

Human Rights Budget Work: What, Why, How?

Briefing Paper 6: The Budget Process and Human Rights Procedural Principles

Published September 2019

In order to realise human rights, the Government has to protect, promote and fulfil these rights throughout the budgetary process in all budget-related decisions, legislation, policy and practice.

FLAC, 2014¹

About this document

Welcome to the final in a series 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.

¹https://www.flac.ie/download/pdf/flac_briefing_on_human_rights_approach_to_budgeting.pdf

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.

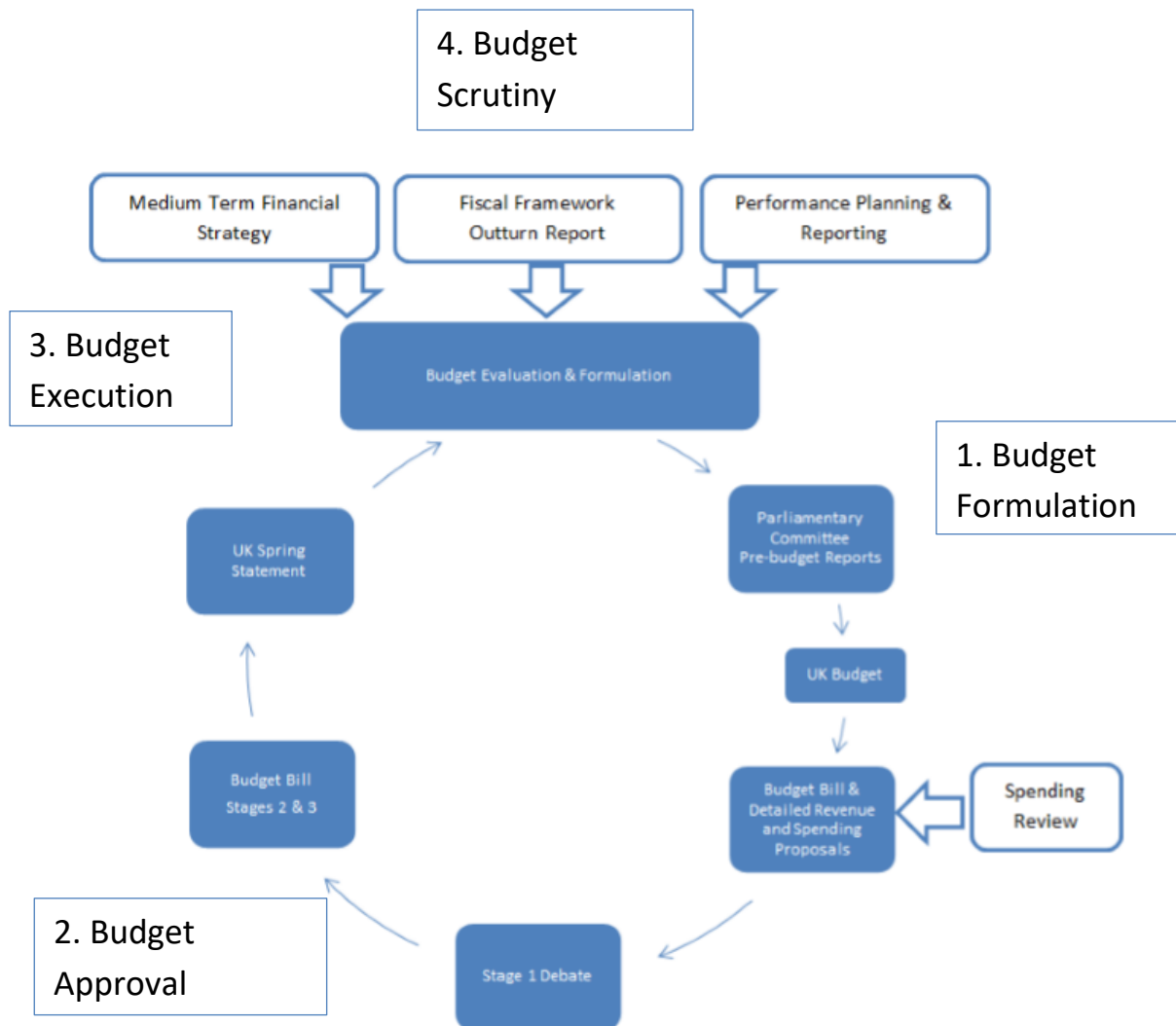
Steps taken by the government should:

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

What is the budget process?

