Social Security Webinar 22-05

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You're listening to human rights 2020s, a podcast from the Human Rights consortium in Scotland. This episode is a recording of a webinar called our international human rights, the right to Social Security held in May 2024. In this episode, consortiums can your policy officer will see Miller discusses the right to Social Security with Aiden Flagg, a PhD student from the University of Glasgow. We hope you enjoy this episode. Hi, everyone. I'm Lucy. I am this new policy officer here at the consortium. And I'm delighted to be hosting another one of our lunchtime sessions around our rights with the forthcoming Scottish Government's human rights bill. And basically, this webinar will be shaped round in a nice conversation. So it might go in different directions. And we'll do that for the first 25 to 30 minutes, and then we will have an audience question and answer. So today, we're talking not just about a general idea of a right to Social Security, but about an international rate that the UK has signed up to, and they have agreed to implement Eden, before we start, can you please tell me a bit about your role, and what the right person for security includes?

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Sir, thanks for listening. And thanks for inviting me on to discuss the basic social, social security.

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My research is focused on economic, social, cultural rights, I'm based on the University of Glasgow, and I'm in the final year of carrying out my PhD. So the final few months of that write up. So it's great to be able to come here and discuss these ways, and the more kind of practical terms. And

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so yeah, as you discussed, the right social security exists in international human rights law. It's primarily based in what we call the assess the International Covenant on Economic, Social cultural rights. And this has been ratified by the UK government, which really just in basic means,

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they agreed to

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implement the rights and obligations.

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The ice asker, it provides the right social security in Article Nine. And what this says is the parties to covenant recognise the fact that everyone wishes security, including social insurance. And that is basically level this is about ensuring access to levels of social security to secure life of dignity. So it can be really around kind of relieving poverty, income maintenance and replacement, income redistribution, mean additional costs, such as personal disabilities, or in childcare, and also covering things like

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it's quite a broad rights.

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One kind of final important point around just how we read the international right is, yes, it's desperate. And this is where I certainly I would draw my main analysis. But also, it's included in other international human rights treaties. So for example, we have Article Six of the Convention on the Rights of the Child, as well as things like article 11 and 14 of the Convention on the Elimination of Discrimination Against Women. And these provide a slight different angles and slightly different insight of how the right functions, society. So we want to kind of look at the framework as a whole to understand what the right decision is.

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Brilliant, thank you.

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And that international level, we don't just have a simple right to Social Security. But these are several elements of the right there. So as you've just said, can you tell us about what that rate is in a bit more detail? What does that entitle us to?

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Yeah, sure. And this was a really important part of of understanding human rights, but also, you know, to ESG rights, that they each have content. And that these are things that we're agreeing to implement when we're saying we're meeting the right social security. So firstly, to break down the right social security as it's been done through kind of international guidance and commentary. Really, we look at it through the lens of what sometimes called like the triple A framework, but also we unpack that a little further and understanding it as it's really about the availability of social security schemes. We want to ensure the benefits are provided relevant social risks, to kind of offset the relevant social risks that exist. So this might be kind of lack of employment, or injury or old age or unaffordable access, things like health care, which less in our sector is very much about others. So that's really about the availability, are there social security schemes in place? We're then looking at things like adequacy. So what is the adequacy of that social security scheme? Is it securing that kind of fundamental life?

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after pregnancy isn't providing enough for people.

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Like what are the distribution of benefits throughout society.

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Another area we would look at is affordability. But that's much more focused on.

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And finally, overall accessibility. So this is really focused on not just the fact that the social security scheme is available, but also that is accessible to people and groups in society. So this brings in your kind of considerations around non discrimination, for example, want to ensure that we're not discriminating in the way that we provide benefits, really, by idea of availability, adequacy, affordability, and accessibility are all really central to how we unpack and understand the right. So

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that's really interesting. And I'm gonna ask you a question that I didn't prep before here, in our emails beforehand. But what of the Scottish Government so far? Or how do you think that they plan to make sure that those principles are covered, especially things like accessibility with people's in how the first, you know, reach out to the scheme or

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apply for it.

