



# Measuring Human Rights in South Africa\*

An index to monitor the State's compliance and observance of certain civil and political rights

\*Project funding supplied by the Mergon Foundation



Centre for  
**CONSTITUTIONAL  
RIGHTS**

Index developed by the Centre for Constitutional Rights (CFCR), in cooperation with South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC)



## **I. General Introduction and Background to Measuring Human Rights**

**1-10**

- Measuring and evaluating human rights
- The purpose of measuring human rights
- Conceptual frameworks for measuring human rights
- Methods and tools for measuring human rights
- The limitations of human rights indicators
- Constructing indicators to measure human rights

## **II. Measuring and Evaluating Human Rights in South Africa**

**11-13**

- Existing frameworks for measuring human rights in South Africa
- Framework and methodology developed for this report
- Limitations of the research



# I. General Introduction and Background to Measuring Human Rights

## Measuring and evaluating human rights

One of the primary features of human rights instruments is that they provide frameworks for the protection of fundamental rights and freedoms.<sup>1</sup> Since the adoption of the *Universal Declaration of Human Rights* in 1948, there has been a steady growth in the number of international, regional and national legal instruments that protect human rights.<sup>2</sup> In South Africa, the Constitution enshrines a Bill of Rights, which guarantees a number of substantive civil, political, economic, social and cultural rights that must be respected, protected, promoted and fulfilled.<sup>3</sup> However, the formal guarantee of a human right in an instrument does not automatically translate into its enjoyment in practice. Despite the proliferation of human rights laws around the world, there is still a disparity between official proclamation and the protection of human rights on the ground. To close the gap between the formal guarantee of a right and its actual enjoyment, states and other actors are required to take legislative and other measures to give effect to rights. Accordingly, whether or not rights and freedoms are enjoyed can be said to depend on both formal guarantees and on the mechanisms that are in place to give effect to rights.

Against this background, international organisations and academic research programmes have become increasingly focused on the gap between rights proclamation and rights enjoyment. Systematic research has been conducted on the

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**1** Other purposes of human rights instruments include safeguarding democratic values, the Rule of Law and promoting transformation and social justice, among other things. For an evaluation of the performance of these constitutional purposes in South Africa, see Bilchitz et al, 2016 “Assessing the Performance of the South African Constitution” published by the International Institute for Democracy and Electoral Assistance available at <http://www.idea.int/publications/south-african-constitution/loader.cfm?csModule=security/getfile&pageID=78875> (accessed on 20 September 2016).

**2** Internationally, the *Universal Declaration of Human Rights*, 1948 and the International Covenants on Civil and Political Rights and on Economic and Social Rights, both effective since 1976, form the core of the universal human rights system but in addition, regional instruments such as the *African Charter on Human and Peoples’ Rights*, effective since 1986, and national constitutions which guarantee human rights, have been propagated throughout the world.

**3** Chapter 2, Bill of Rights, Constitution of the Republic of South Africa, Act 106 of 1996.

efforts taken by states and other actors to give effect to human rights.<sup>4</sup> This research is helpful not only for understanding the effectiveness of different rights regimes but also because it captures the level of commitment and compliance by states with their human rights obligations.

## The purpose of measuring human rights

Primarily, the objective of measuring human rights is to quantify and accelerate progress towards the achievement of human rights. In this way, the project of human rights measurement is strategic, as it may encourage greater compliance by states with their obligation to fulfil rights. Where violations are documented, or non-compliance is demonstrated, this may produce a shaming effect that could motivate states and other duty-bearers to enhance certain efforts. For states and other duty-bearers, having information and knowledge about human rights violations may assist in identifying barriers to the achievement of rights, and strategies for addressing them. This function of human rights measurement has been referred to as “second order analysis” and serves as the basis for continued improvement and development of human rights policy and advocacy.<sup>5</sup> By drawing inferences and hypotheses about rights violations and rights realisation, second order analysis can also be used to inform resource allocation processes.<sup>6</sup> Simultaneously, the documentation and mapping function

