

MANUAL ON human rights MONITORING

Chapter 20

MONITORING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Chapter 20 Monitoring economic, social and cultural rights



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

MONITORING ECONOMIC, SOCIAL AND CULTURAL RIGHTS

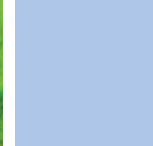


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A. Key concepts



- Human rights are indivisible and interdependent. In most situations, the methods, tools and strategic options for monitoring civil, cultural, economic, political and social rights are the same. It is essential to overcome the tendency to view economic, social and cultural rights as different from civil and political rights so as to make full use of the expertise of human rights officers (HROs).
- Disaggregated information is fundamental to identifying, monitoring and reporting on possible discriminatory patterns in the enjoyment of economic, social and cultural rights.
- Indicators are especially useful to monitor economic, social and cultural rights, in particular to measure their progressive realization.
- Monitoring economic, social and cultural rights may at times require forging new partnerships, including with professionals who have not traditionally been involved in human rights work (urban planners, public health professionals or nutritionists, for example). Strategic decision-making must incorporate these aspects and encourage “out-of-the-box” alliances and partnerships with local, national and international stakeholders in various fields.
- **Methods to monitor economic, social and cultural rights include:**
 - Monitoring legislation and policies;
 - Monitoring budgets;
 - Monitoring violations of economic, social and cultural rights linked to specific events;
 - Monitoring economic, social and cultural rights through judicial and quasi-judicial mechanisms.
- Each field presence has to decide in a strategic and realistic manner the method or, more commonly, the combination of methods that best responds to the economic, social and cultural concerns it has identified and to its own capacity.



B. Introduction

This chapter offers practical guidance on monitoring economic, social and cultural rights and the special considerations that are to be taken into account in this area of work. The chapter identifies methods and possible approaches for effective monitoring. It highlights tools and resources commonly used for monitoring these rights or for addressing issues where civil and political as well as economic, social and cultural rights intertwine, and it provides examples of activities and experiences by various field presences, national human rights institutions (NHRIs), other United Nations agencies and national courts.

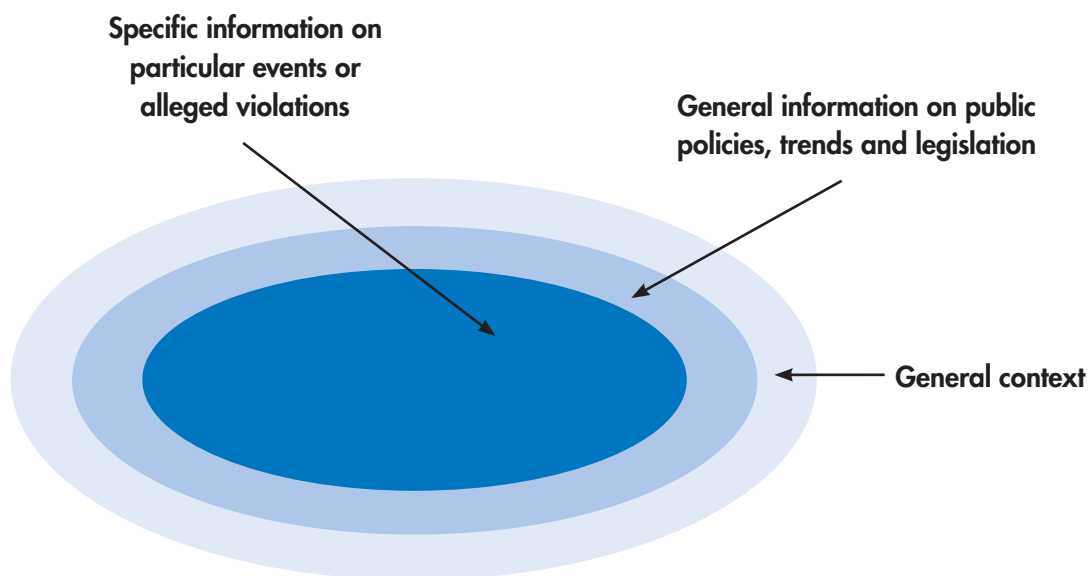
Most of the methods presented in this chapter can also be used to monitor civil and political rights. They are included here to offer a comprehensive set of approaches to monitoring economic, social and cultural rights.¹


The mandate of OHCHR gives equal priority to all human rights, whether civil, cultural, economic, political or social. Monitoring is generally the same for all these human rights and similar tools and skills are used to document, advocate and act in the face of a human rights violation. Every human rights field presence should develop its own strategy, depending on its mandate, available resources and capacities, comparative advantages, analysis of priority issues and groups, the dynamics of existing or potential partnerships and the added value.² This does not mean that field presences should focus only on one approach or one right, but a strategic choice can be to combine approaches. A limited or inexistent focus on economic, social and cultural rights in any human rights strategy inevitably results in an imbalanced assessment of the human rights situation. It could also lead to a limited application of the international human rights standards, which should guide all OHCHR activities.


¹ For more resources, documents and tools on economic, social and cultural rights, see www.ohchr.org.

² See also the chapter on *Analysis*.

C. Information and tools to monitor economic, social and cultural rights



For more details, see also the chapter on *Gathering contextual information* .

As discussed in the chapter on *Gathering contextual information* , an effective approach to any human rights problem requires various layers of information in a cycle where the information gathering process feeds the analysis, which in turn is used to design a human rights strategy leading to actions. The success of a strategy often depends on the quality of the information on which it is based. Monitoring economic, social and cultural rights requires information on each of the three layers shown in the diagram above.

Human rights officers need to be receptive to various kinds of information and sources, including non-traditional sources. For example, with regard to the right to health, information on legislation and the ratification of treaties is useful, but so are epidemiological data to identify the sectors of the population more at risk of a particular infection. A wide range of information makes it possible to identify concrete actions in line with the right to health, such as developing specific hospital protocols, allocating additional resources, including personnel, giving priority to vulnerable sectors of the population and better targeting public information and prevention campaigns.

It is useful for HROs to understand the general context and take into account information about a country's socio-economic situation, poverty levels or demographics regardless of whether they are working on economic, social and cultural rights or on civil and political rights. However, such information alone is not sufficient to monitor State compliance with obligations on economic, social and cultural rights.

Similarly, having substantive but not disaggregated information may fail to show a specific violation or to provide the nuances needed to understand a specific event, such as the impact on an ethnic minority of closing down a school in a particular neighbourhood.

Sometimes, economic, social and cultural rights are considered only as "contextual information" related to violations of civil and political rights. For example, the location of water sources in camps for





internally displaced persons (IDPs) may be referred to as a risk factor for women who may be exposed to sexual and other physical violence when fetching water, but not as something that could directly and specifically jeopardize their right to drinking water and their right to health. Yet, lack of access to safe drinking water constitutes a human rights violation in itself.

Monitoring economic, social and cultural rights also tends to be confused with assessing general trends about basic needs, such as the percentage of those living in extreme poverty or the negative impact of the economic downturn on access to basic social services. Although these trends and data may be considered a proxy for violations of economic, social and cultural rights, a thorough analysis of the obligations of the State, the actual legal and policy frameworks and the situation of specific individuals or groups should nevertheless be undertaken to determine whether a violation has taken place or not.

The partners in this endeavour may be different from those regularly contacted in relation to civil and political rights. For example, field presences can observe events such as general strikes, labour inspections, protests by farmers or the relocation of communities, and carry out visits to schools, health centres and hospitals, informal settlements, factories (including those of the informal sector), plantations or feeding centres, where HROs could interact with a wide array of organizations, associations and individuals. All of these may be useful in monitoring economic, social and cultural rights. Discussions with the authorities may include various line ministries, such as the ministries of health, education, labour, agriculture, forestry and fisheries, development and planning, and local governments. Discussions should also take place with the private sector, trade unions and professional associations.

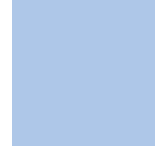
1 Disaggregation of information

Disaggregation of information is critical to monitoring discrimination and inequality, whether in the realization of economic, social and cultural rights or of civil and political rights. Quantitative data, such as socio-economic statistics, that are not disaggregated offer an overview of the situation, but may also at times mask inequality between different sectors of the population or between different regions or locations within a country. The importance of disaggregated data is also emphasized in the chapters on *Gathering contextual information*  and on *Integrating gender into human rights monitoring* .

Unfortunately, disaggregated information is not always available. Field presences can urge national authorities to collect data effectively and systematically, to disaggregate them based on various criteria and to make them available for public use. In their concluding observations the treaty bodies such as the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights often recommend that State parties should improve their national systems of statistics/data collection.³

Human rights monitoring to identify discrimination also requires analysing the gaps between the obligations of the State and the actual situation of specific individuals or groups of individuals, depending on several criteria: age, sex, ethnic or religious background, disability, socio-economic

³ Many examples of such recommendations can be found by searching the Universal Human Rights Index of United Nations documents (www.universalhumanrightsindex.org) for “disaggregated” or “statistics”. One aspect of the right to freedom of expression under article 19 of the International Covenant on Civil and Political Rights is precisely the freedom to seek and receive information of all kinds, which includes the obligation of States to ensure access to public information (demographic, epidemiological, financial, etc.) in various formats.



condition, marital status, sexual orientation, etc.⁴ Identifying these gaps sheds light on the actual limitations of an existing policy or law, or helps identify what particular actions – including temporary special measures⁵ – are needed to address specific marginalized group and subgroups and the obligations of the duty bearer(s).⁶

Lack of access to disaggregated information and statistics may render marginalized communities and sectors of the population even more vulnerable as their actual situation would not appear in reports and aggregated charts, and hence cannot inform policymaking processes. Disaggregated information can also reveal the de facto discriminatory nature of some policies and laws that would otherwise appear neutral.



Using the proportion of births attended by skilled health personnel as an indicator

Sexual health and reproductive health are integral elements of the right to health. To measure progress, there are several indicators, one of which is *the proportion of births attended by skilled health personnel*. A State may select this indicator as one of those it uses to measure its progressive realization of sexual and reproductive health rights, so for example:

National data show 60 per cent of births attended by skilled health personnel

First disaggregation: urban centres 70 per cent; rural areas 50 per cent

Second disaggregation: ethnicity in the rural areas: the dominant ethnic group enjoys a coverage of 70 per cent, but the minority ethnic group only 40 per cent

This highlights the crucial importance of disaggregation as a means of identifying de facto discrimination. When disaggregated, the indicator confirms that *women of the ethnic minority in rural areas are especially disadvantaged and require particular attention*.

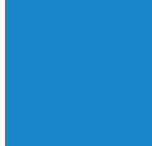
Consistent with the progressive realization of the right to health, the State may decide to aim for a uniform national coverage of 70 per cent, in both the urban and the rural areas and for all ethnic groups, in five years' time. Thus, the indicator is the proportion of births attended by skilled health personnel and the target is 70 per cent. The State will formulate and implement policies and programmes that are designed to reach the target of 70 per cent over five years. The data show that the policies and programmes will have to be specially designed to reach the minority ethnic group living in the rural areas.

(continued)

4 Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights lists race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status as prohibited grounds of discrimination. In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights interpreted the ground "other status" as including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation.

5 See the Committee on the Elimination of Discrimination against Women's general recommendation No. 25 (2004) on temporary special measures for some key elements.

6 For an analysis of the provision of equality and non-discrimination against women in relation to economic, social and cultural rights, see the High Commissioner's report to the Economic and Social Council (E/2008/76).



Using the proportion of births attended by skilled health personnel as an indicator (cont'd)

Annual progress towards the 70 per cent target should be monitored, in the light of which periodic policy adjustments might be required. After five years, a monitoring and accountability mechanism will ascertain whether or not the 70 per cent target has been reached in urban and rural areas and for all ethnic groups.

