tuberculosis, (both respectively under the right to the highest attainable standard of physical and mental health), and "Proportion of underweight children below age five"* (under the right to food, attribute of nutrition).

The compliance outcome indicators in the OHCHR format therefore measure lack of or deficient compliance rather than positive performance as regards the outcome indicators. Indicators allowing an immediate conclusion of violations like *"Reported cases of arbitrary detentions, including post-trial detentions (e.g. as reported to the Working Group on Arbitrary Detention)"*<sup>11</sup> are in a minority among the outcome indicators defined, but the vast majority of outcome indicators are formulated in a format which renders a statement of inadequate protection as the core meaning of what is expressed in interpreting the outcome indicators.

Three observations can be made on the basis of these observations.

- Human rights compliance indicators have been addressed without really addressing different approaches. Among experts, an implicit understanding has gained ground: that a violations approach is unwarranted, but the alternative to a violations approach has never been clearly defined except for repeated notions that country rankings were irrelevant<sup>12</sup>. What seems to be the alternative approach, following the OHCHR methodology, is a softer focus on inadequate protection which lends itself to an implicit under-

11) For the 29 outcome indicators elaborated on the first four rights, see OHCHR HRI/MC2006/7 11 May 2006.

12) The argument against an outright focus on violations has been that this would be an unconstructive approach, but also that measuring of violations could lead to

standing of a need for processes of change – i.e. for an approach similar to what has been termed *progressive realization*<sup>13</sup>.

- One conclusion from the previous analysis which requires careful consideration when indicators to the other rights are formulated is that there is insufficient attention to actual enjoyment of rights. This is not argued in order to hide away problems of inadequate protection, but by excluding positive enjoyment indicators, there is a tendency to underestimate that human rights effort is actually contributing to the realization of social change whether in the civil, political sphere or in the social sphere. *"Proportion of disappearance cases clarified.."* is an example of such an indicator, or *"Number of releases/victims compensated after detentions declared unlawful by judicial authority"* is another example of redress which is also relevant in this context.
- While a softer approach of inadequate protection is undoubtedly a better way to measure most human rights compliance outcomes, a focus on human rights violations, where applicable, can still be a powerful and relevant tool to measure trends in human rights compliance. While analyzing systematic human rights violations by duty-bearers remains a crude measure of human rights compliance, it is not an irrelevant one. There are two reasons for this argument: first, given the fact that other human rights compliance measures have not been legitimately defined before the advent of the OHCHR indicators reviewed here, no other measures of compliance exist *on a comparative scale*. From the point of view of research, not least as regards trends and changes of human rights compliance, this approach is still relevant. Given the prominent efforts and committed actions of states, international organizations, international and local NGOs defending the fulfillment of human rights over the last decades, a global view on whether transformation of human rights respect has been achieved is pertinent and highly relevant. Second, as observed above, the borderline between inadequate protection and violations is not very marked.

ranking of states where lack of compliance was a departure. Such views were expressed at the Conference on Human Rights and Statistics in Montreux (2000), but they were also expressed during the preparations for the OHCHR working group in Turku (2005).

13) This concept has been authoritatively interpreted under the Committee on Economic, Social and Cultural Rights in its General Comment 3. See [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument).

In the analysis below, the trends in human rights compliance are discussed on the basis of structural indicators as well as outcome indicators. As regards the latter, the OHCHR indicators are used especially concerning changes in social rights, but as regards outcomes in the realization of civil and political rights, it would be misleading not to focus attention on the existing data on human rights violations. In using such indicators, one important caveat is pertinent, however: Conducting a comparative analysis of human rights compliance at state level is necessarily an approach characterized by a high level of generalization. Important limitations of data availability and reliability therefore have to be emphasized. In addition, such an analysis is as crude as measuring the gross domestic product in the sphere of economics, and using this as a sole indicator of wealth. Such crude analysis needs to be complemented by more sophisticated indicators<sup>14</sup>.

### The Trends in Human Rights Compliance

Turning now away from methodology, what trends can be discerned in human rights and democracy since the 1990s? The analysis below will focus on structural and outcome indicators in assessing human rights compliance.

