**Human Rights Budgeting and Budget Analysis**

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**for the Scottish Human Rights Commission**

The Scottish Human Rights Commission (SHRC) was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland. The Commission supports Scotland’s National Action Plan on Human Rights (SNAP) and contributes to the Adequate Standard of Living Human Rights Action Group in raising awareness of economic, social and cultural rights in Scotland.

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**INTRODUCTION AnD EXECUTIVE SUMMARY**

The Commission, and many of our partners working together on Scotland’s National Action Plan for Human Rights (SNAP), believe that human rights provide both a legal and conceptual foundation to social justice, as well as the means to put it into practice. Human rights are non-political, international legal standards; they are also a set of values and principles that can be applied outside the courtroom, throughout the planning and delivery of public policy and services.

The international human rights system, and in particular the International Covenant on Economic Social and Cultural Rights (ICESCR), provides both a minimum floor and progressive legal standard for social justice. Tackling poverty through rights based budgeting de-politicises what it is a matter of law, rather than viewing it as a matter of charity, principle or political aspiration.

As part of the Commission’s contribution to SNAP and as a member of the “Adequate Standard of Living” Human Rights Action Group, this paper elaborates on the principles and practice behind human rights budgeting and budget analysis. It seeks to prompt a discussion on how human rights can complement and build on approaches to Equality Budgeting and Participatory Budgeting already developed in Scotland as a means to practically achieve the realisation of economic, social and cultural rights and create a fairer Scotland.

*Getting It Right? Human Rights in Scotland*, a three-year scoping exercise undertaken by the Scottish Human Rights Commission and published in 2012, concluded:

[I]n terms of structural steps, that is the operation of law and institutions, references to human rights were frequent and explicit in the Scottish context. *However, regarding process steps, that is the enactment of policies and strategies, very few are currently rights based in nature….*

The Scottish budget is not rights-based. The public budget is the principal economic policy document of any government. Effective realisation of human rights in Scotland cannot occur unless that budget is brought within the human rights framework.

Currently, the Scottish Government is mandated to develop and implement Equality Budgeting so as to more effectively challenge discriminatory practices and further equality. The processes that have been developed to produce the annual Equality Statements accompanying the budget represent very important advances for the realisation of social justice in Scotland. These include:

* A central concern for the most vulnerable in Scottish society;
* A recognition that the budget should be used to fight discrimination and advance equality;
* The gathering and analysis of a broad range of data to provide evidence on which to base the design of policies, plans and programmes, and to monitor the impact of the same on equality populations in the country;
* A focus not simply on the intended, but more importantly the actual, impact of policies and the budget on vulnerable groups; and
* The involvement of affected populations in designing and assessing the impact of policies, plans and programmes.

Human rights budgeting could build on these and other critical elements of Equality Budgeting. Indeed, these elements would be essential if the public budget were to be brought within a human rights framework.

Additionally the Community Empowerment (Scotland) Act 2015 includes a new power for Scottish Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the use of participatory budgeting.

A human rights framework, building on Equality and Participatory budgeting, would add value to efforts to realise social justice in Scotland. This added value would include:

* Ensuring that the principal economic policy document of the government is developed and implemented not simply in line with the priorities of a particular government, but in keeping with the human rights law that binds all governments, regardless of who is in power;
* Ensuring that the government gives appropriate priority within the budget to spending on critical areas such as health, education, access to justice and work; and
* Focusing not only on who has access to critical government goods and services, but on continually enhancing the availability, accessibility and quality of those goods and services.

The following pages address the rationale for undertaking human rights budgeting (Section I), and define what is meant by that term (Section II). Central to effectively implementing such budgeting is an understanding of what international human rights law has to say about governments’ budgets; Section 3 is devoted to elaborating on those standards. Numerous actors are involved in the formulation and execution of the budget, and these actors have specific responsibilities with regard to the realisation of human rights through the budget. These responsibilities, and when they arise, are spelled out in Section IV.

Woven into the following sections are references to Equality Budgeting where there is an overlap between processes adopted for Equality Budgeting and ones that would be essential to Human Rights Budgeting. Finally, it includes a few examples from other countries where governments have incorporated human rights concerns into budget decisions.

We are grateful to Ann Blyberg for her work in producing the following paper as an important contribution to this agenda.

 

Professor Alan Miller

Chair, Scottish Human Rights Commission

**1. Why do human rights budgeting?**

All public budgets must be formulated, executed and audited within the framework of law. Many of the relevant laws speak to finance, to such issues as revenue-raising and spending authority. At the same time, governments that have ratified international human rights treaties are bound by the obligations spelled out in those treaties, and they comply with those obligations through the development and implementation of laws, institutions, policies, plans—and public budgets. In other words, the body of law guiding governments in formulating and executing their budgets necessarily must include the norms and standards in international human rights declarations and treaties they have ratified.

To look at it from a slightly different perspective: Governments’ budgets, while comprising technical processes, are also political documents. They are shaped by the political debates within a country and embody the values of the decision-makers and, ideally, the people of the country. When a government is committed to values of social justice and equality, as is the Scottish Government, the public budget should mirror those values. The Equality Budgeting process pursued by the government is indeed a critical reflection of those values.

Given the concerns and processes represented in the Equality Budgeting, an obvious question arises: Why do “human rights budgeting”? What would be the value added to the political and social processes of Scotland by pursuing human rights budgeting?