- If it has, the State will set a more ambitious target for the next five-year period, consistent with its obligation to realize progressively the right to health.
- If the 70 per cent target for all has not been reached, then the reasons should be identified and remedial action taken.

Importantly, a failure to reach a target does not necessarily mean that the State is in breach of its international obligations. The State might have fallen short of its target for reasons beyond its control. However, if the monitoring and accountability mechanism reveals that the target was not reached because of corruption in the health sector, for example, then it will probably follow that the State has failed to comply with its international right-to-health obligations.

Source: E/CN.4/2006/48.

2 Quality and transparency of information

Even though official data are important, human rights officers must keep in mind that Governments may be reluctant to share all their information or may manipulate their statistical information. Data can be presented in such a way that they fail to reflect particularly serious issues. In addition, other elements may hamper the collection of meaningful data: lack of readiness by the authorities to disclose data, barriers to access data (such as fees or red tape), unreliable data collection or updates, or the absence of official data. Strategies to cope with these situations may vary.⁷

Human rights officers can seek information internationally or regionally (United Nations Development Programme, World Bank, World Health Organization (WHO), etc.) or from international donors or other sources (academic studies, newspapers, non-governmental organizations (NGOs), etc.).

All treaty bodies request State parties to provide statistics and data in their periodic reports.⁸ Special rapporteurs also request statistics, in many cases, and recommend that States should develop and collect relevant data. These requests are not always complied with and it is useful to remind States of such requests, especially ministries that may not be aware of them or of the reasons why a particular human rights mechanism has made these recommendations.

⁷ A useful reference and advocacy tool in this context is the United Nations Fundamental Principles of Official Statistics. It provides a list of general criteria that a good official statistical system should meet. It refers to data protection, quality, impartiality, ethics, misuse of statistics, etc. Available from <http://unstats.un.org/unsd/methods/statorg/FP-English.htm> (accessed 11 October 2011).

⁸ See, for instance, the harmonized guidelines for State parties' reporting adopted by the treaty bodies (HRI/GEN/2/Rev.6, paras. 12-15, 26) and the revised treaty-specific guidelines of the Committee on Economic, Social and Cultural Rights (E/C.12/2008/2, para. 3), requesting State parties to provide indicators and benchmarks drawing on the OHCHR methodology set out in HRI/MC/2008/3 (see also footnote 9 below).

3 Indicators on economic, social and cultural rights

Human rights indicators, both qualitative and quantitative, are particularly relevant for monitoring economic, social and cultural rights.

OHCHR works on the identification and use of human rights indicators to measure progress in the implementation of human rights obligations at the national level. This work has already led to the development of a set of illustrative indicators for a number of economic, social and cultural rights and civil and political rights.⁹ Apart from monitoring progress over time, indicators also serve to identify disparities in the enjoyment of human rights among different population groups and to draw parallels between legal or policy reforms and the realization of a particular right. Indicators help to make policy and human rights planning and monitoring more efficient and transparent.

Human rights indicators, unlike other social or demographic indicators, are grounded in provisions of international human rights treaties. They are based on human rights principles such as non-discrimination, participation, access to remedy, accountability and the interdependence and indivisibility of all human rights. As illustrated in the annex to this chapter, the indicators in the OHCHR conceptual and methodological framework bring to the fore an assessment of the steps taken by a State party in addressing its obligations:

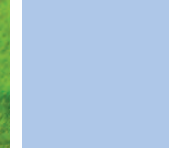
- **Structural indicators:** commitment to and acceptance of international human rights obligations and legislation (e.g., adoption of a plan of action for the implementation of compulsory primary education free of charge for all as stipulated in the International Covenant on Economic, Social and Cultural Rights, art. 14);
- **Process indicators:** efforts made by the State to meet its obligations (e.g., net primary enrolment ratio, disaggregated by prohibited grounds of discrimination, as applicable);
- **Outcome indicators:** outcomes as experienced by the rights holders (e.g., disaggregated literacy rates or average years of schooling).

Importantly, indicators can provide objective data which can be widely accepted, but they cannot provide the “full picture”. It is always necessary to analyse and interpret *what indicators indicate*.

Human rights indicators can serve multiple purposes at the national level:

- (a) They set **objective benchmarks** against which human rights can be monitored;
- (b) They help to identify **trends** in the realization of human rights;
- (c) They help to **identify the type of information** that needs to be gathered. This can also be useful for information that needs to be gathered for reporting to treaty bodies. The United Nations country team (UNCT) can use indicators to report to treaty bodies and also to support other actors, governmental or non-governmental, to do so;
- (d) They make it possible to measure the **progressive realization** of economic, social and cultural rights;
- (e) They offer a concrete and practical entry point for discussions with Government officials who may consider that legal provisions and instruments are too abstract and impossible to break down into operational components and measurable segments;

⁹ More detailed information on the work and methodology of OHCHR on indicators, including lists of illustrative indicators on a number of civil, cultural, economic, political and social rights, is available from www.ohchr.org.




- (f) They can be useful to translate obligations stemming from international human rights instruments into domestic law;
- (g) They can be helpful when monitoring the specific situation of a given province/region or a particular sector of the population;
- (h) They can facilitate the identification of human rights priorities to be measured against objective parameters.

D. Creating alliances and working in partnership

In addition to requiring engagement with the national authorities, monitoring economic, social and cultural rights may also require working with other national actors, such as NGOs, NHRIs, community-based organizations, research institutions, trade unions or other professional organizations, and consumer organizations, as well as working in partnership with other United Nations agencies and entities which are part of the UNCT, or with international NGOs and donors.

On many economic, social and cultural rights issues, the “traditional” human rights actors – such as ministries of justice and foreign affairs, judges, lawyers and human rights organizations – are not the only stakeholders. Some other constituencies are health professionals, community-based organizations working on women’s rights, teachers, agricultural and nutrition experts, organizations of persons with disabilities, land and environmental social movements, cultural heritage institutions and foundations, the private sector, water management experts and urban planners.

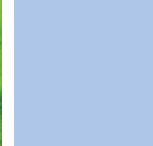
Collecting and verifying information¹⁰ or trends in economic, social and cultural rights, as well as seeking to prevent the escalation of a situation or further violations may, at times, require the support of professionals with specific expertise or technical skills. For example, architects and urban planners may be better equipped to understand – and challenge – the technical aspects that make an area adequate for resettlement after a justified eviction. Tools such as the Basic principles and guidelines on development-based evictions and displacement¹¹ and the OHCHR *Fact Sheet on Forced Evictions*, which are based on general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, are especially useful for these activities.

The chapter on *Engagement with national authorities and institutions*  discusses cooperation with NHRIs as an essential aspect of the work of field presences and offers guidance on working with them. The issues addressed there are equally relevant to monitoring State compliance with obligations related to economic, social and cultural rights. Moreover, it is important to highlight that some NHRIs have an explicit mandate in this respect.¹² Some mandates also include monitoring public policies or intervening in, for instance, environmental or consumer-related areas, which are often linked to the right to adequate food, the right to health, the right to water, etc. These NHRIs have developed the required skills, knowledge, materials and capacities, and can be strong partners.

¹⁰ See chapter on *Analysis*.

¹¹ A/HRC/4/18, annex I.

¹² See also the Committee’s general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights.



Uganda

The **Uganda Human Rights Commission** was established as a constitutional body in 1995. To foster monitoring of and accountability for the realization of the right to health, and following up on a recommendation by the Special Rapporteur on the right to health during his 2005 mission to Uganda (E/CN.4/2006/48/Add.2, para. 91), the Commission established a right-to-health unit. This Unit is responsible for monitoring policies, programmes and projects related to neglected diseases as well as holding all actors accountable in relation to the right to health. The Unit has also developed a **toolkit on the right to health**.

The toolkit provides the means through which the Unit and others can design systems for monitoring and evaluating compliance in the realization of the right to health. The toolkit is intended to help the Unit collect baseline data and to provide benchmarks for future monitoring and evaluation. This will, in the long run, provide reliable information that the Commission or the Government can use to improve policies and programmes for the enjoyment of the right to health in Uganda.

OHCHR-Uganda has supported a number of activities in this connection, ranging from the visit of the Special Rapporteur to the setting-up of a task force led by the Ministry of Health. It has also provided capacity-building and technical support to the Right-to-Health Unit and expressed continued commitment to empowering nationally owned mechanisms.



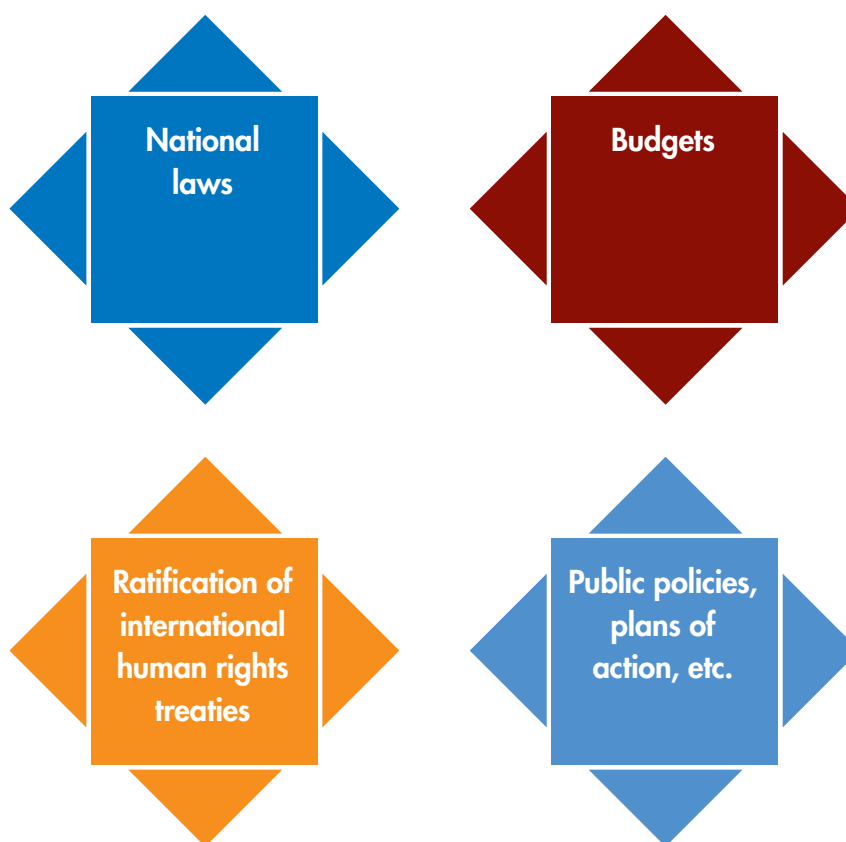
Timor-Leste

In 2006, the Economic, Social and Cultural Rights Team of the Human Rights and Transitional Justice Section of the United Nations Integrated Mission in Timor-Leste (UNMIT), together with representatives of 13 Timorese human rights NGOs, academics and students, started developing a manual on **monitoring economic, social and cultural rights** in Timor-Leste. Since the launch of the manual in 2008, the Team has conducted several workshops for national and international NGOs based in the capital, Dili, and in Timor-Leste's districts. NGOs, but also the Provedoria for Human Rights and Justice and Timor-Leste's National Human Rights Institution, frequently use the manual, and monitor and advocate economic, social and cultural rights, particularly the right to food, health, housing and education. The manual is available in English and in Timor-Leste's official languages, Portuguese and Tetum.



The Human Rights and Transitional Justice Section provided training to the Provedoria on monitoring economic, social and cultural rights in 2009. As a result, the Provedoria started monitoring the realization of the right to food and the right to education. It produced its first right to food monitoring report in early 2010.

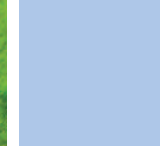
E. Methods of monitoring



International human rights treaties, constitutions and national legislation constitute pieces of a puzzle that are complemented by policies, programmes, plans of action and administrative measures to ensure their implementation. It is essential to look at all the pieces to get the full picture.

