RESOURCING A RIGHTS-BASED RECOVERY

Training for European NHRIs
November 23, 2021
WHY DOES FISCAL POLICY MATTER FOR HUMAN RIGHTS?

WHAT HUMAN RIGHTS NORMS SHOULD GUIDE FISCAL POLICY?

HOW CAN NHRIS ASSESS NRRPS AGAINST THESE NORMS?
WHY FISCAL POLICY?
OVERVIEW OF NORMS
ASSESSING NRRPS AGAINST NORMS
**Government Objectives**
Results the government aims to achieve

**Public Policy Levers**
Steps the government can take to try and change behaviors to achieve its objectives

**Regulatory**
Create and enforce laws, rules and regulations to outlaw and/or sanction certain actions

**Distributive**
The provision of benefits and costs across society through grants and subsidies, service provision etc.

**Symbolic**
Moral leadership to encourage or discourage certain actions through awareness raising, public education etc.
## CONTEXTUALIZING FISCAL POLICY

### What is the Recovery and Resilience Facility?

The centrepiece of **NextGenerationEU**, the EU’s plan for recovering from the economic and social damage of the coronavirus crisis.

### Objectives

*To make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities of the green and digital transitions.*

### Public Policy Levers

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<tr>
<th>Regulatory</th>
<th>Distributive</th>
<th>Symbolic</th>
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<tr>
<td>Reforms to make legal and policy frameworks fit to support green and digital transitions.</td>
<td>Investments in infrastructure, goods and services that support green and digital transitions.</td>
<td>Political commitment to inclusive and sustainable recovery.</td>
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€723.8 billion in loans and grants through the Recovery and Resilience Facility
UNPACKING FISCAL POLICY

Fiscal policy determines the resources governments have to finance public investments.

It’s the tool they use to influence the economy and achieve certain social and economic objectives through:

- **Resource generation**: i.e. how governments raise money;
- **Resource allocation**: i.e. what governments earmark money for in their budgets; and
- **Resource expenditure**: i.e. how allocated money is actually spent and who is benefitting.

To use the classic **pie metaphor**: How big is it? How is it being sliced? Who’s eating it?

Governments generate resources in two main ways:

- they **raise money**—mostly through taxation, but also through fees and fines, profits from state-owned enterprises, foreign aid, and various other sources;
- they **borrow money**—from public and private lenders, both domestic and foreign.

The National Recovery and Resilience Plans generate resources for governments that are earmarked for particular investments. But they’re not a “once off” injection of resources; they also aim to have broader economic effects.
RIGHTS-BASED ANALYSIS OF FISCAL POLICY

- Whether allocations were spent as intended.
- Whether allocations are sufficient to implement policy.
- How policies aim to sustain or improve wellbeing.
- Whether expenditure achieved the desired impact on wellbeing.
- Wellbeing of different socioeconomic groups in particular sectors.
WHY FISCAL POLICY?
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Goal of the policy is rights realization i.e. ensuring everyone can lead a life of dignity

**Policy decisions** reflect rights standards.

Human rights principles shape the process of policymaking, in all phases.
“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”

*International Covenant on Economic, Social and Cultural Rights, Article 2(1)*
SUMMARY OF HUMAN RIGHTS NORMS

Obligations of Conduct

- To take steps (legislative, judicial, budgetary, administrative and other) to fulfill rights
- To use maximum available resources to ensure progressive realization, including resources through international cooperation
- To ensure participation, accountability and transparency in the policy-making process

Obligations of Result

- Minimum core obligations: immediate duty to prioritize achieving minimum essential levels of rights enjoyment for all
- Progressive realization: move swiftly towards increased levels of rights enjoyment, with no deliberate retrogression
- To ensure relevant infrastructure, goods and services are increasingly available, accessible to all, acceptable and of adequate quality
- Non-discrimination: to ensure substantive equality

Minimum core obligations: immediate duty to prioritize achieving minimum essential levels of rights enjoyment for all

Progressive realization: move swiftly towards increased levels of rights enjoyment, with no deliberate retrogression

- To ensure relevant infrastructure, goods and services are increasingly available, accessible to all, acceptable and of adequate quality
- Non-discrimination: to ensure substantive equality
MINIMUM CORE OBLIGATIONS

Eliminate extreme deprivation

- Ensure “minimum essential levels” of each right, regardless of level of economic development.
- Failure to do so is a prima facie presumption that a government is in violation of the Covenant.
- Unless it can demonstrate that “every effort has been made” to use all resources that are at its disposition” to prioritize reaching those minimum levels.

