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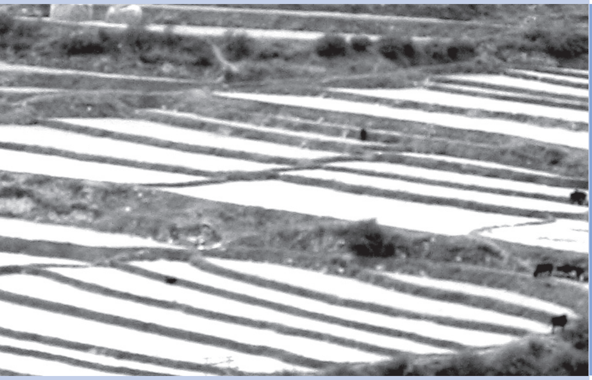

Maximum Available Resources & Human Rights

ANALYTICAL REPORT

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Maximum Available Resources & Human Rights: Analytical Report

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I. Overview and Purposes of the Report

Resources are critical to the realization of economic and social rights. Article 2.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that "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." The Maastricht Guidelines on violations of economic, social and cultural rights clarifies that a state is in violation of the Covenant if it fails to allocate the maximum of its available resources to realizing human rights.

This report examines the many ways that governments can access financial resources in order to fulfill its obligation to use 'maximum available resources' (MAR), as first introduced in the Covenant. It draws on a rich set of discussions between economists and human rights experts who met at the Center for Women's Global Leadership on December 13-14, 2010. Although the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child, several UN Special Rapporteurs and other legal experts have made some notable headway, further clarification on what the concept of maximum available resources means and how states can apply it in practice is needed. Often a narrow interpretation is adopted, assuming that available resources have been fixed by previous policy choices and that the government's main duty lies in efficient administration of these resources. Therefore, the practical applications of MAR have tended to limit analysis to budget expenditures and international assistance, while overlooking other determinants of the full set of resources available to realize human rights—including monetary policy, financial sector policy and deficit financing.

The UN Committee on Economic, Social and Cultural Rights made a statement in 2007 entitled, "An Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant." However, the statement did not define what constitutes 'available resources' beyond stating that it refers to "both the resources existing within a state as well as those available from the international community through international cooperation and assistance." However, it has used the following indicators in assessing a government's compliance with this obligation:

- Comparing economic, social and cultural rights (ESCR) related expenditures vs. expenditures for non-ESCR related areas.
- Comparing expenditures in an area (e.g., education, health) with expenditures in the same area by countries at a comparable level of development.

- Comparing allocations and expenditures against international indicators, such as UNDP's indicator that 5 percent of GDP should go to human expenditures (which for poor countries are specified as basic education, primary health care, and basic water.[1])

We note that these indicators focus only on government expenditures and international assistance.

The UN Convention on the Rights of the Child[2] and the UN Convention on the Rights of Persons with Disabilities[3] are both explicit about State parties' obligations to take steps to use the maximum available resources to ensure economic, social and cultural rights. Further, the Committee on the Rights of the Child has already integrated the concept into one of its General Comments,[4] in its Concluding Observations to several State parties reports,[5] and held a Day of General Discussion on the topic "Resources for the Rights of the Child - Responsibility of States: Investments for the Implementation of Economic, Social and Cultural Rights of Children and International Cooperation." This Committee has expanded the substantive meaning of resources to include "human, technical, organizational, natural and information resources," and has put special emphasis on the State obligations to contribute to global or extraterritorial implementation of these rights.[6] Like the ESCR Committee, however, it has not yet identified the full range of potential financial resources for ESCR realization.

Several UN Special Rapporteurs and Independent Experts have also addressed the meaning of 'maximum available resources.' The former Special Rapporteur on the Realization of Economic, Social and Cultural Rights Danilo Türk noted that:

> Progressive (as opposed to regressive) measures of taxation can, if supported by adequate administrative machinery and enforcement mechanisms, lead to gentle and gradual forms of income redistribution within States without threatening economic stability or patterns of growth, thereby creating conditions that enable a larger proportion of society to enjoy economic, social and cultural rights.[7]

Magdalena Sepulveda, the Independent Expert on the Question of Human Rights and Extreme Poverty, has drawn the following conclusions with regard to the obligation of governments to use the 'maximum of available resources' to realize ESCR[8]:

- Governments must mobilize resources within the country to its utmost ability.
- Government expenditures must be efficient (the 'efficiency criterion' could also be applied to revenue collection).
- Government expenditures must be effective.
- Failure to curb corruption is a failure to comply with the obligation.
- Funds earmarked in the budget for ESCR must not be diverted to non-ESCR areas.
- Funds earmarked for ESCR must be fully expended for that purpose.

- Governments that introduce regressive measures, such as cuts in expenditure on ESCR, must show that they have used the maximum of available resources to avoid taking such a step.
- Governments must do all they can to secure international assistance where national resources are inadequate to realize ESCR.

Her conclusion points to the importance of resource mobilization, as well as of expenditure policy and international assistance.

Olivier de Schutter, the Special Rapporteur on the Right to Food, in his 2009 report on Brazil, draws attention to the role of taxes in fulfilling the obligation to using the 'maximum available resources':

> The tax structure in Brazil remains highly regressive. Tax rates are high for goods and services and low for income and property, bringing about very inequitable outcomes. […] while the social programmes developed under the "Zero Hunger" strategy are impressive in scope, they are essentially funded by the very persons whom they seek to benefit, as the regressive system of taxation seriously limits the redistributive aspect of the programmes. Only by introducing a tax reform that would reverse the current situation could Brazil claim to be seeking to realize the right to adequate food by taking steps to the maximum of its available resources. [9]

The human rights community has recognized the importance of government revenues, including taxation and official development assistance, to the concept of maximum available resources. Economists would agree that resource availability for realizing human rights depends on expenditure, aid and taxation, but also point to the possibility of borrowing and running a budget deficit. Some economists refer to this as the 'fiscal space diamond.'[10] The four points of the diamond are expenditure reprioritization and efficiency; domestic resource mobilization through taxation and other revenue raising measures; foreign aid grants (Official Development Assistance); and deficit financing. In addition, we add the monetary space which depends on central bank policies. These policies influence the interest rate, exchange rates, foreign exchange reserves, reserves in the banking sector, and the regulation of the financial sector. The monetary space also influences the resources available to realization of ESCR; for instance through its impact on the level of employment and the utilization of productive resources. When central bank policy does not support full employment, this reduces available resources.

