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BRIEFING

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ECONOMIC, SOCIAL & CULTURAL RIGHTS

Human Rights, Fiscal Policy and Public Budgets

has been explored since the 1990s with the understanding that budgets are complex economic documents and offer a reflection of what the government does or intends to do. For this reason, public

budgets have been of increasing interest to international human rights institutions, reporting mechanisms and UN Special Rapporteurs, National Human Rights Institutions, and human rights advocates as a key means of assessing a government's commitment to complying with international human rights law standards and norms. As the UN Office of the High Commissioner on Human Rights has recognised: "a government's budget is the most important economic policy and planning document and is an essential means by which to assess governments efforts for the realisation of human rights."

While relevant to respecting, protecting, and fulfilling all human rights, public budgets have received the most attention through the lens of ESC rights law and advocacy. This is because much of the work done to date in assessing governments' budgets from the perspective of human rights law has focused on issues such as the rights to education, health, food, water, sanitation, and social security and their associated legal obligations in international human rights law. It has also been explored explicitly in relation to fulfilling children's rights. Further, where courts have considered the implications of budget decision-making within their judgments, the cases have generally concerned the fulfilment and realisation of ESC rights. Today, public budget analysis is viewed as a central means of analysing a government's commitment to ESC rights with frameworks such as the Center for Economic and Social Rights OPERA Framework including budget analysis as a critical step and tool in an overall approach to measuring and monitoring ESC rights realisation.

This briefing aims to equip government officials and civil society members with insights developed over the past decade about the interplay between ESC rights and public budgets. It serves two primary objectives: first, to guide government officials in aligning their revenue-raising, budget allocation, expenditure implementation, and budget scrutiny with their human rights obligations, and second, to empower civil society with knowledge about how budgets influence human rights, enabling them to hold governments accountable for fulfilling these rights. It forms part of a three-part briefing pack: this paper establishes the foundational framework linking public budgets and international human rights law; Briefing 2 examines how to design and implement rights-based budgeting processes; and Briefing 3 focuses on analysing and scrutinising budgets through a human rights lens. Moreover, while the content centres on international standards, it acknowledges the need for governments to extend this analysis to regional and national levels, considering their obligations across all legal domains. This approach encourages a comprehensive understanding of how public budgets can support the realisation of human rights across multiple governance tiers.

Human Rights Budgeting: Rights-Based Budgets & Budget Analysis

Human rights budgeting is best understood as providing a framework of legal obligations, norms, and principles for practices to be applied within budgetary decision-making. This should be combined with efforts for ongoing monitoring and analysis as to their potential impact upon different groups of rights-holders within the state. It thus provides both an analytical framework from which to make decisions in a rights-compliant manner and an assessment of whether those decisions have had the intended impact on specific rights-based outcomes. This means it can be approached through two differing but interdependent approaches. Firstly, a decision-making framework for the planning and formulation, approval, enactment and review of a public budget, discussed here as a rights-based approach to budgeting. Secondly, as an overall basis for human rights scrutiny and budget analysis of the decisions taken by those who seek to hold governments accountable regarding their international human rights obligations. In short, human rights budgeting is an umbrella term covering the decision-making and scrutiny frameworks it establishes.

a. Human Rights-Based Budgeting

When working through the budget cycle, decision-makers must ensure fiscal policies reflect and uphold human rights obligations. This involves aligning revenue generation, resource allocation, and expenditure strategies with the principles of equality, non-discrimination, and the progressive realisation of rights. Budgets should prioritise the needs of marginalised and disadvantaged groups, addressing disparities while ensuring transparency and accountability. Decision-makers must also balance fiscal sustainability with human rights imperatives, avoiding, unless all feasible alternatives have been considered, austerity measures that could undermine essential rights such as health, education, and social security. Comprehensive impact assessments should be conducted to evaluate how budgetary decisions affect the realisation of human rights and to identify necessary adjustments. There are many actions that can be taken to deliver a budget process that promotes and protects human rights. Some key actions to consider are:

- Human rights standards and obligations: Ensure compliance with national, regional, and international human rights frameworks, integrating and utilising the standards and principles of the framework to inform budgetary decision-making.
- Resource planning & prioritisation (giving due priority): Allocate resources fairly and equitably, focusing on addressing the needs of marginalised and disadvantaged groups.
- Progressive realisation: Strive for the continuous improvement of ESC rights, avoiding regressive measures unless these can be strictly justified as set out in law.
- Non-Discrimination: Design revenue and spending policies that prevent and/or do not deepen systemic inequalities whilst promoting inclusive and human centred development.
- Transparency, participation, and accountability: Maintain open budgeting processes that are subject to appropriate levels of scrutiny by parliament, the courts and other relevant stakeholders, provide access to information, and engage civil society in monitoring and evaluation.
- Revenue generation: Develop fair and rights-consistent taxation and revenue-raising measures, avoiding fiscal policies that disproportionately burden disadvantaged populations.
- Human rights impact assessments: Conduct regular evaluations to measure the human rights implications of budgetary decisions and adjust strategies as needed.
- Sustainability: Balance short-term needs with long-term fiscal and human rights goals, ensuring budgets are resilient to economic shocks.

b. Human Rights Budget Analysis & Scrutiny

Human rights-based budget analysis and scrutiny play a pivotal role in assessing whether governments fulfil their obligations under ESC rights law. It presents a framework which enables the evaluation of how public resources are mobilised, allocated, and spent, identifying whether budgetary decisions align with human rights principles such as equality, participation, and progressive realisation. By exposing gaps in resource distribution or discriminatory practices, budget scrutiny generates evidence that can support judicial interventions. In certain jurisdictions, courts can use this evidence to assess whether a government has violated its obligations regarding ESC rights law.

Key Considerations for Budget Analysis and Scrutiny:

- Alignment with human rights obligations: Examine whether budgets comply with international human rights laws as well as any human rights in domestic legislation or enumerated by the state's constitution.

- Progressive realisation and non-retrogression: Identify whether governments are progressively improving rights or implementing unjustified regressive measures (i.e. making access to rights worse), such as budget cuts to essential services.
- Sectoral analysis: Conduct analysis of allocation to key ESC rights areas of the budget.
- Distribution & gender analysis: Scrutinise allocations to detect inequalities and systemic biases that disadvantage certain groups, particularly people who are marginalised and disadvantaged.
- Transparency, participation, and accountability: Evaluate the openness of budgeting processes and data availability for independent monitoring by the public.
- Evidence for legal recourse: Generate robust data and analysis to be used as evidence in cases determining whether governments fulfil their obligations under ESC rights law.

Budgets and Economic, Social and Cultural Rights: Understanding the Legal Framework

International human rights law obligations concerning ESC rights can be understood through two interdependent sets of obligations: the general obligations to respect, protect, and fulfil ESC rights, which is often adopted throughout the language of international human rights instruments and accompanying guidance, and the specific obligations found within the covenants containing ESC rights.

A. General Obligations

Under international human rights law, all states must respect, protect and fulfil human rights. While these general obligations do not provide a complete account of the considerations for human rights in public budgets and fiscal policy, they offer a helpful and approachable starting point for many to understand the primary underpinning considerations the framework provides.

i. Respect

The obligation to respect ESC rights is generally understood as requiring States to abstain from interfering with the existing enjoyment of a right. While it is understood as a primarily 'negative' obligation in that it requires states to refrain from taking action (such as making cuts to social security which will impoverish people such as the two-child limit in the UK), it contains positive duties and still raises resource considerations. For example, to respect ESC rights, states must ensure that appropriately resourced public institutions and accompanying officials exist to prevent the state's unjustified interference with the enjoyment of ESC rights. A further example is the need to ensure an effective system of justice administration to deliver effective remedies for violations of ESC rights. The early African Commission on Human and Peoples' Rights case of SERAC vs Nigeria demonstrates clearly how the obligation to respect rights can be understood as requiring resources to be mobilised and allocated for remedying the violations suffered through adequate restitution (see further below). Questions concerning the duty to respect human rights through a state's fiscal policy and, consequently, the public budget can include:

- Whether budgetary decision-making discriminates against certain groups and communities.
- If the budget withdraws or diverts funds away from existing programs directly guaranteeing ESC rights, whether in the formulated budget or as it is enacted through the year.
- Or assigning funds to policies that have been impact assessed as negatively affecting rights.
- Allocating adequate resources for the provision of effective remedies.

