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BRIEFING

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ECONOMIC, SOCIAL & CULTURAL RIGHTS

Human Rights Budget Analysis & Scrutiny by Other Actors

Human rights budget analysis takes the standards and principles of international human rights law covered in Part 1 and utilises them as a framework through which to scrutinise a governments budget. Through examining the mobilisation, allocation, and expenditure of public resources through the lens of human rights law, human rights defenders and advocates can identify discrepancies between a government's commitment to human rights in rhetoric and the reality of whether public resources are used to fulfil their commitments. Human rights budget analysis can take many forms and utilise different analytical techniques (distributional, cost-effectiveness, gender analysis) depending upon the purpose of the analysis. For example, whether it is seeking to analyse the commitment to realising one specific ESC right, such as the right to health, or on a particular groups' enjoyment of their ESC rights such as children or minorities. In summary, human rights budget analysis can be an indispensable instrument for civic society, national human rights institutes, and human rights advocates generally, to identify and rectify potential violations related to ESC rights. This third briefing focuses on the use of human rights budget analysis and scrutiny by highlighting frameworks, case studies, and approaches already in place to be adopted throughout the UK in order to hold the state to account for its commitment to ESC rights realisation. It by no means offers an overall approach to conducting human rights budget analysis.

Measuring the Progressive Realisation of Economic, Social and Cultural Rights: The Center for Economic and Social Rights OPERA Framework

Part 1 of this briefing pack highlighted the specific obligations pertaining to ESC rights covering the need to progressively realise ESC rights to the maximum of available resources within the State. Measuring progressive realisation is becoming increasingly accessible through the development of ESC rights measurements frameworks. One leading example is the OPERA Framework, developed by the Center for Economic and Social Rights (CESR), which is a comprehensive tool designed to assess state compliance with obligations to fulfil ESC rights. The framework is structured into four analytical steps: Outcomes, Policy Efforts, Resources, and Assessment. Budget analysis is integral to the 'Resources' step of the OPERA Framework, and it evaluates whether a state is utilising its maximum available resources to progressively realise ESC rights. Making the tool hugely useful for those seeking to scrutinise a states budget and assess their compliance with ESC rights obligations. Through budget analysis, practitioners examine both government expenditures and revenue generation to assess the adequacy, equity, and effectiveness of resource allocation. This involves scrutinising fiscal policies to determine if they are designed and implemented in ways that prioritise human rights obligations.

OPERA Framework – Measuring Maximum Available Resources Summary

Evaluating planned and actual resource expenditures: Analysing budgetary allocations to essential sectors such as health, education, and social services to assess whether funding levels are sufficient to meet human rights commitments. This can provide insights into the overall progressive realisation of ESC rights as well as whether minimum core obligations are being upheld.

- Sectoral Analysis: Examines the proportion of budgets allocated to key sectors for ESC rights such as healthcare, education, and housing.
- Targeted funding: Evaluates whether budget provide 'due priority' to marginalised and disadvantaged groups, such as children, persons with disabilities, or indigenous communities.
- Timeframe: Assesses the trend in allocation over time to ensure sustained and progressive funding increases rather than regressions and identifies real term funding

The types of assessment techniques within the framework for this phase are:

- Calculate the percentage of the state's budget allocated to social spending relevant to the specific right, comparing to relevant benchmarks.

- Identify which population groups are benefitting from spending, contrasting spending disparities with disparities in human rights outcomes.
- Compare allocations to previous budgets to see how spending has evolved over time, taking into account economic growth over the period.
- Track public expenditure (e.g. using PETS, QSDS, or social audits).

Assessing revenue generation: Examining the state's fiscal policies, including taxation and other revenue-generating mechanisms, to ensure they are structured to mobilise adequate resources for ESC rights fulfilment. This assessment is generally focused on the duty to use the maximum available resources to realise ESC rights.

- Taxation systems: Examines whether tax policies are progressive, fair and sufficient to generate revenue for the realisation of ESC rights.
- Alternative sources: Investigates whether the government is exploring other revenue streams and whether this information is made public and transparent.
- Leakage and evasion: Evaluates the impact of tax evasion, avoidance, or illicit financial flows has on the overall mobilisation of resources within the state.

