

The Justice Gap and the Budget Black Hole

PROMOTING JUSTICE FOR ALL
THROUGH BUDGET-BASED WORK



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This policy brief was prepared by Gustavo Maurino and commissioned by Pathfinders for Peaceful, Just and Inclusive Societies, based at the Center on International Cooperation at New York University.

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5.1 billion people—two thirds of the world’s population—lack meaningful access to justice. To achieve SDG16+ and deliver equal access to justice for all by 2030, we need to put people at the center of justice systems and move from words and planning to action and implementation.

About Pathfinders Grand Challenge on Justice

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The Pathfinders’ Grand Challenge on Justice acts as an impact hub, convening countries, civil society, and multilateral and regional organizations to close the justice gap by accelerating action on people-centered justice. The Grand Challenge provides a platform to exchange innovative practices on data collection, evidence-based policy making, and effective use of resources to bridge silos and transform justice systems in preventing and resolving people’s common justice problems.

The Grand Challenge is an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, a cross-regional impact hub of 46 member states, as well as partners across international organizations, civil society, and the private sector committed to advancing the Sustainable Development Goal targets for peace, justice, inclusion, and equality (SDG16+). The Pathfinders is hosted at New York University’s Center on International Cooperation.

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Executive Summary

The field of justice lags behind other sectors in linking fiscal and budget policies to the achievement of people-centered objectives because people assume the challenge to be primarily legal, and assessments are not often informed by fiscal costs, resources, and impact. This policy brief looks at how **access to justice for all will remain elusive** unless justice experts begin to evaluate and address the fiscal dimensions of the justice gap.

In most countries, **data on public and private investment in justice services is limited**. Many countries do not have information on the levels of investment nor on the effectiveness of investment. Others assess only investment in traditional, formal justice institutions, which tackle just a small proportion of people's justice problems.

In the human rights and other fields, recognition has also grown in recent years that budgets are not just technical **matters**, but determinants of whose needs are prioritized and attended to. Budgets **reflect political choices and priorities** and lie at the center of democratic governance and accountability.

This has led to a **democratization of budgetary processes**, with people increasingly participating in the process—demanding greater transparency and accountability from those responsible for budget design and execution.

Further, this brief looks at how **results-based budgeting models and performance-oriented budgets** have been the most important developments in connecting budgets to substantive social justice agendas. Justice experts can learn from successful budgeting models implemented in other areas, including human rights budgeting, gender budgeting, equality and well-being budgeting, and green budgeting.

Opening up justice budgeting and ensuring that it responds more effectively to people's needs will require a comprehensive assessment of the social costs of unmet justice needs; the cost of services currently deployed; the potential costs of alternative interventions; and the impact of investment on the justice outcomes people need and want.

Finally, this brief examines the importance of considering not only the institutional but the **functional role of justice budgets in affecting social outcomes**. This will require expanding the traditional conception of what constitutes justice services beyond formal courts and lawyers; basing investment decisions on evidence of what works to meet people's justice needs; rebalancing investment to assist hitherto neglected communities and population groups; and considering the role of other sectors and of non-state actors in promoting or denying justice.

*IT IS CRITICAL THAT THE JUSTICE
SECTOR MAKES THE CASE FOR
INVESTMENT IN JUSTICE AS A
KEY TO ACHIEVING SUSTAINABLE
DEVELOPMENT*

1 Introduction

More than five billion people around the world lack meaningful access to justice. Even before the economic crises that have hit many countries in recent years, most countries were struggling to meet people's growing justice needs.¹ Now, with even tighter finances as the world faces a cost-of-living crisis, it is even more important to make the case for investment in justice as a key to achieving sustainable development.

Budget-based work can help justice experts in government and civil society evaluate the fiscal dimensions of the justice gap. It can give them the necessary tools to measure and enhance the performance and impact of public policies in the field. Furthermore, it can assist policymakers in designing long-term transformative initiatives for the justice sector that will accelerate the achievement of justice for all.