SERAC vs Nigeria (1996)

In this case, the African Commission on Human and Peoples' Rights addressed the Nigerian government's obligations to allocate state resources for restituting victims affected by environmental degradation and human rights violations in Ogoniland. The Commission found Nigeria violated several articles in the African Charter on Human and Peoples' Rights, including the rights to health, a satisfactory environment, and property protection. It emphasised the state's duty to take concrete measures to remedy these violations, which inherently involves allocating adequate resources. Specifically, the Commission recommended that Nigeria:

- Investigate human rights violations: Allocating funds to conduct thorough investigations and prosecute those responsible.
- Provide adequate compensation to victims: This includes financial restitution and support for resettlement, necessitating budgetary provisions.
- Undertake comprehensive environmental cleanup: Committing resources to restore lands and rivers damaged by oil operations.
- Ensure future environmental protection: Investing in environmental and social impact assessments and establishing oversight bodies for the petroleum industry.

ii. Protect

This obligation requires states to protect the enjoyment of ESC rights from undue non-state actor interference, including through due diligence and appropriate regulation of the private sector in delivering ESC rights-related public services. Concerning the budget and fiscal policy, this can be translated as ensuring fiscal resources are available to support such protection through effective regulation. This nexus has been emphasised by the Committee on ESC rights in its General Comment 15 on the right to water: 'Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal affordable, and physical access to sufficient, safe, and acceptable water. To prevent such abuses, an effective regulatory system must be established in conformity with the Covenant and this general comment, which includes independent monitoring, genuine public participation, and the imposition of penalties for non-compliance.' At the national level a similar approach is highlighted by the case of Juez Sistituta (2002) in Argentina.
Placing this into the context of fiscal principles and decision-making raises considerations such as:

- Safeguarding against third parties that hinder or misuse resources critical to guaranteeing rights.
- Regulate third-party actions with reporting mechanisms, systematic interventions, and infringement sanctions.
- Deny support or incentives to entities that violate human rights or engage in corruption.
- Prevent undue corporate influence that undermines human rights realisation.
- Develop regulatory frameworks to ensure transparency, public participation, due diligence, and accountability and address potential conflicts of interest.

Juez Sustituta de Primera Instancia y 51ª Nominación en lo Civil y Comercial de la Ciudad de Córdoba (2002)

The tribunal ruled that the state has a duty to protect human rights, including the right to water. This duty extends beyond the immediate restitution of victims to encompass establishing effective regulatory systems ensuring this right's long-term protection and fulfilment. This includes positive duties requiring the mobilisation, allocation and expenditure of resources concerning:

- State responsibility for regulation: The state must create robust frameworks to ensure equitable access, sustainable use, and water quality.
- Duty to protect against third-party violations: The state must ensure that private entities are regulated to prevent water rights violations.
- Preventative and restorative measures: The state must invest in infrastructure, enforce policies, and compensate where necessary.
- Budgetary implications: Adequate public resources are necessary to support regulatory systems for water access.

iii. Fulfil

The duty to fulfil rights can be understood as requiring the state to adopt positive measures and enabling strategies to ensure that the actions taken are sufficient to realise ESC rights for every rightsholder. It is often further broken down into the need to facilitate, promote, and provide ESC rights. The duty strikes at the heart of budgetary decision-making, requiring the state's resources to be utilised for the progressive fulfilment of ESC rights through, for example, the development and implementation of legislation, policies, and strategies that are appropriate and adequate for realising ESC rights.

At the same time in adopting proactive fiscal policies to ensure the swift and full realisation of human rights also requires a focus on eliminating discrimination and promoting substantive equality. This involves a clear commitment to financing public services essential for guaranteeing rights. These services must be accessible, acceptable, and of high quality, ensuring they are financially and geographically available. It requires considerations such as:

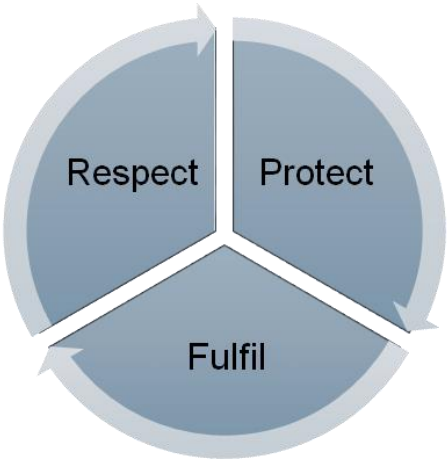
- Ensure non-discriminatory financing: Allocate resources in a way that prioritises marginalised and disadvantaged populations, ensuring equality in access to services.
- Finance public services: Fund essential services such as healthcare, education, and housing to ensure they are available, accessible, and adequate for all, regardless of location or income.
- Promote accessibility: Ensure public services are financially affordable and geographically accessible to all citizens.

- Track progress and adjust budgets: Regularly monitor the effectiveness of fiscal policies in fulfilling human rights and adjust budgets as necessary to address emerging needs or gaps.

