



# **Human Rights Budget Work:** What, Why, How?

## **Briefing Paper 1: Human Rights Budget Work**

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*The budget “reflects the values of a country – who it values, whose work it values and who it rewards... and who and what and whose work it doesn’t.”*

Pregs Govender, 1996

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### **About this document**

Welcome to the first of six papers that explain the “what, why and how” of using human rights to create and scrutinise Scotland’s national budget. A glossary of terms is provided in appendix 1.

### **What is the national budget?**

The national budget is the blueprint for how any government invests in its priorities and is its most important tool for managing the economy. The national budget should include:

- how much money government intends to raise (*revenue*);
- who and/or where the money comes from (*sources*);
- how money will be allocated (*allocation*); and
- how money has been spent (*expenditure*).

### **What is human rights budget work?**

Human rights budget work is using human rights standards and principles to develop and analyse a budget.

### **Why are human rights relevant to the national budget?**

All governments must *respect, protect and fulfil* human rights. The way they generate, allocate and spend money plays a key role in this. You can’t guarantee the right to vote if you don’t have an effective electoral system and you can’t guarantee the right to habitable, accessible, affordable and secure housing without well-regulated public and private housing sectors.

Understanding how a government manages public money also helps to sort the reality from the rhetoric about its commitment to rights. If the

government has an obligation to do something specific then it must be reflected in the budget; it is not just something “nice to consider”. In line with human rights treaties, it is a legal obligation that binds all governments, regardless of who is in power.

Human rights budgeting recognises that budgetary decisions can have materially different outcomes for different groups. Government budgets are not always sensitive to this. In particular, the contributions that households, individuals (especially women) and communities make to the economy—by caring for people for example—are not always recognised because they are not bought and sold through the market. For this reason, it is not uncommon for budgets to reinforce systematic inequalities between groups—in particular between men and women—and to miss out on opportunities to use public financing to improve the position of disadvantaged and marginalised groups.

### **Why carry out human rights budget work?**

Human rights budget work helps progressively realise human rights. Good rights based laws and policies can also still result in unacceptable experiences of rights holders if they are not properly resourced. Human rights budget work can help identify why. Taking human rights standards into account when developing the budgets not a magic bullet. It can, however, help us to ask the right questions to support effective, transparent, fair and accountable use of national resources.

Human rights budget work also allows us to question who takes part in budget decision-making and how different groups in society are affected. It means that appropriate priority must be allocated to critical areas like health, social care, education, access to justice, housing and work. It also means focusing not only on who has access to goods and services, but on continually enhancing the availability, accessibility, affordability and quality of those goods and services.

### **What does human rights budget work involve?**

Human rights budget work includes two complementary activities: *human rights budgeting*, and *human rights budget scrutiny*.

**Human rights budgeting** involves using a rights based process to create a budget that reflects human rights standards. Before the development of the budget comes the development of laws, policies and plans that are also shaped by human rights standards. The budget should then be created to directly realise these laws, policies and plans.

**Human rights budget scrutiny** involves examining the budget to measure the government's compliance with its human rights obligations. The goal is to make public budgets more effective in helping people realise their human rights.

- **Papers 3 and 4 in this series provide more information about human rights budgeting and scrutiny.**

### **What are human rights standards and principles?**

Human rights provide a set of *principles* and *standards* to guide budgeting and scrutiny.

### **Human rights principles**

These ensure the budget process and decisions are *transparent* and *accountable*, providing *effective remedies* when things go wrong, including administrative and judicial ones. Decisions taken must also be done without *discrimination* and with the *meaningful* and *active participation* of rights holders.

In Scotland, these principles are captured using the acronym PANEL (Participation, Accountability, Non-discrimination and equality, Empowerment, Legality)

## Human rights standards

By signing up to human rights treaties, governments are obliged to *respect, protect and fulfil* human rights. This means that they must not interfere with the enjoyment of rights (*respect*); prevent violations of rights by third parties (*protect*); and pro-actively take steps (*fulfil*) to:

- *facilitate* access to goods and services,
- *promote* rights and how to claim them,
- *provide* goods and services to people when, for reasons beyond their control, they are unable to obtain them.

