



# National Taskforce for Human Rights Leadership Report



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## **Foreword by Shirley-Anne Somerville,**

**Cabinet Secretary for Social Security and  
Older People, Co-Chair of the National  
Taskforce for Human Rights Leadership**



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I am delighted to present this comprehensive Report which is the culmination of the work of the National Taskforce for Human Rights Leadership since October 2019. The development of this report, and the extensive work that underpins it, has required the dedication and persistence of many, during particularly challenging circumstances. Consequently, the Taskforce has had to be innovative in its work, especially in relation to ensuring thorough engagement and effective collaboration with an extensive range of stakeholders across the breadth of the country. And the report is all the better for it.

First and foremost, this report allows us an opportunity to recognise and celebrate how much progress has been made on human rights in Scotland. The recommendations ensure Scotland is an international leader in respecting and enhancing human rights. However, more can and must be done to better realise our ambition of being a global human rights leader and ensuring that the policies and decisions we make are shaped by a sound understanding of equality and human rights. To that end, the pioneering approach set out in this report has been recognised and supported by representatives of the United Nations.

The report outlines a wide range of bold and ambitious policy objectives and recommendations for the new framework that will set out for the first time, and in the one place, rights belonging to everyone in Scotland. There is no doubt that these recommendations present a big challenge to the government – to build on and accelerate the progress we have already made on human rights through this radical, new statutory framework. Undoubtedly, developing and implementing a framework of this nature will be complex and there are some aspects which we will require to give particularly careful consideration to if we are to do it justice. However, it is vital we are not complacent and continue to push ourselves to do more to ensure human rights are embedded in everything we do.

Crucially, our engagement has shown there is a strong shared ambition for human rights in Scotland and the role this new legislation will play in helping to fulfil that. This means that we will have help from a wide range of experts and partners as we navigate this new terrain. However, we know that government action by itself cannot bring about the kind of change we need to see. To fully realise the policy aspirations in this report will require a collective effort, from across the public sector and civil society, and this is vital to ensuring that we leave no one behind.

Finally, I would like to thank the members of the Taskforce, Working Group and Academic Advisory Panel for their huge commitment to this work and their steadfast advice and support. I would also like to thank my Co-Chair, Professor Alan Miller, for his unwavering vision which was integral to the Taskforce's success. My thanks also extend to our wider stakeholders across the length and breadth of the country who have enthusiastically engaged in this work and provided support throughout the process. We need to ensure our work on human rights makes a difference, helping people and communities to live with dignity wherever they are in Scotland, and whatever their circumstances.

**Foreword by Professor Alan Miller,  
Independent Co-Chair of the  
National Taskforce for Human Rights  
Leadership**



## A moment in time

This Report recognises that we have reached a moment in time for the introduction of a new human rights framework for Scotland, to improve all of our lives, our society and contribute to a better world.

Its recommendations are challenging, ambitious and need bold leadership to implement. It would be by far the biggest step taken in Scotland's human rights journey.

The recommendations are the direct outcome of broad engagement which has involved civil society and those with lived experience of the denial of their rights, public sector bodies, senior UN representatives and nationally and internationally recognised academics and experts, as well as engagement across the party political spectrum and across the UK.

This proposed new framework would for the first time put in a single place the range of internationally recognised human rights – civil, political, economic, social, cultural and environmental – which belong to everyone. Its aim is to provide full and equal access to the enjoyment of these rights and the maximum protection possible to everyone within the current constitutional arrangements. Key recommendations have been included to enable the framework to be effectively implemented, so that the rights can be made real in everyday life.

Many developments have contributed to bring us to this moment in time. From a human rights perspective, Scotland has become increasingly confident and internationalist throughout the past twenty years of devolution and the introduction of this new framework is the next step on its human rights journey.

An impetus to take this next step has been provided by Brexit, which has weakened the current framework of human rights and social protections.

An urgency to take this next step has been provided by the many lessons from the Covid crisis. It has starkly demonstrated for all countries the necessity to provide more security in people's lives through the increased protection of economic, social and environmental rights in particular, as well as the necessity to more effectively address the structural inequalities laid bare.

The Report's recommendations are very ambitious and it will take time to fulfil their potential. They will need resources and so we need to decide our priorities, use the maximum resources available and progressively realise such rights. Of course some of the challenges faced are much bigger than Scotland or any single country and so we all have a responsibility to start where we are and, in doing so, contribute to broader efforts.

**Foreword by Professor Alan Miller,**  
Independent Co-Chair of the  
National Taskforce for Human Rights  
Leadership

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The UN has called for all countries to cooperate and prioritise human rights as a vital part of all efforts to build back better from the pandemic, end interference with the natural environment which caused the pandemic and urgently address the underlying climate crisis.

This Report aims to support Scotland to rise to these challenges and take the opportunities presented at this moment of time.

I would like to sincerely thank all of my colleagues on the Taskforce, its Working Group and Academic Advisory Panel, and especially to my Co-Chair, for her consistent and clear commitment. I would also like to thank the First Minister for initiating this process and giving me the opportunity to contribute as Independent Co-Chair.

Above all, I would like to thank all of the many people who have contributed in so many ways to the preparation of this Report. These have included people from all walks of life and parts of the country and beyond. My only regret is that we were unable to meet in person and I look forward to future opportunities to do that.

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# INTRODUCTION

# Introduction

**"Human rights are essential to modern democracy. It makes Scotland a much fairer and more equal place."**

All Our Rights in Law participant

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The mandate of the Scottish Government led Taskforce was to make policy recommendations by March 2021 to inform development of a new statutory human rights framework for Scotland, along with the associated requirements of a public participatory process and capacity-building to enable its effective implementation (see Annex A for full Terms of Reference).

This Report is now presenting and making public the Taskforce's proposed high level policy objectives and related specific recommendations for the development of a new statutory human rights framework. It is then clearly for the Scottish Government to determine next steps and a way forward. The Taskforce recognises that the government in so doing will need sufficient flexibility, so that it may take into account all relevant considerations in determining how best it wishes to achieve the proposed policy objectives.

It should be noted that the Taskforce collectively reached agreement on the recommendations presented in this report. However, in some areas, there were, as you would expect, a variety of different views where members worked together to reach a decision. Although inevitably impacted by Covid, the Taskforce has carried out extensive public engagement, including with public authorities, which has directly informed its recommendations which are outlined in Chapter 2. (See Annex E for a summary of public engagements).

This extensive evidence base from public engagement has been supplemented by the Report of the First Minister's Advisory Group on Human Rights Leadership (FMAG), the briefing papers provided by the Taskforce's Academic Advisory Panel, the Bonavero Institute Report, the UNCRC (Incorporation) (Scotland) Bill and the Programme for Government. (See Chapter 1 for more detail).

Among the key findings were a broad support for the FMAG recommendations, along with an increased scale of ambition due to the lessons from the impact of Covid, as well as the widely recognised needs of effective implementation, public participation, adequate resources, access to remedies, monitoring of outcomes and development of a human rights culture.

These key findings helped support the development of overall strategic policy aspirations for the new statutory human rights framework.

The strategic policy aspirations directly respond to the key findings with a primary aspiration being that the framework protects human rights to the maximum extent possible.

The purpose of this protection is to improve the lives of individuals and communities and so should be experienced in their everyday life with access to courts being a last resort. This has been the approach of the UNCRC (Incorporation) (Scotland) Bill and is an approach which has been broadened by the Taskforce in developing its recommendations for a broader statutory human rights framework.

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### This includes:

- reaffirming the civil and political rights contained within the Human Rights Act, which gives domestic effect to the European Convention on Human Rights;
- keeping pace through monitoring and adapting future progressive rights developments within the EU, the Council of Europe and the broader international human rights framework; and
- demonstrating leadership through not only incorporating but also effectively implementing the full range of economic, social, cultural and environmental rights and specific rights for specific groups from UN human rights treaties.

All of these rights are internationally recognised as universal and indivisible, interdependent and interrelated.

An approach like this would integrate these rights from UN treaties as a whole into the new proposed statutory framework.

Additionally, the Taskforce recognises that there are rights which do not yet have their own UN treaties, but which can nevertheless be drawn from existing UN treaties and would therefore benefit from being included within a new framework which demonstrates human rights leadership by securing adequate protection for all.

Such rights include the right of everyone to a healthy environment, the rights of older people and the rights of LGBTI people.

The new framework should then for the first time in Scotland's history not only put in a single place the human rights belonging to everyone, but also ensure equal and full enjoyment of such rights by everyone.

Accordingly, the Taskforce's key recommendations on rights to be included within the framework include the following, so far as possible within devolved competence:

- Reaffirming the relevant rights in the Human Rights Act;
- Incorporation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which includes:
  - the right to an adequate standard of living including adequate food, clothing and housing and to the continuous improvement of living conditions
  - the right to the highest attainable standard of physical and mental health
  - the right to education
  - the right to social security, and
  - the right to take part in cultural life

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- A right to a healthy environment for everyone
  - Incorporation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
  - Incorporation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)
  - Incorporation of the Convention on the Rights of Persons with Disabilities (CRPD)
  - A right of older people to a life of dignity and independence
  - Equality rights for LGBTI people

Further elaboration on all of the above rights, including the policy objectives and evidence base, is to be found in Chapter 2.

Of course the UN Convention on the Rights of the Child is currently being incorporated by means of the UNCRC (Incorporation) (Scotland) Bill and it is important to ensure this new statutory framework aligns with it.

## **Approach to Incorporation**

In consideration of the legislative requirements to give effect to these rights the Taskforce considered the approach to the UNCRC (Incorporation) (Scotland) Bill. This Bill took a direct (reproducing the text of the treaty) and a maximalist (providing the widest protection possible within devolved competence) approach.

The Taskforce considers that this direct approach, as taken in the UNCRC (Incorporation) (Scotland) Bill, would be one effective way to ensure that the rights and obligations enshrined in these international instruments are most fully and comprehensively incorporated into domestic law.

This is because direct incorporation would be one effective way to allow rights-holders and duty-bearers to draw on the standards and interpretative documents developed by international human rights bodies, and where appropriate other jurisdictions, in order to keep pace and align with international obligations.

The Taskforce also considers that, based on FMAG recommendations and the evidence received, the best approach to incorporation would be to have a comprehensive single Bill where all treaties considered in the Taskforce remit are incorporated together. As human rights are indivisible, interdependent, and interrelated, a one-Bill approach with all treaties incorporated will help to reinforce the inter-relationship between all rights and obligations. The Taskforce recognises that an inflexibly direct approach to incorporation might not be the most effective way to deliver an optimally coherent framework when incorporating multiple treaties at once.

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In its public engagement the Taskforce learned that many civil society bodies were of the view that a one-Bill approach will provide clarity and lead to stronger empowerment. Public sector representatives stated that an integrated approach towards incorporation of the treaties would assist with effective implementation which delivers a rights-based culture change in practice.

Stakeholders also consistently emphasised to the Taskforce the importance of recognising people's multiple identities and the need to address issues of intersectionality in overcoming barriers to their rights. This too would be supported by the integrated incorporation of the treaties. Although the Taskforce sees clear merit in the approach taken by the UNCRC (Incorporation) (Scotland) Bill, it recommends a number of additional elements, which will help to achieve the policy objectives of the proposed broader human rights framework. The Taskforce recognises there will be a need to further understand the implications of using this approach when incorporating multiple treaties. This will be explored in the further development of the framework

## **Additional Elements**

A number of additional elements are recommended to strengthen the legislative framework. The primary purpose of these are to ensure, as far as possible, effective implementation of the framework and so improve people's lives.

They include proposals which provide a broad range of proposed implementation duties for the Scottish Government, public authorities and courts, as well as statutory and non-statutory guidance and also provide increased access to justice for individuals and communities.

The policy objectives of all of these recommended provisions are elaborated in Chapter 2.

In addition to the legislative requirements for effective implementation of the framework, the Taskforce considered other actions which would be helpful in the implementation of the Framework.

Public engagement and all of the evidence base has pointed to four distinct but related areas of focus of human rights capacity-building required for effective implementation of the new framework.

- Firstly, there is a need to further improve the decision-making of public authorities, or duty-bearers, through building human rights capacity.
- Secondly, there is a need to further develop the everyday accountability of public authorities through further strengthening the human rights role and capacity of scrutiny bodies, made up of regulators, inspectorates and complaints handling bodies.
- Thirdly, there is a need to ensure that rights-holders know and can exercise their rights.

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- Fourthly, there is a demonstrable need of the strengthening of access to justice as elaborated in Chapter 3.

The evidence base has also emphasised that a public participatory process is an indispensable part of the preparations of a new statutory human rights framework and its implementation.

This can help to increase public awareness, facilitate the public taking ownership of the process, including identifying the requirements of – and contributing to – the capacity-building and other steps needing to be taken to ensure the effective implementation of the framework.

Public participation is also essential on an ongoing basis and in multiple ways to ensure the proper functioning of the new framework and the effective implementation of the Act.

A final key finding from the evidence base on implementation requirements is that improving the monitoring of outcomes is indispensable in order to measure the results obtained on the ground from the implementation of the new human rights framework, in other words understanding to what extent the framework is making rights real.

Further elaboration on capacity-building, public participation and monitoring of outcomes is to be found in Chapter 3.

The Taskforce fully recognises the challenges faced by the Scottish Government in determining and implementing the next steps to be taken in this process, particularly in the context of so many demands being placed upon it in the context of the post-Covid recovery and other competing policy objectives.

However, the establishment of such a new statutory human rights framework is in itself an urgent and essential part of Scotland's values-based and sustainable post-Covid recovery. This is what it means to implement the call of the UN for all countries to "build back better" through placing human rights at the centre of all recovery efforts.

These next steps are likely to include a pre-legislative consultation process, preparation of legislation and policy and explanatory memoranda, the parliamentary legislative process and a public participatory process, development of statutory and non-statutory guidance, capacity-building and development of training and good practice.

All the members of the Taskforce, its Working Group and the many others with whom it has engaged, are committed to providing every support to help these steps to be taken as successfully and as soon as practically possible.

This is because these are the next steps to be taken to secure people's rights in practice. It is this which will demonstrate human rights leadership in and by Scotland and help to build a better country in a better world.

