



Human Rights Budget Work: What, Why, How?

Collected Briefing Papers

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“Budgets are a key sign of a government's values. So, if human rights are not in there, what's being said is that they are not a value worth counting”.

Professor Aoife Nolan, 2014¹

1. About this document

Welcome to the combined edition of six Briefing 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.

2. 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*).

3. 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.

¹ Nolan, A. (2014) Human Rights Budget Work, SNAP Innovation Forum, Govan: <http://www.scottishhumanrights.com/media/1177/reportmarch2015reporttwo rdinnovationforumtranscript.docx>

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 miss out on opportunities to use public financing to improve the position of disadvantaged and marginalised groups.

4. What is human rights budget work?

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

5. Why do 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 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.

Human rights budget work also allows us to question who takes part in budget decision-making and how different societal groups 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.

6. What are human rights standards?

In order to *respect, protect and fulfil* human rights, governments must refrain from interfering with the enjoyment of rights; prevent violations of such rights by third parties; and take appropriate legislative, administrative, *budgetary*, judicial, social and educational measures to:

Facilitate: access to goods and services,

Promote: rights and how to claim them, and

Provide: goods and services to people when, for reasons beyond their control, they are unable to obtain them.

States who have signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) have freely undertaken international legal obligations to ensure the protection of the social, economic and cultural rights, including the right to an adequate standard of living, housing, healthcare, education and work for their citizens. Any country that is a signatory to ICESCR is mandated to:

“take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

Article 2(1) ICESCR

To support the practical application of the obligation to fulfil, a human rights standards have been interpreted from Article 2(1) of ICESCR. Some of these norms are expected to be achieved *progressively* (generally norms focused on **results or outcomes**), but others are *immediate* (norms focused on **conduct or action**).

Specifically, the outcomes Governments must work towards include:

- ensuring the satisfaction of “minimum essential levels” or a “minimum core” of each right (**Minimum Core**),
- progressively achieve the full realisation of people’s rights – in other words this “minimum core” is not a ceiling of achievement, it is a basic floor of provision (**Progressive Realisation**),
- If a government takes a step that decreases people’s enjoyment of a right, it must “fully justify” it (**Non-retrogression**).

6.1 Minimum Core

The government has a duty to ensure the satisfaction of “minimum essential levels” of each right, regardless of their level of economic development, commonly referred to as the “Minimum Core”. This minimum core is intended to protect a person’s right to an adequate standard of living, which is interconnected and interdependent on other rights including the rights to health, social security, education, work and housing. The minimum core is intended to ensure that a person can live with human dignity. Failure for a government to provide the minimum core amounts to a presumption that a government is in violation of the Covenant. This is unless a government can demonstrate that “*every effort has been made to use all resources that are at its disposition*” to prioritise reaching those minimum levels.

On exploring how to define “minimum core” obligations in Scotland, Flegg noted that: “*despite ‘minimum core’ obligations being well established in international law and related academic literature as being binding on State parties’, what this means in practice is not always clear*”.² Guidance is provided by the UN Committee on Economic Social and Cultural Rights on what would be necessary to meet the minimum threshold in relation to certain rights

² Flegg, A. 2018: Defining Minimum Core Obligations for Human Rights Budget Analysis in Scotland, SHRC: Edinburgh.

through the issuing of General Comments (e.g. relation to an adequate standard of living and the rights to housing and education³).

General Comment 3, however, makes clear that “*each State party must decide for itself which means are the most appropriate under the circumstances*”.⁴ For a government to develop an appropriate “minimum core”, good practice would encourage a national discussion with genuine opportunities for rights-holders, particularly the most marginalised, to reach a consensus over where the red lines should lie, below which no one could be considered to be able to live a life of human dignity. Critically, whatever is agreed by such a process, must not be considered as a ceiling of achievement, but rather it is a basic floor of provision upon which a government must build.

³ For example see: Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003). Committee on Economic, Social and Cultural Rights, 'General Comment No. 4: The Right to Adequate Housing' (13 December 1991) UN Doc E/1992/23 para 7. Committee on Economic, Social and Cultural Rights, 'General Comment No. 14, The right to the highest attainable standard of health' U.N.Doc.E/C.12/2000/4 (2000) paragraph 43. Committee on Economic Social and Cultural Rights, 'General Comment No. 4, The Right to Adequate Housing' U.N. Doc. E/1992 /23 annex III at 114 (1991) paragraph 13. See also the Committee on Economic, Social and Cultural Rights, 'Consideration of Reports Submitted By States Parties under Article 16 and 17 of the Covenant' U.N.Doc.E/C.12/GBR/CO/5 (2009).

⁴ Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003).

6.2 Progressive realisation

When considering how to apply this obligation practically in relation to budgeting, this can take many forms. What is key to understand is that progressive realisation is not an option or a duty that can be delayed. It is an ongoing obligation on governments, independent from economic growth, which requires that a government makes the best use of its maximum available resources. Governments must prove that they are making every effort to progress economic, social and cultural rights with the available resources.

Evidence that the principle of progressive realisation has been applied to the budget occurs when a government takes positive measures or steps that further develop preceding efforts. Applying the principle of progressive realisation within the budget can involve a range of different activities, including:

- direct funding,
- application of other resources,
- introducing new programmes,
- reducing restrictions on certain entitlements/programmes, or
- changing policy direction to strengthen the rights of marginalised groups.⁵

6.3 Non-retrogression

“Progressive realisation” obliges governments to move as efficiently and expeditiously as possible towards the full realisation of economic, social and cultural rights. On the contrary, governments have an obligation to refrain from taking **deliberately retrogressive** measures. Any policies adopted that decrease people’s enjoyment of a right must be:

- Temporary
- Necessary and proportionate (other options more detrimental)

⁵https://www.flac.ie/download/pdf/flac_briefing_on_human_rights_approach_to_budgeting.pdf

- Not discriminatory and mitigate inequalities
- Ensure the protection of minimum core content of rights
- Considers all other options, including financial alternatives.

Therefore, when developing their budget a government must ensure that any and all proposals comply with the principle of non-retrogression. This final bullet point obliges governments to explore revenue-raising alternatives prior to making any cuts that would (directly or indirectly) affect the enjoyment of rights. This includes cuts within the public sector, including the provision of public services or delivery of social security, which has significant and clear implications for budgeting.

To achieve these outcomes, governments must “take steps”. i.e. it must take action. These include legislative, administrative, budgetary, judicial, social and educational measures. In particular, “steps taken” by the Government should:

- use the maximum of their available resources to realise rights (Maximum Available Resources),
- increase the availability, accessibility, acceptability and quality of goods and services and address non-discrimination and equality.

6.4 Assessing the rights: Are they Available, Acceptable, Accessible and Quality (AAAQ)?

It’s not enough for a government just to say they will take steps or action, they must also have to do what they say they are going to do effectively, which includes sufficient resourcing. International human rights discourse analysing the way in which effectiveness can be unpacked has developed within these four criteria, which are often abbreviated as AAAQ.

The idea is that the goods and services that are necessary for the realisation of rights should be increasingly available, accessible, acceptable and of quality. These are really useful indicators to benchmark progress against and a lot of international work has already been done on this, especially by the Office of the

High Commissioner for Human Rights⁶. When considering applying the AAAQ criteria to budgets, it is useful to think of the following:

Availability: Relevant infrastructure, goods and services must be available in sufficient quantities.

