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## Knowledge Exchange Seminar Series (KESS)

### Budget Analysis and Housing in Northern Ireland

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#### Background

This team carried out a major project on Budget Analysis and the Advancement of Economic and Social Rights in Northern Ireland, funded by Atlantic Philanthropies. The project examined how international human rights principles might be embedded in budgeting practices and then applied the principles in the fields of social housing and mental health.

In this report we highlight some of the examples of good practice that we reviewed. We then explain the key human rights principles and discuss how they mirror much of the work of parliamentary committee structures. We then look at the lessons learned by applying this in the context of housing in Northern Ireland.

#### What is Budget Analysis?

Human rights based budget analysis<sup>1</sup> analyses the process and outcomes of public finances in terms of human rights obligations. This may entail looking at:

- How governments manage the economy and development (macro-economic questions)
- How governments generate resources (direct taxation, indirect taxation, borrowing, grants from elsewhere).
- How governments allocate financial and other resources

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<sup>1</sup> Blyberg uses 'budget analysis' somewhat more narrowly to cover 'number crunching' on revenue, allocation and expenditure figures; she uses the term 'budget work' to cover budget analysis, costing, tracking, audits, impact assessments and budget advocacy: Ann Blyberg, 'Government Budgets and Rights Implementation: Experience from Around the World' in Jody Heymann and Adele Cassola (ed.) *Making Equal Rights Real* (Cambridge UP 2012), 198. See the IHRIP website <http://humanrightsbudgetwork.org/> which contains resources from around the globe for anyone doing human rights budget work. The Children's Commissioner for England and Wales has carried out a rights based analysis of the 2014 Budget, available at [http://www.childrenscommissioner.gov.uk/content/publications/content\\_904](http://www.childrenscommissioner.gov.uk/content/publications/content_904). In Northern Ireland the Participation and Practice of Rights initiative has carried out some important examples of budget work; PPR's website is at <http://www.pprproject.org/>.

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- How governments actually spend the resources (expenditure).
- The outcomes achieved by government expenditure.
- The processes of government in making these decisions.

These are the objects of the study, but we need to explain the principles that we use when examining them. These principles we draw from the international human rights law framework.

## Principles – the Human Rights Framework

We decided to use the International Covenant on Economic Social and Cultural Rights (ICESCR) to provide a principle based framework for a number of reasons. First, in the United Kingdom there is no human rights text that deals extensively with social and economic rights; the main human rights text focuses on civil and political rights (Human Rights Act 1998). Second, it was a relevant international treaty which the United Kingdom had ratified. Third, and perhaps more importantly, there existed considerable guidance in publications from the ICESCR committee and in the secondary literature as to the content of the ICESCR obligations. This enabled us to develop a detailed framework.

We identified the relevant ICESCR obligations as follows:

### Immediate Obligations

- Minimum core rights. The minimum core of the ICESCR rights must be protected as a matter of priority. The ICESCR Committee identifies minimum core aspects of the ICESCR rights in its General Comments.<sup>2</sup> Failure to protect minimum core obligations can only be justified if a state can show it has deployed all resources at its disposal to satisfy them; this could include appealing for international aid for instance. In at least some of its comments, the ICESCR Committee describes the minimum core obligation as 'non-derogable'.<sup>3</sup>
- Non-retrogression. This is a corresponding obligation to that of 'progressive realisation' but it is an immediate obligation. Progressive realisation implies that deliberate backward steps with regards to ESR violation ICESCR unless they can be shown to be justified having regard to the resources available to the state.
- Non-discrimination. Whatever steps states take in this area should not discriminate in purpose or in effect. This importantly rules out explicitly discriminatory measures (unless these can be justified); but it also requires that indirectly discriminatory measures be treated as suspect. Where policies have a disproportionate effect on minority or vulnerable groups then there is a need to consider other less discriminatory alternatives. The range of groups who need to be considered in this area is wide: it includes women, racial and ethnic minorities, people with disabilities, children, LGBT, religious and linguistic minorities, migrants, persons in places of detention, the elderly among others. The non-discrimination obligation also includes a requirement of positive action to realise equality in practice.<sup>4</sup>
- Procedural obligations: taking steps, ensuring transparency, participation and accountability. There must be state planning with regard to the realisation of ESR; and the state must facilitate the participation of those involved. Even in times of crisis, the state must not abandon plans to progressively move towards the full realisation of human rights for everyone.

