



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

# **Human Rights Bill for Scotland: Consultation October 2023**

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The Human Rights Budget Working Group was established by the Scottish Human Rights Commission in 2018 as an advisory group to support a short-term EU funded project in human rights budgeting. Following the conclusion of that project in 2019, the Commission formalised a workstream on human rights budget work, supported by the Working Group. This workstream remains on-going. Information on the project work to date can be found here:

<https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

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# 1. Introduction

The Human Rights Budget Working Group (HRBWG) welcomes the opportunity to respond to this important consultation into the development of a Human Rights Bill for Scotland. The creation of this Bill is a testament to the support and drive of many on incorporation within and out with government over the last decade and we support the vision for Scotland that this Bill represents.

The HRBWG are also pleased to see the progress that has been made in recent years with regard to human rights budgeting and we welcome the inclusion of a commitment to embed human rights principles in the budget process, as a necessary step forward on that journey.

We do, however, believe that some of the commitments contained within the Bill are tentative and lack the kind of robust commitment that we want to see. From our perspective, the Bill is a unique opportunity to further advance Scotland's journey to becoming a world leader in human rights budgeting. However, the way that the consultation frames human rights budget analysis, the human rights scheme, minimum core obligations and maximization of available resources, all leave considerable room for improvement and strengthening.

The HRBWG would like to make an overarching point that human rights budgeting is a valuable tool to be embedded throughout public services, irrespective of a duty to comply with ICESCR rights. Human rights budgeting, in many respects, is about effective implementation. It allows us to test the compliance with obligations of Maximisation of Available Resources (MAR) and Minimum Core Obligations (MCOs) more effectively. But it also allows for better decision-making in relation to resource distribution, prioritising those most marginalised and disadvantaged. Therefore, even without the Bill and its duties on duty-bearers, this is a framework the government should be working towards.

We offer our responses to a selection of consultation questions which the group feels are relevant to and provide a necessary focus on human

rights budget work. Our intention is to provide a useful and supportive critique which can strength proposals in these areas.

The responses contained within this submission are the views of the HRBWG Members.

## **2. Part 7: The Duties**

### **2.1. Who the duties will apply to**

#### **Question 19. What is your view on who the duties in the Bill should apply to?**

The HRBWG proposes that the duties should apply to any Scottish Public Authority carrying out devolved public functions and that delivers goods and services. This approach is consistent with international law and will enable the inclusion of some authorities which at this point, may appear unusual, but due to the framework of the Bill, it would make sense for them to be included in obligations to report. For example, Visit Scotland in relation to cultural rights.

The group also suggested that all private bodies who are contracted to provide goods and services on behalf of public authorities will also have reporting duties. We agree that this should mirror the approach taken by the UNCRC Incorporation Bill. Action is required as to how private entities can evidence their due diligence with regard to their own supply chain, but asking private companies who are contracted to deliver services on behalf of a council, for example, to report on their due diligence, would be a legitimate ask.

Action will also be required to ensure that private actors – particularly third sector organisations carrying out devolved public functions – have access to guidance, training and support, including adequate and sustainable resources, to carry out their duties and associated tasks like monitoring, evaluation and reporting.

Furthermore, following the Supreme Court decisions and actions around the UNCRC, it is imperative that there is a legislative audit to ensure coherence of the framework and guarantee that the compatibility duty will be applicable to all legislation relevant in the devolved context.

## 2.2. Initial Procedural Duty

### **Question 20. What is your view on the proposed initial procedural duty intended to embed rights in decision making?**

The HRBWG have varying views on the proposed procedural duty. On the one hand some felt it would be better framed as a 'preparation duty' with specific requirements from duty bearers during that preparation time period. This would mean that, for example, six months before the commencement of the duty to comply, that public authorities should report on their efforts to embed rights in decision making, demonstrating what plans and efforts have been made and taken to embed the rights in decision making processes.

