



# 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, 2014<sup>1</sup>*

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## **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 raise, allocate and spend money plays a key role in this. You can’t guarantee the right to vote if you don’t have an effective electoral system and you can’t guarantee the right to a habitable, accessible, affordable, and secure home without a well-regulated housing sector.

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<sup>2</sup>) 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 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 much more 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?

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*”.<sup>3</sup> 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 and education<sup>4</sup>).

General Comment 3, however, makes clear that “*each State party must decide for itself which means are the most appropriate under the circumstances*”.<sup>5</sup> 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.

### **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.<sup>6</sup>

### **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),
- 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 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>7</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, 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 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)<sup>8</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, 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 criterion 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. Some examples could include:

- budget proposals considering 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 consider 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.<sup>9</sup>*

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 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
<b>Minimum Core</b>	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?
<b>Non-Discrimination</b>	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?
<b>Progressive realisation and non-retrogression</b>	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 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.<sup>10</sup>

### **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:

*“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).<sup>11</sup>

**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.<sup>12</sup>

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"><li>• How is the budget designed?</li><li>• 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?</li><li>• Is relevant budget documentation publicly published within an acceptable timeframe - as defined by international best practice?</li><li>• Is it possible to “follow the money” from allocation to spend to impact?</li></ul>
Participation	<ul style="list-style-type: none"><li>• Are citizens’ versions of all budget documentation produced in time to facilitate participation?</li><li>• 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?</li><li>• Does the budget process actively engage with marginalised groups?</li></ul>
Accountability	<ul style="list-style-type: none"><li>• Is there effective legislature and independent oversight of the budget process – as defined by international best practice?</li></ul>

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,<sup>13</sup> 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](#),<sup>14</sup> 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](#)<sup>15</sup> 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 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.<sup>16</sup>

## **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 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 cycle<sup>17</sup> are involved in human rights budgeting:

Primary responsibility for formulating the budget rests with the Ministry of Finance<sup>18</sup>, 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.

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 Committees<sup>19</sup>, 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)

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](#).<sup>1</sup>

**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.<sup>1</sup>

**Accessibility:** 20% of people in Scotland live in relative poverty after housing costs<sup>1</sup>; 50% of older people admitted to hospital are undernourished.<sup>1</sup>

**Adequacy & Quality:** 2/3<sup>rd</sup> of adults and 1/3<sup>rd</sup> 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.<sup>1</sup>

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".<sup>1</sup>*

Exploring all 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 (e.g., for the public, targeted at schools, parents)
- Programmes to target food poverty amongst those over 65 resulting in negative impact on health co-morbidities, (e.g., 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 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.<sup>20</sup> 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 burden borne by different income sectors and disadvantaged groups.”<sup>21</sup>*

In January 2019, Juan Pablo Bohoslavsky, the former Independent Expert on foreign debt and human rights issued [Guiding Principles on Human Rights Impact Assessments of Economic Reforms](#).<sup>22</sup> 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.”<sup>23</sup>*

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 \(SHRC\)](#)<sup>24</sup> and [Equality and Human Rights Commission \(EHRC\)](#)<sup>25</sup> – with a dedicated website which sets out:

- An explanation of the [added value of the human rights dimension.](#)<sup>26</sup>
- The [10 Good Practice Building Blocks for Assessing Impact.](#)<sup>27</sup>
- Information about [two pilot EQHRIAs in Renfrewshire and Fife Councils.](#)<sup>28</sup>
- [Basic background training materials.](#)<sup>29</sup>
- [Links to other resources.](#)<sup>30</sup>

## **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.

### **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.*<sup>31</sup>

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.

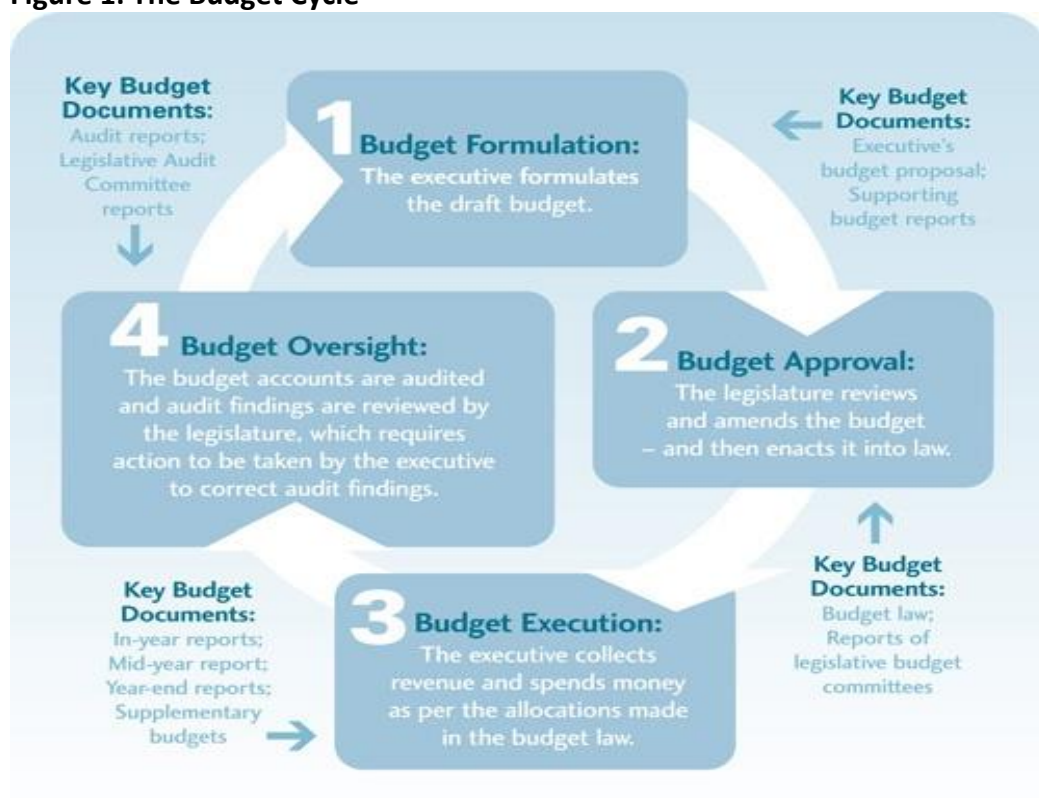
A common reason given by governments for being unable to fulfil its human rights obligations (especially economic, social, and cultural rights) is a lack of resources. Human rights budget scrutiny provides a new lens through which that claim can be interrogated. In other words, by asking the government 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.

