

New Horizons in Economic and Social Rights Monitoring

Seminar Report

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ECONOMIC AND SOCIAL RIGHTS MONITORING

Metrics for
Human Rights

CENTER FOR ECONOMIC AND SOCIAL RIGHTS

TWENTY YEARS WORKING FOR SOCIAL JUSTICE THROUGH HUMAN RIGHTS

AT **20** 

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Introduction

The human rights community has made great advances over the years in elaborating innovative methods to more effectively monitor economic, social and cultural rights (ESCR). In particular, there has been increasing interest in quantitative measurement as a technique of human rights analysis. Traditionally, human rights analysis has been predominately qualitative; relying on evidence from victims, witnesses and alleged perpetrators to uncover facts and narratives that can be tested against relevant human rights standards.¹ Such analysis can be well-suited to addressing ESCR violations where the specific victim, perpetrator and wrongdoing are identifiable. However, some of the most widespread and persistent human rights violations of our time stem from inadequate action by states to fulfill ESCR. A broader lens of analysis is needed to identify the magnitude and source of these more systemic deprivations.

Relying more on quantification has enabled human rights activists and advocates to make the complex and multifaceted standards that underpin the positive obligation to fulfill ESCR—such as progressive realization and maximum available resources—more measurable in practice. This, in turn, has significantly strengthened calls for accountability for non-compliance, as well as advocacy for improved policies and practices.

To build on these developments, the Center for Economic and Social Rights (CESR) and Metrics for Human Rights (the International Network on Quantitative Methods for Human Rights and Development) hosted a seminar entitled “New Horizons in Economic and Social Rights Monitoring” in Madrid, Spain, on 22 and 23 March 2012. The event brought together over 40 leading human rights practitioners and academics from diverse backgrounds. Drawing from experiences of using monitoring in efforts to enhance enforcement, bring about policy change, and most crucially, improve people’s daily lives, the seminar critically examined the current status of efforts to monitor ESCR. In particular, it sought to identify emerging trends, innovative tools and opportunities for interdisciplinary initiatives. Concretely, the seminar aimed to:

- Create an open forum for practitioners using quantitative and qualitative methods for human rights monitoring to openly discuss challenges in their work, share experiences and exchange ideas on emerging topics in ESCR.
- Break down the disciplinary silos that often hamper human rights advocates in effectively learning from one another in order to enhance the field of ESCR monitoring.
- Showcase noteworthy examples of how quantitative and qualitative techniques were used to monitor ESCR and serve as advocacy tools for holding governments to account for their ESCR obligations.
- Establish a channel of information sharing and exchange among the seminar participants so as to build on the dialogue at the seminar and facilitate future joint efforts and information sharing.

Additionally, the seminar focused on the following thematic areas:

- Lessons learnt from practical application of methods for monitoring the duty to fulfill ESC rights in different contexts.
- The experience of domestic courts, national human rights institutions, international human rights bodies and civil society organizations in this regard.
- Trends in the use of ESCR indicators, indices and benchmarks to assess progressive realization.
- The use of rights-based budget and tax analysis to monitor “maximum available resources”, including in the context of fiscal austerity measures.

Structured broadly in accordance with the agenda of the seminar, this report is divided into three sections: the first presents an overview of developments in the field of ESCR monitoring, exploring how different actors have

come to engage more directly with positive ESCR obligations; the second hones in on new tools and techniques that have been developed in recent years, including quantitative methods and analytical frameworks; and the third considers how these tools and techniques might be deployed more strategically. The report summarizes the presentations made during each of the sessions.** In addition, it offers commentary on the key issues that emerged from discussions and raises questions as to where further reflection is merited. The commentary consolidates observations made by participants relevant to each section, regardless of whether these were made in the seminar’s corresponding sessions. In line with the spirit of the seminar, comments made during the discussions are not attributed to individuals, although verbatim quotes are noted as such (“ ”).

Taking stock: an expanding lens of analysis

Some of the most widespread and persistent human rights violations of our time stem from inadequate action by states to fulfill ESCR. Such violations are not necessarily attributable to specific events with individual victims and identifiable perpetrators. More often, their causes are complex, multidimensional and therefore opaque. They reflect failures to develop or implement necessary legislative, budgetary, and administrative measures, which makes it difficult to expose the injustice behind deprivations of these rights. Nevertheless, human rights advocates and activists, working in a variety of forums, are increasingly expanding their efforts to address such deprivations. To do so, they are turning their attention to the *adequacy* of states’ legislative, administrative, and budgetary measures, judged against relevant international standards such as progressive realization and maximum available resources. This section examines how different human rights actors are increasingly engaging with positive ESCR obligations, as well as how these efforts have affected the way they undertake their work.

Summary of presentations

Sessions one and two considered trends and developments in ESCR monitoring from the perspective of various actors working in different contexts, including the United Nations human rights mechanisms, national courts, and national and international NGOs. Setting the scene for the later sessions, which delved into particular monitoring methods in more detail, presenters discussed how the scope of issues that need to be addressed expands when systemic ESCR violations are being monitored and how, in response, different analytical approaches, including more quantitative approaches, are needed.

Emerging issues in United Nations monitoring

Eibe Riedel, a long-standing member of the United Nations Committee on Economic, Social and Cultural Rights (the Committee), noted that a particular challenge for the Committee in exercising its monitoring function is

Often states’ numbers are effectively “un-criticizable”.

that it relies predominantly on self-reporting from states in the form of periodic reviews. The Committee has called on states to demonstrate they are making “measurable progress” toward the full realization of rights. However, reports are often deficient in quantitative terms; they only provide superficial or isolated data. Frequently, data is not current and recent developments are not taken into account. This means that often states’ numbers are effectively “un-criticizable”.

** All materials presented during the seminar are available [here](#) on the Center’s website.

In addition, the Committee faces a range of practical challenges that mean countries' periodic reviews tend to focus on the implementation of recommendations made during their previous review. Ultimately, this reduces the Committee's capacity to dialogue with states and weakens the quality of its analysis. In response, the Committee has agreed to adopt a four-step procedure (which adopts the acronym IBSA: Indicators, Benchmarks Scoping and Assessment) developed by Eibe Riedel, which aims to facilitate dialogue between a state and the Committee about indicators and benchmarks for measuring compliance with the state's obligations under the Covenant.²

When the [Optional Protocol](#) to the Covenant enters into force,³ the Committee will be able to consider individual communications, which adds a new dimension to its monitoring role. In response, it will have to significantly change its working methods, especially the role of rapporteurs. How it considers the obligation to fulfill ESCR in this context will be a crucial question. Article 8(4) of the Optional Protocol mandates the Committee to examine "the reasonableness of the steps taken" by a state. This standard, which reflects the jurisprudence of the South African Constitutional Court, necessarily requires that the Committee interrogate policy decisions made by a state. Articles 8(1) and 8(3) allow for a variety of documentation to be presented to the Committee to make a case regarding the reasonableness of a state's actions, which in turn means that claimants and advocates will need to be prepared to use quantitative data in making their claims.

Christian Courtis, coordinator of the ESCR team at the Office of the High Commissioner for Human Rights (OHCHR), shared the experience of his institution. OHCHR supports the monitoring activities of the United Nations human rights mechanisms, such as the treaty bodies. In addition, many of OHCHR's field offices have a mandate to monitor human rights at the country level. OHCHR has adopted six thematic priorities, one of which is poverty and ESCR.⁴ OHCHR field offices have been using socio-economic data to contextualize their human rights reports and some have monitored specific ESCR. To encourage more systematic monitoring of ESCR by a wider range of its field presences, OHCHR/HQ has proposed several practical entry-points, including:

From a thematic viewpoint:

- prioritizing a specific right to work on (eg housing, health, education, social security) integrating ESCR when already focusing on one group, and integrating ESCR (e.g. women and housing; migrants and health; indigenous peoples and food/housing; children and education)
- addressing ESCR in when addressing cross-cutting human rights issues (e.g. access to justice and remedies, access to information, non-discrimination);
- ensuring that ESCR are included when working of complex human rights situations (e.g. emergency or conflict related displacement; land issues);
- using the political visibility of the Millennium Development Goals, which engages various other national and international actors working on development issues.

From a methodological or strategic viewpoint:

- monitoring event-based violations of ESCR (e.g. forced evictions) by adopting methodologies similar to violations of civil and political rights;
- following court cases and decisions;
- following up on recommendations from the international and regional human rights mechanisms, which creates some momentum in government and other UN agencies;
- including ESCR in the country's common plan for development (UNDAF), which is a common development framework for the United Nations Country Teams, in order to mainstream ESCR in the UN's common approach and to engage with other UN agencies.

New approaches in advocacy

Amnesty International’s ESCR Policy Coordinator **Rajat Khosla** reflected on the organization’s approach to monitoring ESCR in the decade since its International Council Meeting in Dakar in 2001, which expanded AI’s mission to include these rights. The traditional *modus operandi* for an international campaigning organization like Amnesty International had been to mobilize people all over the world to oppose human rights abuses by telling the stories of individual victims, at times accompanied by statistics of atrocities and neglect. In 2001, the organization’s focus shifted from *what* issues it should target, to *how* they should target them.