# RECOMMENDATIONS OF THE TASKFORCE

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**Recommendation 1(a):** The following rights are recommended for inclusion in the new statutory human rights framework:

Re-stating the rights protected by the Human Rights Act which gives domestic effect to the European Convention on Human Rights and includes the following civil and political rights:-

- Right to life
- Freedom from torture and from inhuman or degrading treatment or punishment
- Freedom from slavery or servitude or being required to perform forced or compulsory labour
- Right to liberty and security of person
- Right to a fair trial
- Freedom from punishment without law
- Right to respect for private and family life, home and correspondence
- Right to freedom of thought, conscience and religion
- Right to freedom of expression
- Right to freedom of peaceful assembly and to freedom of association, including the right to form and join trade unions
- Right to marry
- Right to protection of property
- Right to education
- Right to free elections
- Right to non-discrimination in the exercise of all of these rights

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**Recommendation 1(b):** Incorporation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

For information purposes, this Covenant includes for everyone economic, social and cultural rights, including the following:

- right to an adequate standard of living, including the rights to adequate food, clothing and housing and the continuous improvement of living conditions
- right to the enjoyment of the highest attainable standard of physical and mental health
- right to education
- right to social security
- right to take part in cultural life

**Recommendation 2:** Include the right to a healthy environment with substantive and procedural elements in the statutory framework.

**Recommendation 3:** Incorporation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

**Recommendation 4:** Incorporation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

**Recommendation 5:** Incorporation of the Convention on the Rights of Persons with Disabilities (CRPD).

**Recommendation 6:** A right for older people to be included in the statutory framework.

**Recommendation 7:** An equality clause that protects and promotes the full and equal enjoyment of rights of LGBTI people.

**Recommendation 8:** Include an equality clause which aligns with the Equality Act 2010 and provides equal access to everyone to the rights contained within the Bill.

**Recommendation 9:** The framework states the intent of the legislation is to give maximum possible effect to human rights and recognise that human dignity is the value which underpins all human rights. It is suggested this could be done via a purpose clause.

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**Recommendation 10:** Provide that courts and tribunals are clear on the intent of the legislation including the underpinning value of human dignity, in relation to international law and to comparative law. It is suggested this could be done through an interpretative clause.

**Recommendation 11:** The Scottish Human Rights Commission (SHRC) should be given additional powers including taking test cases and conducting investigations and any further extended powers should be considered.

**Recommendation 12:** Provide for a sunrise clause approach leading to a duty to comply which secures protection for rights-holders whilst also allowing duty-bearers time to prepare for full commencement of the legislative framework.

**Recommendation 13:** That there be a participatory process to define the core minimum obligations of incorporated economic, social and cultural rights, and an explicit duty of progressive realisation to support the effective implementation of the framework, which takes into account the content of each right.

**Recommendation 14:** Pre-legislative assessment to be included in the framework – which could include a requirement to certify that any proposed Bill complies with the rights contained within the framework and demonstrate where the proposed Bill contributes to the advancement of such rights.

**Recommendation 15:** Provide a duty on Scottish Ministers to publish a human rights scheme for the giving of further effect to the rights contained within this framework, to be held accountable for its implementation, to report specifically on how a duty to take the statutory human rights framework into account during the budgetary process was met, progress made on Scotland's National Action Plan for Human Rights, and to provide for periodic reporting duties on implementation plans for the Scottish Government and public authorities.

**Recommendation 16:** Further consider the best approach to ensure there is clarity and certainty that relevant private actors carrying out public functions, and functions connected to the delivery of rights within the framework, are within the scope of the obligations in the framework.

**Recommendation 17:** Ensure the Framework allows for making statutory and non-statutory guidance, which should be developed through consultation with key stakeholders, including rights-holders.

**Recommendation 18:** The Scottish Government takes steps to ensure that public authorities are supported to effectively implement the framework through provision of adequate resources and clear guidance on their duties.

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**Recommendation 19:** The Scottish Government should consider how scrutiny bodies can be supported through provision of adequate resources and clear guidance on their duties within the framework to effectively oversee the framework implementation plans of duty-bearers.

**Recommendation 20:** The Scottish Government, working with civil society, community-based stakeholders and public authorities, should develop effective ways to make sure that people have the information that they need about their rights and easy access to advice on rights.

**Recommendation 21:** Through engagement with key stakeholders, including those who face additional access to justice barriers, further consider accessible, affordable, timely, and effective remedies and routes to remedy that will be provided for under the framework.

**Recommendation 22:** Further consider specific duties being placed upon front-line complaint handling mechanisms and scrutiny bodies in order to enhance access to justice and ensure human rights obligations are given effect by all public authorities.

**Recommendation 23:** Explicitly allow for bodies with “sufficient interest” to bring proceedings on behalf of claimants.

**Recommendation 24:** Include in the framework an approach to standard of review of the reasonableness of a measure that takes into account international human rights law standards and comparative best practices.

**Recommendation 25:** Further consider how the framework could provide for the full range of appropriate remedies under international law to be ordered by a court or tribunal when needed, including targeted remedies which could provide for non-repetition of the breach (such as structural interdicts).

**Recommendation 26:** As part of the development of the framework, to further explore access to justice, taking into account the views of right-holders, in order to consider how the framework could help provide a more accessible, affordable, timely, and effective judicial route to remedy.

**Recommendation 27:** The Scottish Government should adopt an innovative and human rights-based approach towards engaging the public in developing the framework including the guidance and its implementation.

**Recommendation 28:** The Scottish Government should develop a large-scale public awareness campaign about the new framework.

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**Recommendation 29:** The Taskforce recommends that further consideration be given to including an explicit right to participation, drawn from the principles of international human rights law, within the legislation.

**Recommendation 30:** Further consideration should be given to the development and strengthening of effective monitoring and reporting mechanisms at all levels and duties at both national and public authority levels, recognising that this will be important to secure better compliance with the framework. It should include consideration of a National Mechanism for Monitoring, Reporting and Implementation, as recommended by the First Minister's Advisory Group on Human Rights Leadership.

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# CHAPTER 1

# Terms of Reference, Methodology and Approaches, Evidence Base, Scope of Engagement and Members of Taskforce

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## **Terms of Reference for the National Taskforce for Human Rights Leadership**

(full detail at Annex A)

### **The Terms of Reference stated the role of the Taskforce was:**

*“To design and deliver detailed proposals for a new statutory human rights framework for Scotland, together with the associated requirements for a public participatory process and for capacity-building initiatives. In doing so it will have particular regard to the recommendations presented in December 2018 by the First Minister’s Advisory Group on Human Rights Leadership.”*

The Terms of Reference also state that the detailed proposals developed and published by the Taskforce must be capable of being implemented by an Act of the Scottish Parliament which means they must be within devolved competence.

The Taskforce is to ensure that its recommendations are appropriately informed by public engagement and a public participatory process.

**"This would be life changing to so many from all different backgrounds. It can change people's lives."**

All Our Rights in Law participant

## Summary of Methodology and Approaches

In developing its overall analysis and recommendations the Taskforce adopted the same human rights-based methodology of Structure, Process and Outcome which was followed by the FMAG and which was subsequently endorsed in its Report by the internationally renowned Bonavero Institute.

- **Structure** is the human rights commitments made in the legal and governance framework of Scotland.
- **Process** is the effort to implement such commitments.
- **Outcome** is the result in real life of the commitments and efforts.

In developing its recommendations for a new statutory human rights framework the Taskforce adopted three complementary approaches – internationalist, maximalist and multi-institutional.

### Internationalist Approach

Firstly, an internationalist approach would put into domestic law, and for the first time in a single place, the human rights belonging to everyone, including a broad range of internationally recognised human rights from UN treaties.

These UN treaties, taken together and treated as a whole, have over time established the international human rights framework which continues to evolve in facing new challenges.

These are also treaties which are signed and ratified by the UK and form part of our international obligations. Treaty bodies have repeatedly called on the UK to incorporate the standards into domestic law.

This approach enables us to keep pace with international rights developments and cooperate internationally in, for example, addressing the urgent challenge of climate change through including the right to a healthy environment within the proposed new statutory framework.

We will continue to learn from international best practice as well as in turn contribute to that, for example through recognising within the proposed new statutory framework the rights of older people, and in doing so contribute to the current preparation of a new UN treaty on the rights of older people.

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## **Maximalist Approach**

Secondly, a maximalist approach in this context is to aim to achieve the most effective promotion and protection of human rights within our current constitutional arrangements.

This includes mitigating the risks of regression, keeping pace through monitoring and adapting future progressive rights developments within the EU, Council of Europe and the broader international human rights system.

Critically, it is demonstrating leadership through not only incorporating but also effectively implementing the full range of economic, social, cultural and environmental rights to be found in UN human rights treaties. All of these rights are internationally recognised as universal and indivisible, interdependent and interrelated.

A maximalist approach further recognises and responds to the reality that there are people in society whose rights are least well realised in practice and who face the biggest barriers for the recognition and realisation of their rights. These include women, children, disabled people, minority ethnic people, older people and LGBTI people.

This maximalist approach, as described, integrates all of these rights and UN treaties as a whole into the new proposed statutory framework so far as possible within devolved competence.

## **Multi-Institutional Approach**

Thirdly, a multi-institutional approach is about sharing human rights leadership and responsibility among parliament, government at all levels, and the courts, as well as our justice system more broadly.

Such an approach also recognises the roles of regulators, the ombudsman, inspectorates and national human rights institutions in providing access to remedy and accountability for rights violations.

In this way, the sum is greater than any of the parts, there is no reliance upon a single institution and a broader human rights culture can be developed.

Very importantly, this approach also increases the extent to which the public can participate in law, policy and decision-making at all levels. It is public participation which is the best guarantor of human rights.

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## Summary of Evidence Base

### The FMAG Report of 2018

This provided a significant evidence base, in that it was the product of considerable public engagement, comprehensive analysis of the human rights situation in Scotland and has been broadly welcomed by the Scottish Government and Scottish Parliament, as well as civil society. Its approach has now also been endorsed by the [Report of the internationally renowned Bonavero Institute](#).

### The Taskforce Academic Advisory Panel

The Taskforce is indebted to its Academic Advisory Panel, chaired by Professor Nicole Busby of the University of Glasgow and composed of leading human rights academics, who contributed a series of valuable briefing papers on key aspects of the development of a new statutory human rights framework, including the following:

- “*The Essential Features of an Equality Clause and the Potential Incorporation of CEDAW*”, Professor Nicole Busby, University of Glasgow
- “*Incorporation of the CERD and CRPD and Equivalent Rights Provision for LGBTI Communities and Older Persons*”, Professor Nicole Busby, University of Glasgow and Dr Kasey McCall-Smith, University of Edinburgh
- “*The Meaning and Content of Duties to be Considered for Inclusion in the Bill*”, Dr Katie Boyle, University of Stirling
- “*The Underpinning Concept of Human Dignity*”, Dr Elaine Webster, University of Strathclyde
- “*Scotland’s Future Relationship with the EU and the Development of Human Rights Under EU Law*”, Professor Tobias Lock, University of Maynooth
- “*Minimum Standards for Delivery of Economic, Social and Cultural Rights*”, Dr Kasey McCall-Smith, University of Edinburgh
- “*Access to Justice for Economic, Social and Cultural Rights*”, Dr Katie Boyle, University of Stirling
- “*Access to Remedy – Systemic Remedies and Structural Orders*”, Dr Katie Boyle, University of Stirling

### The Report of the Bonavero Institute

The Taskforce is also privileged to receive from the Bonavero Institute a Report on the “*Development and Application of the Concept of Progressive Realisation*”. This paper was commissioned by the Taskforce.

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The concept of progressive realisation is a critical component of the duties under international human rights to implement economic, social and cultural rights and, together with other obligations of international law, forms an extremely important part of the recommended new statutory human rights framework.

The Institute, housed within the Faculty of Law at the University of Oxford, undertakes world class research in the field of human rights law and fosters public engagement in human rights issues.

It is noteworthy that the internationally renowned Bonavero Institute affirmed the human rights-based approach taken by the FMAG.

The Taskforce's work has been influenced by the Report and has benchmarked its recommendations against the approach and five principles recommended by the Report.

An extract from the Report's Executive Summary is reproduced here for ease of reference:

"The report suggests five principles that a government needs to bear in mind when seeking to provide for the domestic protection and fulfilment of international human rights obligations beyond their legislative restatement.

- Firstly, in the case of human rights that impose positive obligations, legislation – whether primary or secondary – should be enacted stipulating the benefits that will be provided by government (or where appropriate a private body) to fulfil the rights. Government, or the appropriate private actor, should then provide a process through which those benefits can be obtained.
- Secondly, government needs to ensure that state agencies (and where appropriate, private institutions) tasked with the fulfilment of human rights are properly resourced and undertake their duties effectively, responsively and openly.
- Thirdly, governments need to provide an effective process for monitoring the implementation of rights and for monitoring budgetary allocations to the fulfilment of rights.
- Fourthly, governments should consider a pluralistic institutional model for rights enforcement involving parliamentary committees, courts, tribunals and fourth branch institutions such as ombuds and human rights commissions.
- Fifthly, government needs to determine what institutional provision will be made for circumstances where government fails to act progressively to realise rights. The report notes that in both Colombia and South Africa courts are central to this process, while in Finland a wider range of institutions play a role. In considering what institutional mechanism should be adopted to address this situation, the report suggests that attention be paid to questions of history, constitutional politics and legal culture."

## **Summary of Scope of Engagement (further details in Annex E)**

The evidence base of the Taskforce also benefited immensely from the wide public engagement, although the outbreak of the pandemic impacted on the Taskforce's intended public participatory process, causing time to be lost and requiring a transition to online public engagement.

Online engagement did, however, facilitate broad geographical representation and the participation of those who may have found it difficult otherwise to engage with the Taskforce. It is acknowledged, however, that engagement was also more limited to those who could do so online.

Over forty roundtables were held across all of the areas of focus of the Taskforce and five standing Reference Groups were established representing the breadth of civil society and the public sector as well as bodies engaged with CEDAW, CRPD and CERD.

