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# **A Rights-Based Approach towards Budget Analysis**

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1999

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## **ABBREVIATIONS**

**BUDGET** refers to a state’s national budget.

**UN COMMITTEE** refers to the United Nations Committee on Economic, Social and Cultural Rights.

**ESC** refers to economic, social and cultural rights.

**ICESCR** refers to the International Covenant on Economic, Social and Cultural Rights.

**IMF** refers to the International Monetary Fund.

**NGO** refers to non-governmental organizations.

**WB** refers to the World Bank.

# **A Rights-Based Approach towards Budget Analysis<sup>1</sup>**

*- Maria Socorro I. Diokno -*

Budget analysis is emerging as a valuable tool of ESC rights activism. In case after case involving ESC rights, budget analysis can play an important role in vindicating any claims that may arise and in enforcing the rights in question.

Every time the state adopts a policy or issues a public pronouncement that is patently discriminatory, many ESC rights advocates respond. Yet, the sad reality is that for many activists, their opposition is often left unheard and unheeded by the state. Once the policy or pronouncement finds itself expressed in the budget, in the form of a program or project, the state has indicated its total commitment to such discriminatory action. Once the budget is approved, the policy or pronouncement will likely be implemented to the detriment of the affected communities or sectors. In this case, budget analysis can play a particularly important role.

In their work, ESC rights activists often encounter a dearth of essential public services to communities, especially in the rural areas. They often lack access to potable water, sanitation facilities, electricity, emergency services, health services, education, etc. Many communities also suffer from water-borne diseases, infectious and communicable diseases, malnutrition, stunting, etc. In many communities, the residents are hardly literate. Confronted with this situation, ESC rights activists often hold the state accountable. In doing so, they may call for state projects or programs necessary to the realization and enjoyment of ESC rights. Unfortunately, such clamor is often met by the almost standard state response of “lack of available funds” or “budgetary constraints.” In this case, budget analysis could play a vital role.

Often, ESC rights advocates are approached by communities under threat of eviction or forced displacement due to state “development projects” that may be co-financed by foreign donors or institutions. These projects often come in the forms of dam construction, mostly in areas of indigenous communities, infrastructure development, power-plant construction, etc. They often disguise themselves as contributing to the economic development of the nation. But in reality, they often lead to destruction of people’s homes and livelihood—a direct attack on the communities’ fundamental ESC rights. In this situation, budget analysis could play an important role in protecting and enforcing the affected communities’ ESC rights.

ESC rights activists are often called upon to report on the state of human rights in their countries. These reports are especially important when their countries are under review

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<sup>1</sup> This paper provides a beginning framework towards budget analysis from a rights perspective; it is neither definitive nor exhaustive. Its limitations and gaps will likely become more evident as the rights-based approach is tested time and again by non-governmental organizations around the globe. This paper is intended to encourage, stimulate and provoke human rights groups to explore budget analysis from a rights perspective.

by the UN Committee on Economic, Social and Cultural Rights. Such reports may be incomplete, without an analysis of the national budget.

ESC rights activists are also concerned about growing poverty and inequality in their debt-ridden societies. They often attribute these conditions to the state's lack of political will in implementing ESC rights obligations. Often, the state challenges advocates to provide alternatives or solutions. In this regard, budget analysis could be a valuable tool.

ESC rights advocates can no longer ignore the national budget. The budget is important because it reflects what the state is doing or intends to do. The budget is a translation in financial terms of the action program of the state, coordinating planned expenditures with expected revenue collections and proposed borrowing operations—hence a national plan that cuts across departmental boundaries and ties together all plans and projects.<sup>2</sup> It is the instrument through which a state attempts to carry out the full range of its activities. It converts state development plans and priorities into a program of action.<sup>3</sup>

The national budget can influence the level and direction of economic activity, including the social and political behavior of the people. “Government budget decisions affect our everyday lives and our future. They influence where we work, what transport we use, what health care is available to use, and education our children have. Government budget decisions will affect our choice of home, our personal safety, whether we have clean water and sanitation, and electricity.”<sup>4</sup>

“The budget reflects the values of a country—who it values, whose work it values and who it rewards ... and who and what and whose work it doesn't. ... The budget is the most important economic policy instrument of government, and as such can be a powerful tool in transforming [the] country to meet the needs of the poorest.”<sup>5</sup>

States cannot under any condition escape from their obligations to respect, protect and fulfill ESC rights. State obligations require the state to take action (legislation, policy, program, action plan, etc.) towards the rights' realization. The respect-bound obligation requires the state not only to refrain from any action that would negate ESC rights but also to create and facilitate an economic, social and political environment conducive to the enjoyment, exercise and realization of ESC rights. The protection-bound obligation requires the state to adopt, pursue and implement measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other rights of the individual. The fulfillment-bound obligation requires the state to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of ESC rights.

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<sup>2</sup> Leonor Magtolis Briones, Philippine Public Fiscal Administration, Vol. I, FAFI Publication No. 25, FAFI, Mandaluyong City, 1998, p. 271.

<sup>3</sup> Albert Waterston, Development Planning Lessons of Experience, Baltimore, MD: The Johns Hopkins Press, 1965, p. 201.

<sup>4</sup> Budget Information Service (1998), Institute for Democracy in South Africa, The Budget as a Tool for Change, p. 2. Copies may be obtained from Warren Krafchik: [warren@idasact.org.za](mailto:warren@idasact.org.za).

<sup>5</sup> Debbie Budlender, ed., The Women's Budget, Cape Town: Budget Information Service, Institute for Democracy in South Africa, 1996, p. 7.

It is difficult to conceive of any public policy that can be carried out without money and without being subject to budgetary processes at the development, review and implementation stages.<sup>6</sup> It is equally difficult to conceive of any state action designed to create and facilitate an economic, social and political environment conducive to the enjoyment, exercise and realization of ESC rights that can be undertaken without funds from the national coffer. The state cannot comply with its obligations unless it uses part of its resources to do so, and the state cannot use any of its financial resources without recourse to its national budget.

The exercise of state obligations is greatly influenced by the availability of resources. Various types of resources are available to the state: financial, material, natural and human as well as technology and information. Although “the predominant view has always been that availability of resources cannot be analyzed by looking only at government expenditures,”<sup>7</sup> nonetheless, the budget is one major process by which state’s financial resources are planned and controlled. This points to the very serious need to effectively and prudently allocate states’ financial resources in order to comply with state obligations to respect, protect and fulfill ESC rights. Thus greater attention must be placed on what the state does with its financial resources.

Most states have not clarified the criteria they use for selecting the objects of public expenditure. Confronted with limited financial resources, states often make choices, perhaps arbitrary, that are influenced by pressure politics, perceived economic growth demands, “global realities,” etc., with little consideration for the impact such choices would have on the quality of human life. States have conveniently forgotten that their obligations to respect, protect and fulfill ESC rights should, in fact, serve as the basis for choices to be made. No state has asked the question: what norm of expenditure is consistent with ESC rights obligations?

States’ ESC rights obligations can no longer remain in the realm of theory. Since every action taken by the state has financial implications that are ultimately translated into the national budget, states’ ESC rights obligations and the national budget are intricately linked. The national budget is one way by which states may concretely express their compliance with their obligations to respect, protect and fulfill ESC rights.

“It is critical at this juncture that there be an agenda pushing that [the] government budget be seen as ‘a human rights process.’ This can offer a useful point of intervention in contesting and defining the role of the state—in particular with regard to its responsibilities to ensure the upliftment of the welfare of the most impoverished, disadvantaged and marginalized in societies. ***It is particularly important that during this period of increased economic globalization we should seek to develop an international***

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<sup>6</sup> Briones, Philippine Public Fiscal Administration, Vol. I, p. 271.

<sup>7</sup> Robert E. Robertson, “Measuring State Compliance with the Obligations to Devote the ‘Maximum Available Resources’ to Realizing Economic, Social and Cultural Rights” : Bert B. Lockwood, Jr., Human Rights Quarterly, Vol. 16, No. 4, Baltimore, MD, November 1994, p. 698.

*consensus, rooted in less developed societies, that human rights obligations must find concrete expression in the budgets and economic policies of governments.*”<sup>8</sup>

This paper suggests various rights-based approaches towards budget analysis that may be undertaken by ESC rights advocates as part of their activism. Annexed to this paper are:

- a description of the national budget (Annex A);
- a description of budget analysis (Annex B);
- a description of other rights-based approaches towards budget analysis (Annex C);
- a description of budget indicators that may be applied to a rights-based approach towards budget analysis (Annex D); and
- a rights-based approach towards revenue analysis (Annex E).

Readers are encouraged to review the annexes for further information.

### **Budget Analysis as a Tool to Enforce a Right**

Budget analysis may be applied in situations where the affected communities/sectors wish to exercise their ESC rights, but have no access to any state goods (potable water and sanitation facilities, electricity, emergency services, health services, education, etc.) that could enable them to exercise and enjoy their rights. The purpose of budget analysis, in this situation, would be to pressure the state to provide a service necessary to the realization and enjoyment of an ESC right, by pointing out those portions of the budget (allocations that may appear to obstruct ESC rights) that could be re-aligned.

The state’s national budget indicates exactly how much financial resources are available for state use. It also indicates the various state programs and actions which are to be funded by the national budget.

By looking closely at each expenditure item under each cabinet ministry/department or state agency/office, one may identify programs and projects that may appear to obstruct the realization and enjoyment of ESC rights. These allocations may include any items in the budget of any department/ministry or agency, which, on its face, appear to violate any ESC right, such as, for example, state subsidies for the tobacco industry that violate the right to health.<sup>9</sup>

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<sup>8</sup> Kenneth Creamer, Email dated 9 August 1999; emphasis supplied.

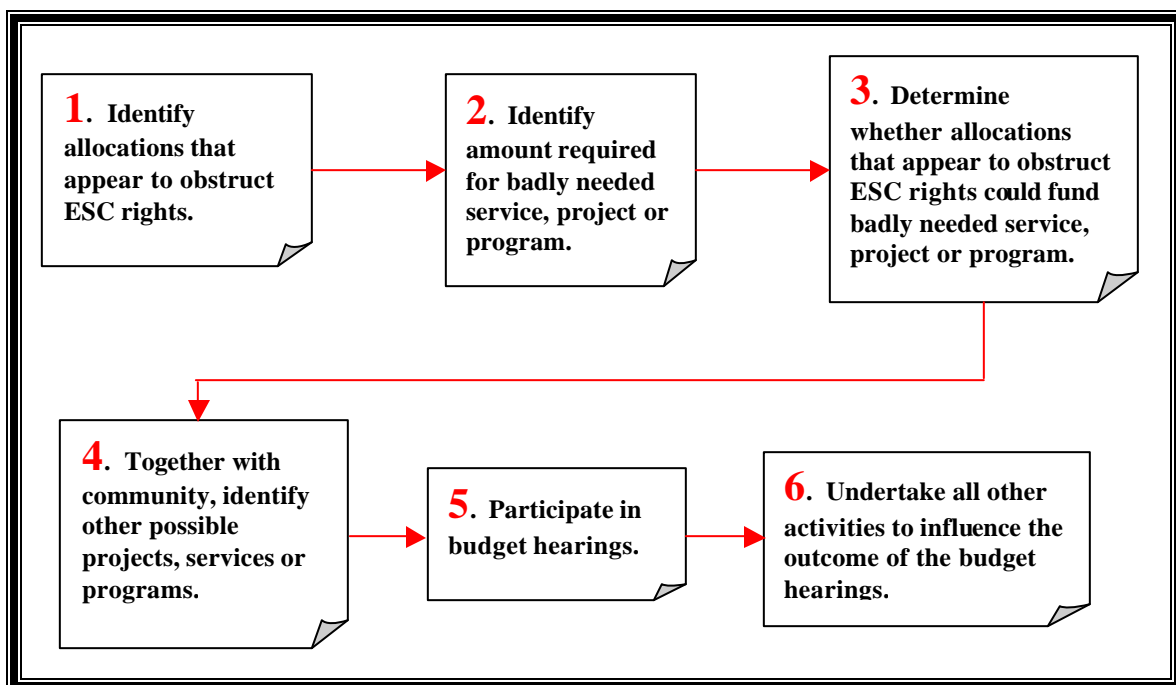
<sup>9</sup> See Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights; see also General Comments 1 to 12 adopted by the UN Committee on Economic, Social and Cultural Rights; see also Maastricht Guidelines on Violations of Economic, Social and Cultural Rights; see also articles discussing violations of the rights to health, education, housing, and food in : Theo C. van Boven, Cees Flinterman, Ingrid Westendorp, The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special No. 20, SIM, Utrecht, 1998; and Fons Coomans, Fried van Hoof, Kitty Arambulo, Jacqueline Smith and Brigit Toebees, The Right to Complain about Economic, Social and Cultural Rights, SIM Special No.18, SIM, Utrecht, 1995; see also related articles in Human Rights Quarterly.