We consider, among other issues, how fiscal and monetary policy decisions influence the resources available for realizing rights and how policy instruments can be used in ways that are in compliance with human rights principles, such as non-discrimination, progressive realization, participation, transparency and accountability. The concept of maximum available resources requires further development in order to challenge the unequal distribution of material resources, and re-imagine the role of the state not only as an efficient administrator of existing resources, but as an institution that mobilizes resources to meet core human rights obligations.

The report is organized around five topics which are essential to sustainably maximizing resource availability to realize human rights: (1) government expenditure; (2) government revenue; (3) development assistance (both official development assistance and private resource flows); (4) debt and deficit financing;[11] and (5) monetary policy and financial regulation. Together, these inter-related policy areas can be represented in a diagram with five critical nodes for mobilizing resources.

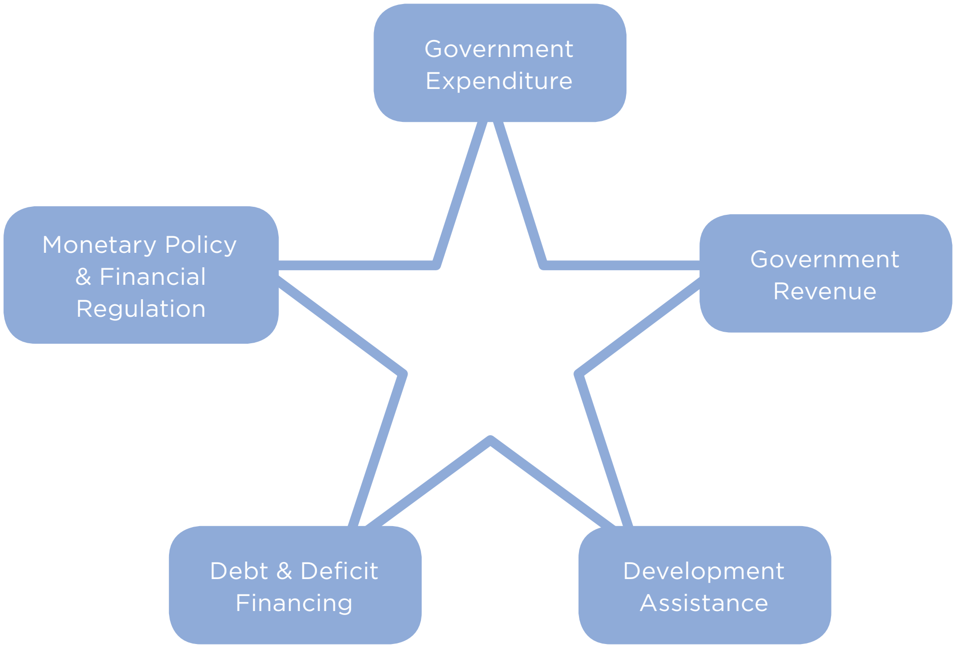

Figure 1: The Maximum Available Resources (MAR) Star

II. Government Expenditure

The allocation of government expenditure is reflected in how different areas of spending are prioritized in the budget. Reprioritizing public budget expenditure and making them more efficient and effective is a central element to ensuring resources for ESC rights over time. Several key issues are relevant to help unpack this area within the context of MAR.

KEY QUESTIONS:

- How can we assess the adequacy of the size of public expenditures?
- How do we deal with the fact that resources may be mobilized, but spent by governments in ways that undermine human rights, rather than realize them?
- Do claims for improvements in efficiency often conceal costs, in terms of increases to unpaid work in homes and communities, and retrogression in the right to just and favorable conditions of work?
- What do economists mean by ‘effectiveness’? Is there disagreement among economists about what ‘effectiveness’ means? Do these

disagreements have any implications for how we should interpret what the ICESCR states about the effectiveness of government spending to realize ESCR?

- What kinds of budget allocation policies safeguard economic and social rights?

Indicators for Government Expenditures

To judge how far a government has allocated adequate resources to public expenditure, it is useful to look at the ratio of total expenditure to gross domestic product (GDP). Gross domestic product is a measure of the total value of the output of goods and services produced in the economy, although it leaves out unpaid services in the household, such as unpaid childcare services provided by family members. Expenditure to GDP ratio should only be compared for countries that are similar when used as a benchmark to evaluate whether there is an appropriate amount of spending.

In addition to looking at the total level of expenditures, the allocation of spending to particular areas that support the realization of specific rights, e.g., health, education, and income protections and transfers to low-income households, should also be taken into account and compared to areas of spending which do not support human rights, e.g., military spending.

However, it is important not to limit the analysis of public expenditures to social spending, since the realization of some economic and social rights, e.g., the right to work, requires an examination of other areas of spending, e.g., public investment in basic economic infrastructure. The scope of human rights expenditure is therefore quite expansive, involving not just social service delivery, but also agricultural, industrial and employment policy.

Consider a case in which efforts to realize children's rights have been exclusively focused on spending on health and education and not on infrastructure investments, such as building roads and schools. Though the spending on health and education can have positive human rights outcomes, the lack of spending on infrastructure may deny some children access to clinics and schools. Thus, defining what constitutes a justified investment in economic and social rights should not be limited to social sectors alone, but also include investments in economic sectors.