- Discrimination
- Restitution
- Institutions
- Diverting existing funds

- Interference
- Regulation
- Corruption
- Intervention

- Allocation
- Funding Public Services
- Availability, Accessibility, Quality
- Monitoring, Evaluation, Review



B. Specific Obligations

Article 2(1) ICESCR RIGHTS

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

ESC rights are also subject to specific obligations under international human rights law, provided for in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The treaty came into force in 1976 with the UK ratifying the ICESCR the same year.

Over the years, the obligations have been interpreted and are now understood as providing an expansive legal framework for assessing a state's commitment to realising ESC rights through public budgets. In short, article 2(1) espouses the obligation to continuously improve conditions and ensure that resources allocated to the realisation of ESC rights will increase proportionally to the increase in the state's overall resources. When broken down further into the duties, as provided below, each element of Article 2(1) provides specific budget considerations.

i. Progressive Realisation & Non-Retrogression

The obligation 'to progressively' is best understood as the need to move as effectively and expeditiously as possible towards the full realisation of the relevant rights, where the realisation of the rights is considered through the need to improve the availability, accessibility, acceptability, and overall quality of ESC rights. The obligation generally provides that resources allocated to the realisation of ESC rights should increase at a rate at least proportional to an overall increase of a state's resources. In other words, as a state's economy grows, the public resources utilised for the realisation of ESC rights are expected to grow tangibly to the economy. In simple terms, the duty asks fiscal decision-makers as well as those scrutinising the nature of such decisions taken questions such as:

- Does the budget establish and adopt a fiscal framework that will increase the availability, accessibility, acceptability, and quality of ESC rights for rights-holders?
- Is there a systematic plan that justifies fiscal measures to be adopted by States within a multi-year framework?
- Are there monitoring and measurement frameworks in place to demonstrate and provide evidence of the effectiveness of fiscal decision-making in the realisation of ESC rights?

Questions for Assessing Budgetary Decision-Making

- Is there a reasonable and evidenced justification for the decision taken?
- Were reasonable alternatives comprehensively examined?
- Was there genuine transparency and participation within the decision-making process, particularly of the groups most affected?
- Does the decision taken impact upon or discriminate against a particular group?
- Does the decision taken threaten the upholding of a minimum essential level of the ESC rights of rights-holders?
- Was there an independent review of the decisions taken as well as where necessary, the process under which they were taken?

As a second consideration, assessing the obligation to progressively realise requires more than questioning whether there has been an increase in resource allocation for ESC rights areas. Beyond this initial consideration, it asks whether the resources used have been done so as effectively as possible to realise ESC rights. This is about identifying and using resources in the most optimal way to progress ESC rights within the state. This raises a more complex issue due to the competing nature of ESC rights concerns, which involve tough decisions being made within budgetary planning. Where it is only sometimes possible to increase resources for the realisation of ESC rights, for example, in times of justified fiscal consolidation, attention should be turned to whether resources are being used effectively. In other words, within the resources available, are they being optimised for the realisation of ESC rights? This highlights the importance of the decision-making process where such tough decisions are made. Here, the further duty of non-regression provides a supporting role in providing boundaries and assessing the approach of decision-makers. The accompanying duty provides a framework for decision-making when budgetary increases are impossible.

Finally, concerning the overall progressive realisation of ESC rights through public budgets and a state's use of resources, the Committee has highlighted that any decisions taken, and assessments made would be considered in light of:

- The country's level of overall development.
- The severity of the alleged breach, in particular, whether the situation concerned the enjoyment of the minimum core content of ESC rights (see further below on what the minimum core is).
- The country's current economic situation, in particular, whether the country is undergoing a period of economic recession.
- The existence of other serious claims of the country's resources, for example, resulting from a natural disaster or armed conflict.
- Whether the state had sought to identify low-cost options.
- Whether the country had sought cooperation and assistance or rejected offers of resources from the international community to implement the treaty's provisions within sufficient reason.

ii. Maximum Available Resources (MAR)

When assessing public budgets, a further consideration is the use of the maximum available resources (MAR) to realise ESC rights. For example, the CESCR has commented that the duty is designed to

ensure that while the state retains a primary role in 'formulating or adopting, funding and implementing laws and policies, there remains a margin of appreciation for each state to determine the optimum use of its resources to adopt national policies and prioritise certain resource demands over others'. It should not be interpreted as requiring all of a state's resources to be used for ESC rights realisation but places a duty upon the state to maximise the resources available for progressively realising ESC rights.

