



# **Human Rights Budget Work:** What, Why, How?

## **Briefing Paper 5: Human Rights Standards and the Budget**

Published September 2019

*Human rights have been embodied in national, regional, and international laws. As such, they are an accepted basis, and in many cases a legal obligation, for government action. Choices made among options using this framework are not perceived as being the subjective wishes of one group, but as priorities agreed upon by a society as a whole.*

Ann Blyberg<sup>1</sup>

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### **About this document**

Welcome to the fifth of six papers that explain the “what, why and how” of using human rights to create and scrutinise Scotland’s national budget. A glossary of terms is provided in appendix 1.

### **What is the national budget?**

The national budget is the blueprint for how any government invests in its priorities and is its most important tool for managing the economy. The national budget should include:

- how much money government intends to raise (*revenue*);
- who and/or where the money comes from (*sources*);
- how money will be allocated (*allocation*); and
- how money has been spent (*expenditure*).

### **Why are human rights relevant to the budget?**

All governments must *respect, protect and fulfil* human rights. The way they generate, allocate and spend money play a key role in this. You can’t guarantee the right to vote if you don’t have an effective electoral system and you can’t guarantee the right to habitable, accessible, affordable and secure housing without well-regulated public and private housing sectors.

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<sup>1</sup> <https://www.internationalbudget.org/sectors-issues-demographic/human-rights/>

Understanding how a government manages public money also helps to sort the reality from the rhetoric about its commitment to rights. If the government has an obligation to do something specific then it must be reflected in the budget; it is not just something “nice to consider”. In line with human rights treaties, it is a legal obligation that binds all governments, regardless of who is in power.

Human rights budgeting recognises that budgetary decisions can have materially different outcomes for different groups. Government budgets are not always sensitive to this. In particular, the contributions that households, individuals (especially women) and communities make to the economy—by caring for people for example—are not always recognised because they are not bought and sold through the market. For this reason, it is not uncommon for budgets to reinforce systematic inequalities between groups—in particular between men and women—and miss out on opportunities to use public financing to improve the position of disadvantaged and marginalised groups.

Good rights based laws and policies can still result in unacceptable experiences of rights holders if they are not properly resourced. Taking human rights standards into account when developing the budget is not a magic bullet. It can, however, help us to ask the right questions to support effective, transparent, fair and accountable use of national resources.

### **What are human rights standards?**

In order to *respect, protect and fulfil* human rights, governments must take positive steps to ensure that people’s rights are real. Steps means concrete measures using the *maximum of their available resources*. These measures should:

- ensure “minimum essential levels” or a “*minimum core*” of each right;
- increase the availability, accessibility, acceptability and quality of goods and services; and

- *progressively realise* people's rights and reduce inequality as soon as possible.

Deliberately *retrogressive measures* are not allowed. Governments must fully justify the adoption of policies that decrease people's enjoyment of a right.

Steps taken by the government should:

- ensure the *active participation* of rights holders;
- respect the principles of transparency, accountability and non-discrimination; and
- fulfil an obligation to provide *effective remedies* if things go wrong.

➤ **Briefing Papers 5 and 6 in this series provide more information about human rights principles and standards.**

States who have signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) have freely undertaken international legal obligations to ensure the protection of the social, economic and cultural rights, including the right to an adequate standard of living, housing, healthcare, education and work for their citizens. Any country that is a signatory to ICESCR is mandated to:

*“take steps... 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”.*

Article 2(1) ICESCR

To support the practical application of the obligation to fulfil, a human rights standards have been interpreted from Article 2(1) of ICESCR. Some of these norms are expected to be achieved *progressively* (generally norms focused on

**results or outcomes**), but others are *immediate* (norms focused on **conduct or action**).

Specifically, the outcomes Governments must work towards include:

- ensuring the satisfaction of “minimum essential levels” or a “minimum core” of each right (**Minimum Core**),
- progressively achieve the full realisation of people’s rights – in other words this “minimum core” is not a ceiling of achievement, it is a basic floor of provision (**Progressive Realisation**),
- If a government takes a step that decreases people’s enjoyment of a right, it must “fully justify” it (**Non-retrogression**).