Indicators, such as the ratio of public expenditure to GDP, should be thought of as providing broad benchmarks for assessing government policy—they are not meant to be prescriptive targets. There may be valid reasons why government expenditure as a share of GDP will vary from the benchmark. The aim is not to develop precise targets, e.g., 5 percent of GDP must go to education. Instead, the goal is to use such indicators to judge whether there is cause for concern about compliance with obligations of conduct, in comparison with similar countries and with past performance of the same country.

Involvement of the private sector in the provision of services that support the realization of rights further complicates the picture. In these circumstances, states have a duty to monitor and regulate the private provision of these services to ensure that human rights obligations are met. Effective regulation requires public resources, although not in expenditure categories typically associated with economic and social rights. Moreover, budget allocations to social service sectors may not fully represent the amount of resources mobilized to support the fulfillment of rights, particularly when the private sector plays a significant role. For these reasons, indicators, such as public spending relative to GDP, must be taken as preliminary measurements of resource allocation in support of rights, but cannot be presumed to be definitive standards against which government policies are to be assessed.

Government spending must also be evaluated in terms of the distribution of benefits among households and individuals. To comply with principles of non-discrimination, public spending should not be allocated in ways which reinforce existing inequalities or which fail to deliver benefits to vulnerable and marginalized populations. The distributive consequences of the allocation of public spending are often referred to as the 'incidence' of government expenditures. For example, health budgets that primarily support hospitals and medical facilities which service middle and upper income families, and to which low-income populations have limited or no access, will not support the realization of economic and social rights to the same extent as alternative budget allocation.

For example, the United States spends a great deal of money on primary and secondary education, in 2003-2004, USD 472.3 billion was spent, and the amount has steadily risen since the 1950s.[12] In 2004, public expenditure on education was 5.9 percent of U.S. GDP, and the U.S. ranked 8th in its commitment to public education spending, according to the UNDP's Human Development Report 2006. On the surface this appears to represent a reasonable commitment to spending on education. However, because most of the funding for education in the U.S. is based on local property taxes, wealthier neighborhoods have higher levels of funding for public schools, USD 15,000 or more per pupil, whereas low-income neighborhoods have less than USD 4,000 per pupil. School districts with the largest percentage of minority students receive the least amount of general education revenues, whereas districts with the lowest percentage of minority students receive the highest amount.[13] Across the country, USD 614 less is spent per student in the districts educating the most students of color as compared to the districts educating the fewest students of color.[14]

Efficiency and Effectiveness of Public Expenditure

Efficiency is often defined in terms of the financial costs of the *inputs* required to produce a particular outcome—greater efficiency implies that more can be produced with a given amount of financial resources. Therefore, from the perspective of utilization of maximum available resources, it is important to examine the efficiency of expenditure.

However, care must be taken when evaluating efficiency. Are all inputs adequately accounted for or are there important resources which are ignored (contributions of unpaid household work or other non-market contributions)? For example, in the health sector, efficiency is typically judged in terms of the financial cost per treatment. This can be reduced by shortening the time that patients spend in hospital. However, patients still need further non-medical care. Therefore, efficiency, narrowly defined, may appear to improve as the cost of providing treatment for each patient drops, but there are huge spill-over costs for unpaid caretakers in households who may be forced to take time off paid work to care for a family member. Therefore, increasing 'efficiency' by reducing spending on key inputs may not create true efficiencies, but imposes higher costs on unpaid, family care at home, with disproportionate impacts on women.

Similarly, efficiency may appear to improve if governments reduce compensation to public sector workers. States often face pressures to reduce their public sector wage bill. However, in these cases, we must consider whether such actions compromise the social and economic rights of those workers. If so, then such tactics will be less efficient than they appear to be, since the full impact on social and economic rights must take into account the impact on public sector workers.

It is also important to examine the effectiveness of spending in achieving positive impact on enjoyment of rights. The *quality* as well as the quantity of outputs matter. For example, spending on health care may be ineffective if much of it is on administrative costs. Services must be delivered in ways that respect the individual's dignity, and this may require more time to interact with people and give them personal attention; and more training of public employees on how to treat people with respect, especially poor people, people from minority groups, and women. People must be able to claim their rights in ways that do not stigmatize them. This is especially important in the case of income transfers.

Leveraging Private Contributions to Public Services and Infrastructure

One form of leveraging private contributions to public services is through co-responsibility, in which communities are asked to provide unpaid services to support the realization of certain rights, e.g., through the construction of schools. This is not necessarily antithetical to human rights, but we must consider who in the community bears the burden of carrying out these new tasks, and whether such services are voluntarily provided.

A second form of leveraging is through public-private partnerships (PPPs). With PPPs a government contracts with private companies to carry out infrastructure investment or service provision. In the case of infrastructure investments, the private company raises the money for the investment, not the government, and covers the cost by leasing the assets to the government. This may seem advantageous in the short run as the borrowing is not included as part of public sector debt. However, in general, private companies face higher rates of interest than the governments, so the costs of the investment are higher. In addition, it is difficult to hold the private companies to account for the fulfillment of complex contracts. Typically the contracts transfer risks to the government, so that if the enterprise is mismanaged or delivery is poorly implemented, the public sector is forced to assume the burden of correcting the problem. The private companies frequently hire workers with fewer social protections than public sector employees, entailing retrogression with regard to labor rights. Bearing all this in mind, a balanced analysis would consider whether PPPs actually bring in extra resources, explore who is really paying the full set of costs, assess the sustainability of the arrangement over time, and determine what actually is gained with PPPs.

Participation, Transparency and Public Expenditures

Budget allocations should be determined in ways that are participatory and transparent. The type of participation, at what stage of the budget process it takes place, and the share of the budget open to participation should all be considered. Civil society organizations, including human rights organizations, are now actively engaging with government budgets in many countries. The participation of human rights organizations leads to framing consideration of budgets in terms of government obligations, non-discrimination, progressive realization, core obligations and non-retrogression.