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**4** Such empirical research includes studies that examine the global variation in human rights protection (Mitchell and McCormick 1988; Henderson 1991, 1993; Poe and Tate 1994; Davenport 1995; Gartner and Regan 1996; Poe et. al 1999), the relationship between human rights treaty ratification and human rights protection (Suksi 1993; Keith 1999; Landman 2001; Hathaway 2002), refugee policy and human rights (Gibney and Stohl 1988; Gibney, et al. 1992), economic assistance and human rights (Stohl et. al 1984; Poe 1992; Poe and Sirirangsi 1993, 1994; Regan 1995), military assistance and human rights (Dixon and Moon 1986; Poe 1991; Poe and Meernik 1995), democracy and human rights (Davenport 1999; Zanger 2000), and direct foreign investment and human rights (Meyer 1996; 1999). Cited in Landman, 2002 “Measuring Human Rights: Principle, Practice and Policy” Paper prepared for the Seminar on Statistics and Human Rights, Brussels 27 - 29 November 2002, sponsored by the Statistical Office of the European Communities (Eurostat), InWEnt Munich Centre *available at* <http://privatewww.essex.ac.uk/~todd/M-HR-landman.pdf> (accessed 28 September 2016) at page 3.

**5** Rubin and Newburg, 1980 and Claude and Jabine, 1992 cited in Landman, 2002 “Measuring Human Rights: Principle, Practice and Policy” Paper prepared for the Seminar on Statistics and Human Rights, Brussels 27 - 29 November 2002, sponsored by the Statistical Office of the European Communities (Eurostat), InWEnt Munich Centre *available at* <http://privatewww.essex.ac.uk/~todd/M-HR-landman.pdf> (accessed 28 September 2016) at page 4.

**6** On the second order analysis function of human rights measurement, see Landman, 2002 “Measuring Human Rights: Principle, Practice and Policy” Paper prepared for the Seminar on Statistics and Human Rights, Brussels 27 - 29 November 2002, sponsored by the Statistical Office of the European Communities (Eurostat), InWEnt Munich Centre *available at* <http://privatewww.essex.ac.uk/~todd/M-HR-landman.pdf> (accessed 28 September 2016) at page 4.

of human rights measurement can assist individuals and civil society groups in holding states accountable for non-compliance with legally-mandated human rights standards. Finally, the project of measuring human rights may be valuable to human rights treaty bodies, academics and international organisations that track and reflect on progress towards human rights and articulate best practices for their achievement.

## Conceptual frameworks for measuring human rights

Conceptually, human rights measurement has generally focused on measuring human rights *in principle*, *in practice* and in terms of *outcome*.<sup>7</sup> Measuring human rights *in principle* is a broadly descriptive exercise and examines how human rights are laid out in legal documents. These assessments include, for example, analysis of the right, its ambit, its limitations and any possibilities around the suspension or derogation of the right.

By contrast, measuring human rights *in practice* is concerned with documenting how rights are enjoyed, deprived and exercised, regardless of in principle commitments made by states. Although measures of rights in principle and rights in practice *ought* to correspond, there is often a disconnect or negative gap between the two measurements. The aim of measuring human rights in practice is to expose this disconnect, by collecting information about the degree and extent to which human rights are violated. In measuring human rights in principle, information about rights deprivations is either summarised quantitatively as events-based data (reports of violations), or translated into comparable, standards-based data (how often and to what degree violations occur), or presented as survey-based data (perceptions on human rights protections).

Measuring human rights in terms of *outcome* focuses on the extent to which government activities and policies have an impact on human rights. In the case of civil and political rights, for example, outcomes that can be measured might include investments in prison reform, the number of registered voters, funding to judiciaries and other resource commitments that support rights-protective regimes.<sup>8</sup>

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<sup>7</sup> Dr. Todd Landman, 2002 “Measuring Human Rights: Principle, Practice and Policy” Paper prepared for the Seminar on Statistics and Human Rights, Brussels 27 - 29 November 2002, sponsored by the Statistical Office of the European Communities (Eurostat), InWEnt Munich Centre *available at* <http://privatewww.essex.ac.uk/~todd/M-HR-landman.pdf> (accessed 28 September 2016).

<sup>8</sup> See Donnelly, J, 1999 “Democracy, Development and Human Rights” *Human Rights Quarterly* 21(3): 608-632 cited in Landman, 2002 “Measuring Human Rights: Principle, Practice and Policy” Paper prepared for the Seminar on Statistics and Human Rights, Brussels 27 - 29 November 2002, sponsored by the Statistical Office of the European Communities (Eurostat), InWEnt Munich Centre *available at* <http://privatewww.essex.ac.uk/~todd/M-HR-landman.pdf> (accessed 28 September 2016) at page 13.