In addition, and on behalf of the Taskforce, the Human Rights Consortium Scotland and the Scottish Human Rights Commission developed a rights-holders participatory project entitled [All Our Rights in Law](#), to ensure that the voices of those with direct lived experience of not having their rights realised effectively contributed to the process. More than 35 conversations were hosted by civil society organisations as part of this project, enabling many individuals who are seldom-heard in human rights developments to give their views. In addition, Together (The Scottish Alliance for Children's Rights) facilitated discussions with children and young people around rights of disabled children, rights of minority ethnic children, and the right to a healthy environment.

Positive political engagement also took place across all of the political parties represented in the Scottish Parliament.

Other contributors to the Taskforce engagement process included senior representatives of the UN, as well as representatives from the Welsh Government, the Northern Ireland Executive and the UK Parliament.

The Taskforce also benefited from engagement with Scottish Government officials, including those involved in preparing the UNCRC (Incorporation) (Scotland) Bill.

All of the above enabled the Taskforce to learn a great deal from a wide range of sources within Scotland, the UK and internationally, and this significantly added to the breadth of experience and expertise which already existed among the members of the Taskforce.

Specifically, the Taskforce was able to assess the extent of the support for the FMAG recommendations for a new framework and how best to build upon that, taking fully into account the lessons from the pandemic and from the UNCRC Bill process.

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The public engagement also enabled the Taskforce to identify the nature of opportunities and challenges presented in general by a new framework and, specifically, in relation to the possible incorporation of CEDAW, CRPD and CERD, as well as to identify the most effective means of implementation of the framework.

## **Members of Taskforce**

The Taskforce contained a distinctive breadth of expertise and experience of members, including from government, local authority and health sectors, civil society, national human rights institutions, academia, the legal profession, and the former Legal Adviser to the Joint Committee on Human Rights at Westminster.

These members were supplemented by other individuals who joined the Working Group of the Taskforce and also, of course, by the members of the Taskforce Academic Advisory Panel (see Annex B).

# CHAPTER 2

# New Statutory Human Rights Framework Recommendations

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The proposed new statutory human rights framework is to build upon the recommendations of the FMAG Report, the maximalist approach taken to the UNCRC (Incorporation) (Scotland) Bill and the breadth of evidence obtained by the Taskforce through its public engagement and Reference Groups, as well as from its Academic Advisory Panel, the Bonavero Institute and other submissions.

For the first time and within the current constitutional arrangements, it is proposed to put in a single framework the broad range of modern internationally recognised human rights belonging to everyone – including re-stating the civil and political rights already provided through the Human Rights Act, along with the economic, social, cultural and environmental rights from UN treaties – and it will seek to ensure full and equal enjoyment of all of those rights for women, children, disabled people, minority ethnic communities, older people and LGBTI people.

## **Strategic Policy Aspirations, Policy Objectives and Recommendations**

The strategic policy aspirations for this group of Taskforce recommendations are:

1. *The framework further protects people's internationally recognised rights where they are not currently protected in law or given adequate focus in practice*
2. *The framework brings focussed attention to the rights of those whose rights are least realised or given attention to in society*
3. *The framework protects the identified rights to the maximum extent possible within current devolved competence*

### **Policy Objective 1: Enjoyment of Economic Social and Cultural Rights belonging to everyone**

The policy objective is that the framework is to provide to everyone in Scotland the economic, social and cultural rights which are internationally recognised but have not yet been brought into our domestic law, policy and practice.

Further elaboration on the incorporation of ICESCR is to be found in the FMAG Report, the Bonavero Institute Report and the papers from the Academic Advisory Panel, including: “Access to Justice for Economic, Social, Cultural and Environmental Rights: Principles of Adjudication” by Dr Katie Boyle; “Minimum Standards for Delivery of Economic, Social and Cultural Rights” by Dr Kasey McCall-Smith; and “Access to Remedy – Systemic Issues and Structural Orders” by Dr Katie Boyle.

It will be important to consider during Bill development to what extent the Bill could build on the rights contained in ICESCR and also, for example, take account of the rights in the European Social Charter. Although, unlike the 1961 Charter, the 1996 revised Charter has not been ratified by the UK Government, it can provide inspiration for this statutory framework.

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**Recommendation 1(a): The following rights are recommended for inclusion in the new statutory human rights framework:**

- **Re-stating the rights protected by the Human Rights Act** which gives domestic effect to the European Convention on Human Rights and includes the following civil and political rights:
  - Right to life
  - Freedom from torture and from inhuman or degrading treatment or punishment
  - Freedom from slavery or servitude or being required to perform forced or compulsory labour
  - Right to liberty and security of person
  - Right to a fair trial
  - Freedom from punishment without law
  - Right to respect for private and family life, home and correspondence
  - Right to freedom of thought, conscience and religion
  - Right to freedom of expression
  - Right to freedom of peaceful assembly and to freedom of association, including the right to form and join trade unions
  - Right to marry
  - Right to protection of property
  - Right to education
  - Right to free elections
  - Right to non-discrimination in the exercise of all of these rights

**Recommendation 1(b): Incorporation of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**

For information purposes, this Covenant includes for everyone economic, social and cultural rights including the following:

- Right to an adequate standard of living, including the rights to adequate food, clothing and housing and the continuous improvement of living conditions
- Right to the enjoyment of the highest attainable standard of physical and mental health
- Right to education
- Right to social security
- Right to take part in cultural life

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## **Policy Objective 2: Enjoyment by everyone of a healthy environment**

The policy objective is to enable everyone to benefit from healthy ecosystems which sustain and promote human health and wellbeing, as well as the right to access to information, participation in decision-making and access to justice.

The right to a healthy environment is based upon existing international human rights treaties (including those that the proposed statutory framework will incorporate, as well as the UN Convention on the Rights of the Child) and international environmental treaties.

A significant finding of the three roundtables on the right to a healthy environment was that recognising this right can be a step change in supporting more coherent protection of all human rights, both from the perspective of rights-holders and duty-bearers.

Stakeholders generally concur with the Taskforce about the need to clarify the procedural and substantive content of this right in the statutory framework, explicitly linking the protection of inter-dependent environmental features with everyone's human health, in line with international standards such as the UN Framework Principles on Human Rights and the Environment and the Aarhus Convention.

More detailed policy features, explanation of this right and the supporting evidence are to be found in Annex D. This recommendation was the outcome of three stakeholder roundtables, as well as engagement with three UN Special Rapporteurs who participated in the Taskforce roundtables, including the former UN Special Rapporteur on Human Rights and the Environment who developed the UN Framework Principles.

## **Recommendation 2: Include the right to a healthy environment with substantive and procedural elements in the statutory framework.**

## **Policy Objective 3: Full and Equal Enjoyment of Rights by Women**

This policy objective includes providing full and equal access to all of women's rights, including to all of the above rights.

Making CEDAW more visible in law through incorporation has the potential to open up its use as a powerful awareness-raising tool in relation to women's continued disadvantage and existing right to equality. This could catalyse CEDAW's use as an agenda-setting framework capable of engendering the Public Sector Equality Duty, Fairer Scotland Duty and the proposed duties under the framework relating to economic, social, cultural and environmental rights in Scotland.

Further elaboration is to be found in the briefing papers from the Academic Advisory Panel, including "The Essential Features of an Equality Clause and the Potential Incorporation of CEDAW" by Professor Nicole Busby, which points out that further consideration will be required to navigate the equal opportunities reservation.

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It should also be noted that the incorporation of CEDAW has been proposed by the First Minister's National Advisory Council on Women and Girls and is a commitment of the current Programme for Government.

### **Recommendation 3: Incorporation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).**

#### **Policy Objective 4: Full and Equal Enjoyment of Rights by Minority Ethnic People**

This policy objective is to enable the full and equal enjoyment of all of the above rights for minority ethnic people. The benefits of incorporation would go beyond litigation and bring a dynamism and cohesion to existing initiatives. For example, access to the rights within CERD would significantly strengthen the existing Public Sector Equality Duty and the Fairer Scotland Duty through making duty-bearers more accountable to take more proactive and outcomes-focused actions.

Incorporation of CERD would demonstrate a commitment beyond only symbolism and would build upon the current post-Covid heightened awareness of inequalities and further shift public perceptions and understanding of the underlying causes of continued racial discrimination.

Further elaboration is to be found in the papers from the Academic Advisory Panel, including "Incorporation of the CERD and CRPD and Equivalent Rights Provisions for LGBTI Communities and Older Persons" by Professor Nicole Busby and Dr Kasey McCall-Smith, which also points out that realisation of the rights contained in CEDAW, CERD and CRPD in Scots law is subject to the provisions of the Human Rights Act 1998, the Equality Act 2010 and other aspects of devolved competence.

### **Recommendation 4: Incorporation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).**

#### **Policy Objective 5: Full and Equal Enjoyment of Rights for Disabled People**

The policy objective is to enable the full and equal enjoyment of all of the above economic, social and cultural rights for disabled people, as well as of additional specific rights.

Incorporation would emphasise the social, rather than the medical, model of disability and so help remove social barriers to full participation in society. It will help bring about a more cohesive framework and a more proactive and dynamic outcomes focus on the Public Sector Equality Duty and the Fairer Scotland Duty.

As with CERD, incorporation would demonstrate a commitment beyond only symbolism and would also build upon the current post-Covid heightened awareness of inequalities and support the necessary cultural change.

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Further elaboration, including reference to competence constraints, is to be found in the papers from the Academic Advisory Panel, including “Incorporation of the CERD and CRPD and Equivalent Rights Provisions for LGBTI Communities and Older Persons” by Professor Nicole Busby and Dr Kasey McCall-Smith.

## **Recommendation 5: Incorporation of the Convention on the Rights of Persons with Disabilities (CRPD).**

### **Model of incorporation of all of the above UN treaties**

It is important that the way in which these UN rights treaties are incorporated is effective for ensuring the protection and realisation of rights in people’s everyday lives. The Taskforce is of the view that there should be full incorporation, subject to competence constraints, of the above listed treaties in a one-Bill approach. The Taskforce also recognises that this proposed new statutory framework for human rights is very ambitious but also very new and complex.

The direct incorporation model, as adopted within the UNCRC (Incorporation) (Scotland) Bill, has the benefit of placing the rights being incorporated within the overall context and intent of the treaties as a whole. It recognises the interdependence among the UN treaties included within the framework as a whole and, furthermore, the Taskforce notes that this model has been broadly welcomed to date in the context of the UNCRC Bill.

Incorporation of treaties, as confirmed in the Bonavero Report, is of course a first step towards giving effect to the rights contained within the treaties and needs to be followed by further steps to give further effect to such rights in the domestic context.

The Taskforce also supports, the maximalist approach of the UNCRC (Incorporation) (Scotland) Bill as it is thought that it provides the widest possible promotion and protection of human rights within devolved competence for that Bill.

It is recognised that further consideration and consultation with stakeholders and others will be required around an approach to incorporation of multiple treaties in a one-Bill approach that achieves a coherent integrated framework which optimally delivers the overall policy objectives.

Furthermore, the Taskforce recognises that none of the recommendations stated here should hinder the advancement of the protection of rights through other legislation or processes, whether before or after the new human rights statutory framework is introduced.

### **Convention Against Torture**

At present, there is significant if not complete protection of the Convention Against Torture (CAT) provided through the UK National Preventative Mechanism of the Optional Protocol of CAT and through the prohibition of torture and inhuman and degrading treatment or punishment provided by the Human Rights Act, as well as other mechanisms.

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Notwithstanding the above protections, there is a case, based primarily upon consistency and coherence, for its incorporation along with the other recommended UN human rights treaties which have all been ratified by the UK but not yet incorporated.

However, as it did not significantly feature in any of the Taskforce public engagement, the Taskforce considers that there should be further exploration, as part of the development of this framework, of the benefits of incorporation of CAT at a later date.

#### **Policy Objective 6: Full and Equal Enjoyment of Rights by Older People**

The policy objective is to ensure older people can enjoy equal access to their rights through an overall right to lead a life of dignity and independence and to take part in social and cultural life, as previously provided by the EU Charter of Fundamental Rights.

Subsequent legislation could helpfully provide specific rights in such areas as health and social care, social security and protection, housing and education and others, in alignment with the Council of Europe Recommendations (2014)02 and the European Social Charter.

Further development of these rights should be informed by close monitoring and engagement with the current preparations by the Open-Ended Working Group on Ageing for a new UN treaty on the rights of older people.

#### **Recommendation 6: A right for older people to be included in the statutory framework.**

#### **Policy Objective 7: Full and Equal Enjoyment of Rights by LGBTI People**

The policy objective is to ensure full and equal enjoyment of rights for LGBTI people. In the absence of a specific UN treaty for LGBTI people, the right of equal access to the full enjoyment of all the above rights belonging to everyone should be provided by an equality clause within the Act establishing the new framework.

Further elaboration of broader purposes of the equality clause is to be found in Policy Objective 8.

#### **Recommendation 7: An equality clause that protects and promotes the full and equal enjoyment of rights of LGBTI people.**

#### **Policy Objective 8: Recognise the reserved status of 'equal opportunities' whilst furthering equality of outcomes for those who require it most, including protected characteristics groups**

The policy objectives include the following: to ensure equal access for all, including LGBTI people as specified above, in relation to all of the rights within the Bill to draw down the provisions of the economic, social and cultural rights to be directly incorporated; to specify the relationship between the proposed Act and the Equality Act 2010; and to align or delineate the 'Scottish specific' provisions of the latter and to aid in the interpretation of the new rights framework by all relevant parties.

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This supports the practical and operational alignment of the proposed new human rights framework and the existing domestic equality duties framework.

Further elaboration is to be found in the paper by Professor Nicole Busby, “[The Essential Features of an Equality Clause and the Potential Incorporation of CEDAW](#)”

**Recommendation 8: Include an equality clause which aligns with the Equality Act 2010 and provides equal access to everyone to the rights contained within the Bill.**

**Evidence base**

The preceding recommendations are directly drawn from what the Taskforce learned from its public engagement and is included in the Taskforce evidence base. This is detailed in Annex E along with the full scope of public engagement.

The public engagement included around one hundred engagement events across a wide range of stakeholders, including civil society and individuals with lived experience of some denial of human rights as well as across the public sector.

The Taskforce established specific reference groups to provide it with focused advice. These included a Civil Society Reference Group and a Public Sector Reference Group, as well as reference groups relating to CEDAW, CERD and CRPD.

