

## **Equality, Human Rights and Civil Justice Committee Pre-budget Scrutiny 2022-2023**

**September 2021**

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The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

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## Introduction

The Commission welcomes the opportunity to respond to the Equality, Human Rights and Civil Justice Committee's pre-budget scrutiny 2022-23. We especially welcome the explicit focus that the Committee has taken this year to focus its questions on the government's human rights obligations with regard to resource generation and allocation, and the importance of human rights principles in facilitating the budget process.

Given the indivisible link between rights and recovery, it is important that decisions about this year's budget with its focus on economic and social recovery from COVID-19 are informed by and rooted in a comprehensive and robust rights-based analysis.

Previous submissions and publications by the Commission provide further detail on a range of areas relevant to this call for views and we suggest that these should be considered alongside this submission, these can be found [here](#)<sup>1</sup>.

# 1. Resource generation

## 1.1. Given the main sources of government revenue should the government further increase revenue available to it, and if so how?

The Scottish Government has human rights obligations which apply to all government activity, including decisions around resource generation, allocation and spend. As the Committee sets out in its call for views, the government has an obligation to maximise its available resources<sup>2</sup> in order to fulfil its human rights commitments and progressively realise rights.

The importance of this specific obligation is that developing a budget through a human rights lens is not just about ensuring that the government is using its existing resources efficiently, effectively and without discrimination, it is also about ensuring that the government is making the necessary effort to generate additional resources and whether those efforts are adequate and equitable.

The obligation to maximise available resources means that governments need to be imaginative and consider innovative ways in which it is in their power to raise funds. For example, we have seen this drawn out in an example where the Scottish Government had sought novel ways to raise revenue for affordable housing. The Scottish Government worked with the Scottish Futures Trust and a number of Councils to develop and deliver options of the original National Housing Trust initiative, which had levered over £200 million of development by 2015<sup>3</sup> to support the delivery of over 2,000 additional homes for affordable rent<sup>4</sup>.

Another key area of focus when a government is exploring whether it has maximised its available resources, is the country's system of taxation.

Tax policy in Scotland is framed around the principles of the 'Scottish Approach to Taxation' based solidly in the legacy of Adam Smith and set out by Revenue Scotland<sup>5</sup>.

- “**Certain**: The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person.”
- “**Convenient**: Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay...”
- “**Efficient**: Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state...”
- “**Proportionate** to the taxpayer’s ability to pay: The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities.”

These principles have some alignment with a human rights based approach to taxation. The obligation to use the maximum of available resources to realise rights means that a government must be efficient in relation to revenue collection, as inefficiency leaves a government without the necessary resources to realise rights. Government expenditures must also be effective. In other words, the impact of the expenditures must be such as to actually help realise rights. In addition, if a government has not spent all allocated funds as intended – or has done so in a way that is inefficient or wasteful - then it has not made full use of maximum available funds. Finally, connected to the principle of proportionate ability to pay, the human rights principle of non-discrimination would necessitate identifying who resources are generated from, whether this is done proportionately and whether any particular groups are unjustly impacted through taxation.

Further work to bring the Scottish principles fully in line with a HRBA is, however, required. The starting point of this approach is to firstly question, is the budget as big as it could be?, rather than accepting a budget total as given. Is the taxation system raising the maximum available funds that it can? Has the government made use of all taxation options available to it? Further questions then include: are all of the government's current (and proposed) taxation options progressive?; who are resources generated from?; is this done fairly, or are particular groups impacted differently?; and what is being done to tackle tax evasion, avoidance and debt? All of which are an inefficient use of available resources, and therefore, a failure to tackle evasion, avoidance and debt, is a failure to comply with this obligation<sup>6</sup>.

The Commission acknowledges that not all fiscal levers are within the Scottish Government's gift. Some efforts that would generate progressive changes and substantial resources, would require a UK led approach<sup>7</sup>. However, the Scottish Government must also exercise its own powers in relation to a number of progressive tax measures that it could choose in and of its own right, with which to approach COVID-19 economic and social recovery. For example, the current government and previous governments before it have repeatedly failed to take the opportunity to make substantial and progressive changes to certain aspects of taxation – such as local taxation<sup>8</sup> - even when successive consultations and Commissions<sup>9</sup>, which have been set up to deliberate on this subject, have concluded that it is both recommended and necessary.