Steps means concrete measures using the *maximum of their available resources*. These measures should:

- ensure “minimum essential levels” or a “*minimum core*” of each right,
- increase the availability, accessibility, acceptability and quality of goods and services,
- *progressively realise* people’s rights and reduce inequality as soon as possible.

Deliberately *retrogressive measures* are not allowed. Governments must fully justify the adoption of policies that decrease people’s enjoyment of a right.

- **Papers 5 and 6 in this series provide more information about human rights principles and standards.**

## How to start human rights budget work

Human rights budget work starts with asking key questions, based on the human rights principles and standards, during budget creation and throughout the budget cycle. See Table 1 and Table 2.

These questions help assess the budget process by asking is it transparent, participatory and accountable? They also help identify if the government has raised all the revenue it can from all possible sources; and allocated and spent

money to efficiently and fairly ensure a minimum level of provision and continually improve the realisation of all rights.

The answers to these questions should be included in a full cycle of scrutiny that starts with policy goals and ends with their impact and outcomes. Using human rights to connect the national budget to policy outcomes helps identify if allocation and spend have indeed resulted in a greater enjoyment of rights (Progressive realisation) and whether funded programmes are discriminatory (Non-discrimination & Equality). Scotland’s National Performance Framework<sup>1</sup> includes a set of National Outcomes; the Budget Process Review Group<sup>2</sup> has said these must be better connected to, and reflected within, the national budget process.

**Table 1: Key questions on human rights principles**

Transparency	<ul style="list-style-type: none"> <li>• Do the public, civil society and scrutiny bodies have access to concise and accessible information about the budget process, revenue generation, allocation and spend – as defined by international best practice?</li> <li>• Were budgetary decisions transparent &amp; non-discriminatory?</li> <li>• Is it possible to “follow the money” from allocation to spend to impact?</li> </ul>
Participation	<ul style="list-style-type: none"> <li>• Was the budget process inclusive and participative?</li> <li>• Does the budget process actively engage with marginalised groups?</li> </ul>
Accountability	<ul style="list-style-type: none"> <li>• Is the budget accountable to the public regarding its process, revenue, spending and impact?</li> </ul>

<sup>1</sup> <https://nationalperformance.gov.scot/national-outcomes>

<sup>2</sup> [http://www.parliament.scot/S5\\_Finance/Reports/BPRG -  
\\_Final\\_Report\\_30.06.17.pdf](http://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf)

**Table 2: Key questions on human rights standards**

Maximum available resources	<ul style="list-style-type: none"><li>• Does the government raise enough revenue to adequately fund rights realisation (including through progressive taxation and reduction in tax evasion, avoidance and debt)?</li><li>• Are allocated funds fully expended? If not – how and where are they redistributed?</li></ul>
Minimum core	<ul style="list-style-type: none"><li>• Does the government provide adequate funding for the provision of basics?</li></ul>
Progressive realisation & Non-retrogression	<ul style="list-style-type: none"><li>• Has expenditure increased/decreased over time?</li><li>• Is there a clear plan for how resources will be mobilised to realise rights?</li></ul>
Non-discrimination & Equality	<ul style="list-style-type: none"><li>• Is there any increase over time in expenditure on disadvantaged groups - to help reduce inequality?</li><li>• Is there any discrimination in distribution of benefits from government expenditure?</li></ul>

Source: Drawn from QUB Budget Analysis Project 2010<sup>3</sup>

### **Why is human rights budget work important for Scotland?**

In 2014 the Scottish Government made a commitment to explore human rights budgeting, although with limited action at the time. However, since 2017 several key activities have acted as a catalyst for developing work on human rights budgeting:

- [The Budget Process Review Group](#) <sup>4</sup>

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<sup>3</sup> QUB Budget Analysis Project Budget Analysis and Economic and Social Rights: A Review of Selected Case Studies and Guidance (2010) QUB School of Law, Belfast.