Following a series of pilot projects focused on documenting violations of the duty to respect and in a limited number of cases, to protect, the organization has in recent years delved into ESCR fulfillment in more depth with its [Demand Dignity](#) campaign.⁵ It is now focusing on integrating ESCR into all its areas of work, for example by looking at ESCR issues as they relate to refugee and migrant rights or to gender issues. As a campaigning organization, one of the key challenge it faces is how to frame deprivations resulting from failures to fulfill ESCR. There is a common tendency for people’s sense of unfairness to be stronger when something is “taken away” as opposed to when it is “not given”.

Elijah Odhiambo, Program Director of the Kenyan NGO Hakijamii, outlined the opportunities and challenges his organization has experienced in advocating for the realization of ESCR in Kenya. There has been a proliferation of socio-economic initiatives since the country adopted a new Constitution in 2010, which enshrined ESCR for the first time. However, accountability systems for such initiatives have been weak or inadequate. In particular, it has been difficult to measure the successes or failures of such initiatives without clear indicators and benchmarks. It has been possible to develop and record indicators at the output level, but due to the overlapping roles of many actors and, at times, unpredictable variables, it has been more difficult to reach agreement on appropriate indicators to measure the outcomes and impacts of such initiatives.



Rebecca Brown (ESCR-Net), Radhika Balakrishnan (CWGL) and Rajat Khosla (Amnesty)

Radhika Balakrishnan, Executive Director of the Center for Women’s Global Leadership, stressed the need for human rights actors to pay greater attention to monitoring economic policy, as it relates to ESCR fulfillment. Human rights advocates and progressive economists have overlapping interests; for example, promoting countercyclical policies and holding governments to account in economic crises. In the long run, it is important that advocacy efforts focus on changing the ways in which economists evaluate policies, so that economic growth and efficiency are only pursued in ways that are consistent with human rights. The challenge for human rights advocates is to build the evidence regarding the extent to which a state is conducting its macroeconomic policies in line with its human rights obligations, and whether the policies deployed are supporting or undermining the realization of ESCR.

Lessons learned in litigation

Litigation is another area where focus has increasingly shifted from the state’s negative obligations to its positive obligations. In some jurisdictions courts have engaged with questions around progressive realization and, to a lesser degree, maximum available resources, even in the context of cases concerning negative violations. Courts in other jurisdictions have been willing to engage more explicitly with cases addressing the

state's positive obligation to fulfill ESCR. In these cases, presenters noted, it is important for litigants to tailor their issues narrowly, frame their arguments persuasively and submit strong evidence.

Jackie Dugard, Executive Director of the Social and Economic Rights Institute, discussed how the concept of progressive realization had been adjudicated in the South African context. Despite its international reputation as a leader in ESCR jurisprudence, South Africa has had few economic and social rights cases in the past 18 years; almost all have related to housing. Nevertheless, through housing cases centering on forced evictions the Constitutional Court has detailed the *positive* actions required of the state to provide alternative accommodation so as to ensure that evictions do not lead to homelessness. In the *Blue Moonlight* case, for example, this included ordering that the local government ensure resources are budgeted to implement its plans.⁶ This has resulted in a blurring between negative and positive and between minimum core and progressive realization.

Martín Sigal, Co-Director of the Asociación Civil por la Igualdad y la Justicia (ACIJ), discussed his organization's experiences in litigating ESCR cases in Argentina. He presented a particular case regarding the lack of vacancies in pre-primary schools in Buenos Aires. To gather the required evidence, ACIJ made over 40 access to information requests to the government to show the structural and discriminatory nature of the problem (populations in the most disadvantaged areas of the city were most affected); referred to general audit reports, which showed the city had underspent its education budget; and presented opinions from pedagogy experts on the importance of pre-primary school as a component of the right to education. The Court agreed that this underspending amounted to a violation of the obligation to dedicate maximum available resources to the realization of the right to education and suggested that the parties find an agreement on how to move forward.

The Director of Canada's Social Rights Advocacy Center, **Bruce Porter**, commented that in cases concerning ESCR fulfillment, it can be difficult to capture both the "contextual narrative of rights holders" and relevant macro-level issues. There is a risk that when interrogating the reasonableness of particular policy decisions, the government's perspective overshadows the perspective of the claimant. As an evidentiary issue, statistics need to be responsive to the needs and perspectives of claimants. A further consideration in relation to evidence is that courts are sometimes less impressed with international data than with government data. For this reason, it is important to engage with national level institutions that undertake monitoring, such as NHRIs and ombudsman institutions, statistics offices etc.

Presenters noted, in particular, that there is still limited jurisprudence from national courts on the requirement that states dedicate maximum available resources (MAR) to the fulfillment of ESCR. For example, what happens if there is a budget, but it is insufficient? What if there was an acceptable budget provision, but it hasn't been spent? Will the court be willing to interrogate macroeconomic policy? This is a significant question in middle income countries like South Africa that experience vast inequality. Jackie Dugard expressed uncertainty about how far courts would be willing to go in interrogating budgetary decisions. Martín Sigal suggested that filing more cases that have resource dimensions is important for developing the language that will help further define MAR and set the parameters for judicial engagement with budgetary questions.

A further challenge lies in ensuring that the remedial orders granted by courts—particularly dialogical remedies that press the state to introduce systemic reforms—are in fact implemented by the state. When they are not, this poses a serious challenge to the legitimacy of ESCR litigation and, as Hakijamii noted, clients' expectations need to be addressed in this regard. In response, there has been a growing need to monitor the implementation of court decisions on ESCR.⁷ In some cases, a monitoring mechanism might be built into the judgment itself, requiring the government to report periodically or establishing a team to analyze progress on implementation.

Malcolm Langford, Director of the Socio-Economic Rights Programme at the Norwegian Center for Human Rights, presented a tool being piloted by Judgment Watch and the Adjudication Group of ESCR-Net, which

seeks to monitor implementation at the global level by recording details about judgments according to five components: information about the case; remedies granted; current level of implementation and impact; risk assessment for next stage of implementation; and planning for next stage of implementation. By mapping what changes have actually occurred as a result of ESCR litigation, the tool encourages lawyers and advocates to more systematically reflect on “*what* has been achieved, *why* and *which* methods can be used to improve strategies” for increasing the level of implementation of judgments.

Commentary

To address the structural nature of violations stemming from a state’s failure to meet its positive ESCR obligations, advocates seeking greater accountability in various settings have needed to expand their lens of analysis to focus more explicitly on uncovering shortcomings or dysfunctions in the state’s actions. As one participant articulated, this involves “transposing” individual circumstances in order to reveal where systemic, structural reform is needed. This, in turn, means moving beyond the question of *whether or not* the country is moving forward, to explain *why* states are performing in a certain way.

In framing the discussion on monitoring, Malcolm Langford outlined three broad uses for which human rights measurement tools are being developed:

- **monitoring**, for example by courts, treaty bodies or civil society, which has a normative objective of determining compliance by an actor with human rights norms;
- **advocacy**, for example by international agencies or development organizations, for changes in policies and practices to improve human rights; and
- **explanation**, for example by academics and public policy researchers, of broader causal relationships that include human rights.

Although the methods presented had an overwhelming focus on monitoring, it became clear that when addressing failures to fulfill ESCR, it is also necessary to engage in advocacy and explanation, to different degrees. This is because, as one participant explained, we need to go from documenting violations to proposing solutions and remedies. But often the solutions to such failures “are not easily identifiable”.

For example, when the solution is to provide victims of rights violations with a remedy, either through courts or through some other quasi-judicial or administrative mechanism, it can be difficult to demonstrate, in empirical terms, the loss they have suffered. Initiatives to address this challenge include the [Eviction Impact Assessment tool](#) developed by Habitat International Coalition and the Housing and Land Rights Network, which seeks to quantify, in monetary terms, losses prior to, during and after forced evictions.⁸

Where the key to demanding accountability is to identify the effects on the ground of particular policy decisions, the challenge is to uncover information that shows how policies may undermine ESCR and demonstrate which individuals and groups “are really paying the price in subsidizing development”. This approach, essentially a kind of human rights impact assessment, is more advocacy-focused in that it seeks to “transform calls for policy reforms into concrete actions”. Nevertheless, when such monitoring is carried out *ex ante* (i.e. before a particular policy has been adopted) it can be difficult to predict the effect of large scale structural changes. Participants involved in efforts to document the effect of the North American Free Trade Agreement (NAFTA), for example, noted that analyses from rights groups often come out too late. To be proactive, the challenge is to identify what changes are imminent and to measure their likely impact.

The challenge is to uncover information that shows which individuals and groups “are really paying the price in subsidizing development”.

