

Indicators to Evaluate Progress in Participation on the Environmental Matters (P10): Lessons Learnt from the Precedents to Elaborate Relevant Indicators

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Today's Topic

- Why indicators are relevant, useful and important for evaluating the progress in P10:
Significance and functions of indicators
- Some **precedents** of indicators
 - UN Human Right Indicators
 - SDG indicators
- Some wrap-up remarks

Background to the topic

- **Principle 10 (P10) of the Rio Declaration** (1992), access to information, public participation and access to justice, has now increasingly been **penetrating environmental law** at the domestic level as well as at the international level.
 - A significant number of countries establish national legislation reflecting Principle 10.
 - **Aarhus Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters (Aarhus Convention)** adopted within the framework of the UNECE on 25 June 1998 (entry into force on 30 Oct. 2001)
 - **UNEP elaborated “Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters” (Bali Guidelines)** (Feb. 2010).
 - Possible adoption of **a treaty by Latino American and Caribbean Region**
 - Other international treaties, such as **the Paris Agreement (Art. 12) and FTA and EPA** concluded with the US and EU
- **How to assess each country’s status** of realization of P10 and then **to identify its challenges and barriers** for it, **given large difference in legal system/ tradition/ governance structure etc.** among countries.
- For this purpose, **developing indicators relevant to P10 could be useful** rather for **identifying similarities** among countries and **specificity** of each country than for ranking countries.
- It constitutes a part of research undertaken under the **Grant-in-Aid for Scientific Research(S) Project “Towards elaboration of indicators relevant to public participation principles under the environmental law”** (FY2014-FY2018).

Principle 10 of Rio Declaration

- “Environmental issues are best handled with the participation of all concerned citizens at relevant levels. At the national level, each individual shall have appropriate **access to information concerning the environment that is held by public authorities...and the opportunity to participate in decision-making processes. ...Effective access to judicial and administrative proceedings**, including redress and remedy, shall be provided.”

Human Rights Indicators (HRI)

- Elaborated by the **United Nations Human Rights Office of the High Commissioner (OHCHR)** in response to a request from the inter-committee meeting of human rights bodies.
- Precedents of use/ expected use of HRI
 - May be used for decision of non-compliance with human rights treaties.
 - Some **precedents of use in judgment by national courts**
 - Ex. Supreme court of Canada: in *Action Travail des Femmes v. Canadian National Railway Co.* (1987), the Court used some statistic data as evidence of “systematic discrimination” in the context of employment of women.
 - Ex. Constitutional Court of Columbia: When requesting information on right of internally displaced persons to the government, it requested it to identify and use quantifiable and comparable indicators.

What's "HRI"?

- What's "HRI"?
 - “In the context of this work, a human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.”(OHCHR, 2012)
 - “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards”;
 - (specific information) “that addresses and reflects human rights principles and concerns”;
 - (specific information) “that can be used to assess and monitor the promotion and implementation of human rights”.