Having determined what relevant infrastructure, goods and services are required and what would be considered sufficient quantity - what resources would be necessary to make these available? This must then be reflected within the budget priorities.

Accessible: Infrastructure, goods and services must be physically, economically accessible without discrimination and people must have access to information.

For accessibility to be universal, this may require certain infrastructure, goods and services to be tailored to specific groups. For example, housing should be accessible to everyone without discrimination. Priority should be given to the most marginalised including homeless people and those who are inadequately housed, and special measures should be taken to ensure adequate housing for people with disabilities, older people, those living in areas vulnerable to natural disasters and others who require them. Therefore budgetary decisions that affect these priorities can make rights more or less accessible to people in relation to restrictions within law, policy and/or in terms of finance.

Accessibility of goods and services may also require appropriately trained civil servants - implementing budgetary decisions therefore may also have cost and

⁶ For example see:

https://www.humanrights.dk/files/media/dokumenter/udgivelser/aaq/aaq_international_indicators_2014.pdf ; <https://www.who.int/gender-equity-rights/knowledge/aaq-infographic/en/> ; <http://phrtoolkits.org/toolkits/medical-professionalism/the-human-rights-basis-for-professionalism-in-health-care/aaq-framework/> ; http://www.healthscotland.scot/media/1276/human-rights-and-the-right-to-health_dec2016_english.pdf

resource implications which requires consideration if rights are to be accessible in practice.

Accessibility is also about affordability. Therefore, in developing the budget a key question to ask is whether any decisions taken will make access to a right more or less affordable? If, for example, a government introduced fees, or raised an income qualification threshold for access to legal aid, one must ask if this would create a financial obstacle to enjoying a right? If the answer is yes, then it must be concluded that the right is not affordable for all.

If this is the case, certain groups may also be disproportionately affected by the same measure. Given that the right to non-discrimination (de jure or de facto)⁷ is non-derogable, i.e. it is not allowed to be suspended or limited for any reason, budgetary decisions must be scrutinised **before** implementation to ensure a state is not in violation of this principle.

Where cost could present a barrier, it may be that forms of tax relief or exemptions from fees could increase affordability for people with limited resources. However, implementing a system with caveats requires a well-informed delivery service which requires staff training, information and guidance – all of which must also be provided for when the government is making budgetary decisions to safeguard human rights.

Acceptability and Adaptability: Infrastructure, goods and services must be culturally and socially acceptable, sensitive to marginalised groups and adapted to the local context. This criteria plays a particular role with regard to non-discrimination and equality.

⁷ The state has an obligation to eliminate **de jure** (in law) discrimination by abolishing “**without delay**” any discriminatory laws, regulations and practices. **De facto** (in fact) discrimination, occurring as a result of the unequal enjoyment of rights, should be ended “**as speedily as possible**”.

From a budgetary planning perspective questions must therefore be asked about what adaptations to policies or programmes may be required in order that they are acceptable to all. Some examples could include:

- budget proposals taking into account the provision of teaching assistants for children and young people with additional requirements to facilitate their right to education;
- educational provisions on family planning may require tailoring to meet the specific needs of communities and individuals for example young women and girls; women and girls from diverse ethnic minorities; or women and girls with disabilities;
- local authority/municipality housing and planning departments need to take into account the cultural requirements of accommodation suitable for Gypsy /Travellers.

Taking a Human Rights Based Approach supports and challenges those making budgetary decisions on the delivery of goods and services, to ensure that they are acceptable by all, not a one-size-fits all.

Quality: Infrastructure, goods and services must be appropriate and adequate in standard and safety. Quality also extends to the way in which people are treated e.g., with dignity and respect.

When exploring quality and adequacy in relation to the budget it helps to define exactly what is meant. Defining “adequacy and quality” of provision will depend on the situation of a given country. Exploring a range of issues, including the following can help to understand country-specific elements of “adequacy”:

- Fiscal and other resources (human, natural, technological, etc.)
- Empowerment – has a budget been allocated to ensure that people have access to information about the existence or extension of a right?
- Does a budgetary measure require legislation?
- Have any new policies been introduced or removed by legislation on a particular right?

- For any new policy and practice, have sufficient budgetary provisions been allocated for the training of the staff whose job it will be to ensure the right is protected and enjoyed?

When considering each of these issues, posing the question “is it adequate?” will help to provide an answer as to whether the proposed measure is compliant with human rights.

6.5 Maximum Available Resources

In her report to the United Nations, the then UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepúlveda Carmona stated that:

States must devote the “maximum available resources” to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible, even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors. This principle should guide the State’s decisions and priorities in generating, mobilizing and allocating resources in order to permit the realization of human rights.⁸

States are granted a “wide measure of discretion” to determine the resources to be set aside to promote the realisation of rights. Nevertheless, “due priority” should be given to the realisation of rights in allocating resources and resources should be allocated in a way that is “equitable and effective”.

Designing a budget which complies with a government’s human rights obligations is not just about how existing resources are allocated, it is also

⁸ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, pg7 Available online at http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf

about what effort has been made to generate additional resources and if those efforts are adequate and equitable? A key area of focus when a government is exploring whether it has maximised its available resources is the country's system of taxation. Further, if a government has not spent all allocated funds - in a way that is inefficient or wasteful - then it has not made full use of maximum available funds.

As explored in more detail in HRBW Paper 5, in designing the budget the government must also be guided by a series of procedural principles to ensure steps taken, are done so with the active **participation** of rights holders and respect the principles of **transparency** and **accountability**. Governments are also obliged to provide **effective remedies** if things go wrong.

6.6 How to apply human rights standards to the budget?

To better understand how human rights standards relate to the budget, it is helpful to think of two complementary types of work: human rights budgeting and human rights budget analysis. Human rights standards apply in both in slightly different ways.

Table 1: Assessing Budgets Against Norms

	Generation	Allocation	Spending
Minimum Core	Is sufficient revenue generated to invest in realising basic levels of rights for all?	Do allocations prioritise the achievement of basic levels of rights for all?	Do financial management systems ensure efficient management of funds allocated?
Non-Discrimination	Who are resources generated from? Are particular groups unjustly impacted?	Do allocations prioritise closing the gaps in human rights enjoyment between different groups?	Have funds been redirected in a way that disproportionately impacts particular groups?
Progressive realisation and non-retrogression	Is (or could) government revenue increase?	Are allocations growing or shrinking? Are reductions justified (in human rights terms)?	Have financial management systems improved or weakened over time?

Source: [SHRC Masterclass Presentation Slides](#)

7. Why are human rights principles relevant to the budget process?

Understanding how a state manages public money, helps to sort the reality about commitment to rights realisation, from the rhetoric. Engaging with human rights principles in the process of creating, implementing and scrutinising a budget will help states to fulfil their legal obligations with fair and transparent decision making around resources.

Human rights principles apply at all stages of the budget process: from its **drafting**, which should be linked to national action plans and strategies,

prepared following wide consultation; to its **approval by the parliament**, which needs to have adequate amendment powers and appropriate time allocated for a thorough evaluation of proposals, implementation and monitoring; to its **implementation** with adequate in and mid-year scrutiny; through to **formal oversight** where the accounts are audited and audit findings are scrutinised by the legislature. For example:

Availability of and public access to information about actual resource expenditure enables people to participate in determining how, in practice, public resources are spent and ensures that these resources are best utilised for the benefit of society, in line with a state's international human rights obligations.