In recent years, the Committee and accompanying commentary have highlighted the role of MAR in ensuring 'due priority' is given to social spending (ie ESCR) within a state's overall spending. Concerning the practice of the Committee, analysis has demonstrated that there are five leading factors in assessing (and assuming) non-compliance with the MAR duty:

- If there is stagnant public expenditure with respect to the financing of ESC rights.
- When public expenditure is lacking precisely in the areas where it is deemed more urgent.
- Whenever evidence of stronger or prolonged economic growth has not been followed by sufficient allocation of resources for ESC rights expenditure.
- Whenever tax policy is either insufficient to provide the necessary resources or discriminatory in nature.
- Whenever high levels of economic inequality are established as an ESC rights problem.

More practically, the MAR duty considers fiscal policy and public budgets through two central avenues. Firstly, the state's policies concerning the mobilisation of resources through areas such as government borrowing and, more critically, taxation, as well as whether the resources raised are being used effectively and efficiently. For example, considerations with taxation policy will often centre upon:

- The sufficiency of revenue raised for delivering ESC rights priorities.
- The tackling of tax avoidance and evasion.
- The need to revisit and review tax exemptions.
- The distribution and progressivity of the tax burden including the impact of the tax system on specific groups in society.
- The efficiency and incentive that the tax system creates to promote rights enjoyment.
- The overall sustainability of domestic tax systems.

Amnesty International's report "What's Tax Got to Do with It: A Resource Guide on Tax and Human Rights" provides an extensive basis for challenging current taxation systems. Furthermore, the CESCR has recently adopted a Statement on Tax Policy highlighting steps states can take towards adopting rights-compliance tax policy.

CESCR Concluding Observations: United Kingdom (2025)

"The Committee is concerned that, despite measures in the 2024 Autumn Budget, the State party's fiscal policy is not effectively addressing income inequality or reducing poverty, while also hindering the mobilisation of the maximum available resources for the implementation of Covenant rights. It is further concerned that insufficient social spending, particularly in a context of rapidly rising inflation, hampers the progressive realisation of economic, social and cultural rights (art. 2 (1))"

Concerning the approach to taxation, the CESCR has recommended the UK:

- Adopt a more efficient, progressive, and socially just fiscal policy by ending the income tax thresholds freeze introduced since 2022, and reviewing the share of corporate, capital gains, inheritance, and property taxes in total State revenue, to broaden the tax base and fiscal space for realising economic, social, and cultural rights.
- Assess the impact of fiscal policy on economic, social and cultural rights, including its distributional effects on disadvantaged groups, in consultation with social partners.
- Strengthen efforts to combat illicit financial flows, tax evasion, and fraud, particularly by wealthy individuals and businesses, by establishing public registries of companies and trusts with mandatory due diligence, thereby supporting international initiatives to that effect and helping other States mobilise resources for realising economic, social, and cultural rights.
- Prevent and punish the use of shell companies for profit-shifting, tax evasion and fraud by strengthening its legal framework and reinforcing whistle-blowers protection measures.
- Conduct an independent, participatory impact assessment of the extra-territorial effects of its financial secrecy and corporate tax policies on the economies of developing countries.

Concerning the effectiveness and efficiency of spending, the MAR duty has also been demonstrated to focus upon overall value for money, capturing issues such as waste, use of budget underspends, and corruption. For example, General Comment 19 of the Committee on the Rights of the Child has highlighted the need for States to 'uncover and remedy the root cause of ineffective and inefficient spending' within public institutions to ensure the maximum of the allocated resources are used for the realisation of ESC rights. This can be broken down further into operational efficiency and allocative efficiency both of which rise questions such as:

Operational efficiency

- Was funding wasted through poor procurement processes?
- Were there leakages in funds going to service delivery points?
- What mechanisms are in place to monitor expenditure and effectiveness in relation to human rights outcomes?
- Do operational efficiencies sought disproportionately affect marginalised or disadvantaged groups?

Allocative efficiency

- Do the allocations of public resources address the most urgent areas of lack of ESC rights enjoyment and related public goods and services?
- Are funds distributed fairly and according to respective needs across regions and demographic groups to ensure that marginalised and disadvantaged populations receive adequate resourcing?
- Do we get the most we possibly can from the distribution of resources in allocations made in the budget, or would an alternative distribution process achieve better results?

Understanding and assessing the efficiency and effectiveness of fiscal resources is primarily seen as an exercise of fiscal audits and budgetary analysis requiring input from economists and fiscal experts. However, the efficiency and effectiveness of public funding should also be analysed with respect to the

realisation of ESC right-holders outcomes. This is the overall goal of ESC rights law, which requires a whole system approach. In other words, where efficiencies sought in one sector or area of budget spending merely leads to pressures in another, this should be considered within any analysis and review of efficiencies.

iii. Minimum Core Obligations

As well as the need to progress ESC rights over time and to the maximum available resources, states are obligated to ensure the satisfaction of minimum essential levels or a minimum core of each right. The "minimum core" represents the fundamental rights and provisions a government must ensure to uphold a person's dignity and well-being. This includes the right to an adequate standard of living and the interconnected rights to health, social security, education, work, and housing. The purpose of the minimum core is to guarantee that individuals can live with dignity.