During the last Parliamentary cycle (even before the arrival of COVID-19) the government had begun to focus discussion on the need for both changes to the system of taxation and the necessity for informed public discourse on the role of taxation in Scotland to inform and support this. Indeed the government has restarted this work and the new Tax Framework for Scotland is currently out for consultation.

It is important that the government's obligation to deliver on Maximum Available Resources is highlighted and reinforced through the budget scrutiny performed by all Parliamentary Committees (not limited to this Committee or to the Finance and Public Administration Committee) to

support these discussions and to hold government to account for progressing this agenda.

COVID-19 has provided both the necessity and the renewed appetite to take the opportunity for truly transformational change. It has also reinforced the importance of taking a Scottish approach to taxation with a view to exploring how COVID-19 has impacted on the taxation system and considering options for a restructuring of the taxes which are devolved including taking a human rights based approach.

In exploring progressive tax measures to realise rights as countries recover from COVID-19, the Centre for Economic and Social Rights and the Tax Justice Network<sup>10</sup> have highlighted that systems of taxation should be asking proportionately more from those most able to pay. They suggest the following:

- “Ending over-reliance on ‘indirect’ taxes like sales tax and VAT, which tend to take a larger proportion from the income of poorer people;
- Increasing rates of ‘direct’ taxes on high incomes and the most profitable businesses,
- Introducing or boosting taxes on assets like property, wealth, inheritance and income from investments,
- Cracking down on tax evasion and avoidance by wealthy individuals and powerful corporations...”<sup>11</sup>.

Much domestic expertise has been developed on the taxation options available to Scotland in recent years by the likes of the Fraser of Allander Institute<sup>12</sup>, CPAG<sup>13</sup> and the Institute for Public Policy Research<sup>14</sup>, amongst others. Ideas include exploring the potential offered by: further amendments to Income Tax; reforming Scottish property taxes; excluding tax avoiders from government bailouts; leveraging tax as a tool for behavioural change; and new taxes – including Local Wealth Taxes. Examples worth exploring in the Scottish context include a net wealth tax modelled on that levied in Switzerland and taxing the imputed rents of owner occupiers (see Byrne 2021 for further details<sup>15</sup>).

This is an area where policy needs to be more proactive. Taking the opportunity to explore these ideas with taxation experts through a human rights lens would afford the Committee (possibly in conjunction with the Finance and Public Administration Committee) the possibility for a timely multi-stakeholder learning opportunity focusing on both the benefits of taking a HRBA to taxation coupled with a thorough analysis of the taxation options that are fully within the remit of the Scottish Government.

## **1.2. How might particular groups be affected differently by efforts to raise revenues?**

The Scottish Government acknowledges through its key principles of the 'Scottish Approach to Taxation', that taxes should be levied in proportion to taxpayers' ability to pay. In addition is the belief that a fair tax system should be progressive. In other words the proportion of tax paid should reflect the relative income or wealth of the taxpayer. The taxation system has the ability to raise additional revenue for the government and the responsibility to do so in a way that does not negatively impact on those who can least afford to pay. The way taxes are levied has a strong redistributive potential.

Whilst in recent years the Scottish Government has taken the opportunity to change the way that income is taxed and in doing so introduce a more progressive system that is fairer to those on lower incomes, wealth (unearned income) has not received the same treatment.

Increasing wealth inequality in Scotland and the UK as a whole is not a new feature of the Scottish or UK economies, however, the pandemic has accelerated this rapidly growing inequality. As the Resolution Foundation recently highlighted<sup>16</sup>, whilst the inflation-adjusted value of household wealth has more than doubled since 1980, revenue from taxes on wealth has remained stagnant. This means that the rate of tax on wealth has effectively more than halved over the last 40 years. Reforming wealth taxes must therefore be given serious consideration

as a means to raising revenue in a way that can help to reduce wealth inequality.

### **1.3. What kinds of analysis are necessary to ensure that resources are raised (and allocated) in such a way that supports the progressive realisation of rights?**

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”.

