



Enhancing the Capacity of National Human Rights Institutions to Monitor Economic, Social and Cultural Rights

CONCEPT NOTE

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Background and Rationale

Since the early 1990s interest in developing new methods for determining whether states are meeting their obligations under the International Covenant on Economic, Social and Cultural Rights has grown considerably.¹ The Covenant requires that states ‘take steps’ towards the ‘progressive realization’ of economic, social and cultural rights (ESC rights) to the ‘maximum of their available resources’. However, the conditionality of this language, combined with complexity of public policy in the socio-economic sphere, make it difficult to trace rights deprivations back to the actions or omissions of government. Poverty and inequality can seem a tragic but inevitable product of invisible economic forces, rather than the result of flawed policies or the ineffective administration of programs.

Accordingly, debate has centered on whether methodologies that incorporate quantitative human rights indicators can help overcome this ‘measurement challenge’. And if so, how? Effective monitoring necessarily requires more than one approach. But how to achieve the right combination of techniques and tools, and who should have responsibility for doing so, remain ongoing questions.

National human rights institutions (NHRIs)—defined generally as independent bodies, officially established by legislation or constitution with a specific mandate to protect and promote human rights—have been identified as key collaborators in the development and use of quantitative monitoring methodologies.² Indeed, their potential in this area stems from a number of institutional characteristics:

- NHRIs have a legally defined relationship with the state, one which gives them authority to monitor compliance with international human rights norms.
- NHRIs rely on a broader set of advocacy tools than the judiciary or civil society groups—as well as a quasi-judicial competence to receive complaints and scrutinize law and practice, they provide advice, assistance and capacity building to government.

- Uniquely positioned between government, civil society and the U.N. human rights system, NHRIs can bring together various governmental and non-governmental actors in the process of selecting indicators and collecting data.
- As permanent institutions, NHRIs are able to track issues over extended periods to identify trends in the level of rights fulfillment

NHRIs themselves have begun to pay increasing attention to their role in relation to the protection of ESC rights and the eradication of poverty. The development and adoption of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, in particular, also increased momentum around ESC rights amongst NHRIs.³ At the international level, NHRI participants at a Roundtable held in New Delhi in 2005 adopted a plan of action committing themselves to: strengthen their institutional capacity in relation to economic and social rights.⁴ In 2008, participants at a workshop on NHRIs and poverty stressed that “capacities, including skills, expertise and working methodologies need to be built and experiences shared in order [for NHRIs] to become an effective and credible actor in [development] processes”.⁵ At the regional level, the Network of National Human Rights Institutions of the Americas has been particularly active in relation to ESC rights; emphasizing the need to prioritize social rights in the Concluding Observations of a regional seminar held in Caracas in July 2009.⁶

Nevertheless, NHRIs often lack the requisite expertise to meet their potential in relation to ESC rights monitoring and, to date, there has been limited guidance for them in this regard.⁷ In a recently conducted needs assessment, members of the Asia Pacific Forum of National Human Rights Institutions identified ESC rights as the third highest priority area for training (following complaint handling and human rights monitoring), for example.⁸ While many NHRIs have demonstrated a capacity to influence public policy in the political sphere, the traditional techniques they use to do so may not be as helpful in addressing the complexity associated with public policy in the socio-economic sphere. It is therefore crucial for NHRIs to prioritize the identification and implementation of appropriate supplementary methodologies and approaches to address ESC rights.

Project Goal

Against this background, the goal of the project is to support NHRIs to strengthen their capacity to use quantitative as well as qualitative monitoring methodologies to more effectively carry out their mandated functions in relation to ESC rights.

Specific Objectives

To achieve the above goal, the specific objectives of the project are to develop and test a practical resource for NHRIs that will increase their understanding of:

- key concepts relating to ESC rights and state obligations;
- the multiple uses and users of quantitative methodologies;

- how to apply a methodological framework to ESC rights monitoring efforts;
- techniques to identify appropriate human rights indicators, establish benchmarks against which to measure progress, collect and analyze data (including economic and budgetary data), and make recommendations;
- the role of qualitative information in the monitoring process;
- how to work inclusively with civil society and government in the monitoring process;
- risks and challenges associated with quantitative methodologies.

The anticipated output of the project will be a guide for NHRIs on monitoring ESC rights—including a framework for monitoring—to be published under the auspices of CESR, which could then be promoted through OHCHR and international and regional networks of national institutions.

Beneficiaries

The primary beneficiaries of the monitoring framework will be the commissioners and staff of NHRIs who are responsible for carrying out the institution's mandated functions in relation to ESC rights. The secondary beneficiaries for the framework will be staff of local, regional and international organizations (including inter-governmental, U.N., NHRI and non-government organizations) that undertake support and capacity building work with NHRIs.

Project Strategy

The project, made possible by funding through the David W. Leebron Fellowship from Columbia Law School, will be carried out in partnership with the Center for Economic and Social Rights (CESR) and the Kenya National Commission on Human Rights (KNCHR). Under the supervision of CESR and KNCHR staff, and in consultation with an advisory group of NHRIs from different regions, the Fellow will implement the project in three stages.