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So if I understand correctly, I think about the kind of action Scottish Government currently takes, or the actions that kind of could take to increase accessibility, I mean, accessibility is often you know, it's about ensuring legally, that these schemes are in place and, and are accessible to different groups. But then you're also talking about things like awareness raising, you're talking about ensuring that specifically, we know within Social Security delivery at the moment, across UK, you know, there are many types of benefits that go unclaimed, there are instances, people shouldn't be responding. Alright, so these schemes are available. But because they've not been made overly excessive, that could cause potential issues with how we're delivering the right social security. So these are the types of issues with one kind of governance we're looking at under this right. Another kind of big area that you might want to look at in terms of the future of how this is delivered, just like digitization of Social Security Systems, moving that kind of all on to the online sphere. You know, we're already seeing that there are issues, people that can impact the overall accessibility of social security schemes. These are the types of areas that I think we could be looking at understanding how to ensure that we create an accessible

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framework as well as overall available.

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That's really helpful. Thanks, Aiden.

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Our webinar last week, fessor Titi, Boyles talk about the International Covenant on Economic, Social and Cultural Rights, and about the key principles that are part of this. In particular, she spoke about the government's need to progressively realise these rights. And there are eight principles of this progressive realisation. And we can hone in on a couple of them today, as well. And there should be a minimum level of social security available immediately. Everyone all of the time, can you tell us a bit about why that minimum is so important and what that minimum is?

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Yeah, sure, it's a great aspect to focus on, especially in relation to security have to do so I kind of have to wind back a little bit to kind of that broader context, the progressive realisation, because it only really makes sense. It's kind of looked at through the lens of the obligation as a total, instead of it kind of being this separate, immediate obligation to like, as I'm sure Katie will have covered in the in the explanation. At last.

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Each white under the ice Eskers is understood as requiring progressive realisation. And this the most basic sense is kind of moving aggressively as quickly and as effectively as possible towards the full realisation of that right. Now, this interpret there is an interpretation or progressive realisation. But over time, it's not just about these progressive aspects, it's not just about the future areas we want to move towards. There's also an immediate baseline that has to be fulfilled.

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So this is really important because it gives both progressive progressive realisation but this progressive element as well as an immediate element, and we discussed this immediate element as what called minimum core obligations. And this has really been kind of unpacked through guidance from the Committee on Economic, Social cultural rights, as well as their kind of scholarly contributions. So

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the guidance at the international level really provides kind of mixed bag and relation to what is expected as that minimum core these immediate aspects of the rate that the state has to meet. So to kind of run through some of those that have been given at the international level as as guidance it's really about ensuring access

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which provides a minimum essential level of benefits to all individuals and families that will enable them to acquire things like essential health care, basic shelter, and housing, water, sanitation, foodstuffs. So really, it's looking at, you know, ensuring that there's a very basic level of Social Security play. So people are able to access that kind of material needs.

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But it goes further. And it says, also by ensuring that you don't discriminate in terms of delivering those

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to respect existing social security schemes and protect them from unreasonable interference, unreasonable being really important word in there, things more procedurally based as well. So we might expect minimum corps not just be about Okay, is there a level of social security payment, it might be how those decisions are being taken. So it might be things like, has the state adopted transparent social security scheme, and kind of overall strategy or plan of action, if you'd like. And the reason these things are seen as immediately enforceable, is that without that baseline, that kind of starting point, we wouldn't, you know, the right couldn't exist in the first place. And that's the way to kind of think about these minimum core is really the absolute baseline of what you would expect for social security in place.

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Yeah, that's, that's fascinating. I mean, across all rights, minimum core obligations are going to be something that we're all focusing in on as we see this bill and how they develop and, and are, you know, implemented across Scotland. I'm going to ask a question related to that as well. How, how does the principle of non discrimination apply to the right to Social Security here and what measures should be taken to ensure that everyone has that equal access benefits and all we kind of covered that with minimum core, but is there more that can be done?

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So non discrimination is really a cross cutting principle within the processor itself. So it's actually provided explicitly through Article Two, two. And this basically means it applies as an immediate obligation across every right that's covered by the treaty. And so maybe we can talk about non discrimination as this kind of minimum core element across all of the rights. Now, we've already kind of discussed, as you say, you know, some of the efforts that could be made in relation to ensuring that there isn't discrimination, but it's also an interesting kind of idea of

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equality as well as. So there's, it's more complicated in terms of how that actually is practically put into effect as as we're aware. But really, it's about ensuring that there's kind of work done, there's monitoring in place, and assessments of how Social Security payments are actually reaching those individuals and ensuring that that the current system that we have in place, the current social security schemes we have in place, are not having a kind of discriminatory effect in areas of society and

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society.