In order to ensure that resources are raised in a way that supports the progressive realisation of rights, a range of information and analyses are required. This includes:

- A broad understanding of income and wealth distributions amongst households – including a breakdown by tenure type; household makeup; protected characteristics.
- Analysis of the potential and likely impact of different revenue raising options on these distributions.
- Analysis of the cumulative and intersectional impact of multiple changes in revenue raising options on these distributions (especially in light of the forthcoming changes to National Insurance from April 2022).
- A broad understanding of what constitutes the minimum core of each right and what progressive realisation would look like for those rights, coupled with analyses of the degree to which:
  - 1. the government is current delivering on its minimum core obligations and 2. how far beyond minimum core the government is currently delivering;
  - 3. any new proposals may help to deliver on the government’s minimum core obligations and 4. how far



beyond minimum core any new proposals may help to further progress those rights.

## 2. Resource allocation

### 2.1. In terms of resource allocation what areas do you think are: sufficiently resourced, and/or under resourced and where resources need to be redirected to?

Gaining an understanding of the sufficiency of resource allocation from a human rights perspective requires a significant piece of analysis, which is out with both the scope of the timescale provided by this consultation and Commission resources. What the Commission can do, however, is to inform the Committee that this is the kind of analysis that the government should routinely be producing as part of and to inform a Pre-Budget Statement (PBS).

A PBS provides a means by which the public can make links between policies and budget allocations. As noted by the OECD in its Best Practices for Budget Transparency, the PBS “*serves to encourage debate on the budget aggregates and how they interact with the economy... [thereby creating] appropriate expectations for the budget itself*”<sup>17</sup>.

International best practice<sup>18</sup> identifies the importance of the PBS as a means to: strengthen the link between policies and budget allocations; identify the government’s basic strategy for the medium term; improve the rationality of the budget formulation; calibrate expectations for the budget and allow the legislators and the public to provide input on broad budget themes.

It’s key contents<sup>19</sup> should include: a macroeconomic forecast over the medium term; the government’s fiscal objectives over the medium term; broad sector allocations; expectations for broad categories of taxes and revenues and a description and cost of new policy measures. These

contents analysed from a human rights perspective would provide the evidence with which to answer the Committee's question.

The lack of an annual PBS by the Scottish Government means it is not possible for any oversight body to examine the fiscal policy plans for the forthcoming budget year nor explore the links between policies and budget allocations. International best practice indicates that a PBS should be published in advance of the more detailed Executive Budget Proposal. The ideal timeframe for a PBS is in the 4<sup>th</sup> or 5<sup>th</sup> month of the previous budget year; possibly combined with a midterm evaluation of the previous year (7<sup>th</sup> month) and at the latest, one month before publication of the Executive Budget Proposal<sup>20</sup>.

## **2.2. How might resource allocation address inequalities and the gaps in the realisation of human rights for all?**

From early days, it was clear that the COVID-19 pandemic was exposing the harmful effects of enduring and persistent inequalities and indirect discrimination on people's rights in Scotland — especially their economic and social rights. It was also clear that the chronic underinvestment in economic and social rights and the public infrastructures that support them, as a result of over a decade of austerity policy, had left Scotland lacking some of the necessary resilience to withstand the full impacts of this pandemic.

Human rights law is clear that even in times of severe resource constraints – whether caused by a process of economic adjustment, recession or a pandemic induced economic crisis – vulnerable members of society must be protected and the government must ensure certain minimum levels of enjoyment of rights (for example, protection against hunger (related to the right to food), access to basic health care (the right to health), and universal, free primary education (the right to education)).

In an environment where there are financial constraints, once the minimum core is fulfilled, a human rights framework can then provide objective guidance which will assist balanced decision making on the use of resources. This is particularly relevant for Budget 2022-23 as it addresses and sets the path for longer term social and economic recovery from COVID-19 in a financially constrained context.