In short, human rights speak to the most compelling, fundamental values in human society (which include equality and non-discrimination), and at the same time they are embodied in laws. International human rights treaties, and national human rights law, provide a consistent and legally-enforceable framework for successive governments, no matter the party in power.

Moreover, the norms and standards contained in international human rights treaties represent a well-considered appreciation of the meaning of justice and equality, and how those can best be realised by governments. They commit governments to prioritize the realisation of the rights to health, education, access to justice and numerous other rights. They commit governments to consistently aim higher, to systematically work to enhance the quality of life of all people.

While human rights are often thought of as inchoate aspirations, in reality international human rights law as it has developed over the past several decades contains detailed standards for governments as they seek to realise a broad range of rights. As such, they can provide invaluable, concrete guidance to governments committed to values of social justice and equality—in this case, through the public budget.

**2. Human Rights Budgeting and Budget Analysis – what are they?**

To better understand the implications of human rights law for governments’ budgets, it is helpful to think of two complementary processes: one, human rights budgeting; the other, human rights budget analysis.

**2.1:** *Human rights budgeting* is a process of developing and executing a public budget in a way that is sensitive to human rights standards and the government’s human rights obligations, a process which aims to arrive at a budget that is designed to effectively realise people’s human rights. The process of human rights budgeting is particularly relevant to the formulation of the budget (See IV.B. 1, below).

On its own, human rights budgeting is not sufficient for realizing rights; it must be part of a larger process. Preceding the development of the budget must be the development of policies, plans, laws and regulations that are sensitive to human rights norms and standards. The budget should then be formulated with the aim of realizing the programmes set out in the policies and plan.

The Equality Budgeting that the Scottish government has adopted follows this same process of examining policies, plans and programmes to ensure that they have, in that case, been developed with equality considerations front and centre. The budgets are then developed to enable the realisation of the policies, plans and programmes.

**2.2:** *Human rights budget analysis:* The formulation and execution of a budget that is designed to comply with human rights norms and standards is not sufficient for the budget to be effective in helping realise rights. Implementation of any budget should go hand-in-hand with a process of monitoring and assessing the impact of the relevant policies, plans—and budget—to determine whether and how they fall short in the aims that have been set for them.

 Human rights budget analysis comprises monitoring and analysing the public budget to assess the government’s compliance with its human rights obligations, all with the goal of making public budgets more effective in helping to realise human rights. Human rights budget analysis is most useful in monitoring expenditures (and the intake of revenue) as well as auditing and evaluating the impact of the budget.

Where a ministry, department or agency (MDA) has identified a shortcoming in an area (for example, if it finds that potable water is not available to specific communities, and thus the right to clean water is at risk), human rights budget monitoring and analysis will not, on its own, allow for a full diagnosis of the causes of the situation. Budget monitoring and analysis must be considered hand-in-hand with other data (e.g., intestinal diseases in the community, results of testing of water quality, distance of households to water points). However, while it can rarely provide a full, definitive answer, budget analysis findings can provide (sometimes very important) evidence as the causes of the situation (for example, inadequate expenditure on water system maintenance), and can help pinpoint what needs to be done if the government is to rectify it.

*Getting It Right? Human Rights in Scotland* stresses that many of the laws and institutions, and some policies, in Scotland have been developed within a rights framework, and yet a range of outcomes are unacceptable. In other words, there appear to be problems in the implementation of good laws and policies. It is in such situations that human rights budget monitoring and analysis could be of particular use—to help identify what has gone wrong, and where.

*A learning process*

Effective human rights budgeting, and human rights budget analysis, draw on a range of knowledge and expertise, and thus necessarily involve a variety of governmental actors. They require a good understanding of national, regional and international human rights norms and standards, and should involve those who have this understanding. The latter could come from, for example, a national human rights institution or the attorney general’s office. Similarly, effective human rights budgeting and budget analysis cannot happen in the absence of well-formulated policies and plans and thus must include those knowledgeable with both the process of developing such policies and plans as well as the content of the policies and plans for the relevant sectors. And, of course, they require a thorough understanding of the process of developing, executing and evaluating governments’ budgets. Therefore, the project of undertaking human rights budgeting should include actors with the requisite knowledge, who would be individuals from the ministry of finance, and those charged with developing and monitoring budgets within line ministries.

Because individuals from different parts of government in most cases do not work with each other on a regular basis, they are not likely to be conversant with the knowledge and expertise of actors from the other areas of government. Thus, human rights budgeting will necessarily entail developing and sustaining a process of regular consultation among these different government ministries, departments or agencies, together with a commitment on all sides to mutual learning.

Civil society should be involved in this process, not simply because people have a right to participate in public affairs, but because many have important experience and expertise to bring to the process. Moreover, involvement in this process will help civil society too to learn more about how to realise human right through the public budget.

N.B. Mention is made in this paper to human rights-related allocations or expenditures. It could be argued that almost all government allocations and expenditures are human rights-related, if they are intended to ensure a stable, functioning society, which is a *sine qua non* for the realisation of rights. However, such a broad understanding of the term would fail to acknowledge that while it can sometimes be difficult to draw a hard and fast line separating “human rights-related” allocations and expenditures from other allocations and expenditures, certain types of spending are more directly conducive to the realisation of people’s rights. In these pages, references to “human rights-related” allocations and expenditures refer to the latter. Thus, for example, the budget of ministries of health, education or justice would be of this nature.

