MONITORING ECONOMIC, SOCIAL AND CULTURAL RIGHTS
WHAT IS MONITORING?

- Monitoring describes a range of investigative activities that seek to expose injustices—e.g. research, audits, analysis, fact-finding etc.

**AUDITING**

Presents an overall “snapshot” Often based on desk research, auditing relies on the regular collection of information to track progress on trends in human rights enjoyment. While it is the least in-depth form of monitoring, auditing is important for highlighting issues that demand further attention.

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

**INVESTIGATIONS**

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

*Examples:* Studies on particular issues; reviews of laws and policies; periodic inspections of services (e.g. schools, hospitals, shelters etc.); national inquiries.

**FACT-FINDING**

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

*Examples:* Responding to individual complaints; bringing cases to court (if mandated).
HOW DO NHRIS MONITOR POLICY?

- Review existing legislation and administrative provisions
- Advise on human rights issues
- Encourage Treaty Ratification
- Facilitate public consultations
- Review proposed legislation and administrative provisions
- Submit information to parliamentary reviews
- Train public servants
- Conduct public education

- Prepare Annual Reports
- Report to international and regional bodies
- Conduct National Inquiries
- Investigate human rights issues
- Participate in legal proceedings
- Refer cases to tribunals
- Receive complaints
- Inspect places of detention

Policy Assessment
Policy Formulation
Policy Realization
Policy Monitoring
Policy Implementation
Agenda Setting/Problem Analysis
Developing Ideas/Designing Policy
Policy Dissemination
Review and Evaluation
WHY MONITOR POLICIES?

- Monitoring is essentially about **gathering evidence** to support demands for greater accountability from governments and other relevant actors.

- Using a human rights lens to monitor resources helps to **show the impact** of poor budget choices and to **pinpoint responsibility** for the injustice caused by them.

- Monitoring economic and social rights poses a particular **challenge for accountability** because:
  - chronic deprivations result from **failure to fulfil**
  - **causality** and state responsibility are harder to prove
  - **applicable norms** are not easy to operationalize
THE CAUSALITY CHALLENGE

A has a right

To B

Against C

Who has to do D

A = Rights Holder
B = Right
C = Duty Bearer
D = Obligation
THE NORMATIVE CHALLENGE

Obligations of Conduct

▪ To take steps (legislative, judicial, budgetary, administrative and other) to fulfill ESCR

▪ To use maximum available resources to ensure progressive realization, including resources provided through international cooperation

▪ To ensure participation, accountability and transparency in the policy-making process

Obligations of Result

▪ Minimum core obligations: immediate duty to prioritize achieving minimum essential levels of rights enjoyment universally

▪ Progressive realization: move swiftly towards increased levels of rights enjoyment, with no deliberate retrogression

▪ To ensure relevant infrastructure, goods and services are increasingly available, accessible to all, acceptable and of adequate quality

▪ Non-discrimination: duty to ensure substantive equality

To use maximum available resources to ensure progressive realization, including resources provided through international cooperation
THE OPERA FRAMEWORK
TOWARDS A NEW ESCR MONITORING FRAMEWORK

- To **build on developments** in the human rights field – e.g. clarification of scope and content of norms; greater use of quantitative methods; growth of field of budget analysis.

- To provide a **simple, coherent structure** in order to build a **persuasive advocacy argument**.

- To systematically **bring together the standards and principles** underpinning the **obligation to fulfill** economic and social rights.

- In particular, to **link evidence** about a state’s conduct, with evidence about the outcomes that result from that conduct.

- To benefit from the strengths of quantitative tools and techniques in supporting such evidence, at the same time respecting the need to **balance quantitative and qualitative analysis and personal testimonies**.
OPERA: A FOUR-STEP FRAMEWORK

**Outcomes**
From the perspective of rights holders, what is the problem?

**Policy Efforts**
How have the government’s actions affected the problem?

**Resources**
How has the use of resources affected the problem?

**Assessment**
In light of the broader context, is the government responsible for the problem?
# Linking Principles with Ways to Measure

## Outcomes
- **What is the level of rights enjoyment overall?**
  - Minimum core obligations
- **Are there differences between populations?**
  - Non-discrimination
- **How have things changed over time?**
  - Progressive Realization

## Policy Efforts
- **What legal and policy commitments has the state made?**
  - Take steps
- **How have policies been implemented?**
  - AAAQ Criteria
- **What was policy-making process?**
  - Participation, transparency, accountability

## Resources
- **How are resources allocated and spent?**
  - Maximum Resources
- **How are resource generated?**
  - Availability of Resources
- **What was the budget-making process?**
  - Participation, transparency, accountability

## Assessment
- **What other determinants affect rights holders?**
  - Indivisibility and Interdependence
- **What constraints face the state?**
  - Respect, Protect, Duty to Cooperate
- **Is the state complying with its human rights obligations?**
  - Obligation to Fulfill
OPERA: A FOUR-STEP FRAMEWORK

**Outcomes**
- Measure rights enjoyment overall
- Measure differences between populations
- Measure changes over time

**Policy Efforts**
- Identify legal and policy commitments
- Evaluate how policies have been implemented
- Analyze the policy-making process

**Resources**
- Analyze how resources are allocated and spent
- Analyze how resource are generated
- Analyze budget processes

**Assessment**
- Identify other determinants
- Understand state constraints
- Determine state compliance
Maternal mortality rates were the highest in the region, extremely unequal and had gotten worse over time.
Despite an exemplary legal and policy framework for maternal health, many problems in practice e.g. lack of gynecologists, unaffordable cost of treatment, poor treatment by service providers.

Concentration Of Obstetricians And Gynecologists Per 100,000 Women Of Reproductive Age (Left) And Maternal Mortality Rate, By Department

Darker shades represent higher numbers of obstetricians and gynecologists (left) and higher rates of maternal mortality (right).

Source: own design based on data from epidemiological reports by MSPAS and USAID, 2009
Analysis of expenditures and revenues showed that social spending was low and that the poorest benefit least. The low generation of resources could be explained by the country’s highly regressive tax system.
Assessment

There were many national and international constraints on the government, including elite resistance to fiscal reform. Overall, compliance with human rights commitments was inadequate. Low levels of maternal health was not linked to a lack of resources, but rather their distribution.
Monitoring can never be a purely technical exercise, it is an exercise of judgment.

OPERA is not a one-size-fits-all model, but a flexible, overarching framework to guide economic and social rights monitoring.

Steps cover all human rights principles:

- Each step suggests a checklist of questions and suggests different quantitative and qualitative methods.

- Which questions need more attention and which methods are most appropriate, will depend on the particular context.

- Adaptable according to user, purpose and audience.