As the Committee identified in this call for views, human rights obligations exist on the government<sup>21</sup>, for resource allocation include:

- prioritising the fulfilment of basic levels of rights enjoyment for all (**Minimum Core**);
- a general increase in allocation of resources, in line with increased revenue, to achieve the further realisation of rights (**Progressive Realisation**); and
- no unjustified reduction in allocation leading to regression in the realisation of rights (**Non-regression**).
- identifying and using the **maximum available resources** for the progressive realisation of rights, and allocating resources in a way that reduces inequalities by meeting the needs of vulnerable and marginalised groups (**Non-discrimination**).

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”. Minimum core obligations are 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. These requirements are immediately realisable, not subject to progressive realisation and the government is obligated to provide this essential level of protection at all times.

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. In relation to realising the right to an adequate

standard of living, the minimum core would include, for example, access to basic housing and freedom from starvation. The current levels of homelessness and poverty, including food poverty, in Scotland means that we can say that Scotland is failing to provide minimum levels of protection as covered by the immediately realisable minimum core of economic, social and cultural rights. Therefore, priority number one for the Scottish Government's budget needs to be addressing these concerns, along with any other failures to provide minimum protection.

Ensuring that the government meets its minimum core obligations is essential if resource allocations are to begin to address inequalities and the gaps in the realisation of human rights for all.

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 through the issuing of General Comments (e.g. relation to an adequate standard of living and the rights to housing, health and education<sup>22</sup>). Critically, however, this must not be considered as a ceiling of achievement, but rather it is a basic floor of provision upon which a government must progressively build.

### **2.3. Overall, how effectively is public finance in Scotland being used to achieve economic, social and cultural rights (as outlined above)? What improvements are required?**

Currently the Scottish Government does not take a human rights based approach to the development of its budget and therefore achieving economic, social and cultural rights is not a driving force within the budget process. For this to begin to happen, achieving economic, social and cultural rights need to be the starting point. Before the development of the budget comes the development of laws, regulations, policies and plans that are shaped by human rights standards.

The standards draw on the content of the specific rights and help to identify what a government should prioritise its spending on (minimum core and non-discrimination) and work towards achieving (progressive realisation and non-retrogression). Understanding the way that government obligations are framed in international human rights law, with reference to all available guidance<sup>23</sup>, helps to set the scene for how these duties can be leveraged as a driver for more equitable, people-centred budgetary decisions in the Scottish context.

Earlier this year, the Commission welcomed the first attempt by the government portfolios to identify areas of rights that may be relevant to their budget area within the [2021-22 Fairer Scotland Equality Budget Statement](#)<sup>24</sup>. This exercise, however, highlighted the existing knowledge gap of the rights framework and the need for significant capacity building

across government departments and the wider public sector, with regard to both the existence and the content of the state's human rights obligations and standards. This will be crucial to the successful implementation in due course of the new human rights framework legislation, the incorporation of UNCR, and the Programme for Government commitment to human rights budgeting.

To use public finance effectively to respect, protect and fulfil rights, the government must first identify what steps or action they plan to take, they must also do what they say they are going to do effectively, and they must do so with 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 Rights<sup>25</sup>. 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 and 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 disabled people, 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 public servants and delivery personnel - implementing budgetary decisions therefore may also have cost and 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 unaffordable. Whilst a government can for example, means test or make fees payable without violating rights, attention must be given as to the impact on the accessibility of rights.

For example, when a Fees Order<sup>26</sup> was introduced requiring an issue fee to be paid when a claim form was presented to an Employment Tribunal, and a hearing fee prior to the hearing of the claim, the Supreme Court unanimously agreed that the Fees Order was unlawful because it had the effect of preventing access to justice. Consideration was given to whether the fees could reasonably be afforded and the Court concluded that the fees could not be regarded as affordable because households on low to middle incomes could only afford the fees by forgoing an acceptable standard of living<sup>27</sup>.

Certain groups may also be disproportionately affected by the same measure. Given that the right to non-discrimination (in law and in practice)<sup>28</sup> 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 to accessing rights, 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.

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.

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”:

- Are sufficient fiscal and other resources (human, natural, technological, etc.) available?
- 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.