For other ministries, perhaps a ministry of public works, a close scrutiny would need to be undertaken to determine if, for example, significant ministry funding is being directed to construction, operation and maintenance of water and sanitation systems, thus helping to realise the rights to water and sanitation.

**3. International Human rights standards as applied to governments’ budgets**

While only infrequently speaking directly about public finance and budget issues, international human rights norms have sweeping and detailed implications for the budget. The realisation of all aspects of all rights requires the commitment of government resources—sometimes a few, more often, substantial resources. International human rights norms call on government to desist from certain types of actions and to undertake a range of others. In the latter case, where the government is called upon to do something (called government’s *positive* obligations), the commitment of resources is an essential way for government to comply with these obligations and realise rights. The following paragraphs summarize the norms and standards that have the most direct and significant bearing on the public budget.

**3.1**: International human rights law guarantees people the right to participate in public affairs and have access to relevant government information. With regard to the budget this means:

* Government should establish and support channels and forums by which ordinary people, as individuals or through organizations and institutions, can have a say in the formulation, enactment, execution and audit of the public budget.
* In order to participate in an informed and effective manner, people need information. The government should make publicly available important budget documents in a format that is readily understandable to a broad range of people. It should at the same time gather and make available key data necessary to understand the implication of the budget for individuals and groups in society.

The Equality Statements prepared to accompany each year’s budget in Scotland reflect an already existing concern within the Scottish Government about the availability of information and the participation of affected groups in the formulation and implementation of policies and budgets. There are numerous references to such participatory processes in the *Equality Statement, Scottish Draft Budget 2014-15*, only one example of which is:

The Health and Wellbeing portfolio has a central role in helping people to live longer, healthier lives… This is achieved … by involving communities in the design and delivery of care … (p. 11)

In other words, the Scottish Government is already making substantial efforts to comply with this obligation.

**3.2**: International human rights norms guarantee equality and obligate the government not to discriminate against groups or individuals. With regard to the budget this means:

1. Revenue must be raised in a way that does not discriminate against any specific group on such grounds as race or ethnicity, gender, income, or sexual orientation (unless justification for the differentiation is reasonable and objective). Revenue-raising schemes have differential impacts on different populations. These impacts should be understood and be compliant with human rights norms.

The differential impact of revenue-raising schemes is recognized by the Scottish Government. The *Equality Statement* for 2014-2015, for example, says:

‘As part of the UK Government’s welfare reform programme, Council Tax Benefit (CTB) was abolished in its Welfare Reform Act 2012. This was always likely to have a negative impact on vulnerable groups (including those with protected characteristics), as those who received CTB were among the most financially vulnerable and included groups such as older people, younger unemployed people with low savings, disabled people, single parents and people who were unable to work because of caring commitments’. (p. 94)

1. Allocations and expenditures must not discriminate on these same bases, and should be implemented in such a way as to enhance equality.

Understanding the impact on individuals and groups of allocations and expenditures requires the gathering and analysis of a range of disaggregated data. The gathering and analysis of relevant data should ideally happen before a policy, programme or budget is implemented, but should also be gathered to assess the impact of the same. The Scottish Government understands the central role of such data-gathering and analysis, as is evidenced in the Equality Budgeting experience. The 2014-2015 *Equality Statement*, for example, says:

‘In developing the Scottish Government Parenting Strategy, a wide range of evidence was collated under an outcomes framework. This broad evidence base informed the development of the strategy and underpinned the EQIA. As a result, the funding streams are aligned to the equality strands and have changed practice and are focused on improving equality outcomes’. (p. 39)

1. A government may allocate additional funds to programmes benefitting historically disadvantaged groups in order to enable such groups to enjoy their rights on a par with others in society—until such time that these groups have reached that parity.

**3.3**: Public budgets are most relevant in enabling the government to comply with its *positive* obligations, mentioned above. With regard to these obligations, international law recognizes that:

1. certain rights or aspects of rights (most commonly civil and political rights, such as the right to life, to freedom of expression, to a fair and public hearing when charged with a crime, etc.) are to be realised immediately, without regard to any limitation on resources; and
2. another set (most commonly economic and social rights, such as the right to work, to health, education, water and sanitation) may take longer to realise, because the government has limited resources available to it.

**3.3.1**: *Obligations related to rights that are to be realised immediately:* International law says that governments must take “appropriate” measures to realise these rights. Appropriate measures are understood to include “adequate” and “effective” ones. This same language is echoed in *Getting It Right? Human Rights in Scotland:*

‘The full realisation of human rights requires the adoption of effective measures or processes such as the development of appropriate strategies and policies, and the allocation of adequate resources’. (Executive Summary, p. 6)

What do these phrases mean for the public budget?

* *Appropriate* allocations and expenditures are those well-suited to realise a specific right (for example, the right to a prompt and fair trial), are responsive to the needs that people have articulated, and are not unnecessary or wasteful.
* Government uses the budget in an *effective* manner to realise human rights when its policies, plans and programmes as well as corresponding budgets are carefully designed and implemented to best realise the rights in question. The choice of programmes, for example, should be evidence-based, meaning that they should have been assessed and have been shown to have a positive impact on the realisation of the rights. Budget expenditures are *effective* when that they actually help realise people’s rights.

