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# Facts and Norms in Human Rights Assessment: Can Human Rights Compliance be Measured?

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# Setting the Scene for HRJust as audience

- Invoking a legitimate aim does not count as justification; even when presented in good faith, it merely is an element in justification
- What else is needed for justification? A structured framework of the grammar of human rights law, providing a basis for analytical step-by-step human rights compliance assessment
- Towards a general theory of assessing human rights compliance, across
  - permissible limitations (to address negative human rights obligations)
  - positive obligations (typically under economic, social and cultural rights)
  - prohibition against discrimination (to replace 'objective and reasonable')
  - collisions between human rights (typically, different rights of diff. individuals)
- Importance of the primacy of the essential core of any human rights
- Importance of empirical evidence, measuring, multidisciplinary expertise
  - Towards a new human rights epistemology

# It has been a long journey to come this far

- 1997-2004 Member of the UN Human Rights Committee (ICCPR)
- 2006-2012 Chair of the expert consultations that resulted in the OHCHR Guide on human rights indicators (slide 4)
- 2012-2015 Leader of FP7 project SURVEILLE that assessed a range of surveillance technologies for security benefit, human rights impact, moral hazards and cost through three parallel expert panels (slide 5)
- 2020-2021 Research on assessing the human rights conformity of national strategies in combating COVID-19 (slide 6)
- 2024-2026 Assessment-WP leader in ongoing Horizon Europe project ELOQUENCE that develops AI-powered chatbots and voice assistants
- these are five iterations of a framework for human rights assessment