### Progressive obligations

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<sup>2</sup> The rest of this bulletpoint comes from the QUB BAP Framework paper.

<sup>3</sup> CESCR General Comment No 14 (n 46) para 47; CESCR General Comment No 15 (n 35) para 40;

<sup>4</sup> CESCR, *General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights* E/C.12/GC/20 (2009)

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- Progressive realisation. States must be able to demonstrate that they are making progress in the achievement of ESR for all. As noted above, steps backwards in terms of rights enjoyment would be a retrogressive measure and would have to be justified having regard to the resources available to the state. However it is not just a prohibition on backsliding: states must show they are moving forward, improving the quality and availability of human rights for everyone.
- Maximum available resources (MAR). This reference in Article 2(1) of ICESCR requires that states raise sufficient revenue to carry out their obligations. Second, if resources are devoted to activities that do not realise rights whilst rights realising activities are underfunded, then there may be a breach of the MAR obligations. Third, if resources devoted to the realisation of rights are not expended or are diverted to another purpose, then there is a breach of MAR.

These obligations are explained in detail in Chapters 3 and 4 of Rory O'Connell, Aoife Nolan, Colin Harvey, Mira Dutschke and Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge 2014) and Aoife Nolan and Mira Dutschke, 'Article 2(1) ICESCR and States Parties' Obligations: Whither the Budget?' (2010) 3 *European Human Rights Law Review* 280.

### Relevant Tools developed in Examples of Good Practice

As part of our project we reviewed 14 examples of budget analysis work; some of these examples were guidance type documents while others also included case studies as examples of how to do budget analysis. Two or three of the documents stood out in terms of the detail of the guidance provide, and are particularly useful resources.<sup>5</sup>

Our review of available guidance and case studies indicated a number of tools that were regularly used in budget analysis work; some of these tools may work best in combination.

Several examples emphasised analysing specific budget lines to see which projects were supported and which were not. In a sense this is a preliminary step which can be taken forward in different ways. For instance some case studies tried to identify budget lines which were inimical to the enjoyment of ESR, or which were not involved in the realisation of ESR (ie their effect was neutral)<sup>6</sup>. It could then be argued that these were resources that were better used to realise ESR (in the case of budget lines inimical to ESR) or more subtle uses might be feasible. Both these examples relate to the ICESCR obligation to devote the maximum of available resources to realising ESR.

Of course, it was also necessary to identify budget lines that were involved in the realisation of ESR. This may well mean identifying budget lines that are concerned with the provision of benefits. However it is also important to examine other budget lines which are important ancillaries to the realisation of ESR. For instance, is there an adequate budget to facilitate processes of transparency, accountability and participation? Is there a budget for promotional activities? Is there a budget for the necessary planning that is required for the realisation of ESR (the obligation to take steps)? Is there a budget to support those agencies necessary to realise and monitor the realisation of ESR?

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<sup>5</sup> These are IBP and IHRIP *Reading the Books: Governments' Budgets and the Right to Education* (2010); FAO *Budget Work to Advance the Right to Food: Many a Slip* (2009); D Elson *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW* (2006). See also the more recent work of the Center for Economic and Social Rights (CESR), Center for Economic and Social Rights, *Mauled by the Celtic Tiger* (2012); Center for Economic and Social Rights, *The OPERA Framework: Assessing compliance with the obligation to fulfill economic, social and cultural rights* (CESR, 2012) Center for Economic and Social Rights, *Assessing Fiscal Policies from a Human Rights Perspective: Methodological case study on the use of available resources to realize economic, social and cultural rights in Guatemala* (CESR, 2012).