Essentially, monitoring compliance with State obligations towards the realization of economic, social and cultural rights requires field presences to analyse the following key aspects:


- What is the (national, regional and international) legal framework applicable to a particular issue?
- What are the entitlements of the rights holders and what are the corresponding State obligations? Which (local or municipal, national, federal) government institution(s) or power(s) are responsible for these obligations?
- Which individuals or groups are not able to enjoy their entitlements? Which population group, individuals or groups of individuals are particularly at risk?
- Why and how are they deprived of their entitlements?
- What specific violations can be identified?
- What are the measures taken to remedy the situation? (E.g., is there a policy framework, programme or judicial mechanism to address the situation? Is it implemented?)
- What is the impact of the measures taken? What other measures are required? Do different groups of the population require different or specifically tailored measures to prevent discrimination?



1 Monitoring legislation relevant to economic, social and cultural rights

International human rights standards and principles must be enshrined in national legislation as a first important step after ratification. Existing national legislation must therefore be harmonized with the international treaty obligations. Legislation and regulations are necessary to define entitlements and access to services and benefits in areas such as health, education, housing, work or social security. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights underscores the importance of adopting legislative measures to achieve the full realization of these rights. Conversely, failure to adopt legislation or adopting inadequate or insufficient legislation will most likely prevent international human rights obligations being met.

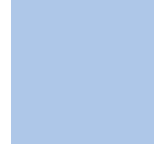
National legislation should be the result of a nationally owned consultative process involving relevant civil society organizations and other actors.

The chapter on *Gathering contextual information*  lists several kinds of legislation explicitly related to economic, social and cultural rights, such as framework laws on health, education, non-discrimination and equality of women, housing, land and food. However, other legislation can also be relevant for assessing the enjoyment of economic, social and cultural rights. For example, civil codes contain provisions on legal capacity which relate to the consent of children, women and persons with disabilities regarding medical treatment and access to sexual and reproductive health information and services. Legislation about consumers' rights establishes rules and guarantees about packaging of food and medicines, ingredients or nutritional values, expiration, etc., all of which are also relevant for the protection of the rights to adequate food and to health.

Field presences may have a comparative advantage in monitoring the process of legal development or reform from an international human rights law perspective. Activities relevant to monitoring legal developments or law reform include:

- (a) Monitoring legislative discussions, including constitutional drafting or reform processes;
- (b) Analysing the compatibility of existing legislation with international human rights standards;
- (c) Identifying gaps in legislation or lack of legislation to adequately protect economic, social and cultural rights;
- (d) Facilitating the participation of NGOs and special interest groups in legislative processes, including by sharing information on existing processes, comparative analyses, etc.;
- (e) Identifying pieces of legislation that are inconsistent with international human rights law.

During reviews of draft laws, field presences often provide technical assistance and cooperation in the form of substantive input, comments or comparative legal analysis from relevant countries (e.g., neighbouring countries, countries with similar traditions or a similar history, or countries that offer particularly good examples of legislation). Essentially, field presences can offer an analysis linking the draft legislation or draft amendment to the country's international and regional human rights obligations. They can also play an important role in facilitating the participation of national actors in legislative processes and in strengthening their capacity so that this participation is effective and informed.



Children of migrant workers and the right to education

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has expressed its concern to various State parties about discrimination and the right to education:

- In 2007 the Committee noted with concern that in **Egypt** most children of documented migrant workers do not have access to public schools and children of undocumented migrant workers do not have any access to the schooling system, whether public or private. The Committee noted that the Constitution, in its article 40, referred only to discrimination of Egyptian citizens (CMW/C/EGY/CO/1).
- Similarly, in 2007, the Committee was concerned at the information that in **Ecuador** a considerable number of migrant children, and notably children of irregular migrant workers, did not have access to the education system and that this might be caused, inter alia, because few are registered at birth or afterwards, either because their parents fail to register them for fear of being deported or because their registration is refused on the ground of the irregular status of one or both parents. The Committee recommended that Ecuador should intensify its efforts to guarantee that each child of a migrant worker had the right to a name and to registration of birth throughout the country, in accordance with article 29 of the Convention (CMW/C/ECU/CO/1).

In both examples the Committee identified gaps in legislation or a lack of adequate policies to ensure the fulfilment of the right to education of children of migrant workers. Similar assessments could also be carried out by human rights officers.

The identification of gaps can also be the result of a participatory process with national authorities and organizations – such as during a seminar, a series of meetings or a multi-sectoral task force. Field presences can facilitate access to background information: treaty bodies' general comments, annotations and recommendations of human rights mechanisms. Reports and assessments prepared by experts can also play an important role in identifying gaps.

The following suggestions may assist in monitoring legislation relevant to economic, social and cultural rights:

- Carefully study the international and regional human rights treaties that the State has ratified and the specific provisions that are relevant to the legislation under discussion. All international human rights treaties have provisions related to economic, social and cultural rights, not only the International Covenant on Economic, Social and Cultural Rights. The general comments/recommendations are very useful to explain the scope and contents of each right or the relevance of a particular issue.¹³ Minimum core obligations as defined in the general comments are also elements to look at.

¹³ The general comments of the Committee on Economic, Social and Cultural Rights are available from www.ohchr.org.



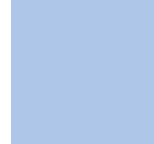
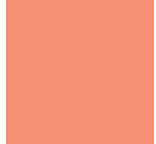
- The concluding observations of treaty bodies, the State reports to treaty bodies, the alternative reports provided by UNCTs, NHRIs, national or international NGOs or other institutions which address specific issues related to the draft law are important for analysis. Provide compilations of such information to national organizations and institutions participating in the discussions.¹⁴
- Prepare a table or checklist of obligations and rights relevant to the specific legislation and examine whether the legislation meets these requirements.
- Examine whether the legislation identifies remedies for individuals or groups of individuals if they are denied access to facilities, goods or services determined by the law.
- Identify shortfalls and gaps, and compile these in a report with proposals to amend or supplement the law where relevant.

All these activities can be undertaken directly by the field presence or with the help of others with specific expertise in these areas. Input can also be requested from specialized networks and communities of practice. Advice from and consultation with OHCHR headquarters can also help with the more specialized aspects of this work.

Once the analysis of the legislation has been completed, field presences could consider some follow-up steps:

- Whenever possible introduce concrete and practical examples of the positive or negative impact that new legislation or suggested reforms would have on the realization of economic, social and cultural rights for different groups of the population.
- Raise awareness within the UNCT or within the peace operation about the law under discussion, the process, the risks as well as the benefits it might have for the promotion and protection of economic, social and cultural rights. Other United Nations agencies, such as the International Labour Organization (ILO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), WHO or the United Nations Human Settlement Programme (UN-Habitat), can provide important input about the proposed legislation in their areas of expertise.
- Provide and facilitate opportunities for constructive dialogue among different national actors.
- Identify windows of opportunity for public or bilateral advocacy by the Special Representative of the Secretary-General/Humanitarian Coordinator/Resident Coordinator, particularly to underline the positive or negative impact the proposed legislation may have on economic, social and cultural rights.
- Suggest steps to develop effective plans, policies and programmes for the implementation of the new or revised law. Whenever possible, suggest that financial resources for its implementation should also be put in place.
- Draw developments and analysis to the attention of relevant special procedure mandate holders for their communications and advocacy with Governments.

¹⁴ The above-mentioned Universal Human Rights Index of United Nations documents is a powerful and useful tool to search the concluding observations of treaty bodies and the recommendations of special procedure mandate holders.



Central Asia

In March 2009, a workshop on **the right to adequate housing** took place in Bishkek. It was attended by representatives of State authorities, civil society and field presences from Kyrgyzstan and neighbouring countries. The workshop served to identify the need of NGOs and human rights defenders in **Kazakhstan, Kyrgyzstan and Tajikistan** for training on the right to adequate housing, which was subsequently held in June. As a result of these activities and awareness-raising on the content and scope of international norms, the right to adequate housing, including specific elements from the general comments by the Committee on Economic, Social and Cultural Rights, were incorporated in the draft housing code of Kyrgyzstan and additional technical cooperation was requested from OHCHR.

Source: OHCHR Central Asia Regional Office.



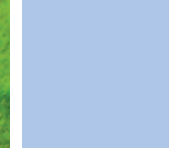
Nepal

During 2009, OHCHR-Nepal discussed the **incorporation of economic, social and cultural rights in the new Constitution**, in coordination with the UNCT and members of the Constituent Assembly. It provided input to clarify the scope and nature of economic, social and cultural rights based on the human rights treaties Nepal had ratified. Important aspects such as the justiciability of these rights and access to remedies were included. OHCHR provided comparative examples from other constitutions and reform processes.

OHCHR-Nepal also supported civil society organizations on specific aspects of economic, social and cultural rights so that they could effectively advocate better protection and promotion of these rights in the new Constitution. For example, the Nepal Bar Association was identified as a key partner and benefited from training. A workshop conducted for its women lawyers led them to draft and submit a charter on economic, social and cultural rights to the Constituent Assembly's Committee on Fundamental Rights. This Committee was responsible for drafting the Constitution's chapter on fundamental rights.

2 Monitoring public policies relevant to economic, social and cultural rights

Public policies, such as sectoral plans of action (for example, on employment, housing, health or education), national or local workplans, poverty reduction strategies or national development strategies, are also an important means of meeting obligations stemming from economic, social and cultural rights. Public policies translate the abstract text of treaties into context-driven plans and specific measures to realize rights. In many cases, they constitute the framework for putting economic, social and cultural rights into practice. They are also entry points for longer-term capacity-building strategies and for putting human rights at the centre of decision-making.



Canada

In 2008, the Ontario Human Rights Commission issued one of the first reports on economic, social and cultural rights by a Canadian NHRI. Entitled “Right at home”, it was the result of a province-wide consultation. Referring extensively to the International Covenant on Economic, Social and Cultural Rights and the mission of the Special Rapporteur on the right to adequate housing in 2007 (A/HRC/10/7/Add.3), the Commission issued several recommendations to the authorities of Ontario on **the right to adequate housing**.

Echoing recommendations of the Special Rapporteur and the Committee on Economic, Social and Cultural Rights, the Commission called for housing rights to be integrated into comprehensive and coordinated poverty reduction strategies and the adoption of a provincial housing strategy with measurable targets, particularly aiming at protecting people on a limited income and vulnerable groups. Very concretely, the Commission called on the government of Ontario to review and improve funding rates, programmes, laws and regulations to make sure that low-income tenants were able to **afford** average rents, food and other basic necessities, particularly by:

- Ensuring that minimum wages are indexed to inflation and enable a full-time earner to live above the low-income cut-off;
- Making the shelter allowance portion of social assistance benefits sufficient to pay average rents;
- Eliminating clawbacks from social assistance payments;
- Increasing the availability of portable housing allowances;
- Increasing the availability of rent banks to enable tenants to pay rent deposits and to cover arrears;
- Assessing the impact of rent control and vacancy decontrol.

In 2009, the Commission published a follow-up report “Policy on human rights and rental housing” and launched a campaign to raise public awareness about the right to housing.

Source: Ontario Human Rights Commission, see www.ohrc.on.ca/en/issues/housing.

Monitoring public policies may be broken down into different stages: monitoring the process of adopting public policies, monitoring their content and monitoring their implementation. During adoption, the main focus of monitoring is on the availability of public information and the opportunities for participation by stakeholders. Monitoring the content primarily focuses on the policies’ consistency with international human rights norms and principles. Monitoring implementation in turn focuses on the way in which adopted public policies are put in practice.