On behalf of the Taskforce, the Scottish Human Rights Consortium and the SHRC also led the All Our Rights in Law project, which gathered evidence from a wide representation of rights-holders, including those with lived experience of some denial of human rights.

The evidence base also includes key findings from the briefing papers from the Taskforce Academic Advisory Panel, the Bonavero Institute Report, the Scottish Human Rights Commission, the Equality and Human Rights Commission, Who Cares? Scotland and the LGBTI sector and others.

These summary notes from public engagement events including the reference groups, are all to be found in Annex E.

**Additional Key Elements**

The Taskforce recommends a number of additional key elements to achieve the policy objectives of the proposed broader human rights framework.

These additional key elements are recommended to strengthen the legislation introducing the framework. The primary purpose of these additional elements is to ensure as far as possible the effective implementation of the framework and so improve people's lives.

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They include proposals which provide a broad range of implementation duties for the Scottish Government, public authorities and courts, as well as statutory and non-statutory guidance and also provide increased access to justice for individuals and communities.

The Strategic Policy Aspirations of this group of recommendations are:

4. *The Framework, and human rights protection more widely, keeps pace with progressive international developments*
5. *The Framework ensures duty-bearers build human rights into all relevant processes and decision-making*
6. *The Framework ensures compliant and progressively realising human rights legislation is passed by the Scottish Parliament and consideration is given as to whether human rights-based monitoring and scrutiny of law and practice could be increased by the Scottish Parliament.*

In line with these strategic policy aspirations the following additional key elements are recommended to be included within the legislation which establishes the new statutory human rights framework.

#### **Policy Objective 9: Supporting Clear Purposive Interpretation**

The policy objective of this recommendation is to provide aid in the interpretation of the rights and duties within the framework by being clear and explicit about its purpose.

For example, when seeking to interpret the framework legislation in their consideration of cases before them, the courts and tribunal system may benefit from a clearly expressed intent and will of Parliament.

The value of human dignity plays an important role underpinning international human rights law and has also assisted with the interpretation of rights and duties in different contexts.

Further elaboration of this concept of human dignity is to be found within the paper by Dr Elaine Webster, "The Underpinning Concept of Human Dignity."

**Recommendation 9: The framework states the intent of the legislation is to give maximum possible effect to human rights and recognise that human dignity is the value which underpins all human rights. It is suggested this could be done via a purpose clause.**

**"The law is a first step – the real work starts now to get it in place and implemented."**

All Our Rights in Law participant

### **Policy Objective 10: Enable the implementation of the framework to keep pace with and contribute to developments in international law**

Firstly, a clear policy objective for the Taskforce is to ensure that courts and tribunals and all bodies strive to achieve the intent of the legislation establishing the framework. This includes the underpinning value of human dignity which is recognised in international law and should be taken into account when interpreting the rights contained within the framework.

There should also be provision within the framework that nothing within it shall affect any provisions from domestic law or international law which are more conducive to the realisation of the rights within the framework.

Furthermore, there is a recommendation for Scottish Ministers to develop a human rights scheme which would provide for further domestic legislation to give further effect to the rights contained within the framework.

Together these provisions will further ensure that the framework provides evolving protection of rights in line with legal and social developments.

Secondly, to serve this objective through ensuring that the framework is interpreted in alignment with international standards. In order to achieve this it is considered that courts and tribunals should pay regard to international law. This should include decisions, General Comments and Concluding Observations from treaty bodies, as well as judgements, decisions, declarations or advisory opinions of the European Court of Human Rights and other sources.

The above includes all of the incorporated rights across the relevant treaties – ICESCR, CEDAW, CRPD and CERD – when relevant, so as to address issues of intersectionality.

Thirdly, the objective is to be served through providing that courts and tribunals may consider comparative law where relevant.

**Recommendation 10: Provide that courts and tribunals are clear on the intent of the legislation including the underpinning value of human dignity, in relation to international law and to comparative law. It is suggested this could be done through an interpretative clause.**

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**Policy Objective 11: Ensuring relevant organisations have appropriate powers to implement the statutory framework**

It would be helpful if the powers for relevant organisations, such as the SHRC, were appropriately extended.

In the case of the SHRC, as Scotland's National Human Rights Institution, the Taskforce view is that there should be extension of the powers of the SHRC, to promote and ensure further compliance with human rights. As the institution mandated to promote best practice in relation to human rights and monitor compliance with human rights, the Taskforce considers that the SHRC could be provided with the power to be able to take test cases and conduct investigations.

Under a multi-institutional approach, increasing the powers and resources of Scotland's National Human Rights Institution would strengthen that institution's role in the capacity-building of a wide range of bodies, in support of the effective implementation of the framework. Further consideration will need to be given during the Bill development on whether there are other organisations that may also require a change or extension of powers to fully effect the legislation.

The SHRC is funded by the Scottish Parliament Corporate Body, therefore further consideration and discussion will be required to determine how to ensure this recommendation is adequately resourced.

**Recommendation 11: SHRC should be given additional powers including taking test cases and conducting investigations and any further extended powers should be considered.**

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**Policy Objective 12: Ensure the framework secures protection for rights-holders whilst allowing for adequate preparation time for duty-bearers in relation to commencement of duties**

The Taskforce's engagement with duty-bearers has highlighted there will be a need to provide a sufficient period of time to make any necessary preparations for the commencement of the compliance duty, including the necessary culture change.

The Taskforce would suggest one useful way to do this would be to have a duty to pay due regard to the rights contained within the Act. This duty would come into effect at the commencement of the Act. Commencement should be as soon as possible after passage of the legislation.

A "sunrise clause" would then trigger the commencement of a duty to comply with the rights contained within the Act. This duty of compliance is to provide rights-holders with access to an effective remedy where necessary, as required by international human rights law.

It is anticipated that these duties of due regard and of compliance would be complementary and mutually reinforcing. The reasoning behind this suggested approach is to provide clarity for duty-bearers that the framework includes both obligations of conduct or process, as well as those of result or outcome. Together the duties may ensure proactive rights-based decision-making that could better meet rights-respecting outcomes for people.

However, the Scottish Government, in drafting the Bill, will wish to consider the best way to effect this policy objective along with the other overall policy objectives.

The Taskforce preference is for this to be within the lifetime of the next Parliament in order to provide certainty to both duty-bearers and rights-holders.

Further elaboration of the above is to be found within the [FMAG Report](#) at pages 28, 29 and in the [Bonavero Report](#).

**Recommendation 12: Provide for a sunrise clause approach leading to a duty to comply which secures protection for rights-holders whilst also allowing duty-bearers time to prepare for full commencement of the legislative framework.**

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### **Policy Objective 13: Ensure duty-bearers understand and implement the international obligations including the duty of progressive realisation**

This policy objective is to ensure that there is explicit recognition, understanding and application of the duty of progressive realisation which is also inherent in the proposed framework.

This concept is critical to the effective implementation of the framework and is drawn from ICESCR, Article 2(1) 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.”

According to international human rights law standards, progressive realisation implies that duty-bearers have a continuous obligation to take deliberate and concrete measures aimed at the full implementation of the rights, as expeditiously and effectively as possible. This duty also implies that duty-bearers are obliged to not take any regressive steps that limit the realisation of rights, unless there are convincing justifications for doing so.

There are certain obligations, however, which are of such importance that they cannot be subject to progressive realisation and availability of resources. These are called minimum core obligations, and are intended to guarantee that the very minimum levels of a right are provided by duty-bearers. However, it is important to emphasise that these fundamental obligations should be seen as a floor and not a ceiling. In order to define what the minimum core obligations are in Scotland, international human rights law standards should be taken into account, while also ensuring a participatory process that takes into account the views and concerns of right-holders in Scotland.

Given the significance of this critical component of the framework, the Taskforce recommends that there should be a specific provision for the duty of progressive realisation.

To give effect to international human rights law standards, as recommended by the Bonavero Report's first principle, the Taskforce suggests that the framework requires the minimum core obligations of incorporated economic, social and cultural rights to be clearly defined following a public participatory process and taking into account international law obligations accompanied by an explicit duty of progressive realisation.

**Recommendation 13: That there be a participatory process to define the core minimum obligations of incorporated economic, social and cultural rights, and an explicit duty of progressive realisation to support the effective implementation of the framework, which takes into account the content of each right.**

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### **Policy Objective 14: Enhanced pre-legislative assessment**

The policy objective is to secure rights-compliant and rights-fulfilling legislation is passed by the Scottish Parliament which is subject to robust scrutiny and review. This can be done by providing for an enhanced pre-legislative assessment.

The intention would be for such an assessment to require that the full range of civil, political, economic, social, cultural and environmental rights within the framework are covered. The Scottish Parliament may wish to consider what further pre-legislative scrutiny it could undertake and the Equalities and Human Rights Committee's role in supporting that.

In furtherance of the duty of progressive realisation, any pre-legislative assessment should include how the proposed legislation would contribute to such progressive realisation and the further and ongoing advancement of the rights within the framework. Further elaboration is to be found on all of the above within the [FMAG Report](#) at page 36.

### **Recommendation 14: Pre-legislative assessment to be included in the framework – which could include a requirement to certify that any proposed Bill complies with the rights contained within the framework and demonstrate where the proposed Bill contributes to the advancement of such rights.**

### **Policy Objective 15 – Securing implementation in practice**

It will be important under the framework that Scottish Ministers are not only accountable for their actions in relation to the compliance duty, but that they are accountable for planning and reporting how they will fulfil the rights and obligations under the Bill in practice. Such a scheme will drive at proactive measures for the realisation of rights and enhance both transparency and scrutiny of steps taken.

The provision of a Human Rights Scheme is akin to that provided for by the Children's Rights Scheme in the UNCRC (Incorporation) (Scotland) Bill in relation to children's rights.

This assists in giving effect to the duty under ICESCR Article 2 (1) 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.”

Additionally, Scotland's National Action Plan on Human Rights (SNAP) provides for a collaborative and participatory means of advancing the realisation of rights in key agreed priority areas. Placing SNAP on a statutory basis within the Bill, preserving its multi-stakeholder structure, would be a further way to build in a human rights-based approach to rights realisation under the framework.

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**Recommendation 15: Provide a duty on Scottish Ministers to publish a human rights scheme for the giving of further effect to the rights contained within this framework, to be held accountable for its implementation, to report specifically on how a duty to take the statutory human rights framework into account during the budgetary process was met, progress made on Scotland's National Action Plan for Human Rights, and to provide for periodic reporting duties on implementation plans for the Scottish Government and public authorities.**

Accordingly, the Scheme, to be published and reported on, could include the following:

- Reporting on the next iteration of Scotland's National Action Plan
- Responses to UN treaty body recommendations and implementation of judgements of the European Court of Human Rights relating to areas of devolved competence
- Ensure participation of affected communities in the making of decisions of a strategic nature, including budget decisions, which affect them
- Make improvements to access to justice through complaints mechanisms, access to information and advocacy and representation
- Make sure that people have access to information and advice about their rights where and when they need it
- Raise awareness and promote human rights
- Demonstrate how human rights have been considered in the Scottish Government's budgetary process.
- Ensure actions contribute to the National Outcome to "respect, protect and fulfil human rights and live free from discrimination" and to the National Performance Framework as a whole
- Prepare guidance on human rights implementation plans (as defined in further provision and/or statutory guidance including the "reasonable steps" expected to be taken by all public authorities in so doing)

The framework should require the Scheme to be laid before by the Scottish Parliament at regular intervals.

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With regard to local authorities and other public bodies and again building on the approach of the UNCRC, further consideration should be given to a reporting requirement so that particular public authorities report on the steps taken to fulfil their duties under the framework.

Additionally a requirement for impact assessment and public participation where decisions of a strategic nature are being taken could be included within the framework, subject to the requisite guidance being given.

Further elaboration on SNAP is to be found in the [FMAG Report](#) at pages 44, 45.

#### **Policy Objective 16: Clarity on intended application to all public functions**

The policy objective is to ensure that the framework applies to private actors when they are exercising functions of a public nature. Clarity on this is considered necessary in light of the experience to date of judicial interpretation of the definition of performing of a public function in relation to the Human Rights Act and the expansion in privately provided public services in all areas of public life.

It is a well-established principle of international human rights law and public international law that the state cannot divest itself of its human rights obligations by outsourcing or delegating those responsibilities to private organisations or individuals. Rights-holders should be able to have confidence and clarity that, regardless of who carries out the public function, their human rights fully apply.

It is also important that, in determining any broadened definition, regard is paid to the UN Guiding Principles on Business and Human Rights and General Comment 24 of the UN Committee on Economic, Social and Cultural Rights.

Further elaboration of this is to be found within the [FMAG Report](#), page 41.

#### **Recommendation 16: Further consider the best approach to ensure there is clarity and certainty that relevant private actors carrying out public functions, and functions connected to the delivery of rights within the framework, are within the scope of the obligations in the framework.**

#### **Policy Objective 17: Clear Statutory and Non-Statutory Guidance**

The policy objective is to facilitate the operationalisation of the rights and duties within the Bill, including implementation plans, reports and impact assessments. This can be advanced through the provision of statutory and non-statutory guidance. We highlight that such guidance is essential for the practical implementation of this framework in a way that drives a human rights culture and improvements in realisation of rights, as well as for enabling accountability to rights-holders.

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We also consider that there would be benefit in this guidance including detail around the implementation of rights for particular groups. In our public engagement, for example, we heard of the barriers to rights faced by care experienced people, people with learning disabilities, deaf people, people affected by imprisonment, and people in the asylum system, amongst many others. The realisation of rights for these groups requires particular attention.

Further consideration of this issue is to be found within the summary notes of the roundtables of the [Taskforce Public Sector Reference Group](#).

**Recommendation 17: Ensure the Framework allows for making statutory and non-statutory guidance, which should be developed through consultation with key stakeholders, including rights-holders.**

Please note that further key additional elements of legislative requirements are to be found in Chapter 3.

**Alignment of the above proposed framework with developing international, European, UK and Scottish landscapes**

The Taskforce recognises the importance of aligning the proposed new framework as far as possible with the shifting international, European, UK and Scottish landscapes.

