

Achieving economic and social rights: The challenge of assessing compliance

It is easy for governments to sign up to economic and social rights, but compliance is another matter

There is increasing recognition of the relevance of economic and social (ES) rights to development (ODI, 2006). Human rights principles, such as accountability and non discrimination, are now cornerstones of broad governance efforts to ensure that states and societies contribute to sustainable and inclusive development.

A number of challenges have stopped ES rights from achieving a fully functional role within development policy and practice, however. These include legal challenges related to the status of ES rights within national law, as well as the feasibility of applying such law in practice. Assessing government compliance to ES rights obligations – or the lack of it – is a key dimension of this practical challenge. Without evidence on compliance, it is not only difficult to hold governments accountable, but it is also difficult to find out what is preventing the full realisation of ES rights.

Economic, social and cultural rights were recognised formally in international law in 1966, when they were enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR is the first part of an International Bill of Human Rights, the second being the Covenant on Civil and Political Rights. Both are international treaties and are binding on States Parties under international law. The Vienna Declaration (1993) recognised civil and political rights and ES rights as ‘indivisible, interdependent and interrelated’. The reasoning is that both sets of rights are necessary to establish the integrity and dignity of the person. There is, therefore, no necessary hier-



How much does it cost to deliver economic and social rights?

archy or precedence among these rights within international treaties.

It is a relatively simple act to ratify a human rights Covenant, and most countries have done so. However, when it comes to implementation, including the compliance of governments with their obligations, the picture is less clear.

There are uncertainties on the precise nature of government obligations under the ICESCR, specifically when the minimum essential level of attainment has been reached. Under the ICESCR, governments are required to ‘take steps ... to the maximum of available resources ... with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means’ (Article 2.1). They are also required to ‘guarantee that the rights ... will be exercised without discrimination of any kind’ (Article 2.2) and ‘ensure the equal right of men and women to

Key points

- Assessing government compliance with economic and social rights obligations is vital for accountability
- Assessing compliance is complex: new approaches are needed, building on available social science methods
- The affordability of these rights should be taken into account when developing approaches to assess compliance

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the enjoyment of all economic, social and cultural rights' (Article 3). But how do we know that sufficient steps have been taken towards the full realisation of ES rights, or that enough is being done to combat discrimination and inequality? In other words, how do we know that governments are complying with their obligations set out in the ICESCR? And how can governments be held accountable in practice for their ES rights obligations?

The fact that there are many ES rights also adds to the complexity. There is limited value in demonstrating that a government 'step', i.e. the action required by the ICESCR towards the realisation of ES rights, would raise the level of realisation in one particular right. Instead, it is necessary to show that a step would raise the level of realisation in one area, without lowering the level of any other. Only then would a government be expected to take the step concerned, with failure to do so representing a violation of its obligations.

These are not just legal challenges, they are also empirical. There is rarely enough evidence to monitor government actions effectively. Too little attention is paid to the rigorous evidence required to ensure that ES rights can be implemented in a meaningful way.

The response so far

Various approaches have been proposed. Some attempt to devise positive measures, such as indicators and benchmarks, whereby governments specify benchmark values of certain key indicators (e.g. literacy rates) to be achieved over a period of time, which are 'challenging yet realistic' (Hunt, 1999). Progress against those benchmarks can then be monitored and assessed. Human rights monitoring bodies may also conduct a 'scoping exercise' to determine whether the benchmarks set by government are sufficiently ambitious.

Other approaches have focused on negative measures, identifying violations of the ICESCR that would signify negative compliance. According to Chapman (1996), recent violations include budgetary cutbacks in education expenditure leading to lower school enrolment rates (e.g. Senegal), continued prevalence of child labour, despite legislation prohibiting it (e.g. Mali), and inequalities in the availability or quality of public services between regions or ethnic groups (e.g. Iran, Romania or the UK). A similar approach focuses on identifying 'clear violations' of the ICESCR (e.g. Roth, 2004). Examples would include a government that builds medical clinics only in areas populated by its supporters, or government officials pocketing scarce public resources or wasting them on self-aggrandising projects.

While each of these approaches has clear merits, they take us only so far. Under the indicators and benchmarks approach, no real guidance has yet been offered on how to judge whether the benchmarks set by governments are sufficiently challenging. Under the violations approach, the whole tone is punitive

rather than facilitative and it is not self-evident what distinguishes a violation from a 'clear violation'.

Questions that remain unanswered include, for example, whether the government of Senegal is in a position to maintain expenditure on education, given fiscal conditions, or whether the government of Mali has the resources it needs to enforce child labour legislation. They are unanswered because existing approaches tend to bypass the economic and fiscal dimensions of compliance. In particular, how much would it cost to deliver ES rights and what are the potential trade offs in prioritising different ES rights?