### Trends in Structural Human Rights Indicators

The formal acceptance of human rights trend should in all likelihood be seen as a parallel process to the processes of democratization taking place from the late 1980s and onwards<sup>15</sup>. With these processes of democratization, a trend of formal human rights acceptance also

14) Morten Kjærum suggest e.g. *The application of international human rights standards in domestic courts, the degree to which human rights advocacy has been adopted by local NGOs as part of their strategies of seeking to improve the conditions of vulnerable groups, the emergence of development of national institutions, and the efforts of the corporate sector to take compliance with human rights standards into account*. Such indicators would reveal more about the actual conditions of human rights implementation, but one challenge is to get comparative data for such a more sophisticated analysis. See Morten Kjærum, 2007. The UN Reform Process in an Implementation Perspective. In: Lagoutte, Stéphanie, Hans-Otto Sano and Peter Scarff Smith. *Human Rights in Turmoil. Facing Threats, Consolidating Achievements*. Martinus Nijhoff Publishers, Leiden.

15) The Polity IV Database classifying countries as democracies, anocracies and autocracies report 89 states as autocracies during 1977 while only 38 states as democracies. During 2005, there were 29 autocracies, but 88 democracies. The category of anocracies is an intermediate category on the scale. See Polity IV Database. See Monty G. Marshall in Monty G. Marshall and Ted Robert Gurr, 2005. *Peace and Conflict. A Global Survey of Armed Conflicts, Self-Determination Movements and Democracy*. Center for International Development.

emerged during the late 1980s and the 1990s. Using the language of the OHCHR compliance indicators structural indicators were reinforced during these decades.

The most obvious way to document this trend is by observing how states have ratified the human rights conventions<sup>16</sup>. A slightly more elaborate scale has been worked out by The Danish Institute for Human Rights which measures *Formal Human Rights Acceptance* by taking into account:

- Ratifications of the seven core human rights conventions, the optional protocol to ICCPR, and the regional human rights conventions where applicable
- The inclusion of the bill of rights in the constitutions of the states
- The reservations taken by state parties to the conventions ratified

According to the data covering 2005, out of 119 states examined, 82 states had a score of high human rights acceptance, 27 states were in the intermediate category, and seven states had a really bad record of human rights acceptance<sup>17</sup>. As the states not covered by the research are states which have previously signed the human rights conventions, the data on structural indicators of human rights compliance point to a high level of human rights acceptance, even for relatively difficult conventions like the one on torture. By far the overwhelming majority of the states of the world have, as a matter of policy during the last three decades, endorsed human rights<sup>18</sup>.

### Trends as Regards Civil and Political Rights Compliance

In Annex table 1 and Annex table 2 to this article, data on the progress in civil and political rights compliance are recorded according to six different rights: disappearances, extrajudicial killings, torture, freedom of assembly and association, freedom of speech, and the right to political participation. The tables therefore cover three

16) During 1987, 85 respectively 85 states had ratified the Covenants on economic, social and cultural rights and the covenant on civil and political rights. The numbers had increased to 135 states for both of the covenants by 1997. By 2007, the numbers were 155 states having ratified the International covenant on economic, social and cultural rights, and 160 states having ratified the International covenant on civil and political rights. Between 1987 and 2007, the Convention against torture was ratified by 12 states during 1987, by 100 in 1997, and by 144 in 2007. See [www.ohchr.org](http://www.ohchr.org).

17) Among the states exhibiting low human rights acceptance, two were from North Africa, four from South East Asia, and one from South Asia. Danish Institute for Human Rights. Country Indicators of Human Rights Commitment and Compliance.

18) Of the 119 states examined, 23 have taken significant reservations on the conventions ratified.



civil and three political rights represented in the tables from the source, the CIRI Human Rights Data Project. There is an overlap between these indicators and the one defined as part of the OHCHR outcome compliance indicators, namely "*Reported cases of disappearances (e.g. as reported to the Working Group on Enforced and Involuntary Disappearances)*".

