

**AN EVALUATING FRAMEWORK FOR ECONOMIC, SOCIAL AND
CULTURAL HUMAN RIGHTS**

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Abstract

The Government is spending very huge amount on social services and public goods through different modes for the achievement of social justices and equality in general and for protection and improvement of human rights in particular. However, the desirable results are not found yet in the context of improvement in standard of living and improvement in the status of human rights. The human right status report 2012 truly pointed out that India's ranking 134 among 187 countries in human development index. It has also pointed out that 77% of Indians live on a consumption expenditure of less than INR 20 (around US\$ 0.4) a day and just 0.8% was the decline in poverty during 2007--11, whereas the average growth rate was 8.2%. It means that in one hand, we have significant economic growth rate and on the other hand, we observe increase in socio- economic dismal hierarchy in general and violations of human rights in particular. Under this overall backdrop, this paper presents a practical framework for integrating different tools and techniques in order to provide a more comprehensive assessment of how public policies comply with the obligation to fulfill ESC rights. The researcher has attempted to present evaluation assessment framework for human rights at country level. This framework is more practical and applicable for the Government and policy makers for the evaluation of the progress and emerging new issues of human rights.

Key Words – Human Rights, Outcomes, Policy Efforts, Resources and Assessment, ESC rights.

I. Introduction

Despite the fact, more than 160 governments around the world are now party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and they have committed to the progressive realization of human rights because millions of people worldwide continue to suffer from poverty, hunger, homelessness, illiteracy and early mortality. Poverty and deprivation are an assault on human dignity, but are all too often deemed to be unavoidable outcomes of ‘under-development’. A human rights perspective challenges this complacency by showing that, when they are the consequence of government policy or are caused by the failure of governments to act, poverty-related deprivations can also reflect a violation of human rights. Over the last two decades, these deprivations have increasingly begun to be addressed as failures to fulfill economic, social and cultural rights (ESC rights). But to increase accountability for such failures, it is necessary to uncover the shortcomings in the state’s social and economic policies that lead to large-scale deprivations. This serves to expose as a preventable injustice what may otherwise be seen as an inevitable tragedy. Holding institutions to account for these failures, through both judicial and non-judicial processes, is an essential step towards providing remedies to those affected. Accountability processes can, in turn, allow policymakers to know what works so that it can be repeated and what does not, so that it can be adjusted¹.

The paper also highlighted indicators of human right through which we can judged the status of human rights in the country. Finally, researcher set out the assessment framework, and illustrate how it might be used to eclectically combine a range of different tools and techniques, drawing on both quantitative and qualitative methods to provide a more comprehensive and integrated assessment of a government’s compliance with its obligation to fulfill ESC rights.

II. Meaning of Human Rights

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. Dr. Justice Durga Das Basu defines “Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a ‘member of human family’ irrespective of any consideration. Durga Das Basu’s definition brings out the essence of human rights. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state

III. Indicators of Human Rights

Quantitative indicators—information expressed as numbers, percentages or ratios—offer a statistical snapshot of a situation by providing a measure of ‘how much’, ‘how many’, ‘to what extent’ or ‘what size’. They demonstrate the level something is at, the direction it is headed and

¹ *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt, presented to the United Nations Human Rights Council (17 January 2007), UN Doc. A/HRC/4/28.*

how far it is from a certain goal or target. Socio-economic indicators have been used in the development field to measure human wellbeing for many years, most notably with the introduction of the groundbreaking Human Development Reports in the 1990s. Reflecting a shift within the development field from an economic growth-oriented approach to a more human rights-based approach, the United Nations Development Programme (UNDP) argued in its *Human Development Report 2000* that ‘information and statistics are a powerful tool for creating a culture of accountability and for realizing human rights’²³. This paradigm shift can also be seen in the Millennium Development Goals (MDGs), which select specific indicators, for which statistical data is regularly collected in order to measure progress over time.