Expected functions of HRI

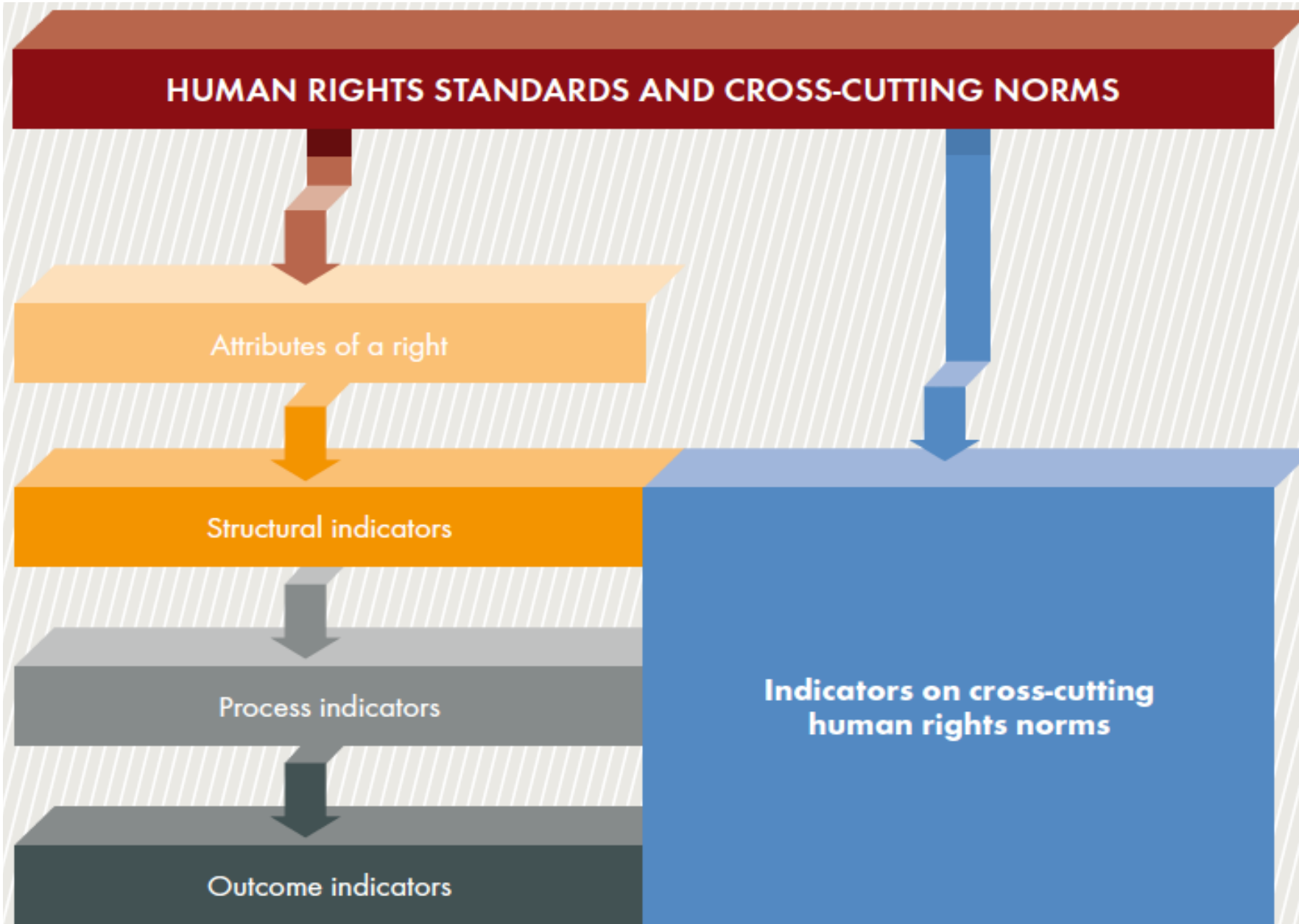
- Expected functions of HRI
 - Help in **clarifying the content of human rights standards and norms**
 - Useful for **instituting a claim** against duty-bearer
 - Useful for court's judgment
 - Useful for **elaborating public policy and program**
 - Help in **enforcing human rights and measuring their implementation by enhancing transparency and accountability.**
 - Useful for **States' evaluating progress of their implementation**
 - Useful for **raising public awareness and to find problems**
- Good precedent in elaborating indicators relevant to P10.
 - **Relevant to P10 indicators as subject-matter**
 - For instance, P10 constitutes a part of well established human rights such as right to know
 - Expected function is quite similar.
 - Do **not aim at scoring or ranking States**; rather the indicators do aim at enhancing public participation by **providing a tool to assess the status and progress by States themselves, expert and the public based on objective data as much as possible.**

Conceptual framework(1)

- Step 1: **Identification of characteristics/attributes of a right**
 - The narrative on the legal standard of a human right is transcribed into a limited number of characteristics or attributes of that right.
= **Identifying more tangible elements/components** contained in the right
 - The attributes should be based on an exhaustive reading of the standard, starting with the provisions in the core international human rights treaties;
 - The attributes of the human right should **collectively reflect the essence of its normative content**, be **few in number** and their articulation should help the subsequent identification of the relevant indicators; and
 - The attributes' **scope should not overlap**.
 - Ex. Right to life
 - Identify “arbitrary deprivation of life”, “disappearances of individuals”, “health and nutrition” and “death penalty”, according to article 3 of the Universal Declaration of Human Rights, article 6 of the International Covenant on Civil and Political Rights and general comment No. 6 (1982) on the right to life of the Human Rights Committee.