As outlined in the Chart below, the budget process in Scotland is year-long and can be broken down into four stages: budget formulation, budget approval, budget execution, and budget scrutiny. This revised process is intended to adopt an outcomes-based scrutiny approach, providing a more transparent means of evaluating the relative success of economic and social outcomes through public resources.

Chart 1: Overview of Revised Budget Process



Source: Budget Process – Subject Committee Guidance²

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:

“Each State Party to the present Covenant undertakes to take steps ... especially economic and technical, to the maximum of

²http://www.parliament.scot/S5_Finance/General%20Documents/Budget_guidance_final.pdf

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).³

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.

Legality: Approaches should be grounded in the legal rights that are set out in domestic and international laws.⁴

³ <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/#the-panel-principles-1210> for further discussion about the PANEL approach.

⁴http://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf

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.

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.⁵

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?
Accountability	<ul style="list-style-type: none"> • Is there effective legislature and independent oversight of the budget process – as defined by international best practice?

⁵ See <https://www.internationalbudget.org/why-budget-work/role-of-civil-society-budget-work/> for further information.

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 2018,⁶ 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](#),⁷ 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](#)⁸ 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.
- **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

⁶ This project ran from January to June 2018 – see project outputs here: <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budgeting/>

⁷ See: <https://www.internationalbudget.org/open-budget-survey/>

⁸ See: <https://www.consultationinstitute.org/consultation-charter-7-best-practice-principles/>

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.⁹

Why is human rights budget work important for Scotland now?

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

- [The Budget Process Review Group](#)¹⁰
- [Scottish Human Rights Commission EU funded project on human rights budget work](#)¹¹
- [Scottish Parliament's Equality and Human Rights Committee Inquiry into Human Rights](#)¹²
- Increased remit of the [Equality Budget Advisory Group](#)¹³ to include human rights budgeting
- [Scotland's Revised National Performance Framework](#)¹⁴
- [Scottish Government Open Government Action Plan 2018-20](#)¹⁵
- [First Ministers Advisory Group on Human Rights Leadership](#)¹⁶

⁹See: <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/TheModelPublicationScheme.aspx>

¹⁰ Ibid.

¹¹ <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

¹²

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

¹³ <https://www.gov.scot/groups/equality-budget-advisory-group/>

¹⁴ <https://nationalperformance.gov.scot/national-outcomes>

¹⁵ <https://www2.gov.scot/Resource/0054/00546407.pdf>

¹⁶ <https://humanrightsleadership.scot/>

There is renewed interest in budget scrutiny in Scotland because of increased fiscal powers and responsibilities devolved to the Scottish Government through the Scotland Acts 2012¹⁷ and 2016¹⁸. There is also a commitment to ensuring that Brexit does not harm current human rights protections and that we remain in step with future advances in EU human rights, as well as growing interest in furthering economic, social, cultural and environmental rights¹⁹.

If the Scottish Government uses its human rights obligations to provide the framework for its Programme for Government, policy and budgets can be based on progressive rights realisation. This will make Scotland more fair, transparent and accountable for decisions on revenue generation, allocation and spend and more likely that those decisions will get it right for the most vulnerable and marginalised.

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

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

¹⁷ <http://www.legislation.gov.uk/ukpga/2012/11/section/25/enacted>

¹⁸ <http://www.legislation.gov.uk/ukpga/2016/11/contents>

¹⁹ 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.

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](#)²⁰ 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](#)²¹ on human rights [budget scrutiny](#);²²
- engaged in scrutiny of [national tax reform](#);²³
- 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

²⁰ <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

²¹ <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

²² <http://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

²³ <http://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>

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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].