**International alignment** – the framework will affirm Scotland's commitment to the international rules-based order including the UN human rights treaties which explicitly underpin the Sustainable Development Goals (SDGs).

The UN human rights treaties and the SDGs are mutually reinforcing. Implementation of the treaties support the realisation of the SDGs and realisation of the SDGs supports the implementation of the treaties.

This new framework will therefore help Scotland to make progress with both of these sets of international obligations. This will improve peoples' lives at home whilst contributing to broader progress internationally.

It will go further and demonstrate leadership in providing a right for older people to a life of dignity and independence, and in this way contribute to the work of the UN Open-Ended Working Group which is preparing a new UN treaty on the rights of older people.

Through providing a right to a healthy environment the framework will demonstrate support for the Paris Agreement, demonstrate global leadership in supporting climate justice and contribute to the international cooperation so urgently needed to face the underlying climate crisis.

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It will join the over one hundred countries which have already enshrined this right in law and so add to the growing momentum for the UN itself to formally declare the human right to a healthy environment.

It will demonstrate global leadership in this area by addressing holistically and practically the inter-dependence of a healthy environment and human rights.

**European alignment** – the framework will help enable Scotland to put into practice its commitment to keep pace with progressive rights developments in the EU and the Council of Europe.

For example, the proposed duty on Scottish Ministers to present a human rights scheme to give further effect to the framework would be one means of adapting any such progressive rights developments within the EU and the Council of Europe.

Further, the framework practically reaffirms Scotland's commitment to the European Convention on Human Rights and to the rights contained within the Human Rights Act.

**UK alignment** – through recognising and reaffirming not only the Human Rights Act but also the Equality Act the framework endorses these existing protections in times of risk to both following the departure of the UK from the European Union.

**Scottish alignment** – the framework will significantly contribute to a more effective implementation of the National Performance Framework (NPF).

The NPF is explicitly aligned with the SDGs and has as one of its National Outcomes “to respect, protect and fulfil human rights and live free from discrimination.”

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This new statutory human rights framework will significantly increase progress in achieving not only that specific National Outcome but indeed all of the National Outcomes across the NPF.

The alignment of this new framework with the NPF, the SDGs and the UN human rights treaty system will also significantly contribute to and streamline the reporting obligations of the Scottish Government and public authorities to all of these processes.

Additionally, the new framework will lead to a more effective implementation of the Public Sector Equality Duties and the Fairer Scotland Duty, as well as of the Report of the Equality and Human Rights Committee which advocates for the Scottish Parliament the role of a human rights guarantor.

This proposed framework is designed to fit within the current devolved arrangements. The FMAG Report indicated that, whilst the framework is designed to fit the current devolved context, it could also potentially inform the preparation of a Bill of Rights which could clearly be broader in scope and entrenched within a written constitution of an independent Scotland.

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# CHAPTER 3

# Implementation Requirements: Capacity-building, Public Participatory Process and Monitoring of Outcomes

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Any statutory human rights framework can only improve people's lives to the extent that it is effectively implemented.

Steps will need to be taken to assure and not just assume that rights are made real.

Key implementation requirements include capacity-building of both duty-bearers and rights-holders, ensuring public participation, strengthening of access to justice and then monitoring the results on the ground.

All of these recommendations are made to fulfil a number of overall policy objectives, including the following:

## Strategic Policy Aspirations relating to this group of recommendations:

7. *The implementation of the framework is effectively monitored and scrutinised, including through “everyday accountability”, where human rights are part of a broader system of checks on compliance. The framework advances access to justice for people whose rights are not being met*
8. *The framework provides for effective remedies where people’s rights are not being respected, protected or fulfilled*
9. *The framework is put into practice as soon as possible, with both duty-bearers and rights-holders supported to secure and advance its implementation*
10. *The public participation in the establishment and implementation of the framework is essential, along with the essential capacity-building of duty-bearers, to further develop a human rights culture*
11. *The framework gives practical effect to a multi-institutional model of human rights protection and fulfilment, reflecting the shared responsibility of multiple actors to respect, protect and fulfil human rights*

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## Capacity-building

The overall policy intention is to embed within public authorities a human rights-based approach towards the effective implementation of the framework, to enable rights-holders to realise their rights and so to develop a human rights culture.

Effective implementation of the framework requires human rights capacity-building of all duty-bearers, as follows:

### **Policy Objective 18: Capacity-building to build a human rights-based and outcomes-oriented approach by public authorities**

Firstly, capacity-building to build a human rights-based and outcomes-orientated approach by public authorities, enabling them to get it right first time through continuously improving their decision-making by not only taking fully into account the rights of individuals, but also subsequently ensuring that the outcomes, and not only the process, of such decision-making, comply with the rights of individuals.

The development of overall implementation plans by duty-bearers on how to use the maximum available resources to progressively realise the economic, social and cultural rights contained within the framework, as well as, where appropriate, the improvement of specific impact assessments which lead to meaningful change and improved outcomes, will be required.

The development of capacity-building through provision of clear and specific statutory and non-statutory guidance should be supported by consultation with both duty-bearers and rights-holders.

It should be accessible and contain practical application examples and details, so as to support duty-bearers operationalise their duties under the framework.

International human rights law expertise, combined with practical experience of working with public bodies and rights-holders, is also essential for the development and delivery of capacity-building.

Provision of adequate resources, as reaffirmed by the Bonavero Report's second guiding principle, is of course also critical to enable not only such capacity-building but also the delivery of a range of public services which impact upon the enjoyment of rights within the framework.

### **Recommendation 18: The Scottish Government takes steps to ensure that public authorities are supported to effectively implement the framework through provision of adequate resources and clear guidance on their duties.**

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### **Policy Objective 19: Human rights capacity-building in relation to the everyday accountability of duty-bearers.**

Secondly, human rights capacity-building in relation to the everyday accountability of duty-bearers enhances the scrutiny by the sector of regulators, inspectorates and complaints handling bodies of the above practical implementation by public authorities.

The Taskforce public engagement has clearly demonstrated the need of further consideration of specific duties being placed upon such scrutiny bodies, along with the need of capacity-building, including the development of a human rights-based approach, to enable such scrutiny bodies to effectively oversee the framework implementation plans of duty-bearers and identify any systemic shortcomings.

This could be done by statutory and non-statutory guidance enabling such scrutiny bodies to fully understand the nature of their duties within the framework, to develop training and share good practice development.

Consultation and participation of duty-bearers, rights-holders and scrutiny bodies should be an essential part of this capacity-building.

The Taskforce engagement with the public sector clearly evidenced that the provision of adequate resources is critical to enabling the framework to be effectively implemented.

This was also affirmed by the Bonavero Report and its second principle on the requirement of adequate resources.

### **Recommendation 19: The Scottish Government should consider how scrutiny bodies can be supported through provision of adequate resources and clear guidance on their duties within the framework to effectively oversee the framework implementation plans of duty-bearers.**

### **Policy Objective 20: Capacity-building of rights-holders to know and be able to exercise their rights**

The policy objective is that rights-holders should have the information that they need about their rights and should know where to go to get further advice.

A significant finding of All Our Rights in Law was that too often people simply do not know that they have rights or where to find out more about them. The effective implementation of this framework requires a step change in this regard.

Stakeholders highlighted that this information needs to be fully accessible and developed with an inclusive communications approach. It needs to be local, specific and proactively available in interactions with duty-bearers. As outlined above, progress on enabling information on rights should be part of the Human Rights Scheme.

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It was repeatedly stated to the Taskforce in its engagement that there needs to be more places for people to go for advice and support on how to claim and realise their rights.

The role of advice givers is essential for enabling rights-holders to be empowered through this framework, to enabling rights-based interactions between duty-bearers and rights-holders to improve human rights-based decision-making and to enable routes to remedy. There needs to be careful consideration given to ensure that this advice is accessible to all.

**Recommendation 20: The Scottish Government, working with civil society, community-based stakeholders and public authorities, should develop effective ways to make sure that people have the information that they need about their rights and easy access to advice on rights.**

### **Access to Justice**

The overall policy intention is the strengthening of access to justice for rights-holders. Access to justice including an effective remedy for rights-holders is required by international human rights law, which also provides guidance on its implementation.

The following Recommendations are proposed to achieve this overall policy intention of strengthened access to justice.

They address the following issues of adequate and effective remedies, non-judicial remedies and “everyday accountability” and judicial remedies.

**Policy Objective 21: Strengthened Access to Justice (Adequate and effective remedies)**

Incorporating rights in domestic legislation requires that adequate and effective remedies and routes to remedy exist within the national legal system.

Under international human rights law, remedies and routes to remedy require to be accessible, affordable, timely, and effective. The element of adequacy of a remedy is mostly concerned with access to justice, where considerations of accessibility, transparency, legal advice and aid, timelines, and affordability, are ensured.

The effectiveness of a remedy not only takes into account the elements of access to justice, but also requires that an appropriate order is issued, and that such order is complied with by the competent public authority. The Taskforce heard a range of views in its engagement about access to justice and how it could be improved and made more accessible.

For example, participants in All Our Rights in Law and the civil society reference group spoke about the barriers that many people can face in accessing remedy, and what needs to happen to make remedy possible and achievable for those who are most marginalised in society.

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It is clear that current routes to justice are complex and can be difficult to navigate. Information about the existence and procedures of routes to remedy could be improved. Legal advice could be easier to obtain. Advocacy services could be available to more people when they need them.

General guidelines on how to redress human rights violations do not yet exist, with the exception of those provided by civil society. Remedies become difficult to navigate without access to information and advice about rights, legal representation, independent advocacy, and sufficient legal aid. The risk of being held liable for the other side's legal fees can be prohibitive.

Further elaboration is to be found in the SHRC's paper "[Adequate and Effective Remedies for Economic, Social and Cultural Rights: Background briefing paper for the National Taskforce on Human Rights Leadership](#)".

**Recommendation 21: Through engagement with key stakeholders, including those who face additional access to justice barriers, further consider accessible, affordable, timely, and effective remedies and routes to remedy that will be provided for under the framework.**

**Policy Objective 22: Strengthened Access to Justice (Non-judicial remedies and "everyday accountability")**

In order to ensure that right-holders are able to access justice and receive redress, there is a need for complaint-handling mechanisms to embed human rights into their considerations.

Existing mechanisms in Scotland would be able to enhance access to justice and further prevent unnecessary judicialisation of human rights issues if they are appropriately strengthened at all levels.

Front-line complaint mechanisms, such as those existing in local authorities, could do more to embed the rights and obligations in the framework. The process of internal investigation and the redress offered would also need to comply with the obligations enshrined in the framework, including ordering adequate remedies.

In relation to regulators, inspectorates and ombudsmen the evidence received by the Taskforce is that at present they could be supported to systematically embed human rights standards or approaches into their ways of working. This would remove an accountability gap in relation to the implementation of the framework rights, and improve the possibilities of access to justice.

It is important to highlight that these existing complaint-handling mechanisms already review issues that are at the core of the rights in the framework, including health, housing, education and culture, and should be supported to take international human rights law into account.

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**Recommendation 22: Further consider specific duties being placed upon front-line complaint handling mechanisms and scrutiny bodies in order to enhance access to justice and ensure human rights obligations are given effect by all public authorities.**

**Judicial remedies**

Based on the evidence received, and taking into account an internationalist, maximalist, and multi-institutional approach, the Taskforce highlights three objectives that can enhance access to judicial remedies, subject to further consideration and development.

**Policy Objective 23: Strengthened Access to Justice (Judicial Remedies – Standing)**

Firstly, the statutory framework should allow for organisations with “sufficient interest” to be able to bring cases.

In order to promote further accessibility of judicial remedies, the framework should allow for civil society organisations with “sufficient interest” to support victims or to bring systemic cases that are in the public interest.

This could reduce the financial and personal burden of legal action of individuals who might not have the means or the capacity to do so themselves.

This is particularly important in the context of economic, social, cultural and environmental cases where the issues can often be systemic and affecting numerous individuals.

Collective or class actions can therefore be more appropriate and also assist the judicial system with case management.

Also relevant is Recommendation 11 in relation to the SHRC powers.

**Recommendation 23: Explicitly allow for bodies with “sufficient interest” to bring proceedings on behalf of claimants.**

**Policy Objective 24: Strengthened Access to Justice (Judicial Remedies – Standard of review)**

Secondly, standard of review. The Taskforce considers that the reasonableness test developed in international law and other domestic jurisdictions is more exacting than the ‘Wednesbury reasonableness test’ in the UK.

In order to ensure access to justice and effective remediation for violations of economic, social, and cultural rights, the Taskforce considers that the framework should set out an approach to a standard of review which takes into account international human rights law standards and best comparative practices in determining the reasonableness of a particular measure.

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For such purposes, the administrative and judicial bodies could, for example, take into account if the measures taken by the duty-bearer ensure the minimum levels necessary for a person to live a dignified life, if the measures taken were deliberate, concrete and targeted towards the fulfilment of the rights in the framework and if the measures taken were coordinated, coherent and comprehensive, among other criteria.

It is also considered that, when determining the reasonableness of a measure, administrative and judicial bodies should pay due regard to the interpretative clause of the framework and so may, where appropriate, take into account the value of human dignity.

Further elaboration is to be found in the papers by Dr Katie Boyle, “Access to Justice for Economic, Social, Cultural and Environmental Rights: Principles of Adjudication” and “Access to Remedy – Systemic Issues and Structural Orders”, the paper “The Underpinning Concept of Human Dignity” by Dr Elaine Webster, University of Strathclyde, as well as in the FMAG Report at pages 34, 35.

**Recommendation 24: Include in the framework an approach to standard of review of the reasonableness of a measure that takes into account international human rights law standards and comparative best practices.**

**Policy Objective 25: Strengthened Access to Justice (Judicial Remedies – Appropriate Orders)**

Thirdly, appropriate orders. The effectiveness of a remedy will necessarily depend on the appropriateness of the order granted in light of the specific circumstances of the case. In international human rights law, appropriate remedies can come in the forms of: (a) restitution; (b) compensation; (c) rehabilitation; (d) satisfaction; and (e) guarantees of non-repetition.

The Taskforce specifically suggests the use of targeted remedies (similar to a structural interdict) which can meet the international law standard of a guarantee of non-repetition.