Conceptual framework (2)

- Step 2: **Identification of indicators**
- The framework uses a configuration of indicators that have been categorized as **structural, process and outcome indicators.**
 - Structural indicator
 - Process indicator
 - Outcome indicator
 - Cross-cutting indicator



Structural indicators

- Structural indicator helps in capturing the acceptance, intent and commitment of the State to undertake measures in keeping with its human rights obligations.
- Some common structural indicators:
 - International human rights treaties ratified by the State
 - Whether relevant key national policies have been elaborated or not, their time frame and coverage

Process indicators

- Process indicators measure **duty bearers' ongoing efforts to transform their human rights commitments into the desired results.**
- Unlike with structural indicators, this involves indicators that continuously **assess the policies and specific measures taken** by the duty bearer to implement its commitments on the ground.
- As a **“monitorable intermediate” between commitment and results**, the **accountability of the State for its human rights obligations can be better assessed.**
- Process indicators are **more sensitive to changes than outcome indicators**; hence, they are better at capturing the progressive realization of a right or at reflecting the ongoing efforts of the State parties in protecting it.
- Some common process indicators are:
 - Indicators based on budget allocations;
 - Human rights complaints received and the proportion redressed;
 - Incentive and awareness measures extended by the duty bearer to address specific human rights

Outcome indicators

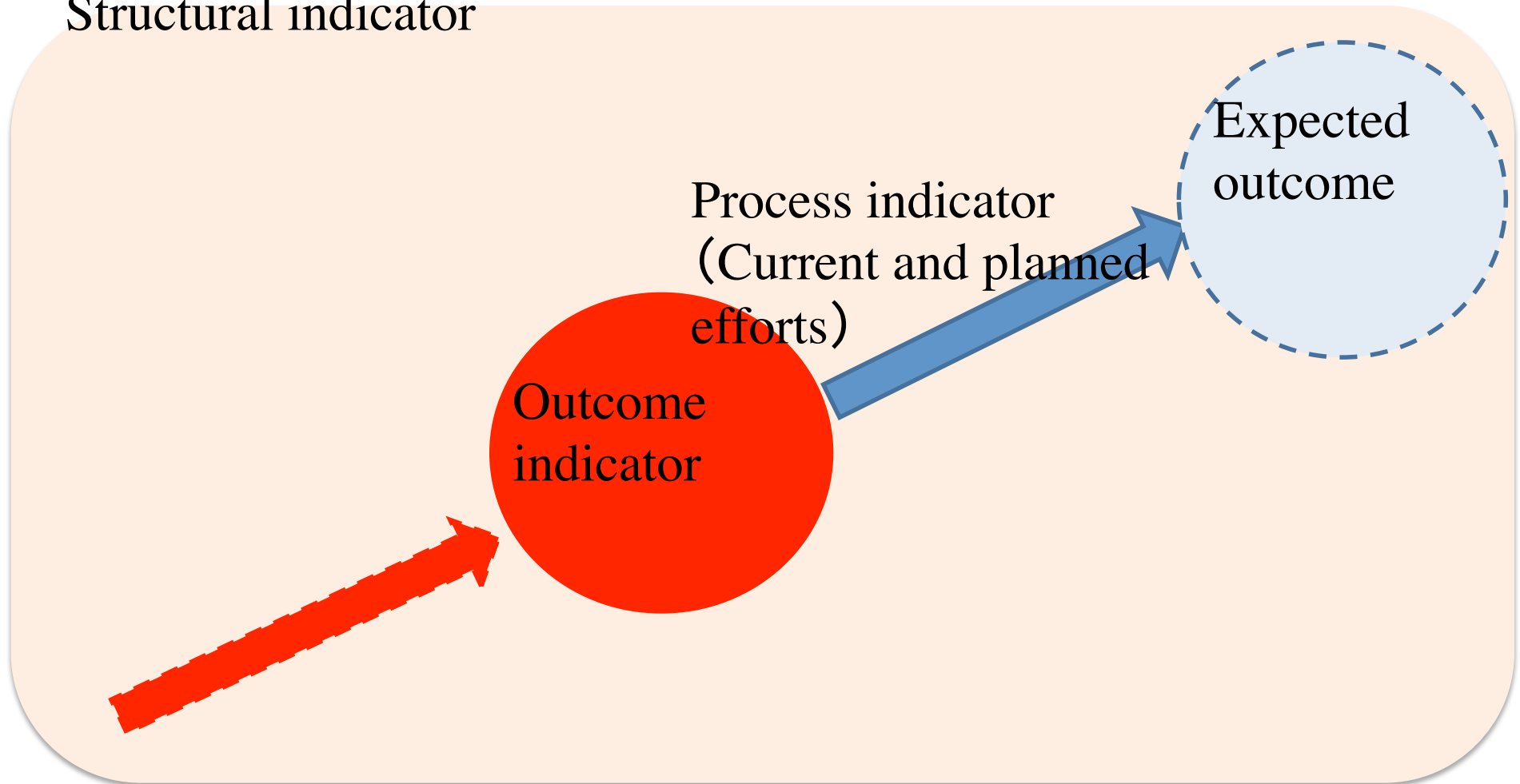
- Outcome indicators capture **individual and collective attainments (results)** that reflect the state of enjoyment of human rights in a given context.
- Often a **slow moving indicator, less sensitive to capturing momentary changes** than a process indicator.
- Some common examples:
 - Proportion of labour force participating in social security scheme(s);
 - Reported cases of miscarriage of justice and proportion of victims who received compensation within a reasonable time
 - Educational attainments (e.g., youth and adult literacy rates)