Plans without ambitious milestones and targets for tackling poverty, inequality, unemployment, and other indicators of social exclusion.

Plans without adequate actions for achieving those milestones and targets.
Differential treatment on a ‘prohibited ground’ is discrimination unless justification reasonable and objective.

De facto discrimination, a result of the unequal enjoyment of rights, should be ended ‘as speedily as possible’.

Affirmative action or positive measures may be needed to end de facto discrimination (obligation of conduct).

Plans without ambitious milestones and targets for reducing disparities between men and women, between racial or ethnic groups, or on the basis of religion or belief, disability, age, and sexual orientation—in the workplace and across different sectors.

Plans without specific adequate for achieving those milestones and targets.
PROGRESSIVE REALIZATION AND NON-RETROGRESSION

Secure improvements over time

- Move as efficiently and expeditiously as possible towards the full realization of economic, social and cultural rights.
- Conversely, not take deliberately retrogressive measures (obligation of conduct).
- To be justified, policies that decrease people’s enjoyment of a right must be:
  - Temporary
  - Necessary and proportionate (other options more detrimental)
  - Not discriminatory
  - Ensure the protection of minimum core
  - Considers all other options

Lack of progress on milestones and targets for tackling poverty, inequality, unemployment, and other indicators of social exclusion.

Lack of progress on reducing disparities between groups.
OBLIGATION TO TAKE STEPS

Take action

Steps can be:

- legislative,
- judicial,
- administrative,
- financial,
- educational, and
- social

Plans that "leave it to the market" to guide green and digital transitions.

Plans that weaken regulations in the name of “improving the business environment”.

Plans that do not prioritize actions for tackling precarious jobs and poor working conditions.
STEPS TAKEN SHOULD INCREASE...

Action taken must be effective

**AVAILABILITY**
Relevant infrastructure, goods and services must be available in sufficient quantities.

**ACCESSIBILITY**
Physically, economically, without discrimination and to information.

**ACCEPTABILITY AND ADAPTABILITY**
Appropriate for local cultural and social context.

**QUALITY**
Appropriate and adequate in standard and safety.

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Plans that do not prioritize revitalizing public services such as healthcare and education.

Plans that do not prioritize strengthening social protection schemes, including income support, affordable housing, and schemes to reduce and redistribute unpaid care work.
MAXIMUM AVAILABLE RESOURCES

Action taken must be properly resourced

Resources must be:

- **Raised** in a way that generates “adequate” or “sufficient revenue” and that is “fair”, “progressive” or “socially equitable”.

- **Borrowed** in a way that is sustainable and avoids loan conditions that harm human rights.

- **Allocated** giving due priority to the infrastructure, goods and services needed to guarantee rights and an equitable and effective way.

- **Spent** efficiently and not wasted, including by strengthening financial management systems and tackling corruption.

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Plans that do not include progressive tax reforms (e.g. taxes on “excess” profits, on wealth, on particular sectors like on luxury and highly carbon-intensive goods) or efforts to fight tax avoidance and evasion.

Plans that direct funding towards lucrative outsourcing contracts and public-private partnerships (PPPs).

Business bailouts, forgivable loans, and other publicly funded incentives that don’t prioritize small businesses and informal economies, where most jobs are created or without conditions that require responsible business conduct and prevent abuse.
PROCESS PRINCIPLES

Action taken must be inclusive

- Steps should be taken in such a way that facilitates the active participation of rights holders and respects the principles of transparency and accountability.

- The state also has an obligation to provide effective remedies, including administrative and judicial ones.

Plans that don’t address the administrative capacity needed for their effective implementation.

Plans that weren’t developed through a consultative process or that don’t provide for the participation of civil society in their implementation.

Plans that allow for undue corporate influence in multi-stakeholder processes.
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WHY FISCAL POLICY?
OVERVIEW OF NORMS
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# TYPES OF POLICY MONITORING

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<tr>
<th>AUDITING</th>
<th>INVESTIGATIONS</th>
<th>FACT-FINDING</th>
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| Present an overall “snapshot” of the situation. Often based on desk research. Relies on regular collection of information to track progress on specific commitments or trends more broadly. While the least in-depth, is important for highlighting issues of concern that demand further attention.  
Examples: Measurement frameworks; annual reports; periodic reports to international bodies. | Dig deeper into a particular issue of concern with the aim of identifying specific actions that can be taken to address it. Investigations often include a mix of desk and field research.  
Examples: Studies on particular issues; reviews of particular laws and policies; periodic inspections of frontline service providers (e.g. schools, hospitals, homeless shelters, places of detention etc.); national inquiries. | Gather evidence with the aim of determining whether a human rights violation has occurred. It is the most in-depth type of monitoring activity and will almost always involve field research.  
Examples: Responding to individual complaints; bringing cases to court (if mandated). |
TOOLS FOR POLICY MONITORING