Conceptually, the approach to measuring human rights may depend on the category of a particular right and its attributes. Although the distinction is becoming less relevant, human rights have historically been regarded as falling into one of two main categories: civil and political rights or economic, social and cultural rights. Civil and political rights are generally understood as rights of protection, which safeguard choices and individual freedoms or liberties. They tend to specify what governments should *not* do (e.g. impede freedom of expression or detain people arbitrarily). By contrast, economic, social and cultural rights are sometimes referred to as rights of provision and are aimed at ensuring that basic human needs are met. To give effect to economic, social and cultural rights, governments are generally required to take positive action and ensure that, for example, healthcare or education services are made available. The distinctive features of these two categories of rights, and particularly the positive or negative attributes they are assumed to comprise, is not always clear, as most rights have both negative and positive attributes. For example, the right to vote requires not only that governments must *not* interfere with a person's right to vote but also that positive action *is taken* to ensure that the relevant infrastructure is in place to facilitate voting. The qualitative distinction between civil and political and socio-economic rights has roots in Cold War politics and in 1993, the distinction was renounced on the basis that all rights must be understood as being of equal importance.<sup>9</sup> However, the distinction has nevertheless informed some commonly-held assumptions about the attributes of human rights and this has impacted on the approach to their measurement.

In relation to socio-economic rights, approaches tend to be focused on the positive actions and resources committed by governments to meet basic needs. This kind of information is generally quantifiable and amenable to statistical analysis, such that comparative data and historical trends can be produced. The *Social and Economic Rights Fulfillment Index* (SERF), for example, measures fulfilment of the rights to food, education, health, housing, work and social security using data like school enrolment figures and infant mortality rates. This information is sometimes provided in terms relative to a country's gross domestic product.<sup>10</sup>

Measuring civil and political rights, by contrast, tends to be focused on analysing choices, freedoms and the negative qualities of rights that demand non-interference

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<sup>9</sup> The *Vienna Declaration and Programme of Action*, adopted in 1993, emphasises the indivisibility, interrelatedness and interdependence of rights and declared all rights to be of equal importance. See <http://www.refworld.org/docid/3ae6b39ec.html> (accessed 3 October 2016).

<sup>10</sup> See the overview note on the data collected by the *Social and Economic Rights Fulfillment Index* available at <http://www.serfindex.org/overview/> (accessed 19 September 2016).

on the part of states and the absence of coercive constraints on the rights holder.<sup>11</sup> Global frameworks for measuring civil and political rights are generally designed as composite measures, which evaluate multiple civil and political rights. They also tend to be made up of multiple data sources and results are generally blended together and weighted to produce single numbers and ranks.<sup>12</sup>

The focus of this project is to construct a framework for measuring civil and political rights in South Africa. Recognising that civil and political rights in South Africa have both negative and positive qualities, in addition to measuring the absence of interference on the enjoyment of rights, we have designed a methodology that accommodates indicators on government-led attempts to achieve and safeguard civil and political rights and freedoms.

It is worth noting that the conceptual frameworks for measuring human rights focus primarily on the role of states in implementing human rights.<sup>13</sup> Judicial actors, quasi-judicial actors (such as national human rights institutions) and non-state actors such as private corporations, trade unions and even private individuals can also play a role in preventing or furthering the implementation of human rights. The framework suggested in this report for measuring civil and political rights in South Africa recognises the need to monitor the role of non-state actors in realising human rights.

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**11** See, in relation to the construction of indicators that measure freedom, Ian Vasquez and Tanya Štumberger, 2012 *An Index of Freedom in the World* published by the Fraser Institute available at <http://object.cato.org/sites/cato.org/files/articles/towards-worldwide-index-3-vasquez-stumberger.pdf> (accessed 22 September 2016).

**12** See for example the indexes published by Freedom House, the Economist's Democracy Index, the UN's Rule of Law Indicators Project and the World Bank's Governance Indicators Project.

**13** In large part, this may be as a result of the tendencies of treaty bodies to require quantitative statistics on the efforts and outcomes of state-led policies and programmes to facilitate the realisation of rights. Many of the indicators applied in the SPII methodology, and in the SERF Index, for example, focus on the role of states in facilitating access to human rights.