### **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 Partnership<sup>32</sup>

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.<sup>33</sup>

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:

- 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?<sup>34</sup>

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).

#### **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](#)<sup>35</sup>) 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.

#### **12.4.2 Resource indicators**

Table 2 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 2: Example indicators of resource generation, allocation and spend<sup>36</sup>**

Examples for resource generation:	Government revenue as percent of GDP Tax revenue as percent of government revenue Different tax types (e.g., income, corporate, VAT) as percent of total tax revenue Tax (by type) as a share of a taxpayer’s total income Tax effort: Tax Evasion Gap Average illicit financial flows Palma Ratio: measure of overall economic inequality
Examples for resource allocation:	Expenditure ratios (percent out of a total) by sector Expenditure ratios by sub-sector Per unit or per capita expenditure by sector and sub-sector Expenditure ratios by country defined minimum core obligations <sup>37</sup>
Examples for resource expenditure:	Variance between budgeted amounts and actual budget outturns Budget turnaround time in relation to policy commitment Efficiency of spending, including analysis of transaction costs and leakages

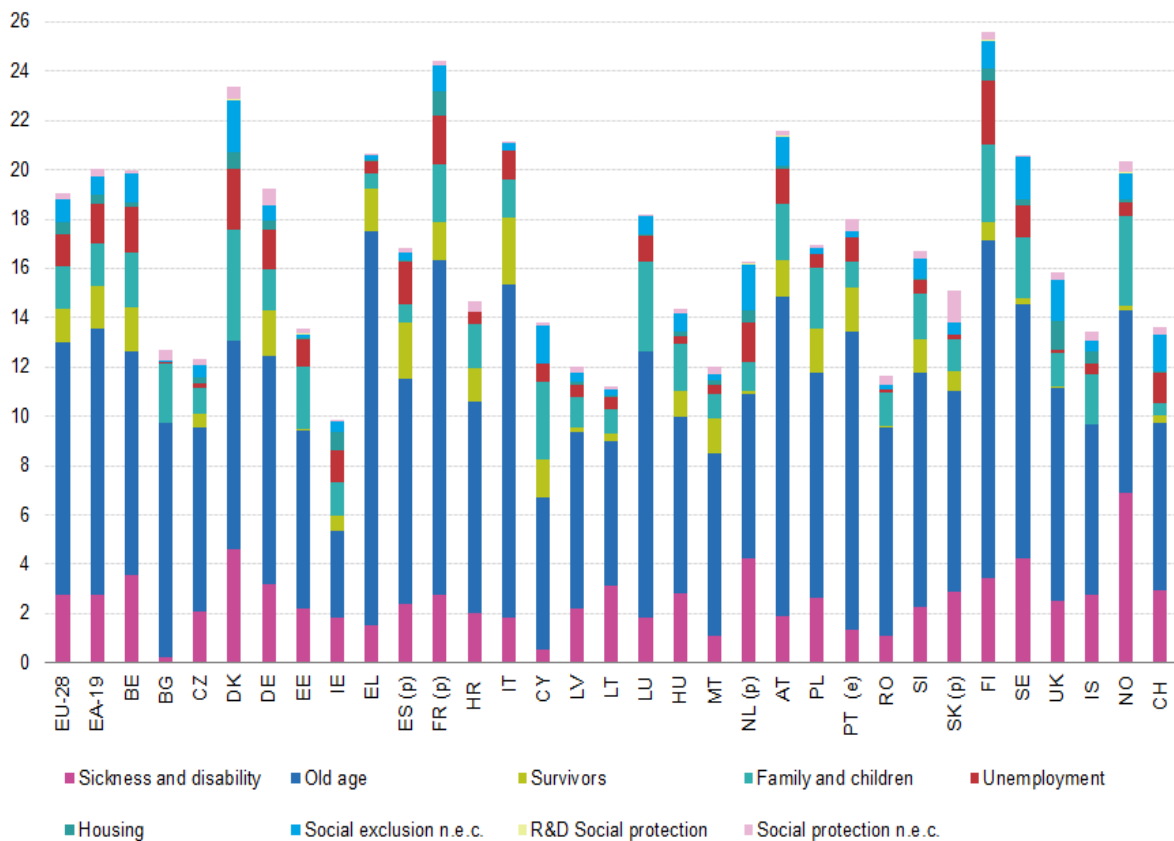


### **12.4.3 Make Comparisons**

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 Comments<sup>38</sup>),
- 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.

**Graph 1: Total general government expenditure on social protection, 2016 (% of GDP)<sup>39</sup>**



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.

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:

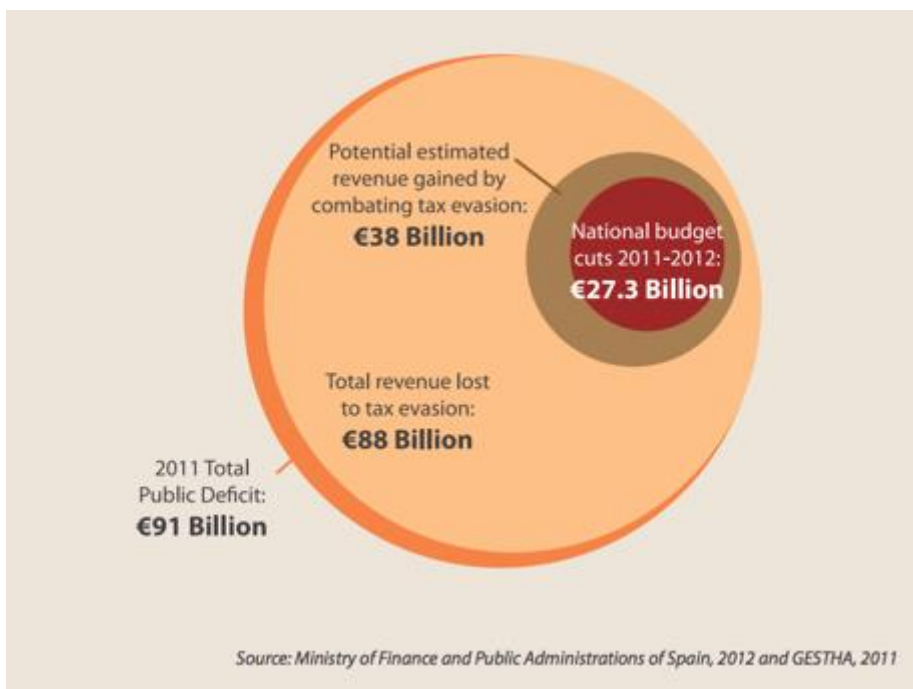
In 2018 at the 6<sup>th</sup> periodic review of Spain<sup>40</sup> by the UN Committee on Economic, Social and Cultural Rights (CESCR), evidence was presented by a

