



Human Rights Budget Work: What, Why, How?

Briefing Paper 2: The Context for Human Rights Budget Work in Scotland

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“It appears to be increasingly recognised that if there is no legal recognition of economic, social and cultural rights and if they are not then considered as part of policy and decision-making (such as in budget planning, allocation, spending and review), then the outcomes will not be as good as they could and should be”.

Professor Alan Miller,
Chair of the First Minister’s Advisory Group on Human Rights
Leadership

About this document

Welcome to the second 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*).

Why are human rights relevant to the budget?

All governments must *respect, protect and fulfil* human rights. The way they generate, allocate and spend money play 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 bind 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 miss out on opportunities to use public financing to improve the position of disadvantaged and marginalised groups.

Good rights based laws and policies can still result in unacceptable experiences of rights holders if they are not properly resourced. Taking human rights standards into account when developing the budget is 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.

What are human rights obligations?

In order to *respect, protect and fulfil* human rights, governments must take positive steps to ensure that people’s rights are real. 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; and
- *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.

Steps taken by the government should:

- ensure the *active participation* of rights holders;
- respect the principles of transparency, accountability and non-discrimination; and
- fulfil an obligation to provide *effective remedies* if things go wrong.

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

Why do human rights budget work?

Human rights budgeting and budget scrutiny enables the delivery of the progressive realisation of human rights through effective and accountable use of resources. Budgeting in this way challenges states to consider human rights standards when developing and scrutinising the budget.

As with other types of budgeting e.g. participatory, gender and equality based, it allows us to question whose voices are heard in, and how different groups are affected by, a state's budgetary decisions, with reference to agreed standards. The added value of human rights budgeting is that the budget is developed and implemented in keeping with the human rights law that binds all future governments, regardless of who is in power. It also means that appropriate priority must be allocated to critical areas such as health, social care, education, access to justice, housing and work. In addition, human rights budgeting 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.

Why is human rights budget work important for Scotland now?

Over the last decade there has been a growing interest in economic, social and cultural rights, with a particular focus by the Scottish Human Rights Commission on strengthening these rights and furthering the debate on the role of incorporating these rights into domestic law and their role in improved the lived experience of people in Scotland.¹

In 2018, partly in response to this growing interest, and also as a means to ensuring that Brexit does not harm existing human rights protections in Scotland and that we remain in step with future advances in EU human rights, the First Minister set up an advisory group to explore human rights leadership in Scotland. The Advisory Group developed a set of recommendations to support Scotland to become an international leader in respecting and enhancing human rights. The recommendations were delivered on December 10th 2018, a key recommendation of which, was the creation of an Act of the Scottish Parliament. This Act will reaffirm those rights contained with the HRA 1998² and add a range of economic, social, cultural and environmental rights. However, if people's rights (civil, political, economic, social, cultural and environmental) are to be fully realised in practice, it is crucial that how we generate, allocate and spend our resources to ensure this, forms part of the debate about national and local budgets.

In tandem with this increased interest in economic, social and cultural rights, Scotland has also seen an increase in its fiscal powers and responsibilities. These were devolved to the Scottish Government through the Scotland Acts 2012³ and 2016⁴ and this has led to a renewed interest in budget scrutiny in

¹ See <http://www.scottishhumanrights.com/economic-social-cultural-rights/strengthening-economic-social-cultural-rights/>

² 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.

³ <http://www.legislation.gov.uk/ukpga/2012/11/section/25/enacted>

⁴ <http://www.legislation.gov.uk/ukpga/2016/11/contents>

recent years. The arrival of these new fiscal powers and responsibilities led to a fundamental review of the Scottish Parliament's budget process by the Budget Process Review Group (BPRG - established by the Scottish Parliament's Finance and Constitution Committee and the Scottish Government). The final report⁵ included 59 key recommendations which should help to improve the Scottish budget process, including the decision making around resource generation, allocation and spend. Many of the BPRG recommendations are consistent with human rights principles. Including a recommendation that:

Committees take a broader approach to budget scrutiny. This would mean shifting the focus from annual changes to inputs, to the difference spending makes. Scrutiny of the selected areas should consider what is being spent overall, what this is achieving in terms of specific output and outcome measures, and if it is offering value for money.

In 2018, the Scottish Parliament's Finance and Constitution Committee brought out parliamentary subject committee guidance for all committees⁶ to support their understanding of the new budget process and framework for scrutiny. The guidance describes the new budget process as aiming to: have a greater influence on the development of the budget; improve transparency and raise public awareness of the budget, respond to fiscal and policy challenges; and lead to better outcomes as measured against benchmarks and stated objectives. All of these core objectives are consistent with human rights standards and principles. The guidance is new and therefore offers a timely opportunity to be adapted to show how subject committees could use a human rights lens as a means to undertaking effective scrutiny.