On the other hand, some felt that at minimum, a duty to have due regard would continue in parallel with the duty to comply after it comes into effect. Therefore, rather than supporting a time-limited preparation duty, would prefer to see a preparation duty and a duty to have at minimum due regard.

In either variation, this would include setting out: what type of due diligence mechanisms have been put in place; what type of impact assessments have been put in place; and what efforts have been made to ensure that human rights have been considered through the government's budgeting process, in order for these rights to be fulfilled. In other words, it is imperative that there are clear mechanisms demonstrating how the Scottish Government has reviewed its budget process to ensure that it is meeting its obligation of maximising available resources. The government would also need to be able to show how the budget *process* will ensure that the annual budget can satisfy:

- the delivery of minimum core obligations;
- compliance with the obligation of non-retrogression and
- demonstrate progressive realisation.

The 'active consideration' of rights, both within the Economic, Social, Cultural and Environmental duties and the 'equalities' duties should attach explicitly to budgetary decision-making. Active consideration of

rights must happen at all levels of decision-making and setting a budget is an absolutely key aspect of any decision-making process.

By giving active consideration of rights, duty-bearers would not only be able to demonstrate where rights were considered but also show the impact that that active consideration had. For example, did it lead to a different decision being taken? Or did it lead to changes in long or short-term strategies? Active consideration of rights (due regard) will be left hollow unless there is accountability within the reporting duties attached alongside.

It is essential that the rights implicit in the shared priorities of the Partnership Agreement (Verity House Agreement<sup>1</sup>) between the Convention of Scottish Local Authorities (COSLA) and the Scottish Government of:

- tackling poverty;
- just transition to net zero; and
- sustainable public services,

are integrated into decision making on policy and resourcing at national and local government levels.

### **2.3. Duty to Comply**

#### **Question 21. What is your view on the proposed duty to comply?**

The HRBWG believes that the Bill should set out a clear duty to comply with the rights and obligations contained in the framework. This means that the duty must be directly related to the inherent obligations attached to economic, social and cultural rights. It is not sufficient for the duty to comply to state that the government must demonstrate compliance through progressive realisation. **It must be made clear in the Bill that this must also mean maximum available resources and non-retrogression.**

In addition, there must also be a test that all these elements are present. What does progressive realisation mean? In line with

international law, it means that targeted, concrete, coherent steps are taken in order to satisfy the content of the rights. For maximum available resources, this means effective, equitable and adequate resource generation, allocation and spend. For non-retrogression this means prohibition of retrogressive measures, except if all of the strict rules governing these choices have been met (i.e. any policies adopted 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 and have considered all other options, including financial alternatives).

All of those aspects also need to be in the Bill for the duty to comply to make full sense. It cannot just be a duty to comply, which is demonstrated by progressively realising the rights, because that means nothing in general without the context of the other obligations. Having rights budgeting within the Scheme needs to have clear links to demonstrating compliance with the rights of the Bill. At the moment as the Bill stands, it is not clear if the other aspects of these obligations are set out in the duty to comply.

## **2.4. Reporting**

**Question 22. Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?**

Yes, the HRBWG believes that an obligation should be placed on public authorities to report periodically on both the actions that they have taken and those that they are planning to take, in order to meet their duties set out in the Bill. This reporting requirement is critical to ensure transparency and accountability in the implementation of human rights in Scotland. However, the reporting duties need to be more than a listing of actions/ potential actions. To be meaningful, public authorities must set out their gap analysis of rights realisation to inform action required.

Public authorities must identify how they will maximise their available resources to meet the duties set out in the Bill. The reporting process



must also reflect on the success or otherwise of these actions, in order to inform future action and resource prioritisation. From a budgetary perspective, this begins with setting out the desired outcomes (including meeting minimum core obligations), identifying the required action/s and setting out how those actions will be resourced.

With regard to what reporting should cover, implementation guidance will be needed. This should show how to actively consider rights in budget frameworks. The production of such guidance could directly involve the HRBWG with other stakeholders, who with appropriate resource, may be able to oversee or advise on.