coalition of 36 Spanish civil society organizations and the Centre of Economic and Social Rights.<sup>41</sup>

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.<sup>42</sup>

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



Source<sup>43</sup>

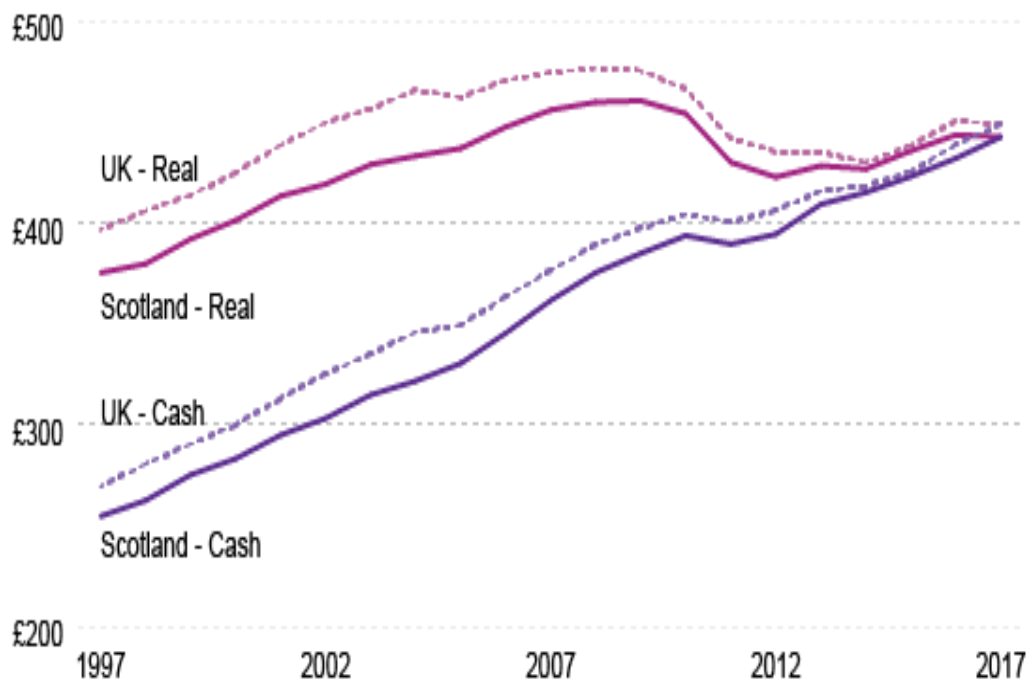
#### **12.4.4 Analyse Trends over time**

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"<sup>44</sup>.

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 inflation<sup>45</sup>.

**Graph 2: Gross weekly pay in cash and real terms for Scotland and the UK between 1997 and 2017<sup>46</sup>**



#### **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.

### **13. Why are human rights relevant to taxation?**

Taxation is a crucial contributor to the realisation of human rights. To prevent or mitigate many key social issues such as poverty, health inequalities or homelessness, a wide range of measures may be adopted, and such measures

are important. However, ultimately, a State's taxation policy may be even more important.

The Centre for Economic and Social Rights sets out the value of explicitly placing human rights at the centre of our analysis of fiscal policy, by way of putting people at the core purpose of fiscal policy decisions. They refer to this as the four "Rs" of fiscal policy: revenue; redistribution; re-pricing; and representation<sup>47</sup>. Looking at fiscal policy through this lens, allows us to frame the realisation of rights people's human rights as a core aim for the development of fairer taxation.

How, when, what and who is taxed; the degree to which this is done fairly and transparently; what is incentivised/ dis-incentivised through taxation; and the level of focus on tackling tax avoidance and evasion, all effect the re-distributional impact of taxation and how much financial resource a State has available to it to progressively realise rights.

Taxation policy can help States to comply with their international human rights obligations, but a human rights based approach to taxation requires governments to manage public finances in a new way. In Scotland, the Scottish Parliament and Scottish Government have a responsibility to observe and implement international obligations, including international human rights treaties within the areas of its devolved competence.

A rights-based approach to taxation therefore requires fiscal policymakers to consider human rights standards when designing and implementing taxation. This includes focusing on the process of 'how' a taxation framework and policy is developed, namely through the principles of participation, transparency, equality and non-discrimination and accountability.

#### **14. Right to participation and transparency**

Political and public participation rights play a crucial role in the promotion of democratic governance, the rule of law, social inclusion, and economic development. The right to both directly and indirectly participate in public life is important in empowering individuals and groups and is one of the core

elements of human rights based approaches aimed at eliminating marginalisation. Many human rights treaties emphasise the right to participation. Article 25 of the International Covenant on Civil and Political Rights includes the right of all people to take part in the conduct of public affairs, including people living in poverty. Other international human rights treaties and declarations contain similar provisions.<sup>48</sup>

Fiscal policies are perceived to be inaccessible to most people. Meaningful participation, as well as accessible information, implemented throughout the policy cycle, from design of budgets and tax codes to allocation of expenditure, implementation, and evaluation, can help improve this accessibility.

Human rights principles are essential components of effective and democratic government.<sup>49</sup> Transparency is a key principle of a human rights based approach to all policy making, and specifically in fiscal policy and public finance management. It supports efficiency, especially in relation to both the design and greater disclosure of information over tax incentives. Clarity over this type of fiscal information helps us to better understand a government's intentions regarding fairness, fiscal justice and how they value the redistributive potential of taxation.