## Methods and tools for measuring human rights

The push towards measuring human rights has resulted in the development of a number of databases, indexes and metrics on human rights and their realisation on the ground.<sup>14</sup> Budgetary analysis and resource monitoring techniques, which track spending on plans, policies and programmes for realising human rights, have become increasingly commonplace.<sup>15</sup> Human rights impact assessments have also gained popularity as a tool for evaluating human rights. The aim of human rights impact assessments is to evaluate cause and effect relationships between an event, activity or intervention, and its impact on the enjoyment of human rights in practice.<sup>16</sup> In conducting human rights impact assessments, human rights standards are typically translated into indicators that can be measured against particular benchmarks and reference points. The use of indicators in human rights measurement has been promoted by the United Nations (UN) and is becoming increasingly standard in human rights measurement projects. At the global level, the development and acceptance of standard indicators on human rights performance has resulted in greater consistency in human rights measurement.<sup>17</sup> As former UN Human Rights Commissioner Navi Pillay has explained, *“the human rights journey from standard-setting to effective implementation depends, in large measure, on the availability of appropriate tools for policy formulation and evaluation. Indicators, both quantitative and qualitative are one such essential tool.”* One of the advantages of the consistent use and application of a standard set of indicators is that progress can be assessed according to benchmarks and reference points, as determined either by countries or universally by treaty monitoring bodies. In addition, indicators can be grouped

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**14** See Malhotra and Fasel, “Quantitative Human Rights Indicators - A Survey of Major Initiatives” paper presented at the Turku expert meeting 10 to 13 March 2005 *available at* <http://www.gaportal.org/sites/default/files/Quantitative%20Human%20Rights%20Indicators.pdf> (accessed 1 October 2016). A comprehensive list of some of the main sources of indicators on governance and democracy has been compiled by Country Indicators for Foreign Policy (CIFP), a joint academic-government project between Carleton University and the Canadian government. The list is *available at* [http://www4.carleton.ca/cifp/gdp\\_indicator\\_descriptions.htm](http://www4.carleton.ca/cifp/gdp_indicator_descriptions.htm) (accessed 26 September 2016).

**15** See eFundar, IBP & IHRIP, 2004, “Dignity Counts: A guide to using budget analysis to advance human rights” *available at* <http://internationalbudget.org/publications/dignity-counts-a-guide-to-using-budgetanalysis-to-advance-human-rights/>; UN Women Website, “Gender Responsive Budgeting” *available at* <http://www.gender-budgets.org/> and the UNICEF website, “Social and Economic Policy - social budgeting and public finance” *available at* [http://www.unicef.org/socialpolicy/index\\_43058.html](http://www.unicef.org/socialpolicy/index_43058.html).

**16** Centre for Economic and Social Rights, 2012 “The Opera Framework: Assessing Compliance with the Obligation to Fulfill Economic, Social and Cultural Rights” *available at* <http://cesr.org/downloads/the.opera.framework.pdf> (accessed 20 September 2016) at page 10.

**17** Centre for Economic and Social Rights, 2012 “The Opera Framework: Assessing Compliance with the Obligation to Fulfill Economic, Social and Cultural Rights” *available at* <http://cesr.org/downloads/the.opera.framework.pdf> (accessed 20 September 2016) at page 10.

together to produce composite scores, which account for broader elements of human wellbeing and which can be ranked and compared across countries. The SERF Index is an example of a composite index, which calculates scores comprising several indicators on five economic, social and cultural rights.<sup>18</sup>

Indicators used to measure human rights can be either quantitative or qualitative and ideally, metrics should comprise both. Quantitative indicators are expressed as numbers, percentages or ratios and offer a statistical overview of a situation by providing a measure of 'how much', 'how many', 'to what extent' or 'what size'.<sup>19</sup> With reference to a specified benchmark, goal or target, quantitative indicators demonstrate status and progress towards (or distance from) a target. Qualitative indicators are an important complement to quantitative indicators and tend to capture deeper and more comprehensive analyses. They are crucial to understanding people's perceptions about human rights and their lived realities. Mixed method approaches to research, which combine quantitative and qualitative methods of analysis, are the best way in which to describe and corroborate comprehensive evidence on human rights.<sup>20</sup>

The rationale for developing indicators on human rights is that frameworks for measuring human rights need to be structured, consistent, operationally feasible and universally relevant.<sup>21</sup> As such, indicators should be relevant, valid, reliable, simple, based on objective information, suitable for comparison, amenable to disaggregation and able to address the objective for which they are being used.<sup>22</sup> Recognising the varying capacities, priorities and contexts of different countries, indicators also need to be contextually relevant and specific to the level of development and human rights achievement that is attainable within a particular context. This is particularly true in relation to indicators that assess socio-economic

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**18** *Social and Economic Rights Fulfillment Index available at <http://www.serfindex.org/overview/> (accessed 19 September 2016).*

**19** Centre for Economic and Social Rights, 2012 "The Opera Framework: Assessing Compliance with the Obligation to Fulfill Economic, Social and Cultural Rights" available at <http://cesr.org/downloads/the.opera.framework.pdf> (accessed 20 September 2016).