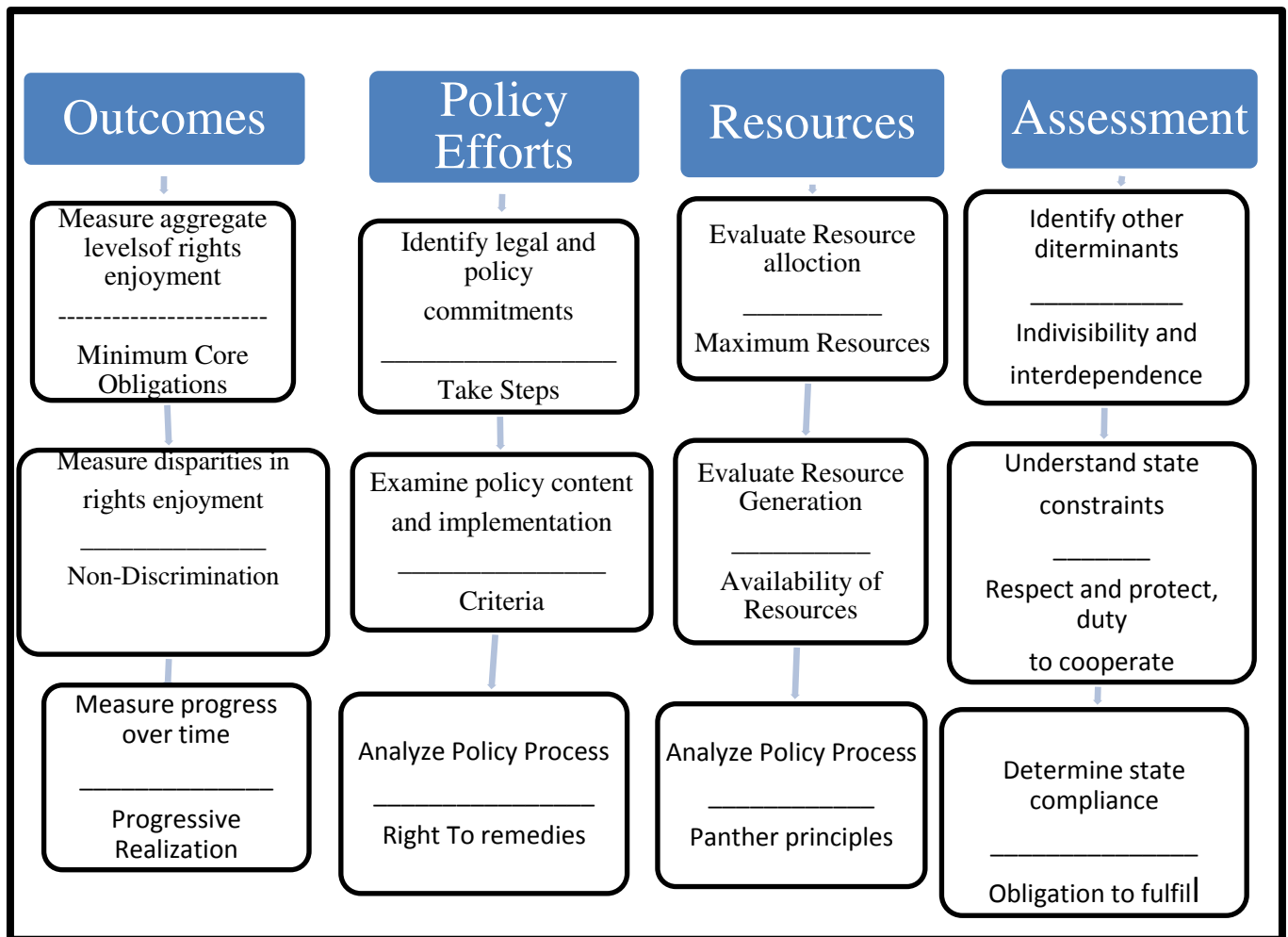
The Center’s experiences in monitoring states’ fulfillment of ESC rights in varying contexts over the last two decades have reinforced the importance of adopting a holistic approach to monitoring. CESR has sought to do this by developing a methodological framework within which various quantitative and qualitative tools and techniques can be deployed. This multidisciplinary, mixed-methods approach draws on valuable work from the legal, social science, statistics, public policy and economic fields. The OPERA framework developed by CESR articulates relevant human rights standards and principles to take into account when monitoring ESC rights fulfillment and offers practical guidance on which tools and techniques might be employed to evaluate them. These range from simple descriptive statistics that summarize data to more complex fiscal policy and budget analyses that assess the availability and allocation of resources. By making explicit this crucial link between the various human rights standards and principles that underpin the obligation to fulfill and the different assessment methods available to monitor them, the framework enables a systematic approach to building evidence of failures to fulfill ESC rights.