Analytical Framework
- Systematically group together norms
- E.g. OPERA—Outcomes, Policy Efforts, Resources, Assessment

Indicators and Benchmarks
- Identify reference points for judging compliance with norms
- May be formalized in policy process or complementary to it

Data
- Quantitative and Qualitative
- Secondary and Primary
- Budget analysis
- Interpreted critically
OBJECTIVES OF POLICY MONITORING

Awareness

Raising

Accountability

Action
## FACTORS DETERMINING OBJECTIVES

<table>
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<tr>
<th>Related to the Issue</th>
<th>Related to the Institution</th>
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<tbody>
<tr>
<td>Understanding of and attitudes towards the issue</td>
<td>Mandate</td>
</tr>
<tr>
<td>Person(s) affected</td>
<td>Organizational capacity</td>
</tr>
<tr>
<td>Scope and scale of problem</td>
<td>Level of influence</td>
</tr>
<tr>
<td>Type of violation</td>
<td>Level of expertise</td>
</tr>
<tr>
<td>Change sought</td>
<td>Relationships with stakeholders</td>
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MONITORING THROUGHOUT THE POLICY CYCLE

- Review existing legislation and administrative provisions
- Advise on human rights issues
- Encourage Treaty Ratification
- Facilitate public consultations
- Review proposed legislation and administrative provisions
- Submit information to parliamentary reviews
- Conduct public education
- Train public servants
- Investigate human rights issues
- Receive complaints
- Participate in legal proceedings
- Conduct National Inquiries
- Report to international and regional bodies
- Refer cases to tribunals
- Prepare Annual Reports
- Conduct National Inquiries
- Monitor
### NHRIS Within the Accountability ‘Ecosystem’

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<th>National</th>
<th>Regional</th>
<th>International</th>
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<tr>
<td><strong>Judicial and quasi-judicial</strong></td>
<td>E.g. National courts, specialized tribunals</td>
<td>E.g. European Court of Human Rights; European Committee on Social Rights</td>
<td>E.g. treaty bodies</td>
</tr>
<tr>
<td><strong>Political</strong></td>
<td>E.g. legislative procedures, parliamentary committees</td>
<td>E.g. Committee of Ministers, Parliamentary Assembly</td>
<td>Intergovernmental political bodies, e.g. Human Rights Council</td>
</tr>
<tr>
<td><strong>Independent oversight bodies</strong></td>
<td>E.g. national human rights institutions</td>
<td>E.g. Commissioner for Human Rights</td>
<td>E.g. special rapporteurs</td>
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<tr>
<td><strong>Social</strong></td>
<td>E.g. NGOs, trade unions, community auditing, media</td>
<td>E.g. regional NGOs and social movements, regional trade unions</td>
<td>E.g. global social movements</td>
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<tr>
<td><strong>Administrative</strong></td>
<td>E.g. codes of conduct, citizen consultation groups</td>
<td>E.g. Fundamental Rights Agency, Council of Europe</td>
<td>E.g. transnational regulatory frameworks, mechanisms of international financial institutions</td>
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Recovering Rights: These collaborative briefings translate human rights principles into concrete policy recommendations to transform the economic system in the wake of COVID. They include issues like governments’ obligation to invest “maximum available resources” on human rights, progressive tax measures, debt financing, gender equality, and more.

Principles for Human Rights in Fiscal Policy: A ground-breaking normative tool developed by civil society groups across Latin America that distills the key human rights principles applicable to tax and budget policies and translates them into more concrete guidelines for the design, implementation, and assessment of fiscal policies.

Rights-Based Economy: This briefing with Christian Aid asks: what would it look like if we had an economy based on human rights? In this initial vision of a rights-based economy, we argue that its primary purpose would be to guarantee the material, social and environmental conditions necessary for all people to live with dignity on a flourishing planet.

Defending Dignity: This training manual, co-published with the Asia Pacific Forum of National Human Rights Institutions guides NHRIs through OPERA, to combine both quantitative and qualitative data to produce compelling evidence when governments fail to meet their human rights responsibilities.