

The Use of Maximum Available Resources

Article 2 & Governments' Budgets

ICESCR Article 2(1):

Each State Party to the present Covenant undertakes to take steps,[...] 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 [...]



What does the obligation to use the maximum of available resources in article 2 mean?

The UN Committee on Economic, Social and Cultural Rights (CESCR) is the body that provides the most authoritative interpretation of the meaning of article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The CESCR is charged with overseeing implementation of the ICESCR. States that have ratified the ICESCR must, as part of their treaty obligations, report regularly to the CESCR on steps they have taken to implement the treaty and on the status of the enjoyment of economic, social and cultural (ESC) rights in the country.

The Committee makes comments and recommendations on each country report. These comments and recommendations often set out the Committee's best understanding of the meaning of specific treaty provisions. Occasionally, the Committee will also issue a "General Comment" (GC) on a topic that has arisen repeatedly during its deliberations in order to provide greater clarity to governments and others as to the meaning of specific rights and obligations in the ICESCR.

At various points in these recommendations and General Comments, the CESCR has made reference to the government obligation to use the maximum of available resources to realize ESC rights, explaining where and how they believe a government has complied or failed to comply with this obligation. From these various sources, it is possible to distil the Committee's understanding of the obligation. This booklet elaborates on those interpretations that have most direct bearing on governments' budgets.

N.B. While this booklet focuses on the obligation to use the maximum of available resources (MAR), it is essential when addressing an issue to consider the MAR obligation in conjunction with the other two obligations in article 2—progressive achievement of the realization of ESC rights and non-discrimination. The meaning and implications of these two other obligations can only be properly understood, and complied with, in conjunction with MAR—and vice versa.

Mobilize as many resources as possible

The obligation to use the maximum of available resources (MAR) means that a government must do all that it can to mobilize resources within the country in order to have funds available to progressively realize ESC rights. While any country typically has a range of potential resources (human, natural, etc.), the financial resources represented by the government's budget are key to realizing ESC rights.

The MAR obligation means that as long as fuller realization of ESC rights requires that more government resources be devoted to it, the government must make all possible efforts to raise as much revenue domestically as it can, without, of course, undermining the long-term viability of the economy. This means that

the government must make every effort to collect all taxes and other revenue due it, all the while complying with the obligations of progressive realization and non-discrimination, and ensuring that people have access to the relevant information.

A government may believe that not taxing the economy heavily will better realize people's ESC rights. Human rights obligations do not prohibit governments from pursuing such a course. The MAR obligation does mean, however, that if a government chooses to go this route, it must be able to show that this economic policy choice has, in fact, been more effective in realizing people's ESC rights than a heavier tax regime would have been.

Many countries simply do not have enough of their own resources to fully realize their people's rights. The MAR obligation means that where domestic resources are scarce, the government must do all it can to secure international assistance, including Official Development Assistance (ODA) so as to better be able to realize rights.

Incurring debt may also give government access to additional resources, and thus should be considered as one means of complying with MAR. However, it is essential to consider carefully the likely human rights impact of taking on more debt. Repayment of the debt can in the longer term cut into the resources available for ESC rights. The terms of the debt (e.g., high interest rates) may also have severe long-term consequences. In addition, it is essential to consider the use to be made of the funds. Will they go to ESC rights-related areas? Will they be invested so as to enhance the productivity of society in the long term or will they be squandered?



Give due priority to ESC rights

The CESCR has said that the MAR obligation means that governments must give “due priority” to ESC rights in the use of their resources. For a government’s budget this means that allocations and expenditures should be directed to ESC rights-related areas as a matter of priority.

To determine whether a government is giving ESC rights such “due priority,” it is useful to consider the share of the budget going to ESC rights-related areas, particularly when this share is compared to need. It can also be useful to compare this share across similarly-situated countries.

To assess whether a government is complying with its MAR obligation, it is also necessary to look at the composition of the funds directed to ESC rights-related areas. Priority should be given *within* these areas to meeting the government’s “core obligations” (as defined by the CESCR in its General Comments). In health, for example, these include reproductive health care and immunization (GC 14). When funds are needed to meet these core obligations, spending on lower priority items within ESC rights-related areas can amount a failure to comply with MAR.