After having this introduction of human right indicators, we can move towards the main theme of the present paper.

IV. An Evaluating Framework for Economic, Social and Cultural Human Rights

The researcher has considered for steps for evaluation of any government policy. These for steps are outcome of previous efforts, policy efforts, resources and assessment. The process involved under each step has been elaborated in below flow chart.

2 Chapman, A. (1996), ‘A “Violations Approach” for Monitoring the International Covenant on Economic, Social and Cultural Rights’, *Human Rights Quarterly*, vol.18, no.1, pp. 23 – 66.



➤ **Steps Involved in Assessment Framework**

To assess obligations of result, the ‘outcomes’ step gives a snapshot of enjoyment of the right(s) under review in a country. However, outcomes alone cannot give a full understanding of a state’s compliance. The ‘policy efforts’ step analyzes obligations of conduct by exploring whether the laws and policies that give effect to the right(s) under review have been designed and implemented in line with human rights standards and principles. The ‘resources’ step looks at the generation, allocation and expenditure of resources, as well as the larger macro-economic policy context that determines the availability of resources for the right(s) under review. The ‘assessment’ step looks at the broader constraints facing the government, before making a judgment about the level of compliance or non-compliance of a state with its human rights obligations based on a cumulative assessment of the findings from the prior three steps.

Step 1 – Outcomes: Assessing the level of enjoyment of rights

Step 1	Human Rights Standards	Types of Assessment Techniques
<i>Measure levels of enjoyment of the right</i>	<i>Minimum core obligations</i>	Identify relevant outcome indicators that show the extent to which the right, including its minimum essential levels, is enjoyed in the country.
	<i>Non-discrimination</i>	Disaggregate indicators by social groups to identify disparities in levels of enjoyment of the right.
	<i>Progressive realization</i>	Examine variations of indicators over time to assess progress, backsliding and change in disparities.

As the first step in the study, we can appropriate outcome indicators to act as proxies for the rights to food, health and education, focusing on child chronic malnutrition, maternal mortality and primary education completion for reasons of data availability, political/MDG relevance and research manageability. We can compared this data to that of countries in the region with comparable levels of GDP per capita.

As discussed earlier, monitoring the fulfillment of ESC rights requires looking beyond individual violations. Quantitative socioeconomic indicators are well suited to analyzing levels of rights deprivations affecting large numbers of the population. By providing a standardized and comparable measure, indicators can uncover patterns and trends within and across demographic groups. While there are dangers in drawing conclusions or generalizations from descriptive statistics alone, they offer a concise snapshot of the situation facing population groups. Collecting and assessing information on outcome indicators can signal the extent to which a state is achieving the realization of a particular right, though information reflecting rights holders’ own perceptions about their rights enjoyment will also be important. It is important to flag that this step is by no means an overall conclusion about a state’s compliance; further investigation about the state’s conduct is needed, as it is necessary to analyze not only what is occurring, but why.

The step begins by collecting data that gives an overview of the current levels of enjoyment of the right(s) under review. The data collected at this step corresponds to the category of ‘outcome’ indicators under the OHCHR framework. This step requires first choosing appropriate indicators that act as proxies for the right(s) under review, accommodating practical limitations of data availability and reliability. For example, primary school enrollment and completion rates, as well as youth literacy rates, can give an initial overview of the extent to which the right to education is being realized for a given population.

Step 2 – Policy Efforts: Assessing state commitment and efforts to fulfill ESC rights

Element	Human Rights Principles	Types of Assessment Techniques
<i>Identify legal and policy commitments</i>	<i>Obligation to take steps</i>	Identify international commitments and national constitutional and legislative provisions that give effect to them.
		Verify the existence of specific laws and policies on the right and compare their provisions to international standards.