The CIRI database records human rights violations according to whether they are frequent, occasional, or non-existent. Added to the tables are the data recorded on the same rights from the Danish Institute for Human Rights database on country human rights indicators. The DIHR indicators were developed independently of the CIRI data, but employ a similar methodology. More rights are included in the DIHR indicators, but these indicators do not distinguish between violations of disappearances and extra-judicial killings. Unlike the CIRI data, the DIHR data do not collapse freedom of association and assembly. These rights are therefore not directly comparable<sup>19</sup>. In the Annex tables, data have been included for 17 countries, one from South, Central, and North America respectively. Three countries from Sub-Saharan Africa, two from North Africa, one from western Asia, one from South Asia, one from South East Asia, one from East Asia, and one from Central Asia. Included are also one country from Russia and the Western CIS region, one country from the Caucasian group, one country from Eastern Europe, and one from the Balkan region.

According to the data in the Annex tables, the following conclusions can be made concerning the trends in civil and political rights.

- The trend is one of deterioration of civil rights. Of 17 countries included in the analysis, 10 experience a deterioration of human rights respect when measured on disappearances, extra-judicial killings and torture between 1987 and 2004. The countries where deterioration occurs are Guatemala, USA, Nigeria, Tanzania, Egypt, Turkey, India, China, Kazakhstan, and Russia. Six countries are characterized by improvements in state compliance concerning these rights, i.e. Chile, South Africa, Vietnam, Georgia, Poland and Croatia. One country, Morocco, remains at the same level throughout the period.

<sup>19</sup> The Cingranelli-Richards (CIRI) Human Rights Dataset, David L. Cingranelli and David L. Richards, 2006, <http://www.humanrightsdata.org>. See <http://www.humanrights.dk/departments/international/PA/Concept/Indicators> for the DIHR country indicators. See also

- As regards political rights, the trend is more positive. Six countries experience improvements: Chile, Guatemala, Nigeria, South Africa, Poland and Croatia. Six countries remain at a constant level, namely USA, Tanzania, Turkey, India, Vietnam, and Georgia. Five countries are marked by deterioration: Egypt, Morocco, China, Kazakhstan, and Russia. The tendency as regards the compliance concerning specific rights is that these 17 states seem to have been willing to improve political rights such as freedom of assembly and association and the right to take part in the conduct of political affairs. These 17 states have not, as it seems, been ready to improve freedom of speech standards.

### Trends in Social Rights Compliance

The progress in achieving the Millennium Development Goals is hardly a core human rights issue, i.e. many human rights scholars and activists will be only scantily informed about achievements or shortcomings in this field. However, as the outcome indicators of social rights correspond to MDG indicators according to the OHCHR proposal as discussed above, more information about these changes need to reach the human rights groups.

The eight MDG goals and their associated targets and indicators exhibit a mixed record according to region and specific goals. Concerning trends in the rights to education and to health, the regional trends are analyzed in order to gain a global overview according to which trends are considered in the 17 countries examined in the previous section.

First, as regards the right to education, one indicator used in relation to the MDG target of achievement of universal primary education for all boys and girls by 2015, is "*Net enrolment ratio in primary education*". It is likely that the OHCHR compliance indicators on outcome in relation to the right to education will use a similar indicator, possibly, however, one which relates to "*Primary completion rates*". Given the fact that the OHCHR indicators have not been finally endorsed as regards the right to education, the decision on this is not final, but it seems relevant to look at the trends for both of them.

As regards net enrolment ratios in primary education, the following regional trends are emanating from the MDG data:

- Sub-Saharan Africa has only achieved insufficient progress. A proportion of enrolment of 64% was achieved by 2003/04, but were the growth rate to remain on par with the planned average

growth rate between 1990 and 2015, it should have been at 77% by 2003/04.

- Southern Asia lacks only slightly behind the planned rate of progress (89% achieved against 91% planned rate of enrolment).
- Western Asia including parts of the Middle East has major problems in achieving the goal.
- Northern Africa has made quite a lot of progress as regards primary education.
- The other regions were by 2003/04 at a level of 90% or more; hence, these regions stand a good chance of realizing the human rights outcome of universal primary education<sup>20</sup>.