The Scottish Government already recognizes the importance of evidence-based decision-making. An example, from the *Equality Statement* for 2014-2015, relates to women offenders:

‘This approach reflected studies conducted by Scottish Government analyti­cal and policy officials which had examined the available research into the effectiveness of various interventions in reducing reoffending. This review noted that services which provided practical support, personal interaction, and addressed the individuals practical needs before progressing to more complex interactions, could be particularly effective in assisting women offenders to desist from crime. Mentoring services could develop these qualities in a way that was practical, flexible and direct’ (p. 51).

* *Adequate* allocations and expenditures are those that are sufficient for the realisation of rights. The budget for programmes necessary to realise specific rights should be of such a size that (assuming the programmes are appropriately designed) MDAs have the necessary resources to properly implement them—and then fully spend the allocated funds.

The centrality of adequate funding for the realisation of rights is recognized, for example, in *Getting It Right?*, which:

… notes that the Children’s Hearings System is widely praised, but cites recommendations to increase its funding to reflect an increasing number of cases. (Executive Summary, p. 21).

“Adequacy” has a bearing not only on the adequacy of the budget of specific MDAs, but potentially on the government’s budget as a whole; that is, the budget as a whole must be adequate to allow for the realisation of rights.

**3.3.2**: *Obligations related to rights whose realisation is conditioned on availability of resources:* The obligations on governments in these cases are to take steps to a) *progressively realise* the rights in question; b) *using the maximum of available resources.* (This language comes from article 2 of the International Covenant on Economic, Social and Cultural Rights). The implications of these two phrases for the government’s budget can be summarized as follows:

**3.3.2.1**: *Progressive realisation:* Progressive realisation of rights goes beyond what is called for in Equality Budgeting. It means that government cannot be complacent with the current state of affairs, even if all are being treated equally, and cannot take steps backwards in the realisation of rights, even if all would suffer equally. The obligation means:

* Governments are obligated to continuously improve conditions, and to move as expeditiously and effectively as possible towards full realisation of the relevant rights. This means that resources allocated to the realisation of economic, social and cultural (ESC) rights should increase at a rate at least proportional to any overall increase in resources.
* Governments must abstain from taking deliberately retrogressive measures. With regard to the public budget, this means, for example:

- Government should not adopt or execute a budget that has a direct or collateral negative effect on the enjoyment of rights; and

- A government should not reduce public expenditures devoted to implementing relevant rights in the absence of adequate compensatory measures aimed to protect persons adversely affected by the reduction.

* When government feels compelled to adopt a retrogressive measure, such as cutting a programme or sector budget, it must prove that it has done so only after the most careful consideration and after having used the maximum of available resources to avoid doing so.
* In times of an economic or other crisis, the measures adopted must protect the most vulnerable members of society, and ensure certain minimum levels of enjoyment of rights (for example, protection against hunger (related to the right to food), access to basic health care (the right to health), and universal, free primary education (the right to education)).

While not explicitly adopting a human rights budget, the Scottish Government has shown sensitivity to this obligation in, for example, *One Scotland: The Government’s Programme for Scotland 2014-2015,* where it says:

191. Analysis published on 7 April 2014 estimates that the cumulative impact of the UK Government’s welfare reforms over the six years to 2015-16 could result in welfare expenditure in Scotland being reduced by around £6 billion, of which it is estimated that £1 billion relates directly to children. Not only does this directly affect the most vulnerable in our society, it also places greater demands on the services that people turn to for support, such as health and housing.

192. The Scottish Government is committed to challenging the UK Government for fairer welfare reform and to take action to ensure that safeguards are in place for those who need them most.

* Once resource constraints disappear and the economy recovers, government must rescind any restrictive measures taken and repair adverse effects on the population, in particular among vulnerable groups.

*Child Support Grant in South Africa – an example of progressive realisation*

The Child Support Grant (CSG), a cash transfer programme in South Africa designed to improve the situation of the poorest children and families, was first implemented in 1998. In line with the mandate of progressive realisation of economic and social rights in the South African constitution, over the years the reach and impact of the CSG has progressively expanded, through increases in the age limit for eligibility (from seven to eighteen years), raises in the income cut-off point so that the grant more effectively reaches all poor children, increases in the size of the grant, and adjustments in benefit levels to account for inflation. In 1998 the grant was R100 per month; as of 2012, it was R280 per month. Between 2007 and 2013, the budget for the CSG grew approximately 5.9% a year. The CSG now reaches over ten million children each month, and is considered one of the most effective social protection systems in the world.

Government was encouraged along this path of progressive realisation of ESC rights by civil society organizations which used budget analysis to show how inflation had eaten away at the value of the grant. The government subsequently adjusted the benefit to take account of inflation. Similarly, as civil society called on government to expand the reach of the CSG by increasing the size of the grant and raising the age eligibility level, it suggested ways the government could secure the resources necessary for the expansion.

**3.3.2.2**:: *Use the maximum of available resources* to realise rights: This human rights obligation goes well beyond what is required by Equality Budgeting. It means that:

* Government must do the maximum it can to mobilize resources within the country to realise rights (which obligation has critical implications for budget revenue). Moreover, it should seek international assistance when national resources are inadequate.