By isolating those amounts, one may be able to pinpoint the amount of funds that could be re-aligned or re-allocated to pay for the implementation of a badly needed service, program or project needed to enjoy and exercise an ESC right.

Then, by looking at the budgetary allocations for a similar service, project or program, one may determine the amount needed to fund the badly needed, service, project or program. One may then compare the amount allocated for items that appear to obstruct ESC rights with the amount required for a badly needed service, program or project.

Together with the affected community, the ESC rights advocate may then undertake joint efforts at legislative budget hearings to pressure the state to allocate funds for the badly needed service, project or program, to be taken from those allocations that may appear to obstruct ESC rights.



### **Step Guide 1. Budget Analysis as a Tool to Enforce a Right**

**Step one.** Do a line-item analysis of the budget (go over each item in the budget), to identify those allocations that may appear to obstruct the realization of ESC rights.

**Step two.** Identify the amount required for the proposed badly needed service, project or program, by looking at the budgetary allocations for a similar service, project or program.

**Step three.** Determine whether the amount required for the badly needed service, project or program could be funded by the allocations that may appear to obstruct ESC rights.

**Step four.** Present the findings to the affected community. If the amount of the allocations that may appear to obstruct ESC rights exceeds the amount required for the badly needed service, project or program, together with the community residents,

determine what other projects, programs or services are necessary or could be funded by the re-allocations.

**Step five.** Participate in budget hearings to influence the legislators to reject any and all allocations that may appear to obstruct ESC rights and instead to realign these allocations to fund the badly needed service, project or program.

**Step six.** Undertake all other activities (lobby, petitions, delegations, litigation, etc.) to pressure the legislature and the state to abandon allocations that may appear to obstruct ESC rights, and instead realign these to badly needed services, projects or programs.

### **Budget Analysis as a Tool to Protect a Right**

ESC rights activists are often called upon to assist communities whose fundamental ESC rights are threatened. The areas where these communities reside are often the sites of “development projects” that are undertaken either by the state alone, or by the state in conjunction with private domestic corporations or international corporations, or perhaps financed by international financial institutions or bilateral lenders.

In these cases, ESC rights activists often begin by undertaking fact finding and documenting their results. Lobby efforts generally follow documentation to seek the suspension and ultimate repudiation of the “development project”. If necessary, ESC rights activists often assist in community organizing and mobilizing activities.

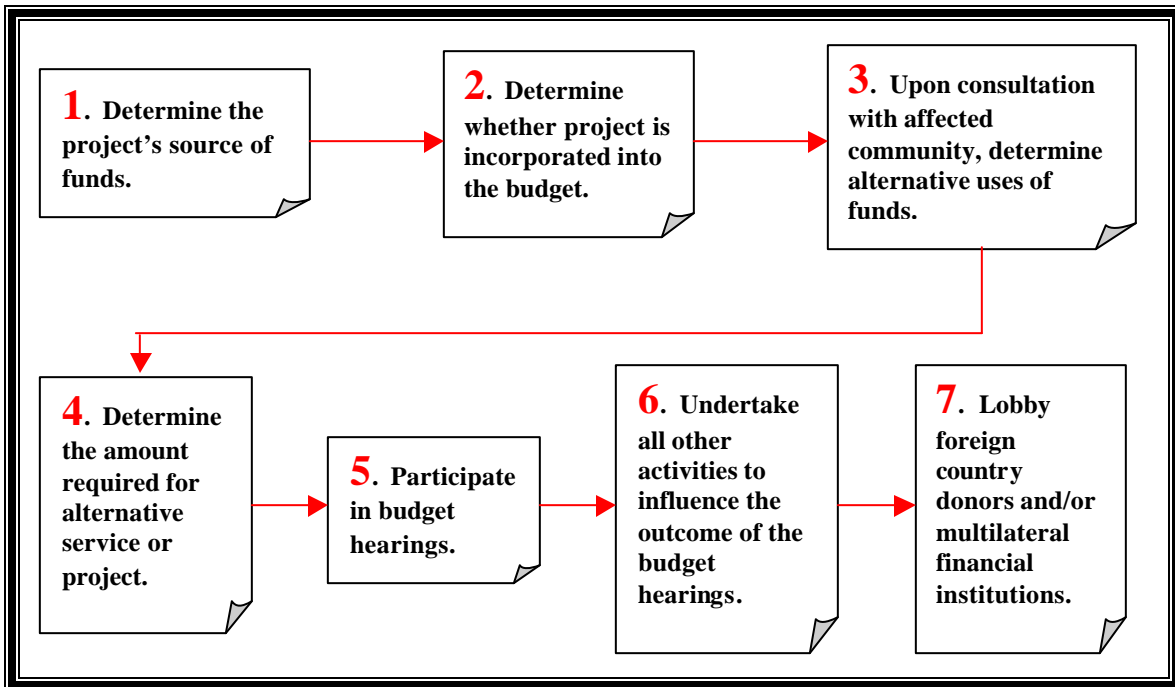
These activities, it is submitted, could be expanded by budget analysis. If one wished to put a stop to such a project, one could review the budget to determine the amount appropriated for that project. One could then compare the appropriated amount with the amounts appropriated for programs or services that are essential to the realization and enjoyment of fundamental ESC rights. Then one could submit one’s findings to the legislature and actively participate in the legislative budget hearings. The opportunity to stop a program is evident during budgetary hearings, since, without funds, that project cannot be pursued by the state. Budget analysis may therefore become an additional interventionary tool in ESC rights activism.

In addition, where foreign country donors or multilateral financial institutions are concerned, one could argue that the amount appropriated for a project that violates ESC rights might be inconsistent with the foreign donors’ commitment under the 20/20 initiative. (*See discussion of 20/20 initiative below*). This would then be an additional argument to influence foreign country donors or multilateral financial institutions to honor their commitment to the 20/20 initiative by diverting the funds for this project to other basic social services.

**Step one.** Determine whether the project is funded or partially subsidized by state funds; determine also whether any foreign donors have committed themselves to fund such project and the amount(s) committed by said foreign donor(s).

*Step two.* Look at the budget to determine whether the development project is incorporated into the budget and to find out the amount appropriated for the project.

*Step three.* Consult the affected community to determine what other services or projects are most needed for them to enjoy and exercise their ESC rights.



### **Step Guide 2. Budget Analysis as a Tool to Protect a Right**

*Step four.* Determine the amount required for such alternative service or project, by looking at the budgetary appropriations for similar services or projects.

*Step five.* Participate in budget hearings; submit position papers outlining the findings and suggesting alternative uses for the funds.

*Step six.* Undertake all other activities (lobby, petitions, delegations, litigation, etc.) to pressure the legislature and the state to abandon the development project, and instead realign these allocations to alternative uses.

*Step seven.* Lobby foreign country donors and multilateral financial institutions. Insist that they uphold their commitment to the 20/20 initiative.

### **Budget Analysis as a Tool to Vindicate a Right**

Many ESC rights activists often come across policies, services and programs that blatantly discriminate against vulnerable sectors (the aged, women, children, the poor, indigenous communities, etc.). They also encounter situations characterized by inequality in access to state programs that impact on the realization and enjoyment of ESC rights. In these situations, budget analysis could play an important role.

The realization and enjoyment of ESC rights depend upon a number of factors, some of which are subject to state control, while others are not. These factors include the general socio-economic condition of a society (quality of the environment, sanitation, health practices, education, nutrition, clothing, housing, income, income distribution, family size, etc.) and the quality, efficiency, availability and distribution of state services. Those factors subject to state control and intervention are largely funded through the budget. In the face of the state's financial inputs, it would seem important to find out whether ESC rights are realized and enjoyed by the vast majority of the population.

In this regard, the budget is viewed as a process indicator, while the status of the rights may be gleaned through various outcome indicators established by both official and NGO sources. It is important to look at as many sources of indicators as possible. One must also be constantly aware of manipulated figures, and look at indicators with a critical eye. Figures can—and have been—manipulated and may be unreliable. Sources may be incomplete or outdated. Indicators are often presented in estimates where precise figures are unavailable. Improper or inconsistent criteria and methodologies are sometimes used in the selection of indicators. Often, indicators are collected nationally and may result in biased figures and in an inaccurate portrayal of the factual situation of vulnerable groups and individuals.<sup>10</sup>

Outcome indicators are largely influenced by a multitude of factors, and should include those indicators that are substantially consistent with state obligations under the ICESCR. It is important to probe beyond those outcome indicators and to correlate the indicators with each other to arrive at the status of ESC rights. It is also important to dis-aggregate the indicators by urban-rural location, gender, age, income levels, social groups, ethnicity, occupation, etc.

One may also breakdown the allocations relating to specific ESC rights by geographic location and spending level. It is important to link the geographic distribution of the population with budgetary allocations. Is the state's population concentrated in urban centers or spread throughout the rural areas? Are the allocations focused on rural or urban spending? If the majority of the population is concentrated in urban areas, state allocations for the realization of ESC rights should focus on these areas. If, on the other hand, the majority of the population is spread throughout the rural areas, state allocations for the realization of ESC rights should focus on rural areas. Inappropriate spending may lead to inequality between and discrimination against age groups, social classes, religions, ethnic groups, and geographic locations.

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<sup>10</sup> Indicators may be used to measure both a certain situation and changes concerning this situation over time. Indicators, however, contain some weaknesses that will need to be rectified if these are to be incorporated more thoroughly into the realm of human rights. For a discussion of indicators (definition, limitations, relative value, criteria for indicator selection, assumptions, etc.), see Danilo Turk, The Realization of Economic, Social and Cultural Rights, July 1991 (Second Progress Report), UN Doc. E/CN.4/Sub.2/1991/17; see also International Human Rights Internship Program, Ripple in Still Water Reflections by Activists on Local- and National-Level Work on Economic, Social and Cultural Rights, 1997.

Looking at the right to education, it may be useful to correlate the state's literacy and functional literacy rates with the state's budgetary allocations and level spending patterns. It is important to look not at the national literacy and functional literacy rate but at the rates for each region. In most cases, the national rate does not reflect the true status across the country; some regions may reflect below-national average literacy rates. Are the allocations for the realization of the right to education focused on elementary, secondary, vocational, adult or university education? High levels of allocation for university education in the presence of increasing illiteracy or poor functional literacy rates, for instance, suggest an inappropriate expenditure mix which, in turn, could point to discriminatory action by the state. Higher education highly subsidized through interest-free loans and low tuition and other charges could deprive other levels of education of badly needed funds. Budgetary priorities focused on particular levels within the educational system, to the detriment of other levels, also suggest inappropriate expenditure mix. This may point to discrimination and inequality in access to state programs that facilitate the progressive realization of the right to education.

Looking at the right to health, it may be useful to link the state's infant mortality rate, under-five mortality rate, and leading causes of mortality with the state's budgetary allocations and level spending patterns. Again it is important to look at the rates for each region. Are state allocations for the realization of the right to health focused on primary or tertiary care, services and facilities? High levels of allocation for tertiary care urban hospitals in the absence of rural primary health care clinics could suggest an inappropriate expenditure mix, which could also point to discrimination and inequality in access to state programs relating to the right to health. Budgetary priorities focused on tertiary care, services and facilities would be inappropriate in the face of high infant mortality rates, high under-five mortality rates, and preventable and/or treatable leading causes of mortality.

Budget analysis, in this case, could be used to support demands for changes in policies, programs and projects that discriminate against vulnerable sectors.

### **Budget Analysis and Monitoring**

In preparing country human rights reports, ESC rights advocates often submit case studies, documented information, laws, jurisprudence, etc., that affect—positively or adversely—the condition of ESC rights. Such report, if submitted, could be augmented by an analysis of the budget. The state's budget is a concrete expression of the state's commitments, development projects and plans. Many times, these projects and plans impact on the realization and enjoyment of ESC rights. Since the state establishes its priorities and crafts its budget, it is ultimately responsible for any negative impact on ESC rights that may result from its budgetary priorities, policies and development plans.

Budget analysis, in this regard, could focus on comparisons with international standards for rights expenditures, which have evolved in recent years.

The World Health Organization has set a global target that encourages states to spend at least five percent (5 %) of their Gross National Product on health expenditures.