<sup>6</sup> For instance these might be expenditures on the Tourism, Finance, or Foreign Affairs departments: H. Hofbauer, A. Blyberg and Krafchik, *Dignity Counts* (Fundar; International Budget Project and the International Human Rights Internship Program, 2004).

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As noted above, identifying relevant budget lines is only a preliminary step. Frequently, this task needed to be combined with other tools.

One very important, indeed basic one, is determining whether there have been underspends or overspends, or diversions of allocations to non-ESR related projects. If money has been allocated to an ESR related project or programme and not spent or fully spent for that purpose then this is a clear failure to use the maximum of available resources. If an ESR related programme has underspent then the resources should be reallocated to realising ESR. Alternatively if a non-ESR related programme has overspent then those are resources that could have been used to realise ESR, and accordingly indicate a failure to use the maximum of available resources. It also goes without saying that where funds have been diverted due to corruption, incompetence or inefficiency then the ICESCR obligations have been violated. These points also indicate the importance of linking human rights budget work to the work of audit offices and ombudspersons.

The monitoring of government expenditure also needs to examine whether money is being spent efficiently and effectively. The South African group IDASA stresses the need to implement cost effective measures, to reduce costs and to avoid waste.<sup>7</sup> If monies are being spent inefficiently or wastefully then there is a failure to use maximum available resources.

One powerful tool is to examine how funding for an ESR related budget line changes over time. This is an important (but not perfect) proxy for determining whether the state is progressively realising ESR over time. However it is also important for giving warning that there have been (or may be) retrogression in the realisation of ESR. In either case, there are important caveats. First, it is important to allow for inflation so that any change can be assessed in real terms. This requires a decision to be made about which measure of inflation to use, and also requires competence in the necessary mathematical skills. Second, expenditure can only be a proxy for what is important, ie changes in outcome (an increase in allocations may mask inefficient expenditure or even misuse of the funds). Third, even if a decrease in allocation suggests a possible retrogressive measure, then it has to be remembered that even retrogressive measures are subject to justification in one form or another. Fourth, it may be necessary to match any changes to changes in demography or indeed need. Fifth, a decrease may reflect a change in the available resources; or a modest increase might obscure a missed opportunity.

For these last reasons, it may be useful to analyse an ESR-oriented budget allocation as a percentage of the overall budget or governmental expenditure, or as a percentage of the Gross Domestic Product. These measures can be useful in telling us how the state prioritises expenditure on ESR compared to other expenditure or alternatively whether it is making maximum use of available resources. In the first instance, if a state is increasing its proportionate expenditure on areas such as Defence, Foreign Affairs, Tourism, while decreasing its proportionate expenditure on ESR related activities (Health, Education, Social Security), then this may signal a worrying failure to prioritise human rights, especially ESR. In the second case, an increasing GDP may indicate that more 'real resources' are available to the state and that it is failing to make full use of them; alternatively if GDP is contracting it may indicate a genuine problem of lack of resources.

Measuring a state's expenditure on ESR as a percentage of GDP may also be useful in other ways. For instance it may be useful to compare such percentages to the equivalent percentages in neighbouring countries or countries with a similar level of development. If comparator countries can afford to devote more resources to ESR then it raises the question as to why the country under scrutiny cannot.

Benchmarks may also be important in another very different way. There may be benchmarks as to what constitute the minimum standards that a state needs to observe. Such minimum standard benchmarks may allow us to decide whether a state is observing its minimum core obligations, which are immediately effective and which have to be treated as a priority (indeed some ICESCR General Comments describe them as 'non-derogable'). These standards might be international ones but often it may be more appropriate to rely on country-specific standards. Diokno for instances suggests that ESR

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<sup>7</sup> IDASA and Judith Streak, *Budgeting for Child Socio-Economic Rights: Government Obligations and the Child's Right to Social Security and Education* (IDASA, 2002), 14, 35; IDASA and Judith Streak, *Monitoring Government Budgets to Advance Child Rights: A Guide for NGOs* (IDASA, 2003), 11.

rights expenditure be analysed to see if it provides expenditures equal to or greater than specific measures of access to food, poverty, daily minimum wage, or daily cost of living.