Thus, other efforts to advance the fulfillment of ESCR have also focused on increasing policymakers' ability "to craft policy regimes" that are in line with their country's obligations of conduct and that promote compliance with obligations of result under the Covenant. A key question in this context is how to move from being reactive to being preemptive. Here more explanatory techniques may assist. In Haiti, for example, it was broadly known that sexual violence was rife in the camps where some 500,000 internally displaced people were still living following the earthquake in 2010. However, while there had been much debate about the problem, there was not much focus on solutions. Using field surveys, the Center for Human Rights and Global Justice was able to provide powerful information for advocates on the correlations between sexual violence and inadequate provisions of basic ESCR such as water and sanitation and to thereby make specific policy recommendations to policymakers on how to address these gaps.⁹

Methods in focus: new tools for measuring fulfillment

A move towards more policy-focused analysis has demanded a shift in the methods adopted by human rights advocates and activists. Traditional events-based monitoring is less equipped to identify the multidimensional factors and multitude of actors that often determine whether social and economic policies fulfill ESCR or lead to deprivations thereof. In particular, looking at systemic issues requires assessing magnitude or trends in a particular situation in order to make reasonable judgments about what constitutes adequate progress over a given period of time. Quantitative approaches are generally well-suited to doing this. This section explores the trend towards using more quantitative methods for measuring ESCR in recent years and considers some of the issues raised by their application in different settings.

Summary of presentations

In sessions three, four and five, presenters introduced a variety of new tools and techniques that have been added to the toolkit for human rights advocates such as rights-based indicators, budget analysis, costing and econometrics. They also reflected on the ways in which these various tools and techniques have sought to measure the various standards and principles underpinning the obligation to fulfill ESCR.

Rights-based indicators

Indicators are an important tool for assessing concepts such as progressive realization, minimum essential levels and non-discrimination.¹⁰ The development of indicators has become a burgeoning field in recent years. While much of this work has focused on developing indicator sets for specific rights, OHCHR has been a pioneer in developing an [indicator framework](#) applicable across the range of rights.¹¹ **Grace Sanico Steffan**, Human Rights Officer at OHCHR presented the framework, which seeks to identify contextually meaningful indicators for different universal human rights standards and cross-cutting norms. The framework collects data on three types of indicators: "outcome" indicators, a proxy for the results of government policies and the fulfillment of rights, are complemented with "structural" and "process" indicators that assess the state's legal framework, policies and programs, and the exercise of discretionary powers by public officials. In this way, the framework seeks to capture whether states are meeting their obligations of conduct, as well as their obligations of result. A number of institutions are beginning to adapt and apply the OHCHR framework, led by international and regional human rights bodies, national human rights institutions, government agencies and statistical offices.

As noted above, other initiatives have focused on identifying indicators for specific rights. **Simone Cecchini**, Social Affairs Officer with the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), explained how his institution has used indicators to address the right to social security in the region. ECLAC monitors state investments in conditional cash transfer (CCT) schemes, which are non-contributory social protection programs that benefit some 25 million families across 18 countries. Using indicators such as the value of conditional transfers and the percentage they represent relative to the extreme poverty and poverty lines, ECLAC has found that, on average, these transfers bring CCT recipients closer to the extreme poverty line, but they are insufficient to overcome it.

Right to Education Project Coordinator **Bailey Grey** presented the [set of indicators](#) developed by the organization in order to increase accountability in response to states' limited progress under the UNESCO Education for All Framework. Identified in collaboration with a range of experts, the project's 200 indicators cover all aspects of rights in, through and to education. Visualized as a tree, the indicators are grouped around 37 headings; five key standards—availability, accessibility, acceptability, adaptability, and governance—and three transversal themes: non-discrimination, participation and accountability.¹² Primarily targeting development and education practitioners, the Right to Education Project has



Nicholas Lusiani (CESR) and Sakiko Fukuda-Parr (The New School)

found in piloting its indicators that adopting a participatory approach is crucial for local ownership. To achieve this, guidance is needed on adapting indicators to the national context, to the thematic issues being addressed, or to the level of education being assessed.

Inga Winkler, Researcher with the German Institute for Human Rights and legal advisor to the United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, discussed the WHO and UNICEF [Joint Monitoring Programme](#) (JMF) for water supply and sanitation.¹³ The JMF, which is the official United Nations mechanism tasked with monitoring progress towards MDG Goal 7, focuses on just two indicators: the proportion of the population using an improved drinking-water source and the proportion of the population using an improved sanitation facility. Nevertheless, there is a recognized need to expand the number of indicators and targets in the post-2015 development agenda to capture improvements in the levels of service so that they: are tailored and contextualized to the national level; reward efforts not just outcomes; are relevant for countries with relatively high levels of access; assess progress for disadvantaged groups; and capture human rights standards and principles such as accessibility, affordability, acceptability, quality.

A key question posed by presenters was how targeted or comprehensive indicator sets should be. Piloting the 200 right to education indicators (e.g. in India, South Africa and Nepal) highlighted the need to give users—who are primarily development and education practitioners—greater guidance on implementing the framework, in particular on adapting the indicators to different contexts or education levels. In contrast, the two indicators used by the JMF give only a partial picture of the issues associated with water and sanitation. The IBSA procedure was raised as an example of a targeted, middle ground approach; it reduced its right to food indicators to 37 and then tested them in three countries. After this, they were cut down to 21 and gauged against the 2008 OHCHR indicators template.

Methods for collecting the data needed to underpin human rights indicators were also discussed. **Justin Simeone**, PhD Candidate at New York University, presented a project undertaken by the Center for Human Rights and Global Justice which sought to quantify vulnerability to sexual violence in Haiti's camps for internally displaced people (IDPs) by utilizing field surveys to gather evidence about the rates and risks of sexual violence.

Adopting a rights-based approach, the project designed indicators to reflect context-specific terminology (e.g. “unwanted touching” to capture non-rape forms of sexual violence) and developed questions that allowed respondents to anonymously identify themselves as the victim (e.g. “you or anyone in your household”). However, the implementation of the survey presented a number of challenges that affected the data generated. To overcome these, researchers “validated” their findings through community feedback workshops.

Rights-based budget analysis

The expanding understanding of maximum available resources (MAR) has been accompanied by a growth in techniques for analyzing the various policy areas relevant to this principle.¹⁴ **Anne Blyberg**, Executive Director of the International Human Rights Internship Program, introduced some of the key features of human rights budget analysis, which describes various methodologies for gathering evidence about whether a government’s budget complies with its human rights obligations. Human rights budget analysis is still a recent addition to the monitoring landscape; though now there are a multitude of initiatives, which have:

- Addressed a range of substantive rights: e.g. education (ACIJ, INESC), health (Fundar), housing (Queens University Belfast), and food (Right to Food Campaign).
- Been used by and targeted at a variety of actors: e.g. courts (Argentina, South Africa, India), NHRIs (Uganda, Northern Ireland), sub-national and municipal governments (Brazil, Mexico City).
- Focused on expanding the capacity of human rights groups to undertake human rights budget analysis: e.g. IBP’s [citizens’ guide](#) to monitoring government expenditures, FAO’s [publication](#) on budget analysis to advance the right to food, OHCHR training.¹⁵

Despite these promising advances, only a handful of groups are doing human rights budget analysis on a regular basis, however. This has meant that civil society organizations have not been able to take advantage of the increasing spaces for participation in budget processes. Engaging with duty-bearers is another challenge. Most governments see no connection between their budget and human rights, while sub-national governments generally do not consider that they have human rights responsibilities.

Furthermore, even though revenue, deficit financing, monetary policy, and other resource policies have widespread human rights implications, most human rights budget analysis continues to focus on expenditure. However, there are some notable exceptions. For example, in Mexico, the Center for Women’s Global Leadership (CWGL) is considering how the human rights obligation to decent work applies to central banks, contrasting inflation targeting to employment targeting. In Brazil, INESC has focused on how debt servicing (which makes up 20-30% of the federal budget) impacts on the availability of funding to resource social policies. The human rights implications of tax policy, in particular, is an area that needs to be investigated more, for example by contrasting tax rebates and social spending.

Aoife Nolan, Professor of International Human Rights Law at Nottingham University School of Law, commented on how the ongoing conceptual uncertainty regarding some aspects of MAR affects budget analysis. For example, the full scope of states’ obligation not to take any “deliberately” retrogressive measures is yet to be conclusively addressed. In the wake of the economic crisis, this lack of normative clarity has limited the capacity of activists to argue authoritatively that specific budgetary provisions are in breach of the Covenant. Another context where it is difficult to determine whether the state is complying with its MAR-related obligations is when service delivery is privatized and resources are channeled to private actors to provide services (e.g. rented accommodation paid by the state). For example, procurement policies have played a historic role in increasing access to services for people with disabilities, but a lot of money goes into institutions, not community initiatives. Can a situation in which vast amounts of money are being siphoned into private pockets be framed as a failure by the state to dedicate its maximum available resources to rights

fulfillment? Public-private partnerships raise similar questions regarding MAR. When will these be human rights compliant and what factors determine this?

Anugula Reddy, Assistant Professor at the National University of Educational Planning and Administration in New Delhi, offered a particular case study that highlighted some of the challenges in carrying out budget analysis at the national level. In India, various commissions and committees established to advise on implementing the *Right of Children to Free and Compulsory Education Act* have made recommendations on the resources that should be allocated to education. The most recent recommended apportioning 3% of GNP to universal elementary education, but in practice allocations have hovered around 1.5%.