The Taskforce also recognises that other appropriate orders will be necessary and that the courts will determine what is appropriate in specific circumstances, for example orders providing satisfaction (apologies, acknowledgement of the facts, acceptance of responsibility), rehabilitation (medical or psychological care), or restitution (return of property or housing).

A structural interdict type remedy is intended to more effectively address systemic failings that go beyond the sole victim of the case in question and prevent further breaches.

The Taskforce of course recognises that any such provision for structural interdicts would require liaison and capacity-building with the courts. Other appropriate remedies as well as multi-institutional routes to resolving systemic issues should also be considered.

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Further elaboration is to be found in the SHRC's paper "Adequate and Effective Remedies for Economic, Social and Cultural Rights: Background briefing paper for the National Taskforce on Human Rights Leadership", and the papers by Dr Katie Boyle, "Access to Justice for Economic, Social, Cultural and Environmental Rights: Principles of Adjudication" and "Access to Remedy - Systemic Issues and Structural Orders", as well as in the FMAG Report at pages 34, 35.

**Recommendation 25: Further consider how the framework could provide for the full range of appropriate remedies under international law to be ordered by a court or tribunal when needed, including targeted remedies which could provide for non-repetition of the breach (such as structural interdicts).**

**Policy Objective 26: Strengthened Access to Justice (Further Work)**

The Taskforce recognises that the adequacy and effectiveness of judicial remedies for human rights violations is a complex and wide-ranging issue.

Therefore, as part of the development of the framework, there needs to be further exploration of access to justice in relation to economic, social, cultural, and environmental rights. This should consider the accessibility, affordability, timeliness, and effectiveness of current routes to remedy in Scotland, application of principles within the Aarhus Convention, and help determine the necessary changes that may need to be undertaken in order to ensure the full effectiveness of the rights incorporated in the framework. This would necessarily have to take into consideration the views of rights-holders, who have expressed challenges in relation to accessing justice for human rights breaches.

Among the relevant issues are: (i) the effectiveness of judicial review as a route to remedy or the need for a new route to remedy; (ii) the availability of legal aid; (iii) any need for an inquisitorial system to redress human rights breaches; (iv) current judicial procedures; (v) any need for a mechanism to prevent urgent irreparable harm and (vi) the overall financial cost associated in bringing a case to court; and (vii) any need for additional measures to better enable strategic test/group cases within the framework.

Additionally and specifically, it is considered that it be further explored whether there could be a provision, akin to a "devolution issue" under the Scotland Act 1998, whereby a compatibility issue with any of the relevant treaties can be the subject of challenge in judicial and administrative proceedings. Its effect would be to refer the point to the relevant superior court for determination.

**Recommendation 26: As part of the development of the framework, to further explore access to justice, taking into account the views of right-holders, in order to consider how the framework could help provide a more accessible, affordable, timely, and effective judicial route to remedy.**

## Public Participation

### **Policy Objective 27: Public Participation in development of the framework**

The policy objective is the effective public participation in the development of the framework.

A clear message from the Taskforce's public engagement, including directly with rights-holders, is that it is crucial that the public are engaged in, and shape, preparations of the new framework, as well as its implementation.

Such engagement is a key part of a human rights-based approach to policy and law making. This reflects the fact that, unless full cognisance is taken of people's experience of human rights in their everyday lives, and particularly that of those who most often experience gaps in their rights, then the law and its implementation will not be as effective as it could and needs to be.

There is scope for learning about best practice in public engagement and innovative approaches such as citizen-led forums could be developed to ensure that there is a diversity of voices involved, including marginalised communities. This participation should be ongoing and be about engagement and not only consultation. The Taskforce has heard consistently about the significant value of engaging with the third sector and community groups, as well as the importance of this being done in a way that enables participants to feel fully informed, respected and listened to.

Specific consideration also needs to be given as to how best to engage women, disabled people, and people from minority ethnic communities particularly around incorporation of CEDAW, CERD and CRPD. There needs to be specific engagement with a diversity of children and young people. Consideration of intersectionality needs to be built in throughout the public engagement.

### **Recommendation 27: The Scottish Government should adopt an innovative and human rights-based approach towards engaging the public in developing the framework, including the guidance and its implementation.**

### **Policy Objective 28: Public awareness of the new statutory human rights framework**

The Taskforce learned directly from its public engagement that steps need to be taken to raise public awareness of the new framework, so as to enable its effective implementation and support the development of a human rights culture.

Stakeholders highlighted to the Taskforce that this public awareness campaign should be big and bold, use all different mediums, including media, be as practical as possible, help counteract any prevailing negative connotations of human rights and that it should include clear routes for more specific information and understanding.

### **Recommendation 28: The Scottish Government should develop a large scale public awareness campaign about the new framework.**

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### **Policy Objective 29: Public participation in the implementation of the framework**

Public participation is also essential on an ongoing basis and in multiple systemic ways to ensure the proper functioning and implementation of the new framework. It is also important in everyday decision-making affecting people's lives.

This will include public participation in strategic decision-making as part of the co-production of a national human rights action plan such as SNAP, in pre-legislative assessment, in treaty body reporting, in preparation of capacity-building including statutory and non-statutory guidance, in the development of public authority implementation plans and impact assessments, in being supported by independent advocacy and exercising access to justice and being engaged in the monitoring of outcomes.

Inclusion within the framework of a right to effective participation would ensure that there are efforts by all to strive to continuously improve the means of effective participation by individuals and the public generally in the implementation of the framework.

### **Recommendation 29: The Taskforce recommends that further consideration be given to including an explicit right to participation, drawn from the principles of international human rights law, within the legislation.**

### **Monitoring of Outcomes**

Strategic Policy Aspiration:

12. *The framework's implementation and outcomes are monitored, including through the use of human rights-based indicators, so as to ensure that human rights are made real*

### **Policy Objective 30: Improvement of the monitoring of outcomes**

Effective monitoring of outcomes is an essential policy objective in order to measure the results obtained on the ground from the implementation of the new human rights framework, in other words checking that the framework has made rights real for people.

Monitoring of outcomes will be required at many levels and by multiple actors, in line with the multi-institutional model proposed by the new framework.

### **National level monitoring**

At a national and government level, as outlined in Recommendation 5 of the FMAG Report, this requires the development of human rights-based indicators to more appropriately measure the outcomes of not only the new human rights framework but also the National Performance Framework as a whole.

Both qualitative data, including the lived experience of rights-holders, and quantitative data, disaggregated where necessary, would inform such monitoring of outcomes.

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As called for in Recommendation 4 of the FMAG Report, the creation of a UN recommended National Mechanism of Monitoring, Reporting and Implementation could support the monitoring of outcomes, as well as provide a number of other purposes such as the coordinating of Scottish Government engagement with European and UN human rights systems, including reporting and implementation of recommendations, as well as the monitoring of relevant rights developments within the EU and Council of Europe to enable Scotland to keep pace.

Further elaboration is to be found in the [FMAG Report at pages 41-44](#) and within the [Bonavero Institute Report](#).

The Scottish Parliament may wish to consider what role it could play in providing scrutiny as to whether government action is delivering the intended outcomes, including in relation to strengthened pre-legislative assessment and scrutiny of the proposed Human Rights Scheme.

The “everyday accountability sector” – regulators, ombudsman, inspectorates – have a key role in monitoring human rights compliance. As referred to earlier in the Report above, further consideration must be given to both the duties on such bodies to carry out such work and also the capacity-building that will be required.

## **Public authority monitoring and reporting**

The Taskforce is clear that it is essential, both for accountability and effectiveness, that there is monitoring and reporting by public authorities of the steps they have taken, and plan to take, to fulfil human rights outcomes. Such public authority mechanisms would be complementary to, and feed into, national monitoring mechanisms, as outlined above. It is important that such monitoring and reporting does not simply lead to increased and burdensome paperwork but helps to secure human rights-based policy and practice decision-making. This area warrants significant further consideration, both with public authority stakeholders and with rights-holders.

## **Human Rights Budget Monitoring**

Finally, it will be essential that human rights budget scrutiny and monitoring forms part of the framework implementation, as acknowledged in the Bonavero Institute Report and by many of the stakeholders the Taskforce engaged with.

Human rights budget scrutiny ensures that the process by which a budget is developed, implemented and evaluated is fit for purpose. That is to say, it engages those whom it affects and complies with international obligations, both procedural and rights. It allows governments to be held to account for delivering on their human rights obligations through appropriate resource generation, allocation and spend.

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Well-functioning budget scrutiny is required to be undertaken by a range of actors including legislators, auditors, citizens, civil society, national human rights institutions and the media. It will be critical that in the implementation of the new framework these various actors play different roles at different stages of the budget process. Consideration must be given in the next stage of the process as to how this can be best facilitated as part of the framework implementation.

**Recommendation 30: Further consideration should be given to the development and strengthening of effective monitoring and reporting mechanisms at all levels and duties at both national and public authority levels, recognising that this will be important to secure better compliance with the framework. It should include consideration of a National Mechanism for Monitoring, Reporting and Implementation, as recommended by the First Minister's Advisory Group on Human Rights Leadership.**

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# CHAPTER 4

# Next Steps

**"We want to increase awareness of human rights to everyone in society so that it is fully understood."**

All Our Rights in Law participant

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The Taskforce fully recognises the challenges faced by the Scottish Government in determining and implementing the next steps to be taken in this process.

However, the establishment of such a new statutory human rights framework is in itself an urgent and essential part of Scotland's values-based and sustainable post-Covid recovery.

This is what it means to implement the call of the UN for all countries to "build back better" through placing human rights at the centre of all recovery efforts, including economic recovery efforts.

In the view of the UN, the experience of Covid has taught all countries that those societies which coped best were those which had already embedded economic and social rights and therefore had an increased economic and social resilience. Additionally, those societies which had already made efforts to reduce structural inequalities fared better in responding to the pandemic.

The next steps of this process to establish a new human rights framework are likely to include a pre-legislative consultation process, preparation of legislation and policy and explanatory memoranda, the parliamentary legislative process and a public participatory process, development of statutory and non-statutory guidance, as well as capacity-building and development of training and good practice.

This Report has also highlighted a number of areas of implementation which should be included in next steps. These include capacity-building of public bodies, the strengthening of access to justice and public awareness and participation.

The evidence from the Taskforce public engagement, including not only from civil society but also from the Public Sector Reference Group, is clear that a primary policy objective of these next steps should be that the legislative process should establish the new framework in as integrated, practically effective and as early a way as possible.

This is in recognition, for example, that all of the UN human rights treaties are inter-dependent and need to be collectively taken into account in decision-making by all public authorities and courts, so as to ensure full and equal access of everyone to the enjoyment of all of the rights. This is one clear way of bringing about the necessary culture change, including addressing the widely identified necessity to take an intersectional approach.

The framework should be developed through a human rights-based approach. Best practice, as confirmed by the experience of the Taskforce process itself, would be for many of these next steps to be taken using the model of co-production.

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The meaningful involvement of public authorities, at both leadership and operational levels, along with civil society and the lived experience of right-holders, is the most likely means of completing these steps in a successful and timely manner.

All the members of the Taskforce and the many others with whom it has engaged are committed to providing every support to help these steps be taken in as integrated, effective and as early a way as is practically possible.

This is because these are the next steps to be taken to secure people's rights in practice. It is this which will demonstrate human rights leadership in and by Scotland and help to build a better country in a better world.

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# CHAPTER 5

# Conclusion

**“Human rights are imperative and directly related to dignity.”**

All Our Rights in Law participant

## The aim of this Report is to respond to our times.

It offers an ambitious and comprehensive set of recommendations which outline how human rights leadership can provide a way forward to improve people's lives and our society.

The combination of the experiences of twenty years of devolution, EU Exit and the Covid crisis has brought us to the cusp of taking the biggest step by far in Scotland's human rights journey. In so doing, we would be contributing to broader global efforts to build back better from the Covid crisis, including through urgently addressing the underlying climate crisis.

The Report's recommendations would for the first time bring into our law and put in a single place the broad range of internationally recognised human rights – civil, political, economic, social, cultural and environmental – which belong to everyone.

The proposed framework would make these rights real in everyday life, enable their full and equal enjoyment and provide the maximum protection possible within devolved competence. In order to achieve this, key recommendations are designed so as to lead to a shift of power through increasing public participation and the accountability of decision-makers, as well as strengthening access to justice.

The collaborative and evidence-based process chosen by the government to reach these recommendations signals the way forward.

The recommendations are themselves the result of extensive public engagement including with those with lived experience of some denial of their rights. The public sector was directly involved from the outset and independent academic and practitioner expertise was sought and lessons learned from international best practice.

The membership of the Taskforce itself reflects a wide range of experience, expertise and interests and, innovatively, was co-chaired by a Cabinet Secretary and a recognised independent human rights figure. The members engaged throughout in respectful and evidence-based discussion and, whilst retaining their own particular views on issues, reached broad agreement across all the recommendations.

The Taskforce is enormously grateful to all those who engaged with it from different walks of life and parts of the country, across the party political spectrum and across the UK and beyond.

The Report's ambitious recommendations, as well as the nature of the process undertaken to reach them, not only provide hope for the future but a practical means to secure real improvement of our lives and our society and contribute to efforts to build a better world.

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# ANNEXES

# Annex A – Terms of Reference

## **Terms of Reference for the National Taskforce for Human Rights Leadership**

**This information is also available at the website for the National Taskforce for Human Rights Leadership.**

### **Strategic Context**

1. The Scottish Government is committed to upholding and promoting the values of an open, inclusive, diverse, tolerant and progressive democracy. Human rights are central to those values and to the vision, shared with Scottish civil society, of a Scotland where all can live with human dignity, through the realisation of internationally-recognised human rights.
2. That overarching commitment is further expressed through Scotland's refreshed National Performance Framework<sup>1</sup> which, for the first time, establishes an explicit National Outcome for human rights – “*We respect, protect and fulfil human rights and live free from discrimination*”.
3. To further support the effective implementation of Scotland’s human rights obligations, the Scottish Government’s programme for 2017-18<sup>2</sup> announced the creation of the First Minister’s Advisory Group on Human Rights Leadership<sup>3</sup>. The Group commenced its work in early 2018 and reported formally on Human Rights Day (10 December) 2018.
4. In responding to the Advisory Group’s report<sup>4</sup>, the First Minister welcomed the proposal for a new statutory human rights framework for Scotland, to be delivered by means of an Act of the Scottish Parliament. She also endorsed the recommendation that this work should be informed by a process of public engagement, working across both the public sector and civic society. She undertook to establish a new National Taskforce to progress that work.
5. In responding to the Advisory Group’s recommendations, the Scottish Government has also committed (via the 2018-19 Programme for Government<sup>5</sup>) to prioritise actions that can be taken to address the human rights and equality impacts of Brexit.