It is important to recognize that strengthening participation and transparency requires resources. The collection and dissemination of timely information requires resources. Budget information needs to be compiled in categories which are useful for monitoring spending priorities with regard to social and economic rights, and made accessible to the general population.

Fiscal Austerity

Sometimes overall public expenditure needs to be cut to reduce unsustainable budget deficits. Not every budget cut is necessarily retrogressive, but the human rights principle of non-retrogression emphasizes that the size and scope of expenditure cuts must be carefully examined. Governments have an immediate government obligation to provide the minimum core of ESCRs to safeguard the most deprived. This suggests two questions must be answered. First, is the fiscal austerity plan based on an appropriate balance between cutting expenditures and increasing taxes? Second, what are impacts on the poorest and most deprived of the cutbacks, and how can the rights of these groups be safeguarded?

III. Government Revenue

Governments receive revenue from many sources: including, taxation, royalties paid for utilization of natural resources, and profits from public enterprises. Here we focus on taxation as this is typically the most important way in which governments mobilize domestic resources. The report considers international development assistance, including official development assistance (ODA), in the subsequent section.

KEY QUESTIONS:

- What institutional and distributive issues should be taken into account when determining tax policy? How does the level and composition of taxes (e.g., income tax, value-added tax (VAT), trade taxes, property taxes) affect the 'maximum available resources' and other human rights obligations?
- How should tax policy respond to the 'booms' and 'busts' of economies in order to reduce the negative consequences of the kind of drastic revenue short falls we currently see happening around the world?
- Has the government considered introducing financial transaction taxes, which are low level taxes on the purchase of financial assets such as stocks, bonds, futures contracts, and currencies, which could potentially raise substantial resources for the fulfillment of human rights?
- Is there a real danger that higher taxes will reduce the resources available for realizing economic and social rights through their impact on non-state actors, such as businesses (i.e., are there circumstances under which tax policy reduces future growth and employment)?
- To what extent is ineffective revenue collection a problem and how can it be addressed?

The process of mobilizing tax revenue and using those resources to provide public goods, social services, and social protections is widely accepted as a central responsibility of a well-functioning government. Nevertheless, many economists and business interests refer to 'tax burdens' and 'distortions' caused by tax policy, using as a benchmark an economy functioning without taxes. In our view this is not an appropriate benchmark, and we argue for referring instead to 'tax contributions' and tax 'guidance.'

Indicators of Tax Revenue Mobilization

To analyze the adequacy of tax mobilization, it is useful to refer to the tax-to-GDP ratio, sometimes known as the effective tax rate. Tax effort is another useful indicator which measures actual tax revenue compared to potential tax revenues. Potential tax revenues are defined in different ways—one approach is to define potential revenues as the total value of tax revenue which would be raised under the prevailing tax code if 100 percent of taxes were actually collected. Tax effort can be used to assess how much additional revenue could be mobilized without changing any tax laws if the effectiveness of collection were improved.

These indicators have a number of limitations which should be borne in mind when using them as benchmarks: different countries have different sources of revenues, the nature of government revenue collection varies, and there are varying degrees of centralization of tax policy. For this reason, they should be seen as helpful, first snapshots of performance, but would need to be augmented by more detailed analyses for a complete picture. In using these indicators it is critical to make comparisons across similar countries. Low-income countries, for example, tend to have lower tax-GDP ratio than high-income countries. We consider that UN human rights treaty bodies and others would be remiss not to consider appropriately benchmarking these indicators as an essential tool in analyzing a government's effort to mobilize tax revenue.

Tax Avoidance, Evasion and Institutional Weaknesses

Tax avoidance and evasion lead to substantial loss of revenue for governments. Bribery and corruption are also common problems. It is vital to strengthen tax collection processes. Cutting the budgets of tax collection offices means that fewer people are available to curtail avoidance and evasion, and is thus a false economy.

The existence of tax havens, with very low taxes facilitates tax avoidance and evasion. Multinational corporations take measures to show their profits as accruing in tax havens to avoid paying taxes. One way of doing this is through mispricing goods and services that are transferred between different branches of the same company operating in different countries. By setting up a branch in a tax haven and then manipulating the price of imports purchased from and exports shipped to other divisions and affiliates of the same company operating in different countries, corporations can show their profits as accruing to the branch in a tax haven rather than in a country with higher taxes. Estimates of the annual tax revenue lost to developing countries due to trade mispricing amount to USD 98 to 106 billion.[15] This compares to total overseas development assistance in 2009 from the countries in the OECD's Development Assistance Committee of USD 83.5 billion.[16]

Insofar as tax policy in one country affects the ability of other countries to establish an effective tax system, a case can be made for cooperation among states to eliminate 'beggar thy neighbor' strategies and cross-border tax avoidance strategies.

Distributive Outcomes of Tax Regimes

Tax policy needs to comply with principles of non-discrimination and equality. Consider the case of increasing VAT rates. This will increase prices of goods and services to households and have a disproportionate impact on lower-income households. This is because low-income households spend a larger share of their income on goods and services than high-income households, who can afford to save part of their income. The result is that VAT payments account for a larger share of the income of lower-income households relative to high-income households.

Incidence analysis looks at the tax contributions of different households in relation to their income. This analysis can be used to analyze tax contributions by household, either by looking at individual taxes (sales tax, VAT, income tax, etc.) or by amalgamating them all and determining what share of income goes in tax payments. This type of analysis can show how much low-income households pay in taxes, as a percentage of their income, relative to richer households, and how much is paid by households with differing gender characteristics (e.g., sex of head of household, sex of primary earner, etc.).[17] Regressive taxation regimes, which require the poor and disadvantaged to pay more of their income than the rich, are questionable from the perspective of non-discrimination, while progressive tax regimes, which make more use if income and wealth taxes, are generally more able to mobilize domestic revenue equitably across households.