The framework highlights the use of these assessment techniques:

- Calculate the state budget as a percentage of the overall economy and compare to similar countries.
- Identify and assess the adequacy and fairness of the state's main revenue sources (e.g. taxation, borrowing, international assistance).
- Evaluate the state's fiscal and/or monetary policies governing the raising of revenue (e.g. identify tax base as % of GDP and track its evolution over time, taking into account economic growth over the period).

Analysing budget processes: Reviewing the transparency, accountability, and inclusivity of budget formulation and execution processes to ensure they align with human rights principles.

- Transparency: Analyses whether budget documents are publicly accessible, comprehensible, and disaggregated by sectors and demographics.
- Participation: reviews opportunities for public involvement in budget planning and execution, ensuring the inclusion of civil society and affected communities.
- Accountability mechanisms: Examines whether audit institutions, parliamentary oversight, or civil society monitoring play active roles in tracking budget implementation.

Assessment techniques for this step include:

- Collect feedback on public participation in the design, implementation and evaluation of fiscal and monetary policies (e.g. through interviews or other qualitative methods and quantitative data, if available).
- Analyse indicators related to transparency of economic policy process.

By incorporating budget analysis, the OPERA Framework enables a nuanced understanding of how financial decisions impact the realisation of ESC rights. It allows advocates and policymakers to identify potential shortcomings in resource allocation and to develop evidence-based recommendations for policy reforms that better align with human rights obligations. It can be directly used by organisations and civic society as a means of assessing compliance with progressive realisation or can be used to guide existing processes and advocacy for ESC rights. It is important to engage with the framework as a whole but a summary for the purposes of budget scrutiny is offered below.

Importantly, the OPERA framework will not provide the entire picture and further considerations are required to provide a full scrutiny of the budget. For example, taking into the account the established tests set out in Part 1 as to reasonable justifications for a lack of expenditure on ESC rights related areas of the budget. However, the OPERA framework provides a clear and approachable assessment of a government budget to begin clearly identifying areas of concern and potential violations of ESC rights law.

Case Studies

Evidence suggests that human rights budget analysis is yet to be carried out effectively by any state. Instead, we have to rely on the work of some rights advocates and organisations as a means of holding the state accountable. Several studies and budget analysis have been carried out using a human rights-based approach. The case studies offered below by no means cover all the detail of the reports and budget analysis carried out. They are merely used to direct the reader to studies where budget analysis has been utilised to demonstrate concerns with or even violation of the progressive realisation of ESC rights.

1. OHCHR – Kenya 2022/23 Budget - Human Rights Budget Analysis

The "Human Rights-Based Analysis of Kenya's Budget, 2022/2023" report, published by the Office of the High Commissioner for Human Rights (OHCHR), provides an in-depth examination of Kenya's fiscal policies based on a human rights framework. The report indicates 'that the share of total social spending (health, education, social protection, and water and sanitation) to the total overall budget is 23.06%, amounting to 6.06% of GDP for the fiscal year 2022/23. This continued a downward trend since 2019 and relatively low in comparison to international and regional recommendations on acceptable minimum levels of social expenditure. Low investment in the social sectors was partly driven by the shrinking fiscal space resulting from increased debt servicing costs and reduced domestic revenues. Debt servicing alone accounts for 42% of the total budget and 57% of total domestic revenues, limiting the ability of Government to sustainably finance social spending.' The report adopts a systematic approach to evaluating the country's fiscal policies through a human rights lens. It includes numerous steps, all of which cannot be captured here, but generally includes:

- Data collection and review of budget documentation: The OHCHR reviewed Kenya's national budget documents, including key fiscal policy statements, budget estimates, and related financial reports. This ensured a comprehensive understanding of how resources were allocated to sectors critical to ESC rights.
- Applying the Human Rights Framework: The report systematically works through the key commitments of Kenya to international human rights under both international and regional mechanisms whilst highlighting key obligations for ESC rights including progressive realisation to the maximum of available resources. Furthermore, the report adopts recommendations from various UN human rights committees to highlight areas of concern in relation to the principles of transparency and participation in the budget.
- Sectoral Analysis: Focus on specific sectors of the budget which are crucial to the realisation of ESC rights. This includes analysis of the adequacy of funding and availability of services for health, education and social security. Analysis includes trends over time as well as assessment against other areas of government spending such as a debt servicing.