Committee on Economic, Social and Cultural Rights (General Comment 3)

"On the basis of the extensive experience gained by the Committee, as well as by the body that preceded it, over a period of more than a decade of examining States parties' reports the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant."

"By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."

While it is ultimately up to each state to determine the exact content and approach to the minimum core of ESC rights, examples of the minimum core content of ESC rights can be determined through guidance from the General Comment of the CESCR. For example, General Comment 15 on the right to water provides that the minimum core of the right should be considered as:

- To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;
- To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalised groups;
- To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;
- To ensure personal security is not threatened when having to physically access to water;

- To ensure equitable distribution of all available water facilities and services;
- To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalised groups;
- To monitor the extent of the realisation, or the non-realisation, of the right to water;
- To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalised groups;
- To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation.

This guidance from the Committee demonstrates two central purposes of minimum core obligations that apply to budgetary decision-making: first, guaranteeing mandatory spending to ensure minimum essential rights levels are fulfilled, and second, prioritising resources for those most marginalised and disadvantaged in society in times of resource constraint and fiscal consolidation.

Guaranteeing Mandatory Social Spends (protective spending)

Protected social spending refers to allocating financial resources shielded from the adverse effects of economic cycles, fiscal constraints, or austerity measures. This type of spending is essential for ensuring that minimum essential levels of ESC rights are maintained, regardless of broader economic circumstances. It reflects a state's commitment to prioritising human dignity and upholding its legal and moral obligations to respect, protect, and fulfil rights. This, for example, could require:

- Mobilising sufficient revenue to invest in fulfilling minimum essential levels of ESC rights.
- The identification within the budget of the minimum protected social spending that ensures financing for essential levels of ESC rights.
- Ensuring the fiscal rules of the state do not hinder the realisation of minimum core levels of ESC rights. Fiscal rules should provide for escape or execution clauses when minimum core rights are not fulfilled.
- Abstaining from spending cuts that undermine minimum essential levels of rights in negotiations on loan conditionality agreements. For example, excluding spending cure in areas such as health, social security and education.

Prioritisation of Resources in Times of Fiscal Consolidation

Fiscal policy must contribute significantly to reducing or eradicating poverty, which means that taxes and public spending must increase the income and well-being of lower-income populations. Fiscal policy should not adversely affect those at risk of falling into poverty. To achieve this, States should:

- Establish mechanisms to ensure that the effects of taxes on consumption (such as sales or VAT taxes) and the income of the population in poverty or at risk of poverty do not cancel out the benefits deriving from transfers and subsidies and avoid increasing these taxes or eliminating exemptions on essential goods without effectively implementing appropriate compensatory mechanisms.

- Protect minimum core obligations: Guarantee the immediate provision of essential goods and services such as basic health care, primary education, essential foodstuffs, housing, water, and sanitation, even during economic downturns.
- Conduct human rights impact assessments: Before adopting fiscal consolidation measures (e.g., austerity, spending cuts, or tax reforms), States should systematically evaluate their impact on vulnerable groups and demonstrate that all other potential alternatives have been considered.

The Principles of Transparency, Participation and Accountability

Alongside the legal obligations outlined throughout this first briefing, there are also principles of conduct arising from the international human rights framework, which should guide the procedures and processes that accompany fiscal and budgetary decision-making. In many ways, it recognises the importance of a rights-respecting process in pursuing an outcome by ensuring transparent, participatory, and accountable decision-making. These also reflect principles for good governance and have long been understood as crucial to adopting good fiscal practices. The UN General Assembly has adopted resolutions highlighting the importance of these principles within fiscal policymaking.

a. Transparency

In the context of public budgets, transparency pertains to making government activities, decisions and information available and easily accessible within the public domain. This encompasses disseminating precise, timely, and comprehensive budgetary information regarding government policies, priorities, and decision-making processes, including the approach adopted to mobilising, allocating, and eventually expenditure public resources. Drawing from international law, both Article 19 and Article 25 of the UDHR underscore the importance of ensuring individuals access to information and their ability to freely seek, receive, and impart information and ideas through any media they choose. Moreover, this has been interpreted as placing a positive duty upon states to proactively publish information, including fiscal and budgetary, which would be deemed in the public interest. Concerning the practice of the CESCR, transparency has been recognised as a fundamental principle in securing the progressive realisation of ESC rights. This principle plays a critical role in several areas, including:

- Integral element of nationally driven public goods and services, programs and action plans: Transparency ensures governments are accountable in allocating resources for all such programs. Clearly defined goals and outcomes foster trust and participation, addressing critical needs like poverty, health, and housing.
- Transparent data crucial for monitoring and measuring ESC rights realisation: Transparent data on government spending and key targets and indicators is essential for tracking progress on ESC rights. It enables public monitoring, identifies gaps, and ensures alignment with human rights standards.
- Crucial to dealing with and removing corruption: Transparency in budgeting and decision-making curbs corruption, ensuring effective use of resources for social welfare. Open scrutiny holds officials accountable and guarantees resources reach marginalised groups.
- Central to fighting tax avoidance and evasion: Transparent tax policies can help to prevent tax abuse, ensuring fair and sufficient revenue collection to fund healthcare, education, and social welfare. Transparent reporting holds entities accountable and secures resources for public services.

While the IHRL framework recognises the central importance of transparent information, achieving this in practice is often better approached through internationally recognised frameworks designed by, for example, the International Monetary Fund ("IMF"), the Global Initiative for Fiscal Transparency ("GIFT"), and the International Budget Partnership's ("IBP") development of an Open Budget Survey

("OBS"). Each provides rights advocates with practical questions and steps for assessing transparency in line with a government's human rights obligations.

Implementing Transparency

- The public availability of key budget documents: including a pre-budget statement, executive's budget proposals, enacted budget, citizens budget, in-year reports, mid-year review, year-end reports, and audit reports.
- Comprehensiveness: The government should disclose its financial activities in its annual budget proposal and issue documents at other times during the budget year to provide a comprehensive, updated picture of its actions.
- Periodicity: Governments must adhere to regular deadlines for drafting, presenting, executing, and reporting on the budget. Timely reporting by the executive, legislature, and audit bodies is critical to ensure transparency and accountability.
- Specificity: Budget descriptions should clearly outline expenditure plans without excessive aggregation. Details should be presented in internationally accepted formats to avoid ambiguity and clarify government intentions.
- Legality: All expenditures and activities should comply with the law. Where the law does not adhere to or promote basic principles of transparency and accountability, civil society should make recommendations to amend it.
- User-friendly structure: Budget documents should be accessible and understandable to various audiences, from legislators to the general public, considering different levels of technical expertise.
- Publicity: Budget documents should be widely available to all citizens, including civil society organisations, to ensure that the public can make informed judgments about government spending.
- Means and ends: Clear links should be made between the government's policies, plans, budget inputs and outputs, and desired outcomes. The budget's explanation should communicate its aims in terms of inputs, objectives to be achieved, and measurable results.

b. Participation

The principle of participation to enable people to exercise their human rights should be uncontested and common practice. For example, Article 25 of the International Covenant on Civil and Political Rights (ICCPR) protects the rights of citizens to participate in public affairs, vote, and have access to public service. Ensuring human rights are adequately accounted for within fiscal policies and fiscal decision-making thus requires the government to actively provide means for public engagement with fiscal processes throughout the budget cycle. With regard to the practice of the CESCR, participation has been recognised as a fundamental principle in securing the progressive realisation of ESC rights. This principle plays a critical role in several areas, including allowing communities to share their lived experiences, ensuring policies address real needs and priorities. This inclusive approach leads to more effective and equitable solutions for realising economic and social rights. Further, it is critical to ensuring empowerment and inclusion. Involving marginalised groups in shaping policies promotes social inclusion and empowers individuals to claim their rights. Participation ensures diverse voices are heard, reducing inequalities and fostering social cohesion. When stakeholders actively contribute to policy design and implementation, trust and ownership are built. This collaborative process increases the likelihood of long-term success in advancing ESC rights.