Concerning trends in the right to enjoyment of the highest attainable standard of physical and mental health, two MDG indicators correspond to the indicators defined by the OHCHR expert group on the right health, namely *"The under five mortality rate per 1000 live birth"* and *"The maternal mortality ratio per 100,000 live births"*.

The general regional pattern of development according to the former indicator of under-five mortality rate is

- Sub-Saharan Africa lacks significantly behind; if the MDG 2015 goal were to be achieved according to the planned rate of reduction of under-five mortality rate, the average mortality rate under five for Sub-Saharan Africa ought to be 116/1000 and not 168/1000 as was the case by 2004.
- Southern Asia also lacks behind, but not nearly as significantly. By 2004, the rate of under five mortality was at 90/1000, whereas it ought to be at 79/1000 on average if a 2/3 reduction of under five mortality were to be achieved by 2015.
- Northern Africa exceeds the planned rate of reduction.
- Eastern Asia and Latin America remain roughly on par with the planned reduction rate.

It is important to underline that these observations represent changes in average regional performance. A more elaborate assessment of changes in these human rights indicators are available in Annex Table 3, where data on health and education indicators have been included for 1990, 2000, and 2004 for the 17 countries which were also studied in the previous section. What do these data tell about progress in human rights?

20) See United Nations 2006. *The Millennium Development Goals Report*. New York. This source reports on the regional trends described in the text.

- First, there is a dramatic, positive development as regards the maternal mortality ratio. Unfortunately, data are not available for 2004, but between 1990 and 2000 there is a substantial improvement on this indicator in Chile, Egypt, Morocco, Turkey, and China. A negative development takes place in Guatemala, Tanzania, and Kazakhstan. Although there is a substantial fall in maternal mortality in Nigeria, the level is too high to warrant a positive interpretation.
- Second, infant mortality rates fall dramatically in the Northern African and Western Asian region between 1990 and 2004. Reductions of infant mortality are also discernible in Chile, Guatemala, Tanzania, and India, but mainly between 1990 and 2000. No progress in this indicator can be identified for these countries between 2000 and 2004 with the exception of Tanzania. Kazakhstan and South Africa are cases of a negative development over the years.
- Third, while data on *primary completion rates* and on *gender parities in primary schooling* are not available for 1990, the former indicator reveals improvements in Guatemala, Morocco, India, and Poland<sup>21</sup>. As regards gender equality in primary enrolment, Morocco and India are characterized by positive change, while parity already exists in China, Russia, Georgia, and Poland. A remarkable negative development seems to have taken place in the USA as regards gender parity in primary schools.
- Concerning outcome indicators of human rights in primary education, five countries of 17 are already at a level of gender parity in primary schools (enrolment), and an additional five have achieved progress in improving gender parity in school enrolment between 2000 and 2004.

### Conclusions

Two major general conclusions emerge from this analysis, one as regards the methodology of comparative human rights assessment at the level of state compliance and another as regards the specific trends of human rights compliance.

Concerning the methodological issue, the instrument under development by the OHCHR is a major achievement of progress because it seems as a legitimate methodology to assess state compliance which offers a balanced approach between analytical components of acceptance, effort and outcome.

21) The figure of 110 in Kazakhstan does raise some suspicion on data reliability.



The OHCHR indicators raise methodological questions about positive and negative approaches and about assessments of violations, inadequate protection and positive enjoyment. These are unresolved matters, but the argument pursued here is that the implicit focus of the OHCHR indicators on *inadequate protection* seems a reasonable choice when assessing whether to focus on assessment of violations or on inadequate protection. The implications of a focus on inadequate protection are process oriented approaches corresponding to what has been conceptualized as progressive realization. Such approaches are relevant as regards not only economic, social and cultural, but also civil and political rights.

However, it has also been argued that a violations approach is warranted as regards attributes of specific rights. Moreover, when assessing change in human rights compliance of states over the last decades at the level of human rights outcomes, violations data are important, albeit, crude tools of assessment.