<i>Examine policy content and implementation</i>	AAAAQ criteria	Identify the goods and services needed to give effect to the right.
		Measure the availability, accessibility, acceptability and quality of these goods and services (e.g. assessing quantitative and qualitative data, community score cards).
<i>Analyze policy processes</i>	<i>Participation, Transparency, Accountability, Right to a remedy</i>	Analyze relevant national laws and policies (e.g. on access to information, local participation, complaints mechanisms etc.).
		Collect feedback on the extent to which those principles are applied in practice (e.g. through interviews or other qualitative methods and quantitative indicators if available).

As outlined above, the obligation of conduct requires that states take ‘action reasonably calculated to realize the enjoyment of a particular right’, including legislative, judicial, administrative, financial, budgetary, fiscal, educational, social and other measures. This step therefore starts by identifying the human rights commitments made by the state at the domestic, regional and international levels and evaluating the legal framework that gives effect to them. It then analyzes the way public policies and programs translate these commitments into the goods and services needed to realize the right(s) under review. Relevant systems, goods and services are judged against the AAAAQ criteria (i.e availability, accessibility, acceptability, adaptability and quality of services necessary for the realization of ESC rights.) The process of adopting and implementing policies and programs is also judged against the principles of participation, non-discrimination, accountability, and transparency. In this step, qualitative policy analysis plays a particularly important role in complementing quantitative indicators.

a) Identifying legal and policy commitments

This step first identifies the regional and international human rights commitments the state has agreed to adhere to. For example, it examines whether the state in question has signed or ratified relevant international covenants or treaties, and if there have been any reservations to these. International agreements, declarations, outcome documents of political summits, programs of action, etc. may also be taken into consideration. Although these are not legally binding, they may elaborate on the content of particular rights, such as the Cairo Declaration on Population and Development, which articulates reproductive health-related rights. Furthermore, by signing on to such agreements, states may pledge to achieve specific goals or targets, providing further evidence of the commitment of a state to the right in question.

The second question to consider is whether these international commitments have been internalized in the domestic legal order in ways that meet the object and purpose of these commitments, whether or not their specific terms are invoked. As at the international level, political campaign promises, statements or speeches made by leaders may also contain specific commitments related to the right(s) under review. It is also important to identify any laws that run contrary to or inhibit the state in fulfilling its human rights obligations. In states where governance structures have been decentralized, examining the consistency of sub-national laws or interpretations of national laws with the human rights obligations made at the national level will also be relevant. These questions on legal and political commitments broadly reflect the ‘structural indicators’ in the OHCHR framework. Focusing on the adoption of legal instruments

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and the existence of institutional mechanisms conducive to realizing the right(s) under review, indicators used in this step tend to be categorical in nature. Rather than being a numerical value, as with many outcome indicators, the questions asked at this step, such as whether a state has ratified a treaty or made any reservations, require a yes or no answer. Information to answer questions on regional and international treaty ratification can be found in the United Nations Treaty Series Online Collection. The Toronto Initiative for Economic and Social Rights' TIER Dataset on the constitutional status of ESC rights in developing countries can also serve as a source of information. To evaluate the extent to which a state has domesticated its international commitments, it is necessary to study the nature and content of legal and political commitments and compare them to international human rights standards, which is necessarily a qualitative exercise.

b) Examining policy content and implementation

While a state may commit formally to their obligation to fulfill ESC rights, this may not translate to improvements on the ground at all in practice. So the next question to consider in this step is how such commitments move from paper to reality. This question can be answered by identifying the public policies in the sector(s) relevant to the right(s) under review and assessing whether they are designed to give effect to the state's human rights commitments.