Civil society and the wider public (along with legislators, auditors and the media) have important roles to play in both the preparation of the budget and budget scrutiny. Budget policies and decisions can be improved through being based on information on actual public needs and priorities. A state can also be held to account for how it then uses its public resources. To facilitate both of these roles, effective public engagement requires access to budget information and the provision of genuine opportunities to engage in budget processes.

Fiscal transparency and inclusivity are now recognised by international institutions, including the International Monetary Fund (IMF), the World Bank, and the Organisation for Economic Co-operation and Development (OECD), as key to producing an efficient budget that delivers on outcomes, as well as being central to the process of enabling governments to be held accountable for how they manage public resources.⁹

7.1 What are the human rights principles relevant to the budget process?

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights states that:

⁹ See <https://www.internationalbudget.org/why-budget-work/role-of-civil-society-budget-work/> for further information.

“Each State Party to the present Covenant undertakes to take steps ... especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

These “steps” should be taken in such a way that:

- facilitates the active *participation* of rights holders,
- respects the principles of *transparency, accountability* and *non-discrimination*,
- includes an obligation on the state to provide *effective remedies*, including administrative and judicial ones.

In Scotland, these principles are captured within a Human Rights Based Approach: PANEL (Participation, Accountability, Non-discrimination and Equality, Legality).¹⁰

Participation: People should be involved in decisions that affect their rights. **Accountability:** There should be monitoring of how people’s rights are being affected, as well as remedies when things go wrong.

Non-Discrimination and Equality: All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.

Empowerment: Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.

¹⁰ See <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/#the-panel-principles-1210> for further discussion about the PANEL approach.

Legality: Approaches should be grounded in the legal rights that are set out in domestic and international laws.¹¹

In essence, this means that the budget process must be open and accessible to the public and these principles should guide the process of deciding how resources are generated, allocated and spent.

7.2 How do you monitor human rights principles within the budget process?

Reviewing the budget process through a human rights lens requires asking the right questions about the quality of the budget process. These include:

Transparency	<ul style="list-style-type: none">• How is the budget designed?• Does the public have access to easy-to-understand information about the budget making process and the budget itself– as defined by international best practice?• Is relevant budget documentation publicly published within an acceptable timeframe - as defined by international best practice?• Is it possible to “follow the money” from allocation to spend to impact?
Participation	<ul style="list-style-type: none">• Are citizens’ versions of all budget documentation produced in time to facilitate participation?• Do the public and civil society have a genuine opportunity to engage with and be involved in the budget process, and at all phases of the budget’s development and review?• Does the budget process actively engage with marginalised groups?

¹¹ See:

http://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf

Accountability

- Is there effective legislature and independent oversight of the budget process – as defined by international best practice?

Developing and/or adopting relevant process indicators can help answer these questions and support the monitoring of progress towards greater budget transparency, participation and accountability. Following an EU funded project into human rights budget work in 2018,¹² the Scottish Human Rights Commission has developed three such process indicators with which to assess the Scottish budget process moving forward.

These include:

- **Global indicator of fiscal transparency:** modelled on the [Open Budget Survey](#),¹³ this includes a focus on transparency (timely availability and accessibility of information); effectiveness of accountability mechanisms (legislature, auditor, fiscal institution), and opportunities for public engagement.
- **Indicator of quality of participation in national budget process:** designed to assess the quality of budget participation with Scotland's national budget process. It is based on the [Consultation Charter](#)¹⁴ which has identified seven best practice principles for consultative processes which aim to assist in the process of evidence based decision-making, namely: Integrity, Visibility, Accessibility, Transparency, Disclosure, Fair Interpretation and Publication.

¹² This project ran from January to June 2018 – see project outputs here: <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budgeting/>

¹³ See: <https://www.internationalbudget.org/open-budget-survey/>

¹⁴ See: <https://www.consultationinstitute.org/consultation-charter-7-best-practice-principles/>

- **Indicator of availability, accessibility and transparency of budget information at the Local Level:** designed to assess compliance with a statutory duty on Scottish public authorities to publish information proactively. The indicator focuses on whether budgetary information is provided in line with the Model Publication Scheme which has been adopted by all Scottish public authorities.¹⁵

8. What does human rights budget work involve?

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

9. What is Human Rights Budgeting?

Taking a human rights-based approach to budgeting means distributing resources in a way that puts people first. It involves thinking through how people's rights are impacted by the way that money is raised, allocated, and spent. Specifically, budget decisions should reflect human rights standards and the process of formulating, approving, executing, and auditing the budget should reflect human rights principles.

In many countries, reforms are being introduced that require budgets to be judged on their performance. While these "performance-based" or "results-based" approaches to budgeting are important, they rarely include explicit performance criteria that reflect questions of justice or equity. Essentially, human rights budgeting means turning human rights standards and principles (as outlined in Paper Four) into the performance criteria that budgets should meet.

Ensuring that the process for taking budgetary decisions is democratic and participatory is a crucial aspect of human rights budgeting. Human rights standards, by themselves, do not always provide clear guidance on what specific choices and trade-offs the government should make. So how choices

¹⁵See: <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/TheModelPublicationScheme.aspx>

are discussed and made is key in determining the extent to which different human rights obligations are met or not.

The budget is one very important means by which the government implements its objectives. These objectives are set out in legislation, policies, plans and programmes. For this reason, human rights budgeting must be part of a larger process. Specifically, actors involved in designing policies and plans relevant for the realisation of human rights need to work closely with those involved in developing the budget, to ensure that they are all pulling in the same direction.

9.1 Why do Human Rights Budgeting?

Human rights budgeting enhances the social impact of economic policy by ensuring that budgetary decisions benefit those most in need. It improves transparency and accountability, by linking budgetary decisions more directly to the human rights outcomes the government has prioritised. It provides the opportunity for government to work in cooperation with civil society to more effectively implement policies by, for example, strengthening the monitoring and evaluation of programmes and plans. This, in turn, deepens citizen participation in democratic processes. It can also be used to progress government's compliance with its national and international human rights commitments.

9.2 Who does Human Rights Budgeting?

All actors involved in the budget cycle¹⁶ are involved in human rights budgeting:

Primary responsibility for formulating the budget rests with the Ministry of Finance¹⁷, which determines how much revenue the government can anticipate bringing in from which sources (i.e. the size of the fiscal envelope). This includes deciding how much the government should borrow and how much of a deficit it should run.

¹⁶ Outlined in HRBW Papers 1 and 3.

¹⁷ In the UK and Scotland the relevant bodies are the UK Treasury and Scottish Government's Finance Directorates.

Line ministries (e.g. health, education, transport) coordinate with the Ministry of Finance in determining how the budget will be allocated to different ministries as well as between national and subnational governments.

Parliament reviews and approves the budget. Typically, the most intensive deliberations about the budget happen in committees. By asking the right questions and carrying out their own analysis of the government's budget and its impact on the enjoyment of human rights, parliamentary committees play an essential oversight role.

Many civil society organisations also participate in the budget cycle. They may make submissions to line ministries about priority programmes or attend and testify in parliamentary committee hearings related to the budget.

9.3 How do you do human rights budgeting?

As noted above, human rights budgeting needs to be embedded into a broader rights-based policy process. This involves:

- examining a country's human rights international human rights obligations and commitments;
- analysing the human rights concerns facing different groups within and across different social sectors (e.g. housing, health, education etc);
- designing policies that respond to those concerns;
- allocating adequate budget to implement those policies;
- monitoring of whether the money was spent as planned, what was delivered and to whom; and
- evaluating whether the policy was implemented and what impact it had.