Finally, as regards methodology, it has been argued that a positive approach of measuring outcomes in human rights enjoyment has to be integrated more strongly in the OHCHR indicators. Such indicators measuring actual enjoyment of rights are needed in order to assess how state efforts (under process indicators) result in actual enjoyment at the level of individuals and groups.

Concerning the trends in human rights, there is undisputed progress over the last decades as regards acceptance of human rights by states (structural indicators). The specific methods of measurement can be debated, but the trends are nevertheless strong.

However, the analysis has revealed that for the specific civil rights indicators examined, disappearances, extra-judicial killings and torture, the performance of the 17 states examined does not give cause for optimism. Among these states, ten exhibit a deteriorating respect in the field of these rights. Six countries are characterized by improvements, and one state exhibits no change.

The trend is more promising as regards political rights, but the positive record is mainly restricted to freedoms of assembly and association and to the right to take part in the conduct of public affairs. In contrast, states are more reluctant to comply with human rights obligations as regards freedom of speech.

The trends in social rights compliance reveal a mixed record. It is possible to analyze the development in these rights from the point of view of the MDG process, but also from the point of view of human rights. The OHCHR compliance method has agreed that indicators of MDG targets and of specific human rights are the same. This goes for attributes of the right to education and for attributes of the highest attainable standard of physical and mental health.

Analyzed without paying attention to the MDG targets, but focusing mainly on whether progress occurs in the indicators defined as human rights indicators, progress is achieved in under-five mortality in the majority of countries analyzed between 1990 and 2000. However, data for 2004 indicate that it is uncertain whether this progress has continued during the present decade. Concerning maternal mortality, the data for the period 1990-2000 indicate progress in six countries, while stagnation occurs in another group of six countries. No data exist on this indicator for 2004. Hence, the record of health rights according to these two indicators is positive when looking at the 1990s, but it is uncertain whether the momentum was carried forward to the current decade. The regional trends examined confirm these indications of a mixed record.

Concerning outcome indicator of human rights in primary education, five countries of 17 are already at a level of gender parity in primary schools (enrolment), and an additional five have achieved progress in improving gender parity in school enrolment between 2000 and 2004. Comparative data on primary completion rates are available for some of the countries between 2000 and 2004 (but not between 1990 and 2000). The indicator of primary completion rates reveals significant progress for six countries out of 17, while regress is apparent for three countries. As regards the rest of the countries, the situation was either stagnation or lack of data making interpretation impossible.

Generally, the record of progress in the few social rights indicators is therefore mixed and with question marks especially concerning the present decade. For some of the poorest countries, progress takes place from a quite low level of performance.

Finally, no attempt has been made in this article to provide explanations of why states have either a positive or a negative human rights compliance record. Such questions must be raised on the basis of a more extended list of countries, and on the background of additional case material.

The scope of data analysis is limited – hence, the conclusion of the article should not be stretched too far. However, a few reflections can be made.

The human rights record of states measured by these indicators is not entirely reassuring for the years 1990-2005. Despite a very strong progress in democracy and in formal human rights acceptance, the record of compliance of the 17 countries analyzed and for the rights examined is not impressive. With respect to the civil rights examined, the most recent indicators give cause for concern. For the political rights examined, the record is more positive but still destabilized by poor records on freedom of speech. As regards social right the progress achieved is more impressive during the 1990s than during the current decade. One positive feature is the progress achieved in gender parities of enrolment in primary schools. Overall, on the basis of this limited review, there seems to be good reasons to reinforce methods of monitoring, and there are perhaps also good reason to reflect about how instruments of human rights implementation can be strengthened.

