

RESOURCING A RIGHTS-BASED RECOVERY

Training for European NHRIs
November 23, 2021



**CENTER FOR ECONOMIC
AND SOCIAL RIGHTS**

WHY DOES FISCAL POLICY MATTER
FOR HUMAN RIGHTS?

WHAT HUMAN RIGHTS NORMS
SHOULD GUIDE FISCAL POLICY?

HOW CAN NHRIS ASSESS NRRPS
AGAINST THESE NORMS?



**WHY FISCAL POLICY?
OVERVIEW OF NORMS
ASSESSING NRRPS
AGAINST NORMS**

CONTEXTUALIZING FISCAL POLICY

Government Objectives

Results the government aims to achieve

Public Policy Levers

Steps the government can take to try and change behaviors to achieve its objectives

Regulatory

Create and enforce laws, rules and regulations to outlaw and/ or sanction certain actions

Distributive

The provision of benefits and costs across society through grants and subsidies, service provision etc.

Symbolic

Moral leadership to encourage or discourage certain actions through awareness raising, public education etc.

Public Financing

CONTEXTUALIZING FISCAL POLICY

What is the Recovery and Resilience Facility?

The centrepiece of **NextGenerationEU**, the EU's plan for recovering from the economic and social damage of the coronavirus crisis.

Objectives

To make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions.

Public Policy Levers

Regulatory

Reforms to make legal and policy frameworks fit to support green and digital transitions.

Distributive

Investments in infrastructure, goods and services that support green and digital transitions.

Symbolic

Political commitment to inclusive and sustainable recovery.

€723.8 billion in loans and grants through the Recovery and Resilience Facility

UNPACKING FISCAL POLICY

Fiscal policy determines the resources governments have to finance public investments.

It's the tool they use to influence the economy and achieve certain social and economic objectives through:

- **Resource generation:** i.e. how governments raise money;
- **Resource allocation:** i.e. what governments earmark money for in their budgets; and
- **Resource expenditure:** i.e. how allocated money is actually spent and who is benefitting.

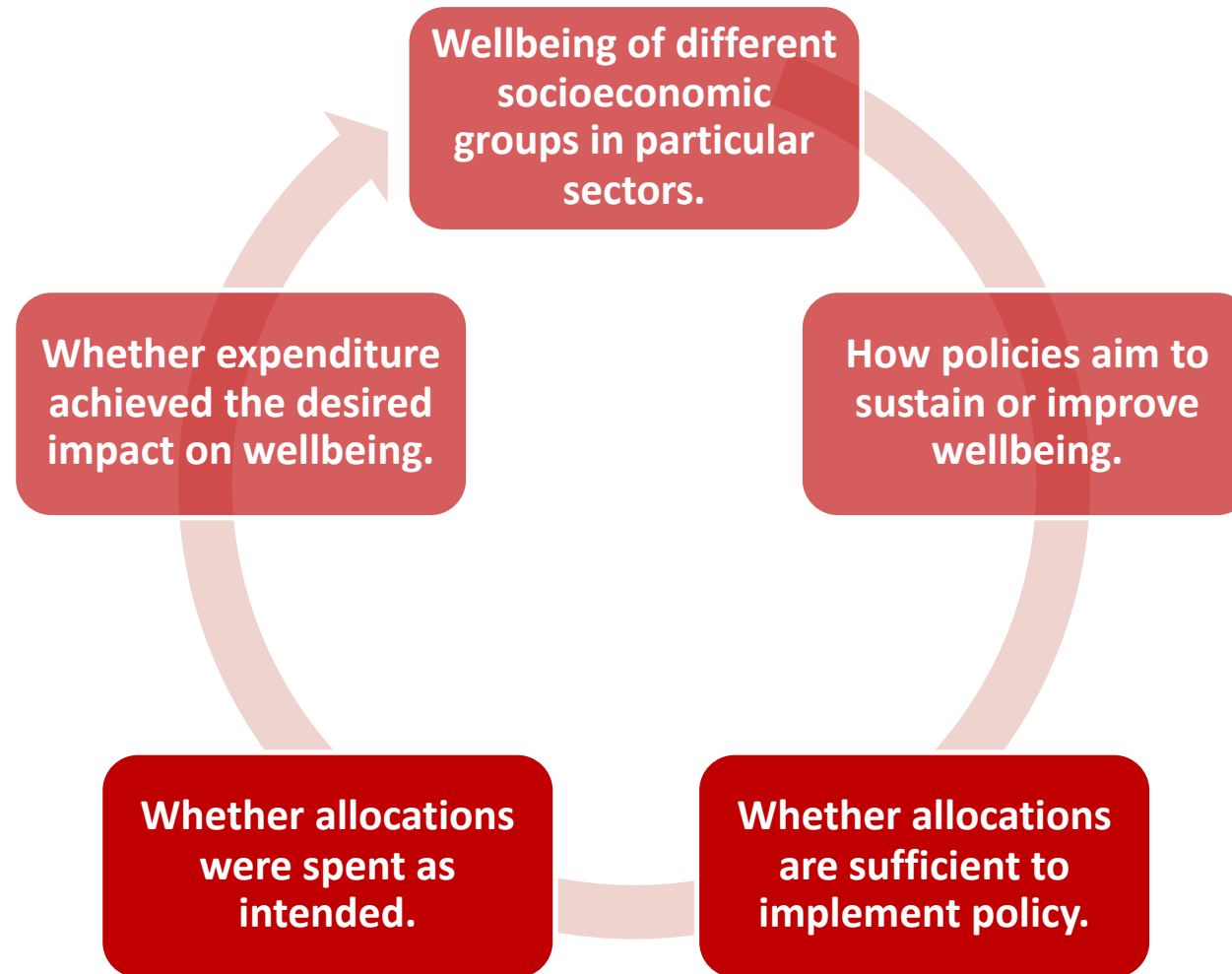
To use the classic **pie metaphor**: How big is it? How is it being sliced? Who's eating it?