**Question 23. How could the proposed duty to report best align with existing reporting obligations on public authorities?**

At present the reporting duties on many Scottish public authorities are burdensome, with growing concerns about overlap, ineffectiveness and cost. Reporting for the sake of reporting is not beneficial for time and resource-pressed public authorities, nor for the tick box culture that it can encourage. This is neither helpful nor meaningful.

In order to maximise the beneficial potential of reporting, the reporting process has to be transparent and meaningful, both in terms of reporting content (including who informs the reporting and what is collected) and feedback for public authorities to support improvement. Careful consideration must therefore be given to the timing of the reporting periods, the provision of adequate resourcing to carry it out and the impact that the reports will have.

The introduction of this Bill presents a timely opportunity to review reporting through an audit of current reporting obligations to see where alignments may exist, especially in relation to proposed reporting for UNCRC. This could include overhauling current arrangements to pursue a single rights-based reporting system in Scotland which encompasses international and domestic reporting duties. This collation of reporting information would then make it easier to develop and track progress.

The group felt that that it is important that this information would complement equalities reporting (e.g. PSED and the Fairer Scotland

duty), opting for as much alignment as possible, while keeping the recognition that equality and human rights are separate but complimentary. It is important for public authorities to understand that reporting on their equalities duties does not mean that they have met their rights reporting duties. However, the goal of alignment in process *and* content in the reporting procedure, is to make for better analysis and better efficiency in the reporting process, and for the analysis to report on the realisation of rights as experienced across multiple characteristics.

There is opportunity for important learning to be drawn from the ongoing Scottish Government review of PSED to inform both the process and the *content* of proposed reporting mechanisms that capture the equalities dimensions of the realisation of rights.

Consideration should also be given to how to best align with the Verity House Agreement which states that the Scottish Government and Local Government “will jointly agree a monitoring and accountability framework, drawing on proportionate reporting and data collection, to provide evidence and visibility over progress towards agreed outcomes.”<sup>2</sup>

For reporting to be meaningful, there needs to be a clearly identified purpose and an understanding of the value of the information being collected and how it will be used to drive improvement.

It is understandable for frustration to develop where reporting does not lead to meaningful engagement. If public authorities are expected to report every few years and then the information that they provide is not taken into account in the wider planning of policy and implementation or referenced in international monitoring, this could lead to a decline in reporting effort. There needs to be an explicit value placed on the information reported, which in part is expressed through what is done with that information. A feedback loop needs to be established which provides useful scrutiny and helpful feedback which can drive improvement.

## **2.5. Progressive Realisation of Economic, Social, and Cultural Rights and the Right to a Healthy Environment**

**Question 24. What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via MCOs and progressive realisation?**

Our response aligns with our previous comments in Question 21. It is important to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment (and as many rights within the special protection treaties as possible within devolved competence), via MCOs and progressive realisation is important. However, you cannot isolate MCOs and progressive realisation from the rest of the inherent obligations.

Minimum core obligations are obligations which a country needs to comply with at all times and in all circumstances, regardless of their resources or the overall conditions of a country. If they are not complied with, there is a *prima facie* assumption a country is not meeting these obligations, unless it can demonstrate that *every effort has been made to use all resources at its disposition* to prioritize compliance. Public authorities must deliver these MCOs for all, or be held accountable if they are unable to, through legal means if necessary. MCOs rely on the delivery of a range and quality of goods and services. It's not sufficient to just provide those goods and services, they must be of a particular standard in the first instance and their availability, accessibility, acceptability and quality must measurably improve over time.

The commitment to realising and securing human dignity, requires the public authorities to take steps, to the maximum available resources in order to ensure MCOs are met and in time to progressively achieve the full realisation of all ESC rights, whilst preventing any backward steps in the enjoyment of rights.

To ensure that this is happening, it is necessary to understand how resources are being generated, allocate and spent. In order to show

compliance with the duty to comply, reporting authorities will need to evidence that they are using maximum available resources to meet MCOs and progressively realise rights (with no regression).