**20** Centre for Economic and Social Rights, 2012 "The Opera Framework: Assessing Compliance with the Obligation to Fulfill Economic, Social and Cultural Rights" available at <http://cesr.org/downloads/the.opera.framework.pdf> (accessed 20 September 2016) at page 20.

**21** United Nations Office of the High Commissioner for Human Rights, 2008 "Report on Indicators for Promoting and Monitoring the Implementation of Human Rights" available at [http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3\\_en.pdf](http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf) (accessed 26 September 2016).

**22** United Nations Office of the High Commissioner for Human Rights, 2008 "Report on Indicators for Promoting and Monitoring the Implementation of Human Rights" available at [http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3\\_en.pdf](http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf) (accessed 26 September 2016) at pages 9 and 10.

rights, like the right to health or adequate housing, which may need to be customised according to what is feasible, relevant and attainable in a particular context.

In 2008, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a standard framework of indicators for measuring human rights.<sup>23</sup> The intention was that the framework would be applied and developed in rights-based monitoring work at the country level around the world. The framework sets out quantitative and qualitative indicators that measure human rights in terms of (i) commitment to a human rights standard; (ii) efforts to make that commitment a reality; and (iii) the results of those efforts over time. Importantly, the framework moves away from the typology of human rights obligations that require states to respect, protect and fulfil human rights. Instead, the OHCHR opted for a series of structural, process and outcome indicators to measure commitment, efforts and results respectively. Indicators that measure commitment are designated as structural, while those that measure effort are designated as process, and those that measure results as outcome indicators.<sup>24</sup>

For the purposes of generating data on selected indicators, the OHCHR framework proposes two complementary sources: socio-economic and other administrative statistics and events-based data on human rights violations. Socio-economic statistics are generally compiled by national statistical agencies and gather quantitative information from administrative records and statistical surveys. In South Africa, socio-economic statistics collected and obtained by Statistics South Africa (Stats SA). Census operations, household surveys and civil registration systems provide information on a range of issues relevant to social, economic, civil and political rights.<sup>25</sup> Events-based data consists of data about reported and alleged human rights violations and might include information about allegations of torture or discrimination and any other reported incidents of human rights violations. In South Africa, events-based data on human rights violations is typically collected and reported by non-governmental organisations and the so-called “Chapter 9” institutions established to support and protect democracy. By design, South Africa’s Chapter 9 institutions are required to be independent and their function is primarily to promote, support and monitor

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<sup>23</sup> United Nations Office of the High Commissioner for Human Rights, 2008 “Report on Indicators for Promoting and Monitoring the Implementation of Human Rights” available at [http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3\\_en.pdf](http://www2.ohchr.org/english/issues/indicators/docs/HRI.MC.2008.3_en.pdf) (accessed 26 September 2016).

<sup>24</sup> In addition to suggesting indicators for substantive rights, the framework also proposes a set of indicators for measuring procedural rights and cross-cutting human rights norms, such as participation, empowerment, equality and non-discrimination that capture the nature of access to various rights.

<sup>25</sup> For more information about the kinds of data collected and analysed by Statistics South Africa, see [www.statssa.gov.za](http://www.statssa.gov.za).

South Africa's democratic and human rights ambitions. The Chapter 9 institutions that are specifically mandated to receive and investigate human rights in South Africa include the South African Human Rights Commission, the Commission for Gender Equality, the Office of the Public Protector and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. In addition, events-based data on human rights deprivations may be produced by South Africa's court systems, quasi-judicial mechanisms, commissions of inquiry and by special procedures of the UN and African Union. It is worth noting, however, that one of the limitations of relying on events-based data is that the incidence of human rights violations tends to be underreported and therefore underestimated.