Stage One: drafting a monitoring framework

This stage will begin by taking stock of the mandates of NHRIs to monitor ESC rights and of the efforts and methodologies used so far by NHRIs to identify possible capacity gaps, needs and priority areas. Three means will be adopted to collect information to this end:

- A short questionnaire to all ICC member institutions;
- Feedback from participants at a side event to be held during the 10th Annual conference of NHRIs in Edinburgh, Scotland;
- Consultation with contact points within a select group of 'focus' NHRIs, including the Kenya National Commission on Human Rights.

In parallel, an analysis will be conducted of current tools and methodologies—with a primary focus on adapting CESR’s methodological monitoring framework—to consider their applicability to the situation of NHRIs. Key references include:

- Efforts within the U.N. and other international organisations (e.g. the human rights indicators project led by OHCHR, monitoring procedures formulated by members of the Committee on Economic, Social and Cultural Rights, and guidelines on progress realization prepared by Inter-American Commission on Human Rights);
- Tools and frameworks developed by international human rights and development NGOs (e.g. CESR, ActionAid and others); and
- Cutting-edge academic work on the use of indicators and indices (e.g. the index of ESC rights fulfilment developed by University of Connecticut and the New School, framework for measuring the right to education by Cornell University).

Building on this preliminary research, a draft monitoring framework will be prepared and circulated for consultation with the focus group.

Stage Two: testing the framework

The second stage of the project will be a 6 month trial of the draft framework (February – July 2011) with the Economic, Social and Cultural Rights Program of the Kenya National Commission on Human Rights (KNCHR). The KNCHR agreed to be a partner in the project in view of its commitment to work around the realization of ESC rights. As outlined in its Strategic Plan 2009-2013, for example, KNCHR has focused on poverty reduction by monitoring the government’s 5-year medium-term development plans against international ESC rights standards. The workability of the draft framework will be tested by incorporating it into the Program’s current monitoring activities. Depending on the needs and priorities of the KNCHR, this might focus on a particular right such as food, health, or housing.

Stage Three: refining the framework and developing a guide

The final stage of the project will be to review and reflect on the work undertaken with the KNCHR, using that understanding to refine and revise the draft monitoring framework and to produce the final guide for NHRIs.

Further Information

For further information about the project, please contact Allison Corkery at acorkery@cesr.org or on +34 91 448 3971.

ENDNOTES

¹ See, e.g. Danilo Türk, Special Rapporteur, *The New International Economic Order and the Promotion of Human Rights: Realization of the Right of Economic, Social and Cultural Rights*, ¶ 96, delivered to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1990/19 (Jul. 6, 1990); World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 98, U.N. Doc. A/CONF.157/23 (Jul. 12, 1993); OHCHR, *Report on Indicators for Monitoring Compliance with International Human Rights Instruments*, ¶ 2, 26, delivered to the Eighteenth Meeting of Chairpersons of the human rights treaty bodies. U.N. Doc. HRI/MC/2006/7 (Jun. 22, 2006); *Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights*, Report to the Economic and Social Council (Geneva, 6-31 July 2009), U.N. Doc. E/2009/90 (2009).

² See, e.g. See OHCHR, *Report on Indicators for Promoting and Monitoring the Implementation of Human Rights*, Report to the Twentieth Meeting of Chairpersons of the human rights treaty bodies (Geneva, 26-27 June 2008), ¶ 37, U.N. Doc. HRI/MC/2008/3* (2008).

³ See 22nd Session of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), Geneva, Switz., Mar, 23-27 2009, *Report of Proceedings*.

⁴ Specifically, participants agreed to establish units or focal points; develop new and innovative strategies, including gathering information through community dialogue that goes beyond traditional forms of complaints-handling processes; develop particular strategies to address the rights of vulnerable groups that include women and children; assess the enforceability, including through judicial procedures, of economic, social and cultural rights; and encourage the development of national plans of action that implement economic, social and cultural rights. International Roundtable on National Institutions Implementing Economic, Social and Cultural Rights, New Delhi, India, Nov. 29-Dec. 1, 2005, *Concluding Statement*.

⁵ Parallel Event on National Human Rights Institutions and Poverty, Geneva, Switz., Apr, 16 2008, *Report*.

⁶ Specifically, participants emphasized the importance of reporting on individual complaints, advising government, supporting social movements and monitoring social rights policies and budgets of governments to ensure they are appropriate and not discriminatory. International Seminar on National Human Rights Institutions and the Protection of Social Rights: Experiences, Perspectives and Challenges, Caracas, Venezuela Jul. 13-15, 2009, *Concluding Observations*, ¶ 11-14.

⁷ In 2005, for example, OHCHR published *Economic, Social and Cultural Rights: a Handbook for National Human Rights Institutions* (Professional Training Series No. 12, 2005). While this is a useful starting point, the thinking on ESC rights monitoring has advanced significantly over the last five years, meaning there is considerable scope to expand on the process outlined in the handbook.

⁸ APF, *Assessment of the Training Needs of Member Institutions of the Asia Pacific Forum of National Human Rights Institutions*, 12 (March 2010).

About CESR

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

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About KNCHR

The Kenya National Commission on Human Rights (KNCHR) is an independent national human rights institution, established by the government through the Kenya National Commission on Human Rights Act 2002. Its core mandate is to further the protection and promotion of human rights in Kenya. It fulfills its mandate by monitoring government action and policies; acting against human rights violators; providing remedies to victims of such violations; and advising the government on measures to enhance human rights protection.

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