Social science methods, including the application of economic models, can take this debate further in a more empirical way. In particular, three sets of methods provide some insight into how to address the gap: econometric analysis; costing exercises; and the modelling of affordability constraints – the method tested by ODI research. None as yet constitutes a full blown assessment method, but (especially when combined) they do hold the promise of building a better understanding of the compliance gap and the genuine obstacles to compliance.

The way forward

Econometric analysis can provide information about the sorts of goods and services needed to achieve key results. In the field of health, for example, econometric studies have identified services that are crucial in lowering infant mortality rates, such as pre-natal health care and immunisation.

Econometric analysis can also provide information about factors that limit people's access to these goods and services. Again, in the field of health, studies have identified the factors that affect whether or not people visit clinics when ill, such as distance to the nearest clinic and the quality of the facilities available. And in education, several studies have identified factors that affect whether or not children attend primary school, such as distance to the nearest school and household income.

This sort of information is an important first step in assessing government compliance. It points to the types of steps a government could take to realise ES rights. If, for instance, econometric analysis suggests that distance to the nearest school or health centre has a significant impact on attendance, it seems obvious that a building programme for schools or health centres would help to raise enrolment rates and health centre attendance.

Of course, the precise magnitude of the effects estimated via econometric analysis remains unclear. There are significant differences in such effects across different population groups and (in some cases) concerns about the direction of causality between variables. These concerns must be treated carefully, by using appropriate methods and combining quantitative and qualitative sources of evidence.

More importantly, however, showing the steps that a government could take to improve the realisa-

tion of an ES right does not prove that these steps should be taken in all circumstances. They may be unaffordable. While econometric analysis is an important first step towards assessing compliance, it must be supplemented by other methods.

Costing exercises are essential to establish whether or not a government can afford to spend the amounts required to realise ES rights. As an article in *The Economist* stated in November 2006:

‘Whether or not water is a right, it is also a commodity which, unlike liberty of expression or freedom from torture, is costly to provide.’

Government steps towards realising ES rights will have cost implications. In particular, they require the government to spend a certain amount: building schools, employing teachers, purchasing drugs and medicines, and enforcing legislation.

It is very difficult to assess whether or not the resources are available, particularly as the global credit crunch and resulting economic downturn begins to bite, but any assessment must first establish the amounts that would be needed – an exercise that is even more important when resources may well be scarce. The role of costing exercises in assessing government compliance with ES rights obligations is to estimate, with as much certainty as possible, how much a government would have to spend in taking a step that would increase the realisation of an ES right. The aim is not to do a Millennium Development Goal costing, such as the cost of achieving 100% school enrolment, the results of which can be uncertain. Instead, it is to cost a clearly identified government action, such as building more schools in rural areas, about which there is far more certainty.

Some sort of costing exercise is essential in any assessment of government compliance with the ICESCR. Even so called ‘clear violations’ of the ICESCR are based on an implicit costing exercise – one reason that violations are defined as ‘clear’ is that potential remedies are seen as relatively inexpensive.

Fortunately, there are several very good examples of costing exercises relevant to ES rights that have been carried out in recent years. The methods depend very much on the type of government actions towards achieving ES rights that are being costed. Typically, however, there are four:

- specifying the additional goods and services to be purchased by the government (e.g. new school buildings, additional teachers, new drugs and medicines);
- obtaining information on the prevailing prices of these goods and services (e.g. teachers’ salaries, prices of drugs and medicines);
- making reasonable assumptions about how additional government purchases might affect these prices;
- subtracting any costs that are recovered through user-fees.

The more care and effort that is put into each of these stages, the more accurate the results will be. Nevertheless, rough ‘back of the envelope’ calculations can be made by NGOs or advocacy groups with limited resources, and can still be valuable. While such calculations will be subject to wider margins of uncertainty, these margins may still be narrow enough to make a convincing case.

Costing exercises, while valuable, do not address whether the required amount of expenditure can be afforded. This is critical, as the realisation of ES rights is not just a matter of absolute cost but also of affordability. And affordability needs to be assessed separately.

Assessing affordability is the hardest part of any assessment of government compliance with ES obligations. Governments can meet the revenue requirements of a particular step in different ways: through reducing expenditure in other areas; by raising taxation or borrowing; or through other sources such as international aid. In most cases, however, raising revenue has a cost in itself. For example, higher income taxes, or a re-allocation of spending away from ‘productive’ expenditure sectors (e.g. infrastructure), may reduce economic growth. Growth is, arguably, not a right in itself, but is a variable that may well affect levels of realisation in real ES rights in the medium term.