Access to public information is an important prerequisite for monitoring public policies. National actors, including NHRIs, civil society organizations, academic and professional institutions, community-based organizations and other relevant stakeholders should be well informed to ensure meaningful participation but also effective follow-up, advocacy and campaigning about specific social guarantees. Missions by special rapporteurs can open doors and offer opportunities for raising awareness about

specific situations or gathering support around a strategy, or they can serve as a first step towards a change in policy.

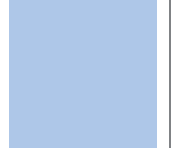
When a field presence strategically chooses to monitor a particular policy or strategy related to economic, social and cultural rights, HROs should:

- Map out the actors already involved in the discussions or potentially relevant to it (including communities or constituencies which may be negatively affected by the policy);
- Ensure those with whom they engage are truly representative of the constituency they claim to represent;
- Assess whether relevant information is made available to the public and those directly affected prior to the decision-making so as to ensure meaningful participation;
- Analyse the compatibility of the new public policy with international human rights law, national legislation and concluding observations by treaty bodies;
- Identify and make available other relevant human rights instruments or tools;¹⁵
- Advocate adequate budgetary provisions, allocations and processes being incorporated in the planning to guarantee the implementation of the policy;
- Identify omissions and gaps which could lead to discrimination, violations or have a negative impact: some policies may seem gender-neutral but result in indirect discrimination against women, for example;
- Point to similar policies from other areas which can serve as a good practice/example of the options that can be discussed;
- Consider relevant disaggregated information about sectors of the population and their particular situations and needs;
- Assess whether the policy takes into consideration the situation of those who are vulnerable, marginalized or in need;
- Consider conflicts of law or practice which may render the policy inapplicable;
- Encourage a discussion on accountability mechanisms and putting them in place whenever possible;
- Whenever possible, identify experts or organizations that can prepare and explain a realistic costing of the implementation of a given policy;
- Once the policy has been adopted, assess whether its implementation is compatible with human rights norms and principles (e.g., it is implemented in a non-discriminatory manner, its implementation does not affect other human rights, etc.).

As mentioned above, at this stage field presences can seek the advice of specialized networks and OHCHR headquarters to go through these steps.

Consider offering technical assistance to strengthen the national monitoring capacity, by offering technical advice on policy review, opportunities for capacity-building on monitoring policies as well as international human rights reporting.

¹⁵ For example, *International Guidelines on HIV/AIDS and Human Rights: 2006 Consolidated Version*, "Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security of the Food and Agriculture Organization of the United Nations", *Handbook: Housing and Property Restitution for Refugees and Displaced Persons – Implementing the "Pinheiro Principles"*.



Timor-Leste

In December 2008, the Economic, Social and Cultural Rights Team of the UNMIT Human Rights and Transitional Justice Section released a thematic report on **the right to food** in Timor-Leste. The fulfilment of the right to food was considered a national priority in Timor-Leste but faced various challenges, including as a result of the political crisis in 2006, a locust plague in 2007, as well as the global food crisis which erupted in 2008. The Section conducted field monitoring through systematic interviews with local communities, vendors, consumers and local authorities. It also monitored the implementation of the rice subsidy policy. Its report analysed and assessed availability and accessibility and relevant national policies and strategies, as well as the institutional framework to implement them. Based on the analysis, the Section issued recommendations to national and international stakeholders.

In 2009, the Section monitored the implementation of these recommendations in 6 of Timor-Leste's 13 districts. It found that food security had improved and identified some remaining challenges which needed to be addressed to make the Government's efforts more effective.

Since 2009, the Section has shifted its role in monitoring economic, social and cultural rights towards supporting local actors. The Section supported the establishment of the Right to Food Network, a network of local NGOs and community organizations in the district of Oecusse. The Network monitors the right to food in the subdistricts, including the distribution of Government-subsidized rice, the school feeding programme, the provision of food after natural disasters and the distribution by the Government of agricultural machines and tools. The Network produced a report in October 2010, and advocacy with local actors is believed to have resulted in the resumption of the Government-World Food Programme school feeding programme.

Public policy development has in some cases been the result of court decisions. Indeed, the legal protection of economic, social and cultural rights has led to courts offering general guidelines to government institutions to ensure that public policies are consistent with national law and international human rights treaties. Some courts have also set up follow-up mechanisms for the implementation of their decisions. Monitoring the implementation of such court rulings would serve: (a) to monitor the implementation of the court decision itself, and (b) to monitor the impact of the policy on economic, social and cultural rights as well.



Colombia

In Colombia, the Constitutional Court adjudicated a case involving the economic, social and cultural rights of thousands of **internally displaced persons**, declaring that the State had failed to implement a public policy to respond to the needs of this population. The decision called for complex and long-term measures, including reforms of public policies. The Constitutional Court established periodic follow-up hearings, and ordered the Government to adopt indicators to measure progress towards the realization of the rights involved and to report periodically on compliance with the Court's decision.

The Constitutional Court issued specific orders to follow up compliance with the remedies decided in the case, and informed OHCHR and other United Nations agencies of specific measures involving groups needing special attention within the displaced population. These included women, children, indigenous peoples, afro-descendants and persons with disabilities. The Court requested OHCHR and other United Nations entities to monitor State compliance with the specific measures, according to their respective mandates.

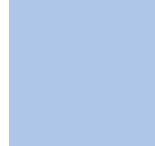
OHCHR formally committed to monitoring the implementation of measures involving indigenous peoples and offered technical support. In April 2009, OHCHR made an intervention before a parliamentary committee which approved a proposal to set up an inter-institutional group to ensure compliance with the measures ordered by the Court, with the supervision of the United Nations, including OHCHR and the Office of the United Nations High Commissioner for Refugees. The group would include civil society organizations, Members of Parliament and members of the governmental agencies concerned. OHCHR proposed that the process should be supervised by the Resident Coordinator, with the advice and participation of OHCHR, in coordination with other United Nations agencies.

Sources: OHCHR-Colombia. See also the website of the Constitutional Court of Colombia (www.corteconstitucional.gov.co/ in Spanish only).

3 Monitoring budgets and using budget information

States are required to make use of the maximum of their available resources for the progressive realization of economic, social and cultural rights (International Covenant on Economic, Social and Cultural Rights, art. 2 (1)).¹⁶ Budgets (federal, national, provincial or local) are essential instruments of policymaking, and often involve various departments in the central Government as well as in the legislative bodies, regional governments and autonomous institutions. Through public budgeting, the State authorities establish priorities and express their commitment to concrete actions which may improve – or limit – the enjoyment of some social guarantees.

¹⁶ For further discussion, see the Report of the High Commissioner to the Economic and Social Council on the concept of "progressive realization" of economic, social and cultural rights, including the use of maximum available resources (E/2007/82). See also OHCHR Fact Sheet No. 33, *Frequently Asked Questions on Economic, Social and Cultural Rights*, in particular questions 7 and 19. Questions 11, 12, 13, 14 and 17 are also relevant.



Public policies, plans and programmes, and ideally legislation, should take into consideration the resources needed (costing) to achieve their purposes. Often, laws or policies are not implemented because of a lack of funding and other resources even though they were well crafted on paper. Effective public policy design and implementation require a balancing act between implementing economic, social and cultural rights and the allocation of limited resources, particularly in low-income countries.

One way to monitor budgets is to seek disaggregated data so as to examine how allocations are made and what expenditures are included or not. Disaggregated budget information, accessible to the non-expert, can show for instance that even if the budget earmarked for a water and sanitation project is increased for the next two years, most of it would actually go to the capital city's middle-income neighbourhoods, with little going to the suburban neighbourhoods, where the majority of the population does not have water on tap. Using disaggregated budget information as well as demographic and geographic data can reveal that a budget allocation that looks good on paper may not meet real needs or may have a discriminatory effect.



Budgeting for HIV/AIDS in developing countries

In 2004, nine African and Latin American NGOs and research institutions contributed to a joint effort to track resources over a five-year period (1998-2003) and to analyse their allocation in response to the HIV/AIDS epidemic. While each country had its specific legislative frameworks, budget cycles and national health system challenges, researchers found interesting similarities. For instance, their report stated that in the Latin American countries, where HIV/AIDS prevalence was below 1 per cent, the bulk of Government spending on HIV/AIDS was earmarked for antiretroviral treatment. In Argentina 90 per cent, in Chile 80 per cent, in Ecuador 74 per cent and in Nicaragua 54 per cent of the national AIDS budget was committed to providing treatment and care, with limited resources made available for prevention.

The report also pointed out that the African countries included in the case studies were falling below the 15 per cent target that Governments had committed to the health sector from their annual budgets at a summit of the Organization of African Unity in Abuja in 2001. In fact, the health allocations as a share of total Government expenditure ranged from 6 per cent in Kenya to approximately 15 per cent in Mozambique, with South Africa's allocation estimated to be just under 12 per cent. Health budgets in the Latin American countries, with the exception of Nicaragua, were primarily financed through State revenue, whereas in the African countries, except in South Africa, they tended to rely primarily on donor funding. Such a situation can undermine the sustainability and the consistency of the State's response to the epidemic.

Source: Fundar (Mexico) and Idasa (South Africa), "Funding the fight: budgeting for HIV/AIDS in developing countries" (2004).

State institutions and authorities are required to be accountable for the ways in which budgets are designed, allocations made to each institution and specific budget lines disbursed.



Analysing budget allocations has its limitations. First of all, not only should allocations be monitored but also the actual disbursements. In addition, the size of the budget allocations to different sectors does not necessarily lead to better access to services or facilities, as many other factors come into play. Often, the key issue is not the sums allocated and spent, but rather how, on whom and where they are spent and how transparent the whole process is (salaries, activities or infrastructure, priority given to geographic location, for example). Finally, the rates of implementation may diverge greatly from the original plan, for instance as a result of structural limitations which make it difficult for a particular ministry or local government to use all the allocated resources. This may happen when the central Government releases the money (too) late.

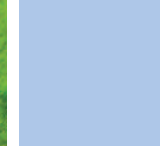
It is important to remember that national budgets are not the only financial and economic parameter to look at. Financial institutions and macroeconomic policies and programmes funded by them have a huge impact on the enjoyment of (or lack of) rights by the populations affected by them.

Despite such challenges and limitations, budget figures combined with relevant disaggregated indicators (see sect. C above) can be useful to monitor State efforts towards the realization of economic, social and cultural rights. Without entering into the complexities of defining the actual level of available resources, it is relatively straightforward for human rights field presences to point to specific problems, such as the underfunding of programmes when there is a clear mismatch between policy objectives and budget allocations, manifest disparities in the use of public funds for specific groups and regions, or significant decreases in funding for particular sectors leading to a deterioration in the protection of economic, social and cultural rights.

To analyse budgets from a human rights perspective it is necessary to examine both how money is allocated on paper (i.e., planning) and how it is actually spent (i.e., execution).

HROs who wish to use budget information and analysis to monitor economic, social and cultural rights should, as a minimum:

- Be aware of any national legislation guaranteeing access to public information, including financial information, ongoing projects, public procurement, national and regional budgets and audits. This is important to know what kind of information the field presence can access as well as to encourage rights holders and organizations acting on their behalf to claim access to such information;
- Understand the budget cycle. For instance, when budgets are formulated, discussed and approved, who is responsible at the regional/local levels and at the central/federal levels? When is information about the previous cycle's execution made public?
- Understand the role different actors play in drawing up, approving and implementing budgets. In some countries, for instance, only the ministry of finance can make funds available to institutions. This might mean that significant delays or cuts could take place even if a budget line was approved by parliament;
- Identify experiences in other countries (neighbouring countries, for instance, or countries with a similar income or development) and assess the effectiveness of their participatory budget processes;
- Identify accountability mechanisms (including independent audits) that can ensure adequate levels of social investment and transparent use of resources. Often these mechanisms are set up to fight corruption but their findings and analyses can be useful to monitor budgets for human rights purposes;



- Seek out academic or research institutions as well as civil society organizations that can help “translate” and clarify budget information and analysis.