It can be difficult to define precisely what constitutes “ESC rights-related” areas. Spending that is more directly related to such as health, water, food and education generally qualifies. However, funding in other areas, such as roads, for example, can also fall in this area if an important benefit of the roads will be to enable small farmers to bring their produce to market more easily (right to food). Funding for the tourism sector can be ESC rights-related if it is targeted to creating good jobs (right to work).

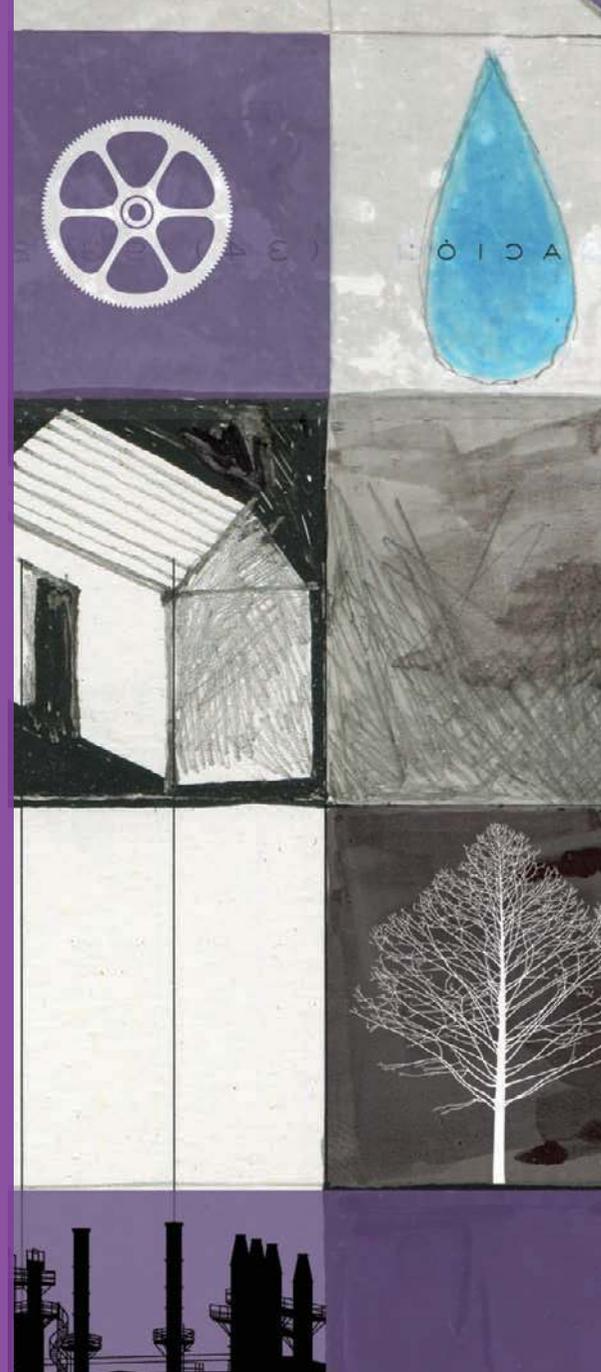


Expenditures must be efficient

Wasting funds amounts to a failure to use the maximum of available resources. Funds can be wasted in a number of ways, including:

- The government may pay more than it should for goods and services, or it may get poor quality for the funds spent.
- Waste also occurs when the government buys unnecessary items or items that are not useful for meeting priority needs. (See case study on *The Use of Maximum Available Resources: Expenditures on non-essential items.*)
- The government may decide that certain goods and services are needed to address a problem, while sound research points to other goods and services as more appropriate.
- When a department or agency receives its funding near the end of the fiscal year, it may spend it quickly, without sufficient thought.

The CESCR has said that a failure to spend funds efficiently may amount to a failure to comply with MAR. However, some expenditures that could be required from a human rights perspective—for example, for developing and maintaining health clinics in remote rural areas—might be considered an “inefficient” use of resources by some economists. Such clinics would be expensive to develop and maintain; more people would likely benefit if a similar amount of money were spent in a more densely-populated urban area. Because a larger number of people would potentially benefit, some economists would consider the latter a more “efficient” use of funds. It is important for human rights advocates to understand the different uses economists make of the word “efficient,” be clear about which of those uses are human rights-“friendly” and which are not, and argue against “efficient” expenditures that do not advance, and may even undercut, human rights by failing, for example, to ensure that the rights of marginalized groups are respected.