Implementing Participation

- Incorporate the voices of marginalised groups: Including marginalised groups ensures public budgets address the needs of vulnerable populations, reducing inequalities and promoting fair resource allocation.
- Provide information in advance: Timely access to budget information enables citizens to engage effectively, make informed suggestions, and hold governments to account.
- Promote comprehensive engagement between the government and the public: Participation fosters two-way dialogue, builds trust, and ensures budgets reflect societal needs through collaborative problem-solving.
- Provide feedback loops to inform citizens about their contributions: Informing participants how their input influenced decisions builds trust, encourages future involvement, and strengthens accountability.
- Engage with and adopt measures of Participatory Budgeting: Participatory budgeting provides an established framework for increasing meaningful public engagement with and participation in budget processes.

c. Accountability

Finally, it is necessary to ensure that fiscal decision-making and budgetary practices are sufficiently accountable. Accountability within the budget process is a cornerstone for ensuring that resources are used effectively, equitably, and in alignment with ESC rights. It plays a crucial role in translating human rights obligations into tangible outcomes by linking fiscal decisions to the rights and needs of individuals and communities. Achieving accountability in the budget process requires the coordinated involvement of various institutions and organisations, each with distinct but complementary roles. Human rights budgeting encourages a joined-up and multi-institutional approach to achieving accountability for fiscal processes. Here's a summary of how a country's Parliament, the Supreme Audit Institution (SAI), Civil Society, National Human Rights Institutions (NHRIs), and, in some jurisdictions, the courts can contribute to this process.
Parliament: Parliament, through both Committees and plenary debates, provides a democratic mechanism for holding the executive accountable for its fiscal policies and ensuring that public resources are used equitably and effectively.

- Legislative Oversight: Ensures that budgets are aligned with national priorities and international obligations, including human rights.
- Scrutiny and Approval: Review budget proposals, debate allocations, and approve expenditures.
- Monitoring: Tracks government performance during implementation, ensuring funds are spent as intended.
- Representation: Acts as a voice for constituents, particularly marginalised groups, ensuring their needs are reflected in budget decisions.

Audit Institutions: Supreme audit institutions provide an expert role in ensuring accountability through the budget process by providing in-depth fiscal analysis and audits, including for the Parliament, to assess the government's fiscal approach and decision-making.

- Watchdog function: Identifies mismanagement, corruption, or inefficiencies, bringing them to public and institutional attention.
- Fiscal analysis: Assesses the effectiveness of expenditures.

Civil Society: Civil society acts as a bridge between the public and government, amplifying voices that might otherwise go unheard and ensuring transparency and inclusivity in fiscal decisions.

- Advocacy: Campaigns for budgets prioritising human rights, equity, and the needs of marginalised populations.
- Monitoring and analysis: Tracks budgetary allocations and outcomes, often conducting independent audits and assessments.
- Public engagement: Raises awareness, educates the public, and fosters participation in budget processes.

National Human Rights Institutions (NHRIs): NHRIs provide expertise in human rights, acting as impartial bodies that hold governments accountable while promoting rights-based approaches to fiscal planning.

- Specialist human rights analysis: Assesses whether budgets comply with international and national human rights standards, particularly concerning ESC rights.
- Monitoring and reporting: Tracks progress in realising human rights through budget allocations including through the use of human rights compliant targets and indicators and publishes findings.
- Facilitating dialogue: This involves bringing together stakeholders, including the government, civil society, and marginalised groups, to discuss budget priorities and guide government in decision-making.

Judiciary: Where ESC rights are incorporated into domestic legal systems, the judiciary can ensure fiscal policies respect human rights legal standards and principles, whilst checking executive and legislative actions.

- Legal oversight: Interprets and enforces budget allocations and expenditures laws, ensuring compliance with constitutional and human rights obligations. Examine cases where budget cuts may violate rights, particularly those of vulnerable groups.
- Remedies for Violations: Provides redress for individuals or groups affected by rights violations due to fiscal decisions.

Implementing Accountability

- Establish and promote a multi-institutional approach to fiscal accountability: Ensure different institutions and mechanisms exist within the state to provide budget oversight and scrutiny.
- Ensure rights-based analysis within the role of Parliamentary Committees in budget scrutiny: Assess and build Parliament's capacity to carry out effective, rights-based budget oversight.
- Strengthen audit institutions and incorporate human rights into fiscal analysis: Deliver independent fiscal analysis which considers impacts on human rights within fiscal analysis.
- Include analysis from national human rights institutions and civil society: Strengthen the role of national human rights institutions in monitoring collective interests concerning fiscal policy.
- Incorporate international human rights into domestic Legal systems: Enable the judiciary to adjudicate and consider the implications of budgetary decision-making on rights violations. Support judicial capacity building and fiscal literacy in this area.

In conclusion, understanding public budgets through the framework of economic, social, and cultural rights shows their role both as a measure and a mechanism for human rights realisation. Recognising the duties to respect, protect and fulfil these rights within fiscal policy lays the groundwork for building budgets that are transparent, equitable and accountable. The following briefing develops this foundation further and sets out practical steps for designing and implementing human rights-based budgeting processes.

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