With regard to the impact on local authorities, in line with the principles that are set out in the Verity House Agreement, any new policy development for local government derived from these obligations is required to be fully funded.

Human rights budgeting is the process that is needed in order to evidence this. It is important that human rights budgeting is viewed as an enabling process that will help to deliver the kind of vision that the Scottish Government are articulating as their intention.

## **2.6. Duty to Publish a Human Rights Scheme**

### **Question 26. What is your view on the proposed duty to publish a Human Rights Scheme?**

The HRBWG supports the need to publish a human rights scheme, which transparently sets out the steps that the government plans to take in order to progressively realise the rights contained within the Bill. This will include setting out how they intend to maximise their available resources in order to meet their minimum core obligations and prevent any retrogressive enjoyment of rights. The HRBWG sets out additional views on the proposed Human Rights Scheme below in question 40 below.

### **3. Part 8: Ensuring Access to Justice for Rights-Holders**

#### **3.1. Scrutiny bodies**

##### **Question 30. What are your views on our proposals in relation to scrutiny bodies?**

The HRBWG agrees with the Government's proposals in relation to scrutiny bodies. The group further agrees with the position proposed by the Scottish Human Rights Commission on the significant role that Regulators, Inspectorates and Ombudspersons (RIOs) play in driving culture within public services, and therefore agree that an additional duty should be placed on RIOs which obliges them to implement their respective mandates and powers in a manner that is consistent with and gives further effect to the new rights.

In recent years members of the group have worked with Audit Scotland in varying capacities in furthering budget transparency, connecting resources to desired outcomes and embedding human rights and equalities within audits. Given that public authorities will be required to act compatibly, they will be required to maximize their available resources in order to do so. The group suggest that the role of Audit Scotland in relation to supporting compliance is further explored and expanded as appropriate.

## 4. Part 9: Implementing The New Scottish Human Rights Act

### 4.1. Minimum Core Obligations

#### **Question 39. What are your views on our proposals to establish Minimum Core Obligations through a participatory process?**

The HRBWG agree with the proposal to establish MCOs through a participatory process, the lack of detail presented in the consultation document as to what this could or should look like however, is unhelpful.

The introduction of this Bill and the process by which Scotland can develop MCOs has the potential to be a world-leading process and one that has not necessarily been done before. In other jurisdictions, MCOs have been defined through judicial interpretation, where a wider conceptualisation is applied on a case-by-case basis.

The HRBWG propose that the process suggested by the Scottish Human Rights Commission at the Equality, Human Rights and Civil Justice Committee [evidence session on MCOs](#) in February 2023 be given due consideration by the government as a process for developing MCOs.

In order develop MCOs, the legislation needs to include a wider concept or definition of MCOs with minimum essential levels of economic, social, cultural and environmental rights that are necessary to live a dignified life. This definition needs to be what grounds and guides the process of developing the MCO list.

Careful consideration must also be given to the model of approach. Whilst it may be tempting to have a model involving, for example, a citizen's assembly to define MCOs, participation in this process cannot be limited to a matter of consensus and voting. The process used does, however, need to ensure a wide variety voices, including those whose rights are most at risk, policy makers and those with technical legal and human rights expertise.

We agree with the Scottish Human Rights Commission's suggestion that this could best be achieved through the creation of an independent commission or committee, similar in structure to the Scottish Mental Health Law Review<sup>3</sup>. This could convene a process of hearing from as many people as possible whilst ensuring that a prioritised scheme was put in place. Its proposals would then be presented to the government and the parliament, for secondary legislation to be introduced.

The critical point is not to confuse meaningful participation and acknowledgement of rights holders' lived experience with consensus, because if the aim is to reach a consensus, there is a real risk that those whose rights are most at risk might not be prioritised in the Scheme.