## The limitations of human rights indicators

The ability and desirability of using indicators to measure human rights performance has been met with criticism. In addition to concerns about the suitability of indicators adequately to illustrate human rights performance, some authors have suggested that the use of indicators may “*reduce the space available for democratic contestation*.”<sup>26</sup> Because indicators tend to privilege quantifiable and putatively transferable data, often with reference to benchmarks and universally-recognised standards, it might encourage governments to concentrate exclusively on meeting some goals to the exclusion of others. Critics of the approach to using human rights indicators have argued that questions about national priorities, rights and strategic focus in the domestic context are best left to states to determine, in line with national objectives.<sup>27</sup> Although these criticisms are valid, the use of indicators to measure human rights has nevertheless gained traction as an imperfect but necessary means of tracking human rights progress.

## Constructing indicators to measure human rights

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<sup>26</sup> Annjanette Rosga and Margaret L. Satterthwaite, 2012 “Measuring Human Rights: UN Indicators in Critical Perspective” in K. David, A. Fisher, B Kingsbury and S. Merry (eds), *Governance by Indicators: Global Power through Quantification and Rankings*.

<sup>27</sup> Annjanette Rosga and Margaret L. Satterthwaite, 2012 “Measuring Human Rights: UN Indicators in Critical Perspective” in K. David, A. Fisher, B Kingsbury and S. Merry (eds), *Governance by Indicators: Global Power through Quantification and Rankings*.

Ultimately, indicators that measure human rights should be designed to translate human rights standards into markers that reflect the commitment, efforts and results of a human rights project. To demonstrate commitment, the OHCHR framework proposes the use of structural indicators that reflect the legal standard of a particular right. This legal standard should be assessed with reference to law and policy, as well as the institutional mechanisms necessary for protecting, promoting and facilitating realisation of the right. Structural indicators might include laws, policy statements, frameworks, national strategies, action plans and other policy instruments, which capture the intent and priorities of states and outline objectives and benchmarks to address human rights issues.

Process indicators reflect the efforts taken to give effect to human rights. They describe and aim to quantify the efforts of duty-bearers to meet or make progress in attaining certain outcomes that are related to human rights. Essentially, process indicators gauge things like the reach of a government intervention, so that this information can be related to an assessment about whether or not the reach of an intervention is adequate. Process indicators should be designed to link human rights commitments with outcomes that reflect the status of attainment of a right. As such, they have been described as indicators which show “cause and effect relationships” between an intervention or process and its impact or effect on human rights. Process indicators typically rely on “flow” variables, which measure a specific variable over a period of time, rather than static measures. For example, in the case of the right to freedom of assembly, a process indicator would be to determine the proportion of requests for demonstrations that were granted within a particular timeframe.

Outcome indicators are indicators which aim to measure results and should be designed to capture attainments that reflect the status of realisation of a right. Outcome indicators are closely related to the enjoyment or realisation of human rights and are therefore the most direct measure of human rights enjoyment. Outcome indicators on the right to be free from cruel, inhuman or degrading treatment might include, for example, the number of reported cases of cruel, inhuman or degrading treatment or punishment. Where process indicators rely on flow variables, outcome indicators are a function of “stock” variables, which are measureable at one particular time.

The broader OHCHR framework proposes that for each indicator, whether structural, process or outcome, detailed meta-data is collected on how the indicator has been defined, computed, collected and disaggregated. A rationale for including the indicator is also provided and comments and limitations around use of the indicator are established.



## II. Measuring and Evaluating Human Rights in South Africa

### Existing frameworks for measuring human rights in South Africa

The Studies in Poverty and Inequality Institute of South Africa (SPII) has developed a helpful three-step methodology for measuring socio-economic rights in South Africa. This monitoring tool has been endorsed by the South African Human Rights Commission (SAHRC) and has been used to evaluate the rights to food, housing, education, healthcare, social security, land and the right to a healthy environment in South Africa.<sup>28</sup> The tool relies on a combination of policy and budgetary analysis, as well as socio-economic statistical indicators to monitor and evaluate the rate, pace and direction of the progressive realisation of socio-economic rights in South Africa.

Although different indicators apply in the context of civil and political rights realisation in South Africa, the basic framework of the SPII tool is nevertheless instructive for purposes of this project. Broadly, it suggests a three-part analysis of (i) policy efforts; (ii) resource allocations and expenditure; and (iii) indicators that describe attainments of particular rights. This methodology roughly maps onto the series of indicators proposed by the OHCHR, explained above, although the bucket of process indicators in the OHCHR series may be slightly broader than the budgetary analysis proposed in the SPII framework.