Expenditures must be effective

To comply with its MAR obligations, a government must spend its money effectively. The expenditures must have the *effect* of enhancing people's enjoyment of their rights.

This means that even if a government spends its money efficiently, intending to realize people's rights, it would be failing to meet its MAR obligations if the spending does not, in fact, help increase people's enjoyment of their rights. In such a situation the government should look at its plans, the design of its programs and activities as well as their implementation, to determine how the spending might more effectively realize people's rights. (See case study on *The Use of Maximum Available Resources: Expenditures on items that are not effective in guaranteeing rights.*)

Corruption can take many forms. Government agencies may, for example, buy goods and services from friends of employees at inflated prices, or funds may be siphoned off at various stops along the way from the national treasury down to the point of service delivery. Whatever shape or form it takes, failure by a government to tackle corruption is also a failure to comply with its obligation to use the maximum of available resources to advance ESC rights, because the funds that have been diverted or misused are wasted funds.

Funds allocated for ESC rights must be fully spent

Under-spending is a common problem in many countries. There are a number of reasons why this occurs. They include:

- A lack of capacity within government. This capacity gap may slow down implementation or result in a program never being implemented at all.

- A department or agency may receive additional funding towards the end of the fiscal year and may not be able to spend it by year-end due to, for instance, lengthy procurement procedures.
- Programs may be designed or structured in such a way as to make it difficult or impossible for people eligible for the program to claim its benefits.
- While funds may be allocated for a specific program, there may be reluctance within the government to see the program realized. Funds may be disbursed slowly, if at all.
- While a donor may have agreed to provide funding for specific sectors, all or some of the funding may never materialize.

The CESCR has said that funds allocated for ESC rights must be fully spent. Thus, under-spending of such funds would constitute a failure by a government to comply with its MAR obligations. In such a case, the government must identify the reasons for the under-spending and do

its utmost to correct the problems that lead to it. (See case study on *The Use of Maximum Available Resources: Under-expenditure resulting from barriers to access and lack of governmental capacity.*)

Funds allocated for ESC rights-related programs must not be diverted to other areas

A budget as approved by a legislature may reflect solid human rights priorities. However, during the course of a fiscal year funds in a budget may be moved from one program or department to another and occasionally even from one ministry to another. The MAR obligation means that, even when it is otherwise legal to move funds in this way, it is not acceptable if it involves moving ESC rights-related funds to pay for non-ESC rights related programs, goods and services. Similarly, it is not acceptable to use needed funds that are allocated to meet core obligations within an ESC rights-related area to cover non-priority expenses.

Moving funds *between* different ESC rights areas may also raise issues related to the obligation of progressive realization. If, for example, funds are moved from education to health, this may result in retrogression with respect to realization of the right to education.



The Article 2 project

This booklet is part of the *Article 2 & Governments' Budgets* handbook. The handbook has been developed by the Article 2 Project, a working group housed first at the Partnership Initiative of the International Budget Partnership (IBP), and then at the Global Movement for Budget Transparency, Accountability and Participation. The project aims to enhance understanding of the implications of article 2 of the ICESCR for how governments should develop their budgets, raise revenue and undertake expenditures.

Article 2 of the ICESCR sets out that governments are obligated to “[...]take steps, individually and through international assistance and co-operation, [...] **to the maximum of its available resources**, with a view to **achieving progressively** the full realization of the rights recognized in the present Covenant [...], **without discrimination** of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

This handbook is, primarily, a resource for civil society organizations, human rights commissions, and even legislators, to hold governments to account for their human rights obligations. Download the complete handbook at:

www.internationalbudget.org/publications/ESCRArticle2.

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Discussion in this booklet draws on the extensive research on article 2 obligations, and specifically on the maximum available resources obligation, in M. Magdalena Sepulveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights*, Antwerpen: Intersentia (2003), 313-319. It also draws on the Limburg Principles (<http://www.unhcr.org/refworld/docid/48abd5790.html>) and the CESCR document, “An Evaluation of the Obligation to Take Steps to the ‘Maximum Available Resources’ under an Optional Protocol to the Covenant,” E/C.12/2007/1 (10 May 2007).