Some of the measures that can enhance transparency are the adoption of laws ensuring the public's access to information on governmental processes, decisions, and policies, as well as institutional reforms on operating procedures and decision-making processes.

## **15. Right to equality and non-discrimination**

It is a key principle that the enjoyment of economic, social, cultural, civil, and political rights should be secured without discrimination on any grounds. Revenue collection is a vital tool for States to ensure it has the resources necessary to redress discrimination and ensure equal access to human rights. The way in which revenue is raised also plays a vital role in the realisation of human rights. Regressive tax systems indirectly discriminate or disproportionately negatively impact the most vulnerable in society, increasing inequality. It is crucial that taxes are raised and collected in human rights-

compliant ways, where those who can least afford it are not asked to pay more.

The concept of progressive realisation (in the International Covenant on Economic, Social and Cultural Rights<sup>50</sup> (ICESCR)) implies that any retrogressive measures, including on taxation, would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the ICESCR.<sup>51</sup> Before, during and after policy making and its implementation, States should evaluate the differential impact of existing and proposed fiscal policies on different groups, in particular those who historically have experienced discrimination, marginalisation or inequalities.

Moreover, human rights law is clear that even in times of severe resource constraints – whether caused by a process of economic adjustment or recession – vulnerable members of society must be protected. Therefore, fiscal policy should always ensure equality, through being progressive and securing resource to assist the most disadvantaged individuals and groups in society.

## **16. Principle of accountability**

Accountability means monitoring, review, and oversight of what is actually going on. The promotion of accountability for meeting obligations is continuous in a human rights based approach. A human rights compliant fiscal framework requires accountability mechanisms that are both *proactive* – ensuring participation at the point of design, and *reactive* – ensuring aggrieved parties can raise their concerns regarding tax law and policy. Accountability also means judicial and non-judicial remedies (within and outwith the court system), however these are only useful if people know they can use them and have effective access.

## **17. Resource generation in Scotland**

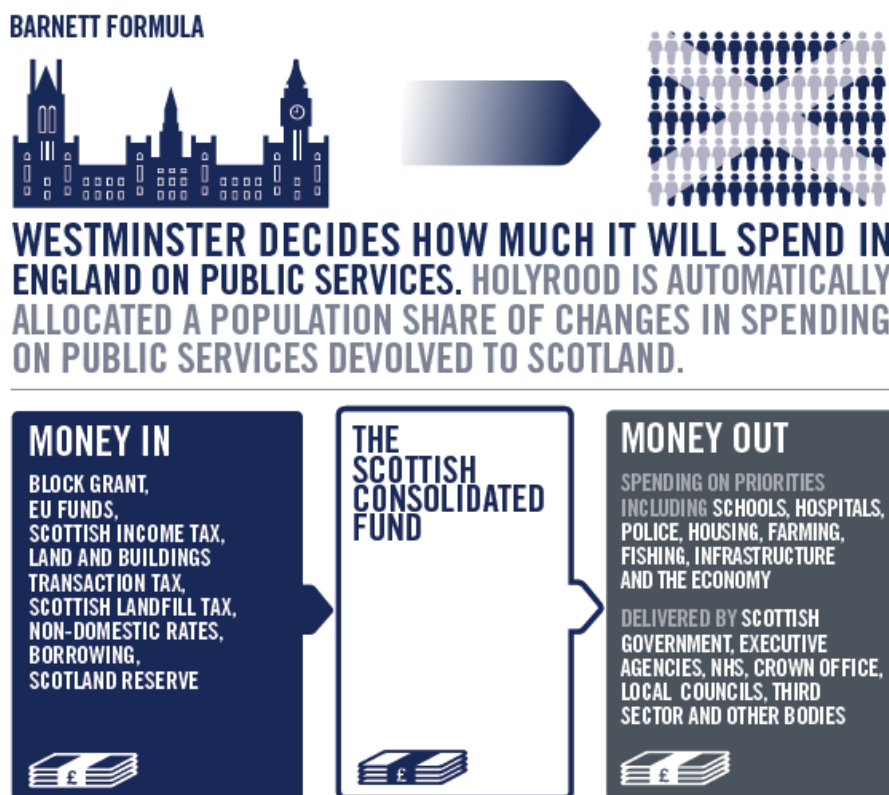
In Scotland, the annual budget runs from 1 April until 31 March, with annual spending amounting to over £50 billion. Devolution allows the Scottish Parliament and Scottish Government to decide how much money to spend on different policy areas, including education, health, social care, policing, certain social security benefits, the economy, climate change and the environment



(see Figure 1 below). The UK Government is responsible for other areas of spending on areas that are reserved, including immigration, certain social security benefits, foreign policy, and defence.

Funding for the Scottish budget has two key sources: the Scottish Block Grant (annual funding from the UK Government); and devolved tax revenues. The level of block grant is dependent on the level of public spending on equivalent public services in England, with a population share in Scotland allocated via the ‘Barnett formula.’ This is added to baseline funding to give the revised Scottish Block Grant for each year. Devolved tax income raised in Scotland is then added to this to fund spending on devolved public services in Scotland.

**Figure 1: Scotland’s finances**<sup>52</sup>



Rules that govern this process are set out in the UK Government’s Statement of Funding Policy and in the Fiscal Framework. The Fiscal Framework (which is currently under review) is an agreement between the Scottish and UK governments, which sets out how Scotland must manage its funding. It sets out limitations on borrowing powers and on the use of financial reserves to transfer funding between fiscal years. The agreement also sets out how ‘Block

Grant Adjustments' can be made to account for the devolution of certain tax and social security powers.