This analysis highlights the importance of budget allocations in realising ESC rights and assesses how well Kenya's budget aligns with its human rights obligations. The key findings of the report are:

- Allocation to Social Sectors - The report notes that the 2022/2023 budget allocates significant resources to sectors critical for ESC rights, such as health, education, and social protection. However, concerns are raised about whether these allocations are sufficient to address existing disparities and meet the needs of marginalised groups.
- Health Sector Funding - Although there has been an increase in health sector funding, it remains below the 15% target outlined in the Abuja Declaration, to which Kenya is a signatory. This funding shortfall is shown to impede Kenya's ability to fulfil the right to health for all.
- Education Expenditure – While education receives a significant share of the budget, the report questions whether this funding is adequate to support inclusive education, particularly for children with disabilities and those from disadvantaged communities.
- Social Protection Programmes – Allocations for social protection have increased, but coverage remains insufficient, leaving many marginalised populations without essential support.
- Public Participation and Transparency – The analysis underscores the need for greater public engagement in the budgeting process. Limited transparency and participation undermine the legitimacy of budget decisions and their alignment with human rights priorities.

The report goes on to set out key recommendations for action to be taken in Kenya. These are:

- Increase Allocations to Critical Sectors – The report advocates for greater budgetary allocations to health, education, and social protection, ensuring that Kenya meets its international commitments and addresses existing shortfalls.
- Enhance Equity in Resource Distribution – Measures should be adopted to ensure the equitable distribution of resources, prioritising marginalised and vulnerable populations in line with the principle of non-discrimination.
- Strengthen Public Participation – Mechanisms must be implemented to enable meaningful public involvement in the budgeting process, particularly ensuring that marginalised voices are heard.
- Improve Transparency and Accountability – Greater transparency in budget formulation and execution is essential. The report recommends regular public reporting and independent audits to hold the government accountable to its human rights commitments.

2. The Seven Towers and the Right to Housing in Belfast

The Seven Towers social housing project in North Belfast provides a clear example of how human rights budget analysis can expose failures in resource allocation and advocate for policy changes to fulfil the right to adequate housing. The project, situated in a predominantly Catholic area, highlights systemic inequalities and how fiscal decisions can undermine ESC rights. Residents of the Seven Towers lived in conditions that consistently failed to meet even basic housing standards. Dampness and mould were widespread, with poor insulation and inefficient heating systems leaving homes colder than the World Health Organisation's recommended standards for health. Despite ongoing complaints, little action was taken to address these issues, contributing to long-term detriments to residents' well-being.

In 2007, the Northern Ireland Housing Executive (NIHE) announced a £7 million cladding project to install PVC rain screens on the exterior of the Seven Towers. The stated objectives included improving the buildings' safety and appearance, reducing long-term maintenance costs, and contributing to better health outcomes for residents. However, when residents queried how the cladding would address persistent dampness and heat retention, the NIHE admitted the project was not designed for these purposes. This raised significant questions about whether the allocated resources were being effectively used to realise the residents' right to housing.

Human Rights Budget Analysis: Key Points

A civil society organisation, Participation and the Practice of Rights (PPR), conducted a human rights-based budget analysis to scrutinise the proposed project. Drawing on government data, the PPR highlighted several key findings:

- Replacing the inefficient heating systems with modern natural gas systems would cost approximately just 28% of the cladding project's budget.
- Such an upgrade would deliver direct benefits amounting to £74,112 across the complex.
- Importantly, the heating system upgrade would directly address habitability issues by improving warmth, reducing dampness, and lowering residents' energy expenses.