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There's really a huge amount of

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efforts that could go into this, which I won't cover but as a basic principle of non discrimination, that's kind of what we're looking for. And it's evidence that not just a state gets in place.

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In other words, principle of no backsliding on the right, as well, which does this mean that the government can never change any of its social security benefits?

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Yeah, so this is again, another important what we would call self charity of progressive realisation. I'm really what we're talking about in terms of that use of backsliding is the principle of what we call non retrogression. And non retrogression suggests is about ensuring that were existing levels of enjoying any se right? exist, that government shouldn't unreasonably kind of interfere with that and shouldn't take that away. So

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really, kind of basic understanding of this might be something like a 20 pound uplift to Universal Credit. And the removal of that, I think 18 months later. And that might be a case where you would look at that through regular Social Security lens. The obligation on retrogression say, Well, you've removed that kind of existing level.

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But now, that isn't to say it wouldn't necessarily be a violation. And this is a really important aspects of non retrogression is that it's assessable. And it's really about the decision making upon which that regressive measure was taken. The task of the Committee on Economic social cultural rights, where we kind of draw a lot of our guidance and understanding of this framework was actually set out specific tests that say, if you've met all these things, then if you've met all these standards, then then really you can change social security and the way you know government still has

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be able to make decisions based on the evidence that it has.

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Within that test, you're looking at things like, is there a reasonable justification for what you're doing? You are? Have you adequately examined other alternatives? Have we looked at potential other options, if you're needing to save money in a tight fiscal space, for example,

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you know, what's genuinely participation of effective groups within?

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It could also be things like measures where, where they discriminate three as already, that's kind of minimum poor area. So if it's discriminatory, that still, you know that would fall foul of the regressive test.

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And fine, you cannot impact upon this minimum court. So that's why this minimum four, again, takes takes

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up real importance within the overall framework, because you cannot kind of backslide from a minimum core position, because it is that absolute baseline. So that's quite a long winded way of answering the question, but it's the principle of non retrogression is there to ensure that anytime a backsliding does take place, there is that kind of reasonable justification and evidence base from the government to say why that's necessary.

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Now, that's really good to know. And I'm sure we've got a few snippets from that we can definitely use on social media and common months for a really easy explanation of that. So this Scottish government plan to introduce human rights skill that incorporates i sesco. So that's economic, social and cultural rights into law here in Scotland. And we'll meet these by Cisco rights enforceable by individuals and communities. This means that we will have an enforceable right to Social Security. Am I right in thinking that and then why is that important?

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And what does enforceability mean? I guess?

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Yeah.

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Sure. So. So this is

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more complicated than it feels on the on the surface. And I think, again, you know, my, my colleague, Katie will have covered this in a bit more detail in last week's seminar. So I'm going to touch upon some of the kind of critical elements of this, but I'm not going to dive into the constitutional details involved in reserve powers, as I think that's been covered in last week's but certainly in terms of the kind of wider approach and reason for going through the incorporation process. Is that currently, the right social security is not directly what we call justiciable, unenforceable, and

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we really understand this as an accountability gap. So where things like the Human Rights Act, have provided you with enforceable rights, if you like things like freedom of expression, or right to a fair trial, that is more equated across to your economic social consequence,

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as recognised by the Social Security Act of creating a place of Social Security as a human right. But that legislating them actually incorporate that into an enforce justiciable rights within

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the incorporation process, if you like is really focused on closing that accountability gap, and so far as possible to do within our devolved powers, ensuring that it is accessed through the courts and other forms of complaint mechanisms. So that's really what we mean by making the right enforceable and kind of how about central legality and accountability?

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That's so even there are big calls on the government to improve our social security system as a key part of tackling poverty, things like calls for many of our members of consortium on the Scottish Government to raise the Scottish child payment, em to the UK Government to end the two child limit, and to increase things like universal credit, and to end any sanctions that are faced within the system and more, if our right to Social Security was enforceable and embedded into law. Would it make any difference to policy decisions such as these?