### **3. Budget Process**

- 3.1. [SPICe have set out](#) the standard budget process. How easy is it for people to engage with the budget process? For example:**



**How easy is it to navigate and find the necessary information on the budget?**

**Is there specific information or access to different information that would improve understanding and scrutiny?**

Availability of and access to transparent information about the budget is key to facilitating engagement with and scrutiny of the budget process. In 2018 the Commission began its human rights budget work with a six month EU funded project that had initially aimed to set up benchmarks and indicators with which to undertake human rights scrutiny of the Scottish budget over time. The difficulty of penetrating the budget in any meaningful way for a human rights analysis at that time instead led the project to a focus in the first instance on process indicators, the logic being with better human rights compliant processes (transparent, participative & accountable), it would be possible in future to undertake a human rights analysis of the national budget/ areas of specific human rights interest within the budget. The project also drew upon the 2017 Budget Review Process recommendations to improve scrutiny and the integration of equality and human rights.

As the Committee may be aware, to support this work, the Commission undertook some research (published in April 2020) that compared the openness of Scotland's budgetary processes with those of 117 countries involved in the International Budget Partnership's (IBP) latest Open Budget Survey (OBS). The OBS produces a global indicator, based on international best practice, of how transparent, participative and accountable countries' budget process are. These principles are core elements of taking a human rights based approach (HRBA) to the budget. The report can be accessed [here](#)<sup>29</sup>, and a letter sent to MSPs at the point of publication summarising the findings can be found [here](#)<sup>30</sup>.

Of relevance to this specific question, the results showed that Scotland fell significantly short of globally recommended standards with regard to budget transparency<sup>31</sup> and also scored below the global average<sup>32</sup>. The assessment focused on the extent to which eight key documents were made publically available, in a timely manner, on the relevant

government website. The score also presented an assessment of the comprehensiveness of the publically available documents.

Recommendations to improve transparency from the OBI survey included a call on the Scottish Government to publish all eight key budget documents<sup>33</sup>; the production of Citizens' version of each of the key documents should be prepared and published at the same time as the key document, to as to support the engagement of citizens with the budget, when it matters, i.e. before decisions are made (see also Question 3.2); and an improved analysis and narrative about how policies across the board may impact on vulnerable or marginalised groups within the Executive Budget Proposal.

Outwith the scope of the OBI survey, the Commission also recommended that transparency could be improved if:

- government policy planning is driven by outcome expectations and evidence of what works;
- the repetitiveness within budget documentation is reduced, focusing on providing concise and consistently presented information, and includes information that should be provided in other reports (such as longer-term projections and connections to National Outcomes);
- budget allocations being referred to in the Scottish Draft Budget are better connected with the Level 1-4 budget lines.
- more comparisons are provided within the Year-End Report between planned allocation, actual spend and impact connected to Scotland's National Outcomes.

The Equality Budget Advisory Group's recent [recommendations](#)<sup>34</sup> to Government, have also called on the Scottish Government to commit to producing a clear, concise and accessible "*Citizens budget*", as well as a bespoke budget website dedicated to "*publishing analysis, reporting, evaluation reports, and other tools related to equality and human rights budgeting.*" These recommendations are strongly endorsed by the Commission as a means to improve accountability by facilitating both formal and informal scrutiny of budget decision-making, by providing

accessible and transparent information about the human rights implications of budgetary proposals.

The Commission wishes to recognise the ongoing work by the Scottish Exchequer's Data Visualisation project aimed at improving the openness and transparency of government data on borrowing, revenue and spend. We also want to welcome the focus on fiscal transparency (and participation) within the next Open Government Action plan due for publication later this autumn. Both have the potential to significantly contribute to the better enable people to engage with the budget process.

### **3.2. Do you feel that you, your organisation, and the evidence you gather, can genuinely influence government decisions on the budget?**

The Commission would like to offer responses to this question both from a Commission perspective, but also on the issue of wider participative engagement.

The Commission has a general duty to promote awareness, understanding and respect for all human rights – economic, social, cultural, civil and political – to everyone, everywhere in Scotland, and to encourage best practice in relation to human rights. As part of its mandate, the Commission responds regularly to a wide variety of policy and legislative consultations from both the Scottish Government and Parliament. In recent years this has included an increased number of responses related specifically to the budget, taxation, the economy and the fiscal framework. These latter responses have in the most part focused on the budgeting process and evidence would suggest understanding of the need to take a human rights based approach in these areas is increasing<sup>35</sup>. Indeed, the focus of the Committee's call for views on the budget this year is a positive example of this progress.