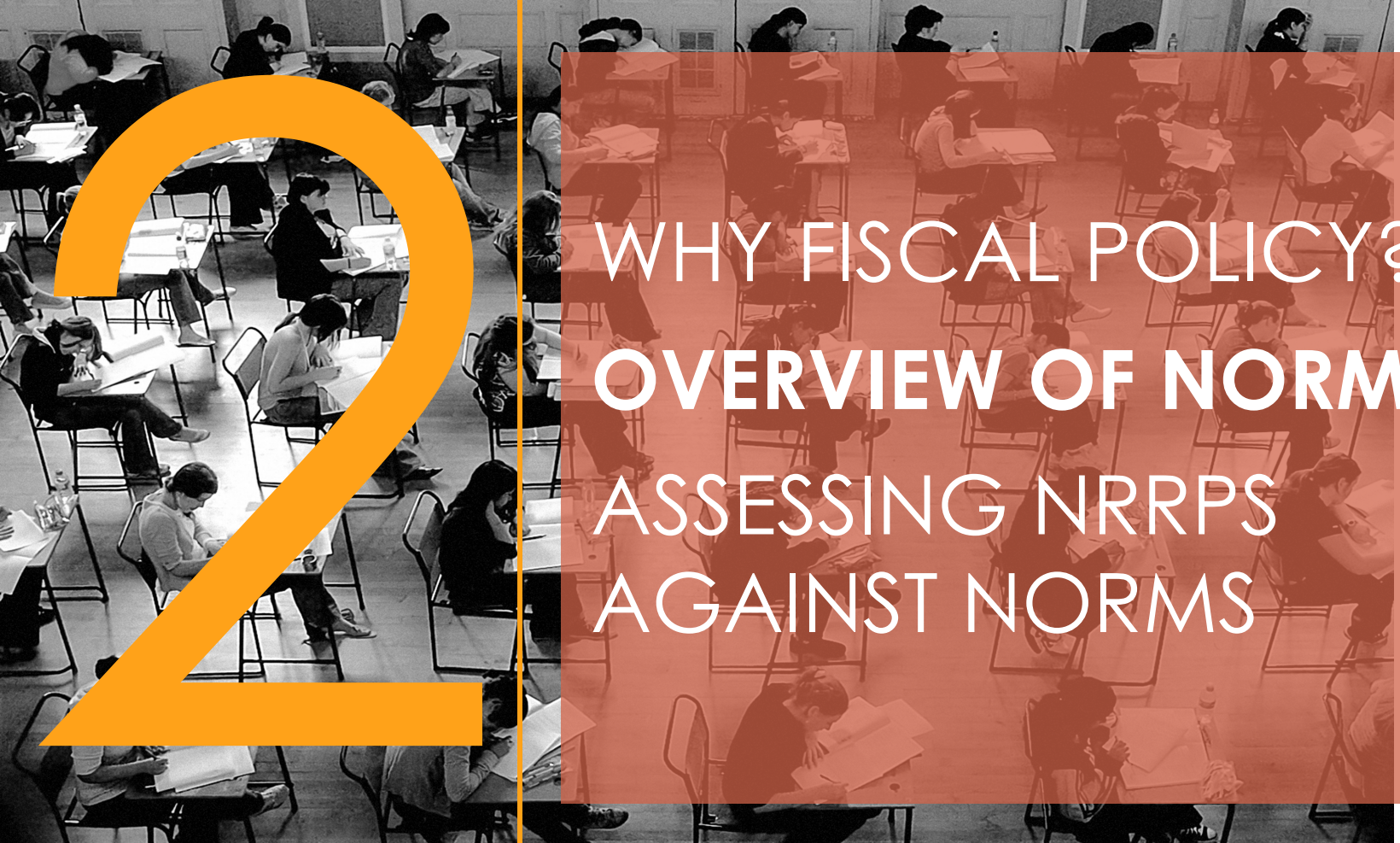
Governments generate resources in two main ways:

- they **raise money**—mostly through taxation, but also through fees and fines, profits from state-owned enterprises, foreign aid, and various other sources;
- they **borrow money**—from public and private lenders, both domestic and foreign.

The National Recovery and Resilience Plans generate resources for governments that are earmarked for particular investments. But they're not a "once off" injection of resources; they also aim to have broader economic effects.

RIGHTS-BASED ANALYSIS OF FISCAL POLICY





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WHY FISCAL POLICY?
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FUNDAMENTALS OF RIGHTS-BASED POLICY

Goal of the policy is rights realization
i.e. ensuring everyone can
lead a life of dignity

Policy decisions reflect rights
standards.

Human rights principles shape the
process of policymaking, in all phases.

WHY FOCUS ON HOW POLICIES ARE RESOURCED?

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, **to the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”

International Covenant on Economic, Social and Cultural Rights, Article 2(1)

SUMMARY OF HUMAN RIGHTS NORMS

Obligations of Conduct

- To **take steps** (legislative, judicial, budgetary, administrative and other) to fulfill rights
- To use **maximum available resources** to ensure progressive realization, including resources through international cooperation
- To ensure **participation, accountability and transparency** in the policy-making process

- To ensure relevant infrastructure, goods and services are increasingly **available, accessible** to all, **acceptable** and of **adequate quality**
- **Non-discrimination:** to ensure substantive equality

Obligations of Result

- **Minimum core obligations:** immediate duty to prioritize achieving minimum essential levels of rights enjoyment for all
- **Progressive realization:** move swiftly towards increased levels of rights enjoyment, with **no deliberate retrogression**

MINIMUM CORE OBLIGATIONS

Eliminate extreme deprivation

- Ensure “**minimum essential levels**” of each right, regardless of level of economic development.
- Failure to do so is a *prima facie* **presumption** that a government is in **violation of** the Covenant.
- **Unless** it can demonstrate that “**every effort has been made** to use all resources that are at its disposition” to prioritize reaching those minimum levels.



Plans without ambitious milestones and targets for tackling poverty, inequality, unemployment, and other indicators of social exclusion.

Plans without adequate actions for achieving those milestones and targets.

EQUALITY AND NON-DISCRIMINATION

Leave no one behind

- Differential treatment on a 'prohibited ground' is discrimination unless justification **reasonable** and **objective**.
- **De facto** discrimination, a result of the unequal enjoyment of rights, should be ended '**as speedily as possible**'.
- Affirmative action or positive measures may be needed to end de facto discrimination (obligation of conduct).



Plans without ambitious milestones and targets for reducing disparities between men and women, between racial or ethnic groups, or on the basis of religion or belief, disability, age, and sexual orientation—in the workplace and across different sectors.

Plans without specific adequate for achieving those milestones and targets.

PROGRESSIVE REALIZATION AND NON-RETROGRESSION

Secure improvements over time

- Move as **efficiently and expeditiously as possible** towards the full realization of economic, social and cultural rights.
- Conversely, not take **deliberately retrogressive** measures (obligation of conduct).
- To be justified, policies that decrease people's enjoyment of a right must be:
 - ❑ Temporary
 - ❑ Necessary and proportionate (other options more detrimental)
 - ❑ Not discriminatory
 - ❑ Ensure the protection of minimum core
 - ❑ Considers all other options



Lack of progress on milestones and targets for tackling poverty, inequality, unemployment, and other indicators of social exclusion.