These policies can be identified by referring to the general comments of the treaty monitoring bodies, which broadly define the characteristics of goods and services needed to fulfill the particular right, but should be guided by expertise and best practice from the relevant sector with regard to the most effective policy interventions. In relation to the right to food for example, the Committee has held that food should be available either directly from productive land or through 'well-functioning distribution, processing and market systems'.

c) Analyzing policy processes

In addition to analyzing the content of policies and the way they have translated into the provision of goods and services, the step considers whether the policy cycle upholds the human rights principles of participation, accountability and transparency. As noted above, participation in decision-making throughout all stages of the policy cycle—design, implementation, monitoring and evaluation—is a procedural right, underpinned by a number of civil and political rights such as access to information, as well as freedom of speech and of assembly. Understanding the relationship between ESC rights and civil and political rights is also important in this analysis. For example, if a person is illiterate, their ability to gather the necessary information to actively participate in public life is limited, further worsening their chance to claim their ESC rights.

Step 3 – Resources: Assessing the use and generation of adequate resources

Element	Human Rights Principles	Types of Assessment Techniques
<i>Evaluate planned and actual resource expenditure</i>	<i>Core obligations Non-discrimination Progressive realization</i>	Calculate the percentage of the state's budget allocated to social spending relevant to the specific right, comparing to relevant benchmarks. Identify which population groups are benefitting from spending; contrasting spending disparities with disparities in human rights outcomes.

<i>es</i>	<i>according to maximum available resources</i>	Compare allocations to previous budgets to see how spending has evolved over time, taking into account economic growth over the period.
		Track public expenditure (e.g. using PETS, QSDS, or social audits).
<i>Evaluate resource generation</i>	<i>Progressive realization according to maximum available resources Non-discrimination</i>	Calculate the state budget as a percentage of the overall economy and compare to similar countries.
		Identify and assess the adequacy and fairness of the state's main revenue sources (e.g. taxation, borrowing, international assistance).
		Evaluate the state's fiscal and/or monetary policies governing the raising of revenue (e.g. identify tax base as % of GDP and track its evolution over time, taking into account economic growth over the period).
<i>Analyze relevant policy processes</i>	<i>Participation, accountability, transparency, right to a remedy</i>	Collect feedback on public participation in the design, implementation and evaluation of fiscal and monetary policies (e.g. through interviews or other qualitative methods and quantitative data, if available).
		Analyze indicators related to transparency of economic policy process.

a) Evaluating planned and actual resource expenditures

This step first gathers budgetary information to determine how much the state allocates to the social sectors relevant to the right(s) under review and who benefits. Resource allocations can be assessed against the principles of minimum core obligations, non-discrimination and progressive realization in order to identify what areas are prioritized in the budget, what groups are prioritized and how prioritizations have evolved over time. Using allocation ratios that show how much is being earmarked for key sectors, as a percentage of total government expenditure or GDP, helps to identify which areas are being prioritized.

b) Evaluating resource generation

In addition to understanding how governments allocate funds, another component of this step considers how these resources are generated. The objective here is to assess whether sufficient revenue is being raised and to evaluate the human rights implications that arise from how revenue is being raised from different sources. Major sources of government revenue are taxation, borrowing and, in some cases, international development assistance, including official development assistance (ODA). A starting point is to look at the size of the government's budget vis-à-vis the overall size of the economy (often depicted as government spending as a percentage of GDP). Seeing how this indicator compares over time or to similar countries can help judge how effective the state has been in harnessing available resources in the country. However, to analyze why more revenue is not being raised, it is necessary to look beyond the budget, to evaluate relevant fiscal and macroeconomic policies to determine their compliance with human rights principles.

c) Analyzing relevant policy processes

Just as in step two, process principles such as transparency, access to information, participation, and accountability should also be assessed in the context of the budget and broader

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fiscal policy. The budget formulation process should be judged on the extent to which information on budgets is available and accessible to citizens through the principles of participation, non-discrimination, transparency and accountability. It is still the case in some countries that governments draw up budgets in secrecy with no public participation and no proper approval process from the legislature. A useful tool in this exercise is the Open Budget Survey, produced every two years by the International Budget Partnership, which scores countries on the extent to which their national budgets meet standards of transparency and accountability. Similarly, evaluating efforts the state has made to address constraints that hinder the collection of tax revenue, such as closing financial loopholes or prosecuting tax evaders, is essential in giving force to the principles of accountability and transparency.