Cross-cutting indicators

- Cross-cutting indicator is meant to capture **the extent to which the process of implementing and realizing human rights respects, protects and promotes transversal norms and principles.**
- For instance
 - non-discrimination and equality
 - **Participation**
 - How much public participation is/was ensured when measures elaborated and adopted.
 - Participation even in elaborating indicators.
 - access to remedy
 - accountability

Basic Structure of HRI

Structural indicator



Source: Takamura

Cross-cutting indicator

Context-specific indicator

- Context-specific indicator is **important for acceptability and use of HRI** among potential users engaged in monitoring and implementing human rights.
- **Universally relevant indicators and contextual specific indicators**
 - Prohibition of torture
 - Prevention of malaria in the context of right to health

Methodologies: data selection (1)

- Step 3 : Make choice of appropriate data which represent each indicator
- Whether to be feasible to quantify and measure human rights compliance?
 - Human rights relate to qualitative aspects of life, which might not be captured by statistics.
 - However, useful to measure a few relevant features related to the realization and the enjoyment of human rights or assess the efforts toward it.
 - Ex. Statistical information on access to legal aid (Art. 9.5 of the Aarhus Convention; Bali Guidelines 20)

Methodologies: data selection (2)

- Availability of appropriate data
 - Elaboration of indicators **may make us aware of lack of information necessary to assess.**
 - Especially **disintegrated data**, for instance, for a specific (often vulnerable) group.
- **Mechanisms to collect, maintain and create such appropriate data.**
- How to ensure **independence and neutrality of information collection and creation.**
- Statistical averages and **information on individual cases**
- **Example of World Bank**

Indicative HRI

Access to information (1)

- Access to information (Right to Freedom of opinion and expression, Universal Declaration of Human Rights, art. 19)
- **Structural indicators**
 - **International human rights treaties** relevant to the right to freedom of opinion and expression (freedom of expression) **ratified by the State**
 - Date of entry into force and coverage of **the right to freedom of expression in the constitution or other forms of superior law**
 - Date of entry into force and coverage of **domestic laws for implementing the right to freedom of expression, including availability of judicial review of any decision taken by the State to restrict it**
 - **Number of registered and/or active NGOs** (per 100,000 persons) involved in the promotion and protection of the right to freedom of expression
 - Date of entry into force and coverage of code of conduct/ethics for journalists and other media persons
 - Date of entry into force and coverage of **legislation on access to information**
 - Date of **establishment of an independent monitoring mechanism** (e.g., information commissioner)
 - Date of entry into force and coverage of **statistical legislation to protect independence and quality of official statistics**
 - Time frame and coverage of **national policy to promote access to information technology**

Indicative HRI

Access to information (2)

- **Process indicators**
 - Proportion of **received complaints** on the right to freedom of expression investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms **and the proportion of these responded to effectively by the Government**
 - Proportion of communications from the special rapporteurs (e.g., Special Rapporteur on the promotion and protection of the right to freedom of expression) responded to effectively by the Government
 - Proportion of **information requests by the media responded to effectively by the Government**
 - **Subscriptions and average daily sales of national and main regional newspapers**
 - Proportion of population with **access to TV and radio broadcasts**
 - **Number of personal computers in use with Internet access per 100 population***
 - **Number of Internet domains registered per 1000 population**