The Scottish Parliament's Equality and Human Rights Committee Inquiry into Human Rights has also raised the profile human rights budgeting and budget

⁵ [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)

⁶ http://www.parliament.scot/S5_Finance/General%20Documents/Budget_guidance_final.pdf

scrutiny within the context of equalities and human rights concerns. In early 2018 the committee showed an increased interest in the potential of human rights budgeting, noting in their Committee Report on Draft Budget Scrutiny 2017-18 that:

“Scrutinising the budgetary aspects of human rights raises similar issues as with equalities because of its cross-cutting nature. We see this as an area where we could work jointly with the Scottish Government with a view to providing greater transparency.”⁷

At the end of 2018, their inquiry also formalised a specific recommendation on budgetary matters to: *Develop scrutiny of human rights through the Scottish budget process.*

In 2018, the Scottish Human Rights Commission received EU funding to pursue a project aimed at improving understanding and use of human rights budget analysis to further Economic, Social and Cultural Rights in Scotland.⁸ This has since led to a formal programme of work at the Commission on human rights budget work, and the Commission also is supporting the development of expertise on human rights budget work on the (non-statutory) Equality Budget Advisory Group,⁹ convened by the Scottish government.

In June 2018 Scotland’s Revised National Performance Framework¹⁰ was published which included a new National Outcome committing Scotland to “*Respect, Protect and Fulfil Human Rights and Live Free from Discrimination*”. The BPRG also recommended that it be possible to track budget allocation and spend against impact and progress within the National Outcomes:

⁷ http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiCS052017R02.pdf

⁸ This project ran from January to June 2018 – see project outputs here: <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

⁹ <https://www.gov.scot/groups/equality-budget-advisory-group/>

¹⁰ <https://nationalperformance.gov.scot/national-outcomes>

“The Group recommends that the Scottish Government and public bodies strengthen their performance planning and reporting to provide a greater focus on the delivery of outcomes. This means providing better information about what activity public spending will support, what this aims to achieve, the contribution this is expected to make to outcomes, how plans are being delivered and the impact this is having. This should include the impact of new policies and significant changes to spending priorities and link with setting and reporting on equality outcomes”.

Scotland is a membership of the Open Government Partnership (OGP) which exists to support government commitment to openness, transparency, and citizen participation across everything that the government does. The OGP was launched in 2011, with Scotland selected to join in 2016. The government’s [second OGP Action Plan 2018-2020](#)¹¹ was published in January 2019 and contains five commitments to be delivered by September 2020. The first of these commitments focuses on financial and performance transparency. It includes a commitment to explore how to make Scotland’s public finances more transparent and accessible in order to promote public discussion, debate and participation in financial and policy decision making.

The momentum for social change in Scotland has been building over the last decade. This recent focus on the incorporation of economic, social and cultural rights and the potential for a new Act of the Scottish Parliament, coupled with increased fiscal responsibility, has provided a timely opportunity to make that change transformational. If the Scottish Government is to develop its Programme for Government using its human rights obligations to provide the framework, this will mean that policy can be developed and budgets designed based on progressive rights realisation.

This will make Scotland more accountable for decisions around resource generation, allocation and spend, and make it more likely that those decisions

¹¹ <https://www.gov.scot/publications/scotlands-open-government-action-plan-2018-20/>

will get it right for the most vulnerable and marginalised. It will encourage the government to be held to account through transparency of process, demand that they align their budget with their human rights commitments and encourage the assessment of spend for impact. These processes are consistent with their own rules, Scottish parliamentary subject committee guidance¹² and the accepted advice of the Budget Process Review Group.

¹² See

http://www.parliament.scot/S5_Finance/General%20Documents/Budget_guidance_final.pdf

The HRBW 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 HRBW Project

Following a short-term grant from the European Union in 2018, the Scottish Human Rights Commission began a [programme of ongoing work](#)¹³ 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;
- organised [capacity building activities](#)¹⁴ on human rights [budget scrutiny](#);¹⁵
- engaged in scrutiny of [national tax reform](#);¹⁶
- and produced this publication series on the *What, Why, How of Human Rights Budget Work*.

¹³ <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

¹⁴ <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

¹⁵ <http://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

¹⁶ <http://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>

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
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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].