The Implications of Higher Tax Rates for Economic Growth

One common concern is that higher taxes on businesses and wealthy households will reduce investment and, hence, growth and employment. Such an impact could conceivably limit the generation of resources available for realizing economic and social rights.

However, lower tax rates and various kinds of tax allowances may just be windfall gains for businesses and wealthy households who would have invested anyway. The primary reasons companies invest (e.g., market access, the availability of an educated labor force, strategic export platforms, or the presence of natural resources) may have little to do with tax levels.

Mobilizing tax revenues to invest in economic and social infrastructure can do more to generate robust economic growth in the long-term. The existence of a highly-educated, productive workforce and quality economic infrastructure (e.g., utilities, transportation) can provide a much stronger incentive for the private sector to invest rather than lower taxes. Prosperity and high rates of tax to GDP certainly go together in the higher income countries that are members of the OECD. The average tax to GDP ratio in these countries rose from 30.1 percent in 1970 to 35.5 percent in 2000. In developing countries, the average tax ratio did not change very much, rising from 16.2 percent in the 1970s to 17.0 percent in 2000.[18]

Economic Cycles, Tax Policy, and Human Rights Obligations

To uphold the principle of non-retrogression, any human rights-centered tax policy must be able to manage the ‘booms’ and ‘busts’ of modern capitalist economies in ways which reduce the negative consequences of drastic revenue shortfalls in downturns, which make difficult for states to maintain spending during downturns. One option is to create a reserve fund, sometimes called 'rainy day fund,' into which the additional revenues during good times are placed. These funds can then be used to maintain spending, and prevent retrogression, during bad times.

Of course, in severe downturns, such as recessions, it is appropriate to introduce stimulus programs. The design of such programs, including the balance between tax cuts and extra spending should take into account human rights principles and obligations. Measures which put more purchasing power into the hands of the poor and middle class—through a cut in VAT, for example, or extra spending on infrastructure and public services which creates jobs—are more equitable from a human rights perspective than reducing income taxes for the richest groups.

IV. Development Assistance

Official development assistance (ODA) is another source that may augment the resources available to a government of a middle or low-income country. It is provided both bilaterally, government to government; and by multilateral institutions such as the World Bank, the regional development banks, and the EU. However, it important to realize that ODA takes the form of loans, as well as grants. Interest has to be paid on loans and the loan has to eventually be repaid. These payments, debt service and the amortization of loans mean that not all of the ODA that flows into a country any one year is a net addition to the resources available to the government. It is important to distinguish between gross inflows of ODA and net inflows of ODA. Even the net inflows can overstate the amount of new resources being made available, since debt relief is counted as part of the net ODA. However, debt forgiveness simply writes off debt, it does not make any new resources available.

ODA may finance specific projects, such as the building of a hospital or a bridge, but increasing amounts of ODA are not tied to a specific project. They are provided to augment the budget of specific ministries ('sector support') or to the Ministry of Finance to support the budget as a whole ('budget support'). ODA which is not tied to a project generally has policy conditions attached to it, such as trade liberalization, an increasing role for the private sector in service provision, or ceilings on public sector pay. Not all ODA provides extra resources for the government; some ODA bypasses the government and goes directly to NGOs.

KEY QUESTIONS:

- How far do governments of better-off countries recognize their extraterritorial obligations to provide international assistance?
- How far does ODA augment the resources available?
- Are there limits on how much ODA a country can absorb?
- How effectively do countries use ODA to support ESCR?

Indicators for Impact of ODA on Available Resources

A useful indicator for how far governments extend international assistance is the value of ODA as a proportion of GDP. A widely used benchmark is that high income countries should provide ODA amounting to 0.7 percent GNI (gross national income).

According to the OECD Development Co-operation Directorate, in 2010, net official ODA flows from members of the OECD Development Assistance Committee (DAC) reached USD 128.7 billion, representing an increase of 6.5 percent over 2009. This is the highest real ODA level ever, surpassing even the volume provided in 2005 which was boosted by exceptional debt relief. Net ODA as a share of the GNI of members of the DAC was 0.32 percent, equal to 2005 and higher than any other year since 1992. Though this is an increase, it is not half way to the promise of 0.7 percent.19

In 2010, the largest donors by volume were the United States, the United Kingdom, France, Germany and Japan. Only Denmark, Luxembourg, the Netherlands, Norway and Sweden met the United Nations ODA target of 0.7 percent of GNI. The largest increases in real terms in ODA between 2009 and 2010 were recorded by Australia, Belgium, Canada, Japan, Korea, Portugal and the United Kingdom. It is worth noting that extraterritorial obligations are generally more controversial under international human rights law than obligations of a state to its own population. International cooperation and assistance can easily be identified in treaties, but quantifying and allocating responsibilities across countries is more complex.

The impact of ODA on available resources will be reduced if ODA is tied to purchases of imports from donor countries that cost more than goods and services available locally or on the international market. The proportion of bilateral aid that is formally untied rose from 46 percent in 1999-2000 to 76 percent in 2007; however, research has found that in most investment projects, the main contract and technical assistance are still procured from donor countries, so some of the ODA that has flowed into a recipient country, almost immediately flows back out again to the donor.[20]

It is sometimes argued that recipient countries may not be able to absorb additional amounts of ODA because they lack the capacity to spend it effectively. However if this is the case, ODA can be directed towards increasing this capacity. A further argument is that if countries spend their additional ODA, it will lead to inflation rather than mobilization of real resources. The IMF, for instance, argued that low-income countries should keep much of their additional ODA in their foreign exchange reserves rather than spend it, unless they have very low rates of inflation.

Another concern is that ODA may substitute for tax revenue rather than augment available resources. Large amounts of aid could serve as a disincentive for governments to increase the effectiveness of their tax collection systems. However, the policy conditions attached to aid may themselves make tax collection more difficult. For example, trade liberalization is often a policy requirement, but this requires reduction of taxes on import.