The United Nations Development Programme recommended that states devote at least five percent (5 %) of their Gross National Product or the equivalent of twenty percent (20 %) of the national budget on what it calls human priority expenditures (expenditures on basic education, health, water, family planning and nutrition). The Human Expenditure Ratio refers to 5 % of the Gross National Product while the Human Development Priority Ratio refers to 20 % of the national budget.

At the 1995 UN-organized World Summit on Social Development, a consensus was reached adopting the 20/20 initiative. The 20/20 initiative directs developed states to devote twenty percent (20 %) of their official development assistance and developing states to devote twenty percent (20 %) of their national budget on basic social services.

To determine whether state allocations for the realization of ESC rights match international standards, one may compute the share of selected allocations as a percentage of the state's Gross National Product and as a percentage of the budget and compare these figures with international standards. It may also be important to undertake international comparative analysis, by comparing both allocations and outcome indicators against those in other countries with similar Gross Domestic Products.

**Step one.** Determine whether the allocation for the realization of the right to health meets the global target set by the World Health Organization by computing total health rights allocation, net of allocations that may appear to obstruct this right, as a percentage of the Gross National Product.

**Step two.** Determine whether selected allocations meet the human expenditure ratio and/or human development priority ratio suggested by the United Nations Development Programme. Add the allocations for basic education, health, water, family planning and nutrition and compute the total as a percentage of the Gross National Product and as a percentage of total budget. Different states have different ways of arriving at these ratios so it may be important to discover what formula the state uses.<sup>11</sup>

**Step three.** Determine whether allocations for basic social services meet the 20/20 initiative adopted at the 1995 UN World Summit on Social Development. Add the allocations for basic education, primary health care including reproductive health and population programs, nutrition programs, safe drinking water, nutrition, and institutional capacity to deliver these programs, and compute the total as a percentage of the budget. Again, different states have different ways of computing this initiative so one may have to find out what formula the state uses.<sup>12</sup>

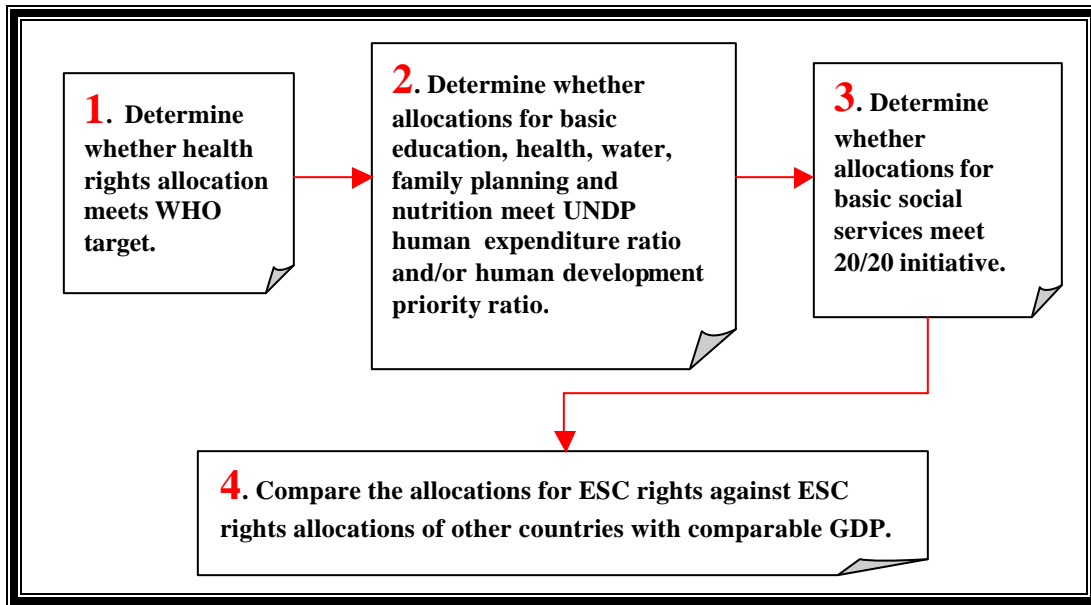
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<sup>11</sup> The Philippines has adopted the following formula to arrive at the human development priority ratio:  

$$\frac{\text{human priority spending}}{\text{total public spending}} = \frac{\text{social service budget}}{\text{total public spending}} \times \frac{\text{human priority spending}}{\text{social service budget}}$$

<sup>12</sup> The Philippines has adopted the following formula to arrive at the 20/20 initiative:  

$$\frac{\text{human priority spending}}{\text{GNP}} = \frac{\text{total public spending}}{\text{GNP}} \times \frac{\text{social service budget}}{\text{total public spending}} \times \frac{\text{human priority spending}}{\text{social service budget}}$$



**Step Guide 3. Budget Analysis to Determine whether State ESC Rights Allocations Match International Standards**

*Step four.* Compare the allocations for ESC rights against ESC rights allocations of other countries with comparable Gross Domestic Products to determine the standing of the state vis-à-vis other states with comparable income. This may include computing the total ESC rights allocation as a percentage of the budget or of the state’s Gross Domestic Product and comparing this figure with figures from other countries with comparable Gross Domestic Products. Outcome indicators may also be compared with the situation in comparable states.

In its human rights report, it may also be useful for the ESC rights advocate to show exactly what the state priorities are, as expressed in the budget. In this regard, budget analysis is undertaken to determine how the state intends to spend its available financial resources. It also seeks to identify the priorities the state has set for its public expenditures and to find out whether these priorities and public allocations are geared towards the creation of conditions necessary for the realization and enjoyment of ESC rights and are compatible with ESC rights obligations.

*Step one.* Identify expenditure mix by classifying the budgets of all cabinet departments/ministries by right and function. The reclassification of the budget entails reviewing every item in every departmental/ministerial budget, since rights-related expenditures often cross departmental/ministerial lines. This step seeks to determine how much is allocated for the creation of conditions that facilitate the realization of ESC rights, how much is allocated for policies, programs and projects that appear to obstruct the realization of ESC rights, and how much is allocated for other functions of the state.

The budget may be classified by right and function, based on the right's content and accompanying state obligations,<sup>13</sup> as follows:

Allocations for the realization of the <b>RIGHT TO EDUCATION</b> may include, among others, the education department or ministry's budget, portions of the budget of the department or ministry of social welfare, public works (construction of school buildings), as well as portions of the budgets of other departments/ministries that relate to the right to education.
Allocations for the realization of the <b>RIGHT TO FOOD</b> may include, among others, the budgets of departments/ministries that deal with land and land issues, agriculture, animal husbandry, nutrition, portions of the public works and highways budget (those dealing with farm-to-market roads, irrigation projects, etc.), portions of the environmental budget (those dealing with forest conservation, marine and aquatic resources management, utilization and conservation, etc.), portions of the trade and industry budget (those dealing with pricing, consumer protection, etc.), and portions of the budgets of other departments/ministries that are linked to the right to food (poverty alleviation funds, social development projects, etc.).
Allocations for the realization of the <b>RIGHT TO HEALTH</b> may include, among others, the health department or ministry's budget, portions of the social welfare budget, portions of the environmental budget (those dealing with pollution, waste management and control, etc.), portions of the public works budget (those dealing with construction of sanitation facilities, water pipes, etc.), as well as those portions of the budgets of other departments/ministries that are connected to the right to health (population control, etc.).
Allocations for the realization of the <b>RIGHT TO HOUSING</b> may include, among others, the budgets of all agencies, departments or ministries tasked with housing and human settlements issues, portions of the budgets of the departments/ministries of social welfare, public works, and others that relate to the right to housing.
Allocations for the realization of the <b>RIGHT TO SOCIAL SECURITY</b> may include, among others, portions of the budgets of the department/ministry of social welfare, agencies that provide income-maintenance or income-support schemes, and others that relate to the right to social security.
Allocations that <b>OBSTRUCT THE REALIZATION OF ESC RIGHTS</b> may include any items in the budget of any department/ministry or agency that, on its face, may appear to obstruct any ESC right, such as, for example, state subsidies for the tobacco industry which violate the right to health.
Allocations relating to <b>NATIONAL DEFENSE AND SECURITY</b> may include the budgets of the ministry/department of national defense, all military budgets, all law enforcement and police budgets, and portions of the budgets of other departments/ministries that relate to national defense and security (intelligence funds, etc.).
Allocations relating to the <b>JUDICIARY</b> will likely be limited to the budget of the judicial branch.
Allocations relating to the <b>LEGISLATURE</b> will likely be limited to the budget of the national legislature.
Allocations for <b>DEBT SERVICE</b> are generally a separate category.
Allocations relating to <b>OTHER STATE (EXECUTIVE) FUNCTIONS</b> will include the budgets and those portions of the budgets not included in any of the above classifications.

**Figure 1. Classifying Budgetary Allocations from a Rights Perspective**

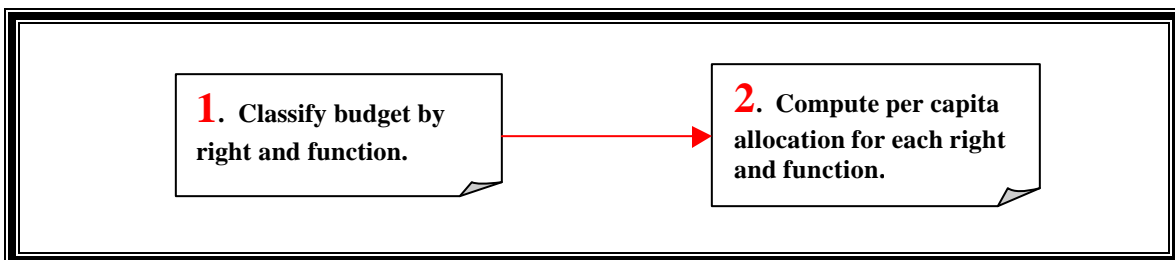
Determine how much the state has allocated for ESC rights' realization in comparison with state allocations for other functions by computing the share of allocation for each right and function to total allocations (allocations for the realization of the right to education as percentage of total budgetary allocations, etc.). This information will provide the expenditure mix in the budget and will point out state priorities for the current year.

<sup>13</sup> See UN General Comments for discussion of state obligations and ESC rights content; see also articles discussing in detail the rights to health, education, housing, and food in : Theo C. van Boven, Cees Flinterman, Ingrid Westendorp, [The Maastricht Guidelines](#) and Fons Coomans, Fried van Hoof, Kitty Arambulo, Jacqueline Smith and Brigit Toebes, [The Right to Complain](#); see also related articles in [Human Rights Quarterly](#).



What are these priorities? Is the state allocating more of its financial resources towards creating conditions for the progressive realization of ESC rights or is it allocating less on rights and more on national defense and security or debt service or some other state function? Does the expenditure mix reflect equitable and effective use of financial resources? Will the expenditure mix result in the enjoyment of ESC rights?

A word of caution. It is possible that, in reclassifying the budget by right and function, one could arrive at a total figure of ESC rights allocations (sum of all ESC rights allocations, net of allocations that may appear to obstruct ESC rights). This total figure, however, when divided by the state's Gross National Product, could produce a high percentage, thus creating the false impression that the state complies with its ESC rights obligations, when, in fact, it may not be doing so at all. Although this may be an effect or by-product of the reclassification of the budget by right and function, the purpose of reclassification is to compare state spending for ESC rights realization against state spending for other functions (judiciary, national defense and security, debt service, etc.).



#### **Step Guide 4. Budget Analysis to Identify State Priorities**

**Step two.** Compute the per capita allocation for each right and function by simply adding up all the amounts in each classification and dividing the total by the population.