The key question is, therefore, whether the positive ‘direct’ effects of government spending designed to raise realisation of ES rights is sufficient to offset the negative ‘indirect’ effects of raising the necessary revenue. If they are, it is reasonable to argue that those steps are affordable, and that lack of available resources is no excuse for inaction. If the positive effects do not outweigh the negative effects, the steps can be said to be unaffordable.

In some cases, the answer to this question may be obvious. This would be the case, for example, if public revenue were being lost as a result of corruption. In this case, failure to take steps towards the realisation of ES rights would represent a clear violation of the ICESCR. In other cases however, the answer will be less immediately apparent, and some way of weighing up the positive and negative effects is required. Ideally, this would be done using a formal analytical model, taking into account the short, medium and long term. Constructing such models can be expensive and time-consuming, however, and they are subject to controversy about underlying assumptions and technical parameters.

Another approach is to base the assessment on ‘rules of thumb’ derived from more general basic principles. An illustration is shown in Box 1, overleaf.

It is possible to draw some sort of conclusion on the overall effects of government actions designed to raise levels of realisation in an ES right, taking into account direct and indirect effects. Of course, the illustration in Box 1 is simplified deliberately: one could incorporate other considerations, and draw on other estimates of relevant elasticities contained in the academic literature. It does, however,

Box 1. Assessing affordability through ‘rules of thumb’: an example

Government interventions to promote economic and social rights often require additional government expenditure. Simple rules of thumb, based on available empirical evidence, can help assess the potential costs of financing this expenditure. For example, consider a set of health interventions that require additional expenditure of 5% of GDP. Econometric analysis carried out by economists Robert Barro and Xavier Sala-i-Martin suggests that raising this revenue domestically (e.g. via taxation) could reduce economic growth by up to 1 percentage point per year.

At the same time, however, raising health standards is likely to raise economic growth. The research by Barro and Sala-i-Martin suggests that raising life expectancy from 50 to 60 years would raise growth by at least 1 percentage point per year. Therefore, the overall effect of the health interventions on economic growth would be beneficial, if they were to raise life expectancy from 50 to 60 years.

Of course, health interventions may promote growth in various other ways: by raising educational standards for example. If we can quantify these effects, we can also take them into account in the assessment. By applying a simple rule of thumb, and using empirical evidence, we can assess the likely impact on economic growth of a set of government interventions to improve specific ES rights (e.g. health) that require additional expenditure. If this impact will be beneficial, limited resources would be no excuse for government inaction.

illustrate the ways in which affordability constraints can be assessed, drawing on publicly available empirical evidence, but without the need to specify and construct a detailed and highly complex analytical model.

Challenges, constraints, and next steps

‘Rights invariably demand or imply trade-offs of a financial sort ... [but] it does not follow that rights must be tossed along with everything else into a gigantic cost-benefit calculating machine created and operated by economists’ (Holmes and Sunstein, 1999: 101-102).

This quotation illustrates the anxiety that many human rights advocates may feel towards the application of quantitative methods and economic analysis to human rights. This anxiety is, perhaps, understandable. At the same time, however, going further in assessing government compliance with the ICESCR will require taking on board at least some of the approaches used by economists and public finance specialists to analyse trade-offs, costs and affordability.

There have been significant developments in this area by NGOs and human rights groups in recent years, for example in the use of applied budget analysis (see <http://www.internationalbudget.org/themes/>

ESC/index.htm). Organisations, including Fundar: Centro de Analisis e Investigacion, the Institute for Democracy in South Africa (IDASA) and the Center for Economic and Social Rights (CESR), have also been leading important research into the use of quantitative research methodologies in human rights advocacy, which should be supported and further disseminated to assess what difference they can make in practice.

Given the complexities involved, there will be some uncertainty and, therefore, controversy about whether governments are in fact complying with their obligations under the ICESCR. Some may present evidence suggesting that a particular step would raise levels of realisation in all ES rights, while others might challenge such findings. But there would at least be recognition of the validity of the exercise, the relevance of the techniques being used and, more generally, the advancement of an evidence-based, empirical debate on ES rights implementation.

It is often very difficult to establish whether or not a government is complying with its obligations under the ICESCR, but the problem must not be seen as insurmountable – more could be done to address this empirical challenge.

- Tools and methods do exist and can, and should, be used to assess compliance.
- New partnerships between human rights activists and social scientists are needed to test the applicability and usefulness of these methods in practice.
- A constructive dialogue between practitioners, thinkers and policy-makers from different disciplines could generate new ideas and identify practical proposals and solutions to address these empirical challenges.

Most importantly, it is time to move the debate on ES rights and their applicability to development practice away from purely theoretical or legal discussions, towards more empirical and realistic grounds.

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