OHCHR indicators	SPII 3-step methodology
Structural indicators	Policy efforts
Process indicators	Budget analysis
Outcome indicators	Indicators

### Framework and methodology developed for this report

Naturally, a framework for measuring a human right must be anchored in the normative content of the right and the goals and human rights standards it establishes. As such,

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<sup>28</sup> For copies of reports and the monitoring tool, see <http://www.spii.org.za/>.

a preliminary level of analysis will be around determining the normative content and component parts of the civil and political rights being assessed. To determine the normative content of a right, the relevant provisions of the law that guarantees the right, together with jurisprudence and the correlative obligations on the state to protect, respect, fulfil and promote the right, will be assessed.

In South Africa, the Constitution is the supreme law and sets the framework for the protection of civil and political rights in South Africa. As such, the civil and political rights as enshrined in the Constitution will inform the normative content of the right under assessment. Importantly, the rights enshrined in the Bill of Rights are subject to a general limitations clause, contained in section 36 of the Constitution. The clause permits rights limitations under certain, narrowly-defined conditions. Rights limitations are permissible where the limitation is authorised by a law of general application, is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, and where the benefit of the limitations are proportional to the harms caused by limiting the right. The limitation clause contained in section 36 of the Constitution, together with the object, purport and preamble that frame constitutional interpretation, are therefore necessary parts of our overall assessment.

For purposes of this project, we have adopted a framework for measuring civil and political rights as contained in the Constitution that is based on both the OHCHR indicators and the SPII 3-step methodology for measuring socio-economic rights in South Africa. Our intention in doing this was to produce a framework that is consistent with a universally-recognised and accepted methodology but also contextually relevant and aligned with established domestic efforts to monitor human and constitutional rights. At a high level, the broad framework for measurement looks as follows:

<b>What is being measured?</b>	<b>What is the focus of analysis?</b>	<b>What indicators can be used?</b>
The scope and normative content of the right	The human rights standard Component parts of the right	Sources of the right Jurisprudence International and regional benchmarks
Commitment to the human right	Legal and policy frameworks	Structural indicators
Efforts to make the human right commitment a reality	Budgets, resources and interventions	Process indicators
Results of efforts	Access, adequacy and quality indicators	Outcome indicators

### 1. Normative content of the right

#### 1. What goals and human rights standards are set by the right?

- How is the right worded and protected?
- What goals does the rights seek to achieve?
- How does the preamble to the Constitution and the general design of the Constitution guide our interpretation of the right?
- What jurisprudence is there to guide content of the right?
- What international, regional or other benchmarks, including the Sustainable Development Goals and other standards exist to guide what enjoyment of the right looks like?

### 2. Commitment to the human rights standard

#### 2. Structural indicators and policy efforts

- Assess legal and policy framework: What international and regional treaties are in place to demonstrate commitment to the right?
- What policy frameworks, statements, national action plans and other instruments are in place to capture and outline commitments and benchmarks?
- Assess content of laws and policies
- Assess accountability mechanisms: What structures, mechanisms and institutions are in place to facilitate access and enjoyment of the right? Are civil society and NGOs actively encouraged to promote and protect the right?

### 3. Efforts taken to meet the human rights standard

#### 3. Process indicators

- What efforts are being taken by state and non-state actors to meet the relevant human rights standard?
- Are resources being allocated to meeting the human rights standard? Are they sufficient?
- How do the efforts taken correspond with the stated commitments? Is enough being done and how effective are the efforts?

### 4. Results of efforts taken

#### 4. Outcome indicators

- What results have been attained which reflect the status of realisation of the right?
- What is the incidence and prevalence of reported cases alleging deprivation of the right?
- What proportion of reported cases of rights violations were addressed?

## Limitations of the research

One of the key underpinnings of systems that protect human rights has been to recognise that human rights are indivisible, interdependent and interrelated. As such, the enjoyment and achievement of particular rights is often contingent on and related to the achievement of other human rights. For example, if the right of access to information is severely curtailed and people cannot receive information required for the exercise or protection of their right to assemble, people may be less likely to exercise their right to freedom of assembly. For this reason, a collective assessment across all human rights is the ideal standard and a limitation of this project is that a full assessment of the interdependence and impact of related rights may not be possible. However, individual assessments of particular human rights, and particularly socio-economic rights, are becoming quite standard and we believe there is merit in undertaking dedicated and comprehensive assessments of particular rights.



## Centre for Constitutional Rights

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