### **Minimum Core**

The government has a duty to ensure the satisfaction of “minimum essential levels” of each right, regardless of their level of economic development, commonly referred to as the ‘Minimum Core’. This minimum core is intended to protect a person’s right to an adequate standard of living, which is interconnected and interdependent on other rights including the rights to health, social security, education, work and housing. The minimum core is intended to ensure that a person can live with human dignity. Failure for a government to provide the minimum core amounts to a presumption that a government is in violation of the Covenant. This is unless a government can demonstrate that “*every effort has been made to use all resources that are at its disposition*” to prioritise reaching those minimum levels.

On exploring how to define “minimum core” obligations in Scotland, Flegg noted that: “*despite ‘minimum core’ obligations being well established in international law and related academic literature as being binding on State parties, what this means in practice is not always clear*”.<sup>2</sup> Guidance is provided

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<sup>2</sup> Flegg, A. 2018: Defining Minimum Core Obligations for Human Rights Budget Analysis in Scotland, SHRC: Edinburgh.

by the UN Committee on Economic Social and Cultural Rights on what would be necessary to meet the minimum threshold in relation to certain rights through the issuing of General Comments (e.g. relation to an adequate standard of living and the rights to housing and education<sup>3</sup>).

General Comment 3, however, makes clear that *“each State party must decide for itself which means are the most appropriate under the circumstances”*.<sup>4</sup> For a government to develop an appropriate ‘minimum core’, good practice would encourage a national discussion with genuine opportunities for rights-holder, particularly the most marginalised, to reach a consensus over where the red lines should lie, below which no one could be considered to be able to live a life of human dignity. Critically, whatever is agreed by such a process, must

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<sup>3</sup> For example see: Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003). Committee on Economic, Social and Cultural Rights, 'General Comment No. 4: The Right to Adequate Housing' (13 December 1991) UN Doc E/1992/23 para 7. Committee on Economic, Social and Cultural Rights, 'General Comment No. 14, The right to the highest attainable standard of health' U.N.Doc.E/C.12/2000/4 (2000) paragraph 43. Committee on Economic Social and Cultural Rights, 'General Comment No. 4, The Right to Adequate Housing' U.N. Doc. E/1992 /23 annex III at 114 (1991) paragraph 13. See also the Committee on Economic, Social and Cultural Rights, 'Consideration of Reports Submitted By States Parties under Article 16 and 17 of the Covenant' U.N.Doc.E/C.12/GBR/CO/5 (2009).

<sup>4</sup> Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003).

not be considered as a ceiling of achievement, but rather it is a basic floor of provision upon which a government must build.

### **Progressive realisation**

When considering how to apply this obligation practically in relation to budgeting, this can take many forms. What is key to understand is that progressive realisation is not an option or a duty that can be delayed. It is an ongoing obligation on governments, independent from economic growth, which requires that a government makes the best use of its maximum available resources. Governments must prove that they are making every effort to progress economic, social and cultural rights with their available resources.

Evidence that the principle of progressive realisation has been applied to the budget occurs when a government takes positive measures or steps that further develop preceding efforts. Applying the principle of progressive realisation within the budget can involve a range of different activities, including:

- direct funding,
- application of other resources,
- introducing new programmes,
- reducing restrictions on certain entitlements/programmes, or
- changing policy direction to strengthen the rights of marginalised groups.<sup>5</sup>

### **Non-retrogression**

Whilst 'Progressive realisation' obliges governments to move as efficiently and expeditiously as possible towards the full realisation of economic, social and cultural rights. On the contrary, governments have an obligation to refrain from taking **deliberately retrogressive** measures. Any policies adopted that decrease people's enjoyment of a right must be:

- Temporary

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<sup>5</sup>[https://www.flac.ie/download/pdf/flac\\_briefing\\_on\\_human\\_rights\\_approach\\_to\\_budgeting.pdf](https://www.flac.ie/download/pdf/flac_briefing_on_human_rights_approach_to_budgeting.pdf)

- Necessary and proportionate (other options more detrimental)
- Not discriminatory and mitigate inequalities
- Ensure the protection of minimum core content of rights
- Considers all other options, including financial alternatives.

Therefore, when developing their budget a government must ensure that any and all proposals comply with the principle of non-retrogression. This final bullet point obliges governments to explore revenue-raising alternatives prior to making any cuts that would (directly or indirectly) affect the enjoyment of rights. This includes cuts within the public sector, including the provision of public services or delivery of social security, which has significant and clear implications for budgeting.