**Table 12**

**Illustrative indicators on violence against women (Universal Declaration of Human Rights, arts. 1-5 and 16)**

	Sexual and reproductive health and harmful traditional practices	Domestic violence	Violence at work, forced labour and trafficking	Community violence and abuse by law enforcement officials	Violence and (post)-conflict and emergency situations
<b>Structural</b>	<ul style="list-style-type: none"> <li>International human rights treaties relevant to the elimination of discrimination against women, including all forms of violence against women, ratified by the State without reservations</li> <li>Date of entry into force and coverage of the principle of non-discrimination between men and women and prohibition of all forms of violence against women in the constitution or other forms of superior law</li> <li>Date of entry into force and coverage of domestic law(s) criminalizing violence against women, including rape, domestic violence, trafficking, traditional harmful practices, stalking and sexual abuse of children</li> <li>Date of entry into force and coverage of legal act instituting an independent oversight body with specific mandate to protect women against violence (e.g., accredited NHRI)</li> <li>Time frame and coverage of policy or action plan for the elimination of discrimination and all forms of violence against women and including data collection and dissemination programme</li> <li>Number of registered or active NGOs and full-time equivalent employment (per 100,000 persons) involved in the protection of women against violence</li> </ul>				
	<ul style="list-style-type: none"> <li>Time frame and coverage of policy to eliminate harmful traditional practices, including female genital mutilation, early or forced marriage, honour killing or maiming and foetal sex determination</li> <li>Legally stipulated minimum age for marriage</li> </ul>	<ul style="list-style-type: none"> <li>Date of entry into force and coverage of legislation criminalizing marital rape and incest</li> <li>Date of entry into force and coverage of legislation protecting gender equality and women's ability to leave abusive relationships (e.g., equal inheritance, asset ownership, divorce)</li> </ul>	<ul style="list-style-type: none"> <li>Time frame and coverage of policy or programme against sexual harassment in the workplace</li> <li>Time frame and coverage of policy to combat trafficking, sexual exploitation and forced labour and provide protection and access to remedy for victims</li> </ul>	<ul style="list-style-type: none"> <li>Date of entry into force and coverage of legislation defining rape in relation to a lack of consent rather than use of force</li> <li>Time frame and coverage of policy to combat community violence and abuse by police forces</li> </ul>	<ul style="list-style-type: none"> <li>Time frame and coverage of policy or programme to prevent or address sexual violence in conflict, post-conflict or emergency situations</li> <li>Time frame and coverage of special measures for participation of women in peace processes</li> </ul>
<b>Process</b>	<ul style="list-style-type: none"> <li>Proportion of received complaints on all forms of violence against women 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</li> <li>Proportion of public social sector expenditure on national awareness-raising campaign on all forms of violence against women (including harmful traditional practices) and on national prevention programme integrated into school curriculum</li> <li>Number of perpetrators of violence against women (including harmful traditional practices, domestic violence, trafficking, sexual exploitation and forced labour) arrested, adjudicated, convicted and serving sentences (by type of sentence)</li> </ul>				
	<ul style="list-style-type: none"> <li>Proportion of women of reproductive age using or whose partner is using contraception and effective preventive measures against sexually transmitted diseases (e.g., HIV/AIDS)*</li> <li>Unmet need for family planning*</li> <li>Number of safe and unsafe abortions per 1,000 women of reproductive age</li> <li>Proportion of women whose age at marriage is below 18 years**</li> <li>Proportion of managerial and other leader positions (e.g., religious leader) occupied by women</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of women reporting forms of domestic violence to law enforcement officials or initiating legal action</li> <li>Number of available places in shelters and refuges per 1000 population (urban and rural)</li> <li>Number of adopted restraining orders</li> <li>Proportion of men and women who think that abuse or violence against women is acceptable or tolerable</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of and frequency of business organizations inspected for conformity with labour standards</li> <li>Proportion of migrants working in the sex industry</li> <li>Proportion of informal sector workers (e.g., domestic workers) shifted to formal sector employment</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of new recruits to police, social work, psychology, health (doctors, nurses and others), education (teachers) completing a core curriculum on all forms of violence against women</li> <li>Proportion of victims of rape who had access to emergency contraception or safe abortion, prophylaxis for sexually transmitted infections/HIV</li> <li>Proportion of sexual crimes (e.g., rape) reported to the police (population survey)</li> <li>Proportion of formal investigations of law enforcement officials for cases of violence against women resulting in disciplinary action or prosecution</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of health staff trained in medical management and support for victims of sexual and other violence</li> <li>Proportion of victims of sexual and other violence accessing appropriate medical, psychosocial and legal services</li> <li>Proportion of reported cases of sexual or other violence where victims (or related third parties) initiated legal action</li> <li>Proportion of expenditure on relief and emergency assistance devoted to women and child welfare</li> </ul>
<b>Outcome</b>	<ul style="list-style-type: none"> <li>Proportion of women subjected to female genital mutilation**</li> <li>Sex ratio at birth and age 5-9 years</li> <li>Maternal mortality ratio* and proportion of deaths due to unsafe abortions</li> </ul>				
	<ul style="list-style-type: none"> <li>Proportion of women who have experienced physical and/or sexual violence by current or former partner in the past 12 months / during lifetime**</li> <li>Proportion of women subjected to psychological and/or economic violence by their intimate partner**</li> </ul>	<ul style="list-style-type: none"> <li>Reported cases of women/men victims of trafficking (within and across countries), sexual exploitation or forced labour</li> <li>Proportion of working women who have been victims of sexual abuse/harassment in the workplace</li> </ul>	<ul style="list-style-type: none"> <li>Proportion of women/men who report feeling unsafe in public places or limiting their activities because of safety or harassment</li> <li>Proportion of women who have experienced physical violence or rape / sexual assault during the past year [lifetime]**</li> </ul>	<ul style="list-style-type: none"> <li>Reported cases of death, rape (attempted or completed) and other incidents of violence against women that occurred in conflict, post-conflict or emergency situations</li> </ul>	
<ul style="list-style-type: none"> <li>Femicide rates (e.g., murder by intimate partner, sexual murder, killing of prostitutes, honour killing, female infanticide, dowry deaths)</li> <li>Proportion of women who have experienced physical, sexual and psychological violence during the past year [lifetime], by severity of violence, relationship to the perpetrator and frequency**</li> <li>Proportion of victim-survivors of physical, sexual or mental violence, included trafficking and forced labour, who received assistance, compensation and rehabilitation services</li> <li>Suicide rates by sex</li> </ul>					

*All indicators should be disaggregated by prohibited grounds of discrimination, as applicable and reflected in metadata sheets*