As one example of maximizing resources for rights-related areas, the Scottish Government has sought innovative ways to raise revenue for affordable housing. In *One Scotland: The Government’s Programme for Scotland 2014-2015*, it points out that it has:

* Worked with the Scottish Futures Trust and a number of Councils to develop and deliver variants of the successful original National Housing Trust initiative, which has levered over £200 million of development so far and is on track to deliver over 2,000 additional homes for affordable rent.
* Pioneered the use of the Charitable Bond mechanism in Scotland as a channel for loan investment to support the financing of more affordable homes and to generate grants for the funding of regeneration projects by charitable organisations. (p. 66)

* Government must give due priority to economic, social and cultural (ESC) rights in the use of resources; that is, allocations and expenditures on ESC rights-related areas should be given due priority within the budget.
* Government expenditures must be efficient. Wasteful expenditures are a failure to make maximum use of available resources. This efficiency criterion also applies to revenue collection. Inefficient revenue collection leaves the government without the resources necessary to realise rights.

Again, without specific reference to human rights obligations, the Scottish Government has sought to use existing resources in a way that best helps realise people’s rights. In the *Equality Statement* for 2013-14, for example, it says:

Over the period from 2010-11 to 2014-15, we will reduce the Scottish Government’s Administration budget by £69 million, that is approximately 25 per cent. In doing so, our intention is to help mitigate the impact of the UK Spending Review settlement on frontline public services and demonstrate leadership at a time when all public sector bodies are being asked to operate within an increasingly tight financial settlement (p. 62).

* Government expenditures must be effective; that is, the impact of the expenditures must be such as to actually help realise ESC rights.

The Scottish Government has made wide-ranging commitments to assess the impact of expenditures. The Introduction to the *Equality Statement* for 2014-15, for example, says:

The budget process is a dynamic one and the Equality Budget Statement (EBS) can only capture the analyses and assessment undertaken to this point. Individual policies and programmes that are made possible by these spending plans will be subject, as appropriate, to assessment for their equality impact in due course (p. 4).

*The maximum available resources and the right to housing in Belfast*

The Seven Towers is a social housing pro­ject in an area of North Belfast with a major­ity Cath­olic population. In 2002 80 percent of those in “housing stress” (i.e., with the greatest need for housing) in North Belfast were Catho­lic. By 2008 the number of Catholics so positioned had increased, while the city had also experienced a significant in­crease in the numbers (although still much smaller) of Protestants in “housing stress.” The residents of the Seven Towers have regularly reported mold on the walls of their flats as a result of dampness. In winter the flats stay colder than what is considered healthy by the World Health Organization (WHO). Insulation is poor and the heating system is inefficient and expensive to run.

The Northern Ireland Housing Executive (NIHE) manages social housing for the Department of Social Development. In October 2007 NIHE made known that it planned to clad (fit with a PvC rain screen) the exteriors of the Seven Towers buildings at a cost of £7million. Its objectives included upgrading the health of residents and safety of the buildings, providing accommoda­tion that met the needs of residents, and reducing the costs of future maintenance of the exterior of the buildings (although there had been no reports of problems with structural integrity). When Seven Towers residents asked NIHE how the cladding would help heat retention and reduce damp in the flats, NIHE responded that it was not intended to do that.

In March 2010, in response to an inquiry from a member of the Legislative Assembly, the Minister for Social Development indicated that NIHE was using a more efficient (natural gas) heating system in many other social housing units in Northern Ireland. The average cost per unit of replacing the type of heating system used in the Seven Towers with the natural gas system would be £5,204; and the average annual savings in heating costs as a result of the switch would be £193 per unit.

A civil society organization (Participation and the Practice of Rights), using these figures, calculated that:

* It would cost approximately £1,998,336 to replace the existing heating system with the natural gas system. This amounted to 28 percent of the cost of the cladding plan; and
* Altogether, Seven Towers’ residents would save £74,112 annually in heating costs.

The Seven Towers’ residents and PPR concluded that the government, by investing in a project that would not be effective in addressing the issues of habitability and affordability, was failing to use the maximum of available resources to realise their right to housing.

In response to civil society concerns, the NIHE adjusted its cladding proposal to ensure that the cladding would be more effective in addressing the issues of warmth and dampness.

* Funds allocated in the budget for ESC rights must not be diverted to non-ESC rights areas, and funds allocated for those rights must be fully spent.

Budgets for needed rights-related programmes may go underspent, for example, because the intended beneficiaries do not, for a variety of reasons, take advantage of the opportunities provided by the programmes. The Scottish Government spots such a potential situation in the following from the *Equality Statement* for 2014-15:

Established in 2008 the CCF [Climate Challenge Fund] was refreshed in November 2012, with a specific focus on increasing the uptake of fund and ensuring this is accessible to the most disadvantaged communities, including communities that fall in the lowest 15 per cent of the Scottish Index of Multiple Deprivation, Black and Minority Ethnic Communities and young people (p. 62)

*Equality and the use of maximum available resources: A case from the City of Buenos Aires*

The Constitution of the City of Buenos Aires, Argentina, guarantees education for all children from 45 days of age. Despite the guarantee, there are long waiting lists to get into school. Those waiting lists are longer in the poorer areas of the city, where there is more demand, and classrooms are more crowded. In 2007, after government refused to correct this situation despite significant public attention to the issue, a civil society organization, the Asociación Civil por la Igualdad y la Justicia (ACIJ), filed a case in the courts. Part of the evidence the organizations put before the court was findings from budget analysis, which showed that despite the needs in the poorer areas, more of the Department of Education’s infrastructure budget was being directed to the better-off areas of the city. In addition, although the government claimed that it did not have the resources to build more classrooms in other areas, analysis of spending showed that the Department had consistently under-spent its infrastructure budget over a number of years. Thus, there was funding available to rectify the situation.