Lack of progress on reducing disparities between groups.

OBLIGATION TO TAKE STEPS

Take action

Steps can be:

- legislative,
- judicial,
- administrative,
- financial,
- educational, and
- social



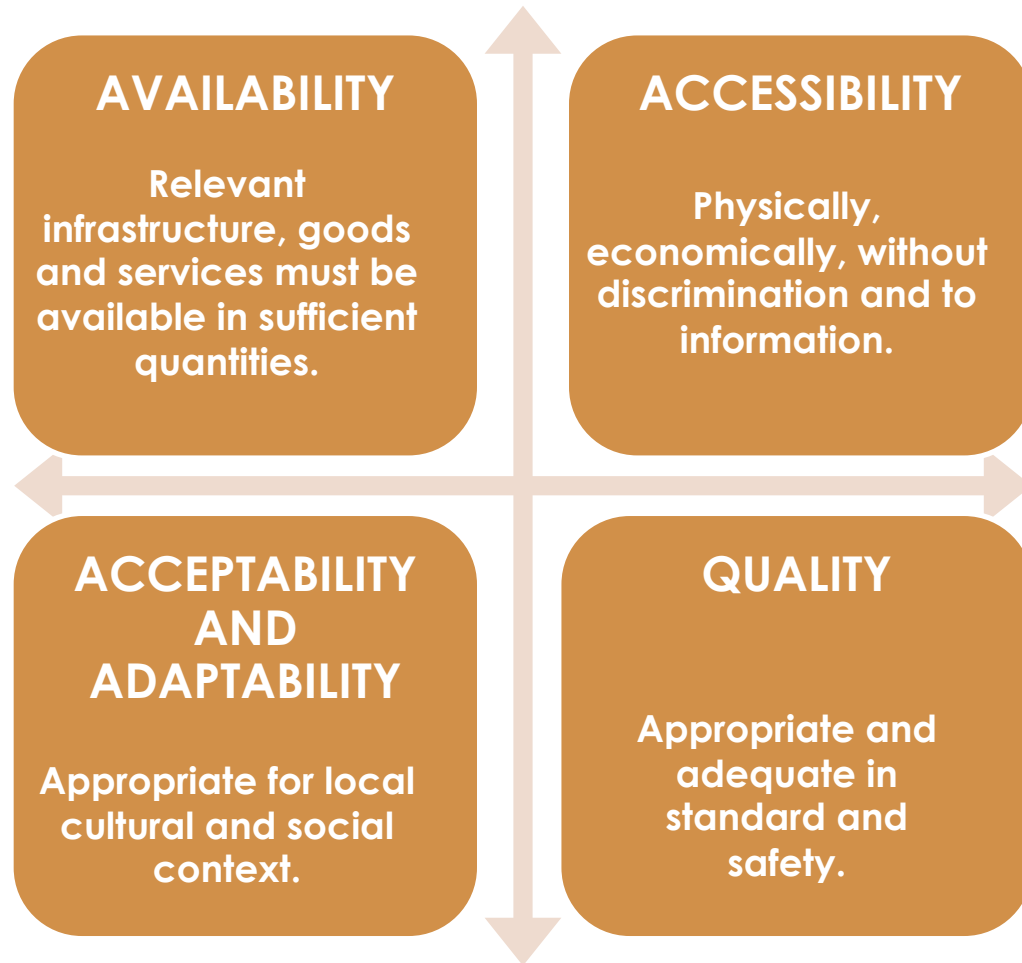
Plans that "leave it to the market" to guide green and digital transitions.

Plans that weaken regulations in the name of "improving the business environment".

Plans that do not prioritize actions for tackling precarious jobs and poor working conditions.

STEPS TAKEN SHOULD INCREASE...

Action taken must be effective



Plans that do not prioritize revitalizing public services such as healthcare and education.

Plans that do not prioritize strengthening social protection schemes, including income support, affordable housing, and schemes to reduce and redistribute unpaid care work.

MAXIMUM AVAILABLE RESOURCES

Action taken must be properly resourced

Resources must be:

- **Raised** in a way that generates “adequate” or “sufficient revenue” and that is “fair”, “progressive” or “socially equitable”.
- **Borrowed** in a way that is sustainable and avoids loan conditions that harm human rights.
- **Allocated** giving due priority to the infrastructure, goods and services needed to guarantee rights and an equitable and effective way.
- **Spent** efficiently and not wasted, including by strengthening financial management systems and tackling corruption.



