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# **Human rights and fiscal oversight: A case study of the Northern Ireland 2011–15 budget**

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## **Introduction**

Human rights has often been dominated by the contributions of lawyers and courts. While lawyers and courts certainly have major contributions to make in this field, recently more attention has been devoted to the contribution of other disciplines and other actors. One important example of this is the discussion on the contribution of legislative assemblies to the protection of human rights. Increasingly, we find that legislatures are considering human rights issues, most notably perhaps in the form of specialist committees such as Westminster’s Joint Committee on Human Rights (Hunt, 2010). In this article, I look at one area where legislative assemblies may offer a distinctive contribution to human rights protection, when exercising their historic role in matters of finance and budgets (O’Connell, 2013).

This historic role in scrutinising finance matters ties in with recent civil society and academic interest in the idea of linking budget analysis to human rights work, a project which requires mutual learning between human rights lawyers and economists (Balakrishnan & Elson, 2008; Harvey & Rooney, 2010). Several writers in this field have already sketched what the relevant human rights principles would look like when applied to budgetary questions. In so doing, authors have drawn on the principles in the UN’s 1966 International Covenant

on Economic Social and Cultural Rights (ICESCR), and specifically principles regarding progressive realisation, maximum available resources, non-discrimination, minimum core rights and process-related rights (Nolan & Dutschke, 2010; O'Connell et al., 2014).

These obligations derive from interpretations of the ICESCR's Article 2, which reads (*italics added*):

1. 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 realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant *will be exercised without discrimination* of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2 includes the obligation of progressive realisation, which requires states to demonstrate that they are improving the protection of human rights over time. Progressive realisation implies a prohibition on 'retrogression', i.e. backwards steps in the protection of rights. According to the ICESCR Committee, any deliberately retrogressive measures need to be shown to be 'fully justified by reference to the totality of rights... and in the context of the full use of the maximum available resources' (General Comment No. 3, para. 9).<sup>1</sup> Furthermore, the committee expects that even in times of economic crisis 'the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes' (General Comment No. 3, para. 12).

Article 2 also specifies that each state party must use the 'maximum of its available resources'; while sometimes interpreted as a loophole for states to escape their obligations, the maximum available resources obligation requires states to show that they are using their resources to realise rights. The realisation of rights presupposes that there must be some minimum core to the realisation of a right; these core elements must be immediately realised. Process-related obligations are implicit

<sup>1</sup> All general comments available at <http://tbinternet.ohchr.org>

in the obligation to ‘take steps’; this implies that there must be a process, a plan involving participation of rights holders, to improve the protection of rights. Non-discrimination is set out explicitly in Article 2(2) but has been elaborated on considerably in General Comment No. 20 to the ICESCR.

The purpose of this article is to see how those principles overlap with the practice of a parliamentary committee involved in fiscal oversight. To that end, this article analyses the discussion of the Northern Irish Budget 2011–15 from the perspective of human rights principles. The article examines the overlap between the concepts used in such debates and scrutiny and the concepts used in human rights law. Some overlap or congruence would be welcome as it would suggest that human rights principles might be taken up or even championed by some of those who already participate in such debate and scrutiny.

The following two sections of this paper will provide background information on the Northern Irish political system and explain the timeline concerning the finalisation of the Northern Irish Budget 2011–15. After setting the context, the paper will examine the budgetary discussions using the ICESCR obligations as a lens. Finally, there will be a discussion of the evidence for congruence and the added value of a human rights perspective.

## **Northern Irish political settlement**

The Northern Irish system of government is based on the Northern Ireland Act, 1998, as amended. The Act and subsequent amendments are themselves based on an international treaty and a series of political agreements from the Belfast/Good Friday Agreement in 1998 through to the St Andrews Agreement in 2006 and the Hillsborough Agreement in 2010.

The Act establishes a power-sharing system of government. The Assembly is elected by proportional representation. Members of the Assembly have to self-designate as unionist, nationalist or other. This self-designation is essential to the working of the cross-community voting rules in the Assembly, as certain votes must get cross-community support. The Executive is headed by a diarchy, the Office of First Minister and deputy First Minister; in addition, there are Executive ministers. Ministerial portfolios are chosen by the parties in proportion to their representation in the Assembly. Special rules apply to the appointment of the politically sensitive post of Justice Minister.

Under this system the functioning of traditional notions of individual ministerial accountability and collective cabinet responsibility is problematic. Legislation attempts to encourage collective responsibility, but these legislative efforts face a near insurmountable obstacle in that each minister is effectively only responsible to his or her party in the Assembly.