Indicative HRI

Access to information (3)

- **Outcome indicators**
 - Reported cases of non-disclosure of documents, archives and administrative or corporate data of public interest (e.g., justice records, arms exports, environmental data, asylum seekers)
 - Proportion of different linguistic population groups having access to media broadcasts in their own language
 - Reported cases of killing, disappearance, detention and torture against journalists, human rights defenders or any other persons who exercised their right to freedom of expression, perpetrated by an agent of the State or any other person acting under its authority or with its complicity, tolerance or acquiescence, but without any or due judicial process (e.g., reported to United Nations special procedures)

Indicative HRI

Participation in public affairs: Exercise of legislative, executive and administrative powers (1)

- **Structural indicators**
 - **International human rights treaties** relevant to the right to participate in public affairs **ratified by the State**
 - Date of entry into force and coverage of the right to participate in public affairs **in the constitution or other forms of superior law**
 - Date of entry into force and coverage of **domestic laws for implementing the right to participate in public affairs**, including freedom of opinion, expression, information, media, association and assembly
 - Date of entry into force of **universal suffrage, right to stand for election, legal provisions defining citizenship and limitations** (including age limits) on permanent residents with respect to the right to participate in public affairs at national and local levels
 - Quota, time frame and coverage of temporary and special measures for targeted populations in legislative, executive, judicial and appointed bodies
 - Type of accreditation of national human rights institutions by the rules of procedure of the International Coordinating Committee of National Institutions
 - **Number of registered and/or active NGOs** (per 100,000 persons) involved in the promotion and protection of the right to participate in public affairs
 - Periodicity of executive and legislative elections at national and local level
 - Date of entry into force and coverage of laws establishing an independent national electoral body

Indicative HRI

Participation in public affairs: Exercise of legislative, executive and administrative powers (2)

- **Process indicators**
 - Proportion of **received complaints** on the right to participate in public affairs investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and **the proportion of these responded to effectively by the Government**
 - **Number of national and local elections** (election, referendum) held during the reporting period
 - **Number of laws adopted** by national and subnational legislatures during the reporting period
 - Proportion of elections and sessions of national and locally elected bodies held as per the schedule laid down by constitutional or statutory bodies
 - Proportion of election campaign expenditure at national and subnational levels met through public funding
 - Proportion of elected personnel whose term of service was interrupted, by type of interruption
 - **Proportion of women and target groups** included in the membership of national political parties or presented as candidate for election

Indicative HRI

Participation in public affairs: Exercise of legislative, executive and administrative powers (3)

- **Outcome indicators**

- Proportion of seats in parliament, elected and appointed bodies at subnational and local levels held by women and members of target groups

SDGs

- Outcome document of Rio + 20 “Future We Want”
 - “resolve to establish an inclusive and transparent intergovernmental process on sustainable development goals that is open to all stakeholders, with a view to developing global sustainable development goals to be agreed by the General Assembly. An open working group shall be constituted”
- UNGA adopted SDGs in September 2015.



SDG relevant to P10

- **GOAL 16 Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels**
 - 16.1 Significantly reduce all forms of violence and related death rates everywhere
 - 16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children
 - **16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all**
 - 16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime
 - 16.5 Substantially reduce corruption and bribery in all their forms
 - **16.6 Develop effective, accountable and transparent institutions at all levels**
 - **16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels**
 - 16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance
 - 16.9 By 2030, provide legal identity for all, including birth registration
 - **16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements**
- **Some other relevant GOALS**
 - **<Gender Equality> 5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life**
 - **<Clean Water and Sanitation> 6.b Support and strengthen the participation of local communities in improving water and sanitation management**

Objective of SDG indicators

- Objectives of SDG indicators: **rigorous monitoring and evaluation**
 - ‘[w]hat is loosely referred to as **the Millennium Development Goals monitoring and evaluation framework consists of a variety of monitoring components which have evolved over time, without a provision for rigorous evaluation**’. (Thematic evaluation of monitoring and evaluation of the Millennium Development Goals: lessons learned for the post-2015 era, Report of the Office of Internal Oversight Services (2015))
 - ‘...one key lesson learned is that the post-2015 sustainable development goals ... would benefit from **a clear, overarching framework of monitoring and evaluation objectives, role/responsibility definitions and coordination mechanisms** being established from the outset.’ (Id.)
 - Recommend to ‘Development of **a coherent, coordinated sustainable development goals monitoring and evaluation plan to support Member State decision-making**’ (Id.)