9.3.1 Resource Generation

Designing a budget which complies with a government's human rights obligations is not just about ensuring that existing resources are used effectively and without discrimination, it is also about questioning what effort has been made to generate additional resources and if those efforts are adequate and equitable? A key area of focus when a government is exploring

whether it has maximised its available resources is the country's system of taxation. Key questions include:

- Is the taxation system raising the maximum available funds?
- Has the level of tax evasion, avoidance and debt been reduced in line with EU standards?
- Who are resources generated from? Are particular groups impacted unjustly?

9.3.2 Resource Allocation

Allocating resources in a way that enables a government to fulfil its human rights obligations requires consideration of that government's specific human rights obligations as set out in the human rights treaties it has signed and ratified. Extensive guidance on how those commitments translate into policy objectives on the ground is then set out in a number of places, including: General Comments provided by the various UN Treaty Body Committees¹⁸, reports from Special Rapporteur on specific issues.

Having analysed the human rights concerns facing different groups within and across different social sectors and having assessed a country's human rights international human rights obligations and commitments, resource allocations should:

- prioritise the fulfilment of basic levels of rights enjoyment for all (Minimum Core);
- be allocated in a way that reduces inequalities by meeting the needs of vulnerable and marginalised groups (Non-discrimination);
- generally increase in line with increased revenue, and not be reduced unjustifiably (Progressive Realisation)

¹⁸ For other examples see CESCR General Comment No. 4: [The Right to Adequate Housing \(Art. 11 \(1\) of the Covenant\)](#); CESCR General Comment No. 13: [The Right to Education \(Art. 13\)](#); CESCR General Comment No. 14: [The Right to the Highest Attainable Standard of Health \(Art. 12\)](#); CESCR General Comment No. 19: [The right to social security \(art. 9\)](#)

The process of deciding on those allocations should also reflect the principles of participation, transparency and accountability.

10. Case Example – The Right to Food

10.1 *Scotland’s international human rights obligations and commitments*

The International Covenant on Economic, Social and Cultural Rights – Art 11(1) states:

*“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including **adequate food**, clothing and housing, and to the continuous improvement of living conditions...”*

Further guidance is contained within **CESCR General Comment No. 12**: [CESCR General Comment No. 12: The Right to Adequate Food \(Art. 11\)](#):

“The right to adequate food is realised when everyone has physical and economic access at all times to adequate food or means for its procurement. The right will be realised progressively; however, States have a core obligation to take the necessary action to mitigate and alleviate hunger.”

Guidance on the core content of right to food states that food should be:

- physically accessible and affordable to all
- nutritious, safe to eat and culturally acceptable
- sustainably produced

Whilst this right will be realised progressively; the government has a **minimum core** to take the necessary action to mitigate and alleviate hunger. Even where resources are limited, the government must still introduce low-cost and targeted programmes to assist those most in need so that its limited resources are used efficiently and effectively.

10.2 Analysis of the human rights concerns relating to food in Scotland

Much of the necessary assessment on the human rights concerns relating to food in Scotland already exists within the evidence submitted to the Scottish Government's [Consultation on the Good Food Nation](#).¹

Availability: Land ownership is prohibitively expensive for most new entrants, the majority of tenancies are short-term and insecure; 46% of farms are failing to recover their annual costs; Agriculture and related land-use accounts for 23% of Scotland's total climate change emissions.¹

Accessibility: 20% of people in Scotland live in relative poverty after housing costs¹; 50% of older people admitted to hospital are undernourished.¹

Adequacy & Quality: 2/3rd of adults and 1/3rd of children in Scotland are overweight or obese; All of the Scottish Dietary Goals have been missed every year since monitoring began in 2001; Pesticide residues are found in 46% of fresh food sold in Scotland; No comprehensive action taken to reduce the need for food banks.¹

In 2016 the UN Committee on Economic, Social and Cultural Rights, informed the UK government that it was:

"...concerned about the lack of adequate measures adopted by the State party to address the increasing levels of food insecurity, malnutrition, including obesity, and the lack of adequate measures to reduce the reliance on food banks".¹

Exploring all of these aspects of the right to food in Scotland can help to identify where the government needs to focus its resourced action.

10.3 Designing policies that respond to those concerns

The UN Committee on Economic, Social and Cultural Rights recommended in 2016 that:

“ the State party develop a comprehensive national strategy for the protection and promotion of the right to adequate food in order to address food insecurity in all jurisdictions of the State party and to promote healthier diets.... the State party introduce higher taxes on junk foods and sugary drinks and consider adopting strict regulations on the marketing of such products, while ensuring improved access to healthy diets”.

The Good Food Nation agenda provides the opportunity for the Scottish Government to formulate resourced strategies and plans, incorporating indicators, benchmarks and time-bound targets (including budgetary), which are achievable and designed to assess progress in the realisation of the right to food. This may also include:

- adopting the laws and policies necessary for the realisation of the right to food or revising the laws and policies which may negatively affect it;
- establishing the institutional mechanisms necessary for coordinating multi-sectoral efforts to realise the right to food; and
- establishing recourse mechanisms which can provide remedies for violations of the right to food.

In exploring allocations key questions for this example could include:

- What has been allocated to policies/programmes that have an impact on realising the right to food – for example:
 - Free school meals
 - Vouchers for pregnant women/ mothers of babies; people in receipt of social security
 - Sustainable farming subsidies
 - Real living wage
 - Health living/diet initiatives (eg. for general public, targeted at schools, parents)

- Programmes to target food poverty amongst those over 65 resulting in negative impact on health co-morbidities, (eg funding of supports like Food Train)
- Programmes aimed at reducing food waste/ unused food re-distribution schemes.
- Inspectorates – e.g. Food Standards Agency – whose remit includes protecting the public’s right to safe food.
- How have allocations changed over time?
- How do allocations compare to other areas of the budget?
- Has allocation had the maximum beneficial impact on the enjoyment of rights? Who has benefited?

11. Resource Expenditure

Often what really matters the most is actual spending. If a government has not spent all allocated funds then it has not made full use of maximum available resources. Therefore, it is also important that during cycles of in-year or mid-year reviews that a government reviews whether their budget allocations are being spent effectively. Key questions include:

- Did the use of funds have the desired impact and deliver the anticipated outcomes?
- If not, was this because actions were not adequately resourced?
- Or, were resources allocated to the wrong policy levers?
- Has a government spent what is said it was going to spend during the course of the year? In other words, have allocated funds been spent as planned?
- If allocated funds have not been spent, how have they been reallocated?
- Was the reallocation process transparent, participative and accountable?