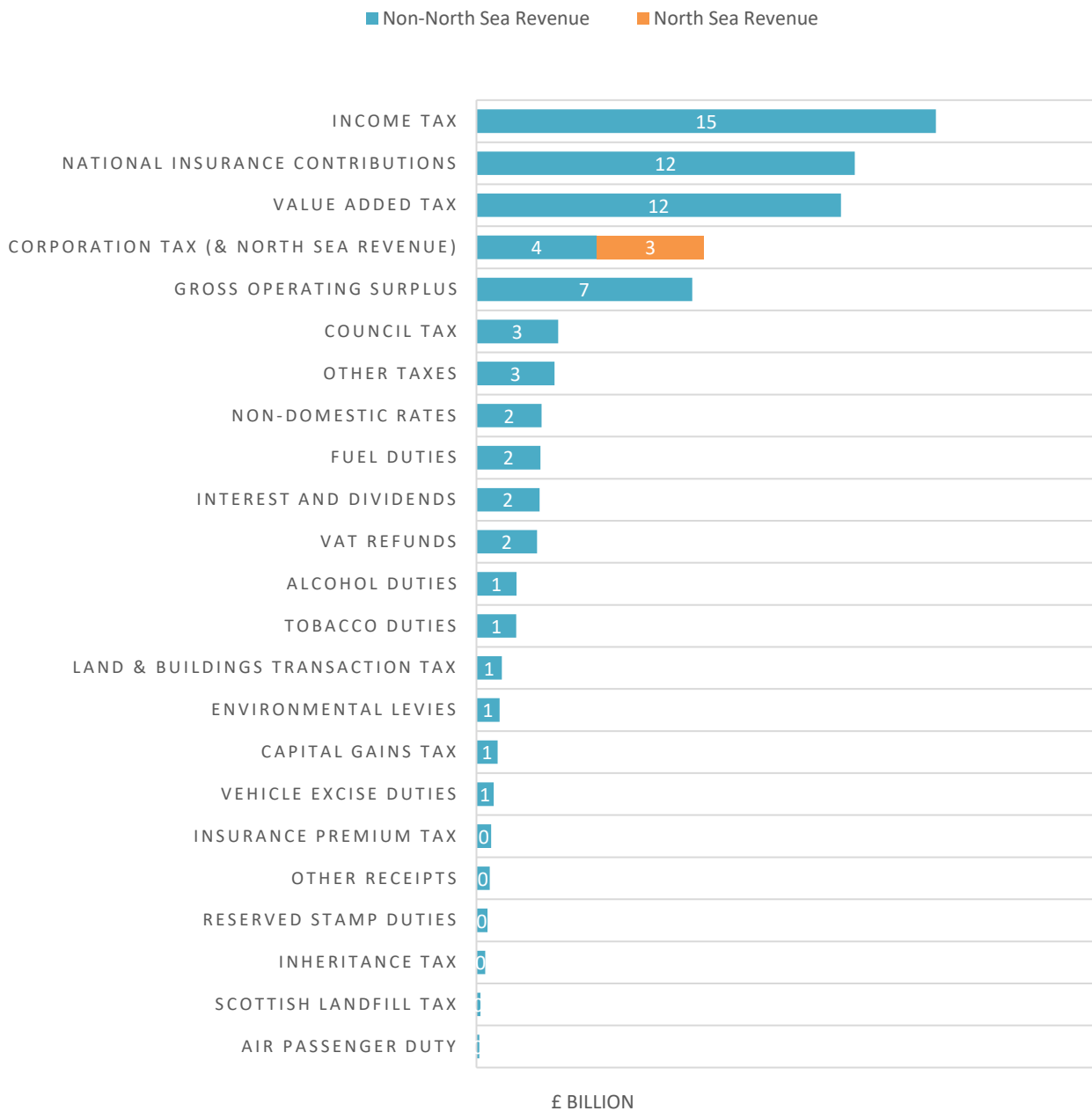
Prior to devolution, the majority of the Scottish budget was derived via the Block Grant (with a small proportion via non-domestic rates). Revisions to the Scotland Acts of 2012 and 2016 now mean that approximately 45% of Scotland's current budget (2023-24) is derived from Scottish taxes<sup>53</sup>.

Currently, the Scottish Parliament has a range of tax raising powers<sup>54</sup>. This includes the power to set the rates and bands of income tax paid by Scottish taxpayers on non-savings and non-dividend income<sup>55</sup>. The Scottish Government have used these powers to amend Scottish income tax policy, which now differs from the income tax policy in place in the rest of the UK<sup>56</sup>. Three further taxes are also fully devolved and are set by the Scottish Parliament, namely:

- Non-Domestic Rates (NDR): a tax paid on non-residential property<sup>57</sup>.
- Land and Buildings Transaction Tax (LBTT): a tax payable on land and property transactions in Scotland over a certain value<sup>58</sup>.
- Scottish Landfill Tax (SLfT): a tax on the disposal of waste to landfill<sup>59</sup>.

Figure 2 below highlights the full range of revenues by source in Scotland.

**FIGURE 2: REVENUE BY SOURCE: SCOTLAND 2021-22**



Source: [Government Expenditure & Revenue Scotland \(GERS\) 2021-22](#)<sup>60</sup>

## **18. Applying human rights norms in the context of fiscal policy**

As noted in Section 4, human rights norms place obligations on governments, to take concrete steps to ensure that people's rights are progressively realised using the *maximum of their available resources*. This has clear implications for a government's fiscal policy decisions.

Fundamentally, governments have an obligation to raise sufficient resources to guarantee people's rights. They need to raise money to fund the necessary infrastructure, goods and services that will ensure everyone has access to, amongst other things: quality healthcare, schools, social security provisions, social housing, clothes, food, and clean water. However, how this money is raised and from whom, must be fair, progressive, and based on the principle of ability to pay. It should make an active contribution to redressing persistent and structural inequalities and the system should have the appropriate checks and balances to ensure it is not abused.

### **18.1 Increasing progressivity of the tax system**

Efforts and focus should be directed at engaging with a progressive tax system in which tax is viewed less as a political choice but, rather, the legal obligation that it is, to ensure public funds are of the required level to finance essential services, policies, and programmes for the fulfilment of people's rights.

Taxation is an indispensable policy instrument to mobilise additional resources without necessarily needing to sacrifice spending priorities. Starting from the assumption that it is not possible to increase the size of the budget undermines Scotland's commitment to human rights fulfilment. It also suggests limitations in the appraisal of tax policy options that could increase revenue.

Whilst acknowledging the limitations created by devolved and reserved policy, the Scottish Government could be bolder in using the taxation choices that are available to it. The Scottish Human Rights Commission has previously documented<sup>61</sup> that Scotland does not currently use the full extent of its taxation powers to generate resource in line with its human rights obligations. 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>62</sup>, CPAG<sup>63</sup>, the Institute for Public Policy<sup>64</sup> and Landman Economics (on behalf of the STUC)<sup>65</sup>, amongst others.