The best practices that have emerged in fiscal and budget policies—as well as research and activism based on budget data and analysis—have demonstrated the links between the fiscal and budgetary dimensions of public policies and the evolution of social justice goals in several fields. **This paper discusses what it would mean in practical terms to take the first steps towards incorporating budget-based approaches and tools into access to justice work.**

2 Budgets for Justice: The knowledge gap

The justice gap is fundamentally a public investment gap, both in terms of how much is invested in justice and what it is invested in. The structural reforms needed to achieve justice for all can only be implemented with a sustained transformation in the quantity and quality of the investment dedicated to its challenges.

Although the need for such investment is widely recognized, there is a lack of established practices and tools to evaluate the costs and benefits of public investment in services that are consistent with a people-centered justice perspective.² No country possesses detailed knowledge of how much is actually invested in providing for people's justice needs, types of services, types of needs needs—and with what levels of effectiveness and results.³

3 Convergence Between Social Justice Agendas and Budgets

In general, the only consistent information produced on a regular basis in connection to the justice sector relates to formal justice institutions and the management of their formal processes.⁴ However, global evidence reveals that these institutions and procedures manage less than 25 percent of the needs and justice problems of the population.⁵ Data on investment in tackling the remaining 75 percent of problems are largely absent, along with data on the impact of investment across the justice sector.

The second half of the twentieth century consolidated the paradigm of human rights, democracy, and the rule of law as axes of hope for progress towards political and social equality. Initially, however, the agendas of social progress were separated from general questions of fiscal policy and in particular, of budgetary policy.

4 Democratizing Budgets

This disconnect has been radically transformed in recent decades, as it has become evident that the effectiveness of human rights approaches and their capacity to activate development and promote the dignity of all citizens critically depend on the consistent commitment of states to deploy goods, services, and institutions with fair and egalitarian mechanisms that protect and respect them.

Public finance management, budgetary policy, and the execution of budget cycles are increasingly recognized as political choices. They are a central element of democratic governance and accountability. The budget is not just about a set of macroeconomic assumptions and a revenues and expenditures account; it is about which rights will or will not be prioritized among various public interests and preferences, which social gaps will be closed or widened, and how far a given political community is or is not advancing towards a life of dignity.

Until recently, the execution and monitoring of budget policies have often been disconnected from the fundamentals of democratic governance. They have either been hidden in the jargon, spreadsheets, and exclusive procedures of the technocracy at finance ministries, or filed away without anyone paying attention to them in the legislatures or in various technical bodies.

Only towards the end of the last century did civic participation in budget policies begin to occupy a place on the global agenda, starting with novel initiatives such as participatory budgeting, which opened some areas of budget decision-making to the participation and voice of affected communities.

This incipient movement to connect budget decisions with the people has deepened in this century, as a consensus has grown about the value of budget management both for institutional legitimacy and as a kind of public contract between the authorities and the public.⁶

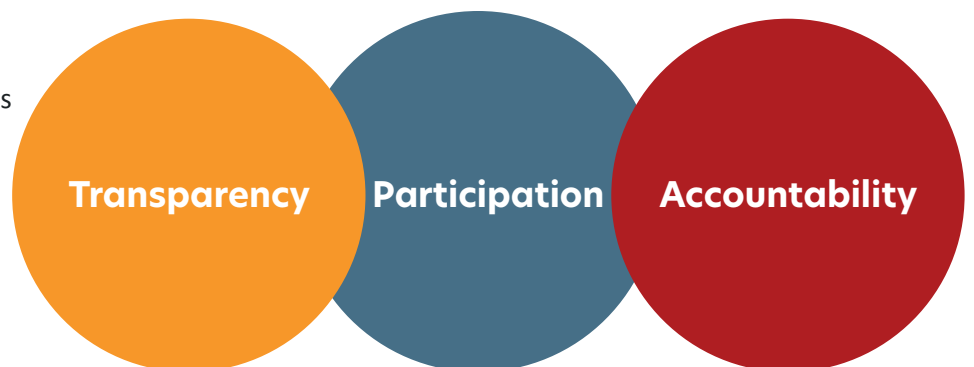
This gave rise to the Open Budgets paradigm, which emphasizes the importance of transparent information, public participation, and accountability. In this paradigm of budget democratization, all processes and information related to budget policy must be available to the public.⁷