*Annex Table 1. Frequent, Occasional or Violations of Civil and Political Human Rights. Disappearances, Extrajudicial Killings, and Torture*

	1987			1998			2004		
	Disapp.	E.Kill	Tort.	Disapp	E. Kill	Tort.	Disapp.	E.Kill	Tort.
Chile	1	1	0	1	1	0	2	2	1 (OV)
Guatemala	1	1	1	2	0	1 (SV)	2	1	0 (SV)
USA	2	2	2	2	2	1	1	1	1
Nigeria	2	2	2	2	1	1 (SV)	1	0	0 (SV)
South Africa	1	0	0	2	0	0 (SV)	2	0	1 (SV)
Tanzania	2	2	1	2	2	0 (SV)	2	1	0 (SV)
Egypt	2	1	1	2	2	0 (SV)	1	1	0 (SV)
Morocco	2	2	0	2	2	1 (SV)	1	2	1 (SV)
Turkey	2	2	0	1	1	0 (SV)	2	1	0 (SV)
India	1	1	0	0	0	0 (SV)	0	0	0 (SV)
Vietnam	2	0	0	2	2	0 (NA)	1	1	1 (SV)
China	2	2	0	2	0	0 (SV)	1	0	0 (SV)
Kazakhstan	na	na	na	2	2	1 (SV)	2	1	0 (OV)
Georgia	na	na	na	1	0	0 (SV)	2	1	0 (SV)
Russia	na	na	na	2	0	0 (SV)	0	0	0 (SV)
Poland	2	1	0	2	2	1 (OV)	2	1	1 (NV)
Croatia	na	na	na	2	1	1 (SV)	2	2	1 (NV)

The Cingranelli-Richards (CIRI) Human Rights Dataset, David L. Cingranelli and David L. Richards, 2006, <http://www.humanrightsdata.org>.

A score of 0 refers to frequent violations, a score of 1 refers to occasional violations, and a score of 2 refers to no violations.

The Capital letters in brackets are the indicators from the Danish Institute for Human Rights: SV denotes *systematic violations*, OV denotes *occasional violations*, NV *no violations* and NA *not available*.

Definitions according to the database.

Disappearances are cases in which people have disappeared, political motivation appears likely, and the victims (the disappeared) have not been found

Extrajudicial killings are killings by government officials without due process of law. These killings may result from the deliberate, illegal, and excessive use of lethal force by the police, security forces, or other agents of the state whether against criminal suspects, detainees, prisoners, or others.

Torture refers to the purposeful inflicting of extreme pain, whether mental or physical, by government officials or by private individuals at the instigation of government officials. Torture includes the use of physical and other force by police and prison guards that is cruel, inhuman, or degrading. Torture can be anything from simple beatings, to other practices such as rape or administering shock or electrocution as a means of getting information, or a forced confession.

*Annex Table 2. Frequent, Occasional or Violations of Civil and Political Human Rights. Freedom of Assembly and Association, Freedom of Speech, and Political Participation*

	1987			1998			2004		
	Ass/ sem	Speech	Polpar	Ass/ sem	Speech	Polpar	Ass/ sem	Speech	Polpar
Chile	1	1	1	2	2	1	2	1 (NV)	2 (NV)
Guatemala	2	1	1	2	2 (NV)	2 (NV)	2	1 SV	2 (NV)
USA	2	2	2	2	2	2	2	2	2
Nigeria	0	1	0	0	0 (SV)	0 (NV)	1	1 (SV)	1 (SV)
South Africa	0	2	0	2	1 (NV)	2 (NV)	2	2 (OV)	1 (NV)
Tanzania	0	1	1	0	1 (SV)	1 (SV)	1	0 (OV)	1 (OV)
Egypt	1	1	1	0	1 (SV)	0 (NV)	0	0 (SV)	0 (OV)
Morocco	1	1	1	0	1 (SV)	0 (OV)	1	0 (SV)	1 (OV)
Turkey	0	1	1	0	1 (SV)	2 (NV)	1	0 (SV)	1 (OV)
India	2	1	1	1	1 (SV)	1 (NV)	1	1 (OV)	2 (OV)
Vietnam	0	0	0	0	0 (SV)	0 (SV)	0	0 (SV)	0 (SV)
China	0	1	0	0	0 (SV)	0 (FV)	0	0 (SV)	0 (SV)
Kazakhstan	na	na	na	0	2 (SV)	1 (SV)	1	0 (SV)	0 (SV)
Georgia	na	na	na	1	1 (SV)	1 (NV)	1	1 (SV)	1 (OV)
Russia	na	na	na	2	1 (SV)	2 (NV)	1	0 (SV)	1 (SV)
Poland	0	1	0	2	2 (NV)	2 (NV)	2	2 (NV)	2 (NV)
Croatia	na	na	na	1	0 (SV)	1 (NV)	2	1 (OV)	2 (NV)