It is important to remember that per capita allocation does not imply that each and every member of the population will actually receive the amount allocated. In all likelihood there will be an uneven per capita distribution of state allocations for the various rights and functions. Research in South Africa has shown uneven per capita distribution of state expenditures on services such as health and education. In South Africa, the poorest twenty percent of households receive less than twenty percent of government expenditures on education and health, whereas the richest twenty percent receive more than twenty percent of public spending on those items. This is indicative of gross inequality in how government spending is reaching (or failing to reach) those who need it most. The per capita analysis would not be able to identify such inequality issues.<sup>14</sup>

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<sup>14</sup> Kenneth Creamer, Email dated 9 August 1999. There is a need to develop tools to determine whether budgetary allocations actually reach those who need it most and to devise a formula that identifies budgetary allocations for every income level. These tools will likely be country-specific and may entail the creation of an equilibrium model for each country. In the Philippines, for instance, the official health expenditure survey (conducted once every three to four years) would provide some information to allow the computation of ratios of health expenditures targeted at—and received by—specific income levels. This would enable Philippine groups to extrapolate the data, re-compute for inflation, and arrive at a rough estimate of the amounts allocated for specific income levels. It then may become possible to identify those programs in the budget that are targeted at particular income levels, divide the allocations for these

To complete the human rights country report, budget analysis may also focus on comparing allocations for ESC rights against national standards. Through the budget, the state allocates financial resources for programs, projects and policies that may facilitate the progressive realization of ESC rights or that may obstruct the realization of these rights. In many cases, the state has established its own standards or parameters that relate to ESC rights. These include standards on poverty, food and wages. Often, the standards set by the state are very conservative, and way below what is actually required to live a decent and humane life and to realize and enjoy ESC rights. The state also does not normally provide the basis for its computation of these standards. Some states are even known to engage in what is called “statistical magic”—the re-formulation and re-computation of minimum standards in order to present a more publicly palatable figure.

State-set standards are usually in the form of food threshold, poverty threshold, and daily minimum wages. The food threshold is the annual per capita income required or the amount spent to satisfy a person’s nutritional requirements of  $x$  calories a day. The poverty threshold<sup>15</sup> is the minimum income required to satisfy food and other basic needs; persons earning less than this amount are officially regarded as poor. Most states have established daily minimum wages, either by executive proclamation or through the national legislature. The daily minimum wage is the rock-bottom wage to be observed by all employers.

In some states, NGOs have been able to compute the daily cost of living, or the amount needed to feed, clothe, house and attend to the health and other basic needs of an individual. The NGO-set standard is generally higher than the official standard and is generally more compatible with the realities within the state.

It is important to compare budgetary allocations for the realization of ESC rights with official state standards relating to ESC rights to determine whether the state matches its own standards and whether the state is indeed creating—or attempting to create—conditions that facilitate the realization of ESC rights. To determine whether state allocations for ESC rights match national standards, compare total per capita rights allocations with the official food threshold, daily minimum wage, daily cost of living and poverty threshold.

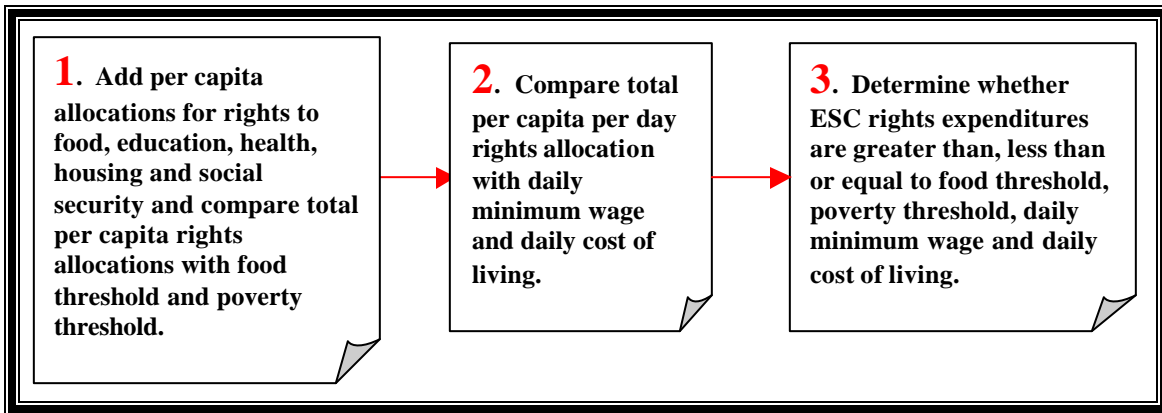
**Step one.** Add the per capita allocations for the realization of the rights to food, education, health, housing and social security and compare the total per capita rights allocations with the state’s food threshold and poverty threshold.

**Step two.** Divide the total per capita rights expenditure by 365 days to arrive at the rights expenditure per capita per day. Then compare the rights expenditure per capita per day with the officially mandated daily minimum wage and the estimated daily cost of living.

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programs by the population in the particular income level, and compare the distribution of allocations by income level. This, however, would require the adoption of certain assumptions, would need additional research and data, and would apply solely to the allocations relating to the right to health.

<sup>15</sup> In setting the poverty threshold, and in deciding what constitutes minimal food and other requirements, most states are generally influenced by social and political factors.



### **Step Guide 5. Budget Analysis to Determine whether State ESC Rights Allocations Match National Standards**

*Step three.* Is the budget for ESC rights less than, equal to, or greater than the food threshold, the poverty threshold, the daily minimum wage and the daily cost of living? Will these allocations result in the enjoyment or non-enjoyment of ESC rights?

#### **Budget Analysis and ESC Rights Litigation**

In recent years, budget analysis has emerged as an important tool in ESC rights litigation. Several cases discussed by Sandra Liebenberg<sup>16</sup> point towards the importance of budget analysis in cases involving resource availability. She cites two cases, which are of particular significance—*Soobramoney v. Minister of Health, KwaZulu-Natal* (1997) and *Eldridge v. British Columbia (Attorney General)* (1997):

*“In Soobramoney v. Minister of Health, KwaZulu-Natal, the Constitutional Court held that the applicant’s demand to receive dialysis treatment at a state hospital did not fall within the scope of ‘emergency medical treatment’ in section 27(3) as it did not constitute an urgent, remedial intervention. Resource availability consequently became a critical issue as the claim fell to be determined in accordance with sections 27(1) and (2) in which resource availability is an express internal limitation. The Court proceeded to consider this issue within the context of the budget of the Department of Health in KwaZulu-Natal, finding that the Department did not have sufficient funds to cover the costs of the health services which are being provided to the public. It was also clearly concerned about the extensive ramifications of granting positive relief in this case. The principle would have to be extended to similarly placed persons. Ultimately ‘the health budget would have to be dramatically increased to the prejudice of other needs which the State has to meet.’ ... The Court indicated that a large dose of deference would be given to the setting of budgetary priorities by the provincial administration, and the ‘difficult decisions’ made by hospital administrators in the context of limited resources. ... ***This decision suggests that the question of the ‘availability’ of resources will be examined largely within the context of the****

<sup>16</sup> Sandra Liebenberg, “Socio-Economic Rights” : Chaskalson, et. al., Constitutional Law of South Africa (3<sup>rd</sup> Revision Service, 1999), Juta & Co.: Cape Town; emphasis supplied.

*existing allocations, whether to a particular portfolio or to a province or local authority. ... “*

“Resource constraints are likely to be the most common justification for limiting socio-economic rights. ... In the Canadian case of *Eldridge* costs-related justifications were expressly considered in the limitations enquiry under section 1 of the Charter. It will be recalled that the Court found that the failure of the Medical Services Commission of British Columbia to provide sign language interpretation for deaf patients constituted a *prima facie* violation of their right to equal benefit of the law and non-discrimination under section 14(1) of the Charter. The Supreme Court held that section 15(1) imposed a positive duty on the government to make ‘reasonable accommodation’ of disadvantaged groups ‘adversely affected by a facially neutral policy or rule.’ However this duty extended only to the point of ‘undue hardship.’ ... In the section 1 (limitations) enquiry the Court found that the government had ‘manifestly failed to demonstrate that it had a reasonable bases for concluding that a total denial of medical interpretation services for the deaf constituted a minimum impairment of their rights.’ A key consideration was the ‘relatively insignificant sum’ that was required to continue and extend the service (\$150,000 or 0.0025% of the provincial health budget of British Columbia). The government raised the argument that the recognition of the appellants’ claim would have ‘a ripple effect throughout the health care field, forcing governments to spend precious health care dollars accommodating the needs of myriad disadvantaged persons.’ In response, the Court held that the claims were not for services that government has not chosen to provide, but ‘only for equal access to services that are available to all.’ ... The fact that the fulfillment of a right will require substantial resources is not in itself a sufficient reason for limiting the right. ... The State is expected to factor the resource requirements of all constitutional rights into the budgetary process. However, the reasoning in *Eldridge* demonstrates that costs considerations are relevant in a limitations enquiry pertaining to the positive duties imposed by constitutional rights. Costs-related reasons for limiting socio-economic rights should be subject to the standard of ‘undue hardship’ referred to in the judgment. *The State must be required to demonstrate convincingly that the costs implications of giving full effect to a socio-economic right will impose an ‘undue hardship’ on its fiscal resources, and will prejudice the other legitimate needs it is expected to meet in a democratic society. ...”*

In the Philippines, the **Free Legal Assistance Group (FLAG)** is currently developing a case before the Supreme Court where budget analysis will play an extensive role. In 1998, the total debt of the Philippines was equivalent to 125.1 % of the country’s Gross National Product.<sup>17</sup> As a consequence of its massive debt, in 1999, the Philippines appropriated one-fifth (20.83 %) of its national budget on debt service, while allocations for fundamental services needed to enjoy and realize constitutionally guaranteed ESC rights were allocated a measly 7.63 % of the total national budget. An analysis of the

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<sup>17</sup> Freedom from Debt Coalition, The Philippine Deep or How Indebted is the Philippines. A Primer on Debt, 1999.

preceding years budgets would likely indicate a similar trend. This is because the Philippines adopted a martial law decree authorizing automatic appropriations for debt service; this decree effectively removed from the Philippine Congress any power and right to review and approve appropriations relating to the country's foreign debt. This decree was subsequently incorporated into the Revised Administrative Code. Its constitutionality was questioned in a 1991 case entitled *Guingona, Jr. v. Carague*.<sup>18</sup> The Supreme Court held that automatic appropriations for debt service in the 1990 budget "constitute lawful authorizations or appropriations." What **FLAG** intends to do is to tie up constitutional provisions and jurisprudence guaranteeing fundamental ESC rights with budgetary constraints as a result of the automatic appropriations provision in the law. **FLAG** rests its case on the recent Resolution adopted by the UN Commission on Human Rights that affirms that the exercise of basic ESC rights "*cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from the debt.*"<sup>19</sup>

While **FLAG** is still further developing its theory of the case, essentially, **FLAG** will look at the year 2000 budget, reclassify it by right and function to determine expenditure mix and budgetary priorities. **FLAG** will identify those allocations for the realization of selected ESC rights (most likely the rights to health and a healthy environment, since the Court has previously upheld these rights as intergenerational rights, or rights owned and possessed by unborn Filipinos). **FLAG** will compare these allocations against the appropriation for debt service. In this way, **FLAG** hopes to strike down this provision, and instead require the state to justify all appropriations for debt service, subject to the review and approval of the Philippine Congress.

### **Budget Analysis and ESC Rights Activism**

Since "the state is explicitly permitted to defend its unsatisfactory progress in realizing the rights on the basis of a lack of available resources,"<sup>20</sup> budget analysis takes on a particularly important dimension in ESC rights activism. It is a potentially useful tool to mobilize public opinion and marshal people's energies towards influencing states to comply with their obligations to respect, protect and fulfill ESC rights.

Many states claim that they are unable to comply with their ESC rights obligations for "lack of available funds." Since programs, and fund sources, are largely discretionary upon the states, many ESC rights activists often find it difficult to respond to their state's convenient claim. By applying budget analysis from a rights perspective, it becomes possible to point out what financial resources could be realigned or reallocated for ESC rights purposes. States may thus find it a bit more difficult to resort to the "lack of available funds" excuse for their failure to comply with their ESC rights obligations. "Budget analysis gives [a] voice to citizens, a voice that is clear, reasoned, in the same

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<sup>18</sup> 196 SCRA 221, 1991.

<sup>19</sup> UN Commission on Human Rights, Effects of the full enjoyment of human rights of the economic adjustment policies arising from foreign debt and, in particular, on the implementation of the Declaration on the Right to Development, Commission on Human Rights Resolution 1992/22; emphasis supplied.

<sup>20</sup> Liebenberg, "Socio Economic Rights," Constitutional Law of South Africa.

language as that of the state, quantitative, and in the form of an argument. Such a voice is difficult to ignore.”<sup>21</sup>

Budget analysis may also be used to mobilize public opinion and action towards the realization of ESC rights. Since budgets are funded largely through taxpayer’s contributions, taxpayers have a stake over where and how their contributions are utilized. By undertaking a rights-based approach towards budget analysis, public opinion may be generated to influence the direction and level of funding of the state’s budgetary priorities.