<sup>1</sup> <https://nationalperformance.gov.scot/>. All 11 of the NPF’s outcomes have human rights relevance and the majority can be mapped directly to international treaty obligations.

<sup>2</sup> A Nation with Ambition, Sept 2017, <http://www.gov.scot/Publications/2017/09/8468>

<sup>3</sup> First Minister’s Advisory Group on Human Rights Leadership - <https://humanrightsleadership.scot/>

<sup>4</sup> News release - <https://news.gov.scot/news/enhancing-human-rights>

<sup>5</sup> Delivering for Today; Investing for Tomorrow, Sept 2018 <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

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## Purpose of the National Taskforce

6. The purpose of the National Taskforce for Human Rights Leadership is to design and deliver detailed proposals for a new statutory human rights framework for Scotland, together with the associated requirements for a public participatory process and for capacity-building initiatives. In doing so it will have particular regard to the recommendations presented in December 2018 by the First Minister's Advisory Group on Human Rights Leadership.

## Remit and Functions

7. In order to achieve its Purpose, the Taskforce will exercise the following remit and functions, supported by the Executive Board:
- a) Develop, agree and implement a strategic programme of work, with appropriate milestones, outputs, workstreams and contributors, so as to enable publication within the current parliamentary session of detailed proposals for a new statutory human rights framework for Scotland. The Taskforce will determine the form, content and publication date of the proposals.
  - b) Develop and make use of appropriate structures and delivery mechanisms (e.g. working groups, reference groups, events and public-facing engagement) in order to ensure that the Taskforce's programme of work is appropriately informed by a public participatory process and that public bodies, non-governmental organisations and other interested parties are supported and enabled to participate in and contribute to the work of the Taskforce.
  - c) Give further consideration to, and make recommendations in relation to, the broader public participation and capacity-building actions necessary to support the effective and successful implementation (on an ongoing basis) of the proposed new statutory human rights framework, including by addressing the question of how rights-holders can be supported to know, understand and assert their rights, and how duty-bearers can ensure that they are fully compliant with their human rights obligations and are taking concerted positive action to respect, protect and fulfil human rights.
  - d) Examine as part of its wider work, the contribution which Scotland can make in demonstrating human rights leadership in a UK, European and global context, in particular by ensuring that lessons can be learned from the design and implementation of practical and effective delivery mechanisms which ensure that human rights commitments and obligations directly shape and improve the everyday lived experiences of all members of Scottish society.
  - e) Provide such other advice or recommendations to the Scottish Government as the Taskforce believes to be necessary in order to secure delivery of the overarching objective defined by its Purpose.

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## Further Guiding Principles and Considerations

8. The work of the Taskforce will take appropriate account of topical human rights issues and concerns, including the implications for human rights of UK withdrawal from the European Union. There is a recognised need to consider how best to protect and promote all human rights across the full range of potential post-Brexit scenarios and to address the concerns generated by ongoing uncertainty in relation to Scotland's future relationship with the European Union.
9. In its December 2018 report, the First Minister's Advisory Group on Human Rights Leadership endorsed three key principles articulated by the Standing Council on Europe. These constitute fundamental guiding principles and will therefore help to inform the work of the Taskforce:
 

There should be “non-regression” from current EU rights;

There should be nobody left behind future progressive EU developments in rights.

Scotland should “take a lead” in the protection and promotion of all human rights.
10. Accordingly, as part of its work the Taskforce will give consideration to the established rights and freedoms which are currently safeguarded under European Union Law, including (in particular) those identified in the Charter of Fundamental Rights. It will examine whether rights of this nature should form part of a future statutory human rights framework, alongside rights which are drawn from United Nations, Council of Europe and other relevant treaties and instruments.
11. In undertaking its work the Taskforce will also consider the wider potential impacts and implications of incorporating international treaty obligations, including the relationship between democratically-elected bodies and the new statutory human rights framework, and between rights-holders and duty-bearers. This will include the extent to which incorporation might have wider structural implications, including for the relationship between the courts, the legislature and the executive.
12. The detailed proposals developed and published by the Taskforce must be capable of being implemented by an Act of the Scottish Parliament<sup>6</sup> and will, to that extent, need to be informed by a clear recognition of the limitations of devolved competence.

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<sup>6</sup> In conjunction with any related order or orders made under the Scotland Act 1998, if relevant.

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13. In line with the general principles of the devolution settlement, the Taskforce will nonetheless be free to comment or report on any matter which is pertinent to its Purpose and to the overarching requirement to respect, protect and fulfil human rights. It will therefore be for the Taskforce itself to determine whether to make reference to any specific aspect of the current constitutional settlement – for example, by suggesting potential adjustments to devolved or reserved competence should it appear that changes of this nature might better support the implementation of relevant human rights obligations in Scotland.

### **Status and Membership of the Taskforce**

14. The Taskforce is a Scottish Government led, time-limited group, established to deliver the Purpose defined at paragraph 6 above. It will be jointly chaired by the Cabinet Secretary for Social Security and Older People and by an Independent Co-chair.
15. Members may serve in a representative capacity (attending on behalf of a particular organisation or group of organisations) or in a personal capacity (being appointed on the basis of the particular insights, experience and skills which they are able individually to bring to the work of the Taskforce).
16. The size of the Taskforce at any one time will not exceed 15 members in total, but the Taskforce may establish working groups and other sub-groups in order to pursue specific programmes of work and to carry out its functions. Working groups and other structures may be led by members of the Taskforce or by one or more individuals who are not members of the Taskforce but who have been invited by the Taskforce to undertake or lead a specified programme of work.
17. Members remain free to express views which differ from the conclusions reached collectively by the Taskforce and are encouraged to contribute actively to wider debate in relation to the realisation of human rights in Scotland, in the UK and at the international level. Organisations represented on the Taskforce are similarly free to adopt a position which differs from that of the Taskforce and to contribute to wider debate. For the avoidance of doubt, participation in the work of the Taskforce is without prejudice to the statutory independence of the National Human Rights Institutions and their compliance with the requirements of the Paris Principles<sup>7</sup>

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<sup>7</sup> <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>

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### **Frequency of Meetings and Mode of Working**

18. The frequency of meetings and mode of working will be determined by the Co-chairs, in consultation with the members of the Taskforce, with the support and advice of the Executive Board and the Programme Office, and with input from such other interested parties as the Co-chairs consider relevant.
19. As a general guide, it is expected that the Taskforce will meet at least 4 times per annum. Members are requested to attend Taskforce meetings in person. Where members do require to participate by means of telephone or video conferencing every effort will be made to facilitate this.

### **Reporting and Lifetime of the Group**

20. The Taskforce will determine the form, content and publication date of the proposals it develops, but will be mindful of the particular symbolic significance of international Human Rights Day (10 December).
21. The Taskforce will conclude its work no later than the end of the current session of the Scottish Parliament (24 March 2021), and appointments will be made accordingly.

### **Executive Board and Programme Office**

22. The work of the Taskforce will be supported by an Executive Board (chaired by the Senior Responsible Owner for the programme, designated by the Scottish Government) and by a Programme Office (including a Secretariat) consisting of Scottish Government officials who have been assigned specifically to support the delivery of the Taskforce's Purpose.
23. Scottish Government officials will remain accountable to the Cabinet Secretary for Social Security and Older People and the Minister for Older People and Equalities, in line with normal Civil Service arrangements. Day-to-day line management will be exercised by senior officials located within the Scottish Government's Local Government and Communities Directorate.
24. The Scottish Government will provide office accommodation and access to ICT and other support services for the Programme Office. All papers, documents and other materials developed by or on behalf of the Taskforce will be stored within the Scottish Government's electronic records and document management system.

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### **Transparency and Information sharing**

25. Transparency is a fundamental human rights principle and it is important that the work of the Taskforce is open to, and welcomes, public scrutiny. The Programme Office established to support the Taskforce will assist the Co-chairs in ensuring that information about the Taskforce's work is communicated to interested parties and is accessible to the public, for example through the development of a website, and other publication mechanisms.
26. The Programme Office will ensure that requests for information are dealt with in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EIRs) and in a manner which implements human rights good practice. In order to assist in ensuring that requests can be responded to accurately and timeously, Taskforce members are asked to ensure that the Programme Office is copied in to all formal correspondence and exchanges of information.

### **Participative Process**

27. The overall work of the Taskforce will be informed by a participatory process, which the Taskforce will develop and implement. It may do so by means of one or more contracts which may be fulfilled by third parties, whose direct contractual relationship will be with the Scottish Government. The award of any such contracts must comply with normal public procurement requirements.
28. The participative process will ensure that the recommendations developed by the Taskforce are underpinned by a participative and deliberative approach which reaches beyond those who already have access to power and influence in Scottish society. Human rights belong to everyone, and it is essential that voices from all walks of life and from every corner of the nation are heard.
29. In order to support its work, the Taskforce, with the support of the Executive Board may consider the establishment of other engagement mechanisms, bringing together individuals drawn from across Scottish society and mobilising, in particular, the knowledge and expertise which resides within civil society and the public, private and third sectors.

**Scottish Government**

November 2019

# Annex B – Taskforce, Working Group and Academic Advisory Panel Members

## Taskforce Members

Name	Title	Role
Shirley-Anne Somerville	Cabinet Secretary for Social Security and Older People	Government Co-Chair
Professor Alan Miller	Professor of Practice in Human Rights Law, University of Strathclyde and Independent Expert with UNDP Crisis Response	Independent Co-chair
Christina McKelvie	Minister for Older People and Equalities	Portfolio Minister with responsibility for Human Rights
Alastair Pringle	Executive Director Legal, Compliance and Scotland Equality and Human Rights Commission	Member representing EHRC Scotland
Claire Sweeney	Director for Place and Wellbeing	Member representing Public Health Scotland
Councillor Kelly Parry	Councillor and COSLA's spokesperson for Community Wellbeing	Member representing COSLA
Fiona Killen	Solicitor	Member representing Law Society of Scotland
Judith Robertson	Chair, Scottish Human Rights Commission	Member representing the Scottish Human Rights Commission
Mhairi Snowden	Director, Human Rights Consortium Scotland	Member representing the Consortium and civil society interests
Murray Hunt	Director of the Bingham Centre for the Rule of Law and Visiting Professor in Human Rights Law, University of Oxford	Independent member

Name	Title	Role
Nils Muižnieks *Nils was unable to attend a number of meetings but provided consultation to Professor Miller throughout.	Director, Europe Regional Office, Amnesty International and Former Commissioner for Human Rights, Council of Europe	Independent member
Professor Elisa Morgera	Professor of Global Environmental Law, Strathclyde Law School, and member of the Strathclyde Centre for Environmental Law and Governance	Independent member

## Working Group Members

Name	Title	Role
Elizabeth Oldcorn	Health Improvement Manager, Public Health Scotland	Working Group Member
Katy Nisbet	Independent legal consultant	Working Group Member
Kavita Chetty	Head of Strategy and Legal, Scottish Human Rights Commission	Working Group Member
Kenny Stewart	Equality and Human Rights Commission	Working Group Member
Luis Felipe Yanes	Legal Policy Development Officer, Scottish Human Rights Commission	Working Group Member
Lynn Welsh	Head of Legal and Compliance, Equality and Human Rights Commission	Working Group Member
Michael P Clancy OBE	Director Law Reform	The Law Society of Scotland and Working Group Member
Mirren Kelly	Policy Manager, COSLA	Working Group Member

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## Academic Advisory Panel

Name	Title	Role
Professor Nicole Busby	University of Glasgow. Professor of Human Rights, Equality and Justice	Chair
Dr Elaine Webster	Senior Lecturer, University of Strathclyde Law School. Specialism: the concept of human dignity in human rights law	Member
Dr Kasey McCall-Smith	Senior Lecturer in Public International Law, University of Edinburgh. Specialism: the international human rights treaty system	Member
Dr Katie Boyle	Associate Professor of International Human Rights Law, University of Stirling. Specialism: models of incorporation of economic, social and cultural rights/ access to justice and effective remedies	Member
Professor Tobias Lock	Jean Monnet Chair in EU Law and Fundamental Rights, Maynooth University, Ireland. Specialism: EU Law and the Charter of Fundamental Rights	Member

# Annex C – Briefing Papers of Academic Advisory Panel and the Report of the Bonavero Institute

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The Taskforce is indebted to the Academic Advisory Panel, chaired by Professor Nicole Busby of the University of Glasgow and composed of leading human rights academics, who contributed a series of valuable briefing papers on key aspects of the development of a new statutory human rights framework.

Please note that the [Academic Advisory Panel papers](#) represent the authors' views and were presented to inform discussion at the National Taskforce for Human Rights Leadership.

- Dr Elaine Webster 'The Underpinning Concept of Human Dignity'
- Dr Katie Boyle 'The Meaning and Content of Duties'
- Professor Tobias Lock 'Scotland's Future Relationship with the EU'
- Katie McCall-Smith 'ESC Rights'
- Nicole Busby 'Equality Clause and CEDAW'
- Dr Katie Boyle 'Access to Justice'
- Busby/McCall-Smith 'Race, Disability LGBT and Older People'.

The Taskforce was also privileged to receive from the Bonavero Institute a report on "[The Development and Application of the Concept of the Progressive Realisation of Human Rights: Report to the Scottish National Taskforce for Human Rights Leadership](#)." This paper was commissioned by the Taskforce.

The Institute, housed within the Faculty of Law at the University of Oxford, undertakes world class research in the field of human rights law and fosters public engagement in human rights issues.