Framework and methodologies for elaborating SDG indicators (1)

- Framework for SDG indicators
 - Work led by the **UN Statistical Commission**
 - Expert Group Meeting on the indicator framework for the post-2015 development agenda (Feb. 2015)
 - Approval of roadmap by the UN Statistical Commission and establishment of **Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG)** (March 2015)
 - Methodologies
 - In light of SDGs, **collect potential (304) indicators through inputs by countries, international organizations and others;**
 - Assess them by **rating based on 3 criteria (Feasibility, Suitability, Relevance) through questionnaires to member states.**

Framework and methodologies for elaborating SDG indicators (2)

- Report of the IAEG (Feb. 2016)
 - **Indicator framework for global monitoring**
 - Some criteria for the selection: relevance, methodological soundness and measurability
 - **An integrated monitoring framework that would include global indicators and different levels of regional, national and thematic monitoring;**
 - Need for the **total number to be limited** and for the indicators to be **easy to communicate**.
 - to **ensure disaggregation of indicators** and to **include a human rights dimension to the indicator framework (following the “no one left behind” principle);**
 - to **further strengthen national statistical capacity.**
- **230 global indicators** adopted by the UN Statistical Commission (March 2016)
 - Acknowledging that the development of a high-quality indicator framework is a technical process that will **need to continue over time, “refinements and improvements will be needed over the years,** as knowledge improves and new tools and data sources become available”.
 - IAEG-SDGs will work on the basis of the **initial indicator framework,** to review and refine the indicators as needed and to further develop the necessary methodologies.

SDG indicators relevant to P10 (1)

- 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all.
 - 16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms
 - 16.3.2 Unsentenced detainees as a proportion of overall prison population

SDG indicators relevant to P10 (2)

- 16.6 Develop effective, accountable and transparent institutions at all level.
 - 16.6.1 Primary government expenditures as a proportion of original approved budget, by sector (or by budget codes or similar)
 - 16.6.2 Proportion of the population satisfied with their last experience of public services