International initiative on maternal mortality and human rights

An interdisciplinary network of civil society organizations known as the **International initiative on maternal mortality and human rights** has come together to develop various tools for working on maternal mortality from a human rights perspective. Some of them, such as the International Budget Partnership and Fundar, Center for Analysis and Research, have developed expertise in budget work over several years and developed methodological approaches to linking budget and human rights.

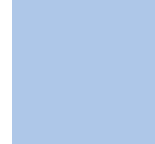
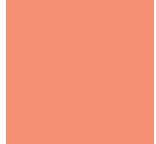
In May 2009, the network published a brief on how to use budgets to hold Governments accountable for their commitments to reducing maternal mortality. For the authors, the public budget reflects a Government’s true social and economic policy priorities. The brief highlights the importance and the potential of civil society work on budget analysis and related advocacy. It discusses three recent examples from civil society: Fundar, Center for Analysis and Research in **Mexico**; Women’s Dignity in the **United Republic of Tanzania**; and the Centre for Budget and Governance Accountability in **India**. The work of these organizations and the lessons drawn from their experiences underscore that the lack of real progress in reducing maternal mortality is linked to the failure of Governments to make maternal health a budgetary priority. Their findings reveal that even though resources to address maternal mortality exist – and may continue to grow – they are not necessarily being allocated correctly or spent effectively.

Source: <http://righttomaternalhealth.org>.

4 Monitoring violations of economic, social and cultural rights linked to specific cases

One of the key messages of this Manual is that the main purpose of documenting human rights violations is to prompt the authorities to resolve the situation. This applies to economic, social and cultural rights as well as to civil and political rights. This section reiterates the importance of monitoring specific cases of human rights violations and underlines that case-based monitoring is possible not only for violations of civil and political rights but also for violations of economic, social and cultural rights.

The principle of progressive realization is often monitored by analysing socio-economic and other administrative statistics over a period of time. Yet monitoring violations of economic, social and cultural rights is often based on describing and documenting the concrete circumstances of an event. For example, monitoring the progressive realization of the right to education may entail considering the evolution of some indicators – such as enrolment in primary education or school dropout rates – over a certain period of time to assess if they have improved. Monitoring specific cases of violations will rather focus on concrete events, such as the turning-away of a group of children from school for lack of place, the arbitrary expulsion of a pregnant pupil or the failure to provide reasonable accommodation to children with disabilities. Nevertheless, both approaches can be combined and lead to the identification of violations of economic, social and cultural rights.



Generally, documenting a human rights violation involves gathering information to determine “who did what to whom”. If possible, this includes:

- The identification of the victim or group of victims;
- The identification of the responsible authorities;
- The identification of other relevant actors involved in the alleged violation (such as private individuals);
- A detailed account of the facts;
- Additional information relevant to the case, including the version of the authorities and any corrective action undertaken; and
- The rights affected and the obligations that have allegedly been breached, and a causal link with the facts of the case.

Some cases of alleged violations of economic, social and cultural rights, especially those involving groups of individuals, usually require statistics and quantitative information to prove that the State has not complied with its obligations, despite having the resources. For example, quantitative data may serve to substantiate a case of de facto discrimination at work on the basis of ethnic origin or gender. Similarly, data showing that there is an insufficient number of school places may be used to support a claim that a particular child’s right to education has been violated.



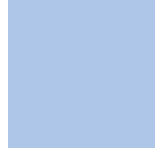
West Bank and Gaza

Health professionals are often at the front line of human rights work. In times of **armed conflict**, it is crucial for health services to continue to function and for the population to have access to them.

During the Israeli military offensive in Gaza, between December 2008 and January 2009, 11 hospitals in the Gaza Strip were damaged and 29 ambulances destroyed. There were constant power cuts and roadblocks, and 16 health workers were killed while on duty. For several days all health teams were prohibited from entering some areas, such as Az Zaytun. WHO, in close consultation and cooperation with the Palestinian Ministry of Health, put in place a threefold strategy:

- **Coordination:** this included (a) activating the health cluster to coordinate all actors (United Nations, International Committee of the Red Cross, NGOs, donors, etc.) and (b) activating the Ministry of Health Emergency Room as the primary technical implementing body functioning 24 hours a day. The health cluster focused on monitoring health risks and threats, providing logistic and operational support, and assessing the health impact of the conflict.
- **Information:** in conflict, information must be reliable, timely and available to all partners. The focus during this period was on the continuous collection of information, good selection, and regular and wide distribution. For this purpose WHO put out a daily situation report and ensured the flow of information from WHO officers in Gaza to the media and other partners and WHO headquarters, regional and local offices.

(continued)



West Bank and Gaza (cont'd)

- **Advocacy:** based on the analysis of the information about access to health services and obstacles hindering such access, WHO identified specific areas for dialogue and advocacy with all parties concerned as well as issues to mobilize the international community.

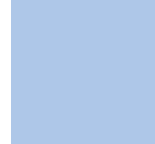
Some of the information that had been collected and systematized helped the WHO Specialized Health Mission to the Gaza Strip (21 May 2009) and the United Nations Fact-Finding Mission on the Gaza Conflict (Human Rights Council resolution S-9/1), which concluded with the adoption of the so-called Goldstone Report (A/HRC/12/48).

The right to health is not only a matter of health-care delivery; health professionals also play other roles which are as important for the protection of individuals and their human rights.

Source: WHO West Bank and Gaza, Human Rights and Advocacy Unit.

Documenting specific cases of violations of economic, social and cultural rights can be used for:

- Reporting through regular internal reporting processes;
- Reporting to relevant special procedure mandate holders, United Nations human rights treaty bodies and other human rights mechanisms;
- Issuing thematic reports such as the report on land, housing and property in post-conflict northern Uganda prepared by OHCHR-Uganda;
- Issuing press releases and public statements to express concerns or facilitate a resolution of the situation (either by the field presence or by the High Commissioner/OHCHR at global level);
- Making these situations visible, and helping stakeholders to come together and articulate their claims;
- Highlighting emblematic situations which may exemplify broader trends or shortcomings. In turn, facilitating a solution to these specific situations may help others to replicate this approach in similar cases;
- Advocacy work with the authorities to seek solutions or remedies, and recommend the adoption of measures to prevent future violations;
- Identifying human rights gaps that can be addressed, at least partly, through technical cooperation.



Sudan

For several years, the human rights component of the United Nations Mission in the Sudan (UNMIS) closely monitored the **forced eviction** of communities as a result of two hydro-electric dam projects on the river Nile. In this context, the human rights component met communities and their representatives, conducted several assessment missions in the affected areas, monitored the situation of representatives that were detained, monitored the humanitarian situation of people that were displaced, reported regularly on the situation, engaged with all parties to achieve a peaceful outcome and monitored the implementation of the State's commitments to providing assistance and compensation to the displaced. UNMIS informed foreign companies working in the area and relevant embassies, and made a number of recommendations to the authorities, to the international community, in particular Member States funding or supporting the projects, and to the financial institutions and companies involved in them.

As pointed out in a series of communications to the Government of the Sudan (see A/HRC/4/18/Add.1, paras. 55-59, A/HRC/7/16/Add.1, paras. 113-119, A/HRC/10/7/Add.1, para. 80), the Special Rapporteur on adequate housing expressed concern over these forced evictions and relocations and described how the violation of the right to adequate housing had led to violence, arbitrary detentions, torture and killings, and the violation of a wide range of other human rights, including the right to participation and consultations, press freedom and freedom of opinion.

5 Monitoring violations of economic, social and cultural rights through courts and quasi-judicial mechanisms

Mapping complaints before relevant judicial or quasi-judicial mechanisms, such as court cases, complaints before NHRIs or administrative bodies or agencies, is another useful way of monitoring violations of economic, social and cultural rights. Similarly, encouraging national and international actors to build capacities for judicial action and litigation of emblematic cases of economic, social and cultural rights violations is also an interesting way of working towards the legal protection of these rights.

Judicial and quasi-judicial complaints usually require the identification of specific violations of economic, social and cultural rights as a basis for their claims. However, different legal systems allow for a variety of claims, which range from individual to collective or group cases. Some legal systems allow only individual victims to seize courts. Others also allow groups – including class actions, public interest representation or *actio popularis* (i.e., allowing anyone to bring a claim before a court in certain cases).

In some jurisdictions economic, social and cultural rights are still not considered justiciable and no adequate remedies for alleged breaches of these rights are provided. However, in others a growing number of case law has shown the potential of courts and quasi-judicial bodies to reveal shortcomings in the design or implementation of laws and public policies and provide redress to victims.



Argentina

In June 2006, the **Supreme Court** of Argentina ruled on the negative impact of the pollution of the river Matanza-Riachuelo and established a mechanism to encourage a policy response conducive to respecting human rights. This river runs through an extensive area, including the city of Buenos Aires, affecting approximately 3 million inhabitants. The Court focused its decision on **establishing a mechanism and on monitoring the implementation** of adequate procedures in order to ensure the protection of various economic, social and cultural rights:

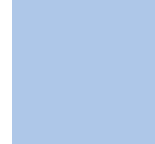
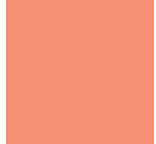
- First, the Court looked at the weakest members of the group of victims to ensure that policies were neither discretionary nor discriminatory.
- Second, the Court requested the city, provincial and national authorities to jointly develop a plan and each of them to take their share of responsibility.
- Third, the Court ordered that this plan should be developed in a consultative and inclusive manner: three public hearings were held at the Court, with the active participation of affected community organizations and individuals, as well as human rights and environmental NGOs.
- Fourth, the Court set up a mechanism of communal control over the implementation of the plan. The plan and its implementation included measurable short-, medium- and long-term objectives.

One advantage of this approach is that democratic participation is strengthened, with the Court creating the conditions for other parts of the State (executive and legislative branches) to take measures in line with human rights standards. Without moving into policymaking, courts can act as monitors of the policymaking process and its outcome, in line with constitutional and international human rights treaty standards.

Source: Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza - Riachuelo), Judgement of 20 June 2006. Available from www.csjn.gov.ar (Spanish only).

Such a focus on monitoring judicial procedures presupposes the existence of a judicial system that is considered transparent, effective and accessible to communities or individuals and their organizations. Clearly, access to justice is an area where the indivisibility and interrelatedness of all human rights are central. Field presences need to take into account the following considerations when monitoring judicial and quasi-judicial processes in relation to economic, social and cultural rights:

- **Are remedies available?** The first step is, of course, assessing whether the domestic legal system provides for adequate remedies for violations of economic, social and cultural rights through judicial or quasi-judicial mechanisms. Mapping the kind of available remedies and their reach is an important step towards a meaningful monitoring effort. Remember that, even in jurisdictions where judicial remedies do not exist or are limited, NHRIs are often allowed to receive complaints about violations of rights.



- (a) **If remedies are available**, field presences can help build the capacities of judges to decide such cases and of civil society organizations to use these remedies. However, litigation is costly and lengthy, its outcome is not always predictable, and favourable decisions may not be implemented in due course or may not result in effective and meaningful remedies for the victims. Litigation should, therefore, be considered only after other avenues have been explored and the expectations of complainants regarding the outcome should not be raised.
- (b) **If remedies are NOT available, or if the available remedies are manifestly ineffective or excessively slow**, monitoring complaints about violations of economic, social and cultural rights before courts or other bodies is not an effective avenue to redress such violations. Nevertheless, monitoring the manifest lack of remedies or the slowness of the system may be important to highlight the legal gaps and obstacles that prevent victims from receiving redress.