After some extended litigation, the court agreed that the right to education of children in the city’s poorer areas was being violated by this discriminatory practice, and that the government was failing to use the maximum of available resources to rectify the situation. After appeals by government, and as the highest court was getting ready to rule against the government, a new city government was elected that made a commitment to develop a plan to construct new classrooms and extend access to early childhood education to all children in the city. Since 2011 the Department of Education of the City of Buenos Aires has been implementing the plan, which will increase access to early childhood education for children in the poorer parts of the city.

* Because corruption is an inefficient use of available resources, failure to curb corruption is a failure to comply with this obligation.

**4.** **Human Rights budgeting: Who and What does it affect?**

**4.1:** Human rights budgeting and human rights budget analysis implicates all **actors** in the budget process.

* Ministries of Finance (MoFs) do not generally see their job as related to human rights, and yet, because the budget is a central tool available to governments for realizing rights, Ministries of Finance have essential responsibilities for ensuring that budgets are formulated and executed in a way that best realises rights.
* Line ministries (such as the Ministry of Health, Education, etc.), as well as government departments and agencies, have basic responsibilities for ensuring not only that the content of their budgets accord with relevant human rights norms and standards, but also, where their budgets are directly relevant for the realisation of rights, that they are accorded “due priority” by the MoF.
* Sub-national governments, whether in a centralized government or federal system, often have primary responsibility for critical service delivery essential for the realisation of rights. They should thus be aware that they are obligated to realise rights just as the national government is. The national government has the added responsibility of monitoring sub-national governments to ensure that they are complying with their human rights obligations, and to take measures, where necessary, to ensure that people living in different areas of the country enjoy their rights on an equal basis (regardless, for example, of different revenue-raising capacities of sub-national authorities).
* It is not simply the executive that has responsibility for the public budget. The legislature has human rights obligations and should play a meaningful role in reviewing and voting on the executive’s budget proposal so as to be able to ensure that the budget complies with those obligations.
* A country’s Supreme Audit Institution (SAI), as part of government, shares in the government’s obligations to realise rights, in its case as part of its tasks of analysing and assessing how the government has implemented the budget.

**4.2:** Human rights budgeting and human rights budget analysis are also relevant for different **stages** of the budget process.

The flow chart on the next page illustrates the process of human rights budgeting (II.A, above): developing, spending and auditing/evaluating a public budget within a human rights framework. Some discussion on what happens at each stage of human rights budgeting is set out in the pages that follow the flow chart.

Human rights budget monitoring and analysis (II.B, above) is discussed in more detail (along with an accompanying flow chart) under expenditures and audit/evaluation (4.2.3 & 4).

**flow chart 1:**

**The process of human rights budgeting**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Formulation (IV.B.1.a & b)** |  | **Enactment (IV.B.2)** |  | **Execution (IV.B.3.a & b)** |  | **Audit and evaluation (IV.B.4.a - d)** |
| 1. Develop-ment of human rights-sensitive policies and plans |  | 2.Develop-ment of budget in step with policies and plans |  | Review and amendment of executive’s budget using human rights framework  |  | 1. Revenue intake, expenditure of budget, using a human rights framework |  | 2. Monitoring and analysis of revenue and expenditures using human rights framework  |  | 1. Audit of revenue and expenditures using human rights framework  |  | 2. Review of SAI report using human rights framework  |
| **Relevant actors** |
|  |
| * *Policy and planning staff within line ministries*
* *Human rights institutions/ actors within government*
* *Civil society*
 |  | * *Budget staff within line ministries and in MoF*
* *Policy and planning staff within line ministries*
* *Human rights institutions/*

*actors within government** *Civil society*
 |  | * *Legislators*
* *MoF and budget staff within line ministries*
* *Civil society*
 |  | * *MoF, line ministries, departments and agencies*
 |  | * *MoF*
* *Internal auditors/ other MDA monitoring and evaluation staff*
* *Civil society*
 |  | * *Supreme Audit Institution (SAI)*
 |  | * *Legislators*
* *SAI*
* *Civil society*
* *Line ministries, departments and agencies*
* *MoF*
 |

**4.2.1 Formulation stage**

**4.2.1.1**: Development of policies, plans and programmes: Those responsible for formulating the budget, whether in the MoF or other MDAs, should, first of all, ensure that the budget for which they are responsible is grounded in policies and plans that are human rights-sensitive. *Getting it Right? Human Rights in Scotland* reports on a scoping exercise that identified where policies were already human rights-sensitive—and where they were not.

 Prior to developing plans and programmes, the relevant ministries should have collected and analysed data to identify where relevant government services are failing to reach particular populations, and designed their plans and programmes so as to more effectively reach those populations. This means, for example, that a policy in the health arena would, in line with international human rights standards, seek to ensure that health care is available to the whole population, that it is physically accessible to all, and that it is affordable and of good quality. Plans to implement the policy should be based on data that the ministry has collected informing it where the quality of health care services falls short or where users must travel significant distances to access needed services.

 Again, *Getting It Right?* has identified a number of such “gaps” in the realisation of rights.

**4.2.1.2:** Formulation of budget: The MoF and those responsible for formulating the budget in other MDAs should then apply the standards set out in section II, above, to ensure that the funding in the budget has been determined in line with the government’s human rights obligations.