It is important to remember that “an exercise such as budget analysis does not make the budget, does not give an alternative process or product, or final solutions or numbers, though it may do so from time-to-time. What it does is give signals for change. That is the strength of budget analysis and policy priority.”<sup>22</sup>

Budget analysis may be incorporated into ESC rights activism through a variety of ways. In ESC rights litigation, budget analysis can play a crucial role in cases where “relevant allocations are patently inadequate to fulfill constitutional obligations, or if the determination of priorities manifests a clear preference for advantaged groups at the expense of disadvantaged groups.”<sup>23</sup> In ESC rights monitoring, budget analysis may be used to monitor the level of compliance by states of their ESC rights obligations in a variety of ways, as suggested in this paper and in Annexes C and E.

Budget analysis may also be incorporated into community education and mobilization campaigns. Activities aimed at empowering communities through discussions of the budget and its implications on ESC rights provide communities with the opportunity not only to claim the budget, but also, and more importantly, to claim their ESC rights. Communities gain knowledge on the budget and budget process and identify exactly where and how tax contributions and other public money is spent. That knowledge provides communities with the opportunity to influence the state to take positive actions to guarantee ESC rights or to desist from implementing any policy, program or measure that limits or obstructs ESC rights. That knowledge may also spur communities to effectively participate in the budget process, to hold the state accountable to the people, and to force the state to become transparent in its fiscal policies and actions.

Budget analysis is a complex, complicated and intimidating task—one that challenges the time, resources and energy of the already over-burdened advocate. Yet, in time, many ESC rights activists will soon find it an indispensable tool in ESC rights activism.

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<sup>21</sup> Mihar R. Bhatt, “Budget Analysis: DISHA’s Experience,” Annex D : International Human Rights Internship Program, Ripple in Still Water Reflections by Activists on Local- and National-Level Work on Economic, Social and Cultural Rights, 1997, p. 96.

<sup>22</sup> Ibid.

<sup>23</sup> Liebenberg, “Socio Economic Rights,” Constitutional Law of South Africa.

## The Budget

Budgets are variously referred to as financial plans, work plans or programs, or political and social documents. A budget can be viewed from various frames of reference: as an economic process (resource allocation); as a political process (competition among various groups for limited resources); and as an administrative process (planning, coordinating, control and evaluation). A budget can also be viewed as a human rights process (allocation of funds in compliance with state obligations towards the full realization of ESC rights).

In its strictest, most technical sense, a budget is a document containing words and figures that propose expenditures for certain items and purposes. The words describe items of expenditure or purposes and figures are attached to each item or purpose.<sup>24</sup> The budget has been defined as a process consisting of a series of activities relating expenditures to a set of goals,<sup>25</sup> or as a process through which public expenditures are made. While considerations of revenue constraints and taxation are inherent in the budget process, budgeting is generally treated as part of the expenditure process, rather than as a revenue raising process. In this respect, public budgeting serves as the allocation of expenditures among different purposes so as to achieve the greatest results.<sup>26</sup> A budget contains—or should contain—the totality of resources available to a country<sup>27</sup> and an itemized listing of all expenditures of the state. The budget is prepared in advance of the fiscal year to which it applies.

From an economic perspective, a budget has been described as the “most important economic instrument” of the state, as it reflects the country’s socio-economic policy priorities by translating priorities and political commitments into expenditures and taxation. In this way, the budget emphasizes constraints and trade-offs in policy choices.<sup>28</sup>

From a political perspective, “... the national budget is a representation in money terms of governmental activity. If politics is regarded in part as conflict over which preferences shall prevail in the determination of national policy, then the budget records the outcome of the struggle. If one looks at politics as a process by which the government mobilizes resources to meet pressing problems, then the budget is a focus of these efforts.”<sup>29</sup> The budget has also been defined as “the master plan of government,”<sup>30</sup> the translation of

<sup>24</sup> Aaron Wildavsky, cited in Briones, Philippine Public Fiscal Administration, Vol. I, p. 269.

<sup>25</sup> Allan Schick, cited in Briones, Philippine Public Fiscal Administration, Vol. I, p. 269.

<sup>26</sup> Grooves and Bish, cited in Briones, Philippine Public Fiscal Administration, Vol. I, p. 269.

<sup>27</sup> Resources available to a state include its physical factors, natural resources, human power, existing productive capacities, financial resources in domestic currency and foreign exchange, receipts from borrowings, grants and assistance programs, etc.

<sup>28</sup> Budget Information Service (1998), The Budget as a Tool for Change.

<sup>29</sup> Aaron Wildavsky, cited in Briones, Philippine Public Fiscal Administration, Vol. I, p. 270.

<sup>30</sup> Prof. Philip E. Taylor, cited in Briones, Philippine Public Fiscal Administration, Vol. I, p. 269.

financial resources into human purposes, or a series of goals with price tags attached, hence a plan where choices are coordinated.<sup>31</sup>

From an administrative standpoint, the budget is seen as a financial plan that serves as the pattern for and control over future operations and as a systematic plan for the utilization of manpower, material or other resources.<sup>32</sup> It brings together estimates of anticipated revenues and proposed expenditures, implying the schedule of activities to be undertaken and the means of financing those activities. In the budget, fiscal policies are coordinated, and only in the budget can a more unified view of the financial direction of the state be observed.<sup>33</sup>

From a human rights framework, a national budget can be defined as a process through which financial resources are allocated in compliance with state obligations to respect, protect and fulfill human rights. The status of human rights and compliance with state obligations become the key determinants of the choices made relative to financial resource allocation. A state's human rights obligations should guide the ultimate purpose of government: to use all tools at its disposal to ensure the guarantee and enjoyment of all human rights by all individuals. Thus, state obligations provide the *raison d'être* underlying economic and administrative decisions reflected in the national budget.

Although state budgets are country-specific, generally speaking, the national budget structure has three components: revenues, expenditures and balance/(deficit).

**Public revenues** are all income or receipts of the state's treasury that are used to support public expenditures. There are five main sources of public revenues.

**Expenditures** refer to payments made by the state, including current operating expenditures, capital outlays and the retirement of the public debt. Expenditures are classified, but expenditure classes—and details thereof—vary from country to country. It is important to note that expenditure classes depend on a variety of supporting systems.<sup>34</sup> It is therefore difficult to prescribe guidelines on how to read a budget. In some states, budgetary allocations are listed by nature of expense, according to the state's Chart of Accounts,<sup>35</sup> and may include personal services, maintenance and other operating expenses, and capital expenditures. In other states, budgetary allocations are listed by function, which include overall management and related administrative and other program expenses, depending on spending objectives.

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<sup>31</sup> Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 270.

<sup>32</sup> Eric Kohler, cited in Briones, *Philippine Public Fiscal Administration*, p. 270.

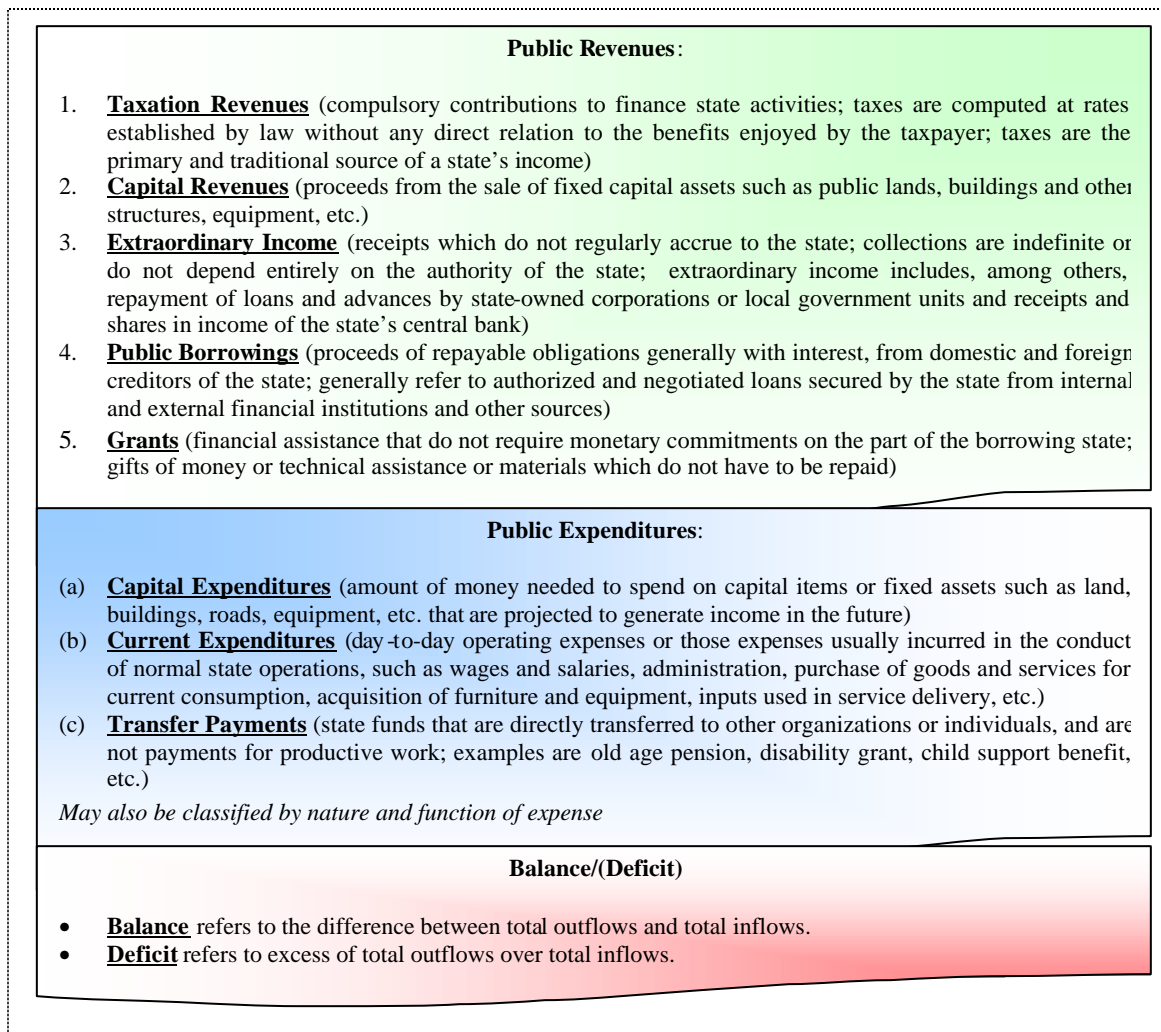
<sup>33</sup> Prof. Philip E. Taylor, cited in Briones, *Philippine Public Fiscal Administration*, Vol. I, p. 269.

<sup>34</sup> Supporting systems include civil service law, institutions and regulations which determine the number, rank and salaries of public sector employees, system for selecting, prioritizing and controlling public investment projects, laws and processes governing the procurement of goods and services, economic and financial models, etc. (Larry O'Toole, *SIGMA Policy Brief No. 1: Anatomy of the Expenditure Budget*, 1997).

<sup>35</sup> A Chart of Accounts is a uniform and systematically arranged list of accounts applicable to a specific concern, with account names and numbers.



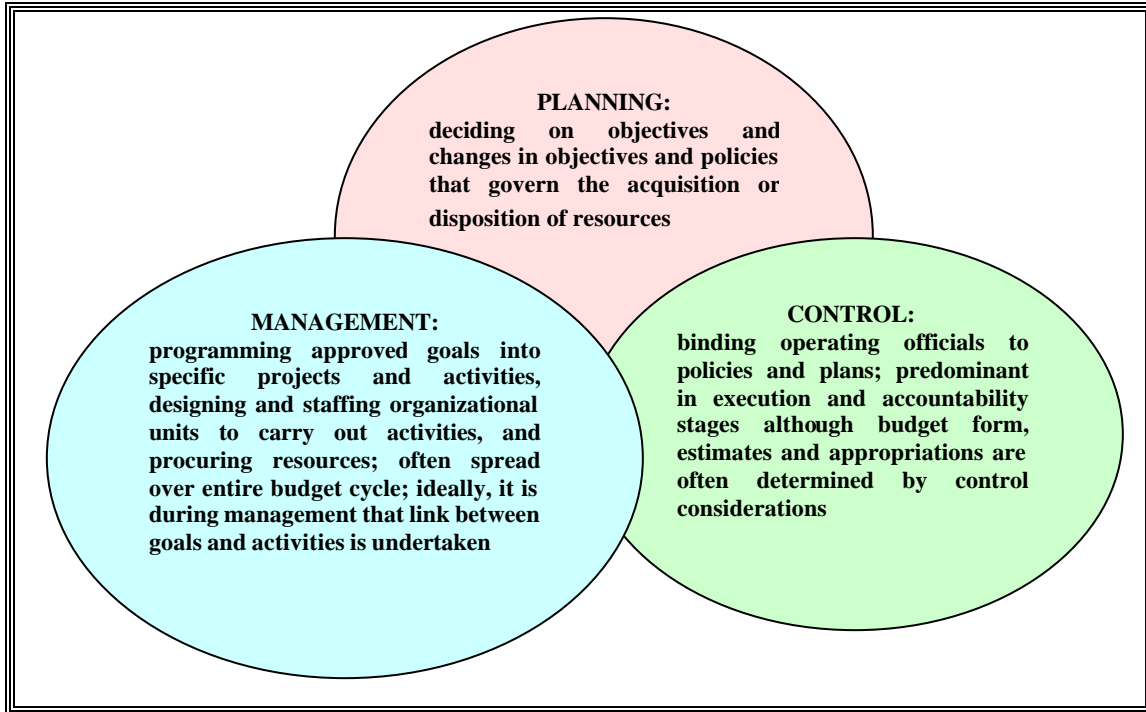
The final part of a budget is its **Balance/(Deficit)**. A balanced budget indicates that cash outflow does not exceed cash inflow. This is quite rare for most developing states. More commonly, developing states incur deficits, where total outflow exceeds total inflow. In this situation, states generally engage in deficit spending, or incur expenditures in excess of revenues. Such excess may result from a reduction in tax receipts at a time when expenditures remain the same or are increased. Deficit spending indicates an unbalanced budget. Deficit spending is generally financed by borrowed funds and its major objective is to stimulate economic activity by increasing purchasing power within an economy.