The capacity of field presences to monitor cases may be limited by time and resource constraints. As it may not be possible to follow up the range of ordinary judicial or quasi-judicial case law on economic, social and cultural rights, field presences may wish to focus on emblematic cases, such as:

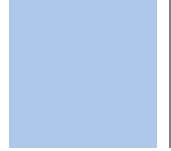
- Leading cases decided by the supreme or constitutional court;
- Landmark complaints decided by NHRIs;
- Public interest cases that have received broad public attention.

Monitoring judicial or quasi-judicial cases can also extend to monitoring the implementation of court orders. In cases where the required remedy is complex and might entail the modification of laws, regulations and plans, the provision of new services, new budgetary allocations or the coordination of different government departments or agencies, the implementation of court orders can take a long time. A number of emblematic cases from different jurisdictions have led to new procedural developments, such as appointing special court commissioners, assigning monitoring functions to NHRIs or developing specific indicators for the political branches to report on progress in the implementation of judicial orders to the courts. The above-mentioned cases from the Supreme Court of Argentina (on river pollution) and the Constitutional Court of Colombia (on internally displaced persons) illustrate this trend.

Field presences can also play a role in monitoring the implementation of judicial decisions which aim to provide redress to victims. For example, United Nations field presences have monitored decisions related to discriminatory patterns in housing restitution in post-conflict situations.¹⁷

Not only is the implementation of national decisions important, international decisions, including those of the Inspection Panel or Compliance Advisor/Ombudsman of the World Bank, may contain crucial provisions and principles relevant to the realization of economic, social and cultural rights. This can be the case not only of decisions specifically focusing on these rights but also of those primarily related to civil and political rights but with ramifications for economic, social and cultural rights, such as access to medical or psychological services for victims of torture, or culturally adequate collective reparation.

¹⁷ See, for example, *Handbook: Housing and Property Restitution*, pp. 79–80 and 87–88.



Indigenous peoples in the inter-American system

The Inter-American Court of Human Rights has ordered States, as a specific means of moral satisfaction, to translate its decisions into indigenous languages and to disseminate them. See, for example, the case of the *Plan de Sanchez massacre v. Guatemala*, Judgement of 19 November 2004 (Reparations, paras. 102–103).

Similarly, in the case of the *Sawhoyamaya Indigenous Community v. Paraguay*, Judgement of 29 March 2006 (Merits, reparations and costs, para. 230), the Court ordered the State to provide the school of the “Santa Elisa” settlement with all necessary material and human resources and to establish a temporary school for the children of the “Kilómetro 16” settlement. Inasmuch as possible the education had to respect the cultural values of the indigenous community and of Paraguay and be bilingual – in the Exent language and, at the discretion of the members of the Community, either in Spanish or in Guarani.

Usually, when international judicial and quasi-judicial mechanisms consider that a right has been violated, the State has some leeway to determine the specific remedies. International courts and treaty bodies have little capacity to follow up on such issues. Field presences can play an important role in monitoring the steps that the State takes to comply with decisions and recommendations by such international mechanisms.

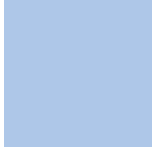
Litigation must not necessarily be successful in order to achieve the changes in policy that may be required to realize some aspects of economic, social and cultural rights. In some cases, litigation serves to shed light on an issue and bring about public awareness and debate. Public policy and even legislation have been amended or developed as a result of such “defeats” and shown the way for the executive or legislative branches of government to respond adequately to specific gaps in protection or implementation.



Australia

The New South Wales Department of Corrective Services opposed the distribution of condoms in its **prisons**. The authorities relied on education as the primary **HIV prevention** measure. In 1995, 50 inmates sought to pressure the regional government to reform its policies. Concretely, the plaintiffs requested condoms to be supplied by the State of New South Wales. The prisoners argued that the decision not to supply condoms or permit their possession or use by male prisoners was so unreasonable that it amounted to improper exercise of power, brought about a need to investigate the legitimacy of detention and constituted a breach of the duty of care, including **health care**, of the Department to the prisoners. All three grounds were dismissed by different courts, including by the High Court of Australia. However, the rejection was for procedural reasons and the arguments based on negligence remained intact.

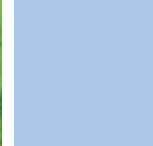
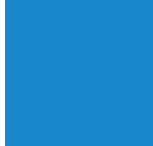
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Australia (cont'd)

Despite its dismissal by the courts, this case brought about important policy changes: in 1996, the New South Wales government decided to make condoms available in all prisons. According to the WHO guidelines on HIV infection and AIDS in prisons (1993), the case for the provision of condoms in prisons is clear. Condoms should be made available to prisoners, since sexual intercourse occurs in prison – even when prohibited – and all prisoners have the right to receive health care, including preventive measures for sexually transmitted diseases.

Source: Courting Rights: Case Studies in Litigating the Human Rights of People Living with HIV (Canadian HIV/AIDS Legal Network and UNAIDS, 2006).



F. Choosing strategic approaches to monitoring economic, social and cultural rights

Economic, social and cultural rights cover many rights and situations: labour, social security, health, food, education, housing, water and cultural life. Strategic considerations, including the value added, the resources available, the partnerships or windows of opportunity, may imply that field presences focus only on some rights or particular issues, such as discrimination. After a careful analysis, they should choose relevant issues and entry points, depending on the particular context of the country and region where they work. Below are some suggestions.

1 Focusing on one right and one population group

Field presences can focus their attention on one or several specific rights. Many field presences engaged in the protection and promotion of economic, social and cultural rights have taken this path, and have chosen some right or rights as a priority, such as the right to health, the right to food or the right to housing. However, this is not the only option. Field presences may also decide to focus on particular rights of part of the population, such as women and the right to health, children and the right to education, persons with disabilities and the right to social security, or similar choices with migrants, indigenous peoples or minorities, and highlight the specific dimensions relevant locally or nationally.

This focus allows for more targeted activities and embarking on pilot projects which can be specific to a subregion or a community. Human rights officers can use surveys, small focus groups or informal discussions, as well as more formal consultations and discussions with the authorities to identify those issues that appear most pressing.



Uganda

Conflict raged in northern Uganda for 22 years, displacing 2 million people in IDP camps. In 2006, with the cessation of hostilities, some people started to leave the camps and return home. They faced numerous obstacles, such as insecurity and a lack of public services that could facilitate their return (no schools, no hospitals, water points in disrepair). Furthermore, land disputes directly affecting the right to housing of returnees involved large concessions for development projects (building of roads, for example) and the discovery of oil wells in some districts leading to land grabbing and evictions.

OHCHR-Uganda developed a strategy to protect the right to housing. Some of its lines of action were:

- Analyse the Constitution, applicable laws and policies;
- Identify gaps in law and practice, such as the lack of consultation with the rightful owners of the land, the lack of adequate compensation to landowners, the inefficiency of land adjudication mechanisms and the failure to apply existing policies;

(continued)



Uganda (cont'd)

- Ensure immediate measures to halt evictions where possible, or to ensure adequate compensation to victims and alternative sites for the relocation of IDPs are provided;
- Ensure that the **return, resettlement and relocation** are voluntary and lead to durable solutions in line with the national IDP policy;
- Encourage the Government to resolve land disputes by implementing existing policies, including the national IDP policy and the Pinheiro Principles;
- Recommend that development partners and donors should observe existing legislation, consult the community on the existing development plans and work closely with the local government to prevent violations of the right to housing that lead to homelessness.

2 Focusing on cross-cutting issues

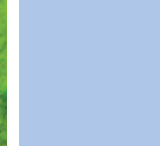
A number of cross-cutting issues also offer useful approaches. For example, **access to remedies and to justice**, with reference to economic, social and cultural rights, raises the issue of the justiciability of such rights, both nationally and internationally. Field presences could focus either on the experience and obstacles to the judicial protection of economic, social and cultural rights, or on the promotion of international complaint mechanisms – such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Equality and non-discrimination also offer an important platform for engagement. For instance, it is possible to prioritize relevant prohibited grounds of discrimination (e.g., gender, race, political or religious beliefs, social origin, disability, nationality, health condition or sexual orientation) in connection with one or several economic, social and cultural rights (e.g., health, education, labour, housing, food or water). Other cross-cutting issues are access to information, consultation and participation and strengthening of NHRIs.

Land and property. Access to land is fundamental for a range of rights, including the rights to housing, food, water, work and health. Access to natural resources, to traditional cultural and religious sites and to a way of living that is directly linked to land is essential for large groups of the population, including farmers and indigenous peoples. Securing access to land encourages people to invest and improve housing and land itself. It can also enable people to access public services and credit. Land is often a source of tension, and unresolved land disputes often degenerate into violence and conflict. It also plays a crucial role in post-conflict situations, particularly if mining leads to confrontation between minorities, indigenous peoples, government officials and public or private enterprises.

3 Mapping the relevant international human rights mechanism(s)

Field presences should take advantage of existing human rights mechanisms for monitoring economic, social and cultural rights. This includes treaty body mechanisms, the United Nations Human Rights Council's special procedure mandates (thematic and country-specific), the universal periodic review (UPR) and other monitoring mechanisms, such as treaty bodies under regional human rights systems.



Reporting mechanisms and specific monitoring opportunities, such as country visits by special rapporteurs or independent experts, offer field presences strategic opportunities for focusing the attention of different stakeholders, including the United Nations country team. Such opportunities may help to crystallize and make visible ongoing monitoring efforts. Likewise, field presences have a comparative advantage when following up the implementation of recommendations or concluding observations issued by international human rights mechanisms.



Peru

Three years after the mission of the Special Rapporteur on adequate housing, NGOs in Peru documented the progress made and the status of the recommendations contained in his report. This report helped NGOs to coordinate their activities and decide on their strategies. The information was forwarded to his successor, who used it in her follow-up report to the Human Rights Council.

Source: A/HRC/10/7/Add.2.

Several international human rights treaties contain provisions on economic, social and cultural rights – not only the International Covenant on Economic, Social and Cultural Rights. Thus, monitoring and reporting on economic, social and cultural rights can be also relevant for:

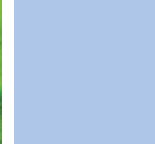
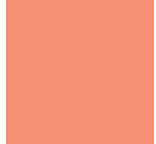
- The Committee on the Rights of the Child;
- The Committee on the Elimination of Racial Discrimination;
- The Committee on the Elimination of Discrimination against Women;
- The Committee on Migrant Workers;
- The Committee on the Rights of Persons with Disabilities;
- The Committee against Torture; and
- The Human Rights Committee.

All these treaty bodies have frequently considered issues which are closely linked to economic, social and cultural rights. For example, the consideration of prison conditions also touches on the right to food, the right to health, the right to water and access to sanitation. The UPRs conducted by the Human Rights Council also offer new opportunities for reporting on economic, social and cultural rights.

The Human Rights Council also has a growing number of special procedure mandates on economic, social and cultural rights and related areas, ranging from the right to food, education and health, to cultural rights and water.¹⁸

Field presences should be aware of the timetable of State reporting obligations to different international human rights mechanisms and of upcoming reporting obligations or the existence of overdue reports. OHCHR should always support Governments and NHRIs in coordinating their reporting efforts, but not lead the process as such. The monitoring work of field presences should be coordinated with the activities of the human rights mechanisms so that both processes reinforce and complement each other.

¹⁸ The OHCHR website lists the thematic special procedures, including the mandates on economic, social and cultural rights (www.ohchr.org).



Field presences can play an important role in monitoring the way in which observations and recommendations by treaty bodies, special procedure mandate holders and the UPR are followed up by States. Their presence in the field gives them a comparative advantage over treaty bodies and special procedure mandate holders, who have limited capacity to follow up after the consideration of a State report or after a country visit. Treaty bodies usually have to wait until the following review of the State party to assess whether their recommendations were followed up, while field presences can and should consistently support Governments in the implementation of recommendations.¹⁹ This applies also to economic, social and cultural rights, for which the Government may have less technical knowledge or a limited capacity.