## **4.2. Human Rights Scheme**

### **Question 40. What are your views on our proposals for a Human Rights Scheme?**

The HRBWG agrees with the proposal that a Human Rights Scheme will be necessary. The group also supports the Scottish Human Rights Commission's position that any Scheme should support planning by the Scottish Government on how to progressively realise rights, and that consideration must be given to their suggestion that the requirement of planning and reporting as part of a Scheme should be extended to all duty-bearers and not limited to Scottish Ministers. We would also reiterate our earlier point here, that if there are additional/ increased requirements on private actor duty bearers - particularly for the third sector - then they must be provided with adequate and sustainable resources, capacity building, training and support to do so.

The group further agrees with the Commission's suggestion that the Scheme could be aligned with the proposed reasonableness standard of review, ensuring policy coherence and in turn that the scheme should include reporting on:

- a) The measures taken to ensure the minimum essential levels for a person to live a dignified life (minimum core obligations);

- b) The concrete and targeted plans to fulfil the rights in the framework;
- c) The proposed coordinated, coherent and comprehensive measures that are in place to realise the rights in the framework;
- d) The measures taken to ensure the maximum available resources needed to realise rights, including in relation to resource mobilisation, allocation, and expenditure (through human rights budgeting, for example);
- e) The measures that are being proposed to respond to the precarious situation of disadvantaged and marginalised individuals or groups and those at high risk (as matter of priority); and
- f) Plans have been put in place after a transparent and participative decision-making processes.

The Consultation states that the Scheme could broadly follow the approach in the UNCRC Bill in relation to the Children’s Rights Scheme, which supports the need for alignment which we believe is important to ensure consistency and support more effective implementation in practice by public authorities. It is therefore disappointing to note that the commitment to “Consider the rights of children in the Scottish Government's budget process” is not mirrored for the general population within the proposed Scheme for the Bill. Embedding human rights principles (as proposed) is important to drive a transparent, participative and accountable process, but taking the rights of people into consideration in developing budget priorities, is important to drive the desired outcomes. The former will not in and of itself deliver the latter.

In the 2023 [Concluding Observations](#) on the UNCRC the Committee asked the State Party to incorporate a child rights based approach into state budgeting process. The government should draw on the content of this Concluding Observation to develop an appropriate approach to rights-based budgeting that would support both Bills.



## ***Allocation of resources***

*Para 11. The Committee recommends that the State party incorporate a child rights-based approach into the State budgeting process in all jurisdictions of the State party, the overseas territories and the Crown dependencies and:*

*(a) Implement a tracking system for the allocation, use and monitoring of resources for children, with a view to eliminating disparities and ensuring equitability, and assess how investments in all sectors serve the best interests of children;*

*(b) Introduce budgetary allocations for children in disadvantaged situations and ensure that children are not affected by austerity measures;*

*(c) Ensure that, in situations of economic crisis, regressive measures are not taken without meeting the requirements set out in paragraph 31 of the Committee's general comment No. 19 (2016) on public budgeting for the realization of children's rights, including that children participate in the decision-making process relating to such measures;*

*e) Ensure transparent and participatory budgeting in which civil society, the public and children can participate effectively.<sup>4</sup>*

As a transparency mechanism that must be presented to parliament, there is no guarantee that there will automatically be adequate scrutiny of the Scheme, which is key to ensuring accountability and progress. We would propose that at the very least, the Equality, Human Rights and Civil Justice Committee (EHRCJ Committee) is required to scrutinise the scheme, hold evidence sessions on it and provide further recommendations to Scottish Ministers. If the Scheme is to provide a valid and valuable purpose, there has to be a mechanism in place whereby the Scheme is scrutinised by parliament not just laid before it. The role of the Scottish Human Rights Commission in the scrutiny process, should also be carefully considered.

This process could take the format similar to UN Treaty Body reviews whereby the government submits an evidence report, the Commission and Civil Society organisations have the opportunity to present shadow reports and then the EHRCJ Committee undertakes scrutiny sessions where the government is questioned on its evidence. This is then followed up with the Committee producing conclusion observations and recommendations, which are in turn reviewed for progress at a later stage. This could also take the form of a wider process of parliamentary committee scrutiny, similar to that of pre-budget scrutiny, with all Committees engaged in their own scrutiny sessions feeding back to the EHRCJ Committee as the lead coordinating committee.