The settlement also involves the Assembly's statutory committees, established to scrutinise the work of the departments. Given the absence of a genuine parliamentary opposition during the period examined, the scrutiny role of these committees becomes important. The power-sharing nature of the settlement is carried over to these committees; the chair should not belong to the same party as the relevant minister.

The Assembly has no equivalent to the Westminster Joint Committee on Human Rights. The 1998 Agreement did provide for the possibility of special ad hoc committees to consider the convention compatibility of legislation, and the Northern Ireland Human Rights Commission has called for a specialist Assembly committee, but this has not arrived yet.

Legislation in Northern Ireland may relate to excepted, reserved or transferred matters. Excepted matters remain the competence of Westminster and are set out in Schedule 2 to the Northern Ireland Act. Reserved matters are those currently within the competence of Westminster but which may be devolved to the Assembly. Schedule 3 of the Northern Ireland Act covers reserved matters. All other matters are transferred. Among those matters which are excepted or reserved include many relating to important economic levers; e.g. taxes and duties (Schedule 2, para. 9).

### **The 2011–15 budget**

The 2011–15 budget was adopted not long after the onset of the financial and economic crisis. Following the Conservative/Liberal Democrat emergency budget of June 2010, and spending review of October 2010, the Northern Ireland Minister for the Department of Finance and Personnel, Sammy Wilson, unveiled a draft budget on 15 December 2010. This was done with something of a celebratory air; some commentators had doubted that the five-party Executive would agree a budget. In the end the Finance Minister produced not merely a budget, but one for four years. The Finance Minister explained that the departments would produce more detailed departmental budgets

before Christmas and that there would be a consultation process open until 9 February 2011.

In the event, many of the departments only published draft budgets in the middle of January 2011. As a consequence, the consultation period deadline for the budget was extended to 16 February 2011. During the period January to March, the Assembly committees considered the various draft departmental budgets. In particular, the Finance and Personnel Committee of the Assembly produced a substantial report on the draft budget. On 7 March 2011 the Finance Minister introduced a revised budget into the Assembly. The revised budget was formally approved by the Assembly on 9 March 2011 in a cross-community vote. The following section examines the oversight work of the Assembly committees, highlighting overlap or potential overlap with human rights principles.

### **ICESCR obligations and the 2011–15 budget**

Among the ICESCR principles are four key human rights obligations: progressive realisation and non-retrogression, the use of maximum available resources, process-related rights (taking steps, transparency, participation) and non-discrimination. How are each of these reflected in the oversight work of the Assembly committees?

#### ***Progressive realisation and non-retrogression***

The Finance Minister placed the draft budget in the context of the severe budget cuts imposed by London. Having done that, he also stressed that the budget would not adopt a ‘slash and burn’ approach but would seek to ‘prioritise the economy, provide a degree of protection to the health service and seek to assist the most disadvantaged in our society’ (Northern Ireland Executive, 2010, para. 1.3). The draft budget proposed special protection for health, more specifically the ‘health’ proportion of the budget of the Department of Health, Social Services and Public Safety. As more than a third (41 per cent) of public spending in Northern Ireland goes to this department, the draft budget document only offered protection for the health element of the department’s work – about 77 per cent of the department’s budget (Northern Ireland Executive, 2010, para. 3.44).

The principle of non-retrogression means that even in times of severe economic difficulty every effort must be made to protect the most disadvantaged. The *Draft Budget 2011–15* document included provisions for special funds to protect the disadvantaged, each worth

£20 million (Northern Ireland Executive, 2010, paras 3.45–3.46). While welcome, there was concern, as expressed by the Finance and Personnel Committee, that the impact of the spending cuts would be 'regressive' and 'have the biggest impact on the least well off' (Finance and Personnel Committee, 2011, para. 160).

Progressive realisation of rights requires that resources be used effectively and efficiently to realise rights. Progressive realisation is particularly likely to be harmed by reduction or abolition of services or grants which are long-term preventive in nature. The Finance and Personnel Committee highlighted concerns about reductions to various projects promoting long-term realisation of the right to health or the right to work (Finance and Personnel Committee, 2011, paras 216–17). These included Sure Start, Health in Pregnancy, Education Maintenance Allowance, Adult Apprenticeship, sports and libraries. The long-term benefits of these programmes mean that investment in 'human capital', through long-term prevention of various harms, may well be cheaper than treating the consequences of under-investment later (Finance and Personnel Committee, 2011, para. 222). This point is reinforced by the Justice Committee, which commented that offending resulted from a complex of factors that included 'homelessness; lack of educational attainment; unemployment; mental health issues; alcohol and substance misuse; and being a victim of sexual abuse or domestic violence' (Finance and Personnel Committee, 2011, para. 480). The human rights requirement for resources to be used effectively and efficiently to progressively realise rights requires a shift away from what the Finance and Personnel Committee calls a 'penny wise, pound foolish' approach (Finance and Personnel Committee, 2011, para. 226).