Plans that do not include progressive tax reforms (e.g. taxes on “excess” profits, on wealth, on particular sectors like on luxury and highly carbon-intensive goods) or efforts to fight tax avoidance and evasion.

Plans that direct funding towards lucrative outsourcing contracts and public-private partnerships (PPPs).

Business bailouts, forgivable loans, and other publicly funded incentives that don't prioritize small businesses and informal economies, where most jobs are created or without conditions that require responsible business conduct and prevent abuse.

PROCESS PRINCIPLES

Action taken must be inclusive

- Steps should be taken in such a way that facilitates the **active participation** of rights holders and respects the principles of **transparency** and accountability.
- The state also has an obligation to provide **effective remedies**, including administrative and judicial ones.



Plans that don't address the administrative capacity needed for their effective implementation.

Plans that weren't developed through a consultative process or that don't provide for the participation of civil society in their implementation.

Plans that allow for undue corporate influence in multi-stakeholder processes.



WHY FISCAL POLICY?
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TYPES OF POLICY MONITORING

AUDITING

Present an overall “snapshot” of the situation. Often based on desk research. Relies on regular collection of information to track progress on specific commitments or trends more broadly. While the least in-depth, is important for highlighting issues of concern that demand further attention.

Examples: Measurement frameworks; annual reports; periodic reports to international bodies.

INVESTIGATIONS

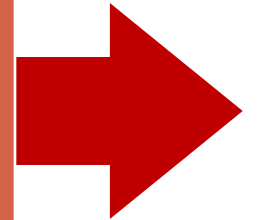
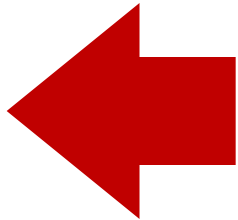
Dig deeper into a particular issue of concern with the aim of identifying specific actions that can be taken to address it. Investigations often include a mix of desk and field research.

Examples: Studies on particular issues; reviews of particular laws and policies; periodic inspections of frontline service providers (e.g. schools, hospitals, homeless shelters, places of detention etc.); national inquiries.