Proposals 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 e.g., carbon emissions,
- land tax and increasing the Scottish landfill tax, and
- introducing new taxes, such as a local wealth tax.

The 2022 review of taxation by Landman Economics concluded that a number of reforms to the tax system at the point of publication (December 2022) could be introduced as early as April 2023, raising around £1.3 billion of additional revenue per year. A further package of reforms (if legislated for in 2023) could raise an additional £2 billion per year (£3.3 billion in total), if in place by April 2026.<sup>66</sup>

This is an area where policy needs to be far more proactive. Exploring these options with taxation experts through a human rights lens would give the Scottish Government a timely opportunity to focus on both the benefits of taking a human rights based approach to taxation and a thorough analysis of the taxation options that are fully within its remit. It is disappointing, therefore, that the Scottish Government's Tax Advisory Group<sup>67</sup> created in June 2023 to feed into both the Scottish Budget 2024/25 and the tax strategy over the longer-term on tax strategy, has not engaged with any human rights expertise.

## **18.2 Impact assessment of fiscal policy**

Tax revenues are a key source of income for governments to be able to execute their legal obligations to protect, respect and fulfil human rights. Therefore, human rights impact assessments of key fiscal decisions, including those around taxation are of critical importance.

This is supported by the work of the former UN Independent Expert on foreign debt and human rights<sup>68</sup> who explored this particular work when developing his [Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies](#).<sup>69</sup> The aim of these Guiding Principles is to provide States with effective and practical guidance and tools for assessing economic reform policies on the basis of existing human rights standards.

*Based on the existing human rights obligations and responsibilities of States and other actors, the guiding principles underline the importance of systematically assessing the impact of economic reforms on the enjoyment of all human rights before decisions are taken to implement such reforms, as well as during and after their implementation. Economic policymaking must be anchored in and guided by substantive and procedural human rights standards, and human rights impact assessments are a crucial process that enables States and other actors to ensure that economic reforms advance, rather than hinder, the enjoyment of human rights by all.<sup>70</sup>*

The Scottish Human Rights Commission has previously strongly advised the Scottish Government to review all of the guiding principles with a view to informing both the content and process of further developing or amending [Scotland's tax policy framework](#)<sup>71</sup>.

### **18.3 Tax abuse**

Scottish and UK Government efforts to promote human rights are meaningless without adequate efforts to collect the necessary funds to provide for basic public services. A State or devolved administration that does not take strong measures to combat tax abuse is not allocating the maximum available resources to the realisation of rights. Such allocation is required by international human rights law.

Given that tax evaders and avoiders pay less than taxpayers with the same or less capacity to pay, both tax evasion (illegal) and tax avoidance not only

undermine the fiscal base, but the principles of equality and non-discrimination.

The former [UN Independent Expert on Extreme Poverty and Human Rights](#)<sup>72</sup> noted that tax abuse is:

*'not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality'.*<sup>73</sup>

We know, for example, from [2012 research](#)<sup>74</sup> undertaken with tax inspectors and the Centre for Economic and Social Rights in Spain, that a reduction of tax evasion and tax avoidance by 10% (in line with EU standards) would have resulted in the generation of 38 billion Euros, exceeding the country's total austerity budget cuts that year.

#### **19. 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.<sup>75</sup>

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 10<sup>th</sup>, 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 1998<sup>76</sup> 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 2012<sup>77</sup> and 2016<sup>78</sup> and this has led to a renewed interest in budget scrutiny in 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 report<sup>79</sup> 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 committees<sup>80</sup> 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 undertake 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 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.”<sup>81</sup>*

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.<sup>82</sup> 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,<sup>83</sup> convened by the Scottish government.

In June 2018 Scotland's Revised National Performance Framework<sup>84</sup> 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:

*“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](#)<sup>85</sup> 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 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 guidance<sup>86</sup> and the accepted advice of the Budget Process Review Group.

Since the first edition of this paper, the following developments have also taken place:

- [National Taskforce for Human Rights: Leadership Report \(2021\)](#);<sup>87</sup>
- Equality, Human Rights and Civil Justice Committee Fellowship and report on [Human rights budgeting](#);<sup>88</sup>
- Increased engagement by Scottish Parliament Committees [during pre-budget scrutiny](#)<sup>89</sup> with the principles of human rights budgeting;
- [Scotland's revised Framework for Tax \(2021\)](#)
- Scottish Exchequer [fiscal transparency project: 2021 to 2025](#)<sup>90</sup>
- New [Human Rights Bill for Scotland](#)<sup>91</sup>

## 20. The HRBW series

The briefing papers in this series<sup>92</sup> 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
- 7: Human Rights and Taxation

## 21. 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](#)<sup>93</sup> to better understand and support wider scrutiny of public spending decisions including budget through a human rights lens. The work has so far:

- developed three process indicators to support scrutiny of national and local council budget processes,
- organised [capacity building activities](#)<sup>94</sup> on human rights [budget scrutiny](#);<sup>95</sup>
- engaged in scrutiny of [national tax reform](#);<sup>96</sup>
- and produced Briefings 1-6 in 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 of Strategy and Learning, **The Center for Economic and Social Rights**
- [Prof. 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, Research and Impact, the Health and Social Care Alliance Scotland (the ALLIANCE)
- [Prof. Jo Ferrie](#), **Senior Lecturer** at the School of Social and Political Sciences, University of Glasgow

## 22. Contact

We welcome enquiries about human rights budget work. To discuss, or for more information, please contact:

Scottish Human Rights Commission  
Bridgeside House  
99 McDonald Road  
Edinburgh  
EH7 4NS

E: [hello@scottishhumanrights.com](mailto:hello@scottishhumanrights.com)

T: 0131 297 5750

W: [www.scottishhumanrights.com](http://www.scottishhumanrights.com)

## 23. 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.

### 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.

## **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.

## **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.

### **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.

### **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).



## 24. Endnotes

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<sup>1</sup> Nolan, A. (2014) Human Rights Budget Work, SNAP Innovation Forum, Govan:

<http://www.scottishhumanrights.com/media/1177/reportmarch2015reportwordinnovationforumtranscript.docx>

<sup>2</sup> See the work of the Scottish Women's Budget Group - [Scottish Women's Budget Group | Publications \(swbg.org.uk\)](http://swbg.org.uk)

<sup>3</sup> Flegg, A. 2018: Defining Minimum Core Obligations for Human Rights Budget Analysis in Scotland, SHRC: Edinburgh.