\* MDG-related indicators

\*\* UNECE indicator

IV > Illustrating the Framework - Indicators for Some Rights

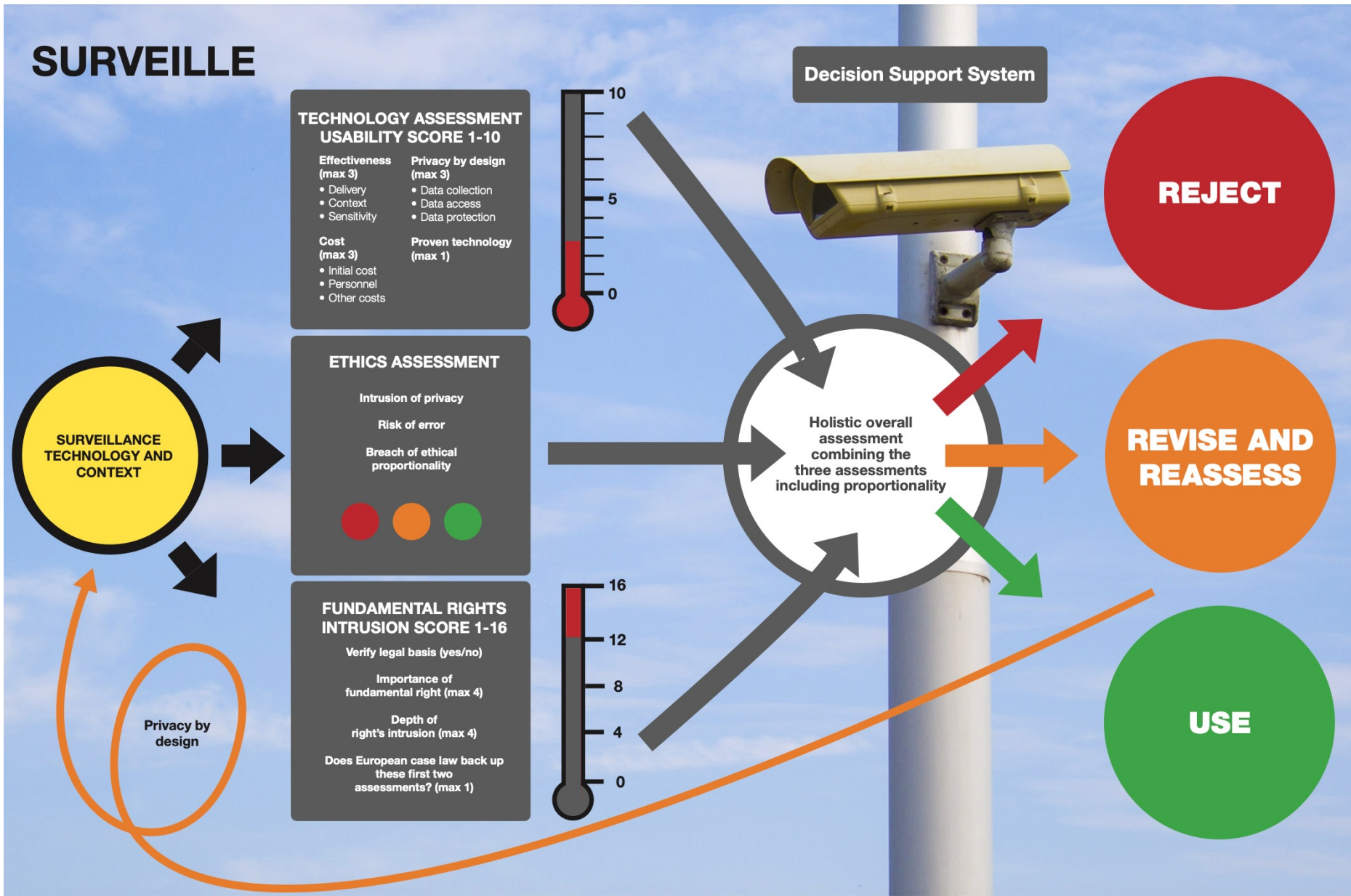
# SURVEILLE

Usability score reflects the legitimate aim of safety or security. Arithmetic scale 0-10, with 0.5 point increments