Effectiveness in Use of ODA to Support ESCR

Effective use of ODA to support ESCR depends not only on recipient governments, but also on donor governments. Much ODA is distributed more in accordance with the political interests of donor countries than the ESCR needs of recipient countries. Moreover, donor governments and institutions attach policy conditions to ODA in the belief that this will lead to more effective use of ODA, but these have often been counterproductive.

BetterAid has called for a radical change in the international development cooperation and global governance system, based on a new approach focused on development effectiveness rather than aid effectiveness. They argue for the following key pillars of a just development cooperation 'architecture':

- A new international legal framework will enforce a harmonization of respective policies, efforts and approaches in promoting international development cooperation;
- The UN's relevant charter bodies (including subsidiary organs), treaty bodies and various specialized agencies will be the legitimate key actors in the system. This will ensure the enforcement of a rights-based approach to development, highlighting women's rights, gender equality, labor standards and the decent work agenda;
- The OECD DAC will refine its mandate to focus on its original functions—mainly monitoring aid flows;
- The IMF and World Bank will review their mandates and objectives to be based on a genuine commitment to social justice and increased international cooperation. Their programs and policies will be monitored and reviewed by an inclusive and democratic body under UN auspices.[21]

V. Debt and Deficit Financing

When government spending exceeds total government revenue there is a budget deficit and governments must borrow to make up the difference. Governments borrow by taking loans from other governments, commercial banks, and international financial institutions like the IMF and World Bank; and by issuing bonds to investors.

Bonds stipulate the conditions under which the government must pay back the money it borrows. That is, the bond specifies the size of the payments to the bondholders and the length of time over which the bond must be repaid. These conditions of repayment are fixed for each bond. Short-term bonds are paid back quickly, often within a few months, while long-term bonds are repaid over a much longer period, often many years. Bonds are bought and sold in the bond market, and once the government issues a bond, it can be traded among investors in global markets. The price of the bonds varies with conditions in the bond market. If a government has difficulty finding investors willing to hold its bonds, the price of the bonds falls until they are sold. From the government's point of view, lower bond prices means that borrowing has become more expensive, since the sale of bonds generates fewer resources. From the investors' point of view, lower prices mean a higher rate of return, since the investor has to pay less money initially in exchange for the future payments the government must make as stipulated by the bond.

It is important to recognize the difference between budget deficits and the public debt. Deficits represent how much is borrowed to cover the gap between revenues and expenditures in a particular budget. The total amount that a government borrows over time, i.e., the total outstanding amount owed to bondholders, is the public debt. The public debt represents a claim on future budgets, as interest has to be paid.

In some cases, formal limitations exist that constrain the ability of governments to borrow. These restrictions may come from laws or constitutional restrictions and may only apply to a particular level of government, e.g., state, provincial, or local governments. Or the limitations may exist because donors place restrictions on the government's ability to borrow as a condition associated with their financial support.

KEY QUESTIONS:

- How do we judge whether borrowing is contributing in a sustainable way to resource mobilization or whether it is simply building up a mountain of debt that will reduce the resources available for human rights fulfillment in the future?
- What are the distributional impacts of financing government expenditures by borrowing?

Debt and Assets

To answer the above questions we need to look at the two sides of the balance sheet—liabilities on one side (i.e., borrowing) and assets on the other. In deciding whether borrowing can contribute to or hinder the realization of human rights, it is critical to consider whether the government is using the debt to finance the creation of assets that will help in the realization of economic and social rights. Conventional arguments on debt burdens frequently fail to address the asset side. In other words, if a government borrows, what assets will it be able to create that would not have been created otherwise? For example, borrowing to build a school generates social and economic benefits for future generations.

In defining assets which contribute to realization of human rights, we would argue that investments in human capital must be included, as well as in physical capital. There is no point in building a school if teachers are not also provided. These kinds of investments can also raise the productivity of private investments. Enhanced productivity supports faster growth and higher incomes which, in turn, increase tax revenues and allow governments to pay back the initial borrowing over time. Public investments in education, health and infrastructure also attract more private investment and are often more decisive in investment decisions than simply providing tax breaks to businesses. These investments support long-run growth and generate the resources needed to meet future debt obligations, as well as supporting the realization of human rights.

Two key questions then arise when considering whether borrowing might positively or negatively affect human rights. First, to what extent are assets built through borrowing contributing to human rights? If the assets are not improving human rights processes or outcomes, obviously the need for such borrowing should be questioned. Second, will those assets generate income through economic activities which directly or indirectly re-pay the debt, or at least the interest payments? Investments in nutrition and education, for example, make some people more productive, which will increase output. Provided there is a way of taxing this output, the debt can be serviced by higher tax revenue.

A further consideration is the overall state of the economy. Borrowing in a recession and borrowing in good times are very different. During a downturn, government spending represents an important policy instrument to stimulate economic activity and get the economy going again. Deficit financing plays a central role in allowing governments to increase expenditures in recessions, because government revenues fall during recessions. Without the ability to borrow, governments may have to cut spending in response to declining revenues, making the downturn worse. During periods of stable growth, these deficits can be repaid when government revenues recover. The use of deficit financing to support government spending during downturns, and then paying back this borrowing when growth has recovered, is referred to as 'counter-cyclical fiscal policy.'

Debt servicing payments also depend on macroeconomic variables, such as the prevailing interest rates and exchange rates. In addition, the types of bonds that governments issue and the nature of the bond market have a direct influence on the costs of borrowing. Some governments rely primarily on short-term bonds. In these cases, governments must continually issue new bonds when existing bonds come due, and debt management is more burdensome and uncertain. When new bonds are issued, they may not generate the same resources as the older bonds because of changing conditions in the bond market. In addition, the composition of buyers and sellers in bond markets affects the cost of servicing the debt. For example, in many low-income countries, the domestic banking sector purchases the vast majority of bonds. This gives the banks a great deal of power to influence the price at which governments can sell their bonds.