Over the next parliamentary session, the extent to which the government actively takes, as opposed to talks about taking, a human rights based approach to the budgeting (and policy development) process, will provide a stronger indication of the degree to which we will genuinely believe that we have influenced government decisions on the budget.

On a wider note, the Commission welcomes the increasing recognition of the importance of participative engagement in decision making, including around the budget process. Participation is key to the realisation of people's human rights. Being afforded the opportunity to participate in decisions around delivery of local services, national policy (including the budget) and legislative priorities complement rights to vote, standing for and holding elected office. It also creates opportunities to develop policies which are more innovative, appropriate and tailored to people's needs, provided participation is representative and well-supported.

Returning briefly to the Open Budget Survey, it recognises the important role of public engagement in budget accountability, which cannot be realised through transparency alone. For this, genuine participation is also critical. Enabling the public to access to budget information is the first step of a transparent budgetary system. This must also be complemented by all relevant institutions (i.e. the executive, the legislature, and the Audit Institution) providing the public with opportunities for genuine participation and engagement during each of the four phases of the budget process. The survey score for Public Engagement was assessed through a series of questions which examined the degree to which the government provided opportunities for the public to engage in budget processes throughout the budget cycle. Participation and empowerment (including access to information) are key foundations of a Human Rights Based Approach. Scotland was classed as providing the public with limited opportunities to engage in the budget process.

To further our understanding around this issue, another piece of work undertaken by the Commission's budget project in 2018 explored satisfaction levels with the participation process to develop the national budget. This work revealed the difficulties various stakeholders faced in

accessing transparent fiscal information and a general scepticism amongst participating stakeholders that their engagement actually had a genuine impact on decision making of the budget priorities<sup>36</sup> .

This year's Programme for Government makes numerous references to the need to consult with people and Chapter 6 is focused on promoting democratic participation. In addition there is also growing emphasis placed on the need to consult with people with lived experience of various issues. However, consultation does not automatically equate with good participation. Quality participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood. The process must also be given the necessary time and resources to be meaningful.

This call for views, like many government and parliament consultative processes, do not provide sufficient time for meaningful engagement. The participation of those whose voices are least often heard, often requires additional time and support. After such a difficult 18 months, with many organisations under even more pressure than usual, participation – even when crucially important – is often just not possible due to these kinds of barriers. Engagement processes have to ensure that they facilitate stakeholder participation, not create barriers to it. Whilst there will always be occasions where things happen very unexpectedly or are unpredictable, the budget process is not one of those things. It is an annual process and it should be possible to develop a scrutiny process that allows for meaningful and supported engagement.

### **3.3. How can the links between policy commitments, allocations and achievements of rights be made more transparent?**

In order to ensure that the links between policy commitments, allocations and achievements of rights are transparent, first, clear and accessible government data on borrowing, revenue and spend must be both

available and accessible to people. It must be presented in such a way that it is possible to make connections between policy commitments, the allocation and expenditure of resources and the impact that this spend has had. Where human rights standards are taken into consideration and built into the process during the policy development stage, this will increase the probability that the impact of budget allocation and spend on the realisation of these rights will be better understood.

The forthcoming incorporation of international the laws into Scots law will bring to the forefront, the importance of rights realisation across the work of all levels of government, parliament and all public bodies. In taking a human rights based approach to policy development and associated budgetary decisions, the intended and likely impact on rights realisation will be built into policy plans and their associated budgets. Assessing the potential impact at the policy development stage and further reviewing what has happened in reality, both intended and unintended outcomes will help to better understand the impact of resources on rights.

Scotland's National Performance Framework also has the potential to support better linkages between policy commitments, allocations and achievements of rights. The framework has a specific outcome on human rights to respect, protect and fulfil human rights and for people to live free from discrimination. What is less well understood is that the whole framework is underpinned by Scotland's human rights obligations across the full spectrum of rights – economic, social, cultural, environmental, civil and political. The development of indicators that are rights based could support this sought after linkage between policy commitments, allocations and achievements of rights.