To achieve these outcomes, governments must “take steps”. i.e. it must take action. These include legislative, administrative, budgetary, judicial, social and educational measures. In particular, “steps taken” by the Government should:

- use the *maximum of their available resources* to realise rights  
**(Maximum Available Resources),**
- increase the **availability, accessibility, acceptability and quality** of goods and services and address **non-discrimination and equality**.

### **Assessing the rights: Are they Available, Acceptable, Accessible and Quality (AAAQ)?**

It’s not enough for a government just to say they will take steps or action, they must also have to do what they say they are going to do effectively, which includes sufficient resourcing. International human rights discourse analysing the way in which effectiveness can be unpacked has developed within these four criteria, which are often abbreviated as AAAQ.

The idea is that the goods and services that are necessary for the realisation of rights should be increasingly available, accessible, acceptable and of quality. These are really useful indicators to benchmark progress against and a lot of international work has already been done on this, especially by the Office of



the High Commissioner for Human Rights<sup>6</sup>. When considering applying the AAAQ criteria to budgets, it is useful to think of the following:

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

Having determined what relevant infrastructure, goods and services are required and what would be considered sufficient quantity - what resources would be necessary to make these available? This must then be reflected within the budget priorities.

**Accessible:** Infrastructure, goods and services must be physically, economically accessible without discrimination and people must have access to information.

For accessibility to be universal, this may require certain infrastructure, goods and services to be tailored to specific groups. For example, housing should be accessible to everyone without discrimination. Priority should be given to the most marginalised including homeless people and those who are inadequately housed, and special measures should be taken to ensure adequate housing for people with disabilities, older people, those living in areas vulnerable to natural disasters and others who require them. Therefore budgetary decisions that affect these priorities can make rights more or less accessible to people in relation to restrictions within law, policy and/or in terms of finance.

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<sup>6</sup> For example see:

<https://www.humanrights.dk/files/media/dokumenter/udgivelser/aaq/aaq-international-indicators-2014.pdf> ; <https://www.who.int/gender-equity-rights/knowledge/aaq-infographic/en/> ;  
<http://phrtoolkits.org/toolkits/medical-professionalism/the-human-rights-basis-for-professionalism-in-health-care/aaq-framework/> ;  
[http://www.healthscotland.scot/media/1276/human-rights-and-the-right-to-health\\_dec2016\\_english.pdf](http://www.healthscotland.scot/media/1276/human-rights-and-the-right-to-health_dec2016_english.pdf)

Accessibility of goods and services may also require appropriately trained civil servants - Implementing budgetary decisions therefore may also have cost and resource implications which requires consideration if rights are to be accessible in practice.

Accessibility is also about affordability. Therefore, in developing the budget a key question to ask is whether any decisions taken will make access to a right more or less affordable? If, for example, a government introduced fees, or raised an income qualification threshold for access to legal aid, one must ask if this would create a financial obstacle to enjoying a right? If the answer is yes, then it must be concluded that the right is not affordable for all.

If this is the case, certain groups may also be disproportionately affected by the same measure. Given that the right to non-discrimination (de jure or de facto)<sup>7</sup> is non-derogable, i.e. it is not allowed to be suspended or limited for any reason, budgetary decisions must be scrutinised **before** implementation to ensure a state is not in violation of this principle.

Where cost could present a barrier, it may be that forms of tax relief or exemptions from fees could increase affordability for people with limited resources. However, implementing a system with caveats requires a well-informed delivery service which requires staff training, information and guidance – all of which must also be provided for when the government is making budgetary decisions to safeguard human rights.

**Acceptability and Adaptability:** Infrastructure, goods and services must be culturally and socially acceptable, **sensitive to marginalised groups** and

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<sup>7</sup> The state has an obligation to eliminate **de jure** (in law) discrimination by abolishing “**without delay**” any discriminatory laws, regulations and practices. **De facto** (in fact) discrimination, occurring as a result of the unequal enjoyment of rights, should be ended “**as speedily as possible**”.

adapted to the local context. This criteria **plays a particular role with regard to non-discrimination and equality.**

From a budgetary planning perspective questions must therefore be asked about what adaptations to policies or programmes may be required in order that they are acceptable to all. Some examples could include:

- budget proposals taking into account the provision of teaching assistants for children and young people with additional requirements to facilitate their right to education;
- educational provisions on family planning may require tailoring to meet the specific needs of communities and individuals for example young women and girls; women and girls from diverse ethnic minorities; or women and girls with disabilities;
- local authority/municipality housing and planning departments need to take into account the cultural requirements of accommodation suitable for Gypsy /Travellers.