### ***Maximum available resources***

The ICESCR obliges states to progressively realise rights using the maximum of available resources. The duty to use all available resources has several implications. First, it is legitimate to investigate whether the state could increase the resources available to it. Second, it is legitimate to inquire whether the state has prioritised resources towards the realisation of rights over other projects which do not directly realise rights. Third, when resources are allocated to the realisation of rights then they must be so used; they should not be diverted to other purposes, or saved and returned to the central funds.

In considering whether resources could be increased it is necessary to consider the limited nature of the powers of Northern Ireland in

financial matters. The devolved government has very limited powers to raise resources.

The sources of revenue available to the Northern Irish Executive are explained in the budget documents. The main source is the block grant from London, the size of which is determined by the Barnett formula. The block grant accounts for 93 per cent of the financial resources available to the Northern Ireland Executive (Northern Ireland Executive, 2010, paras 3.8–3.14). As a consequence of the 2010 spending review, the block grant to Northern Ireland was significantly reduced; Northern Irish commentators have stressed the bluntness of the Barnett formula in this regard. Barnett does not take account of relative need; further the UK Government's response of cutting public spending was bound to have a serious impact on Northern Ireland, which has traditionally relied heavily on the public sector and where there are disproportionately more persons in receipt of public benefits relating to, for example, disability (Finance and Personnel Committee, 2011, para. 19).

Apart from the block grant, the other two main sources of revenue are the regional rates and the possibility to borrow monies under the Reinvestment and Reform Initiative. These two additional sources account for 5 per cent and 2 per cent, respectively, of the resources available to the Northern Ireland Executive (Finance and Personnel Committee, 2011, para. 19).

For 2011–15, the Executive intended to make full use of its borrowing powers under the Reinvestment and Reform Initiative. This is an effort to make full use of available resources and, provided there are prudent measures regarding repayment, such an effort is to be commended. In previous years, the Executive had not made full use of this borrowing power. The Finance and Personnel Committee also noted concerns about the rising cost of such borrowing (Finance and Personnel Committee, 2011, para. 71).

With regard to the powers to vary regional rates, the Executive had decided to freeze domestic rates during the period 2008–11, while business rates were only increased by 2.7 per year over that period. This means that in real terms the revenue from domestic rates decreased while the revenues from business rates stayed more or less constant. In the *Draft Budget 2011–15*, the Executive proposed that both rates should only increase in line with inflation (Northern Ireland Executive, 2010, paras 3.21–3.24). Therefore, the Executive had not used its power to vary rates to increase the revenue available for the realisation of rights (or anything else). Regional rates in Northern

Ireland are the lowest in the UK, according to evidence presented to the Finance and Personnel Committee (2011, para. 163). The committee also noted that there were many issues about the rates, including a cap on the higher end, which made the rates potentially regressive, and that, even in the best of situations, they could not be more than proportionate (Finance and Personnel Committee, 2011, paras 163–5). In that context, the committee urged the Executive to keep the matter under review, and to ensure that any increases respected the principle of equity (Finance and Personnel Committee, 2011, para. 166).

### ***Prioritising the realisation of rights***

The *Draft Budget 2011–15* indicated that departments were expected to find significant savings. It acknowledged that the scale of savings was such that they could not be realised by mere efficiencies. Nevertheless, the draft document set out the principle that the 'delivery of front-line services' should be prioritised (Northern Ireland Executive, 2010, para. 3.28).

The language of rights was sadly lacking from many of the documents in the process. However, it should be noted that politicians and public servants did incorporate references to the protection of 'front-line services', the importance of health and the need to protect the most disadvantaged in the community. To some extent these concepts overlap with the idea of realising rights. These issues lack the specificity offered by the catalogue of internationally recognised human rights. What counts as a 'front-line' service is unclear (Finance and Personnel Committee, 2011, para. 50). The idea of disadvantage does not have the specificity of non-discrimination and, of course, there may be many activities under the heading of 'health' that could be better prioritised from a human rights perspective.