Such a process would provide an important level of external scrutiny. It would however, need to be sufficiently resourced. As further discussed in Section 4.4, this raises the importance of and need to develop human rights knowledge and capacity within government, and across public authorities and third sector organisations, as well as the need to resource capacity to engage effectively in the scrutiny processes of shadow reports such as that proposed above.

With regard to the frequency of reporting, the group believes that this does need to be further considered. A balance must be struck between quality and depth on the one hand and frequency of reporting on the other. It is not reasonable to ask for both in terms of an efficient use of public resources, which links back to the earlier points (Question 23) on reporting on the duties, and the need for effective compliance being enabled by more/better aligned reporting processes.

### **4.3. Parliamentary scrutiny**

#### **Question 41. What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?**

Parliament should play an important role as an accountability mechanism in reviewing legislation before it is passed to ensure that it is compliant with human rights (e.g. the Finnish model).<sup>5</sup>

The HRBWG fully support the response of the Scottish Human Rights Commission with regard to the importance of and need to further develop the capabilities of parliamentary committees to enhance their scrutiny role. We also agree with suggestions for the enhanced role of the Equality, Human Rights and Civil Justice Committee, the role of other Committees, the role of the Presiding Officer, the role of a person in charge of a new Bill and the overall work of the parliament.

The group would also like to raise a question over the process for assessment and scrutiny of the annual budget bill introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill. The group assumes that, like other proposed legislation, each budget Bill must comply with the rights contained within the framework and demonstrate where the proposed budget Bill contributes to the advancement of such rights. There would therefore need to be a process by which it can be evidenced that the budget has taken into consideration its obligations to meet MCOs, progressive realisation and non-retrogression through the maximisation of its available resources, in order to be human rights bill compliant. In other words, a compatibility assessment will be required that determines the degree to which economic, social, cultural and environmental rights have been taken into consideration in the development of the budget.

#### **4.4. Guidance and capacity building for public bodies**

##### **Question 42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?**

Capacity building across the public sector will be critical to the successful implementation of the Bill. The HRBWG would like to propose that one approach to building this capacity could be through the creation of a well-resourced Independent Centre of Expertise on Economic, Social, Cultural and Environmental Rights to build knowledge and skills among public authority officials.

Part of the focus of that Centre could be supporting public authorities on how to approach their reporting duties and setting out what a good

report looks like through provision of good practice examples and capacity building to support proper monitoring.

Key to good reporting is effective monitoring of the reporting and the provision of feedback. What can cause public authorities to become irritated and question the value of the effort to report, is the requirement to undertake a procedure or a step with no feedback on how they are progressing, or on what recommendations are needed for improvement. Helping duty-bearers to actually embed human rights requires a functioning feedback loop, including a Centre of Excellence, robust statutory guidance on best practice and supporting practice on what good actually looks like, with meaningful feedback to public authorities are all necessary elements to capacity building.

## **4.5. Monitoring and Reporting**

### **Question 44. What are your views on monitoring and reporting?**

As has been noted elsewhere in this submission, monitoring of and reporting on the steps that public authorities have taken or plan to take to progressively realises rights, is essential for both for accountability and improving the effectiveness of action.

As has already been noted and was raised by the Taskforce, it is important that such monitoring and reporting does not simply lead to increased and burdensome paperwork but rather, it serves a concrete purpose of improving human rights-based policy and practice decision making.

Reiterating points made earlier in brief, monitoring and reporting must: be meaningful in process and content, be proportionate to the resources of the public authorities involved, be efficiently streamlined and aligned for mutually supportive goals, provide an effective feedback loop to support a learning environment, and serve the purpose of holding government to account for its commitment to progressively realising rights.