<sup>4</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>5</sup> 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).

<sup>6</sup>[https://www.flac.ie/download/pdf/flac\\_briefing\\_on\\_human\\_rights\\_approach\\_to\\_budgeting.pdf](https://www.flac.ie/download/pdf/flac_briefing_on_human_rights_approach_to_budgeting.pdf)

<sup>7</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>8</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>9</sup> 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](http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf)

<sup>10</sup> See <https://www.internationalbudget.org/why-budget-work/role-of-civil-society-budget-work/> for further information.

<sup>11</sup> See <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/#the-panel-principles-1210> for further discussion about the PANEL approach.

<sup>12</sup> See: [http://www.scottishhumanrights.com/media/1409/shrc\\_hrba\\_leaflet.pdf](http://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf)

<sup>13</sup> This project ran from January to June 2018 – see project outputs here:

<http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budgeting/>

<sup>14</sup> See: <https://www.internationalbudget.org/open-budget-survey/>

<sup>15</sup> See: <https://www.consultationinstitute.org/consultation-charter-7-best-practice-principles/>

<sup>16</sup> See: <http://www.itspublicknowledge.info/ScottishPublicAuthorities/PublicationSchemes/TheModelPublicationScheme.aspx>

<sup>17</sup> Outlined in HRBW Papers 1 and 3.

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<sup>18</sup> In the UK and Scotland the relevant bodies are the UK Treasury and Scottish Government's Finance Directorates.

<sup>19</sup> 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 \(art. 9\)](#)

<sup>20</sup> 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".

<sup>21</sup> 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](http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf)

<sup>22</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/443/52/PDF/G1844352.pdf?OpenElement>

<sup>23</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24090&LangID=E>

<sup>24</sup> <http://eqhria.scottishhumanrights.com/index.html>

<sup>25</sup> <http://www.equalityhumanrights.com/>

<sup>26</sup> <http://eqhria.scottishhumanrights.com/eqhrialpaddedvalue.html>

<sup>27</sup> <http://eqhria.scottishhumanrights.com/eqhriagoodpractice.html>

<sup>28</sup> <http://eqhria.scottishhumanrights.com/eqhriapilotstudies.html>

<sup>29</sup> <http://eqhria.scottishhumanrights.com/eqhriatrainingresources.html>

<sup>30</sup> <http://eqhria.scottishhumanrights.com/eqhriaotherresources.html>

<sup>31</sup> Applied Budget Work by Warren Krafchik: <https://www.internationalbudget.org/sectors-issues-demographic/human-rights/>

<sup>32</sup> <https://www.internationalbudget.org/why-budget-work/engaging-stakeholders/>

<sup>33</sup> 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.

<sup>34</sup> Allison Corkery, 2018, Introduction to Human Rights Budget Work:

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

<sup>35</sup> See: <https://www.consultationinstitute.org/consultation-charter-7-best-practice-principles/>

<sup>36</sup> Drawn from Allison Corkery, 2018, Introduction to Human Rights Budget Work:

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

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<sup>37</sup> This would require a country to have set out, based on international guidance, definition of its country's minimum core obligations.

<sup>38</sup> For example for ICESCR General Comments, see here:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=9&DocTypeID=11)

<sup>39</sup> Source: [https://ec.europa.eu/eurostat/statistics-](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Total_general_government_expenditure_on_social_protection,_2016_(%25_of_GDP).png)

[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)

<sup>40</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1197&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1197&Lang=en)

<sup>41</sup> <http://cesr.org/>

<sup>42</sup> See <http://cesr.org/spanish-austerity-violates-health-housing-sexual-and-reproductive-health-and-rights>

<sup>43</sup> <http://www.cesr.org/sites/default/files/FACTSHEET-Spain%28EN%29-June2018-FINAL.pdf>

<sup>44</sup> *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

<sup>45</sup> See <https://www.officialdata.org/2017-GBP-in-1997?amount=100>

<sup>46</sup> <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2017/11/21/Earnings-in-Scotland--2017#How-has-pay-changed-over-the-last-twenty-years->

<sup>47</sup> See [https://www.cesr.org/sites/default/files/2022/Taxes\\_Budgets\\_and\\_Human\\_Rights.pdf](https://www.cesr.org/sites/default/files/2022/Taxes_Budgets_and_Human_Rights.pdf)

<sup>48</sup> These include the Universal Declaration of Human Rights (art. 21); the International Covenant on Economic, Social and Cultural Rights (art. 8); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)); the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 7 and 8); the Convention on the Rights of the Child (art. 15); the Convention on the Rights of Persons with Disabilities (arts. 4 (3), 29, 33 (3)); the International Convention on the Protection of All Migrant Workers and Members of Their Families (arts. 41 and 42);

<sup>49</sup> Human Rights institutions, such as the Scottish Human Rights Commission, are also key to democratic governments.

<sup>50</sup> International Covenant on Economic, Social and Cultural Rights

(ICESCR) <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>51</sup> ICESCR General Comment No 1 (1989)

<sup>52</sup> See [Scotland's finances 2019-2020: key facts and figures - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scotland-finances-2019-2020-key-facts-and-figures-gov.scot/www.gov.scot)

<sup>53</sup> See [A first glance - Scottish budget 2023-2024 | FAI \(fraserofallander.org\);](https://www.fraserofallander.org/publications/a-first-glance-scottish-budget-2023-2024)

[Scotland's Framework for Tax - Tom Arthur - Reform Scotland](https://www.fraserofallander.org/publications/scotland-framework-for-tax-tom-arthur-reform-scotland)

<sup>54</sup> The Scottish Government has produced this video to summarise how tax revenues contribute to the Scottish Budget. ['Raised in Scotland. Spent in Scotland.'](https://www.gov.scot/publications/scottish-budget-2023-24-web-version/pdf)

<sup>55</sup> This is income earned through employment, self-employment, pensions, or property.