**Diagram 1. Budget Structure**

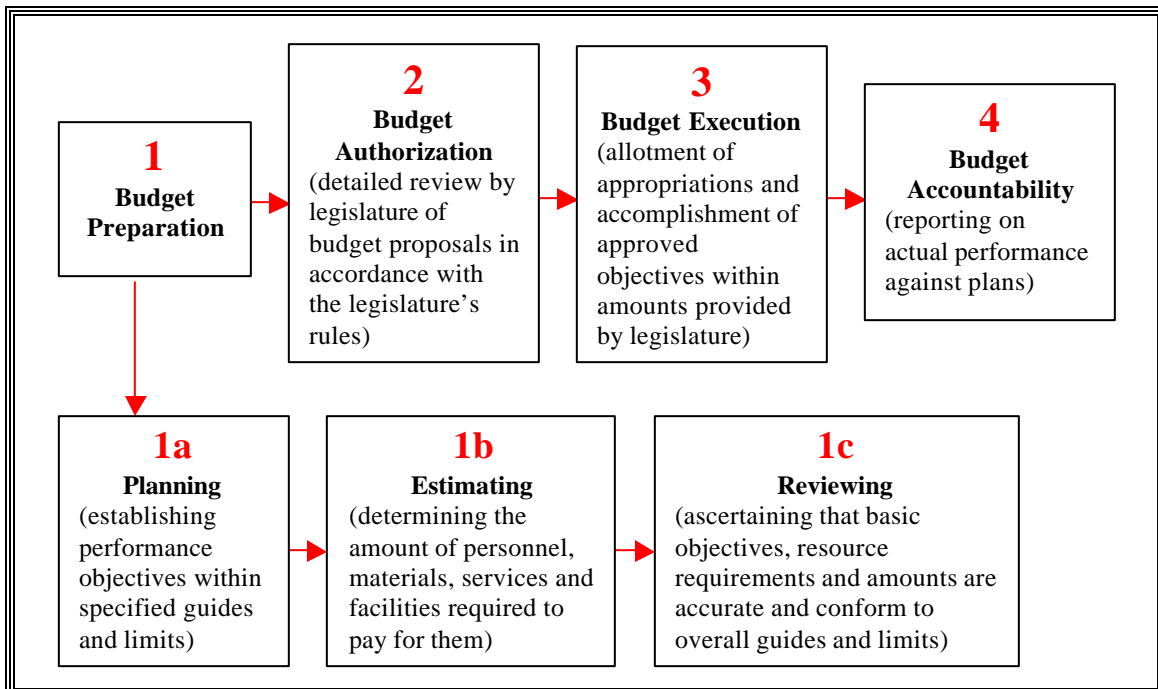
The budget process is a cycle of sequential and inter-related budget activities regularly recurring within a fiscal year; it has been described as a fairly complex process, since new fiscal objectives are established each year which require several fiscal years to work out.<sup>36</sup> In general, there are three essential elements of the budget process: planning, management and control.

<sup>36</sup> Jose P. Leveriza, Public Administration The Business of Government, 2<sup>nd</sup> Edition, Metro Manila: National Bookstore, 1990.



**Diagram 2. Elements of the Budget Process**

A law generally spells out the four-stage budget process.<sup>37</sup>



**Diagram 3. Stages of the Budget Process**

<sup>37</sup> For further discussion of the budget process, see Appendix 1, Section A, to International Budget Project, *A Guide to Budget Work*, 1999, available at <http://www.internationalbudget.org/resources/guide>.

The key players in the budget process vary from country to country. Generally speaking, however, the key players belong to both the executive and legislative branches.

From the executive branch, the key players in the budget process include, among others:

- the Department/Ministry of Finance or the Department/Ministry of Budget and Management or the department or office responsible for preparing the budget;
- the Cabinet including the Chief Executive who decides on budgetary thrusts and priorities for the budget year; and
- Other departments/ministries that prepare departmental/ministerial budgets, programs and priorities.

From the legislature, the key players in the budget process include, among others:

- members of the Committees on Appropriations, Finance and such other committees that undertake the initial review of the budget;
- the legislative budget office (where such exists); and
- All members of the legislature who will eventually vote on the budget.

The budget should be governed by at least the following principles: transparency, accountability, participation, equity, non-discrimination and equality. The principle of transparency is important in the budget process. Transparency is a prerequisite for public debate; if budget information is not available, it is difficult to discuss. Transparency allows the analysis of state policies and facilitates the identification of weaknesses leading to the adoption of needed reforms. Transparency can increase faith in the state, and can contribute to consensus building and commitment to social trade-offs. Transparency enables the legislature and civil society to hold the state accountable, which they can only do if they have information on budget policies, practices, expenditures and outcomes. Transparency contributes to macroeconomic and fiscal stability as it prevents the buildup of a crisis in secret, bringing about smaller adjustments sooner.<sup>38</sup> The principle of transparency is recognized even by the IMF, which published in 1998 a “Code of Good Practices on Fiscal Transparency—Declaration of Principles.”<sup>39</sup>

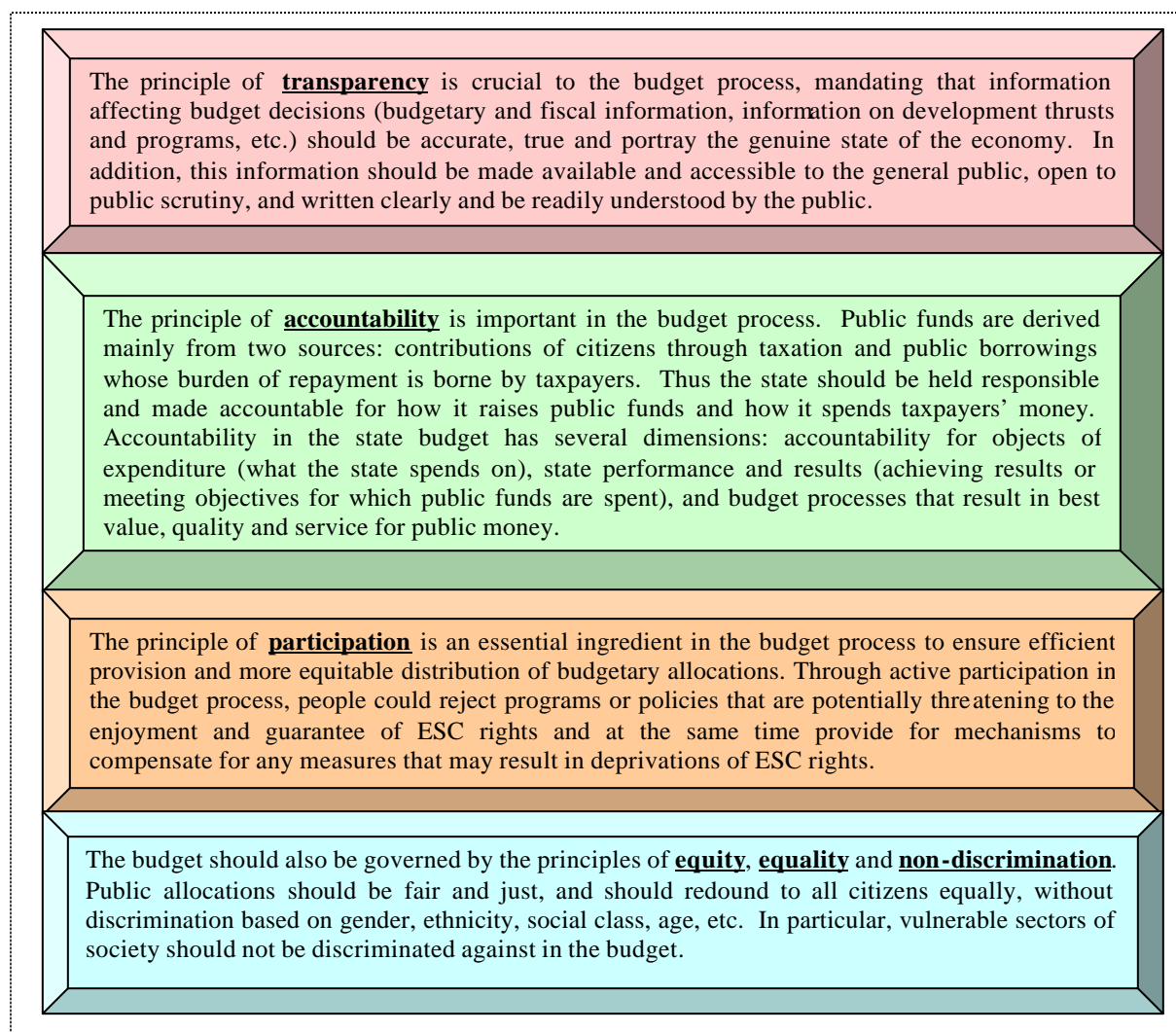
Participation in all levels of social, political and economic decision-making is both a right and a duty of all individuals. Participation is an indispensable principle in the budget process. “Involved participation, which is affirmative in that it explicitly includes input from poor and working people hungry for education, health care and social security, is

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<sup>38</sup> Budget Information Service, Institute for Democracy in South Africa and the International Budget Project, Transparency and Participation in the Budget Process: The South African Case and Transparency and Participation in South Africa’s Budget Process, Draft papers submitted to the Second International Budget Conference entitled “Transparency and Participation in the Budget Process,” Cape Town, South Africa, February 21 to 25, 1999.

<sup>39</sup> Barry H. Potter, Fiscal Transparency: The IMF Code, Paper submitted to the Second International Budget Conference entitled “Transparency and Participation in the Budget Process,” Cape Town, South Africa, February 21 to 25, 1999. Copies of the IMF transparency documents, which are now available in Arabic, Chinese, French, Portuguese, Russian and Spanish, are available at the IMF transparency web site at <http://www.imf.org/external/np/fad/trans/index.htm>

likely to result in more equitable expenditure patterns than a process which is dominated by powerful interests who set a self-serving agenda of tax breaks, subsidies, down-sizing and privatization.”<sup>40</sup>



**Figure 2. Principles That Should Govern a Budget**

Porto Alegre, Brazil, is perhaps one of the best examples of participatory budgeting, where “city-dwellers have been able to decide about virtually anything related to public resources under the municipal domain—from streets to be paved to reform of the city’s public market, from supporting cultural initiatives in peripheral areas to the publication of a book telling the history of a specified community, from sanitation systems to pay policies regarding municipal civil servants.”<sup>41</sup>

<sup>40</sup> Kenneth Creamer, “Key Challenges for Progressive Budget Reform” : Budget Information Service, Institute for Democracy in South Africa, Budget Watch, 31 July 1998.

<sup>41</sup> Zander Navarro, Participatory Budgeting—The Case of Porto Alegre (Brazil), Paper presented to the Regional Workshop: Decentralization in Latin America—Innovations and Policy Implications, Caracas, Venezuela, May 23-24, 1996 [Revised June 1996].