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That's a great question. I'm really great areas to kind of be pushing on as well. So so that's fantastic. But I think here, it's important to focus on kind of two different understandings of how we implement and how we give effectively. On the one hand, we have that legal implementation if you'd like that legal incorporation into Scots law. And this was discussed, it's really about that accountability process, ensuring the government can be held to account in the same way that it might be for other human rights. And so that in and of itself should directly impact upon the way in which Scottish Government is making its decisions about Social Security. That inevitable accountability that is brought in, however, as I'm sure many of us are, some of us are aware, you know,

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The default settlement and the fact that much of Social Security remains as a reserved area to UK Government, and especially delivered to things like Universal Credit. There's recognition of the limits of the legal powers of Scottish government to take action in space. And so really, that kind of brings me on to the second area here, which is also about not just focusing on the legal incorporation, and, you know, this idea of enforcing them to do something, this is about international law as well. And you know, the fact that we've already agreed to the standards, we've already ratified and said that we're going to implement and Scotland has the powers to observe and implement these these

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international obligations within the default context. So what we're looking at is ensuring that this this framework, this rights based approach of you like to understanding social security in Scotland, becomes embedded throughout those decision making processes becomes embedded throughout how the screens are delivered, and, you know, participation, that there's transparency within those decision making processes and others.

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Yes, accountability will help through enforcement. But other implementation measures are going to be equally as effective, kind of pressurising Scottish Government to look at somebody's decision to

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one of those I can see is probably the role of civil society. And obviously, we've got a few

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representatives from civil society on the call today, what role do civil society and charity organisations play? And advocating for and ensuring the implementation of the right to Social Security? What? What can we do to keep pressure up?

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Well, well, the big question. I mean, I'm quite sure there are many people on this call who who would happily jump in here to say, say all the many things that they're doing, and could be doing? Yeah, you know, human rights,

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responsibility of duty bearers, primarily, but they are also kind of wider cultural change point. And I think that this idea of civil society, there's a huge role for all these bodies, duty bearers, as well as non that ensure that these kinds of rights are being filtered through our decision making processes that are raised at different levels of governance as well, you know, this is not just about government, this is also about that kind of delivered on impact, right, in areas of society, you know, but also, I think, adopting the language of human rights and economic, social cultural rights can be a really powerful and effective tool at demonstrating that these are kind of nice to haves, these are international legal agreements that we've ratified, and that were yet to kind of meaningfully put into effect. And I think that these are really strong ways of engaging some of these issues, and making sure that you're keeping up that pressure, if you like to have an adequate social security's.

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And we've got a pre submitted question, actually, which, which relates to that, but it is, how public awareness and understanding of the right to Social Security can be improved, to foster greater support, like how do we get that information out to people time and time again. And the consortium, we do workshops, and, and sessions where people tell us it's just, there's such a lack of information on finding out what their human rights are and how to access them. So how could we improve that specifically, I guess, for the Social Security, but I guess you may add to this generally about human rights information, anyway.

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Yeah, um, you know, of course, kind of filtering these information, and particularly international human rights law, you know, it's not the most accessible language and accessible framework for people to kind of research in themselves and kind of go online and start reading about, it's kind of them and a lot of different

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approach approaches and languages others. So it's such an important

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aspect to pick up on is how to make this framework and how to make these rights we need accessible to everyone who's working through these organisations as well as as duty bearers. And that's going to be a critical aspect of the overall kind of implementation of the bill and ensuring that these plates are not kind of opaque, but are really understood throughout the different sectors of society. I think there's a lot of different aspects that we could do you know, the work Katie and I did on those briefings and Nuffield, that's one very simple way of us, you know, as academics kind of producing slightly more accessible

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documents that can be shared with practitioners and those working in direct different organisations kind of give you a basic of the overall legal landscape and how you can adopt some of these, some of these approaches, but also I think, having that kind of wider discussion on current Social Security in Scotland about human rights is one lens which you and it can also learn from from other insects.

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Traditional approaches that are already in existence, I think that deliberation around how we want to best implement security will really begin to kind of build those bridges, if you like, between someone who might look at it from a rights based perspective and someone who might look at it as a kind of anti poverty perspective.

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Yeah. And sort of just so interesting.

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Can you please give any examples of how different countries have maybe successfully implemented the rapes of security? I understand that that might not be your area at all. So if you don't have an answer, that's totally fine.

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But you may you may do.

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Sure. So yeah, this is really looking at where this right has been incorporated. And this comes down to

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really different models of incorporation, if you like. And so it may not be that in constitutions around the world, where people can write.

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And provided for this might be looking at, not specific word in rhetoric, Social Security, although certain states have done this successfully.

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Like Social Security appears to be enforceable, and there are there are cases.