Follow-up to country missions by special procedure mandate holders is not always easy because of resource limitations. Some have conducted follow-up missions. Others, such as the Special Rapporteur on torture or the Special Rapporteur on adequate housing, have chosen to report periodically to the Human Rights Council on the follow-up to previous missions. To this end, they request the State authorities, civil society and international organizations, including field presences, to provide updated information. This exercise provides an opportunity for evaluating the progress made since the mission by all stakeholders, including field presences, and the need for possible additional recommendations. In most cases, it is mainly the field presences that monitor how recommendations are followed up, depending on their own priorities and capacity.



Guatemala

OHCHR-Guatemala has helped to build the capacity of civil society organizations to systematically follow up international recommendations on **the right to education**, especially those made by the Special Rapporteur on the right to education. It has trained a number of civil society organizations in international standards on the right to education and monitoring techniques. It expects that this capacity-building will help the establishment of a dialogue with different State agencies to ensure the implementation of the recommendations.

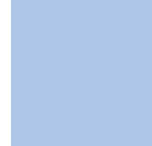
4 Using the Millennium Development Goals

Information on progress towards development goals can be powerful and useful for monitoring economic, social and cultural rights, but must be supplemented with other indicators and information. Some States are more willing to discuss the Millennium Development Goals (MDGs) than to focus on international human rights treaty reporting as a whole, and highlighting the links between MDGs and economic, social and cultural rights can at times be a way of building bridges.

Monitoring progress towards the achievement of the MDGs or the implementation of poverty reduction strategies is also often perceived as equating monitoring economic, social and cultural rights.²⁰ While many development goals and processes, such as MDGs and poverty reduction strategies, can provide a supportive context for the realization of human rights, including economic, social and cultural

¹⁹ The Universal Human Rights Index referred to above can be useful for finding all the recommendations made to a specific country by different human rights bodies and mechanisms, or for consulting information on specific rights and issues.

²⁰ For further discussion, see OHCHR Fact Sheet No. 33, *Frequently Asked Questions on Economic, Social and Cultural Rights* (question 15) as well as *Claiming the Millennium Development Goals: A Human Rights Approach* (United Nations publication, Sales No. E.08.XIV.6).



rights, there are differences between achieving development goals and realizing human rights. Such differences lie in:

- (a) The nature of the commitments made by States;
- (b) The scope of the issues,
- (c) The qualitative and quantitative aspect of what is measured;
- (d) The time frame; and
- (e) The geographic scope (see box below).

Monitoring MDGs	Monitoring economic, social and cultural rights
<ul style="list-style-type: none"> ■ Monitor “political commitment”: linkage between States’ commitments made under the MDGs may not be clearly linked with their legal obligations. 	<ul style="list-style-type: none"> ■ Monitor States’ legally binding commitments made under human rights law.
<ul style="list-style-type: none"> ■ Not all economic, social and cultural rights issues are covered (e.g., no reference to higher education, participation in cultural life or protection against forced eviction). 	<ul style="list-style-type: none"> ■ International human rights treaties and national law provide a comprehensive list of the economic, social and cultural rights to be protected.
<ul style="list-style-type: none"> ■ Monitor <i>how many</i> (e.g., national average) are affected. 	<ul style="list-style-type: none"> ■ Monitor not only <i>how many</i> are affected but <i>who</i> is affected to identify possible patterns of discrimination. Monitoring <i>who</i> is affected requires disaggregated information.
<ul style="list-style-type: none"> ■ Monitor an intermediary target with a limited time frame (e.g., MDG 7 requires the proportion of people without sustainable access to safe drinking water to be halved). 	<ul style="list-style-type: none"> ■ Monitor States’ constant efforts until they achieve the full realization of economic, social and cultural rights (e.g., the right to water requires access to safe and affordable drinking water for <i>all</i>).
<ul style="list-style-type: none"> ■ Focus mostly on situations in developing countries. 	<ul style="list-style-type: none"> ■ Monitoring the situation in all countries, i.e., both developed and developing, depending on the treaties they have ratified.

Adapted from *Claiming the Millennium Development Goals*, p. 3.

5 Using the United Nations programming cycle

The human rights-based approach to development cooperation and programming is a methodological approach aimed at ensuring human rights standards are integrated into programmes, activities and plans. In this sense, economic, social and cultural rights are included in its core, to the same degree as civil and political rights.

A human rights field presence normally participates in United Nations common country programming processes, such as the Common Country Assessment (CCA)²¹ and the United Nations Development Assistance Framework (UNDAF).²² These processes can be used as entry points to: (a) gather and analyse information and data on a number of human rights issues; (b) establish and strengthen partnerships and collaboration with United Nations agencies; and (c) influence their agenda to make it include more and better human rights work.

Integrating human rights in the United Nations programming cycle is not *sensu stricto* monitoring work. It is, however, closely linked to monitoring, particularly given the collection and analysis of information undertaken as well as the strategic aspects of partnering with international actors as part of the corrective actions that can be envisaged to close human rights gaps or prevent or redress human rights violations.

Along the same lines, integrating human rights issues and concerns into UNDAFs may enable UNCTs to provide stronger support to the Government and other national actors in monitoring the realization of human rights, including economic, social and cultural rights.

In addition, the regular cycles of CCAs and UNDAFs provide opportunities for assessing the country's achievements in the protection and promotion of human rights, including economic, social and cultural rights. They also highlight where a human rights field presence can provide substantive input to government officials, local or national authorities and other United Nations agencies on human rights standards and possible actions related to these rights, including in relation to other recommendations (for instance, from treaty bodies and special rapporteurs).



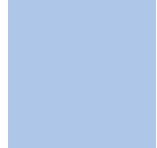
Uganda

In May 2009, OHCHR-Uganda prepared a human rights audit of Uganda's draft **UNDAF** (2010-2014). Using a human rights-based approach, it assessed whether the UNDAF was: (a) attentive to root causes, and seeking fundamental changes in rules and structures that affect equality in development; (b) attentive to the principles of participation, equality, accountability and empowerment; and (c) attentive to human rights indicators.

(continued)

²¹ The Common Country Assessment is the common instrument of the United Nations agencies, prepared in consultation with the national Government to provide an analytical assessment of the country's development situation.

²² The United Nations Development Assistance Framework is the strategic programme framework for the United Nations country teams. It describes the collective response of a United Nations country team to the priorities in the national development framework - priorities that may have been influenced by the United Nations country team's analytical contribution.



Uganda (cont'd)

The outcome and recommendations of this exercise allowed for better mainstreaming of human rights in the UNDAF country programme outcomes and boosted performance. To conduct this human rights audit, each element of the United Nations Common Understanding was captured in a few guiding questions to find out to what extent the human rights-based approach was reflected in the results matrices of the various UNDAF outcome groups. For example, to determine the extent to which proposed UNDAF interventions were attentive to ensuring that development was consistent with human rights standards, the auditor/reviewer was guided by these questions:

- What is the quality of the participation mechanisms it envisages? Does it emphasize rights-based accountability (of duty bearers to rights holders)?
- Does the UNDAF strengthen mechanisms for redress which take into account resource constraints?
- How robust is the UNDAF approach to equality and non-discrimination?
- Does the UNDAF look critically at power relations and seek explicitly to achieve the empowerment of disfavoured or marginalized groups?

Annex I: Example of a human rights indicator matrix

This matrix with indicators on the right to social security is an illustration of the work on human rights indicators developed by OHCHR. This work is also described in detail on the OHCHR website: www.ohchr.org.

Illustrative indicators on the right to social security (Universal Declaration of Human Rights, art. 22)				
Income security for workers	Affordable access to health care	Family, child and dependent-adult support	Targeted social assistance schemes	
<ul style="list-style-type: none"> ■ International human rights and ILO treaties relevant to the right to social security ratified by the State ■ Date of entry into force and coverage of the right to social security in the constitution or other forms of superior law ■ Date of entry into force and coverage of domestic laws for implementing the right to social security, including in the event of sickness, old age, unemployment, employment-related injury, maternity, paternity, disability or invalidity, survivors and orphans, health care (including reproductive health care), and family and child support ■ Time frame and coverage of policy for universal implementation of the right to social security 	<ul style="list-style-type: none"> ■ Date of entry into force and coverage of regulation on mandatory health insurance ■ Time frame and coverage of national policy on health and access to health care, including for reproductive health and for persons with disabilities ■ Time frame and coverage of national policy on drugs, including on generic drugs 	<ul style="list-style-type: none"> ■ Date of entry into force and coverage of public support for families, including single-parent families, children and dependent adults ■ Legally prescribed qualifying period, rate of contribution, duration and rate of allowances 	<ul style="list-style-type: none"> ■ Time frame and coverage of social assistance programmes and non-contributory schemes for persons in specific situations of need (e.g., IDPs, refugees, war victims, long-term unemployed persons, homeless persons) ■ Time frame and coverage of national policy on unemployment 	

S T R U C T U R A L



Illustrative indicators on the right to social security (Universal Declaration of Human Rights, art. 22)

Income security for workers	Affordable access to health care	Family, child and dependent-adult support	Targeted social assistance schemes
<ul style="list-style-type: none"> ■ Proportion of received complaints on the right to social security investigated and adjudicated by the national human rights institution, human rights ombudsman or other relevant mechanism and the proportion of these responded to effectively by the Government ■ Proportion of targeted population appropriately informed on its entitlements and benefits (in cash or in kind) under the applicable social security schemes ■ Net official development assistance for implementing this right, received or provided as a proportion of public expenditure on social security and gross national income 	<ul style="list-style-type: none"> ■ Per capita public expenditure on primary health facilities (including for reproductive health care) and essential medicines ■ Number of targeted individuals newly registered as participants in the health insurance system in the reporting period ■ Proportion of household expenditures on health goods and services covered by health insurance / public support ■ Proportion of births attended by skilled health personnel* ■ Proportion of target population within X hour(s) of medical and paramedical personnel and relevant health-care facilities 	<ul style="list-style-type: none"> ■ Public expenditure on family, child and dependent-adult allowance or benefit schemes per beneficiary ■ Proportion of household expenditure (food, health, day care, education, housing) on children and dependent adults covered by public support (improvement in) ■ Density of nursery/childcare centres and nursing homes for the targeted population or regions in the reporting period 	<ul style="list-style-type: none"> ■ Public expenditures for targeted social assistance schemes per beneficiary (Improvement in) Density of administrative offices and personnel providing targeted social assistance ■ Proportion of requests for social assistance (e.g., income transfer, subsidized housing, disaster relief) reviewed and met

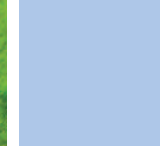
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Illustrative indicators on the right to social security (Universal Declaration of Human Rights, art. 22)

Income security for workers	Affordable access to health care	Family, child and dependent-adult support	Targeted social assistance schemes
<ul style="list-style-type: none"> ■ Proportion of labour force participating in social security scheme(s) ■ Proportion of workers covered under social security who requested and received social security benefits in the reporting period 	<ul style="list-style-type: none"> ■ Proportion of population covered by health insurance (public or private) ■ Proportion of population that renounced health-care services during the past 12 months for economic reasons, by service (e.g., dental care, medical consultation, drugs, surgery) ■ Proportion of persons with affordable access to health care, including essential drugs,* on a sustainable basis 	<ul style="list-style-type: none"> ■ Proportions of entitled families, children and dependent adults receiving public support 	<ul style="list-style-type: none"> ■ Proportion of population in specific situations of need receiving social assistance for food, housing, health care, education, emergency or relief services
<p>O U T C O M E</p>			
<ul style="list-style-type: none"> ■ Proportion of individuals in the formal or informal economy below national poverty line before and after social transfers* 			
<p>All indicators should be disaggregated by prohibited grounds of discrimination, as applicable, and reflected in meta-data sheets.</p>			

* MDG-related indicator.