Taking a human rights based approach supports and challenges those making budgetary decisions on the delivery of goods and services, to ensure that they are acceptable by all, not a one-size-fits all.

**Quality:** Infrastructure, goods and services must be appropriate and adequate in standard and safety. Quality also extends to the way in which people are treated e.g., with dignity and respect.

When exploring quality and adequacy in relation to the budget it helps to define exactly what is meant. Defining 'adequacy and quality' of provision will depend on the situation of a given country. Exploring a range of issues, including the following can help to understand country-specific elements of "adequacy":

- Fiscal and other resources (human, natural, technological, etc.)
- Empowerment – has a budget been allocated to ensure that people have access to information about the existence or extension of a right?

- Does a budgetary measure require legislation?
- Have any new policies been introduced or removed by legislation on a particular right?
- For any new policy and practice, have sufficient budgetary provisions been allocated for the training of the staff whose job it will be to ensure the right is protected and enjoyed?

When considering each of these issues, posing the question “is it adequate?” will help to provide an answer as to whether the proposed measure is compliant with human rights.

### **Maximum Available Resources**

In her report to the United Nations, the then UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, stated that:

*States must devote the “maximum available resources” to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible, even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors. This principle should guide the State’s decisions and priorities in generating, mobilizing and allocating resources in order to permit the realization of human rights.<sup>8</sup>*

States are granted a ‘wide measure of discretion’ to determine the resources to be set aside to promote the realisation of rights. Nevertheless, ‘due priority’ should be given to the realisation of rights in allocating resources and resources should be allocated in a way that is ‘equitable and effective’.

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<sup>8</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, pg7 Available online at [http://www.justiciafiscal.org/wp-content/uploads/2014/06/A\\_HRC\\_26\\_28\\_ENG.pdf](http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf)

Designing a budget which complies with a government's human rights obligations is not just about how existing resources are allocated, it is also about what effort has been made to generate additional resources and if those efforts are adequate and equitable? A key area of focus when a government is exploring whether it has maximised its available resources is the country's system of taxation. Further, if a government has not spent all allocated funds in a way that is inefficient or wasteful then it has not made full use of maximum available funds.

As explored in more detail in HRBW Paper 5, in designing the budget the government must also be guided by a series of procedural principles to ensure steps taken, are done so with the active **participation** of rights holders and respect the principles of **transparency** and **accountability**. Governments are also obliged to provide **effective remedies** if things go wrong.

### **How to apply human rights standards to the budget?**

To better understand how human rights standards relate to the budget, it is helpful to think of two complementary types of work: human rights budgeting and human rights budget analysis. Human rights standards apply in both in slightly different ways.

**Human rights budgeting** means taking decisions about the budget that reflect human rights standards, through a process that reflects human rights principles. In other words, budgetary decisions should be informed by human rights standards. Before the development of the budget comes the development of laws, regulations, policies and plans that are shaped by human rights norms. The norms draw on the content of the specific rights and help to identify what a government needs to prioritise its spending on (minimum core & non-discrimination) and work towards achieving (progressive realisation & non-retrogression).

**Human rights budget analysis** is where we then scrutinise the public budget to assess a government's compliance with its human rights obligations through its budgetary decisions. Did the government make transparent, participative and accountable decisions? Did the government maximise its

available resources, develop its budget allocations and spend them based on its human rights obligations, an assessment of its existing human rights compliance and recommendations for improvement?

To both support the processes of budgeting and budget scrutiny, it helps to translate the norms and principles outlined above into a series of normative questions. The table below sets out questions based on the standards relevant to resource generation, allocation and spend.