Alexandre Ciconello, Policy Advisor at the Instituto de Estudos Socioeconomicos in Brazil, discussed some of the strategies used by INESC in conducting budget-related advocacy. To establish links between the budget, rights guarantees and efforts to confront social inequalities, INESC weighs disaggregated human rights indicators illustrating inequalities between groups against the resources allocated to and expended on government initiatives to address those rights. The Institute adopts a participatory approach to its advocacy, for example running a program educating teenagers in the Federal District of Brazil about human rights, democratic participation and public spending, through which students have proposed and advocated for amendments to the local parliament's budget bill. As a result, US \$1 million was allocated to improving the conditions of schools (to build sports facilities and auditoriums and to renovate toilets).

Costing human rights

Initiatives focused on costing have sought to quantify, in financial terms, the immediate impact of specific ESCR violations, as well as the more long-term consequences of failing to take action to address them. **Joseph Schechla**, Coordinator of the Habitat International Coalition's Housing and Land Rights Network, discussed the quantitative household surveys used by HLRN to assess losses suffered as a result of forced evictions. In some cases, like in Kandhamal, India, this has focused on showing disparity between compensation offered and the real value lost by families who were victims of violence by the local community. In other cases, as in Mathurwe, Kenya, this has focused on identifying what other relief plaintiffs to a court case challenging an eviction may be eligible for. Costing was a particular method that a number of participants thought had great potential to be expanded. One asked, for example, whether there might be an opportunity to cost inequality. Another suggested bringing costing to budget analysis, in order to facilitate quantification of the costs of inaction.

Applying econometrics

Other methods presented were focused on giving more empirical content to the obligation to fulfill ESCR by applying mathematical and statistical methods. **Sakiko Fukuda-Parr**, Professor of International Affairs at the New School, explained why choosing the right measurement tool mattered for evaluating state performance (normative use). To measure obligations of conduct and result, progressive realization and maximum available resources implies a need to consider: (i) achieved level; (ii) pace of progress; (iii) initial starting point; and (iv)

Regression analysis, which allows different variables to be controlled, can be used to test different theories about the conditions that are more or less conducive to rights compliance.

resource constraints. Commonly used development metrics such as the Human Development Index and the Millennium Development Goals do not take account of progressive realization and limitations on maximum available resources can lead to quite misleading conclusions. For example, the MDG 'on target' framework focuses on the level of achievement and takes no notice of the pace of progress or the starting point, which means that countries that are 'off track' may be performing well in terms of effort and progressive realization. For example The Gambia and other Sub-Saharan African

countries have improved their pace of progress and show high scores for progressive realization according to the [Social and Economic Rights Fulfillment Index](#) (SERF Index). This composite score measures how far a country is from the maximum level achieved by any country with the same level of available resources.¹⁶

A measure like SERF can also be used for ‘a more predictive’ or causal analysis where the goal is to be more explanatory. Sakiko Fukuda-Parr explained how basic statistical analysis using the SERF Index shows the characteristics of countries that perform well in fulfilling ESC rights. Preliminary results show gender equality to be associated with good performance while government expenditure and civil and political rights do not appear to have a direct relationship.

Susan Randolph, Associate Professor of Economics at the University of Connecticut, takes these uses of the SERF Index further and presented her econometric analysis to explore policy regimes that promote State compliance with their socio-economic rights fulfillment obligations. Taking the SERF Index as a rigorous measure of state compliance, she considered countries’ structural characteristics and historical legacy, such as infrastructure, women’s empowerment, malaria prevalence, and ethnic homogeneity, as well as current policy regimes such as neoliberal reforms, the size of government, trade policy, and political stability. Her study findings imply that policies should focus on promoting rural productivity and employment opportunities, women’s empowerment and education, equitable growth, and the eradication of malaria.

Edward Anderson, Lecturer in Development Studies at the University of East Anglia, and Malcolm Langford presented an initiative to measure progress on the water and sanitation MDGs using regression analysis to control for variables other than GDP that could have a statistically significant influence on water and sanitation outcomes, such as a country’s dependency ratio, urban and rural population shares, land area, education levels, and water resources. This approach gives a better indication of government effort on, or priority attached to, water and sanitation. Countries with much lower performance than might be expected given their estimated capacity are likely failing to deploy the maximum available resources.

Commentary

The discussions that followed drew out a broad range of issues related to the methods presented. A recurrent theme was the value that numbers play in “myth-busting”. The indicators ECLAC has used in its work on social security, for example, have helped challenge the idea that if you give cash to poor families they stay home and don’t work. They also refute the myth that governments in Latin America are now giving too much in social transfers and social protection. In this way, quantitative methods are a valuable tool for human rights advocates in “speaking to the unconverted”. While broad-brush human rights arguments are not convincing to many decision-makers including economists, technocrats, judges, and different UN agencies, empirical evidence of a failure to fulfill ESCR can be more persuasive.

At the same time, participants also raised concerns that attempting to make ESCR “count” may lead to a degree of “fetishization” of particular techniques. Quantitative techniques are numerous and constantly evolving, but they have tended to be developed in isolation from one another. As a result, they risk losing touch with the needs of their users, instead becoming ends unto themselves. For example, a number of participants questioned whether the complex formulas applied in econometric methods in an effort to illustrate causality may become too opaque to be actionable by different actors, such as the Committee or national policy-makers.

A particular concern in this regard was that few of the methodologies that rely on serious “number-crunching” are appropriate in capturing the knowledge and experiences of communities. This risks mirroring an older paradigm of accountability being about accountability to

The challenge is how to capture both the contextual narrative of rights holders and macro-level issues that shape that narrative.

experts, not to rights holders. Ensuring that tools and techniques used for monitoring are accessible and responsive to the needs of rights holders can help address this challenge. These facts notwithstanding, it is important that such tools remain rigorous enough to build a strong normative case about a state's compliance. Ultimately, this is about "getting the design right" for a particular monitoring activity and ensuring that the voice of the rights holders is the driving force behind it; presenters shared a variety of participatory monitoring activities such as community-led social audits and procurement monitoring.

As participants were conscious to emphasize, it is ultimately rights-holders themselves who, as "experiential experts", have the legitimacy to speak on the issues affecting them. Thus, the challenge is how to capture both the contextual narrative of rights holders and macro-level issues that shape that narrative. Numerous participants stressed that it is important for quantitative analysis, which generally speaks to experts, to be "connected to the realities of the individuals and reflect the perspectives of rights holders". This can create a kind of feedback loop, whereby qualitative work may uncover issues that need to be evaluated statistically. In Haiti, for example, CHRGI sought to triangulate the findings of its field surveys by sharing them during community forums—essentially asking participants "does this make sense to you?". As well as ensuring that the monitoring process itself reflects the human rights principles of participation and empowerment, community voices and personal stories are crucial when it comes to galvanizing support for the actions needed to realize ESCR; giving a human face to statistics helps engender actions.



Anne Blyberg, *International Human Rights Internship Program*

Reinforcing the need to draw on a combination of data collection techniques is the fact that the collection and dissemination of official data remains relatively suspect in many countries. Even when data is available, it is often not disaggregated so as to be practically useful in making reasonable conclusions. For example, as one participant pointed out, it is very difficult to determine the number of poor households in slum areas whose right to water and sanitation have improved within a given period of time and whether such improvement has addressed issues such as gender and other forms of vulnerability.

Lack of information was also raised as a particular hurdle in carrying out human rights budget work. One example shared by Aoife Nolan was work that sought to uncover the systemic underfunding of mental health services for youth in Ireland, where there was no clear data on allocations for youth within the budget lines for mental health services. In other cases, data may be available, but inaccessible.

Participants shared a variety of innovative approaches for addressing these challenges. For example, in Argentina, ACIJ have used access to information mechanisms, bringing over 40 cases requesting information. They have also undertaken interdisciplinary work with sociologists, economists, and pedagogy experts to build evidence and have advocated for judges to issue orders for the production of information where it does not exist. In Brazil, INESC has worked with the national congress to produce data on specific areas, such as a youth budget. At the same time though, participants emphasized that the state bears primary responsibility for monitoring and sounded caution that civil society groups not get "sucked into the vacuum of a slimming state" and be expected to replace those public institutions mandated to perform that role.

The discussion also addressed the different approaches to data sources, indicator selection, level of aggregation and data use. These questions are themselves influenced by who is carrying out a particular monitoring activity, to what end, and for which audience. Malcolm Langford highlighted three different approaches to working with quantitative methods: descriptive, comparative, and dialogical. A *descriptive*

approach focuses on counting, disaggregating numbers, and calculating probabilities. Although a seemingly straightforward way to illustrate a particular situation, it can be difficult to interpret—and judge the reasonableness of—the numbers, ratios and percentages produced through such an approach without a benchmark or comparator.

A *comparative* approach focuses on ranking countries, finding common denominators, or identifying outliers. It was highlighted that this approach is valuable in terms of helping to make an argument about the reasonableness of a state's performance and therefore has great advocacy potential. For example, CESR used the SERF Index in its advocacy when the United States appeared before the Human Rights Council's Universal Periodic Review. There was a "stunned silence" when it was reported that the US ranked last out of 24 OECD countries on the index, despite having the largest economy. Using a comparative approach to generate that reaction, without defining compliance, makes it possible to provoke a deeper policy conversation.