Some groups also engage in the difficult task of costing programmes to determine how much would the delivery of specific ESR actually cost.

One key task is to assess allocations against need. This is crucial to determining if the state is taking steps with a view to progressively realising the relevant rights. Human rights law requires that there be a concrete plan to realise human rights. In order to do this it is necessary to assess the nature and degree of the relevant need, and to assess whether programmes are expected to deal with the problem.

Some groups have looked to see how governments raise revenue (taxation), and in particular do they raise revenues in ways likely to harm the less well off. A classic example here is the extent to which a state relies on direct or indirect taxation. Indirect taxation harms the less well off proportionately more as it in effect functions as a flat rate tax rather than being proportionate to income. Such tax can also be described as regressive. Another issue though is dealing with tax avoidance and tax evasion. A further way of examining revenue is comparing the approach to taxation with suitable comparators. If a state generates significantly less taxation than comparator states then this may indicate there is a failure to use the maximum of available resources. It is also possible to examine how a state provides exemptions and subsidies; CESR has determined for instance that the exemptions and subsidies offered by Guatemala actually outweigh the amount of money received in taxation.<sup>8</sup>

A fundamental tool is to examine who are the beneficiaries of programmes or changes in public expenditure: do certain programmes benefit people dependent on their wealth or income, their sex, their race /ethnicity, whether they are children, whether they have a disability or where they live?<sup>9</sup> Such analysis is essential to determining state compliance with the immediate and cross cutting obligation of non-discrimination, and the related concepts of equality and equity. In the UK, the Institute for Fiscal Studies provides analysis as to how budgetary decisions (both changes in taxation and public expenditure) affect different income groups, including groups with children. Similarly, the House of Commons Library was able to provide such an analysis as to how the 2010 budget affected women. This sort of analysis may be somewhat technical, but it can also be approached in a more participative manner, by surveying the intended beneficiaries of government programmes.<sup>10</sup>

### Relevance to Committee Work

One member of the project team examined the work of Assembly Committees in during the discussion on the adoption of the 2011-2015 Budget to determine whether Committee work showed overlaps with human rights principles. The absence of rights language from the discourse of politicians in scrutinising the 2011-2015 NI budget was striking. The term human rights did not figure once in the 600 paragraph report of the Finance and Personnel Committee on the Draft Budget. Nevertheless, there was considerable overlap between the ICESCR human rights principles and the concerns of public representatives involved in debating and scrutinising budgets. This was so even though the language used is sometimes quite different. There were some very clear overlaps, most notably when parliamentarians talk of the need to enhance participation and transparency. However the other terms of the discourse also overlapped with human rights principles. Parliamentarians sometimes mentioned the impact of budget cuts on the vulnerable in society which overlaps with the concept of non-discrimination. The concern to investigate ways of increasing resources overlapped with the idea of using the maximum of available resources. The references to the need for greater clarity on how priorities are established, identifying and protecting frontline services, giving priority to health, all resonated with the ideas of protecting rights from

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<sup>8</sup> Center for Economic and Social Rights, *Assessing Fiscal Policies from a Human Rights Perspective: Methodological case study on the use of available resources to realize economic, social and cultural rights in Guatemala* (CESR, 2012), 20.

<sup>9</sup> M. Diokno, *A Rights-Based Approach towards Budget Analysis* (International Human Rights Internship Program, Washington DC 1999), 11.

<sup>10</sup> IDASA for instance stresses the need to find out children's experience of poverty and their experience of relevant service delivery: IDASA and Judith Streak, *Monitoring Government Budgets to Advance Child Rights: A Guide for NGOs* (IDASA, 2003), 103-123.

retrogression and ensuring that resources are prioritised to rights realisation. The Finance and Personnel Committee's adoption of the term 'social outcome' is also important as it seems to refer to the actual realisation of particular goods in society; in that way there seems to be a link to the idea that what matters in the realisation of social and economic rights are actual changes (improvements) in living conditions, rather than necessarily more money spent on a particular programme.