**Table 1: Assessing Budgets Against Norms**

	Generation	Allocation	Spending
<b>Minimum Core</b>	Is sufficient revenue generated to invest in realising basic levels of rights for all?	Do allocations prioritise the achievement of basic levels of rights for all?	Do financial management systems ensure efficient management of funds allocated?
<b>Non-Discrimination</b>	Who are resources generated from? Are particular groups unjustly impacted?	Do allocations prioritise closing the gaps in human rights enjoyment between different groups?	Have funds been redirected in a way that disproportionately impacts particular groups?
<b>Progressive realisation and non-retrogression</b>	Is (or could) government revenue increase?	Are allocations growing or shrinking? Are reductions justified (in human rights terms)?	Have financial management systems improved or weakened over time?

Source: [SHRC Masterclass Presentation Slides](#)

- **Briefing Papers 3 and 4 provide more information about human rights budgeting and scrutiny.**

### **Why is human rights budget work important for Scotland?**

In 2014 the Scottish Government made a commitment to explore human rights budgeting, although with limited action at the time. However, since 2017 several key activities have acted as a catalyst for developing work on human rights budgeting:

- [The Budget Process Review Group](#)<sup>9</sup>
- [Scottish Human Rights Commission EU funded project on human rights budget work](#)<sup>10</sup>
- [Scottish Parliament's Equality and Human Rights Committee Inquiry into Human Rights](#)<sup>11</sup>
- Increased remit of the [Equality Budget Advisory Group](#)<sup>12</sup> to include human rights budgeting
- [Scotland's Revised National Performance Framework](#)<sup>13</sup>
- [Scottish Government Open Government Action Plan 2018-20](#)<sup>14</sup>
- [First Ministers Advisory Group on Human Rights Leadership](#)<sup>15</sup>

There is renewed interest in budget scrutiny in Scotland because of increased fiscal powers and responsibilities devolved to the Scottish Government through

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<sup>9</sup> Ibid.

<sup>10</sup> <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

<sup>11</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/106453.aspx>

<sup>12</sup> <https://www.gov.scot/groups/equality-budget-advisory-group/>

<sup>13</sup> <https://nationalperformance.gov.scot/national-outcomes>

<sup>14</sup> <https://www2.gov.scot/Resource/0054/00546407.pdf>

<sup>15</sup> <https://humanrightsleadership.scot/>

the Scotland Acts 2012<sup>16</sup> and 2016<sup>17</sup>. There is also a commitment to ensuring that Brexit does not harm current human rights protections and that we remain in step with future advances in EU human rights, as well as growing interest in furthering economic, social, cultural and environmental rights<sup>18</sup>.

If the Scottish Government uses its human rights obligations to provide the framework for its Programme for Government, policy and budgets can be based on progressive rights realisation. This will make Scotland more fair, transparent and accountable for decisions on revenue generation, allocation and spend and more likely that those decisions will get it right for the most vulnerable and marginalised.

- **Briefing Paper 2 provides more information about the Scottish context for human rights budget work.**

### **The HRBW series**

The briefing papers in this series are:

- 1: Human Rights Budget Work
- 2: Human Rights Budget Work in Scotland: Why Here, Why Now
- 3: Human Rights Budgeting
- 4: Human Rights Budget Scrutiny
- 5: Human Rights Standards and the Budget
- 6: Budget Process and Human Rights Principles

A collected set of all briefing papers is also available.

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<sup>16</sup> <http://www.legislation.gov.uk/ukpga/2012/11/section/25/enacted>

<sup>17</sup> <http://www.legislation.gov.uk/ukpga/2016/11/contents>

<sup>18</sup> Currently the HRA 1998 together with the Scotland Act, protect the rights that are contained in the European Convention on Human Rights in Scotland's own laws. The rights in the HRA are predominantly civil and political rights.



## About the HRBW Project

Following a short-term grant from the European Union in 2018, the Scottish Human Rights Commission began a [programme of ongoing work](#)<sup>19</sup> to better understand and support wider scrutiny of public spending decisions including budget through a human rights lens. The work has so far:

- developed three process indicators to support scrutiny of national and local council budget processes;
- organised [capacity building activities](#)<sup>20</sup> on human rights [budget scrutiny](#);<sup>21</sup>
- engaged in scrutiny of [national tax reform](#);<sup>22</sup>
- and produced this publication series on the ‘What, Why How of Human Rights Budget Work’.

The Commission also cooperates with academia on a collaborative PhD on Minimum core obligations in Scotland.