However, finding universally applicable indicators so that it is possible to make such a comparison is complicated for a number of reasons. One participant noted that the "intergovernmental politics of data" makes it necessary to find consensus on what data sources are acceptable, and this may limit the breadth of usable information. Another commented that the search for comparability inevitably scales back concepts to more generalizable indicators.

This has two side effects: first, more general indicators may be less relevant to a particular country. Second, contextual factors that are more determinative of a country's performance are often left hidden, weakening the explanatory value of such an approach. For example, participants raised questions about how "actionable" indices such as SERF are to policy-makers, given that the correlations between states' performance and different variables are shown on the aggregate level.

A *dialogical* approach focuses on measuring states' progress against targets or benchmarks that have been negotiated between stakeholders or that the government has committed to (or has been ordered to meet by a court). Through the IBSA process, for example, the Committee carries out a scoping exercise with a state to select indicators and benchmarks in the context of the state's periodic report, which are then assessed in subsequent sessions. The strength of a dialogical approach is that it relies on political "buy in" for a particular benchmark. However, this isn't always guaranteed, as highlighted in the case of budgeting for the right to education in India. The Millennium Declaration is another example that highlights the challenge when the dialogical approach is consensus-based; countries could not agree on many indicators to capture the full range of issues covered in the declaration. Another concern, when targets are agreed to at an aggregate level, is that the most disadvantaged, marginalized and discriminated against get overlooked, perpetuating huge disparities in relation to the accessibility and quality of basic services. Disaggregating data is crucial to militate against this risk, but it needs to go beyond the standard rural/urban divide. Wealth quintile analysis is also very powerful, but it is not sufficient. Disaggregated indicators need to reflect prohibited grounds of discrimination, such as race, ethnicity, religion, sex, age, disability etc. to understand who lacks access and why.

Regardless of the way that numbers are put to use—be it descriptive, comparative or dialogical—the complex nature of human rights interventions and the overlapping role of many actors and at times unpredictable variables, means that data collected through quantitative tools and techniques will generally not be enough to effectively show the causal links between obligations of conduct and obligations of result. At most, it may demonstrate correlations between conduct and result; a starting point from which further analysis may be able to uncover the capacity gaps that are hindering progress. For this reason, using a range of both quantitative and qualitative tools and techniques can offer an effective way to gather the information needed to draw out these causal links in more detail, hence a number of participants highlighted the advantages of integrating approaches more fully.

Framing fulfillment: interpreting findings for effective advocacy

From an advocacy perspective, the key issue is how to convincingly demonstrate that seemingly inevitable or irretractable deprivations are in fact created, perpetuated or exacerbated by policy failures and breaches of the state's human rights obligations in order to propose concrete solutions, be they remedial or transformative. By making particular aspects of the obligation to fulfill ESCR more measurable, each of the tools and techniques outlined in the previous section makes an important contribution to this advocacy objective. However, to give a more complete picture of ESCR fulfillment it is necessary to make sense of the data that can be generated using different tools. This section explores ways of framing the data generated through various techniques so as to achieve advocacy outcomes.

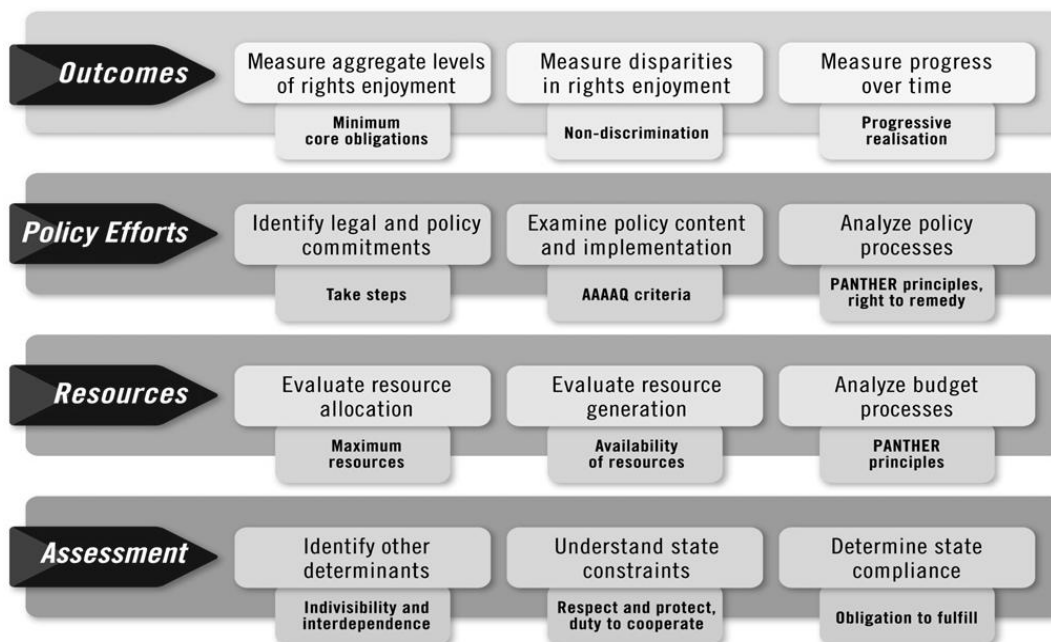
Summary of presentations

In practice, monitoring policies from a human rights perspective requires a comprehensive, multidimensional approach to assessing ESCR fulfillment, integrating quantitative and qualitative methods within a broader framework. In session six, the Center for Economic and Social Rights (CESR) introduced its analytical framework, which groups the various standards and principles relevant to the obligation to fulfill ESCR and suggests a range of quantitative and qualitative techniques that are appropriate for measuring them.

It is necessary to make sense of the data that can be generated using different tools.

CESR Executive Director **Ignacio Saiz** introduced some of the different monitoring activities the Center has undertaken in recent years. These have ranged from materials that use existing development data to present a snapshot of the key ESCR issues in the country, such as its [Visualizing Rights](#) factsheet series, to more in-depth country reports that assess public policies of critical relevance for ESCR fulfillment through the lens of the state's human rights obligations. In this work, CESR has been selective and pragmatic in its approach to using quantitative methods, but it has also found it necessary to go beyond individual tools and techniques and to develop a more comprehensive framework of analysis to assess fulfillment of ESCR. In order to answer the question of "how to effect policy change" in the different countries it works in, the key issue for CESR has been to weave together the different kinds of evidence generated by different monitoring techniques to demonstrate the "links in the chain" between breaches of state obligations and the unacceptable outcomes that result from them.

CESR Researcher **Allison Corkery** presented the [four-step framework](#) developed by CESR. The framework, which adopts the acronym OPERA, groups the various dimensions of the obligation to fulfill around four areas: it examines Outcomes, Policy Efforts and Resources, and then triangulates the findings in these three areas in light of relevant contextual factors to make an overall Assessment of compliance. Within each of the four dimensions, relevant human rights standards are listed. Each is matched with suggested tools and techniques for collecting the information needed to substantiate an argument about how the state is performing against the particular norm, for example disaggregating socio-economic indicators to uncover disparities in rights enjoyment, or assessing tax policy to determine whether a country is maximizing its resources, in a fair and equitable way. In this way, the framework seeks to be methodical, and at the same time flexible and adaptable to different users and uses. In so doing, it recognizes that assessing a state's compliance ultimately requires an exercise of judgment that cannot be substituted by a one-size-fits-all formula.



Sally-Anne Way, Lecturer and LLM Deputy Director at the University of Essex and Research Consultant with CESR, discussed some of the lessons the organization has learned from the application of OPERA in various contexts. In Guatemala, for example, CESR, in partnership with the Instituto Centroamericano de Estudios Fiscales was able to build the case that the country’s poor and unequal socio-economic indicators were linked to the inadequate and badly distributed funding of social programs, in turn fuelled by a highly regressive tax system that did not allow for sufficient generation of resources.¹⁷ The utility of a framework like OPERA is that it provides an overarching structure for building a rigorous, well-evidenced argument about a state’s rights compliance, drawing on the strengths of various tools and techniques to collect and analyze different types of data. While quantitative approaches play an important role in painting the big picture, they are insufficient on their own. A more qualitative political economy type analysis helps to give a nuanced and contextual understanding. Nevertheless, a key challenge in applying the framework is how comprehensively or selectively to frame the issues to be analyzed. Attempting to cover every aspect of ESCR fulfillment in detail can produce an overwhelming amount of information, particularly when, as discussed further below, some relevant concepts remain difficult to measure.

Commentary

Several of the standards and principles relevant to the obligation to fulfill ESCR continue to challenge human rights advocates and activists. In some cases this is because they remain conceptually underdeveloped, in others it is because they are difficult to quantify. While recognizing that conceptual ambiguity needs to be kept in perspective, participants discussed how to conceptualize ESCR fulfillment, both in the context of the OPERA Framework and more broadly. In particular, comments highlighted the various issues that have been given less attention in debates about ESCR fulfillment and on which it is important to engage communities and articulate their understanding.