This congruence is significant and welcome. As Murray Hunt notes, many of the old and unhelpful dichotomies in rights discourse are being superseded.<sup>11</sup> One of these is that human rights law is a matter for courts as a forum of principle to resolve, while interests, bargaining, compromises and logrolling are the currency of politicians. Rather than compartmentalising rights and politics in this way, key human rights texts envisage that 'every individual and every organ of society' should strive to ensure the universal observance of all human rights (Preamble to the Universal Declaration of Human Rights 1948). Politicians in the Northern Ireland Assembly already engage in a relatively principled, largely evidence based, somewhat participatory process of scrutinising the budget; they already address questions of vulnerability. These key elements – a principled approach, an evidence base, participation, vulnerability, find ready analogues in a human rights framework for budget analysis. Therefore there is little reason for politicians to be afraid or suspicious of the language of rights. On the contrary, a human rights framework offers some benefits for the work of politicians. To see how this might be so we proceed to discuss the application of the principles to the context of housing.

### Application – Housing

The project examined a number of issues relevant to the resourcing of social housing in Northern Ireland from a human rights-based perspective. The pre-devolution decisions of central government to put more emphasis on home ownership have created an extremely challenging financial environment for the public bodies directly responsible for the provision of social housing in Northern Ireland. In the context of severe budgetary and borrowing constraints, local housing bodies have explored creative ways of using existing resources and generating additional finance. Initiatives such as the transfer to housing associations which could borrow off-budget and greater use of the private rented sector have helped to circumvent some of the difficulties- but not without costs. Crucially the state's use of resources appears to have been insufficient to progressively realize the right to adequate housing over time during the timeframe of this research.

In terms of the ICESCR, the UK is bound to ensure that everyone enjoys the right to an adequate standard of living, including the right to adequate housing. The state is obliged to take steps to the maximum of its available resources with a view to progressively achieving the right to adequate housing. In abstract terms, this means that the state must use all the resources that it can, without neglecting any other vital obligations, to gradually and continually improve all aspects of the right to adequate housing. Various duties stemming from this obligation are to be adhered to immediately. For example, the state must not tolerate retrogression in the realization of rights. A basic minimum core entitlement as well as a duty to ensure equality are both of immediate effect. Even though resources might be inadequate to realize all aspects of the right immediately, this does not relieve the state from the immediate duty to plan for full realization as well as for the future acquisition of resources necessary for implementation. The state therefore has to develop a national housing strategy in which these plans are spelled out. In terms of process, the state also has to ensure that those likely to be affected by decision-making in the housing sphere have the ability to participate meaningfully in those decisions.

What then is required in order for the state to better fulfil its ESR obligations? A variety of possible solutions are feasible in terms of ensuring state compliance with its international obligations in relation to the right to adequate housing. It is, therefore, not appropriate to be overly prescriptive about what policies should be adopted. However, a number of points arise from the above analysis.

The use of housing associations as a mechanism for raising finance off-balance, while politically convenient, is questionable from a human rights perspective. While it appears to offer a cost-free mode of providing housing, in practice it

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<sup>11</sup> Murray Hunt, 'Enhancing Parliament's Role in Relation to Economic and Social Rights' (2010) European Human Rights Law Review 242.

only does so by foregoing revenue that would otherwise accrue to the public purse. If borrowing is required, it may be more efficient to provide the appropriate public body with a borrowing capacity.

It is necessary for proper transparency and accountability processes to be in place, even in a multi-agency system which relies on hybrid bodies to deliver important services. Indeed, arguably, it is more important to pay attention to transparency and accountability questions in such a context, as otherwise the complexities created by a multi-agency system might undermine these values.

Public authorities should allocate financial resources to address perceived need, based on adequate planning. It is problematic if resources are dependent on the unpredictable raising of revenue. In particular, a system of funding for ESR based on the contingencies of the land market, as practised in NI, should be avoided. Such a system means that an economic crisis reduces the resources available for the provision of ESR in the very situation they are arguably most needed.