Finally, the sustainability of the debt depends on how well the tax system is functioning and in which currencies the debt is denominated. Borrowing is no substitute for a strong set of domestic tax institutions and the exchange rate has a direct effect on the cost of servicing the debt when that debt is denominated in a foreign currency.

Distributive Implications of Borrowing

Generally, interest payments on the debt go to those who own the bonds. Ownership is highly concentrated; therefore, debt servicing payments often represent a regressive transfer of income to wealthier segments of the global economy. Committing to large debt payments involves future transfers from the government to wealth holders. If the government has to tax low-income and middle class households to pay this interest, then there is redistribution from the poor to the rich. These regressive impacts need to be brought into the analysis, and might suggest the need for alternative policies, through progressive taxation for example.

National Debt Audit to Determine What Is Onerous, Odious, and Illegitimate Debt

The concepts of onerous, odious and illegitimate debt[22] provide tools with which to analyze the implications of accumulated debt. Onerous debt generally refers to a situation in which the obligations attached to the debt—for example, debt servicing payments—significantly exceed the benefits which were derived from taking on the debt. In these circumstances, the cost of servicing the debt can greatly limit the ability of the state to progressively realize rights. Odious and illegitimate debt refer to situations in which the national debt was incurred by a regime for purposes that do not serve the interests of the nation, e.g., the debt enriched economic elites or was used to finance war or repression. Again, sizeable debts which did not advance human rights compromise the ability of the state to make progress towards realizing those rights in the future.

The creation of public debt audit commissions, such as the one created in Ecuador,[23] provide an example of good practice in determining the legitimacy of a country's current debt profile. Further, better financial regulation across jurisdictions to deal with these odious debts is required to recover those funds.

Budget Deficits, Government Borrowing and Economic Crisis

The sustainability of debt also very much depends on the creditors. Views and expectations of creditors can be volatile, especially in time of economic crisis. Austerity measures that some European governments have been forced to undertake in 2010/11 are an attempt to restore the confidence of bondholders in order to convince them to continue to hold the bonds. Nevertheless, bondholders have been demanding higher rates of return in exchange for agreeing to hold the debt of some governments. This raises the payments governments must make to service the debt. In the context of an economic downturn, when government revenues are already under pressure, higher debt serving payments squeeze other areas of spending. There is a danger that obligations to creditors overwhelm the obligation to protect and progressively realize human rights. International cooperation may be necessary to support progressive realization of human rights.

VI. Monetary Policy and Financial Regulation

Monetary policy and financial sector regulations influence the resources available and provide potentially powerful instruments for directing financial resources toward uses that support the realization of human rights.

Monetary policy, conducted by central banks, directly affects the resources available for the realization of economic and social rights, especially the right to work. It does this by influencing interest rates, exchange rates and the amount of credit available in the economy. Higher interest rates discourage borrowing and make credit more expensive—as a consequence, economic activity slows when central banks raise interest rates, and there is less job creation. Indeed very high interest rates make lead to unemployment, as firms can no longer afford the working capital necessary to keep employing and producing.

Exchange rates affect the competitiveness of the economy and the level of exports and imports. For example, if the domestic currency is devalued relative to other currencies (i.e., it takes more of the domestic currency to purchase one dollar, one Euro, etc.), exports become less expensive (and more competitive) while imports become more expensive. In many, but not all cases, this encourages exports and limit imports, outcomes which promote the growth of the domestic economy.

Central banks also often have a regulatory role to play with regard to the financial sector, raising questions about their obligation to protect rights from the actions of third parties, e.g., private financial institutions.

In contrast to the past when central banks were more employment-centered, monetary policy today almost universally prioritizes price stability (sometimes through a policy of 'inflation-targeting') over maintaining stable growth and aiming for full employment. When central banks attempt to maintain price stability, they affect interest rates and exchange rates with important consequences for the realization of certain rights. For example, interest rates affect access to and affordability of housing. Exchange rates can have a sizeable impact on the prices of food, fuel, and other critical imports, and on employment outcomes through trade effects. Likewise, central banks can have, and have had in previous decades, significant impacts on employment by influencing the overall level of demand and investment in the economy.

In the past, central bank policy was often formulated to support a goal of supporting employment. When there is widespread unemployment, resources are wasted and this is a major source of inefficiency and compromises the right to work. Moreover, when employment falls below its potential level, tax revenues will also be lower thus affecting the resources available to a government to realize its human rights obligations.

Today central banks are, in most countries, independent government institutions. In addition to influencing interest rates and exchange rates, central banks are typically responsible for many financial regulations.

KEY QUESTIONS:

- How does the concept of 'maximum available resources' apply to central bank policy?
- Monetary policy choices are often portrayed as needing to balance a trade-off between employment (i.e., the right to work) and inflation (which may affect earnings and living standards, depending on the context). How do we think about such trade-offs in terms of 'maximum available resources'?

Central Bank Policy and Maximum Available Resources

Some economists think that there are trade-offs between price stability and expanding employment and production. Policies that attempt to achieve full employment, it is often argued, lead to inflationary pressures. The extent to which this is true depends on a variety of factors, including the determinants of inflation in a particular country, the wage setting institutions which are in place (e.g., is there centralized bargaining?), and the labor market policies in place (e.g., active labor market policies that better match workers with available opportunities and improvements to labor market institutions that raise productivity can improve employment outcomes without inflationary pressures). In addition, the distribution of the costs of inflation varies from one setting to the next. Some argue that price stability is necessary to prevent the erosion of an adequate standard of living.

However, if a low inflation rate means that there are not enough job opportunities, then it does not provide the conditions for an adequate standard of living. Moreover, if earnings rise with the rate of inflation, the impact on living standards will be negligible, relative to cases in which incomes remain relatively fixed.