Measuring standards of review

Participants commented on some of the challenges in quantifying the state's immediate duties under the Covenant, including to uphold the principle of non-discrimination, as well as to meet the minimum core obligations contained in the Covenant. There was some disagreement among participants regarding the concept of minimum core obligations. While some felt that the development of indicators of minimum standards is long overdue, others questioned its utility altogether.

Measuring standards underpinning the duty to take steps has also proved challenging. One participant suggested that obligations of conduct are more conclusively illustrated by "empirical evidence of improved outcomes". At a practical level, it was suggested that while the AAAAQ (or 4As) framework has been very good for identifying indicators, it has been less informative in applying them; the overlap between each category makes them unfriendly for users and there may be alternative ways to categorize the various components or elements of a right. The Right to Education Project, for example, frames education according to issues such as infrastructure, provision of free education, quality teachers, etc which straddle the 4A categories. Other participants expressed concerns that the classifications were rigid and artificial. A more conceptual challenge is that the AAAAQ framework presumes a fairly direct role for the state in providing the infrastructure, goods and services needed to give effect to a particular right. However, in contexts where such goods and services are more market-driven, is the AAAAQ framework the most accurate conceptualization of the steps a state is expected to take under the Covenant?

How to calculate a state's resource capacity was flagged as an ongoing challenge in measuring MAR. Frequently, GDP per capita is used as a proxy indicator for resources. But it has serious limitations. Capital outflows, for example, were raised as an issue to take into consideration in resource calculations that are not included in GDP. The state's tax efforts also need to be assessed to determine the resources available to the state. Recognizing the limitations of GDP as a measure of available resources, the Economic and Social Rights Empowerment Initiative has sought to estimate a more meaningful measure of a country's resource capacity that incorporates the variables of: initial income level, initial health conditions, geography and sanitary conditions (malaria prevalence), effects of wars, economic openness, and natural resource wealth. The initiative presented by Edward Anderson and Malcolm Langford to monitor progress on the water and sanitation MDGs from the perspective of MAR measures resources using a composite score made up of GDP, dependency ratio, population shares, aid, educational levels and water resources—although the statistical importance of each varies dramatically. The crucial question to consider is whether these sets of variables are accurate and sufficient to estimate the resource capacity of a country, depending on the national context.

Where good governance and civil and political rights meet the ESCR agenda

In the context of a growing discourse on the importance of adopting a human rights approach to development, there is increasing recognition that policy initiatives must be designed and implemented in accordance with the principles of participation, accountability and transparency. From the perspective of the rights holder, provisions of international human rights treaties, including in the Covenant on Civil and Political Rights, give substance to these principles. For example, in order to meaningfully participate in policy decisions, rights holders need to be able to exercise their rights to



Elijah Odhiambo (Hakijamii) and Eibe Riedel (CESCR)

information, to freedom of expression, and to freedom of assembly. Access to effective judicial or other appropriate remedies for victims of ESCR violations is another precondition for ensuring human rights accountability. Less visibly, rights holders may be affected by cultural norms or social hierarchies that inhibit their ability to exercise their rights, which makes empowerment another important principle of the rights-based approach.

However, the degree to which these concepts can be suitably quantified was flagged by numerous participants as an ongoing question in relation to measuring ESCR fulfillment. On the one hand, equating participation to elections is too reductive. On the other hand, the list of potential indicators on these questions can be endless. Nevertheless, an emerging area where participants thought human rights indicators could play a greater role was in measuring access to justice, which is a core component of compliance with the Covenant. OHCHR noted that there had been increasing interest in statistical analysis related to the administration of justice, but that this had not yet been mainstreamed. The IBSA template similarly includes structural indicators on access to remedies and the Committee sees NHRIs and ombudsmen as key partners on this issue.

From the perspective of the state, there are a variety of governance challenges that may hinder the success of policy initiatives. While inadequate resources are a commonly cited problem, in some cases other factors may be more prominent. A number of participants highlighted that there are often more systemic issues that hamper the effectiveness and efficiency of the institutional structures designed to give effect to a particular policy initiative. For example, in some cases local authorities face limitations on what they can spend on human resources, so cannot effectively expend funds. In such cases, the focus should be on identifying how to capacitate relevant government bodies. In Nigeria, for example, initiatives have focused on improving the government's procurement process.

Several of the methods presented during the seminar had adopted innovative approaches for exploring the dynamics that determine ESCR fulfillment. For example, the work presented by Susan Randolph sought to identify policy regimes that promote states' compliance with their obligations by recalculating the SERF index to include proxy indicators on issues like political stability, democratic political institutions, government expenditures, foreign resource flows, stabilization and structural adjustment, and resource extraction. However, the factors that impact on duty bearers' ability to fulfill ESCR are not always easily quantifiable. A challenge raised by a number of participants, in this respect, is where to draw the line in terms of what structural factors the government can be expected to influence (and thus be held accountable for) and the choice of indicators to reflect these factors. It was also recognized that current measures of bureaucratic, administrative and technical capacity are extremely biased, and assume that what is desirable is small government and institutions that make free markets work well. Developing "neutral" language to challenge these assumptions was raised as an important focus for future monitoring efforts.

Measuring the influence of different actors

As noted earlier, one factor that sets violations of the obligation to fulfill ESCR apart is the multitude of actors involved. In contrast to violations stemming from a failure to respect or protect, where there are clearly identifiable perpetrators, violations resulting from a failure to fulfill generally result from longstanding and interrelated deprivations by a collection of actors. Measuring the scope and degree of their influence was another area that participants felt required greater attention.

To begin with, the responsibility of the state is often diffused among several actors within its institutional apparatus. Horizontally, different ministries and departments may have mandates relevant to a particular right. Vertically, responsibilities may be devolved to state or local governments. For this reason, it is "important to be sensitive to who's really in charge" and to explore ways of identifying the different capacity gaps that national and local governments have in fulfilling their human rights obligations.

As already noted, services previously within the purview of the state are also being increasingly provided by private actors. When monitoring privatization from a human rights perspective the focus has generally been on the regulatory role of the state in protecting individuals and groups from violations by non-state actors. But privatization is still relevant to the obligation to fulfill. It was suggested that human rights advocates need to “engage more holistically” on this, for example by ensuring more robust oversight of government contractors. One participant felt that the lack of an accountability framework for non-state actors still requires attention and suggested that indicators on the conduct expected of secondary duty-bearers need to be developed.

At a more macro-level, the effects of globalization have also reduced the influence and exclusivity that the state has in determining social and economic policy. Multinationals, international financial institutions, donor agendas and other non-state actors are increasingly crowding the state’s decision-making space. Thus, in measuring states’ progress under the Covenant, the challenge is to distinguish between rights deprivations resulting from factors genuinely beyond the state’s control, and deprivations for which inadequate state action (or inaction) has been a contributing - if not causal - factor in creating, perpetuating, or exacerbating. However, this must be done without being overly deferent to the state’s claims of lack of capacity.

New Horizons: shaping the future together

The monitoring activities presented during the seminar came from various communities of practice (legal, political, social and economic) and from across diverse sectors (public, civil society, academic, international). Each is based on distinct theoretical foundations, underlying assumptions, and theories of change, and this in turn has a bearing on the subjects being monitored and the targets they are seeking to influence. For example:

- Lawyers may bring cases evidencing the improper exercise of administrative discretion.
- Community activists may channel evidence of a discriminatory law through the media to mobilize public support to repeal it.
- Economists may promote rights-based policy making with public servants by providing evidence of the likely impact of different options.

Thus while the challenges of collecting, analyzing and communicating evidence varies for each of these groups, they share commonalities. One participant highlighted, for example, that lawyers generally find the use of empirical data a challenge. Another echoed that human rights capacity building for non-legal practitioners has tended to focus on the international human rights framework, without offering more holistic guidance on various stages of the monitoring process.

In the final session, participants broke out into working groups to reflect on how the various approaches explored at the seminar could be more effectively deployed to confront some of the key accountability gaps of our time. The groups were lead by:

- **Rosalind McKenna**, Coordinator of the Human Rights in Ireland Programme at Amnesty International Ireland, chaired a discussion on monitoring ESCR in times of economic crisis and recession;
- **Joachim Nahem**, Manager of the Global Programme at the UNDP Oslo Governance Centre in Norway, lead a discussion on rights-based metrics in the post-2015 development agenda; and
- **Sandra Ratjen**, Senior Legal Advisor at the International Commission of Jurists (ICJ), who chaired a discussion on monitoring in the context of complaints received under the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

This stimulated a discussion on crucial next steps in theory and practice of monitoring ESCR, taking into account opportunities and challenges presented by the current global context.

There was wide agreement that it is important to break down silos and adopt a more interdisciplinary approach to monitoring and broad enthusiasm for increasing partnerships was expressed; strengthening collaborations between researchers and advocates was a particular proposal. One participant suggested that legal practitioners could rely more on technical experts, such as accountants or geographers. Another suggested that heterodox economists, who see achieving full employment as a goal of fiscal and monetary policy, can be key allies in advocating for the right to work, decent work and an adequate standard of living. Similarly, Feminist and progressive economists can bring a lot of evidence about discrimination and equality to fiscal and monetary policy, including at the macro level.