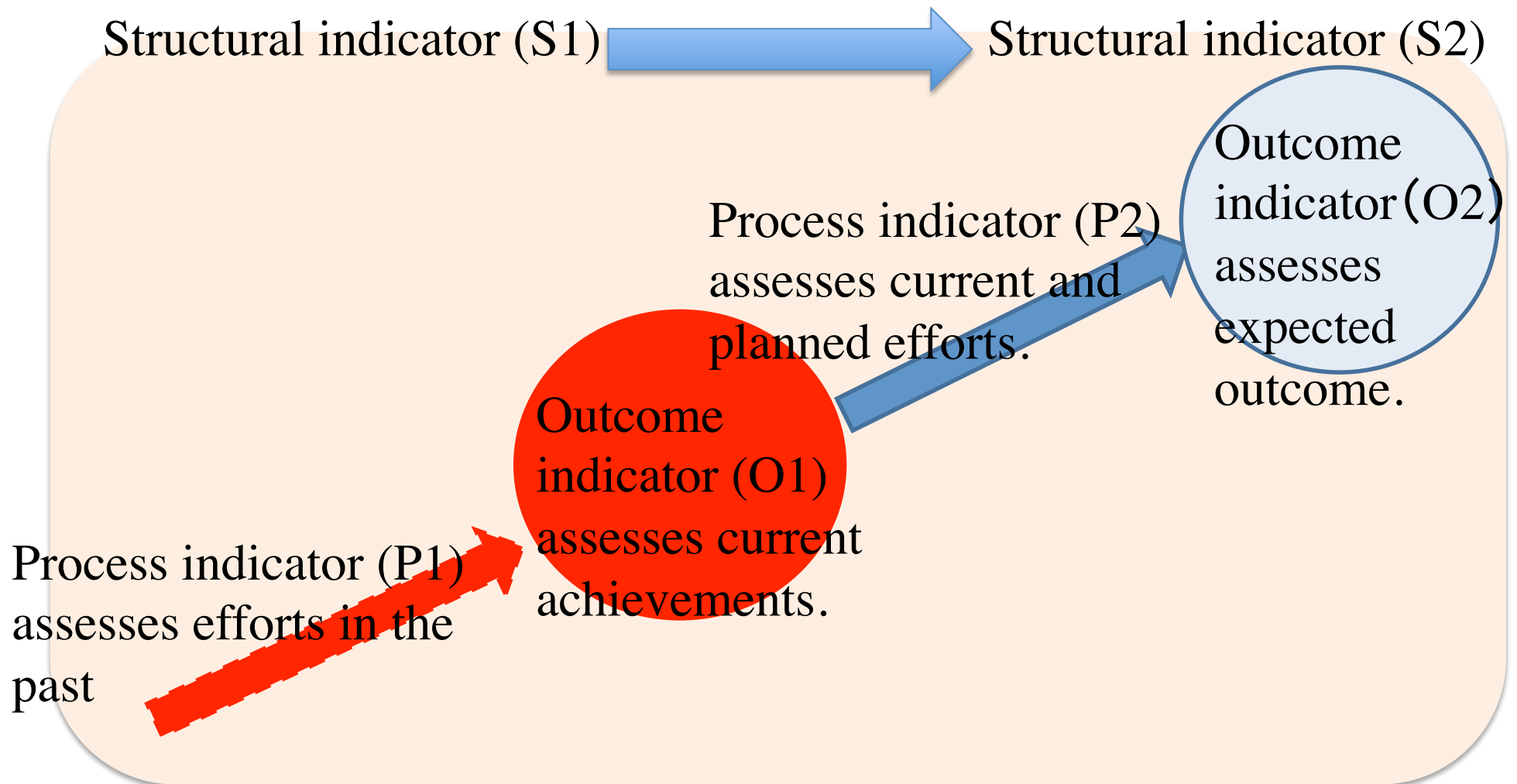
SDG indicators relevant to P10 (3)

- 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels.
 - 16.7.1 Proportions of positions (by sex, age, persons with disabilities and population groups) in public institutions (national and local legislatures, public service, and judiciary) compared to national distributions
 - 16.7.2 Proportion of population who believe decision-making is inclusive and responsive, by sex, age, disability and population group

Concluding remarks (1)

- Indicators to assess the progress in P10 could be useful, especially if they would be an evaluation tool to monitor/ assess countries' efforts and progress from various criteria.
 - Example of HRI: possible to assess not only achieved outcome (through outcome indicator) but also status of institutional foundation/setting (through structural indicator) and on going and planned actions (through process indicator).
 - Actions might not lead to be expected outcome in some cases, while outcome might be achieved without any actions.
 - Possibility of “dynamic assessment”.
 - Such an evaluation tool may be useful to analyze and better understand the situation and its background by each country.
- Applied methodologies have common features and challenges.
 - Selected based on determined goals and considering feasibility (applicability) and data availability.
 - Appropriate and objective measurement and quantification is a challenge.
 - How to reflect different national and regional circumstances/ legal tradition.
 - No one left behind principle, focusing on specific (often vulnerable) population/group.
 - Need for disintegrated data.

Possible application of HRI: Dynamic Assessment



Source: Takamura

Concluding remarks (2)

- Indicative **indicators of HRI** are suggestive, but for some indicators, their scope may be too narrow to cover P10.
 - Especially, indicators on right to participate in public affairs focus on traditional “participation”, ie. Election and voting.
- **SDG indicators should be improved (additional and/or complementary indicators are necessary) by integrating consideration of P10.**
 - “... there are also entire domains which today have no ontological representation. For example, Human wellbeing; **Law and legal representation of entities, their rights and roles; Policy and political processes, documents; Social entities and processes;** and Financial activities and economic representations of entities. ...” (Observation by UNEP, Oct. 2015)
 - “It should not be surprising to any of us, given the scope and ambition of the 2030 Agenda, that some of these indicators will need further work to allow the robust measurement the SDGs fully deserve. In some cases, additional indicators seem warranted to address fully the scope of particular targets, such as those under 16.1.” (Statement by US, March 2016)

Thank you so much for your attention.

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