Reflecting on the issue of connectivity, recent discussions by the HRBWG on the 2023-24 Programme for Government raised the

questions of how this connects to the budget, and the need to be able to see and understand the evidence that deemed that these were the critical priorities for next year. Moreover, discussions focused on how actions within the Programme for Government are connected (but not explicitly) to the human rights framework. There is potential for everything to be much better connected, if there was an overall focus on reporting on the implementation of the Bill. In turn, this could feed into the evidence base for periodic international reviews, which could include a focus on the budget. The HRBWG encourages the Scottish Government and other stakeholders to this consultation to consider the recent recommendations<sup>6</sup> from the [Equality and Human Rights Budget Advisory Group](#)<sup>7</sup> (EHRBAG) and the Scottish Government response<sup>8</sup>, as well as the developments in the Scottish Budget process to improve the integration and alignment between the Programme for Government and the process of commissioning the draft budget.

Furthermore, it is imperative to consider that in order to monitor effectively, there is a need to consider the data that is currently collected and its suitability to monitor the obligations of progressive realisation, MCOs, non-retrogression and the maximum use of available resources.

In order to explore whether we are meeting that minimum core, currently, there is a lot of evidence that we simply do not have access to. The Scottish Human Rights Commission is well positioned to have a strong monitoring role, but is not currently sufficiently resourced, nor equipped with the correct powers to do that properly. South Africa provide a useful example of practice whereby its human rights commission has a power under its constitution to compel the provision of information from public authorities, which it uses to create its own indicators.

The Scottish Government could look at such models to improve how scrutiny organisations can be afforded access to the right information to make those assessments. This could provide creative and innovative ways of monitoring human rights progress in Scotland. By creating a list of issues or set of questions asking for specific data from different public authorities, indicators could be created which could be monitored periodically.

Once there is a clear picture of compliance with the minimum core based on whatever indicators have been developed, it will be possible to understand key issues and where progress has or has not been made. This can then be explored in relation to available resources, that is, the resources that are required to be generated and allocated on the basis of that identified need. Following this, the budget process can be scrutinised and monitored to explore where resources have been spent and what impact they have had, on the basis of that initial assessment of need.

Successful human rights budget scrutiny, first requires access to all the data available on the current enjoyment of minimum core obligations, in order to identify the issues that are at stake. This is then cross-cut with information on how the government plans to prioritise its resources on the basis of that assessment.

The new human rights framework must guarantee that regulators, inspectorates, ombudspersons and Scotland's national human rights institution are provided with the appropriate powers and resources to ensure effective human rights monitoring.

End

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<sup>1</sup> See [Local Governance Review and New Deal for Local Government | Scottish Parliament Website](#)

<sup>2</sup> See [Local Governance Review and New Deal for Local Government | Scottish Parliament Website](#)

<sup>3</sup> See <https://webarchive.nrscotland.gov.uk/20230327160310/https://cms.mentalhealthlawreview.scot/wp-content/uploads/2022/09/SMHLR-FINAL-Report-.pdf>.

<sup>4</sup> See [https://digitallibrary.un.org/record/4013807/files/CRC\\_C\\_GBR\\_CO\\_6-7-EN.pdf?ln=en](https://digitallibrary.un.org/record/4013807/files/CRC_C_GBR_CO_6-7-EN.pdf?ln=en)

<sup>5</sup> See Scottish Human Rights Commission, Models of Incorporation and Justiciability for Economic, Social and Cultural Rights Authored by Dr Katie Boyle (2018).

<sup>6</sup> See [Equality Budget Advisory Group: recommendations for equality and human rights budgeting - 2021-2026 parliamentary session - gov.scot \(www.gov.scot\)](#)

<sup>7</sup> See [Equality and Human Rights Budget Advisory Group - gov.scot \(www.gov.scot\)](#)

<sup>8</sup> See [Equality and Human Rights Budget Advisory Group's recommendations: Scottish Government response - gov.scot \(www.gov.scot\)](#)