For a number of years<sup>37</sup> the Commission has been calling on the Scottish Government to explore the development of human rights based indicators to support the measurement of national progress. This was also included as a key recommendation (number 5) of the [First Minister's Advisory Group on Human Rights Leadership](#)<sup>38</sup>. Best practice explains that such indicators help to measure progress across three levels, namely: Structure, Process and Outcome. Together they address the essential aspects of human rights implementation, namely:

commitment, effort and result. The focus on commitment and effort (which includes policy and resources), as opposed to only measuring result outcome, is one of the areas which make human rights indicators distinct.

Outcome indicators look backwards at results, whereas Structure and Process indicators help governments to look forward and make more progress, e.g. by removing barriers to better outcomes such as systemic discrimination as a result of law or policy, intended or unintended. Process indicators also strengthen evidence-based policymaking by assisting governments in determining whether their interventions are actually leading to improved outcomes or whether they need to be adjusted. This includes exploring budgetary connections to result outcomes - good rights based laws and policies can still result in unacceptable experiences by rights holders if they are not properly resourced.

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<sup>1</sup> See [Human Rights Budgeting | Scottish Human Rights Commission](#)

<sup>2</sup> Explicitly identified in Article 2(1) of the International Convention on Economic, Social and Cultural Rights <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>; Article 4(2) of the UN Convention of the Rights of People with Disabilities [Article 4 – General obligations | United Nations Enable](#) and Article 4 of the UN Convention on Rights of the Child [Layout 1 \(unicef.org.uk\)](#)

<sup>3</sup> Blyberg states: that the government pioneered the use of the Charitable Bond mechanism in Scotland as a channel for loan investment to support the financing of more affordable homes and to generate grants for the funding of regeneration projects by charitable organisations. See <https://www.scottishhumanrights.com/media/1706/human-rights-budgeting-and-budget-analysis-oct-2015-vfinal.doc>

<sup>4</sup> See <https://www.scottishhumanrights.com/media/1706/human-rights-budgeting-and-budget-analysis-oct-2015-vfinal.doc>

<sup>5</sup> <https://revenue.scot/taxes/scottish-approach-tax>

<sup>6</sup> See <https://www.scottishhumanrights.com/media/1706/human-rights-budgeting-and-budget-analysis-oct-2015-vfinal.doc>

<sup>7</sup> See [Let's Talk About Tax | CPAG](#) for a thorough overview of current and potential tax options in the UK, including a section focusing on Scotland by David Eiser.

<sup>8</sup> See discussion by David Eiser “Devolved Taxation: Scotland” in Bradshaw, J. 2019, *Let's Talk About Tax* [Let's Talk About Tax | CPAG](#)

<sup>9</sup> For example, the *Burt Review* in 2006 and the *Commission on Local Tax* in 2015.

<sup>10</sup> See CESR and the Tax Justice Network, 2020, Recovering Rights Series, Topic Three - [https://www.cesr.org/sites/default/files/Brief%203%20Progressive%20Tax\\_.pdf](https://www.cesr.org/sites/default/files/Brief%203%20Progressive%20Tax_.pdf)

<sup>11</sup> See CESR and the Tax Justice Network, 2020, Recovering Rights Series, Topic Three - [https://www.cesr.org/sites/default/files/Brief%203%20Progressive%20Tax\\_.pdf](https://www.cesr.org/sites/default/files/Brief%203%20Progressive%20Tax_.pdf)

<sup>12</sup> See [Fraser of Allander Institute - The Scottish and UK Economy](#) ;

<sup>13</sup> See for example [Let's Talk About Tax | CPAG](#)

<sup>14</sup> See for example [1568730565 local-tax-in-scotland-sept19.pdf \(ippr.org\)](#)

<sup>15</sup> Response by Professor David Byrne Ph.D., FAcSS to Consultation on Scotland’s first Framework for Tax and tax policy in relation to the Scottish Budget 2022-23 (forthcoming) – copy can be provided on request.