In the last decade, the Open Government Partnership (OGP) has promoted and advocated for the adoption of national commitments to open fiscal and budget information, as a critical element in strengthening relations between the state and citizens in a manner consistent with the ideals of the rule of law and democratic accountability and participation. International organizations including the International Monetary Fund (IMF)⁸ and the Organization for Economic Co-operation and Development (OECD⁹) have also developed standards and consensus on good practices related to budget openness. A comprehensive and long-established matrix of budget openness dimensions and indicators can be found in the Open Budget Survey,¹⁰ which has been implemented by the International Budget Partnership since 2006 and has already produced seven global rounds of evaluation.

The three key dimensions of budget openness are transparency, participation, and accountability. They are mutually supportive and reinforcing. None of these dimensions can be activated effectively or strengthened without the activation and strengthening of the others.

There is a correlation between levels of economic and institutional development and levels of budget

Figure 1: Three key dimensions of budget openness



openness and transparency.¹¹

The twenty countries with the best indicators are made up of upper-middle-income countries and have functional democratic systems, while the bottom twenty are made up of countries that significantly lack one or both of these dimensions.

5 Putting People at the Center of the Budget

Putting people at the center of fiscal and budgetary policy relies on policy being designed, implemented, and evaluated in a way that responds to their needs. From this perspective, the budget increasingly becomes an instrument for managing and responding to people's priorities, instead of a technical device for financial management.

The most important developments in connecting budgets to substantive agendas for social justice and equality goals come from **results-based budgeting models**¹² and **performance-oriented budgets**.¹³

Performance budgeting is the utilization of performance information for the purposes of allocating or re-allocating public resources (e.g., linking an increment or reduction of funding to an increment or reduction of outputs or other results).¹⁴ The value of this new paradigm consists in providing a functional framework for budgetary decision-making based on publicly-stated priorities and goals.¹⁵ Its focus is on concrete impacts of the goods, services, and activities provided by the state, and it provides indicators, data and objective mechanisms to evaluate the effectiveness of public investment in relation to the forecasts adopted at the time of budget formulation.

6 Budgeting for Social Change: Examples for a new paradigm

There are already examples of success in linking social agendas more closely to budgeting. All these practices share a series of valuable elements that can be replicated in other fields. They are based on a public commitment, at the highest political level, to integrate the institutional management of budget policy with standards, principles, goals, and indicators associated with progress towards social justice. They rely on institutionalized practices of openness and information transparency, production of specially designed budget data and indicators, participatory opportunities, and accountability to civil society over the performance and

Figure 2: Key elements for linking social agendas to budgets



results of budget management. And they adopt a perspective of progressive refinement, adjustment, and evolution, which takes into account the lessons learned, strengths and weaknesses of the process, and allows the initiative to be strengthened both in its processes and substance.

The following section includes examples of budgeting for social change.

6.1 Human rights budgeting

The understanding of the content of human rights as a bundle of powers associated with various levels of state duties and obligations led to the recognition of the fundamental relationship between rights and public institutions, investments, and actions and, therefore, of their direct connection with fiscal policy and public budgets.¹⁶

Some of the most widespread tools and practices through which this connection has been developed are:

- **Budget-based principles and standards for assessing human rights obligations:** A series of standards have been developed regarding fiscal and budgetary policies in relation to human rights commitments, which guide public decisions on fiscal and budgetary policy, as well as helping to analyze, evaluate, and activate social mobilization towards effective human rights commitments.
- **Budget-based indicators for monitoring progress in human rights realization:** Fiscal and budgetary indicators have been developed for the evaluation of performance and progress in the fulfillment of human rights obligations. These highlight the levels of public investment in services that are needed to progress in the realization of rights.
- **Budget-based monitoring and evaluation tools for comprehensive human rights assessment of economic policies and investments:** Various models and practices have been developed aimed at highlighting general trends in states' performance on human rights. Some of the most comprehensive and sophisticated examples include analysis of the practices and results of fiscal and budgetary dimensions of public policies that have human rights impact.

6.2. Gender budgeting

The most developed and widespread of the practices that aim to make the budget an institutional public policy tool to promote more just and inclusive societies is that of gender budgeting. In its almost four decades of evolution, this has shown enormous transformative potential.