Annex II: Guidance on monitoring forced evictions

The following is a guidance tool based on general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Basic principles and guidelines on development-based evictions and displacement of the Special Rapporteur on adequate housing, and the work of OHCHR.

Contextualizing forced evictions

Every day forced evictions take place somewhere in the world. Yet, the environment and the context in which they occur vary greatly from case to case. Addressing the legal and structural problems could prevent their recurrence: a preventive approach to forced evictions is more efficient than trying to resolve cases once the process is in motion.

Legal context:

1. What is the status/recognition of the right to adequate housing in the country's legislation?
2. Apart from property laws, is there any other legislation that directly or indirectly addresses elements of the right to adequate housing?
3. Is there legislation to protect tenants?
4. What is the country's legal and regulatory framework for evictions?
5. Are there laws, policies or programmes in place to protect against forced evictions?
6. Are the above-mentioned laws enforced?

Housing context:

7. Which authority/ies is/are in charge of housing in urban and rural areas?
8. Are State competencies and responsibilities for adequate housing clearly defined?
9. Is there a national housing policy? Does it specifically address the needs of the most vulnerable? *[Urban and rural specificities and conditions should be considered.]*
10. Is there a programme for regularizing informal settlements?
11. Is there a programme for slum upgrading?
12. Is there enough affordable housing (both public and private) available?
13. Are there barriers, including discrimination, to accessing affordable housing, in particular for specific groups?
14. What policies are in place regarding housing and livelihoods in rural and remote areas, including in relation to ancestral lands, access to public services and access to productive resources and employment?
15. What is the housing situation in rural areas and is there access to basic services in those areas?
16. Is there speculation on housing and land, including land-grabbing?
17. Is urban planning inclusive of various sectors of the population or does it lead to spatial segregation?
18. Is information, such as master plans, freely and easily accessible to all?
19. Is the right to participation in decision-making applied to housing and land?
20. What indicators, statistics and data are available on adequate housing, including with regard to vulnerable groups?
21. What forms of remedy and redress are available under the national law?



Overall context:

22. Are victims of evictions facing other human rights issues, such as discrimination or racism?
23. What is public opinion on forced evictions?
24. Is the issue of evictions used for political and electoral ends?
25. How free is the press to enquire and report back on forced evictions?
26. Are there NGOs working on housing or forced evictions? Can they work freely? *[Both national and international.]*
27. Can people and communities – including those under threat of eviction – freely associate?
28. Is there generally an efficient judicial system and effective access to remedy?
29. Do officials and State representatives (including police forces) receive any human rights training?

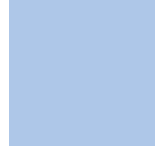
Assessment questionnaire

Violations of human rights can occur throughout the eviction process. They may differ in form and intensity depending on the phase of the eviction: before (including during the project design phase), during and after the eviction.

Consequently, the aim of a human rights intervention could be to: (a) prevent the human rights violation, for instance by halting the eviction; (b) if the eviction can be considered legally justified, ensure that it is carried out in a manner that respects the human rights and the human dignity of the affected residents; (c) address the human rights violations they experience through protection and recourse to complaint mechanisms, and (d) if the eviction has taken place without adequate relocation or safeguards, immediately address the housing and living conditions of the evicted residents, especially the most vulnerable and those whose life, security or health could be threatened.

The following questionnaire gives an indication of the various human rights violations and issues that could be raised during interviews with victims, communities, NGOs, international agencies, State and local authorities, private companies, etc. It could also serve as a basis for a concrete dialogue with various parties. Not all questions are always relevant depending on the context, the situation or the interviewee. They should be adapted and additional questions should be raised to clarify a point or investigate other potential human rights violations.

The responses may help you to: (a) assess if this situation qualifies as a forced eviction according to international standards; (b) investigate what human rights are violated and what is required to stop and redress these violations; (c) point out issues that need to be worked on in the medium and long run; (d) monitor the situation; and (e) report (including for treaty body or special procedure purposes).



A. Project design and before the eviction

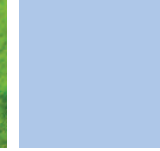
30. Have alternatives to eviction been considered and, if not, why not?
31. Have the redevelopment plans considered the possibility of rehousing evicted residents in the same location after the completion of the project? *[Thus only temporarily relocating them during the project's implementation.]*
32. Was an eviction impact assessment carried out? If so, give details. *[When was it undertaken and by whom, who was consulted, etc.?] ¹*
33. Are disaggregated data, statistics and indicators available to assess the differential impact of forced evictions on women, children, the elderly, people with disabilities, people with illnesses and under treatment, and other groups with specific needs?
34. How, when and by whom were communities informed of the project and possible evictions? How easy is it to access all the information relevant to the project?
35. Were communities consulted at any stage? When and how? By what authorities? Were all communities consulted or only some of them or only community representatives?
36. How were the affected residents/communities notified of the eviction? In which form (written, oral, public billboard, newspaper, radio, etc.)? How long in advance? In a language understandable to all those potentially affected?
37. Did the notification contain: a justification for the decision? An explanation of why there was no alternative to the eviction? Information on relocation? Information on compensation? Information on legal recourses available to challenge the decision and how to access these?
38. Are there administrative or judicial review mechanisms to challenge these decisions? Have they been used? Are they timely and effective? Are they accessible and affordable?
39. Do the affected individuals and communities have access to legal counsel – without payment if necessary?
40. Do the affected persons have enough time to access recourse mechanisms before the eviction takes place?
41. Can the process be suspended during the review of the eviction decision?
42. Was an inventory drawn up to assess the properties, investments and other material goods that are expected to be destroyed or could potentially be damaged?
43. Will the affected persons/households receive support/compensation to evacuate their belongings? Were they or their representatives informed of these measures?
44. What measures are foreseen to prevent them from becoming homeless or vulnerable to violations of other human rights? Were they or their representatives informed of these measures?
45. What short-term and long-term solutions were foreseen to ensure that the affected persons/households are adequately housed? Have the affected persons or their representatives been informed of these measures?
46. What relocation/resettlement measures are foreseen? Have the affected persons or their representatives been informed of these measures?
47. What specific measures were foreseen so that children's schooling is not disrupted?
48. What specific measures were foreseen for those under medical treatment?
49. What specific measures were foreseen for persons with disabilities?
50. Were there consultations with the affected persons/communities on the adequacy of the relocation site?
51. Were there consultations with the current residents of the future relocation site?

¹ The impact assessment is particularly important in evaluating the real cost of eviction that goes beyond material costs. See Basic principles and guidelines on development-based evictions and displacement, paras. 32 and 61–63.

52. Are the living conditions at the relocation site at least of the same level as at the original site and are they in accordance with core elements of the right to adequate housing? Is there access to basic services? Would the livelihoods of the relocated residents be guaranteed? *[For instance, if poor individuals and communities are relocated from slums and similar areas, an effort should be made to improve their living conditions at the relocation site. In no case should they be worse off.]*
53. Is the relocation site fully operational before the eviction takes place?
54. Is relocation planned in a way that prevents the segregation and marginalization of the evicted communities?
55. Will the affected community or group be split up and relocated to different sites, disrupting their social networks?
56. If the affected residents have an opportunity to be part of the redevelopment project, did their tenure change (from tenant to owner, for instance)? Were measures foreseen to ensure the sustainability of this tenure (for instance, State subsidies), especially for those who are poor or on a low income? *[In some cases, evicted residents are offered an opportunity to buy housing in the newly redeveloped project – a situation that may not be sustainable depending on their income or their work situation.]*

B. During the eviction

57. When did the eviction take place? *[Time, date, in bad weather, on a public holiday, etc.?)*
58. Who carried out the eviction? *[In some cases, police forces seal off the area, but it is private company workers and bulldozers that destroy the houses.]*
59. Was a formal authorization for the eviction presented?
60. Were independent observers present (civil society groups, international organizations, media, etc.)?
61. How were the eviction(s) carried out? *[Description and details.]*
62. Was violence used by the authorities? *[Description and details. What material was used? Was it proportionate?]*
63. Were lives threatened? *[For example, bulldozers destroying houses with people inside.]*
64. Was there violent resistance from those facing evictions? *[Description and details.]*
65. Were belongings destroyed? *[These could be identification and official papers, cattle and poultry, immovable objects, etc.]*
66. Were those facing evictions forced to destroy their own shelter and belongings?
67. Were measures taken to protect possessions that were left behind against destruction, illegal appropriation and use?
68. Were steps taken to ensure that no one was subject to attacks or other acts of violence, in particular women and children? *[For instance from another community.]*
69. What measures were taken to minimize the traumatic impact of the eviction on women, infants, children, the elderly, persons with disabilities and ill residents?
70. Are video footage, testimonies or any other information on the event available?
71. Is the eviction over or are more evictions planned?

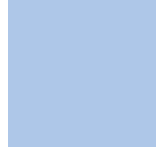


C. After the eviction

72. Immediately after the eviction, what measures were taken to provide security, food, water, shelter, clothing, medical care and other essential goods?
73. Were evicted residents taken to the relocation site? With their belongings?
74. What concrete issues do the evicted residents face as a result of the eviction? In particular, what are their humanitarian needs? *[With the help of other agencies, draw up a list of issues with regard to shelter and protection against the cold and the heat, access to food and cooking facilities, access to water and sanitation, health situation of the community and medical care or schooling for children that could serve as a basis for requesting concrete and immediate action from the authorities.]*
75. Did the evicted residents have to bear any of the cost of the eviction and/or resettlement?
76. Could the media freely and impartially cover, investigate and report on the events?
77. Does the State monitor the situation of the evicted residents? *[Whether relocated or not.]*
78. Have there been any tensions/conflicts between the relocated community and the communities that already lived there?
79. Has there been any short-, medium- or long-term negative impact on the livelihoods of the relocated communities?

D. Remedies

80. If a judicial proceeding or hearing was held on the case, did it meet the criteria of fair and impartial justice, and due process?
81. Were victims or their representatives harassed or threatened in any way because of their opposition to the evictions?
82. Was there fair and just compensation for all the losses, whether material (such as personal, real or other property or assets), or non-material (such as loss of livelihood, employment, education and social benefits, psychological and social services)? *[For more details, see Basic principles and guidelines on development-based evictions and displacement, paras. 60–63.]*
83. How were the losses and the compensation assessed? Who was in charge of this?
84. If the livelihoods of the evicted residents were linked to their land and housing, what measures – in consultation with the affected residents – were foreseen so that they could continue to access productive resources and employment? *[Note that, for fishing communities, access to the sea, lakes and rivers may also be relevant.]*
85. How is compensation delivered, including from a gender equality perspective? *[Timeliness, administrative procedures, corruption may be issues to consider.]*



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MANUAL ON human rights MONITORING

This chapter forms part of the revised *Manual on Human Rights Monitoring*. Following the success of its first edition, published in 2001, the Office of the United Nations High Commissioner for Human Rights has updated and restructured the *Manual*, to provide the latest and most relevant good practices for the conduct of monitoring work by human rights officers, under the approach developed and implemented by the Office.

The revised *Manual* provides practical guidance for those involved in the specialized work of human rights monitoring, particularly in United Nations field operations. This publication comprehensively addresses all phases of the human rights monitoring cycle, setting out professional standards for the effective performance of the monitoring function. It also outlines strategies to maximize the contribution of monitoring to the protection of human rights.

While each chapter has been made available separately, linkages with other chapters are highlighted throughout. A full reading of the *Manual* is thus recommended for a comprehensive understanding of human rights monitoring.

This tool has been tailored to the everyday needs of United Nations human rights officers in the field. The methodology it sets out would, nonetheless, be of equal relevance to others tasked with human rights monitoring functions. Its wider use and application by regional organizations, national human rights institutions, non-governmental organizations, relevant governmental bodies and others is strongly encouraged.



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