<sup>4</sup> Ibid.

- [Scottish Human Rights Commission EU funded project on human rights budget work](#)<sup>5</sup>
- [Scottish Parliament's Equality and Human Rights Committee Inquiry into Human Rights](#)<sup>6</sup>
- Increased remit of the [Equality Budget Advisory Group](#)<sup>7</sup> to include human rights budgeting
- [Scotland's Revised National Performance Framework](#)<sup>8</sup>
- [Scottish Government Open Government Action Plan 2018-20](#)<sup>9</sup>
- [First Ministers Advisory Group on Human Rights Leadership](#)<sup>10</sup>

There is renewed interest in budget scrutiny in Scotland because of increased fiscal powers and responsibilities devolved to the Scottish Government through the Scotland Acts 2012<sup>11</sup> and 2016<sup>12</sup>. There is also a commitment to ensuring that Brexit does not harm current human rights protections and that we remain in step with future advances in EU human rights, as well as growing interest in furthering economic, social, cultural and environmental rights<sup>13</sup>.

If the Scottish Government uses its human rights obligations to provide the framework for its Programme for Government, policy and budgets can be based on progressive rights realisation. This will make Scotland more fair, transparent and accountable for decisions on revenue generation, allocation

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<sup>5</sup> <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

<sup>6</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/106453.aspx>

<sup>7</sup> <https://www.gov.scot/groups/equality-budget-advisory-group/>

<sup>8</sup> <https://nationalperformance.gov.scot/national-outcomes>

<sup>9</sup> <https://www2.gov.scot/Resource/0054/00546407.pdf>

<sup>10</sup> <https://humanrightsleadership.scot/>

<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2012/11/section/25/enacted>

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/2016/11/contents>

<sup>13</sup> Currently the HRA 1998 together with the Scotland Act, protect the rights that are contained in the European Convention on Human Rights in Scotland's own laws. The rights in the HRA are predominantly civil and political rights.



and spend and more likely that those decisions will get it right for the most vulnerable and marginalised.

- **Paper 2 in this series provides more information about the Scottish context for human rights budget work.**

### **The Human Rights Budget Work series**

The briefing papers in this series are:

- 1: Human Rights Budget Work
- 2: Human Rights Budget Work in Scotland: Why Here, Why Now
- 3: Human Rights Budgeting
- 4: Human Rights Budget Scrutiny
- 5: Human Rights Standards and the Budget
- 6: Budget Process and Human Rights Principles

A collected set of all briefing papers is also available.

### **About the Human Rights Budget Work Project**

Following a short-term grant from the European Union in 2018, the Scottish Human Rights Commission began a [programme of ongoing work](#)<sup>14</sup> to better understand and support wider scrutiny of public spending decisions including budget through a human rights lens. The work has so far:

- developed three process indicators to support scrutiny of national and local council budget processes;

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<sup>14</sup> <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

- organised [capacity building activities](#)<sup>15</sup> on human rights [budget scrutiny](#).<sup>16</sup>
- engaged in scrutiny of [national tax reform](#);<sup>17</sup>
- and produced this publication series on the *What, Why How of Human Rights Budget Work*.

The Commission also cooperates with academia on a collaborative PhD on Minimum core obligations in Scotland.

This programme is supported by a Human Rights Budgeting Working Group which drives and supports this work programme. Members of this group include:

- [Dr. Alison Hosie](#), Research Officer, Scottish Human Rights Commission
- [Allison Corkery](#), Director, Rights Claiming and Accountability Program, The Center for Economic and Social Rights
- [Dr. Angela O’Hagan](#), Senior Lecturer in Social and Public Policy, Glasgow Caledonian University & Independent Chair of the Equality Budget Advisory Group
- [Lucy Mulvagh](#), Director of Policy and Communications, The ALLIANCE
- [Dr. Jo Ferrie](#), Senior Lecturer at the School of Social and Political Sciences, University of Glasgow

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<sup>15</sup> <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

<sup>16</sup> <http://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

<sup>17</sup> <http://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>

## Contact

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## Appendix 1: Glossary of Terms

### AAAQ

This stands for *Available, Acceptable, Accessible, Quality*. These are the core standards against which we can assess whether economic, social and cultural rights are a reality for people.