Examples of questions budget developers should ask themselves are: With regard to a right that is to be immediately realised, is the allocation proposed appropriate and adequate to ensure immediate realisation of the right? Has the government secured the maximum available resources to direct to programmes that are important for the realisation of ESC rights? If the budget has grown from the previous years, do the allocations allow for at least comparable growth in funding for ESC rights-related areas? Does the budget overall give due priority to ESC rights-related areas? Has the government determined that the formulae it uses to disburse funds to sub-national government units is non-discriminatory and will enhance equality among different areas of the country?

The following are a few decisions a government might take during formulation of the budget that would have negative implications for its compliance with its human rights obligations:

* It decides to introduce a new revenue-raising scheme without adequately assessing its impact on different groups, particularly vulnerable populations, and adjusting it as necessary to ensure that those populations’ rights will not be negatively affected;
* It decides to cap public expenditures, without adequately taking into account the effect of that decision on spending for key human rights-related areas such as education and health;
* It fails to adequately cost out programmes in human rights-related areas, thus threatening the effective implementation of the programmes;
* It fails to give due priority to ESC rights-related areas in the budget;
* It makes cuts in allocations for human rights-related areas without adequately assessing the impact of the cuts on programmes essential for the realisation of rights, and adjusting cuts to minimize negative impacts, particularly on vulnerable groups; or
* It fails to evaluate the impact of the formulas it uses to disburse funds to sub-national government units on *per capita* availability of funding in different areas of the country.

*Participatory budgeting*

In human rights budgeting, channels and forums should be available for civil society to have input into the formulation of the budget. Although such channels and forums can take numerous forms, one particularly striking example of such is what is known as participatory budgeting, in which communities have a role in defining what a government’s budget—particularly all or part of the capital or development line items of the budget—is spent on. In such situations, community meetings are called, proposals for priorities for funding are made and voted upon, and the results incorporated into the government’s budget. Various of Scotland’s initiatives to involve communities in policy, programme and spending decisions amount forms of participatory budgeting.

**4.2.2 Enactment stage**

The legislature, whether in its finance or budget committee, or committees overseeing specific sectors (such as health or education), should ask itself questions similar to those posed above for the executive. The legislature should also ensure that civil society can play an active role in the budget review process through, for example, being allowed to attend and, where appropriate, present evidence in hearings on the budget.

The following are a few of the problems that often arise in the enactment process that have implications for the legislature’s compliance with its human rights obligations:

* Most importantly, legislators are often not aware of their human rights obligations as they relate to the budget;
* Legislators do not have adequate capacity available to them to understand the implication of the budget for human rights;
* The legislature is provided inadequate time to review and assess the executive’s budget proposal; or
* The legislature does not have the authority, either in law or in fact, to modify the executive’s budget proposal.

**4.2.3 Execution stage**

**4.2.3.1:** Execution of the budget: Even if a budget has been formulated with sensitivity to human rights concerns and has been appropriately reviewed and modified by the legislature, challenges can and often do arise in the process of execution. Some of these problems have human rights implications. They include ones where:

* Government fails to fully collect the revenue due it;
* Government underspends allocations in human rights-related areas;
* Various MDAs use a faulty procurement process, resulting in the government’s spending more than it should for goods and services, or spending for poor quality goods and services;
* Resources are otherwise misused or abused resulting in maladministration, theft, fraud and corruption. These first four situations are examples of a failure by government to use the maximum of available resources for the realisation of ESC rights; and
* Funds that have been appropriately allocated are spent disproportionately for the benefit of favoured areas of a municipality or country, resulting in discrimination on the basis of income, ethnicity or other prohibited grounds.

To avoid human rights-related problems such as these, ministries should have in place sound expenditure management processes, to ensure that funds are released and spent on time, spent efficiently and effectively, and so on. They should also have sound performance management processes, to ensure that civil servants work efficiently and effectively, and are cognizant of the human rights implications of their work.

**4.2.3.2:** Monitoring and assessing expenditures during execution: Because problems in design and execution of budgets arise frequently, monitoring and analysing expenditures is essential for ensuring that a budget is being spent appropriately and that its impact is such as to help realise human rights. Monitoring is also essential for informing the proper formulation of future years’ budgets.

This monitoring and analysis, which is represented as one step in Flow Chart 1, in reality involves a number of processes. These processes can be broken out and illustrated by Flow Chart 2:

**flow chart 2:**

**using The process of human rights budget monitoring and analysis**

**to assess execution as well as the audit and evaluation of the budget**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |   |  |   |  |   |  |   |  |   |  |
| 1. Identification of an expenditure or performance problem |  | 2. Analysis: Is it a human rights problem? |  | 3. Analysis: Is the budget an aspect of the problem?  |  | 4. If it is: Analysis of the budget |  | 5. Statement of findings in human rights law and budget terms |  | 6. Use of find-ings to inform future budget formulation and execution |
| **Relevant actors** |
|  |
| * *Internal auditor*
* *Monitoring and evaluation staff*
* *Civil society*
 |  | * *Internal auditor*
* *Monitoring and evaluation staff*
* *Human rights institutions/ actors*
* *Civil society*
 |  | * *Internal auditor*
* *Monitoring and evaluation staff*
* *Civil society*
 |  | * *Internal auditor*
* *Civil society*
 |  | * *Internal auditor*
* *Monitoring and evaluation staff*
* *Civil society*
 |  | * *MoF*
* *Line ministries*
* *Civil society*
 |