<sup>56</sup> See [Income tax in Scotland: using the powers \(azureedge.net\)](https://www.azureedge.net/.../income-tax-in-scotland-using-the-powers) for further details.

<sup>57</sup> See [Current NDR rates](https://www.fraserofallander.org/publications/current-nldr-rates)

<sup>58</sup> See [Current LBTT rates](https://www.fraserofallander.org/publications/current-lbtt-rates)

<sup>59</sup> See [Current SlfT rates](https://www.fraserofallander.org/publications/current-slft-rates)

<sup>60</sup> See <https://www.gov.scot/publications/government-expenditure-revenue-scotland-gers-2021-22/>

<sup>61</sup> Please see the following where the Commission has written most recently about taxation options for the Scottish Government: • <https://www.scottishhumanrights.com/media/2235/tax-policy-and-the-budget-a-framework-for-tax-shrc.pdf> • <https://www.scottishhumanrights.com/blog/we-need-human-rights-based-taxation-to-help-scotland-build-back/> • [https://www.scottishhumanrights.com/media/2317/2022\\_08\\_04-fpa-pre-budget-scrutiny-2023-24-web-version.pdf](https://www.scottishhumanrights.com/media/2317/2022_08_04-fpa-pre-budget-scrutiny-2023-24-web-version.pdf)

<sup>62</sup> See <https://www.fraserofallander.org/>

<sup>63</sup> See <https://cpag.org.uk/shop/cpag-titles/lets-talk-about-tax>

<sup>64</sup> See [https://www.ippr.org/files/2019-09/1568730565\\_local-tax-in-scotland-sept19.pdf](https://www.ippr.org/files/2019-09/1568730565_local-tax-in-scotland-sept19.pdf)

<sup>65</sup> See [https://stuc.org.uk/files/Reports/Scotland\\_Demands\\_Better\\_Fairer\\_Taxes\\_for\\_a\\_Fairer\\_Future.pdf](https://stuc.org.uk/files/Reports/Scotland_Demands_Better_Fairer_Taxes_for_a_Fairer_Future.pdf)

<sup>66</sup> See [https://stuc.org.uk/files/Reports/Scotland\\_Demands\\_Better\\_Fairer\\_Taxes\\_for\\_a\\_Fairer\\_Future.pdf](https://stuc.org.uk/files/Reports/Scotland_Demands_Better_Fairer_Taxes_for_a_Fairer_Future.pdf)

<sup>67</sup> See <https://www.gov.scot/news/advisory-group-on-tax-strategy/>

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<sup>68</sup> The current terms of the mandate of the Independent Expert are contained in Human Rights Council resolution 43/10, from June 2020, where the mandate was renewed for a period of three years. The Independent Expert sets out to examine:

- the problem of the debt burden of developing countries, in particular of the least developed countries,
- the social impact of the measures arising from foreign debt,
- the impact of illicit financial flows on the enjoyment of human rights.

See <https://www.ohchr.org/en/special-procedures/ie-foreign-debt>

<sup>69</sup> See [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/57](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/57)

<sup>70</sup> <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactAssessments.aspx>

<sup>71</sup> See <https://www.gov.scot/publications/framework-tax-2021/>

<sup>72</sup> See

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_28\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_28_ENG.doc)

<sup>73</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28

<sup>74</sup> See [http://cesr.org/sites/default/files/FACT\\_SHEET\\_SPAIN.pdf](http://cesr.org/sites/default/files/FACT_SHEET_SPAIN.pdf)

<sup>75</sup> See <http://www.scottishhumanrights.com/economic-social-cultural-rights/strengthening-economic-social-cultural-rights/>

<sup>76</sup> Currently the HRA 1998 together with the Scotland Act, protect the rights that are contained in the European Convention on Human Rights in Scotland's own laws. The rights in the HRA are predominantly civil and political rights.

<sup>77</sup> <http://www.legislation.gov.uk/ukpga/2012/11/section/25/enacted>

<sup>78</sup> <http://www.legislation.gov.uk/ukpga/2016/11/contents>

<sup>79</sup> [http://www.parliament.scot/S5\\_Finance/Reports/BPRG\\_-\\_Final\\_Report\\_30.06.17.pdf](http://www.parliament.scot/S5_Finance/Reports/BPRG_-_Final_Report_30.06.17.pdf)

<sup>80</sup> [http://www.parliament.scot/S5\\_Finance/General%20Documents/Budget\\_guidance\\_final.pdf](http://www.parliament.scot/S5_Finance/General%20Documents/Budget_guidance_final.pdf)

<sup>81</sup> [http://www.parliament.scot/S5\\_Equal\\_Opps/Reports/EHRiCS052017R02.pdf](http://www.parliament.scot/S5_Equal_Opps/Reports/EHRiCS052017R02.pdf)

<sup>82</sup> 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>

<sup>83</sup> <https://www.gov.scot/groups/equality-budget-advisory-group/>

<sup>84</sup> See: <https://nationalperformance.gov.scot/national-outcomes>

<sup>85</sup> <https://www.gov.scot/publications/scotlands-open-government-action-plan-2018-20/>

<sup>86</sup> [http://www.parliament.scot/S5\\_Finance/General%20Documents/Budget\\_guidance\\_final.pdf](http://www.parliament.scot/S5_Finance/General%20Documents/Budget_guidance_final.pdf)

<sup>87</sup> <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/>

<sup>88</sup> <https://sp-bpr-en-prod-cdnep.azureedge.net/published/2022/10/20/862a68a0-a6a9-46cd-9fdb-87cc7a877406/SB%2022-61.pdf>

<sup>89</sup> <https://spice-spotlight.scot/2023/01/24/budget-bingo-common-themes-in-committees-pre-budget-scrutiny/>

<sup>90</sup> <https://www.gov.scot/publications/scottish-exchequer-fiscal-transparency-discovery-report/>

<sup>91</sup> <https://www.gov.scot/news/new-human-rights-bill/>

<sup>92</sup> The Briefing papers can all be found here: <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

<sup>93</sup> <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

<sup>94</sup> <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

<sup>95</sup> <http://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

<sup>96</sup> <http://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>