- **Availability:** Relevant infrastructure, goods and services must be available in sufficient quantities.
- **Accessibility:** Physically, economically, without discrimination and to information.
- **Acceptability & Adaptability:** Culturally and socially acceptable and adapted to the local context.
- **Quality:** Appropriate and adequate in standard and safety.

### Allocation

The amount of money a government sets aside to put towards a project, or programme.

### Accountability

Human rights laws create legal duties on governments and public bodies. If governments and public bodies fail to protect human rights, there should be effective and fair ways for people to challenge this, for example through the courts.

### CAT

This is shorthand for the UN Convention Against Torture.

### CEDAW

This is shorthand for the UN Convention on the Elimination of All Forms of Discrimination Against Women.

### CERD

This is shorthand for the UN Convention on the Elimination of Racial Discrimination.

**CRC**

This is shorthand for the UN Convention on the Rights of the Child.

**CRPD**

This is shorthand for the UN Convention on the Rights of Persons with Disabilities.

**Civil and political rights**

Rights which protect our freedoms, such as right to life, right to liberty, freedom of expression, freedom of belief, freedom of association.

**De jure**

“In law” – e.g. de jure discrimination – discrimination in law.

**De facto**

“In reality” – e.g. de facto discrimination – discrimination in reality/ lived experience.

**Duty-bearers**

States and other state actors are duty-bearers who have the responsibility to and can be held accountable for respecting, protecting and fulfilling people’s rights (rights-holders).

**ECHR**

The European Convention on Human Rights.

**Economic, social and cultural rights**

Rights to those “goods” which we need to live in dignity, for example rights to health, housing, food, social security.

**ESC/ESCR**

This is shorthand for Economic, Social and Cultural Rights.

**General Comments**

These are comments developed by the committees in charge of monitoring the different UN human rights treaties. They tell us how we should understand and interpret human rights.

### **Human rights based indicators**

Internationally, human rights based indicators are tools for States to assess their own progress in implementing human rights and compliance with the international treaties. Where rights based outcomes are defined, best practice (developed by the Office of the High Commissioner for Human Rights (OHCHR)) would then allow for three types of human rights indicators— structural indicators, process indicators and outcome indicators. Together they address the essential aspects of human rights implementation, namely: commitment, effort and result.

- **Structural indicators** measure a state's **commitment** or intention to abide by international human rights law.
- **Process indicators** measure the **efforts** undertaken by the state to meet their human rights obligations.
- **Outcome indicators** measure a state's human rights **performance**, evaluating the results of its human rights policies.

### **ICESCR**

This is shorthand for the International Covenant on Economic, Social and Cultural Rights. This is a UN treaty which sets out the economic, social and cultural rights we have.

### **ICCPR**

This is shorthand for the International Covenant on Civil and Political Rights. This is a UN treaty which sets out the civil and political rights we have.

### **Inalienability**

The idea that human rights are for everyone, everywhere.

### **Incorporation**

The idea of including UN treaties in our domestic law here in Scotland. There are different ways to achieve this, with different effects. The aim would be to enable people to claim the rights they have in international treaties directly. At the moment, there are very limited ways to do this as UN treaties are not part of our law.

### **Indivisibility**

The idea that all human rights are equally important. Economic, social and cultural rights are as important to human dignity as civil and political rights.

### **Interdependence/Inter-relatedness**

The idea that human rights are connected, so having one can ensure that you have another. For example, adequate housing can support good physical and mental health.