<sup>16</sup> See [\(Wealth\) gap year • Resolution Foundation](#)

<sup>17</sup> See Organization for Economic Cooperation and Development. “Best Practices for Budget Transparency.” OECD Journal on Budgeting, Volume 1, Number 3. 2001. <http://www.oecd.org/dataoecd/33/13/1905258.pdf>

<sup>18</sup> Ramkumar, V. & Shapiro, I. (2011) Guide to Transparency in Government Budget Reports: Why are Budget Reports Important, and What Should They Include?, International Budget Partnership – accessed at: <https://www.internationalbudget.org/wp-content/uploads/Guide-to-Transparency-in-Government-Budget-Reports-Why-are-Budget-Reports-Important-and-What-Should-They-Include-English.pdf> page 45

<sup>19</sup> As defined by best practice – reference *ibid.*

<sup>20</sup> *Ibid.*



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<sup>21</sup> As derived from Article 2(1) of the International Convention on Economic, Social and Cultural Rights See <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>22</sup> 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).

<sup>23</sup> For example see the current UN recommendations relevant to COVID-19 for the UK [https://www.ohchr.org/Documents/Events/COVID19/Infographics/UNITED\\_KINGDOM\\_OF\\_GB\\_AND\\_NORTHERN\\_IRELAND.pdf](https://www.ohchr.org/Documents/Events/COVID19/Infographics/UNITED_KINGDOM_OF_GB_AND_NORTHERN_IRELAND.pdf) and more generally - General Comments and recommendations produced by Treaty Body Committee and Special Procedures: <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

<sup>24</sup> See [Scottish Budget 2021-2022: Equality and Fairer Scotland Budget statement - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>25</sup> For example see:

[https://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq\\_international\\_indicators\\_2014.pdf](https://www.humanrights.dk/files/media/dokumenter/udgivelser/aaaq/aaaq_international_indicators_2014.pdf) ; <https://www.who.int/gender-equity-rights/knowledge/aaaq-infographic/en/> ; <http://phrtoolkits.org/toolkits/medical-professionalism/the-human-rights-basis-for-professionalism-in-health-care/aaaq-framework/> ; [http://www.healthscotland.scot/media/1276/human-rights-and-the-right-to-health\\_dec2016\\_english.pdf](http://www.healthscotland.scot/media/1276/human-rights-and-the-right-to-health_dec2016_english.pdf)

<sup>26</sup> Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013, SI 2013/1893 (“the Fees Order”)

<sup>27</sup> See [R \(on the application of UNISON\) \(Appellant\) v Lord Chancellor \(Respondent\) \(supremecourt.uk\)](http://supremecourt.uk) for a summary of this case.

<sup>28</sup> 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**”.

<sup>29</sup> See [scotland-2019-obi-report-vfinal.pdf \(scottishhumanrights.com\)](http://scotland-2019-obi-report-vfinal.pdf)

<sup>30</sup> See [20\\_05\\_obi-report-msp-letter\\_vfinal.pdf \(scottishhumanrights.com\)](http://20_05_obi-report-msp-letter_vfinal.pdf)

<sup>31</sup> Scotland scored only 43/100 for transparency, acceptable practice is considered to exist with a score of 61 or more out of 100.

<sup>32</sup> The global average score for transparency was 45/100.

<sup>33</sup> Four of these documents are not routinely published, namely: Pre-Budget Statement, In-Year, Mid-Year and a Citizens' Budget.

<sup>34</sup> See [Equality Budget Advisory Group: recommendations for equality and human rights budgeting - 2021-2026 parliamentary session - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>35</sup> This is evidence by increased reference to human rights (and equality) budgeting by this and other committees, the EHRC legacy committee's human rights inquiry, the Commissions' invitation onto and work with EBAG, and the Commission's invitations to engage with the government on its work on fiscal transparency work, economic recovery, green recovery, taxation framework and the government's increased focus on mainstreaming equality and human rights including through the budget.

<sup>35</sup> See <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

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<sup>37</sup> 4 See <https://www.scottishhumanrights.com/media/1761/submission-to-ehric-re-npf-230418.docx>  
<https://www.scottishhumanrights.com/news/commission-welcomes-international-experts-to-explore-a-rights-based-approach-to-the-national-performance-framework/>

<sup>38</sup> See <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>