This analysis revealed that the NIHE's cladding project failed to prioritise measures that would have a tangible impact on residents' quality of life. Instead, significant public resources were allocated to aesthetic improvements that did not meet the core housing needs of the community.
Following sustained advocacy by PPR and the residents, the NIHE revised its cladding plans to include measures aimed at improving warmth and reducing dampness in the flats. This change demonstrated the power of participatory advocacy and rights-based scrutiny in influencing public policy. The Seven Towers case underscores several critical lessons for conducting human rights budget analysis.

- Resource alignment: Budget analysis can expose discrepancies between government spending and the needs of affected communities, ensuring resources are used to realise rights effectively.
- Accountability and participation: The involvement of residents and civil society organisations was instrumental in holding the government accountable for its obligations under international human rights law.
- Transparency: By making budgetary priorities visible, this case highlighted the importance of open dialogue between governments and the public in addressing socio-economic disparities.

The Seven Towers case illustrates the importance of applying a human rights lens to public spending. By highlighting the mismatch between budgetary allocations and residents' needs, the case demonstrates how targeted advocacy and robust budget analysis can compel governments to make decisions that better reflect their obligations to fulfil ESC rights. This serves as a model for other communities seeking to challenge inequitable policies and advocate for meaningful change.

Budget Analysis and the Courts

ESC rights law is not currently incorporated into UK law (though Scotland does currently have proposals in place to achieve this). In brief, this leaves an accountability gap for ESC rights as they cannot be enforced through domestic courts. However, in other jurisdictions globally, human rights budget analysis has been used in ESC rights adjudication to hold governments to account for fiscal policy and, often, a lack of spending on ESC rights related services. Case law and practice within these jurisdictions can provide insightful guidance on human rights budget scrutiny, key areas of focus, and how it can be used to clearly evidence a lack of compliance with ESC rights law. The two cases below are offered as a demonstration of the types of analysis undertaken to highlight how budget analysis can be used to hold governments to account for a lack of social spending. The first case concerns healthcare in South Africa and focuses on the actual expenditure of allocated resources vital drugs to tackle to aids epidemic. The second, focuses on a case from the Colombian constitutional court and focuses upon the need to ensure prioritisation of those most marginalised and disadvantaged in society in times of fiscal consolidation.

Case Analysis: The Treatment Action Campaign and the Right to Health in South Africa

The Treatment Action Campaign (TAC) case was a landmark moment in socio-economic rights litigation and provides a case study for how budget analysis can contribute to the adjudication of socio-economic human rights. In this case, addressing a public health crises in South Africa. It highlights how resource allocation and expenditure, particularly for life-saving medicines, can be scrutinised under a rights-based framework to ensure governments fulfil their obligations to the maximum of available resources. In the late 1990s and early 2000s, South Africa faced one of the most severe HIV/AIDS epidemics globally, with millions of people infected and dying due to lack of access to antiretroviral treatment. The introduction of Nevirapine, a cost-effective medication to prevent mother-to-child transmission (PMTCT) of HIV during childbirth, represented a pivotal opportunity to reduce infant HIV infections. However, the South African government initially restricted access to Nevirapine, citing concerns over its safety and over the capacity of the healthcare system to implement PMTCT programmes due to the costs of running the program.

The Treatment Action Campaign, a civil society organisation, challenged this decision in court, arguing that the government's failure to make Nevirapine universally available violated the constitutional right to health care (Section 27 of the South African Constitution).

The decision in the TAC case explicitly addressed how resource allocation affected the realisation of the right to health. The group, in part, built the case around budget analysis and focused on demonstrating:

- The cost-effectiveness of Nevirapine: Nevirapine was an inexpensive intervention, with costs far outweighed by its benefits. Preventing mother-to-child transmission of HIV would reduce long-term healthcare expenditures associated with treating paediatric HIV.
- The misallocation of resources and budgetary underspend: The government's resistance to implementing a PMTCT programme was not due to a lack of financial resources but rather a misallocation influenced by scepticism toward ARVs. Further, the TAC demonstrated through publicly available budget information that provincial departments of health had underspent their budgets by about US $63.1 million in 2000.