Gender budgeting puts the gender gap at the center of discussions regarding the allocation of public resources, sheds light on the biases that have traditionally been present in this field and provides tools to calibrate the impacts of fiscal and budgetary decisions on the structural situation of women. As outlined in the OECD Gender Budgeting Framework, among the tools typically used in the field of gender budgeting are the following:

- **Gender impact assessments:** Analysis of the gender impact on existing or new fiscal and budget measures and policies.
- **Gender dimension in performance setting:** Identifying gender equality indicators and objectives as part of the performance budgeting framework, which ties budgets to expected outcomes.
- **Gender budget statement:** Producing a comprehensive public summary or report of how budget measures are intended to support gender equality priorities.
- **Gender budget tagging:** Directing specific resources to fund programs and activities that support gender equality objectives, and tracking them throughout all the budget cycle.

- Gender perspective in evaluation and performance audit: Identifying whether gender goals relating to different policies and programs were achieved.
- Gender perspective in spending review: Ensuring spending reprioritization has a positive impact on gender equality goals.

6.3. Equality and well-being budgeting

In the last decade, some countries have attempted to incorporate their budgetary policies into explicit commitments to advance social equality. They have institutionalized public participation in budget design, implementation, and evaluation within a performance budgeting framework, which ties budgets to specific objectives related to equality and well-being.

The newest and most ambitious budget endeavor oriented towards social justice goals can be found in New Zealand, where the practice of well-being budgeting was introduced in 2019. Budget policies and decisions are made and evaluated in terms of their contribution to realizing well-being goals, working across government to assess, develop, and implement policies that improve well-being.

Canada has begun work on a similar initiative, which seeks to generate the evidence and data necessary for linking the budget policy with social welfare. Ireland and Scotland have also been pioneers in including the perspective of equality at the core of their budgetary policies.

6.4. Green budgeting

So-called “green budgeting” approaches—and more comprehensively, environmentally responsive budgeting—identify and evaluate the environmental impacts of general budgetary and fiscal policies, especially those related to programs or policies where climate or environmental implications are not usually taken into consideration.

Although these initiatives are in the early stages of development and have been tried mainly in developed countries with a strong tradition of environmental commitment, initial steps are promising in terms of developing budget-based tools for enhancing the scope of environmental accountability.

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7 Key Elements of a Budget for Access to Justice for All

It is time to open the justice budget, to understand how current investment in access to justice works—its trends, priorities, and results—as well as the relevant transformations that can impact the justice gap. A growing number of investigations related to the impact and costs of justice services have proven the evidentiary value of these methodologies and mark a promising path to strengthen the urgent case for justice for all.

7.1 Costs

First, to the extent that the justice gap is also a public investment gap, the proper determination of its size and scope requires a comprehensive identification and calibration of:

- **Social costs** associated with situations of unmet justice needs, and
- **Actual cost** borne by the state and by individuals of the services that are currently being deployed, as well as the **potential costs of alternative or additional initiatives** that could be deployed to address justice needs more effectively.

In recent years some innovative experiences have been developed in this regard.¹⁸ One has consisted in weighing the individual and social costs associated both with justice needs that are not met and with the management of those needs that are covered by justice services.¹⁹ Until now, most research in this area has focused on costing exercises applied to traditional and formal justice services.²⁰ However, the value of such studies will increase as costing exercises encompass the entire range of justice services and adequately weigh their effectiveness—one such example includes an innovative recent study that measures the costs per case attended to by dispute resolution services for communities and individuals that include customary and informal justice mechanisms.²¹

There is a long way to go to develop and implement adequate analysis tools regarding the impact of investment in justice in relation to social needs.²² However, it has been possible to estimate the level of investment in basic justice services for communities, especially in low- and middle-income countries.²³ This kind of study is a foundation for an open global conversation that focuses on concrete commitments to reduce the fiscal dimension of the justice gap.