The need for careful planning does not just relate to the direct provision of ESR resources like social housing. State agencies need to manage the wider resources in society to make sure that vital resources like land remain affordable. A failure to address these wider issues does not just make the state provision of ESR resources problematic; it also makes it difficult for individual persons and families to realize their rights through their own efforts; and fundamentally may cause longer-term economic problems.

The state needs to consider the relationship between public and private provision of housing, and reconsider policies which rely on short term use of the private sector. A short-term approach which relies on the private sector may overlook issues about the adequacy of rights fulfilment in the private sector as well as channelling resources in such a way as to benefit the already advantaged (private landlords) rather than investing in public services for the benefit of the less well off.

More broadly, however, change in how housing is perceived is necessary to ensure that social housing is adequately valued in the long-term. If financial support for social housing has been lacking in the context of a neoliberal ideology which emphasizes market solutions, the engendering of a discourse which views housing as a right, essential to human dignity, security and well-being, may promote a firmer footing for social housing.

### **Conclusion: What would be the benefits?**

There are at least five key benefits to using a human rights based framework.

First, it elevates the principles upon which budget decision-making is based from ones of utilitarian calculation or even good practice to ones of **obligations** corresponding to rights claims. The language of obligations may well be particularly appealing to parliamentarians who are seeking to hold the executive to account.

Second, human rights provides some **specifics**. The text of the ICESCR and related documents such as the General Comments spell out in detail the content and obligations of human rights and these may provide clearer standards to guide policy. The human rights focus on the enjoyment of rights (and not just the process by which they are protected) suggests how 'social outcomes' might be measured. We measure them by looking at selected key indicators in relation to housing, health etc., and monitor how public action improves those outcomes.

Third, the emphasis put in international human rights law on the idea of **justification** reinforces the good governance requirement of evidence based policy making. Departments and the Executive as a whole should have to offer specific arguments for curtailing certain rights related services or for not increasing resources where apparently possible. For example, the requirement that a public authority must be able to demonstrate that it is using the maximum of available resources should encourage a more rigorous inquiry into decisions not to raise resources through (eg) domestic or

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business rates or water charges. At the very least, there should be a rigorous evidence base. Even if a more rigorous evidence base does not provide a clear answer it at least facilitates an intelligent discussion.

Fourth, the human rights principles may suggest that **some problematic issues need to be asserted more robustly**. It enables us to identify whether there are specific failings in terms of (for example) protecting rights from violations by non-state actors, enhancing transparency, tackling specific forms of discrimination.

Fifth, a more explicitly rights based approach to budgeting and budget scrutiny would also enhance **accountability** before independent institutions, while at the same time ensuring that unwarranted criticism is avoided.

### For more

For more details see the following work of the authors, from which this presentation draws heavily

Aoife Nolan, Rory O'Connell and Colin Harvey, *Human Rights and Public Finance* (Hart 2013)

Rory O'Connell, Aoife Nolan, Colin Harvey, Mira Dutschke and Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge 2014)

Colin Harvey and Eoin Rooney, 'Integrating Human Rights? Socio-Economic Rights and Budget Analysis' (2010) (3) *European human rights law review* 266-279

Aoife Nolan, *Economic and Social Rights after the Global Financial Crisis* (Cambridge: Cambridge University Press, 2014)

Aoife Nolan, 'Economic and Social Rights, Budgets and the Convention on the Rights of the Child' (2013) 21 (2) *The International Journal of Children's Rights* 248-277

Aoife Nolan and Mira Dutschke, 'Article 2(1) ICESCR and States Parties' Obligations: Whither the Budget?' (2010) (3) *European human rights law review* 280-289

R O'Connell Working Paper Human Rights Based Budget Analysis and Devolved Government in Northern Ireland  
[www.ssrn.com/author=495253](http://www.ssrn.com/author=495253)

R O'Connell Working Paper Overview of Budget Analysis and Human Rights Work [www.ssrn.com/author=495253](http://www.ssrn.com/author=495253)