Step 4 – Assessment: Understanding constraints before assessing compliance

Element	Human Rights Principles	Types of Assessment Techniques
Identify contextual factors that limit the enjoyment of the right	Indivisibility and interdependence of rights Right to a remedy	Identify the social, economic, political or cultural conditions that prevent people from enjoying the right or seeking redress for violations of the right (e.g. through capacity gap assessment).
Understand the state’s constraints	Obligation to respect and protect rights against abuse by third parties Extraterritorial obligations of other states to respect, protect and fulfill ESC rights	Identify how the acts or omissions of third parties or structural dysfunctions impact on the state’s ability to fulfill the right.
Determine state Compliance	Obligation to fulfill	Draw together findings from previous steps, in light of above elements.

a) Identifying contextual factors

There are often many factors that influence human rights enjoyment reflecting the principle that rights are indivisible and interdependent. Often one right serves as a requisite for the enjoyment of another, and thus denials of one can foster multiple levels of deprivation. Poor and socially excluded groups are less likely to be able to access information, organize, participate in policy debates and obtain redress, for example. Identifying other rights deprivations or socio-economic, political or cultural factors inhibiting people’s ability to enjoy the right(s) under review or to seek redress when they are the victims of a rights violation can help pinpoint the responses reasonably expected of the state. For example, socio-cultural norms can disempower women, limiting their ability to freely make decisions regarding their reproductive health. In the health sector, these underlying factors have often been described as ‘social determinants’—the economic and social conditions under which people live, which affect their health and have an impact on health inequalities. Qualitative approaches, such as conducting a capacity gaps analysis with rights holders can uncover some of these barriers.

b) Understanding state constraints

The capacity of the state, as the primary duty bearer, is also relevant to consider. This involves identifying constraints on the state from domestic or international sources that influence

or constrain its capacity to fulfill the right(s) under review. This requires reflecting on the features that are particularly important in the context under review. Although such constraints will vary greatly depending on the context, they may broadly relate to:

- The conduct of third parties, such as corruption, business misconduct, elite capture, donor influence, aid conditionality, etc.
- Structural dysfunctions or conditions relating, for example, to decentralization, electoral processes, parliamentary procedures, political instability, environmental and climate volatility, international trade, investment, finance, monetary and debt policies, etc.

c) *Determining state compliance*

After taking adequate consideration of constraints faced by the state, an overall examination of the information collected in the previous three steps can be made to reach a comprehensive assessment of compliance with the obligation to fulfill the human right(s) under review. By linking to the various human rights principles and standards, the different steps provide a guide to the elements—or pieces of the puzzle—that must be taken into consideration when judging a state's performance. By triangulating the findings from the first three steps—outcomes, policy efforts and resources— it is possible to bring to light the obstacles that are preventing commitments made on paper translating into practical action that has a meaningful impact improving the situation on the ground

➤ **Use of Framework**

Now simply we can say it OPERA framework. It examines both obligations of conduct and result- and, importantly, makes the link between the two. As outlined further above, the framework looks at different dimensions of the obligation to fulfill, grouped around Outcomes, Policy Efforts and Resources. It then triangulates the findings from each step to make an Assessment of a state's compliance with its obligation to fulfill human rights. The framework can be applied to a particular right or a number of rights, depending on the objectives, scope and complexity of the monitoring activity. By relying on both quantitative and qualitative data that is usually readily available, the framework aims to be practical and relatively simple to apply, allowing for flexibility and adaptability to the particular context of the monitoring activity and possible data availability constraints. It has been designed primarily as a framework suitable for civil society groups to strengthen their efforts to hold governments to account for systemic deprivations of ESC rights; but its utility goes beyond this. For example, the OPERA framework may assist in building evidence for specific cases before national courts, national human rights institutions, or other quasi-judicial mechanisms. For policy-makers, it may be used to integrate a human rights-based approach in policy monitoring and evaluation methods, such as results-based management or performance contracting.

V. Conclusion:

We accept that there may be some shortcomings and some missing aspects in forgoing analysis. The points raised by experts and academicians will definitely helpful in further development in this framework. However, the use of this model in context of evaluation of government policy is not negligible.

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