

Episode 4: Maximum Available Resources

This episode focuses on the duty of states to use the maximum of their available resources to give effect to economic and social rights. This obligation is set out in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights. That Article makes clear that the full achievement of the economic and social rights under the Covenant will be limited by the resources available to the state.

The first question we'll consider here is: what are 'available resources'? The resources that people tend to focus on when talking about implementing economic and social rights are financial ones – i.e., money. However, the Committee on Economic, Social and Cultural Rights has made clear that the relevant 'resources' for the purpose of satisfying economic and social rights also include human, technological, organisational, natural and information resources.

Article 2(1) requires the identification and maximisation of existing and potential available resources. This should be done with the aim of using current and future resources to advance enjoyment of economic and social rights over time. We discussed this notion - the duty of progressive realisation - in episode 3.

The duty of governments to make use of their maximum available resources to guarantee economic and social rights has very important implications for budgets and public spending.

Article 2(1) refers to the real resources available to the State. As such, assessing whether a state is using the maximum of its available resources involves looking beyond current budgetary allocations; it requires the State to look at the opportunities it has to maximise resources through fiscal or economic policy more broadly. Using 'available resources' also

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extends beyond those resources over which the state has direct control, to include sources such as development aid available from the international community.

So, when we try to assess whether a state is using the maximum of its available resources to advance economic and social rights it often isn't just about assessing the size of the slice of the budget cake that is dedicated to economic and social rights. Rather, it may involve assessing – and critiquing – the size of the budget cake as a whole.

How does this work in practice? Well, let's look at a concrete example of how the UN Committee on Economic, Social and Cultural Rights has addressed this issue. In its 2016 concluding observations on the UK's implementation of the Covenant, the Committee directly addressed national fiscal policy when considering whether the UK was giving effect to its duty to mobilise the maximum available resources for the implementation of economic and social rights. The Committee expressed concern about the potential impact of changes to UK fiscal policy, such as inheritance tax, value added tax and corporate tax. The Committee was worried that these changes might adversely affect the ability of the UK government to address persistent social inequality, as well as to collect sufficient resources to achieve the full realisation of Covenant rights.

The Committee also expressed concern that financial secrecy legislation and permissive rules on corporate tax were affecting the ability of the UK – as well as other countries - to meet its obligation to mobilise the maximum available resources in terms of Article 2(1).

The Committee made a number of recommendations focused on these issues. First, that the UK should conduct a human rights impact assessment of the recent changes introduced to its fiscal policy. This should include an analysis of the distributional consequences of that

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policy in terms of income and the tax burden of different income sectors and marginalised and disadvantaged groups. The Committee also recommended that the UK ensure that its fiscal policy was adequate, progressive and socially equitable. It further said that the UK should improve tax collection so as to increase resources available for giving effect to Covenant rights. Finally, the Committee recommended that the UK take strict measures to tackle tax abuse.

Moving to budget allocations and public spending, the maximum available resources obligation requires that resources must be sufficient for economic and social rights achievement; in other words, there must be enough money allocated to, for example, social security to guarantee progressive realisation of the right to social security. The duty also requires that resources must be used efficiently. It's very important to note that a human rights understanding of efficiency goes beyond traditional economic concepts of efficiency, being centred on human dignity and requiring States to channel funding in terms of need.

For a state to prove it is using its maximum available resources, funding allocated to economic and social rights must be used for that purpose and not diverted to other areas. An example of such diversion is where budgets allocated for economic and social rights-related goods and services are reduced to cover increased expenditure in another area – for instance, defence. Another example is where a government allocates capital funding for the construction and refurbishment of school buildings – something that should further the right to education. But the money is not spent within the time required and it gets sucked back into the 'general' budget and is thus lost to education. In that instance the State duty to make use of its maximum available resources to realise economic and social rights is not

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satisfied. Finally, failure by a government to tackle corruption is also a failure to comply with the obligation to use the maximum of available. This is because funds that have been diverted or misused are wasted funds.

Of course, budgets and resources don't just manage themselves. Given that, it's appropriate to finish this episode saying that, funding must be allocated towards smooth administration and management of allocated resources. So where, for instance, budget decision-making functions are delegated to local authorities, then funding must be provided for training and oversight systems to ensure that those given the job of administering those resources are actually able to do so effectively.