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MONITORING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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WHAT IS MONITORING?

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

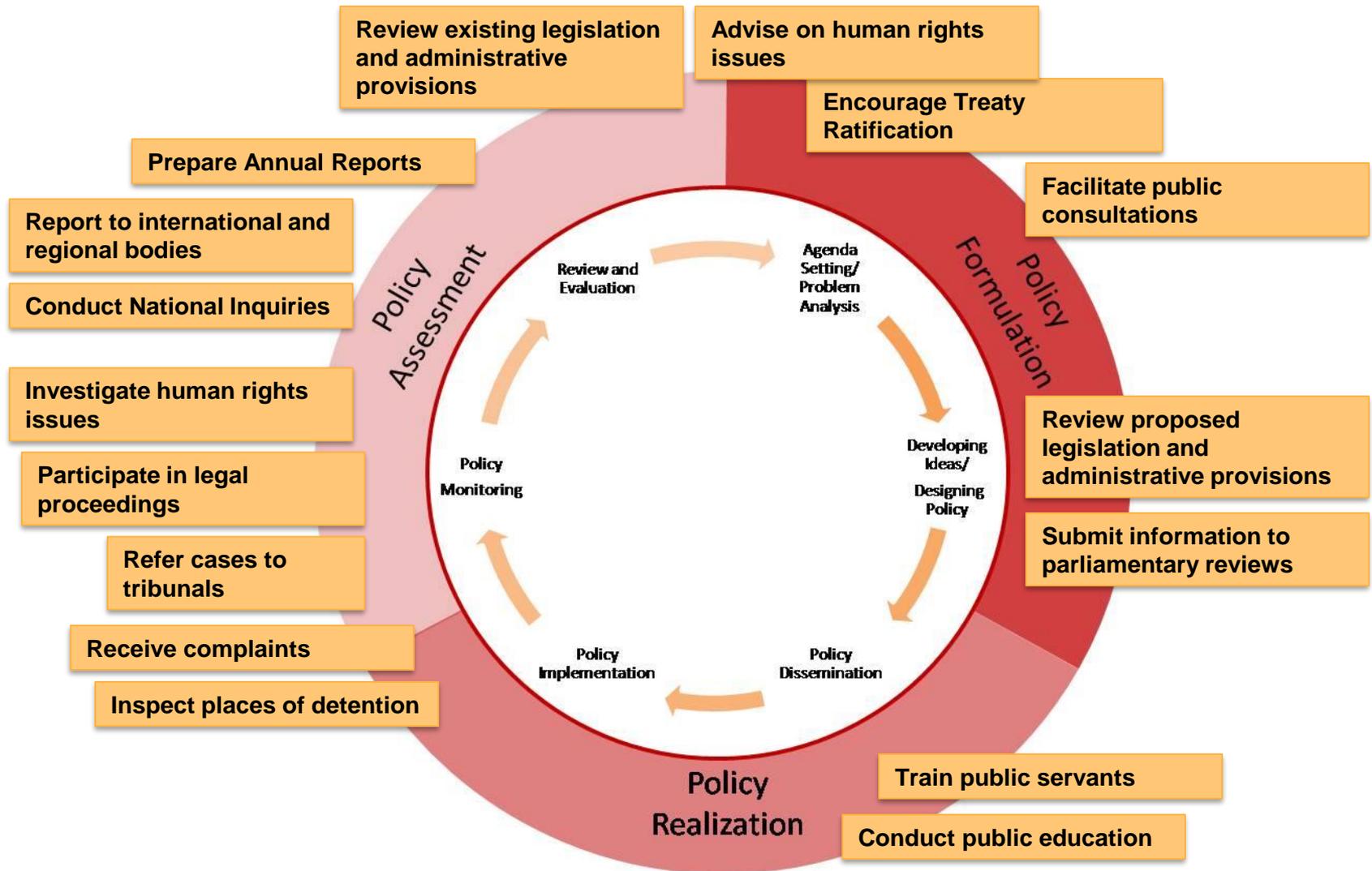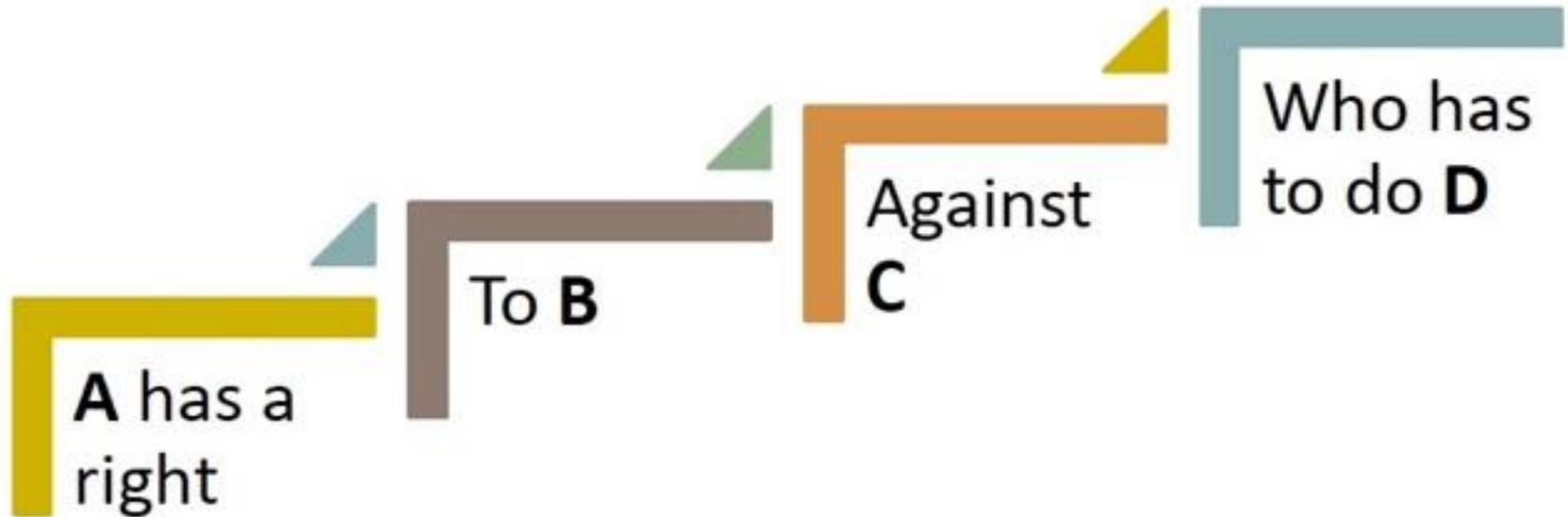| AUDITING	INVESTIGATIONS	FACT-FINDING
Presents an overall "snapshot" Often based on desk research, auditing relies on the regular collection of information to track progress on trends in human rights enjoyment. While it is the least in-depth form of monitoring, auditing is important for highlighting issues that demand further attention.	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.	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: *Measurement frameworks; annual reports; periodic reports to international bodies.*	*Examples:* *Studies on particular issues; reviews of laws and policies; periodic inspections of services (e.g. schools, hospitals, shelters etc.); national inquiries.*	*Examples:* *Responding to individual complaints; bringing cases to court (if mandated).*