11.1.1 Human Rights Impact Assessments

A number of UN human rights committees have proposed the use of human rights impact assessments to support better policy making and fiscal decisions.¹⁹ As Ms Sepúlveda noted:

[Governments should] “conduct human rights assessments of fiscal policy periodically and with broad public participation, including analysis of the distributional consequences and tax

¹⁹ Committee on Economic, Social and Cultural Rights, General Comment 2, International technical assistance measures (Fourth session, 1990), U.N. Doc. E/1990/23, annex III at 86 (1990) & Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991) & Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002) & Committee on Economic, Social and Cultural Rights, General Comment 17, the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant), U.N. Doc. E/C.12/GC/17 (2006) & Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) U.N. Doc. E/C.12/GC/20 (2009) & Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a)), U.N. Doc. E/C.12/GC/21 (2009) & General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) pg 21 “Implement rights-based budget monitoring and analysis, as well as child impact assessments on how investments, particularly in the health sector, may serve the best interests of the child”.

burden borne by different income sectors and disadvantaged groups”.²⁰

In January 2019, Juan Pablo Bohoslavsky, the Independent Expert on foreign debt and human rights issued new [Guiding Principles on Human Rights Impact Assessments of Economic Reforms](#).²¹ Within the guidance he highlights that human rights need to be a central factor of good policymaking if economic reforms are to “*help advance societies, rather than hinder people’s lives*”.

He goes on to say that talk about the role of a State’s human rights obligations in economic policymaking as obligations that States simply cannot ignore. These decisions have consequences and those consequences must be identified before not after a policy has been implemented:

“Any economic policy measures – whether fiscal austerity, structural adjustment reforms, privatisation of public services, deregulation of financial and labour markets, or changes in taxation – all have human rights consequences... Governments at all levels - including local and subnational governments - must properly take into account their human rights obligations when designing and formulating economic reforms. Human rights impact assessments are key to this process... such assessments should pay particular attention to potential and cumulative impacts of economic measures on specific individuals and groups, such as women and persons with disabilities.”²²

²⁰ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona see here, http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf

²¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/443/52/PDF/G1844352.pdf?OpenElement>

²² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24090&LangID=E>

Human rights impact assessments are still not especially widely used, however, they should be standard practice in the preparation of budgets. Such assessments enable fair and transparent decision making and provide a practical method to support governments to avoid disproportionately affecting some groups more than others with their policy and budgetary decisions.

Good practice has been developed on Equality and human rights impact assessments (EQHRIAs) by the [Scottish Human Rights Commission \(SHRC\)](#)²³ and [Equality and Human Rights Commission \(EHRC\)](#)²⁴ – with a dedicated website which sets out:

- An explanation of the [added value of the human rights dimension](#).²⁵
- The [10 Good Practice Building Blocks for Assessing Impact](#).²⁶
- Information about [two pilot EQHRIAs in Renfrewshire and Fife Councils](#).²⁷
- [Basic background training materials](#).²⁸
- [Links to other resources](#).²⁹

12. What is Human Rights Budget Scrutiny?

Human rights budget scrutiny or analysis involves examining the public budget to assess a government's compliance with its human rights obligations. This is done with the central goal of making public budgets more effective in helping to realise human rights, to ensure that everyone can live a life of human dignity. This involves exploring both the budget process: to ensure that it is participative, transparent and accountable; as well as examining a government's resource generation, allocation and spend with reference to the agreed human rights standards, as noted above.

²³ <http://eqhria.scottishhumanrights.com/index.html>

²⁴ <http://www.equalityhumanrights.com/>

²⁵ <http://eqhria.scottishhumanrights.com/eqhrialpaddedvalue.html>

²⁶ <http://eqhria.scottishhumanrights.com/eqhriagoodpractice.html>

²⁷ <http://eqhria.scottishhumanrights.com/eqhriapilotstudies.html>

²⁸ <http://eqhria.scottishhumanrights.com/eqhriatrainingresources.html>

²⁹ <http://eqhria.scottishhumanrights.com/eqhriaotherresources.html>

12.1 Why do we do Human Rights Budget Scrutiny?

It is not uncommon for governments to find that despite having some of their laws and policies developed within a rights framework, that the range of lived experience outcomes of rights-holders remains 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 analysis could be of particular use to help identify why:

The causes of a poor human rights situation can be multiple. Budget work can help identify if budget choices are one of the causes.³⁰

Human Rights Budget Scrutiny helps to ensure that the process by which a budget is developed, implemented and evaluated is fit for purpose; engages those who it affects; and complies with international obligations, both procedural and rights. It allows governments to be held to account for delivering (or failure to deliver) on their human rights obligations through appropriate resource generation, allocation and spend.

A common reason given by governments for being unable to fulfil its human rights obligations (especially economic, social and cultural rights) is a lack of resources. Human rights budget scrutiny provides a new lens through which that claim can be interrogated. In other words, by asking the government to explain how it believes it has maximised its available resources to deliver its human rights outcomes. Scrutinising a budget through a human rights lens is not just about ensuring that a government is using its existing resources effectively and without discrimination, it is also about questioning if a government has made the effort to generate additional resources and whether those efforts are adequate and equitable.

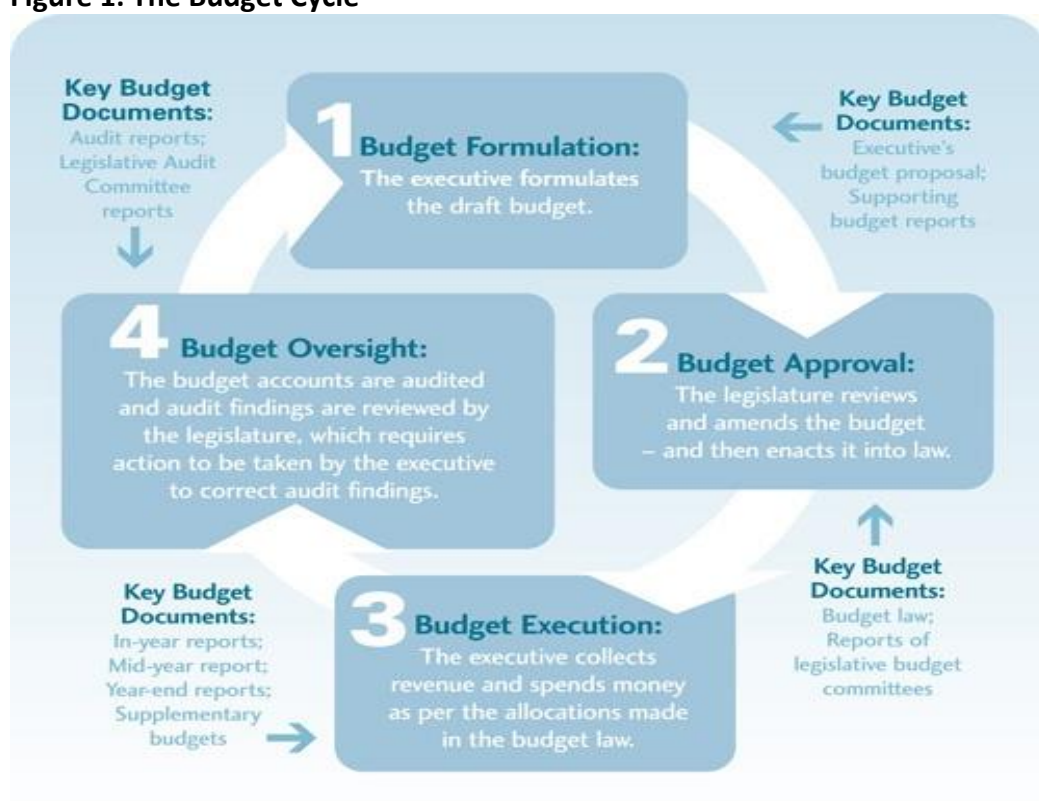
³⁰ Applied Budget Work by Warren Krafchik:
<https://www.internationalbudget.org/sectors-issues-demographic/human-rights/>

12.2 Who does budget scrutiny?

Well-functioning budget scrutiny is undertaken by a range of actors in an “accountability ecosystem” (i.e. legislators, auditors, citizens, civil society, National Human Rights Institutions (NHRIs) and the media). Formal oversight institutions are a core element of sound financial management. Effective legislatures, auditors and independent fiscal institutions have both the mandate and the resources to ensure that the public budget process is transparent, accountable and enables genuine participation from rights-holders.