The Constitutional Court of South Africa delivered its judgment in Minister of Health v Treatment Action Campaign (TAC) in 2002. The court ruled that the government's restrictive policy on Nevirapine was unreasonable and unconstitutional, as it failed to utilise available resources to prevent mother-to-child transmission of HIV. The judgment in the case took into consideration several important resource-relate factors, including:

- The reasonableness of resource allocation: The court evaluated whether the government was using its available resources effectively and equitably to address a public health crisis. It judged Nevirapine was provided free of charge by the manufacturer for a period, meaning cost was not a significant barrier. Existing healthcare infrastructure could accommodate the distribution of Nevirapine, undermining the government's argument about systemic limitations.

- The overall progressive realisation of rights: While the Constitution recognises that ESC rights are to be realised progressively, the court held that inaction or regressions in the face of available solutions were not justified. The government's refusal to scale up PMTCT programmes with Nevirapine was deemed an unreasonable limitation on access to healthcare.

Most importantly, the judgement supported by budget scrutiny led to a transformative effect on South Africa's public health system and global human rights jurisprudence. Its impacts included:

- The scaling up of PMTCT programmes: Following the judgment, South Africa rolled out a nationwide PMTCT programme, dramatically reducing the rate of mother-to-child HIV transmission and preventing hundreds of thousands of HIV-AIDS related deaths.
- Increased accountability in public health spending: The case established a clear approach for courts to scrutinise government budgetary decisions in light of constitutional rights, ensuring that public resources are allocated to maximise their impact on the realisation of socio-economic rights.
- The empowerment of civil society: TAC's success demonstrated the power of civil society in advocating for equitable resource allocation and holding governments accountable for fulfilling their constitutional obligations.
- A clear integration of human rights in budget analysis: The case solidified the principle that resource availability and allocation must align with the progressive realisation of ESC rights. Governments are obligated to ensure that fiscal decisions prioritise vulnerable populations and address pressing public health needs.

Case Study: Enforcing Minimum Core Obligations in Healthcare in Colombia – Decision T-760 of 2008

In Decision T-760 of 2008, the Colombian Constitutional Court issued an influential ruling on socio-economic rights realisation, addressing systemic violations in the country's healthcare system. The case stemmed from a wave of complaints filed by individuals and civil society organisations, which exposed deep inequities in access to healthcare, administrative inefficiencies, and widespread failures to uphold constitutional guarantees. Grounding its judgment on the principle of mínimo vital (minimum core obligations), the Court affirmed that access to essential healthcare is inseparable from the constitutional rights to life, dignity, and health. In doing so, the Court reframed healthcare not merely as a policy choice but as a legally enforceable right. A central feature of the ruling was the Court's focus on the inefficiency of resource use due to regulatory failures in Colombia. Rather than accepting resource scarcity as an excuse for rights violations, the Court took into account whether existing funds were being managed effectively. It identified that inequities in healthcare provision, including disparities between contributory and subsidised regimes, delays in essential treatments, and excessive administrative barriers, were not the result of insufficient funding but of systemic mismanagement and inefficiency. The reasoning allowed the Court to hold the state accountable for failing to allocate resources reasonably, thereby strengthening the link between fiscal governance and the protection of socio-economic rights. The case highlights the links, as highlighted through the exploration of ESC rights obligations in Part 1, that ESC rights consideration extends to the need to consider the overall efficiency with which the state is using resources to progress ESC rights.

The impact of T-760 was profound, both financially and constitutionally. The decision compelled the Colombian government to expand subsidised healthcare coverage, guarantee access to all essential medicines, streamline reimbursement procedures, and invest in structural reforms to correct administrative and regulatory shortcomings. These measures not only produced immediate improvements in healthcare access but also established clearly that inefficiencies cannot justify the denial of minimum core obligations.

Applying human rights analysis to budgets strengthens transparency, accountability and equity in fiscal governance. When governments and civil society use these frameworks together, they help ensure that fiscal decisions uphold human rights principles and respond to people's needs. Human rights budget analysis provides a practical approach for ensuring that economic policy and resource allocation genuinely advance dignity, equality and the realisation of economic, social and cultural rights.

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