HOW DO NHRIS MONITOR POLICY?

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 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

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

THE OPERA FRAMEWORK

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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?	Are there differences between populations?	How have things changed over time?
Minimum core obligations	Non-discrimination	Progressive Realization

Policy Efforts

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

Resources

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

Assessment

What other determinants affect rights holders?	What constraints face the state?	Is the state complying with its human rights obligations?
Indivisibility and Interdependence	Respect, Protect, Duty to Cooperate	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
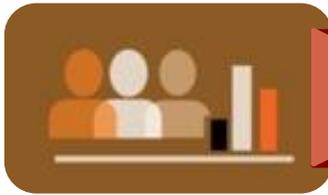- Analyze how resource are generated
- Analyze budget processes

Assessment
- Identify other determinants
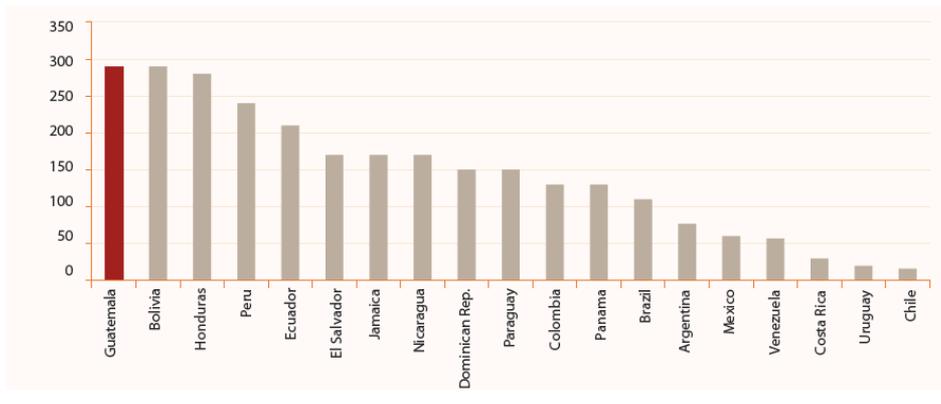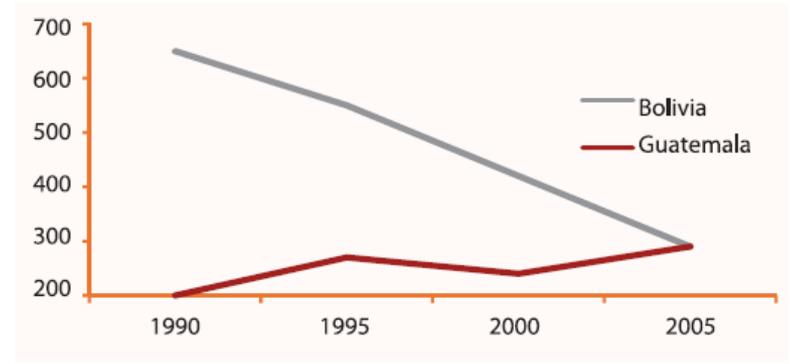- Understand state constraints
- Determine state compliance

Maternal Mortality Rates (adjusted) per 100,000 live births in Latin America (2005)
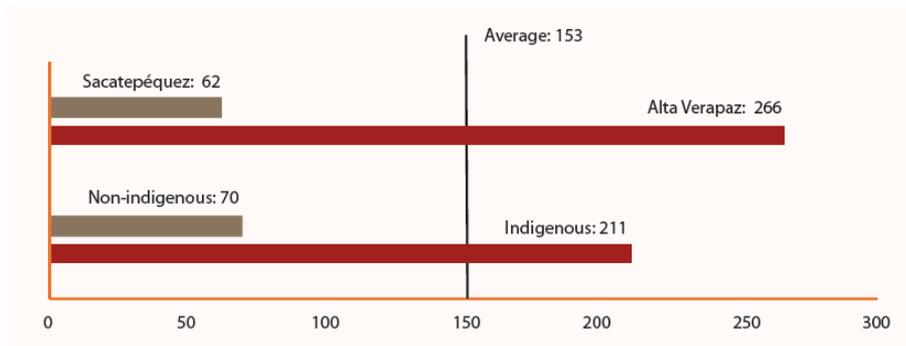

Source: Own calculations based on data from World Bank 2008

Maternal Mortality Rates (adjusted) per 100,000 live births: Guatemala and Bolivia (1990-2005)