These various actors play different roles at different stages of the budget process. In most countries the budget process is a yearlong process and can be broken down into four stages, as shown in Figure 1 below.

Figure 1: The Budget Cycle



International Budget Partnership³¹

³¹ <https://www.internationalbudget.org/why-budget-work/engaging-stakeholders/>

Very few formal or informal oversight actors currently apply a human rights lens to their scrutiny, however, they could be readily adapted to do so.

Legislatures have a role to play at all four stages of the budget process. They can help set the general parameters of the budget (in line with human rights obligations), identify priorities (delivering the minimum core, areas for progressive realisation whilst ensuring non-retrogression), scrutinise budget implementation (through procedural principles and resource generation and allocation, whilst ensuring non-discrimination) and evaluate audit reports (resource expenditure vs allocation, whilst ensuring non-discrimination).

While a distinct role exists for a finance committee of the legislature to examine the overall budget, it is also important that other subject or sectoral committees review budget for their subject area or sector. Critically, all of these subject or sectoral committees need to be supported to understand the relevant human rights obligations to their area. This is an important role that can be played by NHRIs and civil society organisations.

Audit institutions have a specific role at the fourth stage of the budget process, where they can assess whether or not resources have been used in accordance with the law and whether a government's financial procedures have been followed. This assessment should also include compliance with human rights law and human rights procedural obligations.

It is also common for independent auditors throughout the budget cycle to undertake additional financial and performance audits to scrutinise specific areas of government spending for effectiveness and efficiency. Such audits undertaken through a human rights lens would provide valuable understanding of a government's compliance with its international human rights obligations.

Oversight by an **Independent Fiscal Institution** is not yet widespread globally, however, they have existed in a small group of countries (such as Austria, Belgium, and the United States) for many years. Over the past decade it has become more common for the creation of such institutions to support the

restoration and improvement of government finance credibility and trust by the public in government figures.³²

The participation of **rights-holders** as an “informal oversight mechanism” (e.g. individual citizens, or members of **civil society organisations**, as well as members of NHRIs and the media), all help to strengthen the formal oversight institutions. They can provide and shine a light on the perspective of lived experience, in particular where that lived experience is being failed by poor budgetary processes and/or decisions.

National Human Rights Institutions have a unique role to play in the process of budget scrutiny. As with many aspects of the work of NHRIs, one of their key roles is that of a bridge. One bridge is between the State and civil society. Cooperating with a variety of civil society actors, NHRIs can help to bring an accurate overview of the human rights situation, with recommendations, to governments, parliament and other State bodies. Another bridge is between the national and international arenas, helping to apply international human rights standards at the national level, with a full understanding of the local context. It is within this context that NHRI can help to support the State, civil society and formal oversight institutions to understand how to view and scrutinise the budget and budget process through a human rights lens.

12.3 How do you do human rights budget scrutiny?

Ask the right questions

Good scrutiny starts with asking the right questions. This can help the analyst to assess where a government’s budget process has complied with its procedural rights, in other words – to assess if the process is:

³² In 2017, the Scottish Fiscal Commission came into being, with its independence set in law. It produces independent, official forecasts with their values based on those set out by the Organisation for Economic Co-operation and Development for Independent Fiscal Institutions which requires independence; transparency; accessibility and openness.

- Transparent - Do people have access to adequate, timely and coherent information?
- Participative – Are genuine opportunities offered for rights-holders to engage with and have impact on budgetary decisions?
- Accountable – Are government held accountable for their budgetary decisions?

It can also allow the analyst to assess whether governments have fulfilled their human rights obligations in how they have generated, allocated and spent their resources.

- Generation – Is sufficient revenue generated to invest in realising basic levels of rights for all? Who are resources generated from? Are particular groups unjustly impacted? Could government revenue increase?
- Allocation - Do allocations prioritise the achievement of basic levels of rights for all? Do allocations prioritise closing the gaps in human rights enjoyment between different groups? Are allocations growing or shrinking? Are reductions justified (in human rights terms)?
- Spend - Do financial management systems ensure efficient management of funds allocated? Have funds been redirected in a way that disproportionately impacts particular groups? Have financial management systems improved or weakened over time?³³

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).

³³ Allison Corkery, 2018, Introduction to Human Rights Budget Work: <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

12.4 Identify Indicators

Analysing both procedural rights and assessing resource generation, allocation and spend can be aided by the identification and development of good indicators.

12.4.1 Process indicators

Much International best practice exists to support the assessment of budget process (e.g. from the International Monetary Fund (IMF), the World Bank, the Organisation for Economic Co-operation and Development (OECD) and the Global Institute for Fiscal Transparency (GIFT)). One indicator that has been developed to support the monitoring of budget processes for transparency, participation and accountability is the [Open Budget Survey](#), a biennial global indicator of fiscal transparency (timely availability and accessibility of information); effectiveness of accountability mechanisms (legislature, auditor, fiscal institution), and opportunities for public engagement.

As well as the opportunity to participate another useful process indicator could explore the actual quality of that participative experience. This could include assessing the ease of and inclusiveness of the participation and the perception of impact on budgetary decisions. Utilising, best practice principles for consultative processes (e.g. the [Consultation Charter](#)³⁴) could help support the development of a robust indicator on the quality of participation.

Finally, the majority of focus thus far has been on the national budget, however, local budgeting processes are equally important. Indeed, in many countries, it is the local authorities or municipalities that make key decisions about which and how local services are funded. Arguably, the realisation of rights in practice and delivery of both a minimum core and progressive realisation of rights is determined at the local level. Therefore exploring the availability, accessibility and transparency of budget information at the Local Level, can support a human rights analysis of budgetary decisions at the local level.

³⁴ See: <https://www.consultationinstitute.org/consultation-charter-7-best-practice-principles/>

12.4.2 Resource indicators

Table 1 below sets out a range of examples of resource indicators that could be used to scrutinise generation, allocation and spend. In order that they are comparable like for like, it is necessary for many of these indicators (especially allocation) to convert total numbers into ratios (e.g. amounts allocated into percentages).

Table 1: Example indicators of resource generation, allocation and spend³⁵

Examples for resource generation:	<p>Government revenue as percent of GDP</p> <p>Tax revenue as percent of government revenue</p> <p>Different tax types (e.g. income, corporate, VAT) as percent of total tax revenue</p> <p>Tax (by type) as a share of a taxpayer’s total income</p> <p>Tax effort: Tax Evasion Gap</p> <p>Average illicit financial flows</p> <p>Palma Ratio: measure of overall economic inequality</p>
Examples for resource allocation:	<p>Expenditure ratios (percent out of a total) by sector</p> <p>Expenditure ratios by sub-sector</p> <p>Per unit or per capita expenditure by sector and sub-sector</p> <p>Expenditure ratios by country defined minimum core obligations³⁶</p>
Examples for resource expenditure:	<p>Variance between budgeted amounts and actual budget outturns</p> <p>Budget turnaround time in relation to policy commitment</p>

³⁵ Drawn from Allison Corkery, 2018, Introduction to Human Rights Budget Work: <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

³⁶ This would require a country to have set out, based on international guidance, definition of its country’s minimum core obligations.