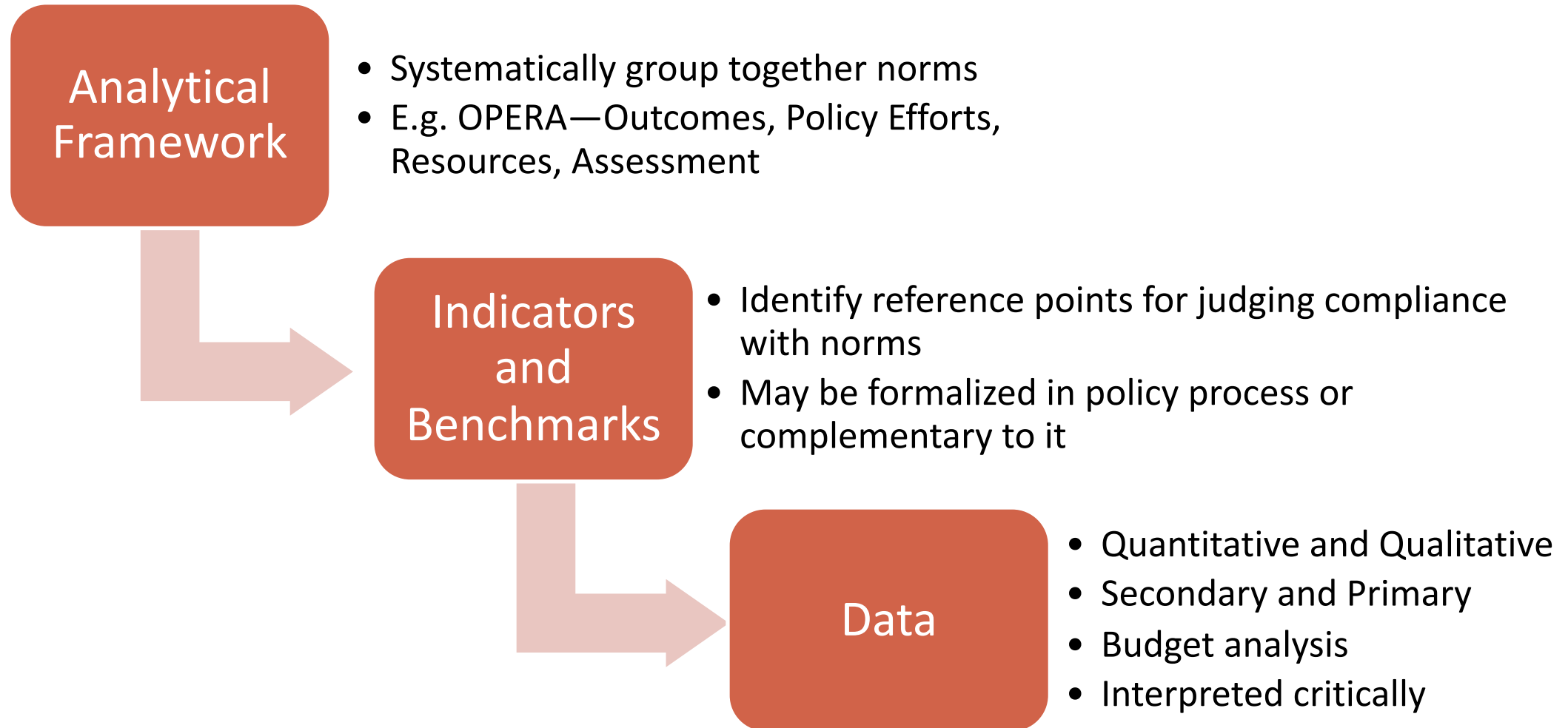
FACT-FINDING

Gather evidence with the aim of determining whether a human rights violation has occurred. It is the most in-depth type of monitoring activity and will almost always involve field research.

Examples: Responding to individual complaints; bringing cases to court (if mandated).