## **Budget Analysis**

Budget analysis is a thorough and detailed review of the budget. It involves the collection, study and interpretation of budget data, the correlation of budget data to other relevant information such as state policies and programs, and the establishment of findings and results. Its aim is to provide analysis and information that is credible, accessible to a wide range of audiences, and makes a timely contribution to policy debates, with the purpose of affecting the way budget issues are decided and the decisions that are made.<sup>42</sup>

Budget analysis is undertaken through a number of perspectives. Some groups assess financial arrangements covering national and sub-national goals. Others look at the effects of budget decisions on programs that affect vulnerable sectors. Yet others study the relationship of spending for one function against another (for example, military spending or debt service compared with economic development). Still others analyze budget process issues, policies and institutions. Other groups undertake budget analysis through a very technical lens; this includes classifying expenditures by major and minor headings (function or nature of expense), looking at budget figures, studying new allocation items, and understanding the state's development plans as expressed by budgetary allocations.<sup>43</sup>

Budget analysts often encounter problems. Access to budget data and information is a common problem. The major budget books, detailed financial studies, papers and other budget documents are often withheld from the public. On many occasions, those undertaking budget analysis have been able to secure budget information from members of the national legislature; unfortunately, this sometimes prevents groups from timely intervention in the budget process.

Clarity of budget information and data is another problem. In Israel, "the language of the budget books is obscure, divisions often are not properly identified, and functions often are not properly specified. These problems thwart the ability to assess policies."<sup>44</sup> Israel's experience is by no means isolated.

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<sup>42</sup> Iris Lav, Getting Started on Budget Work, Notes submitted to the Second International Budget Conference entitled "Transparency and Participation in the Budget Process," Cape Town, South Africa, February 21 to 25, 1999.

<sup>43</sup> For a description of the various approaches towards budget analysis, see International Budget Project, A Guide to Budget Work, 1999, available at <http://www.internationalbudget.org/resources/guide>.

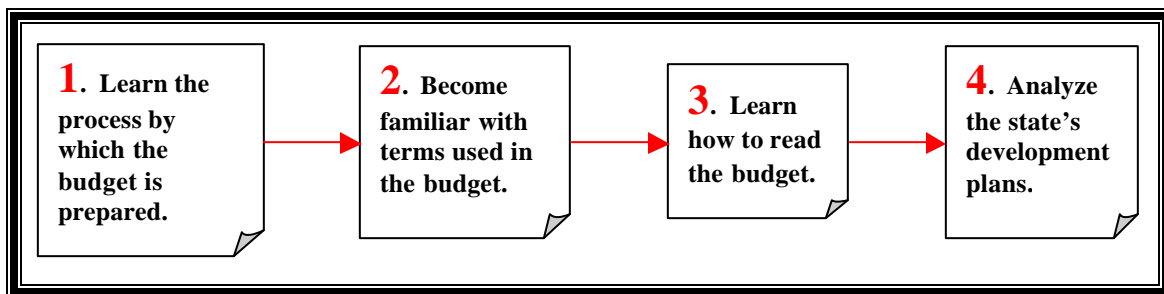
<sup>44</sup> Adva Institute and the International Budget Project, Reforming Israel's Budget Process: Assessing the Establishment of a Knesset Budget Office and other Options, 24 February 1999, Paper submitted to the Second International Budget Conference entitled "Transparency and Participation in the Budget Process," Cape Town, South Africa, February 21 to 25, 1999.

Another problem, again found in Israel, but reflective of other countries, is that “the budget books do not enable readers to establish the relationship between functions, costs and allocations—and thus to check the rationale behind the allocations.”<sup>45</sup>

There are several gaps in the budget structure that limit its effectivity as an instrument of analysis. The budget does not show any deviations between actual expenditure and allocations; sometimes, funds are spent for purposes other than those that are authorized; other times, expenditures are larger or less than the allocated funds and the budget does not show what happens to the unutilized portions of the allocations. The budget also does not indicate leakage, if any, in the amount expended, nor is the budget broken down by region, state, district, or municipality.

Finally, the budget process rarely provides people with the opportunity to participate in any of its stages. Sometimes, people may participate in the budget process only during the budget authorization stage, when the legislature conducts public hearings to discuss the budget.

Getting started on budget analysis involves a four-step process.<sup>46</sup>



### Step Guide 6. Getting Started on Budget Analysis

First, one must learn the process by which the state’s budget is prepared and identify the key players in the budget process. This involves securing a copy of the budget law and official rules or guidelines on budget preparation. By carefully studying the budget law and corresponding guidelines, one would gain the initial information and knowledge needed to begin budget analysis.

Second, one must become familiar with the various terms used in the budget. The use of an accounting dictionary or consulting with experts would be helpful.

Third, one must learn how to read the budget. One needs to know how the budget is classified and what each classification entails. One also needs to know how to read the figures in order to determine their implications. Consulting experts and others already engaged in budget analysis would help. So too would studying the budget guidelines prepared by the budget office, where such are available.

<sup>45</sup> Ibid.

<sup>46</sup> The International Budget Project of the Center on Budget and Policy Priorities recently released A Guide to Budget Work, 1999; the Guide is available at <http://internationalbudget.org/resources/guide>. Additional information may be obtained from Isaac Shapiro at [shapiro@cbpp.org](mailto:shapiro@cbpp.org).

Fourth, since the budget is—or should be—tied to the state’s development plans, one must assess these plans. This involves securing copies of such development plans and programs, carefully analyzing them in order to determine their impact on the country.

The following are some guidelines suggested by an organization called **Developing Initiatives for Social and Human Action** [DISHA] of Gujarat, India, which has undertaken budget analysis for the past several years.<sup>47</sup>

- In interpreting data, use judgment based on experience, subject studies or new learning.
- Test each hypothesis through an analysis of data.
- Bring in people from many disciplines to review the analysis.
- Review current and possibly new or innovative uses of data or findings such as articles, news accounts, views or fact sheets.
- Use skilled analysis to focus on unusual patterns or trends over time, sectors or constituencies.
- Conduct brainstorming sessions to generate new ideas for ways of looking at findings.
- Identify and use established standards of comparison.
- Think of direct action, follow-up collective or legal action, and analyze or interpret data that can lead to or support such action.

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<sup>47</sup> Bhatt, “Budget Analysis: DISHA’s Experience,” Ripple in Still Water, pp. 96-97.

### **Other Rights-Based Approaches towards Budget Analysis**

The ways by which budget analysis may be approached from a rights perspective suggested in this paper are by no means exhaustive. If any, these are mere starting points.

A rights-based approach towards budget analysis could also focus on revenues and allocations. Public revenues are analyzed to determine whether the state complies with its respect-bound, protection-bound and fulfillment-bound obligations in its efforts to raise revenues to finance state activities. (*See Annex E.*)

Public allocations may be analyzed by nature and function to determine their impact on ESC rights and concomitant state obligations through a variety of ways:

- Public allocations may be probed to determine whether the expenditure mix, geographical and spending level patterns, state programs, categories of current expenditures and compensatory measures comply with state obligations to respect, protect and fulfill ESC rights.
- Public allocations may be scrutinized to find out whether the state has appropriated funds for the steps it is required to take under Article 2.1 of the ICESCR.
- Public allocations may be assessed to ascertain whether the state has appropriated funds to meet the benchmarks set by the state relating to the progressive realization of ESC rights.
- Public allocations may be compared with the status and condition of ESC rights to determine whether state allocations are geared towards the satisfaction and realization of ESC rights.
- Public allocations may be compared against international standards for rights expenditures and national standards related to the enjoyment and exercise of ESC rights.
- Public allocations may be compared against expenditures from a rights perspective. Such analysis would seek to look at the delivery of state services (whether the projects, programs, etc. that are funded are actually implemented; whether the target beneficiaries actually benefit from the programs that are implemented; whether these programs contribute to the progressive realization of particular ESC rights; etc.). Such analysis, however, would necessitate comparing the budget against the official audit of state expenditures released by the Auditor-General's office (or equivalent). This may present some problems, chief among them, the time lag between the audit and the release of the audit results (in the Philippines, the official audit results are available some three years after the year under audit).



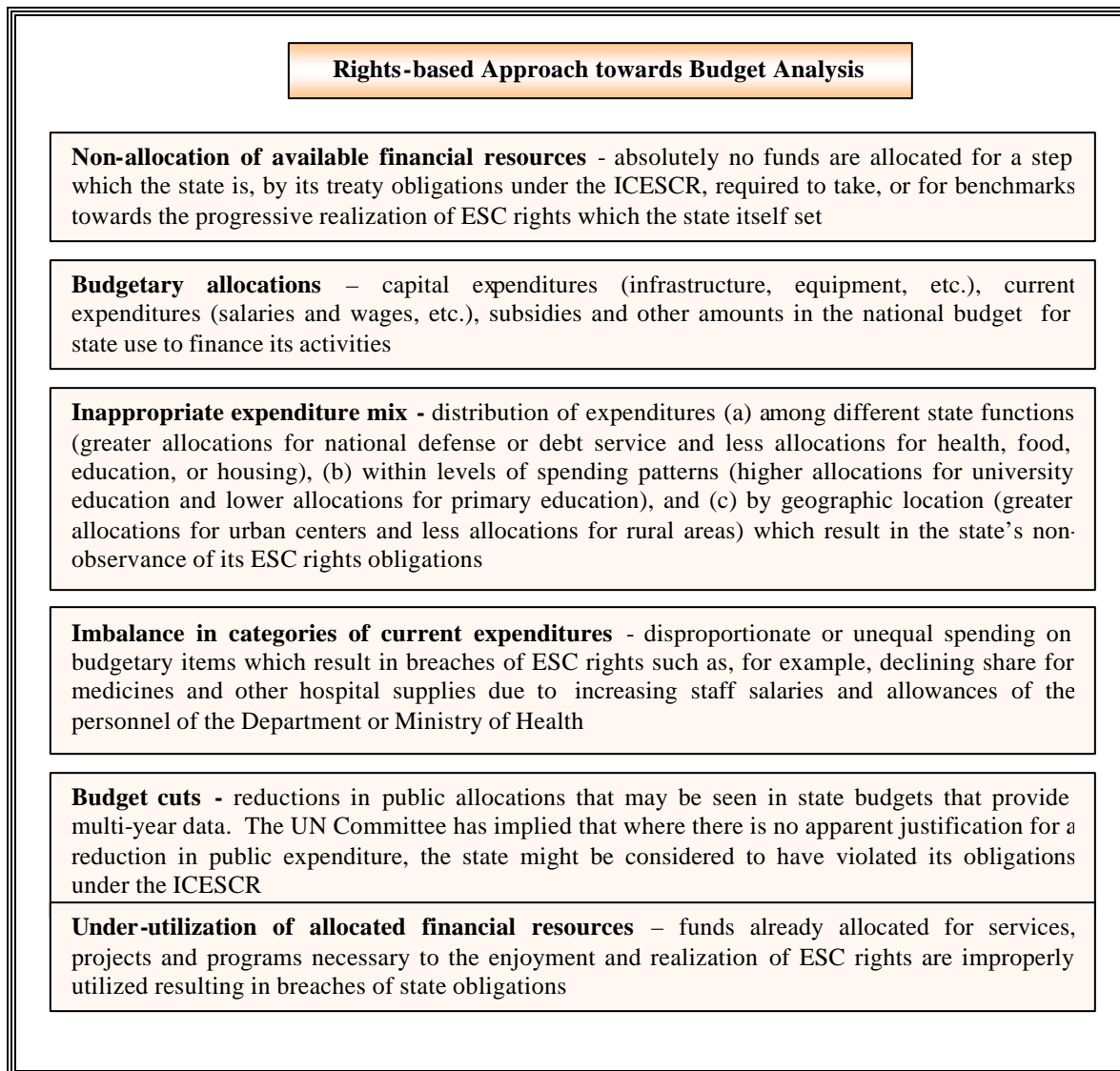
- Public allocations related to the judiciary, national commissions on human rights (where such exist) and other rights-adjudication bodies may be analyzed to determine the extent of remedies available to victims of ESC rights violations, in their exercise of their right to reparation.
- Monitoring the progressive realization of ESC rights through budget analysis entails a multi-year comparison of the state's budget. Comparing one year's budget with the next year's allocations may indicate changes in the state's policies and priorities. Are these policies and programs geared towards the realization or obstruction of ESC rights? Is the state allocating more funds for programs that facilitate or that obstruct the progressive realization of ESC rights?