However, even if we were to grant that these terms were synonymous with the idea of rights, the budget documents still failed to set out in any detail how the departments were involved in these, or how these issues fed into decisions about how much money each department required, or what the effect of budget cuts would be on the delivery of these services. The Finance and Personnel Committee lamented the manner in which the Department of Finance and Personnel published an overall budget without including detailed departmental budgets (Finance and Personnel Committee, 2011, para. 32). Furthermore, there was no explanation as to how the allocations for individual departments, or between current or capital expenditure,



were derived; nor was it clear how departments prioritised spending (Finance and Personnel Committee, 2011, paras 11, 54).

The fact that departmental allocations were partly based on what was regarded as ‘inescapable’ expenditure by each department suggested that departments may not have been prioritising the protection of rights (in the form of front-line services). Yet it appears that the criteria as to what defined ‘inescapable’ varied across departments (Finance and Personnel Committee, 2011, paras 55–8).

The Finance and Personnel Committee stressed the importance of considering what counts as a front-line service and also what defines inescapable expenditure. This was in line with an earlier recommendation that departments explain clearly which services were essential and which offered scope for ‘allocative savings’ (Finance and Personnel Committee, 2011, para. 115). The committee expressed its dismay that the Finance Department would not be monitoring departmental efficiency, but rather how savings were being achieved (Finance and Personnel Committee, 2011, para. 118).

Human rights law suggests a more sophisticated approach to prioritisation. Those services which are essential to the minimum core of rights must be protected (even in times of emergency), and those services essential to realise rights more generally must be protected over other public expenditure which is not relevant to the realisation of rights.

### ***No stagnation, diversion or return***

A major issue during the debate on the budget, and not just in Northern Ireland, was the issue of maintaining ‘end year flexibility’ with departmental funds (Finance and Personnel Committee, 2011, paras 62–70). This practice allowed departments to retain any departmental underspends for use in later years. The concept of maximum available resources presumptively discourages such accumulation of resources: resources allocated to the realisation of rights should actually be used to realise those rights. Nevertheless, if such underspends are managed as part of sensible financial planning (e.g. to avoid unnecessary end-of-year splurges) and are used within reasonable time to further the realisation of rights, then such reserves can be compatible with human rights standards. In some cases, this may even be necessary; the school year, for instance, does not correspond to the financial year.

What cannot be compatible with human rights standards though is a decision to return such funds to the central coffers of the state. Yet

this is precisely what happened in 2010 when the UK Treasury unilaterally cancelled this facility for central and devolved departments, and required any accumulated resources to be returned to the UK Treasury. In so far as this affected monies allocated for the realisation of rights, this decision would appear to be a clear breach of the ICESCR obligations. The Treasury subsequently allowed a small exception for Northern Ireland but this amounted to less than 10 per cent of the funds accumulated (Finance and Personnel Committee, 2011, paras 59–66, fn 23). As suggested above, this Treasury move was especially likely to hit Education hard, and therefore it is welcome that the Finance and Education Ministers were able to guarantee against this measure harming schools (Finance and Personnel Committee, 2011, para 376).

***Process-related rights: Taking steps, transparency, participation***

The ICESCR requires that states 'take steps' towards the realisation of rights. This obligation is immediate in nature. It requires a plan to realise rights and some transparency about the level of rights realisation and about what is being done, or will be done, to improve the realisation of rights. This could come in an initial stage through relying on existing measures such as the equality mainstreaming duties and the mandatory Executive anti-poverty strategy, or through explicit mention in consultation papers or (for legislation) explanatory notes.

The dearth of information necessary to assess compliance with rights standards is repeatedly emphasised in the work of the Finance and Personnel Committee. The committee, in its comments on preventive spending, highlights the need to do more to identify 'social outcomes' rather than mere 'outputs'. 'Social outcome' is a concept very close to the realisation of rights in society (Finance and Personnel Committee, 2011, paras 229–31).

The deficiencies in terms of information are exacerbated by the failings in joined-up government. The Committee for Employment and Learning noted that there was no coordination over how departments released their draft budgets (Finance and Personnel Committee, para. 385). The Finance and Personnel Committee noted that the draft budget and departmental documents were not accompanied by a programme for government or investment strategy (Finance and Personnel Committee, 2011, para. 47).