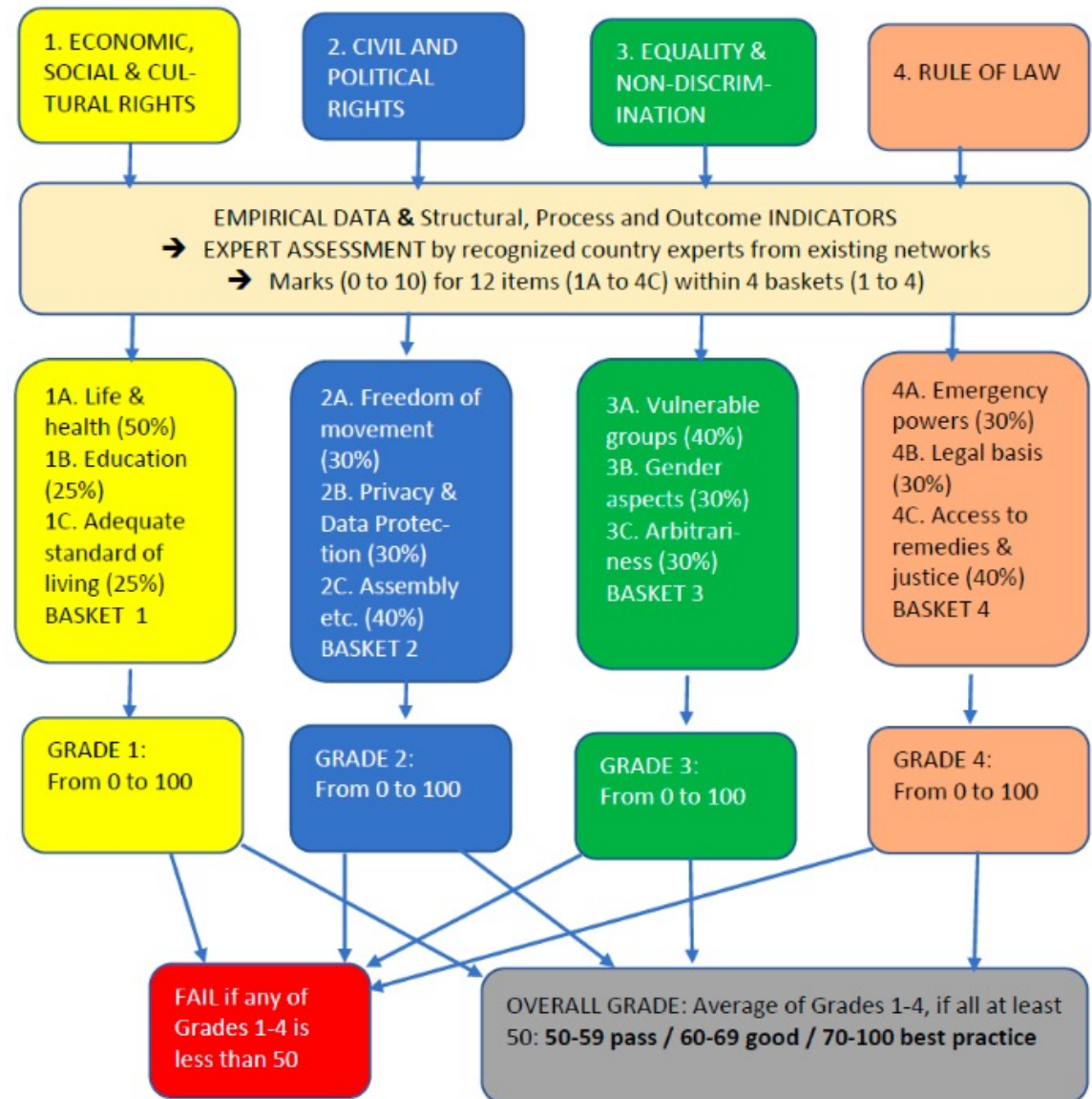
Ethics assessment does not seek to quantify or to pass judgment (pass or fail) but to provide warning lights

Human rights assessment applies Robert Alexy's triadic scale 1, 2, 4 and multiplication. Note that the maximum score 16 is higher than the maximum usability score 10, reflecting the inviolable essence