	Efficiency of spending, including analysis of transaction costs and leakages
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12.4.3 Make Comparisons

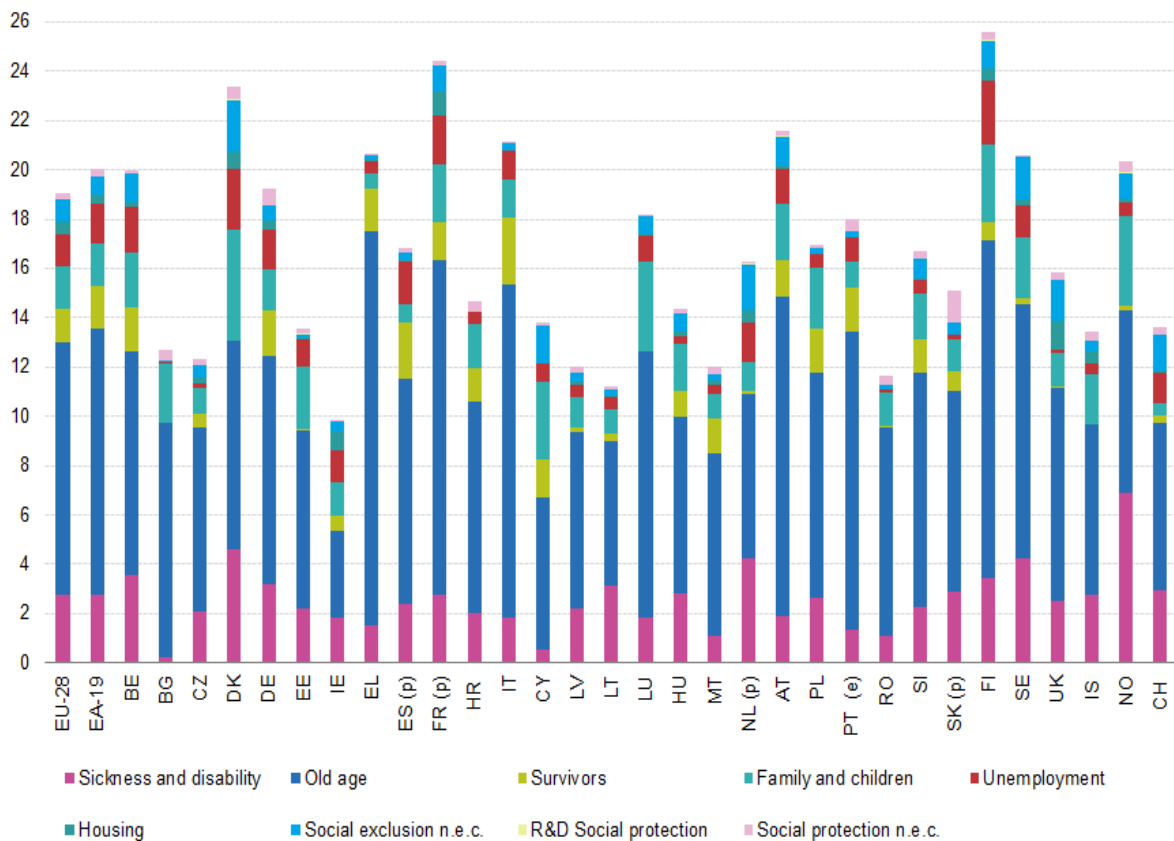
Making comparisons with the information gathered via indicators allows a government to compare its place and relative progression or regression both externally, for example to:

- national or international targets or commitments agreed to by the State (e.g. UN Treaties) ,
- guidelines from international bodies (e.g. UN treaty body General Comments³⁷),
- other comparable countries (e.g. see graph 1 below),
- Other parts of the budget (e.g. areas of economic, social and cultural rights compared to civil and political rights.
- Other relevant economic indicators (e.g. nationally defined indicators of economic progress)
- Between groups (e.g. equalities and groups with protected characteristics)
 - Helps to identify who is/ is not benefiting – disparities at local levels can help raise red flags of possible discrimination in the distribution of decentralised funds
 - Calculating per capita allocations can help facilitate by-group comparisons

³⁷ For example for ICESCR General Comments, see here:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11

Graph 1: Total general government expenditure on social protection, 2016 (% of GDP)³⁸



This graph shows the amount that each of the EU 28 countries spent on a range of social protections as a percentage of their Gross Domestic Product in 2016. This graph can be used to highlight: which countries on the whole spend more (Denmark, France and Finland), compared to who spends the least (Ireland, Lithuania and Romania); who spends more or less on specific areas of spend e.g. housing or sickness and disability; and how countries compare to the EU average. Changes can then also be monitored over time.

³⁸ Source: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Total_general_government_expenditure_on_social_protection,_2016_\(%25_of_GDP\).png](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Total_general_government_expenditure_on_social_protection,_2016_(%25_of_GDP).png)

Undertaking such comparisons allows the government to be challenged over how they use and present the use of their resources. This can be a very powerful tool as the case study of Spain presented below shows:

In 2018 at the 6th periodic review of Spain³⁹ by the UN Committee on Economic, Social and Cultural Rights (CESCR), evidence was presented by a coalition of 36 Spanish civil society organizations and the Centre of Economic and Social Rights.⁴⁰

This evidence showed that the austerity measures that had been adopted by the Spanish government (as the ONLY option), were having a devastating and disproportionate impact on the most vulnerable populations and as such Spain was breaching its human rights obligations.

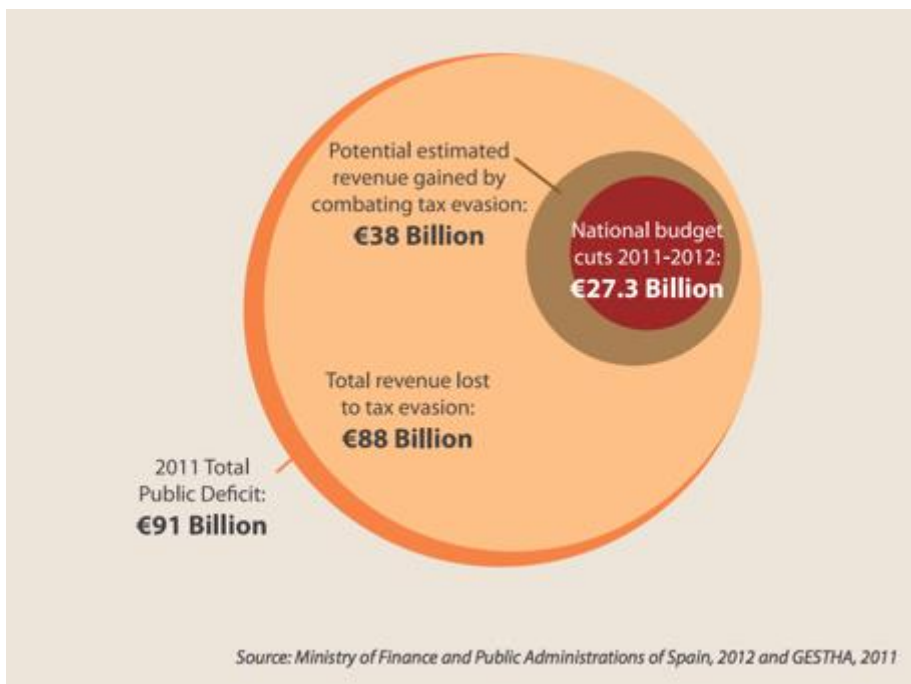
In their submission, the dominant narrative that government overspending had cause the crisis and that budget cuts were the only option was challenged by the presentation of evidence that 1. Spain's annual expenditure on social protection was low (compared to other EU countries) and 2. Estimates from the national union of tax inspectors showed that if Spain reduced its black economy by 10% (in line with EU standards), this would have been enough revenue to exceed the entire budget cuts for 2012.⁴¹