Civil society plays an active role in many countries in monitoring and analysing the government’s budget, but government should fulfil its own responsibilities in this regard through sound political and administrative leadership and the use of internal auditors and other staff responsible for monitoring and evaluation. These staff should have knowledge not simply about financial accounts, but also about the government’s human rights obligations, so as to be in a position to alert the MDA if the government is falling short in complying with them. For example:

* An internal auditor may undercover weaknesses in the procurement process. Alternatively, s/he may notice that the MDA is significantly under-spending allocations. The auditor should present his/her findings not only in financial terms, but also human rights terms. For example: Under-spending or spending inefficiently represents a failure by government to spend funds appropriately (see pp. 8, above), or to use the maximum of available resources to realise economic and social rights (see p. 11, above)
* Some of this monitoring is longer-term, requiring analysis beyond a single fiscal year. The negative impact on vulnerable groups of specific revenue-raising schemes, for example, may not become immediately apparent, but a tax incidence analysis undertaken a couple of years after introduction of the scheme may. Again, any such findings should be presented by the monitor not simply in financial terms, but in human rights terms—in this case, as potential evidence of discrimination, because of the disproportionate impact of the scheme on specific groups.

An example of how the process in the flow chart would work:

* *Expenditure or performance problem:* The education ministry receives complaints from a number of local school committees that the necessary textbooks have not arrived, or where they have arrived, the numbers are fewer than expected.
* *Is this a human rights problem?* People have a right to education, which includes the right to education of a good quality. The lack of textbooks undermines the quality of education. Thus, this is a problem related to the right to education.
* *Is the budget an aspect of the problem?* Answering this question will require further research, as it may be unclear at first why there are too few textbooks or textbooks have not arrived as planned. If upon further discussions with local education departments, the ministry learns that the funds allocated for textbooks were inadequate to buy the full number of textbooks required, that would point to a potential budget element of the problem.
* *Analysis of the budget:* Upon analysing the budget, the ministry of education may learn that the cost of the textbooks was higher than had been assumed in developing the budget. Upon closer inspection the ministry identifies some flaws in the procurement process that resulted in the textbook contract’s being awarded to a contractor other than had been used in previous years—resulting in unnecessarily higher prices.
* *Statement of the findings in human rights law and budget terms:* The government, in failing to secure textbooks at the best possible price, had failed to use the maximum of available resources to realise the students’ right to education.
* *Use of findings to inform future budget formulation and execution:* The education ministry should correct the flaws in the procurement process to ensure that it buys textbooks at the best possible price and to align budget allocations with expenditures.

**4.2.4 Audit/evaluation**

Accountability is a fundamental human rights principle: Government is accountable to the people for how it exercises its powers and prerogatives—including with regard to the public budget. Budget accountability can be realised through a number of different forums and procedures, which include:

**4.2.4.1**: The Supreme Audit Institution (SAI) of a country, which plays a critical role in assessing the budget. SAIs are charged to ensure that the government’s budget is formulated and executed within the law. While most laws SAIs consider are of a narrow financial nature, these institutions have the authority to look beyond such narrowly-framed laws, and as part of their mandate could and should assess the government’s compliance with its human rights obligations. However, as of now, most SAIs are unaware that they should be undertaking such an assessment and are unfamiliar with the human rights framework and how to use it.

**4.2.4.2:** The legislature. International best practices say that SAIs should submit their report for review and action to the legislature. The legislature thus becomes an essential mechanism for accountability on the budget. Many legislatures, however, fail to undertake such a review, thus passing up an opportunity to assess the budget’s compliance with human rights norms and standards.

**4.2.4.3:** National human rights institutions, which have a mandate to assess a government’s compliance with its human rights obligations. This mandate should include evaluating the budget accordingly.

**4.2.4.4:** The courts. As guarantors of the fulfilment of rights, and overcoming traditional objections to their intervention in budget-related issues, courts are increasingly considering cases where challenges are brought to the way the government has formulated or executed the budget, and are issuing rulings that speak to a failure by government to meet its human rights obligations. (See Buenos Aires case study, above, p. 14). Courts thus are becoming an increasingly important forum for evaluation of government’s formulation and expenditure of the budget and its impact on the enjoyment of human rights.

**CONCLUSION**

The UK has ratified the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights. In doing so it has committed itself to taking appropriate measures to realise the rights in those treaties. While Scotland has taken steps to bring its laws and institutions in line with this commitment, it has not done so with regard to the most important economic policy document of the government—the public budget.

Despite this, it already has in place a number of the essential elements of human rights budgeting:

* Scotland has made an explicit commitment to social justice and equality;
* The government has supported the development and functioning of a broad range of participatory mechanisms that involve people in communities in influencing policies and programmes that affect them;
* The Scottish National Human Rights Commission, in *Getting It Right? Human Rights in Scotland*, and in *SNAP:* *Scotland’s National Action Plan for Human Rights*, has identified where gaps exist in the realisation of rights in the country;
* The government undertakes Equality Budgeting with its focus on equality and non-discrimination—key to a human rights approach; and
* The government gathers a broad range of data which it already uses to develop evidence-based policies, plans and programmes, and to monitor the impact of the same.

While the UK as a whole has the same international human rights obligations as does Scotland, it has not itself adopted human rights budgeting. Scotland could take the lead in this regard, as it has done in a number of other areas that bear on the rights of people. Using information provided in this paper, Scotland should start a discussion on the steps to be taken to move towards fulfilling its international human rights obligations in the way that it manages the public budget.