The sources of inflationary pressures must also be taken into account. In many countries, inflation is not primarily caused by central bank policy. In these cases, inflation is not a problem of excessive credit leading to too much demand, but rather a problem of poor infrastructure, low productivity, and/or monopoly power of some businesses which have sufficient market power to raise prices. Increasing prices in global markets for essential goods, such as food and energy, can also contribute to inflation through the cost of imports. Inflation, in other words, can be related to several other issues, besides monetary policy.

Equality and Non-Discrimination

The trade-offs between inflation and employment also differ for different groups, with benefits accruing accordingly. As already discussed, monetary policy which tries to reduce inflation by raising interest rates can also reduce employment. However, the costs of losing a job are not distributed equally. More marginalized populations, including women and different ethnic and racial groups, often disproportionately experience the negative consequences of such policy choices. For example, research has shown that central bank policies adopted during periods of inflation reduction in developing countries have different impacts on women's and men's employment.[24] These dynamics need to be taken into account when evaluating monetary policy choices from a human rights perspective.

In addition, monetary policy influences the amount of credit available in the economy. How these resources are used—and the extent to which they support the realization of economic and social rights—depends on the nature of financial institutions and how the financial sector is regulated. Financial sector policies can influence the incentives investors face and affect the ways in which credit is directed. For example, financial regulations can support lending to small and medium enterprises or lending to improve access to housing, instead of supporting financial speculation.

Institutional Structures of Central Banks

Central banks have human rights obligations with regard to making maximum available resources available. If we are to develop a framework for securing the maximum available resources for economic and social rights, we should think more broadly on the role of central banks in mobilizing resources for job creation, not only inflation-targeting and price stability. In doing this, the key is to explore the institutional structures and mandates of central banks, because they affect the objectives and tools at their disposal and also set out what exogenous and endogenous obstacles governments have in mobilizing the maximum available resources.

Several central banks have a strict price stability mandate under law, with little to no discretion to engage in employment creation. Numerous central banks around the world have formally adopted a policy of 'inflation-targeting' in which the central bank announces very low target inflation rates, without explicitly quantifying or taking into account the costs—in terms of lost employment and growth—of meeting these goals. Inflation-targeting is often justified in terms of improving accountability of the central bank, but without an allowance for greater transparency and participation in setting targets and conducting policy. The extent to which the mandate and practices of the central bank, a government institution, fail to address core human rights obligations is rarely considered. However, there is no reason why central banks should not be held accountable to the same human rights principles as other government agencies.

Foreign Exchange Reserves

To shield themselves against global shocks, many central banks in low-income countries hold reserves of foreign currency—which are called foreign exchange reserves. Foreign exchange reserves are typically denominated in a major international currency, such as the dollar or Euro. In recent decades, the rapid mobility of finance across international borders has increased the risks of financial crises. Short-term inflows of capital—to buy stocks, bonds, and other financial products—can quickly reverse themselves, putting pressure on a country's currency, its financial sector, and the domestic economy. In the event of this kind of rapid outflow of capital, a country can draw on its foreign reserves in order to protect its currency and to provide some insulation against the negative consequences of such a crisis. Many countries began to accumulate large stocks of foreign exchange after the East Asian financial crisis in 1997.

In many respects, these large stocks of foreign exchange reserves represent idle resources. There are real costs associated with diverting resources towards the accumulation of foreign exchange reserves, instead of being used to finance development.[25] From a human rights perspective, the accumulation of reserves could be justified in terms of insuring against a financial crisis which could lead to budget cuts that affect economic and social rights. However, it is important to question whether such safeguards could be secured in other ways, in which case idle reserves could be mobilized for the realization of rights, i.e., they would contribute to the maximum available resources. Explicit restrictions on short-term capital inflows and outflows, often called capital controls, represent one alternative to the accumulation of foreign reserves. By limiting the free movement of capital, particularly financial flows that are speculative in character, countries can open up space to pursue policies that facilitate the realization of basic rights.

Regulation of Financial Sector

Central banks can have a key regulatory role with respect to the financial sector, setting out the rules and incentives and determining how the financial sector channels and allocates its resources. By changing these rules, central banks in countries around the world can help mobilize financial resources and channel them to uses which support the realization of rights. For example, central banks could strengthen the regulator requirements on commercial banks which fail to extend a certain amount of credit to priority areas, for instance, housing, job-creating investments, or small-scale loans to the informal self-employed. Positive incentives could also be put in place. If banks are not lending because of perceived risk, government guarantees could be extended on ESR-priority areas. Public development banks could also be created, which could be more accountable and interested in facilitating investments which improve the public welfare. Governance problems, such as corruption and cronyism, can emerge and undermine the effectiveness of such institutions. However, the problem is not with the concept that public banks or financial regulations can be used to support human rights. Instead, the challenge is to design effective institutions for mobilizing and directing a country's financial resources to socially productive ends.

VII. Conclusion

This report has proposed various ways of clarifying, elaborating, and extending the concept of maximum available resources. In so doing, it has challenged the approach to maximum available resources which takes the broad policy parameters that determine the resources available to support economic and social rights as given. There are many ways that governments can access financial resources in order to support the principle of using the maximum available resources (MAR), as first introduced in the Covenant. The mobilization of resources extends to consideration of debt financing, monetary policy, financial reform, and taxation. The aim of this report is to introduce new ways of thinking about these issues.

The report highlighted numerous questions and issues which could be raised in the context of evaluating whether a state is using the maximum resources available for the fulfillment of economic and social rights. In most cases, the questions and issues are broad and represent a starting point for rethinking the concept of maximum available resources. A detailed application of these ideas requires taking into account specific economic, social, and political situations on a country-by-country basis. Nevertheless, the report has begun to lay the groundwork for a much more expansive consideration of what it means to use the maximum available resources to realize fundamental human rights.

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Endnotes

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3 See Article 4.2: "With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law."

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