TOOLS FOR POLICY MONITORING



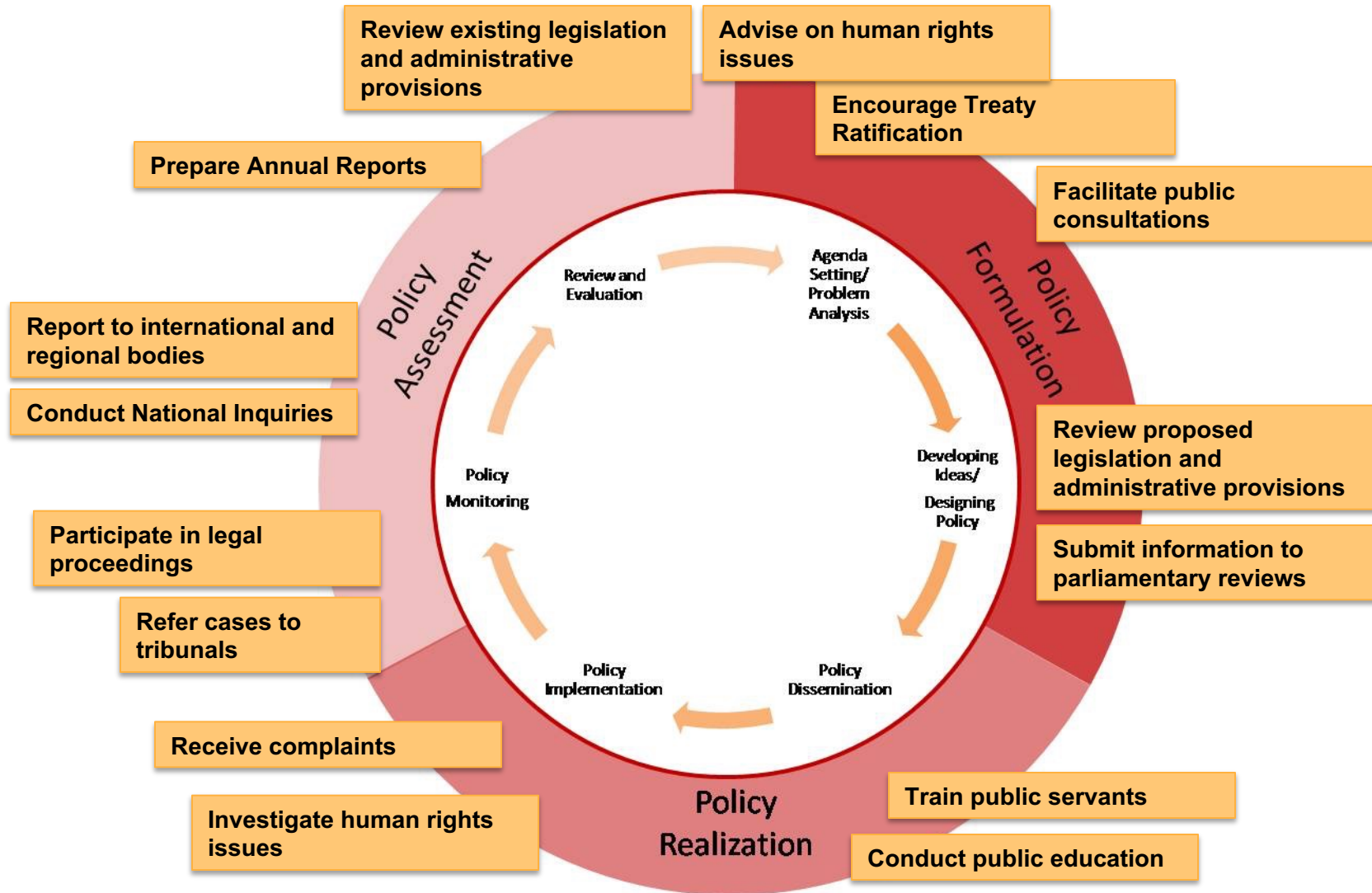
OBJECTIVES OF POLICY MONITORING



FACTORS DETERMINING OBJECTIVES

Related to the Issue	Related to the Institution
Understanding of and attitudes towards the issue	Mandate
Person(s) affected	Organizational capacity
Scope and scale of problem	Level of influence
Type of violation	Level of expertise
Change sought	Relationships with stakeholders

MONITORING THROUGHOUT THE POLICY CYCLE



NHRIS WITHIN THE ACCOUNTABILITY 'ECOSYSTEM'

	National	Regional	International
<i>Judicial and quasi-judicial</i>	<ul style="list-style-type: none"> E.g. National courts, specialized tribunals 	<ul style="list-style-type: none"> E.g. European Court of Human Rights; European Committee on Social Rights 	<ul style="list-style-type: none"> E.g. treaty bodies
<i>Political</i>	<ul style="list-style-type: none"> E.g. legislative procedures, parliamentary committees 	<ul style="list-style-type: none"> E.g. Committee of Ministers, Parliamentary Assembly 	<ul style="list-style-type: none"> Intergovernmental political bodies, e.g. Human Rights Council
<i>Independent oversight bodies</i>	<ul style="list-style-type: none"> E.g. national human rights institutions 	<ul style="list-style-type: none"> E.g. Commissioner for Human Rights 	<ul style="list-style-type: none"> E.g. special rapporteurs
<i>Social</i>	<ul style="list-style-type: none"> E.g. NGOs, trade unions, community auditing, media 	<ul style="list-style-type: none"> E.g. regional NGOs and social movements, regional trade unions 	<ul style="list-style-type: none"> E.g. global social movements
<i>Administrative</i>	<ul style="list-style-type: none"> E.g. codes of conduct, citizen consultation groups 	<ul style="list-style-type: none"> E.g. Fundamental Rights Agency, Council of Europe 	<ul style="list-style-type: none"> E.g. transnational regulatory frameworks, mechanisms of international financial institutions

ADDITIONAL RESOURCES FROM CESR

Recovering Rights: These collaborative briefings translate human rights principles into concrete policy recommendations to transform the economic system in the wake of COVID. They include issues like governments' obligation to invest "maximum available resources" on human rights, progressive tax measures, debt financing, gender equality, and more.

Principles for Human Rights in Fiscal Policy: A ground-breaking normative tool developed by civil society groups across Latin America that distills the key human rights principles applicable to tax and budget policies and translates them into more concrete guidelines for the design, implementation, and assessment of fiscal policies.

Rights-Based Economy: This briefing with Christian Aid asks: what would it look like if we had an economy based on human rights? In this initial vision of a rights-based economy, we argue that its primary purpose would be to guarantee the material, social and environmental conditions necessary for all people to live with dignity on a flourishing planet.

Defending Dignity: This training manual, co-published with the Asia Pacific Forum of National Human Rights Institutions guides NHRIs through OPERA, to combine both quantitative and qualitative data to produce compelling evidence when governments fail to meet their human rights responsibilities