A human rights compliant process also requires effective participation. Several sources provide useful guidance on effective participation. The Sedley Principles, the Labour Government's code

of practice on consultation (Department for Business, Enterprise and Regulatory Reform, 2008) and specific guidance from equality or human rights institutions (Equality Commission for Northern Ireland, 2010) all offer models. Effective participation requires time for adequate consultation but also more information, and in particular information in useful form explaining the anticipated effects of budgetary decisions on the realisation of rights on the ground, and disaggregated according to their effects on vulnerable groups.

In terms of participation, the time allocated for public consultation on the draft budget was very short. This was acknowledged even in the draft budget announced on 15 December 2010, where the blame was put on the late announcement of the UK spending review (Northern Ireland Executive, 2010, para. 1.3). The Finance and Personnel Committee, while recognising this fact, also noted it was not a satisfactory explanation. The departments had known since June 2010 that draft budgets were needed and so the publication of the overall draft budget in December, with the individual departmental budgets mostly in January 2011, was extremely late (Finance and Personnel Committee, 2011, paras 24–5). With a deadline of 9 February (later extended to 16 February), this left very little time for consultation, especially as it included the holiday period.

Even more seriously, the consultation documents frequently lacked detail and, in particular, did not indicate the topics of consultation. In respect of the majority of departmental draft budgets, the Assembly committees had criticisms on either the amount of time available or the amount and quality of information available (Finance and Personnel Committee, 2011, paras 28–30). The Committee for Employment and Learning noted bluntly that the absence of details ‘makes it almost impossible for any meaningful public consultation to be undertaken or any detailed scrutiny by the committees’ (Finance and Personnel Committee, 2011, para. 384).

### ***Non-discrimination***

Substantive equality is key to international human rights standards. This requires not merely formally equal or identical treatment, but state action to ensure that everyone enjoys the full range of civil, cultural, economic, social and political rights equally. This requires paying attention to the actual condition of women, ethnic or racial minorities, children, people with disabilities, people living in disadvantaged areas, and so forth.

There was some evidence of consideration of equality impacts. For instance, the Department of Culture, Arts and Leisure considered the impact of library closures and reductions in museum services on the elderly, people with disabilities, and people living in rural or disadvantaged areas; it also anticipated differential impact according to race (Finance and Personnel Committee, 2011, paras 325, 327, 350, 351, 358). The Regional Development Committee expressed concern that cuts to that department would hurt the most vulnerable in society (Finance and Personnel Committee, 2011, para. 494). While there was reference to protecting the vulnerable throughout the considerations of the department and committee works, this was inconsistent. Some departmental budgets did refer to the impact on vulnerable groups. The Social Development draft budget, for instance, singled out particular areas as priorities because of how they affect vulnerable groups (e.g. fuel poverty, child maintenance) (Department for Social Development, 2011, para. 5). The Culture, Arts and Leisure Committee and Department spelt out the equality impacts in relations to specific groups, but more frequently we were left with vague references to protecting the vulnerable. Other departmental budgets made reference to concerns about equality and vulnerable groups without providing any details. A 'full high level impact assessment' was promised in the Health Department's consultation paper, but none was published before the finalisation of the budget.

The Northern Irish departments have a ready-made tool in the form of the Northern Ireland Act's Section 75 equality mainstreaming provisions for a process to investigate the impact of policy decisions on different groups. It is disappointing that the performance of the departments was variable and sometimes lacking in regards to Section 75. The Finance and Personnel Committee had to ask the Department of Finance to publish its equality screening work, for instance (the department subsequently did so) (Finance and Personnel Committee, 2011, para. 409).

### **Overlap and the benefits of using a human rights framework**

Rights language was absent from the discourse of politicians in scrutinising the 2011–15 Northern Ireland budget. The term 'human rights' does not figure once in the 600-paragraph report of the Finance and Personnel Committee on the draft budget. Nevertheless, throughout this paper it is seen that there is considerable overlap between the ICESCR human rights principles and the concerns of

public representatives involved in scrutinising budgets, even though the language used is sometimes different and politicians steer away from rights talk. There are 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 overlap with human rights principles. Parliamentarians sometimes mention 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 overlaps with the idea of using maximum available resources. The references to the need for greater clarity on how priorities are established, identifying and protecting front-line services, and giving priority to health all overlap with the ideas of protecting rights from 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. 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.

If there is indeed some overlap, what is the benefit – the value added component – of using a human rights framework? It seems to me there are at least five key benefits.