Source: Own calculations based on ECLAC and UN Statistic

Maternal mortality rate (reported) per 100,000 live births, by ethnicity and selected departments

Average: 153

Sacatepéquez: 62

Alta Verapaz: 266

Non-indigenous: 70

Indigenous: 211

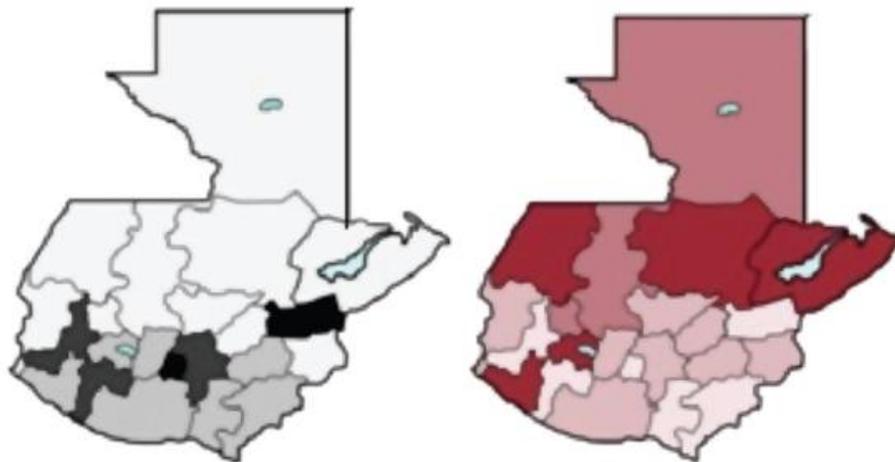Source: Own calculation based on Ministerio de Salud Pública y Asistencia Social (2003)

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
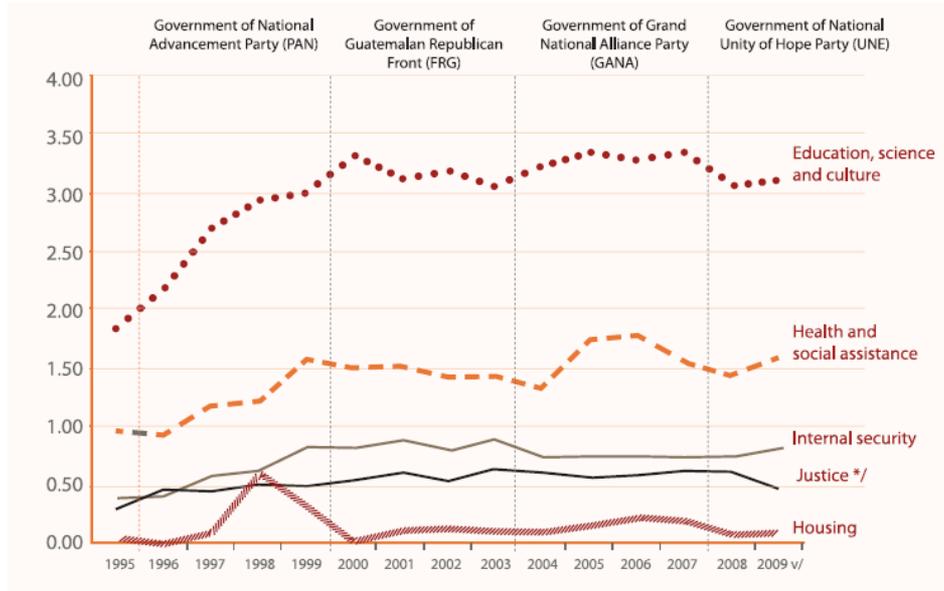

Darker shades represent higher numbers of obstetricians and gynecologists (left) and higher rates of maternal mortality (right).