³⁹http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1197&Lang=en

⁴⁰ <http://cesr.org/>

⁴¹ See <http://cesr.org/spanish-austerity-violates-health-housing-sexual-and-reproductive-health-and-rights>

Figure 2: Tax Evasion vs. Budget Cuts in Spain (2012)



Source⁴²

12.4.4 Analyse Trends over time

Analysing trends over time allows a critical examination of a government's effort to progressively realise rights realisation. Examining trends over time can help to support impact analysis, connecting budget allocation with outcomes, and show what allocation/s have been potential drivers for change. When making such comparisons it is important to make the distinction between real and nominal expenditure. This is crucial to allow for credible commentary on progressive realisation. To enable valid, accurate comparison over time, nominal budget figures need to be "adjusted for inflation"⁴³.

⁴² <http://www.cesr.org/sites/default/files/FACTSHEET-Spain%28EN%29-June2018-FINAL.pdf>

⁴³ *Formula for Adjusting for Inflation: Real Value = Target year's nominal value X base year's consumer price index (CPI) / Target year's CPI.*

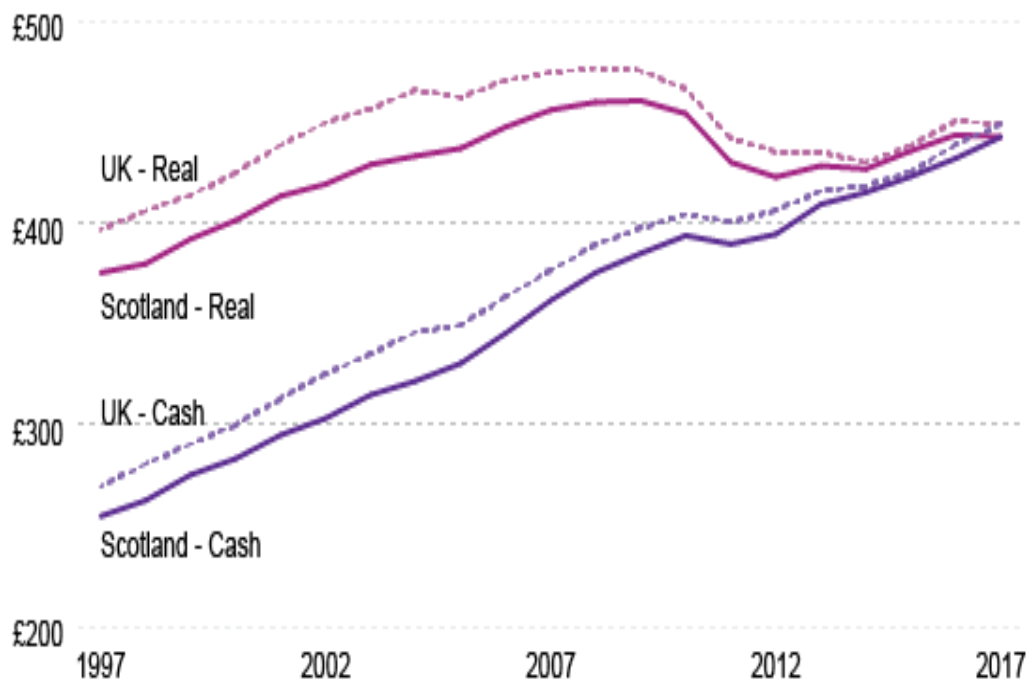
Example: 2019 money in 2008 values: Real Value = (2019 value) X (2008 CPI) / 2019 CPI

Graph 2 below shows trends in average weekly earnings in Scotland and the UK: 1997-2017. It shows that from 1997 until 2008/9 (when the banking crisis hit) the amount of money that people in Scotland and the UK were paid (before tax) increased at or above the rate of inflation – in other words in line with living costs. Things like rent and household bills became more expensive over time, but pay increased at the same rate and so was able to match these increases. From 2009, whilst the cost of living has continued to rise, the amount the people are paid has not kept pace with inflation. Therefore, people have less money in their pocket as they have ended up spending a larger proportion of their pay on things like rent and household bills.

£100 cash in 1997 is still £100 cash in 2017, but what it can buy has changed. Things cost more in 2017 and so £100 in 2017 has only the equivalent purchasing power of about £57.80 in 1997, a difference of £-42.20 over 20 years. This highlights why it is important to look at figures adjusted for inflation⁴⁴.

⁴⁴ See <https://www.officialdata.org/2017-GBP-in-1997?amount=100>

Graph 2: Gross weekly pay in cash and real terms for Scotland and the UK between 1997 and 2017⁴⁵



12.4.5 Actual spend

Often what really matters the most is *actual spending*. If a government has not spent all allocated funds then it has not made full use of maximum available funds. It is important therefore to consider the following questions:

- Has a government spent what it said it was going to spend during the course of the year? In other words, have allocated funds been spent as planned?
- If allocated funds have not been spent, how have they been reallocated?
- Was the reallocation process transparent, participative and accountable?

A useful place to start to explore this, if possible to identify, is the percentage of unspent funds in a government's budget.

⁴⁵<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/1/21/Earnings-in-Scotland--2017#How-has-pay-changed-over-the-last-twenty-years->

13. 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.⁴⁶

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 FM's 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 1998⁴⁷ 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 her fiscal powers and responsibilities. These were devolved to the Scottish Government through the Scotland Acts 2012⁴⁸ and 2016⁴⁹ and this has led to a renewed interest in budget scrutiny in

⁴⁶ See <http://www.scottishhumanrights.com/economic-social-cultural-rights/strengthening-economic-social-cultural-rights/>

⁴⁷ 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.

⁴⁸ <http://www.legislation.gov.uk/ukpga/2012/11/section/25/enacted>

⁴⁹ <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 report⁵⁰ 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 committees⁵¹ 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

⁵⁰[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)

⁵¹http://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.”⁵²

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.⁵³ 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,⁵⁴ convened by the Scottish government.

In June 2018 Scotland’s Revised National Performance Framework⁵⁵ 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:

⁵² http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiCS052017R02.pdf

⁵³ 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>

⁵⁴ <https://www.gov.scot/groups/equality-budget-advisory-group/>

⁵⁵ See: <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](#)⁵⁶ 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

⁵⁶ <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 guidance⁵⁷ and the accepted advice of the Budget Process Review Group.

⁵⁷http://www.parliament.scot/S5_Finance/General%20Documents/Budget_guidance_final.pdf

14. 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](#)⁵⁸ 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](#)⁵⁹ on human rights [budget scrutiny](#).⁶⁰
- engaged in scrutiny of [national tax reform](#);⁶¹
- 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

⁵⁸ <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

⁵⁹ <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

⁶⁰ <http://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

⁶¹ <http://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>

- [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

15. Contact

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16. 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].