### **Jurisprudence**

The case law which has developed as a result of judges or judicial bodies applying legal principles to real life situations.

### **Justiciability**

The idea that the extent to which economic, social and cultural rights are realised can be decided by a court or other judicial body.

### **Maximum of available resources**

The idea that a country spends as much of its budget as it can on making rights real. This includes ensuring:

- existing resources are used effectively and without discrimination.
- efforts to generate additional resources are adequate and equitable.
- Resources are not only financial, but also human, natural, technological, etc.

### **Minimum Core**

A duty exists on states to ensure the satisfaction of “**minimum essential levels**” of each right, regardless of their level of economic development.

These are usually taken to mean protection from starvation, free primary education, healthcare in emergencies and basic housing. Governments should

make sure that people have these at all times. (General Comments help to identify what a minimum core should be for each right).

### **Non-discrimination**

The idea that you cannot treat someone differently based on a “prohibited ground” unless justification is **reasonable** and **objective**.

- Treaties list prohibited grounds, but these are **not exhaustive**.
- The state has an obligation to eliminate **de jure** discrimination by abolishing “**without delay**” any discriminatory laws, regulations and practices.
- **De facto** discrimination, occurring as a result of the unequal enjoyment of rights, should be ended “**as speedily as possible**”.
- Affirmative action or positive measures may be needed to end de facto discrimination.

### **Non-retrogression**

The idea that things should get better, not worse; governments should not take decisions which they know will create setbacks in making rights real. States must “fully” justify the adoption of policies that decrease people’s enjoyment of a right. Must be:

- Temporary
- Necessary and proportionate (other options more detrimental)
- Not discriminatory and mitigate inequalities
- Ensure the protection of minimum core content of rights
- Considers all other options, including financial alternatives

### **Obligation of Conduct**

The idea that governments have to take actions which they think will help realise rights. E.g. Adopting and implementing a plan of action to reduce unemployment.

### **Obligation of Result**

The idea that governments have to achieve specific targets, based upon detailed standards. E.g. Reducing unemployment to agreed levels.

In relation to the obligation to fulfil, **results** can generally be achieved **progressively**, but **conduct** is an **immediate** duty.



### **Obligation to take steps**

Governments have duties to take action to ensure they are complying with their duties towards human rights. Steps taken can be:

- legislative,
- judicial,
- administrative,
- financial,
- educational, and
- social

### **Process principles**

- Steps should be taken in such a way that facilitates the **active participation** of rights holders.
- “Steps taken” should respect the principles of **transparency, accountability** and **non-discrimination**.
- The state also has an obligation to provide **effective remedies**, including administrative and judicial ones.

### **Progressive realisation**

The idea that some rights can be made real over time rather than immediately; the United Nations recognises that in some cases it is not possible for governments to ensure that everyone gets their economic, social and cultural rights straightaway. However, governments still have to do all they can.

### **Proportionality**

The idea of using an appropriate means to resolve a situation; not using a sledgehammer to crack a nut.

### **Respect, Protect, Fulfil**

This is a way of describing the different types of duties which governments have towards people’s human rights:

- Respect means that governments must not act in a way that violates people’s human rights E.g. Forced evictions carried out by the state.

- Protect means that governments must protect people's rights from being violated by the actions of others, E.g. Failing to regulate private housing market
- Fulfil means that governments must take positive steps to ensure that people's rights are real. E.g. taking appropriate **legislative, administrative, budgetary, judicial** and **other measures** to:
  - **Facilitate**: access to right (e.g. through infrastructure, goods, and services)
  - **Promote**: rights and how to claim them.
  - **Provide**: when people, for reasons beyond their control, are unable to necessary to realise rights, the state may be obligated to provide it (e.g. through infrastructure, goods, and services).

### **Rights-holders**

From a human rights perspective, all individuals are rights-holders, that can make legitimate claims to their rights. [States and other state actors are duty-bearers who have the responsible to and can be held accountable for respecting, protecting and fulfilling those rights].