



Detailed technical considerations in the selection of human rights indicators

Some of the more specific and technical considerations that were discussed and taken into account in the process of defining indicators were:

1.1 Common indicators versus indigenous-specific indicators

Generating data on indigenous peoples related to common indicators (for example, those adopted to monitor the SDGs) can measure discrimination against indigenous peoples, as it is possible to compare data between indigenous and non-indigenous sections of the population. However, common indicators are rarely useful for measuring aspects relating to indigenous peoples' self-determination, which therefore requires the development of indigenous-specific indicators. The challenge related to such indicators is that data collection will largely depend on indigenous peoples' own efforts – and the limited resources available for that purpose.

1.2 Measuring various aspects of States' responsibilities

The majority of UNDRIP provisions imply obligations for States (the **duty-bearers**), and entitlements for indigenous peoples and individuals (the **rights-holders**)¹.

In general, States' obligations with regard to human rights fall in three categories:²

- To **respect**: States must refrain from interfering with the enjoyment of human rights;
- To **protect**: States must prevent private actors or third parties from violating human rights;
- To **fulfil**: States must take positive measures to realize human rights, including adopting appropriate legislation, policies and programmes.

It should be noted that these aspects of States' obligations are not mutually exclusive. For example, the right to lands, territories and resources will require respect, protection and fulfilment:

¹ However, the UNDRIP also contains provisions which imply obligations for indigenous peoples, for example article 34, which stipulates that Indigenous peoples have the right to promote, develop and maintain their juridical systems or customs, in accordance with international human rights standards. The assessment framework is designed to also monitor these aspects.

² As explained in OHCHR, 2012: 10: "In the human rights literature, these [concepts] are referred to in the Maastricht Guidelines, which define the scope of State obligations in relation to economic, social and cultural rights, but are equally relevant to civil and political rights." See Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht, Netherlands, 22–26 January 1997).

- Respect for indigenous peoples' rights to lands, territories and resources on the basis of tradition occupation and use;
- Protection against third parties violating indigenous peoples' rights to lands, territories and resources; and
- Positive measures to fulfil indigenous peoples' rights to lands, territories and resources, such as demarcation and titling.

All indicators were carefully assessed in order to ensure that as many aspects as possible of States' obligations were addressed in the Navigator framework.

1.3 Differences in measuring civil and political, and economic, social and cultural rights

States' obligations with regard to human rights are often categorized as either **immediate obligations** or **obligations that may be discharged progressively**.

- **Immediate obligations** are often understood as States' obligations vis-à-vis **civil and political rights**.
- **Progressive realisation** is often understood as States' obligations vis-à-vis **economic, social and cultural rights**.

For example, States have the **immediate obligation** to protect indigenous peoples' rights to freedom of expression, and the **obligation to progressively** realise their rights to health and education.

However, the OHCHR questions this simplistic categorization, noting that: "in most instances, civil, cultural, economic, political and social rights entail immediate obligations as well as aspects of progressive realization".³

Another difference is that, traditionally, a **violation approach** has been used for civil and political rights. This is based on the consideration that the normative content of civil and political rights is explicit, the claims and duties are well-known, and the rights can be enjoyed as soon as they are guaranteed by the State. The focus is essentially on monitoring the absence of violations of such rights, i.e. monitoring the absence of negative outcomes. As a result, such rights are often categorized as "negative" human rights".⁴

In contrast, the general practice for economic, social and cultural rights has been to monitor the **progressive realization** of these rights over time.⁵ "Such rights are perceived as resource-intensive and therefore difficult to immediately guarantee, particularly in developing countries. Therefore, the progressive realization of such rights is monitored over time. Since the realization of such rights are desirable, positive and require proactive measures by States, these rights are often categorized as "positive" human rights obligations".

However, OHCHR also challenges this distinction by noting that "in practice all human rights have positive and negative obligations and their implementation could be associated with both positive and negative outcomes".⁶ OHCHR therefore recommends to not focus solely on positive or negative **outcomes** (i.e. not only focus on violations or progressive realisation) but also on the **obligation of conduct**, i.e. the **underlying process of realizing such outcomes**.

³ See OHCHR, 2012: 10.

⁴ Ibid: 23.

⁵ In accordance with article 2(1) of the ICESCR.

⁶ Ibid: 23-24.

In the context of indigenous peoples, one of the key challenges in terms of State conduct is the **recognition** of the rights of indigenous peoples as such, based on their right to self-determination.

Based on a recommendation of Yance Arizona,⁷ all the proposed indicators for the Indigenous Navigator framework were assessed to ensure that the framework adequately monitor:

- State conduct and recognition of rights;
- Violations of rights; and
- Progressive realization of rights.

1.4 Quantitative, qualitative, objective and subjective indicators

The OHCHR categorizes human rights indicators using the following criteria:

	Fact-based/objective	Judgement-based/ subjective
Quantitative	<p>A: Indicator articulated in quantitative form and based on information on objects, facts or events that are, in principle, directly observable and verifiable.</p> <p>An example is the SDG indicator for stunting: Prevalence of stunting (height for age <-2 SD from the median of the WHO Child Growth Standards) among children under five years of age)</p>	<p>B: Indicator articulated in quantitative form and based on information that is a perception, opinion, assessment or judgment, using, for instance, cardinal/ordinal scales</p> <p>An example is the indicator: Adequate consultations with indigenous peoples' autonomous institutions before approval of measures and projects that may affect them.</p>
Qualitative	<p>C: Indicator articulated as a narrative, in a categorical form, and based on information on objects, facts or events that are, in principle, directly observable and verifiable</p> <p>An example is the indicator: Recognition of indigenous peoples' right to self-government in domestic law(s).</p>	<p>D: Indicator articulated as a narrative, not necessarily in a categorical form, and based on information that is a perception, opinion, assessment or judgement.</p> <p>An example is the indicator: Trends in traditional healing practices</p>

According to OHCHR, all the different indicators can provide relevant and complementary information and data. However, to make the assessment more objective and acceptable, the order of preference for indicators should be:

- Fact-based/objective indicators (A/C) over judgement-based/subjective indicators (B/D), and;
- Quantitative indicators (A/B) over qualitative indicators (C/D).⁸

⁷ See working document on States' obligations under UNDRIP by Yance Arizona, developed in the context of the Indigenous Navigator project.

⁸ See OHCHR, 2012: 19.

The Indigenous Navigator makes use of all four categories (A-D), but has attempted, to the extent possible, to give priority to A, then C, then B and then D. One of the complications with A indicators is that it is often quite difficult to identify quantitative indicators that can be objectively measured by communities without equipment or large-scale collection of statistical data.

In order to strengthen validity of data collected in the categories B-D, when filling out the Indigenous Navigator questionnaires, respondents are asked to insert additional narrative information and references to supplement and justify their responses.

1.5 Universal versus context-specific indicators

In order to allow for comparison of data across communities, countries and regions, it is preferable that the implementation of the UNDRIP is measured against a set of universal indicators. It has, to a large extent, been possible to develop such a set of universal indicators, as the indicators are derived directly from the provisions of the UNDRIP, which is a common framework relevant to all indigenous peoples. However, the relevance of some issues is context-specific. For example, cross-border issues are only relevant for indigenous peoples separated by international borders. Likewise, the availability of programs for poverty reduction will not be important in wealthy communities. Field-testing in diverse settings have indicated that the indicators have a high degree of universality, but the Questionnaire Database also allows users to select the indicators and focus areas that are particularly relevant to their context.