

Equalities, Human Rights and Civil Justice Committee

13th Meeting, 2023 (Session 6), Tuesday 23 May 2023

Note by the Clerk

Human Rights: Minimum Core Obligations

Introduction

1. At its work programme discussion on 17 January 2023, the Committee agreed it would undertake some further work on what minimum core obligations would mean in practice. This work builds on the Committee's previous work on human rights budgeting and will help provide context ahead of the introduction of the proposed Scottish Human Rights Bill.

Previous work on Human Rights Budgeting

2. The Committee has previously explored what is meant by minimum core obligations through its budget scrutiny process. At its session on [28 September 2021](#), the Committee heard from witnesses that capacity building is required to understand what minimum core obligations are and what progressive realisation means.
3. At its session on [25 January 2022](#) the Committee heard that using a human-rights based approach would mean Scotland working to a minimum core when it comes to the basics of what should be tolerated.
4. The Committee heard further evidence in its session on [25 October 2022](#) which followed a private session with Rob Watts of the Fraser of Allander Institute and from People First on their experience of the Scottish Budget.
5. At its session on [21 February 2023](#), the Committee heard again from Rob Watts and from Dr Alison Hosie and Luis Felipe Yanes of the Scottish Human Rights Commission. The session focussed on what minimum core obligations might look like, how consensus on minimum core obligations can be achieved, what steps Scotland can take to ensure this is a participatory process and how we might be able to monitor and measure whether minimum core obligations are being met.

Minimum Core Obligations

6. The [SHRC has explained](#) (2019) that 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.
7. 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 realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures” Article 2(1) ICESCR.
8. The minimum core is intended to ensure that a person can live with human dignity. Failure by a government to provide minimum core amounts to a presumption that a government is in violation of the Covenant.¹
9. However, there is little agreement on how to define minimum core obligations in practice and an ongoing debate on whether the minimum core obligations in a developed country should be the same as those in a developing country.
10. Guidance is provided 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](#).

Introduction of a Scottish Human Rights Bill

11. The Scottish Government announced it would introduce a new Human Rights Bill during Session 6 of this Parliament. The aim is to introduce a new human rights framework for Scotland based on recommendations from the [National Taskforce for Human Rights Leadership](#) which was established to take forward the recommendations made in the [2018 Report of the First Minister’s Advisory Group on Human Rights](#) to prioritise actions to progress human rights and equality in Scotland
12. The consultation on the Bill is yet to take place but it is anticipated it will restate the rights in the Human Rights Act 1998 as well as incorporating rights of four UN Human Rights treaties into Scots Law on economic, social and cultural rights, women, disabled people and minority ethnic communities. The Bill may also include rights for older people, LGBTI people and rights on a healthy environment.
13. Today’s session will provide useful context ahead of the introduction of the Bill.

¹ This is unless a government can demonstrate that “every effort has been made to use all resources that are at its disposal” to prioritise reaching those minimum core.

Oral evidence

14. At today's meeting, the Committee will hear from academics with expertise in this field including the chair of the National Taskforce for Human Rights Leadership.

- **Professor Katie Boyle**, Chair of International Human Rights Law, University of Stirling
- **Professor Alan Miller**, Professor of Practice in Human Rights Law, and
- **Dr Elaine Webster**, Reader in Law, University of Strathclyde.

15. Members are likely to explore with witnesses, issues including:

- **The process of establishing minimum core** and how the participatory process should be approached
- What challenges and benefits a participatory process may present
- **What does minimum core mean in practice** for example, a right to housing, right to food, right to education, a right to health
- The risk to achieving good outcomes if minimum core obligations are set too low or too high and whether some obligations should be prioritised over others
- Whether it might be necessary to have some flexibility to allow for both relative and universal obligations
- To what degree minimum core obligations may apply to the other treaties, eg on women (CEDAW), disabled people (CRPD) and race (CERD)
- **Monitoring/measuring minimum core and scrutiny**, for example what type of indicators are required to ensure that we can monitor and measure whether minimum core obligations have been met
- **Non-legal and legal remedies** including mechanisms by which non-compliance with minimum core obligations may potentially be challenged both by organisations and by individuals and where the responsibility for challenge should lie.
- **International examples**

Next steps

16. The Committee will consider all the evidence it has heard and agree what further steps, if any, it wishes to take.

Committee Clerks
May 2023