Note privacy by design loop



- A passing grade requires a passing mark from all four baskets (see bottom left red box)
- All human rights are included, with equal weight (as 4 baskets)
- Among human rights, the right to life (item 1A) has the greatest weight, 0.5 x 25%)
- The permissible limitations test is explicit in basket 2 that covers civil and political rights while basket 1 focuses on positive obligations
- Equality and nondiscrimination are represented as basket 3
- Issues related to derogation and the exercise of emergency powers are covered in basket 4



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1. Include **ALL state obligations** under **ALL human rights** of **ALL people** (interdependence and indivisibility of human rights)
  - a) Assessment is NOT about ‘civil liberties’ and negative human rights obligations only
  - b) The right to life; economic, social and cultural rights; nondiscrimination; the right to security of the person are also human rights
  - c) Give due attention to the positive human rights obligations of the state
2. As human rights will often be on **both sides of the equation**, there is a need for **reconciliation** (instead of blunt prioritization or abstract ‘balancing’):
  - a) No compromising of nonderogable rights
  - b) Every human right has an inviolable essential core
  - c) Necessity: Reduce HR intrusions to those that deliver significant and measurable results towards the legitimate aim and that cannot be substituted by a less intrusive alternative without losing that benefit; only then is an intrusion necessary
  - d) Proportionality: After passing the necessity test, also check that the measured human rights intrusion remains proportionate to the actual measured benefit obtained -> every step (a to d) provides an independent reason to reject a measure
3. Human rights assessment must be **evidence-based**
  - a) Indicators, measurement, quantification
  - b) Structured frameworks needed to give the correct role to each factual element
  - c) The strength of multidisciplinary and mixed expertise (vs. the judicial truth)

## A caveat – and it is a big one!

- All this represents an appeal to facts and reason, hoping that society would be prepared to commit itself to rational decision-making where everyone's interests matter and there is a common accepted framework for a rational and evidence-based discourse
- In the digital information age, the evidentiary preconditions for this could finally be met – based on unprecedented availability of data
- Among many other things, the result would entail a new approach to judging and courts – to be based on mixed multidisciplinary expertise
- BUT: right now the world is moving in the opposite direction. Neither facts nor norms matter, and neither do humans and their rights
- What is even more foundational than commitment to empirical facts is commitment to norms, be they called 'law', 'values' or 'human rights'
  - And this is where our world is failing right now

# Facts without norms is a house of cards

- All this represents an appeal to facts and reason, hoping that society would be prepared to commit itself to rational decision-making where everyone's interests matter and there is a common accepted framework for a rational discourse
- What is even more foundational than commitment to facts is commitment to norms, be they called 'law', 'values' or 'human rights'



# Further reading

- OHCHR project on human rights indicators (slide 4)  
Human Rights Indicators: A Guide to Measurement and Implementation, United Nations 2012. Available in English, French, Spanish, Russian and Arabic at <https://www.ohchr.org/en/publications/policy-and-methodological-publications/human-rights-indicators-guide-measurement-and>
- FP7 project SURVEILLE on assessing surveillance technologies (slide 5)  
Surveillance: ethical issues, legal limitations, and efficiency (FP–SE-C2011-284725). See, in particular, Deliverable D4.10, ‘Synthesis report from WP4, merging the ethics and law analysis and discussing their outcomes’; Deliverable D3.9, Final report of WP3’ and ‘SURVEILLE Briefing Note’; all available through <https://surveillance.eui.eu>
- EUI project on assessing strategies against COVID-19 (slide 6)  
Methodology: Martin Scheinin and Helga Molbæk-Steensig, Pandemics and Human Rights: Three perspectives on human rights assessment of strategies against COVID-19. EUI Working Papers, Law 2021/01, <https://cadmus.eui.eu/server/api/core/bitstreams/0031c9bd-4ce7-5024-a7b2-bed52df89418/content>  
Pilot study: Martin Scheinin, Health Resilience Requires Rigorous Human Rights Assessment, EUI School of Transnational Governance, Resilience Papers [https://47ef41f2-be4f-4426-80c9-35abcb384d23.filesusr.com/ugd/6a28e0\\_51c6b106336b4149bf9242d42199e631.pdf](https://47ef41f2-be4f-4426-80c9-35abcb384d23.filesusr.com/ugd/6a28e0_51c6b106336b4149bf9242d42199e631.pdf)