At the same time, however, another participant flagged that interdisciplinary collaborations are time and resource intensive. They involve their own challenges and the conversation is not always straightforward. For example, concepts like efficiency and sufficiency have different meanings for different communities of practice. There is not always consensus on whether human rights are most appropriately conceptualized as a means or an end. Such different understandings can manifest in methodological challenges. At times, the added complexity of working across disciplines may run against the need to act swiftly in certain situations.

To help better facilitate work across different communities of practice, participants suggested exploring opportunities for more effective dialogue between those working with international monitoring mechanisms and national level enforcement mechanisms, for example encouraging special rapporteurs to submit amicus interventions in court cases. Another suggested that sharing community-based methodologies more widely with different grassroots groups should be prioritized, including those that are not explicitly human rights focused. More broadly, participants stressed the need to continue to share experiences, thoughts and lessons learned with other groups and other disciplines, in particular to talk about examples of how monitoring activities have made a difference in people’s lives. To this end, a Working Group on Monitoring ESCR was proposed to promote dialogue about how new tools and techniques might be employed—individually or in combination—to more effectively monitor social and economic policies and strengthen accountability for states’ human rights obligations.

Overall, there was resounding consensus that the seminar was a unique opportunity for practitioners to “get out of their comfort zone”, helping to dissolve boundaries between different communities of practice. In particular, the chance to “peek behind the veil” of a rich array of methods for measuring ESCR opened up space for a robust discussion about how such methods might be applied in ways that more intentionally focus on maximizing their capacity to meet the real world advocacy needs of rights holders. This marked a clear direction for taking forward the conversation on ESCR monitoring beyond the seminar.



Seminar Participants

Endnotes

**** All seminar materials are available at: <http://www.cesr.org/article.php?id=1255&preview=1&cache=0>**

¹ Langford, M. & Fukuda-Parr, S. (2012), 'The turn to metrics', *Nordic Journal of Human Rights* 30:3.

² See Riedel, E., Arend, J. & Suárez Franco, A (2010), 'Indicators – Benchmarks – Scoping – Assessment', *Friedrich Ebert Stiftung Background Paper*.

³ *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, General Assembly Resolution A/RES/63/117 (10 December 2008).

⁴ See OHCHR Website, 'Strategic Management Plan 2012-2013', at http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_mp_2012_2013_web_en/index.html#/home.

⁵ See Amnesty International Website, 'Demand Dignity', at <http://www.amnesty.org/en/demand-dignity>.

⁶ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC)* [2011] ZACC 33. Available at: <http://www.saflii.org/za/cases/ZACC/2011/33.html>

⁷ For example CEJIL IAS, World Bank Courts Project, *Interights v Greece*. Research: Making it Stick (2013), *Symbols or Substance* (2012), *From Judgment to Justice* (2011). ESCR-Net: strategies to make it costly for policy makers not to implement judgments or to incentivize implementation.

⁸ See HIC [HLRN] Website, 'Counting the Costs of Eviction', at <http://www.hlrn.org/spage.php?id=p2s=#.UKUplldfA8U>.

⁹ Center for Human Rights and Global Justice (2012), *Yon Je Louvri: Reducing Vulnerability to Sexual Violence in Haiti*. Available at: <http://chrgj.org/documents/yon-je-louvri-reducing-vulnerability-to-sexual-violence-in-haiti/>.

¹⁰ See Center for Economic and Social Rights (2012), *The OPERA Framework: assessing compliance with the obligation to fulfill economic, social and cultural rights*. Available at: <http://www.cesr.org/section.php?id=179>.

¹¹ See OHCHR (2012), *Human Rights Indicators: a guide to measurement and implementation*. Available at: http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

¹² RTE Project Website, 'Indicators Presented', at <http://www.right-to-education.org/node/860>.

¹³ JMP Website, 'Introduction', at <http://www.wssinfo.org/>.

¹⁴ Balakrishnan, R., Elson, D., Heintz, J. & Lusiani, N. (2011) *Maximum Available Resources & Human Rights: Analytical Report*, Center for Women's Global Leadership, Rutgers University. Available at: <http://www.cwgl.rutgers.edu/economic-a-social-rights/380-maximum-available-resources-a-human-rights-analytical-report->

¹⁵ IBP (2008), *Our money, our responsibility: a citizen's guide to monitoring government expenditures*. Available at: <http://internationalbudget.org/publications/our-money-our-responsibility-a-citizens-guide-to-monitoring-government-expenditures/> FAO (2009), *'Many a slip': budget work to advance the right to food*. Available at: http://www.fao.org/righttofood/publi09/budget_guide_en.pdf.

¹⁶ This composite measure is calculated by combining weighted fulfillment ratings for five rights (food, education, health, adequate housing, and decent work). The overall fulfillment score is in turn calculated by comparing a country's performance on particular proxy indicators (e.g. under-five mortality rates, life expectancy, and assisted birth rates in the case of the right to health) to the highest level historically achieved by any country at a similar level of per capita GDP. See Economic and Social Rights Empowerment Initiative Website, 'Research', at <http://www.serfindex.org/research/>.

¹⁷ See CESR (2012), *Assessing fiscal policies from a human rights perspective: methodological case study on the use of available resources to realize economic, social and cultural rights in Guatemala*. Available at: <http://www.cesr.org/downloads/assessing.fiscal.policies.from.a.human.rights.perspective.pdf>

Appendix I – Agenda

Thursday March 22, 2012

9:00 - 9:30 Welcome, introductions and aims of the meeting

The organizers will make introductory remarks about the purpose of the meeting, explaining the special focus on methods for monitoring the fulfillment of economic, social and cultural (ESC) rights and the rationale behind the agenda. Their comments will help frame discussion over the two days

9:30 - 11:15 Session 1. TAKING STOCK: Progress and challenges for ESC rights monitoring

These presentations will give an analytical overview of the state of the field and current challenges in ESC rights monitoring from the perspective of human rights practitioners working in different spheres. The session will identify the main trends and developments in ESCR monitoring over the last decade, the current challenges posed by the external environment and the most significant gaps in strategy/capacity that human rights and development advocates need to confront in this area.

Chair: Rebecca Brown (ESCR-Net)

Presentations:

- Eibe Riedel (UN CESCR), *Taking stock of advances in treaty body monitoring*
- Christian Courtis (OHCHR), *Surveying the field of ESC rights monitoring: an OHCHR perspective*
- Radhika Balakrishnan (CWGL), *Economics & Rights: interdisciplinary monitoring approaches*
- Rajat Khosla (AI), *Reflections on AI's ESC rights monitoring a decade after Dakar*
- Elijah Odhiambo (Hakijamii), *Methodological challenges in ESCR monitoring in complex environments*

11.30-13:00 Session 2. TAKING STOCK: Lessons learned from litigation

ESC rights litigation in jurisdictions across the globe has brought greater conceptual clarity to the normative content of these rights, seeking to elucidate the meaning of complex principles such as “progressive realization according to maximum available resources”. Litigation is a critical arena for methodological innovation and for the application of tools to operationalize these principles. This session will take stock of methodological advances and challenges in building evidence of ESC rights violations, particularly breaches of positive obligations, as well as methods to measure the impact of ESC rights adjudication.

Chair: Sandra Ratjen (ICJ)

Presentations:

- Bruce Porter (SRAC), *Evidentiary challenges in ESC rights adjudication, domestic & international*
- Jackie Dugard (SERI), *Adjudicating “progressive realization” in the South African context*
- Martín Sigal (ACIJ), *Combining quantitative and qualitative evidentiary methods: a practical case study*
- Malcolm Langford (NCHR), *The Judgment Watch Monitoring Tool*

14:15-16:00 Session 3. METHODS IN FOCUS: Rights-based indicators

Indicators are an important tool for monitoring ESC rights fulfillment. Quantitative indicators are particularly necessary to assess public policies in light of concepts such as progressive realization, minimum essential levels and non-discrimination. The development of indicators has been a burgeoning field in recent years. While much of this work has focused on specific rights, OHCHR has developed an indicator framework applicable across the range of rights. This session will also explore a number of indicator sets on specific rights, and will distill the lessons learnt from their application in particular contexts, including the Millennium Development Goals.

Chair: Claire Methven (DIHR)

Presentations:

- Grace Sanico Steffan (OHCHR), *The OHCHR indicators framework*
- Simone Cecchini (CEPAL), *Indicators to monitor investment in social protection*
- Bailey Grey (RTE Project), *Lesson learned in applying right to education indicators*
- Inga Winkler (GIHR), *Towards rights-based MDG indicators for water & sanitation*
- Justin Simeone (NYU), *Quantifying Vulnerability to Sexual Violence in Haiti's IDP Camps*

16:30-18:15 Session 4. METHODS IN FOCUS: Rights-based budget and cost analysis

The design and implementation of methods for assessing the resource dimension of the obligation to fulfill (the use of maximum available resources) is one of the most advanced areas in economic and social rights monitoring. This session will take stock of the lessons learned in the applied use of rights-based budget analysis in different settings. The session will also include innovative quantitative methods for costing the impact of economic and social rights violations.