Source: own design based on data from epidemiological reports by MSPAS and USAID, 2009
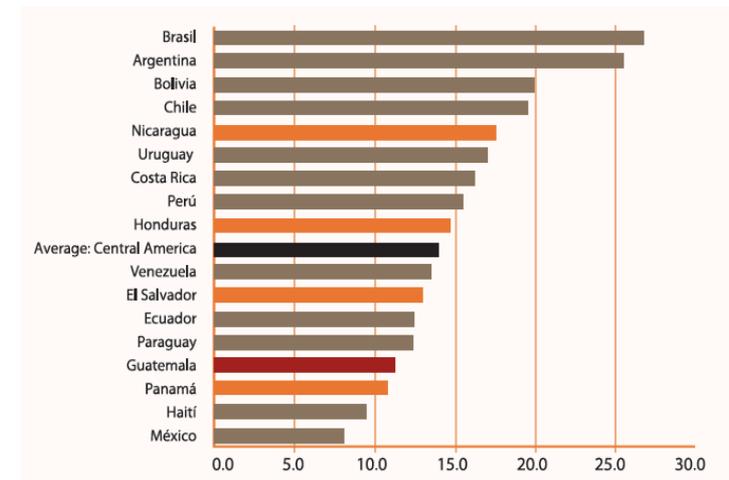
Resources

Central government social spending since the Peace Accords by sector (as a percentage of GDP)

| Government of National Advancement Party (PAN) | Government of Guatemalan Republican Front (FRG) | Government of Grand National Alliance Party (GANA) | Government of National Unity of Hope Party (UNE) |

Education, science and culture

Health and social assistance

Internal security

Justice */

Housing

Source: own calculations based on statistics from the Ministry of Public Finance and the Central Bank

Tax as a percentage of GDP in Selected Countries in Latin America and the Caribbean (2008, preliminary figures)

Brasil, Argentina, Bolivia, Chile, Nicaragua, Uruguay, Costa Rica, Perú, Honduras, Average: Central America, Venezuela, El Salvador, Ecuador, Paraguay, Guatemala, Panamá, Haití, México
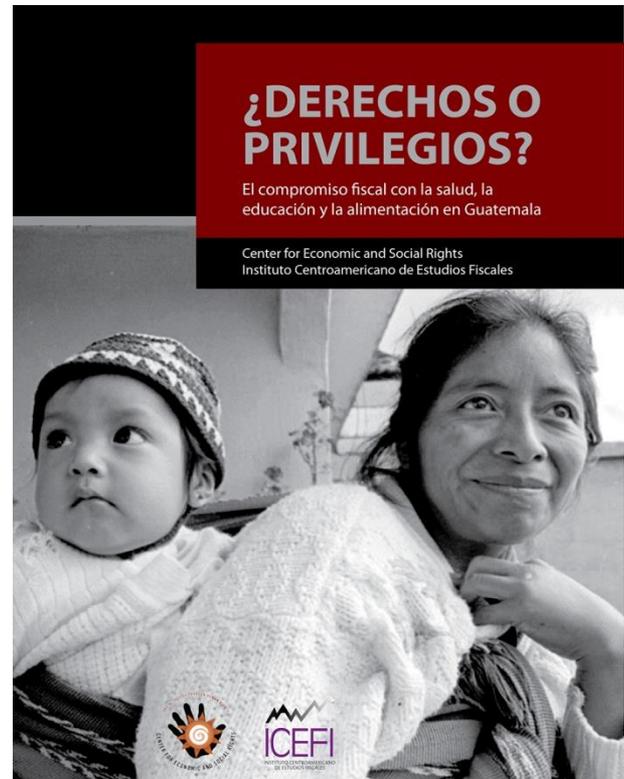
Source: own calculations based on statistics from CEPAL

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.

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*.

¿DERECHOS O PRIVILEGIOS?

El compromiso fiscal con la salud, la educación y la alimentación en Guatemala

Center for Economic and Social Rights
Instituto Centroamericano de Estudios Fiscales

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FEATURES OF THE OPERA FRAMEWORK

- 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.**