This programme is supported by a Human Rights Budgeting Working Group which drives and supports this work programme. Members of this group include:

- [Dr. Alison Hosie](#), Research Officer, Scottish Human Rights Commission
- [Allison Corkery](#), Director, Rights Claiming and Accountability Program, The Center for Economic and Social Rights

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<sup>19</sup> <http://www.scottishhumanrights.com/economic-social-cultural-rights/human-rights-budget-work/>

<sup>20</sup> <http://www.scottishhumanrights.com/media/1776/human-rights-budgeting-project-masterclass-presentation.pdf>

<sup>21</sup> <http://www.scottishhumanrights.com/media/1842/human-rights-budgeting-150319-presentation-whole.pdf>

<sup>22</sup> <http://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx>

- [Dr. Angela O'Hagan](#), Senior Lecturer in Social and Public Policy, Glasgow Caledonian University & Independent Chair of the Equality Budget Advisory Group
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## Appendix 1: Glossary of Terms

### **AAAQ**

This stands for 'Available, Acceptable, Accessible, Quality.' These are the core standards against which we can assess whether economic, social and cultural rights are a reality for people.

- **Availability:** Relevant infrastructure, goods and services must be available in sufficient quantities.
- **Accessibility:** Physically, economically, without discrimination and to information.
- **Acceptability & Adaptability:** Culturally and socially acceptable and adapted to the local context.
- **Quality:** Appropriate and adequate in standard and safety.

### **Allocation**

The amount of money a government sets aside to put towards a project, or programme.

### **Accountability**

Human rights laws create legal duties on governments and public bodies. If governments and public bodies fail to protect human rights, there should be effective and fair ways for people to challenge this, for example through the courts.

### **CAT**

This is shorthand for the UN Convention Against Torture.

### **CEDAW**

This is shorthand for the UN Convention on the Elimination of All Forms of Discrimination Against Women.

### **CERD**

This is shorthand for the UN Convention on the Elimination of Racial Discrimination.

### **CRC**

This is shorthand for the UN Convention on the Rights of the Child.

### **CRPD**

This is shorthand for the UN Convention on the Rights of Persons with Disabilities.

### **Civil and political rights**

Rights which protect our freedoms, such as right to life, right to liberty, freedom of expression, freedom of belief, freedom of association.

### **De jure**

“In law” – e.g. de jure discrimination – discrimination in law.

### **De facto**

“In reality” – e.g. de facto discrimination – discrimination in reality/ lived experience.

### **Duty-bearers**

States and other state actors are duty-bearers who have the responsibility to and can be held accountable for respecting, protecting and fulfilling people’s rights (rights-holders).

### **ECHR**

The European Convention on Human Rights.

### **Economic, social and cultural rights**

Rights to those ‘goods’ which we need to live in dignity, for example rights to health, housing, food, social security.

### **ESC/ESCR**

This is shorthand for Economic, Social and Cultural Rights.

## **General Comments**

These are comments developed by the committees in charge of monitoring the different UN human rights treaties. They tell us how we should understand and interpret human rights.

## **Human rights based indicators**

Internationally, human rights based indicators are tools for States to assess their own progress in implementing human rights and compliance with the international treaties. Where rights based outcomes are defined, best practice (developed by the Office of the High Commissioner for Human Rights (OHCHR)) would then allow for three types of human rights indicators— structural indicators, process indicators and outcome indicators. Together they address the essential aspects of human rights implementation, namely: commitment, effort and result.

- **Structural indicators** measure a state's **commitment** or intention to abide by international human rights law.
- **Process indicators** measure the **efforts** undertaken by the state to meet their human rights obligations.
- **Outcome indicators** measure a state's human rights **performance**, evaluating the results of its human rights policies.

## **ICESCR**

This is shorthand for the International Covenant on Economic, Social and Cultural Rights. This is a UN treaty which sets out the economic, social and cultural rights we have.

## **ICCPR**

This is shorthand for the International Covenant on Civil and Political Rights. This is a UN treaty which sets out the civil and political rights we have.

## **Inalienability**

The idea that human rights are for everyone, everywhere.

### **Incorporation**

The idea of including UN treaties in our domestic law here in Scotland. There are different ways to achieve this, with different effects. The aim would be to enable people to claim the rights they have in international treaties directly. At the moment, there are very limited ways to do this as UN treaties are not part of our law.