Chair: Gilbert Onyango (East African Center for Human Rights)

Presentations:

- Ann Blyberg (IHRIP/IBP), *State of play in applied budget monitoring*
- Aoife Nolan (University of Nottingham), *Budget monitoring from an ESCR perspective: lessons learned from practical application*
- Anugula Reddy (NUEPA), *Financing the right to education: evidence from India*
- Alexandre Ciconello (INESC), *Insights gained from INESC's budget and human rights methodology*
- Joseph Schechla (HIC-HLRN), *Counting Costs: Quantifying the effects of forced eviction and displacement*

Friday March 23, 2012

9:15 – 11:00 Session 5. FRAMING FULFILMENT: Quantitative monitoring of progressive realization

This session explores innovative quantitative methods for evaluating states' overall compliance with the obligation to progressively fulfill ESC rights taking into account their resources. It will include analysis of findings and insights gained from the development of an index to measure state economic and social rights performance, as well as the experience of monitoring MDG and human rights compliance using indicators of states' expenditure and revenue.

Chair: Nicholas Lusiani (CESR)

Presentations:

- Sakiko Fukuda-Parr (The New School), *Evaluating state performance to improve human wellbeing by the metric of human rights*
- Susan Randolph (U of Connecticut), *Crafting policy regimes that advance ESCR: evidence from a multivariate analysis*
- Terra Lawson-Rehmer (The New School), *Using GDP as proxy for resources*
- Edward Anderson and Malcolm Langford (UEA and NCHR), *Monitoring MDG compliance on water and sanitation using Maximum Available Resources*

11:30-12:45 Session 6. FRAMING FULFILMENT: The OPERA Framework

In practice, rights-based policy monitoring requires a comprehensive, multidimensional approach to assessing ESCR fulfillment, integrating quantitative and qualitative methods within a broader analytical framework. In this session, CESR's OPERA framework will be introduced, as an overarching assessment framework within which multiple measurement methodologies can be integrated. The lessons learnt from applying the monitoring framework in concrete settings will be shared, and feedback sought from participants on how the framework could be further developed and applied.

Chair: Ignacio Saiz (CESR)

Presentations:

- Allison Corkery (CESR), *OPERA: A framework for integrating quantitative and qualitative tools to monitor the obligation to fulfill ESCR*

- Sally Anne Way (CESR/University of Essex), *Operationalizing OPERA: lessons learnt from practical application*

Feedback from discussants and other participants

14:30-16:00 Session 7. NEW HORIZONS: Opportunities ahead

The purpose of this session is to provide participants with a space for reflecting on the various approaches and strands of work explored in the previous sessions, and how these can be more effectively deployed to confront the key accountability gaps of our time. It aims to stimulate a discussion on critical next steps in the theory and practice of ESCR monitoring, taking into account opportunities and challenges presented by the current global context.

Simultaneous break-out groups

1. Monitoring ESC rights in times of economic crisis and recession
Introductory presentation: Ros McKenna (AI Ireland)
2. Rights-based metrics and the post-2015 development agenda
Introductory presentation: Joachim Nahem (UNDP)
3. Monitoring in the context of the ICESCR Optional Protocol mechanism
Introductory presentation: Sandra Ratjen (ICJ)

17:00-17.45 Session 8. NEW HORIZONS: Weaving threads together

Concluding remarks drawing on the array of presentations demonstrating how monitoring can be used to bring about effective policy change, enhance enforcement and accountability, and most crucially, improve people's lives. Organizers and participants will reflect upon the opportunities these experiences offer to break down disciplinary silos and advance quantitative and qualitative monitoring methods and frameworks as powerful tools for human rights advocacy.

END OF MEETING

Appendix II – List of participants

Anderson, Edward, Lecturer in Development Studies, University of East Anglia (UEA), UK

Arranz, Marta, Monitoring & Evaluation Manager, Save The Children, Spain

Balakrishnan, Radhika, Executive Director, Center for Women’s Global Leadership (CWGL), USA

Blyberg, Ann, Executive Director, International Human Rights Internship Program (IHRIP), USA

Brockerhoff, Stephanie, Senior Researcher, Studies in Poverty and Inequality Institute (SPII), South Africa

Brown, Rebecca, Deputy Director, International Network on ESC Rights (ESCR-Net), USA

Caliguire, Daria, Independent advisor on Economic, Social and Cultural Rights

Carson, Leslie, Director, Human Rights Programme, WellSpring Advisors, USA

Cecchini, Simone, Social Affairs Officer, UN Economic Commission for Latin America and the Caribbean (CEPAL), Chile

Ciconello, Alexandre, Policy Advisor, Instituto de Estudos Socioeconomicos (INESC), Brazil

Corkery, Allison, Researcher, Center for Economic and Social Rights (CESR), Spain

Courtis, Christian, Head of Human Rights and Economic and Social Issues Section, Research and Right to Development Division, Office of the High Commissioner for Human Rights (OHCHR), Switzerland

Dugard, Jackie, Executive Director, Socio-Economic Rights Institute (SERI), South Africa

Fukuda-Parr, Sakiko, Professor of International Affairs, The New School, New York, USA

Grey, Bailey, Coordinator, Right to Education Project (RTE Project), UK

Hattori, Asako, Human Rights Officer, Human Rights and Economic and Social Issues Section, Research and Right to Development Division, OHCHR, Switzerland

Holland, Luke, Researcher, Center for Economic and Social Rights (CESR), Spain

Keller, Sheena, Equality & Citizens’ Rights Department, European Union Agency for Fundamental Rights (FRA), Austria

Khosla, Rajat, ESC Rights Policy Coordinator (Health), International Secretariat, Amnesty International (AI), UK

Langford, Malcolm, Research Fellow and Director of Socio-Economic Rights Programme, Norwegian Centre for Human Rights (NCHR), Norway; Co-Coordinator, Metrics for Human Rights

Lema Tomé, M. Margarita, Research Fellow, Center for Economic and Social Rights (CESR), Spain

Lusiani, Nicholas, Senior Researcher, Center for Economic and Social Rights (CESR), USA

McKenna, Rosalind, Coordinator, Human Rights in Ireland Programme, Amnesty International Ireland

Methven O’Brien, Claire, Senior Adviser, Human Rights and Business, Danish Institute for Human Rights (DIHR), Denmark

Nahem, Joachim, Manager, Global Programme, UNDP Oslo Governance Centre, Norway

Neill, Constanza, Office Manager, Center for Economic and Social Rights, Spain

Nolan, Aoife, Professor of International Human Rights Law, University of Nottingham, UK

Odhiambo, Elijah, Program Director, Hakijamii, Kenya

Onyango, Gilbert, Regional Director, East African Center for Human Rights (EACHRights), Kenya

Oré Aguilar, Gaby, Program Director, Center for Economic and Social Rights (CESR), Spain

Porter, Bruce, Director, Social Rights Advocacy Center (SRAC), Canada

Randolph, Susan, Associate Professor in Economics, Co-Director of Economic and Social Rights Empowerment Initiative, University of Connecticut, USA

Ratjen, Sandra, Senior Legal Advisor, International Commission of Jurists (ICJ), Switzerland

Reddy, Anugula N., Assistant Professor, National University of Educational Planning and Administration (NUEPA), New Delhi, India

Riedel, Eibe, Member, UN Committee on Economic, Social and Cultural Rights; Swiss Chair of Human Rights, Geneva Academy of International Humanitarian Law and Human Rights, Switzerland

Saiz, Ignacio, Executive Director, Center for Economic and Social Rights (CESR), Madrid, Spain

Sanico Steffan, Grace, Human Rights Officer, Research and Right to Development Unit, Office of the High Commissioner for Human Rights (OHCHR), Switzerland

Satija, Manav, Assistant to the Legal Advisor on Economic, Social and Cultural Rights, International Commission of Jurists (ICJ), Switzerland

Schechla, Joseph, Director, Housing and Land Rights Network - Habitat International Coalition (HIC), Egypt

Sigal, Martin, Co-Director, Asociación Civil por la Igualdad y la Justicia (ACIJ), Argentina

Simeone, Justin, PhD candidate, New York University (NYU), USA

Trommel, Stefan, Executive Director, International Disability Alliance (IDA), Spain

Way, Sally-Anne, Senior research consultant, Center for Economic and Social Rights (CESR); Lecturer and LLM Deputy Director, University of Essex, UK

Winkler, Inga, Legal Adviser to the UN Special Rapporteur on the Rights to Water and Sanitation; German Institute for Human Rights (GIHR), Germany

Wisniewski Otero, Victoria, Researcher, Center for Economic and Social Rights (CESR), Spain

About CESR

The Center for Economic and Social Rights (CESR) was established in 1993 with the mission to work for the recognition and enforcement of economic, social and cultural rights as a powerful tool for promoting social justice and human dignity. CESR exposes violations of economic, social and cultural rights through an interdisciplinary combination of legal and socio-economic analysis. CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

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About Metrics for Human Rights

Metrics for Human Rights (the International Network on Quantitative Methods for Human Rights and Development) aims to create synergies amongst scholars and practitioners for the use of human rights assessment methods as monitoring and advocacy tools for policy change. The Network serves as a space for sharing ideas and work, a forum for debating methodological issues and a place for identifying operational synergies and research opportunities.

Acknowledgements

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