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One really great case that kind of highlights post minimum core elements of this, and this focus on social security levels, is provided for through the German Constitutional Court. And while it's directly focused on

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the right to Social Security, as appears in the treaty texts, it is about this idea of minimum corps and about securing a life of dignity. And so within that was the heart CLI V corps case, right. If you went through the German constitution corps, is what we find is that, due to recent changes, the German government had placed on Social Security payments and the scheme that existed there, the court was asked to firstly assess those those levels, but also the kind of procedure and decision making behind those. And so while it wasn't the courts place to

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save the kind of levels of social security being given those payments being made, did focus on issues like the procedures behind it, and the decision making of how they reach to the fact that this level of of social security payment in Germany, that was being seen as kind of not being able to provide material needs access to food or healthcare or or

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housing, for example. And it really demonstrated that the decision making process has insufficient evidence to transparently made notes kind of saying, you've come up with this random number of what Social Security should be, without demonstrating why that's the case. And basically, the be understood as well not kind of directly on the right to Social Security, it shows that this idea of minimum baseline should be taken into account. And this ties directly on a case was brought around the insufficiency of Social Security payments in Germany to kind of

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Yeah, it's been successfully enforced in and other countries around the world. This is not brand new, and it's very much conversation in the UK. But this practice on information and awareness and learning we can do from from others.

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Brilliant, am I always think it is best to learn from others actually, and and see how we can best ourselves. My final question is What mechanisms are in place to hold governments accountable? If they fail to meet those obligations? If they fail to meet that minimum core under the right social security? What what are the levers we can use? Let's see if if they're not met with this human rights bill.

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Good. So again, this is more complex because of the devolved and reserved hours that exist, especially after the UN CRC judgement where it kind of closed off

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provided a different interpretation, shall we say? And I'm qualified power of the UK Government. So really, this is a more complex question. And probably I want to go into in detail and at this point, but really what we're looking at is kind of complaint. So that might be your legal route, if you'd like to apart the duties, such as security is to ensure access.

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And so if duty error has failed to meet the standards of the right, then really what we'd be looking at as as challenging both decisions and challenging under the right security. You've not met those standards. So we might go look at a kind of core process to hold the government accountable. Now, these are much more limited because of specific circumstances. But it's also

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Pour into understand court as a really kind of means of last resort, you know, it's really not a very accessible means.

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With the rights brought into Scots law and brought into

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incorporated into our system, we will be able to see that actually other thing other efforts and other means will become available, like your average complaints mechanism. Your might be through local authorities might be through a specific institution might be through an ombudsman.

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We have numerous non judicial groups to provide remedies within the state. And I think it's important to think about when you're talking about accountability, not just immediately jumping to the idea that there's a court case, but also looking at these non judicial remedies, or non judicial Avenue routes, if you like, but that are going to be equally important.

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Thanks for that, again, really interesting. We do have a question here now, from Ross, or they asked, when we consider non discrimination under Article 14 ECHR. There is a well developed body of case law that informs our approach, especially in the area of social security. Do you think we will be taking a similar approach to non discrimination challenges under the bill slash the UN treaties? Or is there a distinct jurisprudence that we will have to familiarise ourselves with?

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Okay, not not an easy question.

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No, and, you know, I'll provide the best answer I can, you know, it's not the kind of jurisprudence that currently exists under Article 14 ECHR is my particular area of expertise. And nor do I know what the final bill looks, it's very difficult to kind of make an assessment and on how those two points back to how the equality clause or other assumptions going to interact with that. There's also the added aspect here that there's discrimination, particularly complex aspects of this

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agreement with equal opportunities reservation. So this is a really challenging area, I think, for the bill probably, but in general, kind of for seeing exactly how non discrimination is going to work as that principle women and a domestic legal framework if you like, but certainly, my understanding my thoughts be that they would be looking seeking to take an approach, more in line with economic, social, cultural, we have specific guidance on what non discrimination means when those within these specific rights and how they attached. And that guidance was developed later, then the language of

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HR and so it provides a kind of much wider concept of what we might mean by discriminatory practices and what we might mean by things like substantive equality. And my hope, would be that the development of the bill has taken into account this specific interpretation of non discrimination in relation to ESC rights, instead of focusing on

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purely on the kind of non discrimination framework that currently exists. But as I say, that's a complicated and legal question.

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Thanks very much for that. And

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thanks very much, everyone, for coming. These longtime sessions have been hugely helpful for myself anyway.

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And I hope to see you all at the next one. Thank you.

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