Reviewing multi-year budgets may point out any retrogressive measures the state has taken relative to ESC rights. Has the state cut back on any expenditure relating to ESC rights realization? Have any major ESC rights-related programs or entitlements been canceled? Have budgetary allocations that are targeted at vulnerable sectors been reduced? What justification has the state relied on for such cutbacks, cancellations and reductions? Is the state's justification among those permissible under the ICESCR?

Finally, the status of ESC rights is an integral part of the rights-based approach towards budget analysis. By continuously monitoring the status of ESC rights, it is possible to determine whether the rights are progressively being realized or not. Has the status improved over the years? If not, what action is the state taking to improve the status of ESC rights? Is the action reflected in the budget?

### Budget Indicators Applicable to a Rights-Based Approach towards Budget Analysis

A rights-based approach towards budget analysis may use the following budget indicators: (a) non-allocation of available financial resources; (b) budgetary allocations; (c) inappropriate expenditure mix; (d) imbalance in categories of current expenditures; (e) budget cuts; and (f) under-utilization of allocated financial resources.



**Diagram 4. Budget Indicators to Monitor State ESC Rights Obligations**

### A Rights-Based Approach Towards Revenue Analysis

A rights based approach towards revenue analysis seeks to determine how much financial resources are available for state use and how the state intends to raise these resources. This information impacts on the status and realization of ESC rights and can signify whether the state complies with its non-discrimination and equality obligations.

Generally speaking, the state raises its public revenues mainly through tax collections and public borrowings. It is important to look at taxation revenues because these will show whether the state complies with its respect-bound and fulfillment-bound obligations, particularly, the non-discrimination and equality obligations of the state.

Taxes are classified into direct and indirect taxes depending on whether taxes are based on the taxpayer's ability to pay or not. Direct taxes<sup>48</sup> are those that cannot be shifted or transferred to another but are borne by those liable to pay them. Direct taxes are computed on the basis of the taxpayer's income or personal assets such that those with greater income pay a larger tax. Since direct taxes cannot be shifted to other taxpayers, these do not tend to increase the prices of consumer goods and services and are, in principle, more effective in achieving equality in society.

Indirect taxes,<sup>49</sup> on the other hand, are those paid by persons other than the one on whom the tax is legally imposed. Persons liable for indirect taxation may shift or transfer their tax burden to others as part of the purchasing price of a commodity or part of compensation for services rendered. Thus, all buyers of the same product or service pay exactly the same rate and amount of tax regardless of differences in their incomes.

In countries where income is inequitably distributed, indirect taxation increases inequality in society. This is because when the poor pay the same amount of taxes as the rich, the poor are actually paying proportionately more taxes than the rich are. The indirect tax is a bigger share of the income of the poor, and the poor have less to spend for their needs than the rich do. Indirect taxes also tend to increase the prices of consumer goods and services. Where indirect taxation results in a decline in purchasing power, which is required in the exercise of human rights,<sup>50</sup> indirect taxation has a devastating effect on the enjoyment and realization of ESC rights. In situations where tax revenues are generated mainly through indirect taxes, the state may be said to be in breach of its obligation to respect ESC rights. The state may also be in breach of its obligation to fulfill ESC rights where reliance on indirect taxation results in rising prices and effective reduction of purchasing power, which are not among the conditions necessary for the enjoyment and realization of ESC rights. Finally, the state may also be held liable for the deliberate retardation of the progressive realization of ESC rights

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<sup>48</sup> Examples include income tax, transfer tax, real property tax, estate tax, community tax, etc.

<sup>49</sup> Examples are sales tax, business percentage tax, value added tax (VAT), amusement tax, and the like.

<sup>50</sup> Eduardo Suesun Monroy, Method and Plan of Work for the Study of Human Rights and Extreme Poverty, UN Doc. E/CN.4/Sub.2/1991/18, June 1991.

and/or the calculated obstruction of the progressive realization of ESC rights, particularly the rights to an adequate standard of living, food, health, education and housing.

In theory, tax revenues generated mainly through direct taxes, particularly in countries characterized by massive poverty and inequality in the distribution of wealth and income, are a more effective means to achieve equality in the distribution of wealth and income in society. In practice, however, the effectivity of direct taxation in achieving equality in the distribution of wealth and income in society may not be readily apparent, particularly in situations where non-wage income (business income, professional income, interest income, etc.) is hardly taxed. In this situation, wage earners pay their taxes, while businessmen and other professionals do not. One may therefore need to explore the different measures relating to the burden of taxation, by looking at the entire tax system, to determine whether the state complies with its obligations to respect and fulfill ESC rights. Existing studies, conducted by academic or research institutions, and/or other NGOs, could be relied upon to provide substantial information indicating whether direct taxation in a particular state contributes to the achievement of equality in society.

It is also important to look at the source of public borrowings and conditions attached to these loans particularly in light of the fact that higher borrowings mean larger spending on debt service, thus smaller allocations for the creation of conditions necessary for the enjoyment and realization of ESC rights. The identification of the source of the loan will determine to some extent the conditions that are attached to the loan, since all loans have conditions attached to them.

Commercial banks impose primarily financial conditions (interest rates, spreads,<sup>51</sup> periods of repayment, etc.). Bilateral lenders (other country-governments) impose generally political and trade conditions. Multilateral financial institutions (IMF and WB) impose conditions that involve detailed participation in the state's development plans and all aspects of the state's economic policies. As a general rule, the IMF extends loans to states with balance-of-payments<sup>52</sup> problems, while the WB extends loans that are directly applied to development projects. In practice, however, overlapping occurs.

States' protection-bound obligations require the state to protect its citizens from abuse by third parties. State acceptance of conditions imposed by third parties that are attached to public loans and that retard, halt, or obstruct the progressive realization of ESC rights may be construed as a breach of the state's protection-bound obligations. In addition, states' fulfillment-bound obligations require the state to create conditions necessary for the enjoyment and realization of ESC rights. State acceptance of conditions attached to public loans that retard, halt, or otherwise obstruct the progressive realization of ESC rights may also be construed as a breach of the state's fulfillment-bound obligations.

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<sup>51</sup> Spreads refer to the difference between two different figures or percentages.

<sup>52</sup> Balance-of-payments represent the balance between what a state earns from its exports of goods and services, etc., which makes foreign currencies available to it, and what the state spends for its imports and other items, including foreign aid, requiring foreign currencies.

Under a lending philosophy predicated on the assured free flow of goods and commodities from industrialized countries to the borrowing state, the IMF imposes conditions on all loans it extends. Countries that oppose the conditions suggested by the WB and the IMF do not receive financial assistance.<sup>53</sup> Although details vary according to the specific situation of the state, the basic components of IMF-imposed conditions on loans it extends include:<sup>54</sup> abolition or liberalization of foreign exchange import controls; devaluation of the domestic currency; domestic anti-inflationary programs, (including control of bank credit, higher interest rates and perhaps higher reserve requirements, control of government deficit, curbs on spending, increase in taxes and in prices charged by public enterprises, abolition of consumer subsidies, and control of wage increases); dismantling of price controls; and greater hospitality to foreign investment. These conditions are often packaged within what is called a “structural adjustment program”<sup>55</sup> and could adversely affect the enjoyment and realization of ESC rights,<sup>56</sup> especially when these adversely affect living conditions by leading to a decline in purchasing power<sup>57</sup> needed to exercise ESC rights.

Policies controlling wage increases in the wake of rising prices directly violate the right to work and the rights to an adequate standard of living, food, clothing, housing, health and education. Policies abolishing consumer subsidies and dismantling price controls on consumer items, combined with policies controlling wage hikes, that result in lowering purchasing power and restricting access to essential goods and services, violate the rights to an adequate standard of living, food, housing, health and education.

Policies requiring the devaluation of the domestic currency may also lead to a fall in purchasing power and a rise in prices of consumer goods and services. This is because when a greater amount of domestic currency is used to buy the same amount of foreign currency, the domestic currency prices of the state’s imports increase, even if the foreign currency prices have not. For countries that import most of its capital goods, the prices of even locally made and assembled goods also increase. Devaluation as a condition for a public loan that results in a fall in purchasing power may result in violations of the rights to an adequate standard of living, food, housing, health and education.

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<sup>53</sup> Sigrun I. Skogly, “Structural Adjustment and Development: Human Rights—An Agenda for Change” : Bert B. Lockwood, Jr., Human Rights Quarterly, Vol. 15, No. 4, Baltimore, MD, November 1993, p. 756.

<sup>54</sup> Leonor Magtolis Briones, Philippine Public Fiscal Administration, Vol. II, FAFI Publication No. 25, FAFI, Mandaluyong City, 1998, pp. 8-9.

<sup>55</sup> The World Bank defines structural adjustment program as “reforms of policies and institutions covering micro-economic (such as taxes and tariffs), macroeconomic (fiscal policy) and institutional interventions; these changes are designed to improve resource allocation, increase economic efficiency, expand growth potential and increase resilience to shocks”, cited in Skogly, “Structural Adjustment and Development: Human Rights—An Agenda for Change,” Human Rights Quarterly, p. 755.

<sup>56</sup> For discussion of the impact of structural adjustment programs, see Fantu Cheru, Effects of structural adjustment policies on the full enjoyment of human rights, 24 February 1999, UN Doc. E/CN.4/1999/50.

<sup>57</sup> Simply put, a decline in purchasing power means a reduction in the cost of the domestic currency, i.e., what  $x$  amount in domestic currency could have bought yesterday, the same amount can buy much less today. Income, jobs and productivity affect purchasing power. When prices rise faster than wages, and wages rise faster than productivity, a decline in purchasing power occurs. It is important to note that higher prices alone do not necessarily constitute a human rights problem. But the combination of higher prices, lower wages, and lower productivity could.

Policies such as liberalization of foreign exchange and import controls—part of the globalization of economies under the General Agreement on Tariffs and Trade—encourage the increase in foreign portfolio inflows and outflows, and facilitate the free inward and outward flow of short-term capital or short-run money (“hot money” or speculative investments). These policies are regarded by many as having caused the Asian currency crisis. In some countries in Southeast Asia, particularly Indonesia and Thailand, the currency crisis was attended by the closure of businesses and factories, massive unemployment, food shortages, riots and other acts of violence, collapse of commercial and other banks, rising poverty and growing inequality. This situation is clearly incompatible with the progressive realization and enjoyment of ESC rights.

Policies controlling bank credit and imposing higher interest rates could result in less access to capital for domestic industries; with less capital, domestic industries often find themselves resorting to down-sizing, right-sizing, shortened work hours, and, in more serious situations, closing down factories. Unemployment and underemployment could thus increase. Such policies could have serious implications on the enjoyment and exercise of ESC rights.

Where the state accepts any of the policies imposed by third parties as conditions to public loans that result in a decline in purchasing power, and thus a decline in living conditions, the state may be said to be in breach of its obligations to protect and fulfill ESC rights. As noted by the UN Committee: “a general decline in living ... conditions, directly attributable to policy and legislative decisions by states parties, and in the absence of accompanying compensatory measures, could be inconsistent with the obligations under the Covenant.”<sup>58</sup>

Looking at taxation revenues, determine who bears the tax burden, by looking at (a) the share of direct and indirect taxes to total taxation revenues and (b) the ratio of indirect to direct taxes. To determine who shoulders the tax burden, (a) simply compute the share of direct and indirect tax to total tax revenues (direct tax as percentage of total tax revenues and indirect tax as percentage of total tax revenues) and (b) compute the ratio of indirect tax to every 1.00 in domestic currency of direct tax collected (divide indirect tax by direct tax to arrive at the ratio of *x indirect tax : 1.00 direct tax*). The above computations will lead to either of two results: (a) tax revenues are generated mainly through direct taxation; or (b) tax revenues are generated mainly through indirect taxation.

In all likelihood, the budget will not reflect a breakdown of taxation revenues (region-wise, commodity-wise, city-wise, and item-wise); neither will the budget reflect the upward spiral of tax contributions (from municipality/city, to district, to state, to central or national level). This information may be useful to determine which segment of society pays a higher percentage of indirect and direct taxes. This information may be sought from the state’s internal revenue service or from studies on the burden of taxation undertaken by research or academic institutions and NGOs.

Looking at public borrowings, identify the source of the loan (domestic or foreign, commercial banks, bilateral lenders or multinational financial institutions) and conditions attached to the loan.

### **Step Guide 7. A Rights-Based Approach towards Revenue Analysis**

<sup>58</sup> General Comment No. 4, The Right to Adequate Housing (art 11(1) of the Covenant), adopted by the UN Committee on Economic, Social and Cultural Rights at its sixth session, 1991, UN Doc. HRI/GEN/1/Rev.3, 15 August 1997, paragraph 11, p. 69.