7.2 Resources

It is difficult in most countries to precisely establish the volume of public resources allocated to justice services, how these allocations are distributed, to what extent they are effectively applied during the budget cycle, how they evolve over time, and the evidence and priorities that underlie them. How justice spending is classified also varies by country—the activities of many other parts of government (for example, housing, immigration, or the environment) affect and are affected by justice, but these are not always regarded as part of investment in justice.

The lack of budget transparency in most countries creates significant obstacles to expanding knowledge of resource allocation. In the justice sector (as in others), the difference between resources programmed, allocated, and executed tends to be especially significant in states with economic difficulties, weak institutional capacities, and underdeveloped accountability dynamics. This makes it difficult to assess the effective levels of financial commitment to the justice agenda.

A meticulous consideration of investment in justice requires that the fiscal impact resulting from exemptions, tax incentives, indirect tax burdens, inflationary adjustments, capital amortizations, fiscal costs, and savings resulting from delays in the application of resources during the budget cycle be adequately weighed.²⁴

7.3 Outcomes and impact

Consideration of the levels of investment in justice services is only meaningful insofar as it allows us to measure the results it produces. The best budget analysis and programming practices incorporate consideration of the outcomes associated with the goods and services that the application of public resources produce. However, these elements are often absent in budget discussions, definitions, analysis, and evaluations related to access to justice.

The typical performance and result variables for budget investment in the justice sector consist of tracking the total portfolio of cases or mediations handled, or of sentences handed down in a certain period by courts and so on. This approach discourages a focus on the outcomes people need and want. There are many justice services (in the broad sense), located both within and outside the traditional structure of the justice sector, whose activities are not formalized in traditional judicial or administrative procedures, and which lack administrative systems for recording, measuring, and weighing their scope and impact.

The most common example of this is that of legal information and literacy services. It is common for this type of activity to be treated as a collateral element, an externality of core operations. Budgetary definitions related to this broad field of services, as well as their monitoring and evaluation, generally lack any kind of support in performance and outcome indicators, and they are not identified as relevant components of access to justice.

Although the outcomes of investment in justice are a fundamental element in understanding how we deal with the justice gap (or fail to do so), **it is precisely in this area where the budget-based policies and analysis have the longest path of growth and development ahead.**

Conclusion

To integrate the perspective of people-centered access to justice into budget-based work and analysis, it will be important to consider not just the institutional role of the justice budget in affecting social outcomes and promoting development, but its functional role in providing services. **A service-oriented perspective requires expanding the traditional conception of what constitutes justice services.**

Cost-benefit studies applied to access to justice have typically been based on formal legal aid mechanisms,²⁵ especially in relation to judicial or mediation processes. However, the value of **different kinds of justice services**, conceived in a broader and more comprehensive way, has been revealed by numerous studies.²⁶

From a people-centered perspective, justice services also include, for example, programs that promote legal awareness, legal advice services, and interdisciplinary support to cope with the psychological, economic, or family stressors connected with justice needs, community dispute resolution mechanisms, and administrative services to provide people with the documentation they need to participate fully in society. These services can be provided by many different types of institutions—whether state or community, formal or informal, for-profit or not-for-profit. **Looking at the justice sector in this broader way radically changes the matrix of functions and roles that must be considered when connecting the budget and access to justice.**

A service-oriented perspective would encourage a rebalancing of budget allocations. Investment analysis and evaluation models would be built from evidence of “what works” to resolve the different dimensions of the justice gap, including for hitherto neglected communities.²⁷ Performance analysis, programming, and evaluation models would be designed based on evidence about unmet justice needs, and the type of services, functions, and roles that are effective in remedying them—rather than solely on the demands of traditional institutions.

The perspective of justice as services also implies that various activities, programs, and the public policies of ministries including ministries of equality, gender, environment, and others should be considered as part of the core of investment in justice. Although they are institutionally disconnected from ministries of justice and other traditional justice institutions, these other ministries often play key roles in delivering justice and preventing injustice.

In conclusion, linking justice work more closely to budgets is vital if sustainable progress towards justice for all is to be achieved. Budget-based work can help justice practitioners to identify the fiscal aspects of injustice, develop cost-effective and transformative responses, and evaluate and improve policies. This linking is more advanced in other fields than in the field of justice. It is time for the justice sector to catch up.

Endnotes

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