First, it elevates the principles from ones of utilitarian calculation or even good practice to ones of obligations corresponding to rights claims. Adequate time and sufficient information for consultation are not merely good practice; the people of Northern Ireland are entitled to demand this from their public representatives. The language of

obligations may well be particularly appealing to parliamentarians who are seeking to hold the Executive to account. It was notable in January 2011 that the Finance Minister himself was publicly concerned about the failure of ministerial colleagues to publish consultation documents on their departmental budgets. There was some publicly expressed concern that the failure to do so might create legal difficulties. While the focus of this work is not on obtaining redress in court, the fear did seem to coincide at least with the publication of the documents.

Second, human rights provide some of the specificity that the Finance and Personnel Committee found lacking in the draft budget process. There are several examples of how this might be done. Instead of talking about 'front-line' services and giving priority to health, we can talk about which services are essential for realising the minimum core of rights, which services are essential for realising rights beyond the minimum core and which services realise rights only indirectly, or not at all. Also, the goal of realising rights provides a suggestion as to 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 placed in international human rights law on the idea of justification reinforces the good governance requirement of evidence-based policymaking. 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 demonstrate that it is using the maximum of available resources should encourage a more rigorous inquiry into decisions not to raise resources through, for instance, domestic or business rates, or water charges. At the least, there should be some more rigorous evidence base than that offered in the draft budget document. It has to be acknowledged that even when the evidence base is offered, the figures may well be uncertain, based on assumptions about possible future behaviour, and still leave scope for disagreement and political judgement. However, 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 issues need to be asserted more robustly. This is clearest in relation to equality and non-discrimination. There is no consistency and little rigour in the practice of equality analysis. This suggests that depart-

ments are not making full use of the equality mainstreaming structures in place, at least in relation to the budgetary process.

Fifth, a more explicitly rights-based approach to budgeting and budget scrutiny would also enhance accountability before independent institutions, while at the same time avoiding unwarranted criticism. The accountability institutions might be courts, national human rights institutions or international monitoring bodies such as the European Committee of Social Rights and the ICESCR Committee.

## **Conclusion**

In this conclusion, I briefly outline four key challenges for the development of a human rights based approach to fiscal oversight, and outline five steps for taking forward such a process.

First, there is a challenge in that a human rights approach to budget scrutiny might turn into something of a tick-box exercise, with all departments explaining how all of their work involves realising human rights. Given the capacious understanding of human rights in international law many programmes might be sold as realising the right to culture, or to leisure, or to work.

Second, some of the language of human rights is variable, and necessarily so. Human rights principles cannot determine in the abstract whether the surest way to improve rights is through direct state-funded provision or through private economic activity facilitated by low taxation. However, human rights can keep the focus on what is important (realising rights) and insist on justification through a robust evidence base for the policy to be adopted, as well as guarantees for participation, transparency and non-discrimination.

Third, there is a danger that human rights principles might be mis-sold as a panacea for economic woes. Human rights principles may usefully shape and inform public discussion but they have to be translated into effective change on the ground and that requires action by politicians, public servants, economic actors and citizens.

Fourth, it should not be thought that human rights law exhausts the language of public discourse. The protection and realisation of rights should be the priority, but there is also a need for public debates on other public goods, from successful economic development through to policies promoting integration and sharing of public spaces.

Having identified a number of challenges, what can be done to help develop a human rights based approach to fiscal oversight? Here, five steps are important.

First, there needs to be a greater explicit focus on realising rights. As mentioned above, this could be done in the first stage through developing existing measures (e.g. explicit mention in explanatory memoranda).

Second, the process for considering budgets needs to be more participatory and transparent. There is no need for new principles here – there are several useful guides as to the requirements for consultation.

Third, departments and the Executive need to provide more evidence as to why particular options to increase revenue are not being pursued, at least in situations where other parts of the UK employ such means. It should be possible to do more than make vague references to the difficulties people are facing. If such revenue-raising options are pursued then they should themselves be designed to be human rights compliant and, in particular, avoid hurting the most vulnerable.

Fourth, prioritisation needs to be explained in terms of how rights are being realised by particular projects. Projects directly involving the realisation of minimum core rights should be prioritised at all costs. Projects involving the realisation of rights beyond the minimum core should be prioritised over those projects that only indirectly realise rights or do not realise them at all.

Fifth, there needs to be a more consistent and rigorous approach to equality and non-discrimination. Departments should explain the impact of proposed decisions on disadvantaged and vulnerable groups, and explain how measures would be designed so as to minimise the impact on the disadvantaged and vulnerable.

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