The Cingranelli-Richards (CIRI) Human Rights Dataset, David L. Cingranelli and David L. Richards, 2006, <http://www.humanrightsdata.org>.

A score of 0 refers to frequent violations, a score of 1 refers to occasional violations, and a score of 2 refers to no violations.

The Capital letters in brackets are the indicators from the Danish Institute for Human Rights: SV denotes *systematic violations*, OV denotes *occasional violations*, and NV *no violations*.

Definitions according to the database:

**Freedom of Assembly and Association.** This variable evaluates the extent to which the freedoms of assembly and association are subject to actual governmental limitations or restrictions (as opposed to strictly legal protections).

Despite the international recognition of the right to assembly and association, in some states, citizens are prohibited by government from joining, forming, and participating in political parties of their choice. Citizens in many states are prohibited from protesting or publicly criticizing government decisions and actions. In more than a few states, organizations critical of a government or those that are perceived to have political agendas are not allowed to hold demonstrations, and their activities are severely curtailed and closely monitored by the state.

**Freedom of Speech and Press.** This variable indicates the extent to which freedoms of speech and press are affected by government censorship, including ownership of media outlets. Censorship is any form of restriction that is placed on freedom of the press, speech or expression.

**Political Participation.** The right of citizens to freely determine their own political system and leadership is known as the right to self-determination. Enjoyment of this right means that citizens have both the legal right and the ability in practice to

change the laws and officials that govern them through periodic, free, and fair elections held on the basis of universal adult suffrage.

To what extent do citizens have freedom of political choice and have the legal right and ability in practice to change the laws and officials that govern them? This right is sometimes known as the right to self-determination, and "by virtue of this right [citizens] freely determine their own political status..."

*Annex Table 3. Changes in Human Rights Outcome Indicators 1990-2004. Indicators of the Right to Health and Education.*

	1990		2000		2004				
	Deaths/ 100,000 live birth	Deaths/ 1000 Live birth	Deaths/ 100,000 live birth	Deaths/ 1000 Live birth	Primary Comple. Rate pct	Gender Parity in Primary En- rolmnt pct	Deaths/ 1000 Live birth	Primary Comple. Rate pct	Gender Parity in Primary En- rolmnt pct
	Mat.mort		Inf.mort	Mat.mort	<5-mort		<5-mort		
Chile	65	17	31	9	98.1	96	8	95.4	95
Guatemala	200	60	240	39	57.9	89	33	70.2	92
USA	12	9	17	7	Na	98	7	97	93
Nigeria	1000	120	800	107	Na	82	101	75.2	85
Sth Africa	230	45	230	50	89	96	54	Na	Na
Tanzania	770	102	1500	88	Na	99	78	56.5	96
Egypt	170	76	84	40	97.3	92	26	94.6	96
Morocco	610	69	220	45	58.2	84	38	75.4	90
Turkey	180	67	70	38	Na	91	28	87.8	94
India	570	84	540	68	75.4	82	62	88.5	93
Vietnam	160	38	130	23	96.4	94	17	93	Na
China	95	38	56	33	Na	Na	26	Na	100
Kazakhstan	80	53	210	63	93	100	63	110	99
Georgia	33	43	32	41	101.3	100	41	85.6	100
Russia	75	23	67	20	Na	0	17	Na	100
Poland	19	19	13	8	95.3	99	7	100.3	99
Croatia	na	11	8	7	91.8	99	6	Na	Na

UN Statistics Division 2006. *MDG Info* 2006. <http://www.devinfo.info/mdgin-fo2006/>.