### **Indivisibility**

The idea that all human rights are equally important. Economic, social and cultural rights are as important to human dignity as civil and political rights.

### **Interdependence/Inter-relatedness**

The idea that human rights are connected, so having one can ensure that you have another. For example, adequate housing can support good physical and mental health.

### **Jurisprudence**

The case law which has developed as a result of judges or judicial bodies applying legal principles to real life situations.

### **Justiciability**

The idea that the extent to which economic, social and cultural rights are realised can be decided by a court or other judicial body.

### **Maximum of available resources**

The idea that a country spends as much of its budget as it can on making rights real. This includes ensuring:

- existing resources are used effectively and without discrimination.
- efforts to generate additional resources are adequate and equitable.
- Resources are not only financial, but also human, natural, technological, etc.

### **Minimum Core**

A duty exists on states to ensure the satisfaction of “**minimum essential levels**” of each right, regardless of their level of economic development. These are usually taken to mean protection from starvation, free primary education, healthcare in emergencies and basic housing. Governments should make sure that people have these at all times. (General Comments help to identify what a minimum core should be for each right).

### **Non-discrimination**

The idea that you cannot treat someone differently based on a ‘prohibited ground’ unless justification is **reasonable** and **objective**.

- Treaties list prohibited grounds, but these are **not exhaustive**.
- The state has an obligation to eliminate **de jure** discrimination by abolishing ‘**without delay**’ any discriminatory laws, regulations and practices.
- **De facto** discrimination, occurring as a result of the unequal enjoyment of rights, should be ended ‘**as speedily as possible**’.
- Affirmative action or positive measures may be needed to end de facto discrimination.

### **Non-retrogression**

The idea that things should get better, not worse; governments should not take decisions which they know will create setbacks in making rights real. States must “fully” justify the adoption of policies that decrease people’s enjoyment of a right. Must be:

- Temporary
- Necessary and proportionate (other options more detrimental)
- Not discriminatory and mitigate inequalities
- Ensure the protection of minimum core content of rights
- Considers all other options, including financial alternatives

### **Obligation of Conduct**

The idea that governments have to take actions which they think will help realise rights. E.g. Adopting and implementing a plan of action to reduce unemployment.

### **Obligation of Result**

The idea that governments have to achieve specific targets, based upon detailed standards. E.g. Reducing unemployment to agreed levels.

In relation to the obligation to fulfil, **results** can generally be achieved **progressively**, but **conduct** is an **immediate** duty.

### **Obligation to take steps**

Governments have duties to take action to ensure they are complying with their duties towards human rights. Steps taken can be:

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

### **Process principles**

- Steps should be taken in such a way that facilitates the **active participation** of rights holders.
- 'Steps taken' should respect the principles of **transparency**, **accountability** and **non-discrimination**.
- The state also has an obligation to provide **effective remedies**, including administrative and judicial ones.

### **Progressive realisation**

The idea that some rights can be made real over time rather than immediately; the United Nations recognises that in some cases it is not possible for governments to ensure that everyone gets their economic, social and cultural rights straightaway. However, governments still have to do all they can.

### **Proportionality**

The idea of using an appropriate means to resolve a situation; not using a sledgehammer to crack a nut.

### **Respect, Protect, Fulfil**



This is a way of describing the different types of duties which governments have towards people's human rights:

- Respect means that governments must not act in a way that violates people's human rights E.g. Forced evictions carried out by the state.
- Protect means that governments must protect people's rights from being violated by the actions of others, E.g. Failing to regulate private housing market
- Fulfil means that governments must take positive steps to ensure that people's rights are real. E.g. taking appropriate **legislative, administrative, budgetary, judicial** and **other measures** to:
  - **Facilitate**: access to right (e.g. through infrastructure, goods, and services)
  - **Promote**: rights and how to claim them.
  - **Provide**: when people, for reasons beyond their control, are unable to necessary to realise rights, the state may be obligated to provide it (e.g. through infrastructure, goods, and services).

### **Rights-holders**

From a human rights perspective, all individuals are rights-holders, that can make legitimate claims to their rights. [States and other state actors are duty-bearers who have the responsible to and can be held accountable for respecting, protecting and fulfilling those rights].