# Annex D – Explanatory Note on Right to a Healthy Environment<sup>1</sup>

## 1. The high-level policy objective served by the right to a healthy environment

### 1.1 Becoming a global leader in environmental rights

More than 100 countries in the world have already included a human right to a healthy environment in their constitutions, as this right encapsulates existing international human rights obligations to protect against environmental harm.<sup>2</sup>

The recognition of a human right to a healthy environment “has proved to have real advantages” in other countries:

- it “raises awareness that human rights norms require protection of the environment and highlights that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom”
- it “has raised the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws”
- “When applied by the judiciary, it has helped to provide a safety net to protect against gaps in statutory laws and created opportunities for better access to justice.”<sup>3</sup>

Recognising the inter-dependence between its international human rights obligations and international environmental law obligations serves two purposes. On the one hand, a safe, clean and healthy environment is necessary for the fulfilment of the human rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living including the rights to food and to housing, to safe drinking water and sanitation, to participate in cultural life and to the right to development itself. On the other hand, the exercise of such human rights as the right to a healthy environment, to freedom of expression and association, to education, information, participation and effective remedies are vital to the protection of the environment.<sup>4</sup>

That said, Scotland could be the first country among common law jurisdictions to recognise the human right to a healthy environment (although currently Canada and the US are also taking steps in that direction).

<sup>1</sup> This note is subject to further consideration of alignment with the UNCRC (Incorporation) (Scotland) Bill

<sup>2</sup> UN Framework Principles

<sup>3</sup> UN Framework Principles on Human Rights and the Environment [A/HRC/37/59](#)

<sup>4</sup> UN Framework Principles

More significantly, Scotland could become a global leader in environmental rights by taking an innovative approach to prevent the shortcomings in implementation and enforcement experienced in other countries. First of all, these constitutions do not recognise the full legal content of existing human rights obligations to protect against environmental harm as clarified in the 2018 UN Framework Principles on Human Rights and the Environment. In addition, Scotland could be a global human rights leader by:

- taking a participatory and implementation-focused approach to the human right to a healthy environment, through an ambitious and inclusive capacity-building programme;
- ensuring access to justice and every-day accountability for the human right to a healthy environment based on the UN Framework Principles;
- pioneering the environmental dimensions of the human rights of the child;<sup>5</sup> and
- capitalising on the work already done on climate justice to address inter-linked substantive dimensions of the human right to a healthy environment (including biodiversity, that has come centre stage in the context of the COVID-19 global pandemic).

The combination of the participatory approach to legal recognition and the focus on building capacities for implementation can provide real opportunities for different public bodies, civil society, business and others to identify together what can make this right a reality in Scotland.

The UN Environment Programme has already identified several international opportunities for Scotland to share its leading approaches to the human right to a healthy environment globally. Hosting the UN Climate Change Conference of Parties (COP26) in Glasgow is also a great opportunity to showcase Scotland's pioneering approach.

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<sup>5</sup> This innovative feature was recognised by all international actors that participated in the Environmental Roundtables: former UN Special Rapporteur on Human Rights and the Environment John Knox; current Special Rapporteur on Human Rights and the Environment David Boyd; former UN Special Rapporteur on Toxics and Human Rights Baskut Tuncak; and human rights officers of the UN Environment Programme.

## 1.2 Policy coherence and co-benefits for a fair green recovery

The recognition of a human right to a healthy environment can also provide benefits in terms of policy coherence and reflect other human rights developments in Scotland, particularly through transformative partnerships and place/community-based approaches.

It supports joined-up thinking across public bodies with a view to delivering co-benefits across a variety of public policy objectives, notably:

- The incorporation of the Convention on the Rights of the Child in Scotland, which supports prioritising environmental concerns that are essential for protecting children's right to mental and physical development as the 'best interests of the child' and ensuring that balancing exercises between environmental and other public policy objectives take a long-term perspective that allows for protecting children's rights. Specific references to children in the provision recognising a human right to a healthy environment serve to emphasise children's particular vulnerability to environmental degradation, which should not be considered an exception. Rather, it should be considered part of the general right to a healthy environment.<sup>6</sup>
- Through the specific standards of protection required under the international human rights of the child, environmental protection can also better protect also other parts of the population that may be particularly vulnerable to environmental degradation,<sup>7</sup> thereby contributing to Scotland's national public health priorities "places and communities" and its agenda on health and equality.
- The Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 targets to reduce Scotland's emissions of all greenhouse gases to net-zero by 2045 at the latest, while ensuring climate justice and a just transition, can be supported in taking an environmentally holistic and human rights-based approach.
- UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021: incorporation of EU environmental law principles into the Scottish legal system can be mutually supportive with the recognition of the human right to a healthy environment.
- The Scottish land reform, including its Land Rights and Responsibility Statement, both provide lessons learnt and approaches for the recognition of the human right to a healthy environment, and a critical area for the implementation of this right.

<sup>6</sup> Angeliki Papantoniou, *Children and the Environment* 2021

<sup>7</sup> Placing children (0-18yo) at the centre of SDGs for lifelong, inter-generational & economic benefits for society as a whole (& strong foundation for monitoring progress): H Clark et al, "A Future for the world's children? A WHO-UNICEF-Lancet Commission

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On the whole, the right to a healthy environment contributes to decision-making in the light of the indivisibility of human rights and the SDGs.

Finally, the recognition of a human right to a healthy environment can contribute to Scotland's green recovery, maximising learning and awareness accrued during the COVID-19 pandemic.<sup>8</sup> The recognition of the human right to a healthy environment can thus support the planning for post-COVID-19 recovery to "build back better" and not return to business as usual, as called for by the UN Secretary-General. The recognition of a human right to a healthy environment can contribute to prioritise environmental protection over unsustainable development approaches as part of Scotland's efforts to explore the human rights-based approach and the fair transition to net zero.<sup>9</sup>

## **2. The proposed policy key features of a human right to a healthy environment**

In order to fully recognise recommendation 2 on the human right to a healthy environment it is suggested the following key policy features will be important to consider in bill development and will need to be integrated into the wider framework:

1. As referenced in the preamble to the Aarhus Convention, Recommendation 2 recognises that the adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.
2. Recommendation 2 is intended to clarify that everyone has a right to a healthy environment and should benefit from healthy ecosystems that sustain human health, well-being and children's development and enable their full potential. [NOTE: the intention of this is to emphasise the importance of ecosystems for everyone's human health, in the light of the most recent global scientific reviews;<sup>10</sup> to emphasise the importance of the human right to health for the protection and realization of the rights of the child,<sup>11</sup> which would be a first internationally;<sup>12</sup> and to point to medium to long timeframes to be taken into account to avoid negative impacts from environmental harm on children as they become adults.<sup>13]</sup>

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<sup>8</sup> <https://www.strath.ac.uk/humanities/lawschool/blog/covid-19environmentalprotectionhumanrightsleadership/>.

<sup>9</sup> Note that the ECCLR Committee made the following recommendation in their Green Recovery Report: The Committee recommends the Scottish Government further embed a human rights-based approach to recovery, underpinned by the key principles of participation, accountability, non-discrimination, empowerment and law.

<sup>10</sup> Morgera, FACT SHEET NO 5: Why a human right to a healthy environment matters for the human right to health? (16 April 2020). World Health Organization (WHO), *Report by the Director-General - Health, environment and climate change - Human health and biodiversity*, A71/11, 2018; WHO, *Report by the Director-General - Health, environment and climate change - Human health and biodiversity*, A71/11, 2018; CBD, Dec. XIII/6, 2016CBD, Dec. XIV/4, 2018.

<sup>11</sup> Morgera, FACT SHEET No 2: FACT SHEET NO 5: Why a human right to a healthy environment matters for children's rights? (DRAFT 11 June 2020

<sup>12</sup> The Constitution of El Salvador is the only constitutional provision directly referring to children and the environment in the same article, and courts in El Salvador have used this and other constitutional provisions to determine that everyone has the right to a healthy environment.  
(ART 34: "Every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.") The novelty of the proposed key feature is making children explicit right-holders as a central tenet of a general right to a healthy environment and thus putting children at the centre of protection that the right entails for everyone.

<sup>13</sup> Report of UN Special Rapporteur on Human Rights and the Environment, John Knox on the rights of the child and the environment (A/HRC/37/58).

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3. It will be important to recognise, through this Recommendation, that the human right to a healthy environment has both procedural and substantive components, in an operative (as opposed to purely aspirational) way:
    - 3.1 Indicating that the substantive component of the right includes inter-dependent environmental features “which include clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems” [NOTE: this could be a globally innovative feature as it would incorporate in domestic legislation for the first time the international formulation elaborated by the UN Special Rapporteur on Human Rights and the Environment David Boyd.<sup>14]</sup>]
    - 3.2 Indicating that the procedural entitlements comprise: access to environmental information, public participation in environmental decision-making, environmental and socio-cultural assessments, and access to justice in environmental matters and effective remedies, in accordance with the Aarhus Convention and the UN Framework Principles on Human Rights and the Environment.
  4. A key policy objective of this Recommendation is to ensure relevant authorities pursue the full implementation of this right, prioritising the best interests of the child, in progressively advancing the conservation, sustainable use and restoration of the environment, in accordance with the principles of precaution, prevention, integration, polluter pays, and remediation at source.

[NOTE: This links international obligations on non-discrimination with the protection of the environment, based on a solid international evidence base whereby also in highly developed states, environmental disease is clearly linked to poverty and social inequalities. This is confirmed in the evidence base collected by the Taskforce. The UN Framework Principles on Human Rights and the Environment point to heightened obligations to protect the right to a healthy environment for those in particularly vulnerable situations. Non-discrimination is also one of the fundamental principles of the UNCRC (Article 2), so it is important to take measures to make the environment of the child safe, for example, by providing adequate housing and play facilities.<sup>15</sup> This would also integrate the highest standards of protection for the rights of the child as a way to raise the bar in the protection of the environment to the benefit of all; and it clarifies that the international and EU environmental principles (contained in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 are complementary to the human right to a healthy environment.]

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<sup>14</sup> UN DOC A/HRC/43/53.

<sup>15</sup> Angeliki Papantoniou, *Children and the Environment 2021* and FACTSHEETS No. 2-4.

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5. A further key policy objective of Recommendation 2 is also to ensure that relevant authorities protect everyone from current and emerging environmental degradation, to avoid unjustified, foreseeable negative impact on human life, health, well-being or children's development, including by ensuring treatment and accountability for loss.<sup>16</sup>

The following definitions could assist in interpreting these proposed policy features.

**Environment** the environment should be understood broadly. Based on the definition of "environmental information" under the Aarhus Convention (Art. 2.3), the environment should be understood as comprising "air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements."

In considering the protection of the right to a healthy environment, the following considerations should be taken into account (as per Art. 2.3 of the Aarhus Convention):

- Factors, such as substances, energy, noise and radiation, and activities or measures, affecting or likely to affect the elements of the environment;
- The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures affecting or likely to affect the elements of the environment.

**Ecosystems** according to the Convention on Biological Diversity (Art. 2), these are defined as "a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit."

**Well-being** is an all-encompassing term referring to physical and mental health,<sup>17</sup> as well as all other aspects of life that can be negatively affected by environmental degradation. Children's well-being refers to health, education, leisure and all other aspects of the child's life which can be affected (for example the family life of the child can be disrupted by the loss of home due to a landslide or an explosion of an industrial site). It is important, therefore, to have a broader term than health.<sup>18</sup>

**Children's development** is addressed under Article 6 of the UN Convention on the Rights of the Child: 'Every child has the right to life. Governments must do all they can to ensure that children survive and develop to their full potential.'

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<sup>16</sup> The model of protection, treatment and accountability is proposed in relation to children's protection from environmental threats in Angeliki Papantoniou, *Children and the Environment 2021* (Brill, forthcoming 2021).

<sup>17</sup> Morgera, FACT SHEET NO 5: Why a human right to a healthy environment matters for the human right to health? (16 April 2020).

<sup>18</sup> Angeliki Papantoniou, *Children and the Environment 2021*

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**Conservation, sustainable use and restoration** can be defined in accordance with the Convention on Biological Diversity as follows:

- **Conservation** includes both “the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties” and the “conservation of components of biological diversity outside their natural habitats” (CBD Art. 2).
- **Sustainable use** “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations” (CBD Art 2).
- **Restoration** rehabilitation and restoration of degraded ecosystems and promotion of the recovery of threatened species (CBD Art. 8), with the involvement of relevant stakeholders and for job creation and as contributions to climate change mitigation and adaptation, socio-economic development and food security (CBD Decision XI/16, 2012).

**Children's best interests** is a principle in accordance with Article 3(1) of the Convention on the Rights of the Child: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’

**Precaution** according to the UN Framework Principles on Human Rights and the Environment, substantive environmental standards (that should be non-discriminatory and non-retrogressive) should take into account the best available science but the lack of full scientific certainty should not be used to justify postponing effective and proportionate measures to prevent environmental harm, especially when there are threats of serious or irreversible damage.

The reference to precaution and other general principles of international environmental law, as well as in EU principles of environmental law referred in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 serves to clarify that the human right to a healthy environment contributes to implement environmental principles, and more generally that environmental governance should reflect the human right to a healthy environment.

**Current and emerging environmental degradation** according to the World Health Organisation, current threats are air pollution, water, sanitation and vector-borne diseases, while emerging are chemicals<sup>19</sup>, electronic waste and climate change.<sup>20</sup> To the above list another important threat is the loss of biodiversity, which fits both categories.<sup>21</sup>

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<sup>19</sup> See also Human Rights Council Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 2 August 2016, A/HRC/33/41.

<sup>20</sup> World Health Organisation *Inheriting a sustainable world: Atlas on children's health and the environment* 2017, xi, Elisa Morgera *Why a Human right to a healthy Environment matters for children's rights* (Factsheet no 2 DRAFT 11 June 2020) and in Papantonio, *Children and the Environment* 2021.

<sup>21</sup> Morgera Factsheet no 2.

**Treatment** of environmental disease will, possibly, require the most initiative on behalf of the Scottish government. It should be pointed out that the protection of children from diseases will also have a positive effect on other members of the population with particular vulnerabilities. The state may wish to consider plans and programmes for healthcare, such as:

- i) Special training of doctors to recognise environmental factors and be able to treat them. For example, the detection of persistent organic pollutants (POPs) causing diabetes; and
- ii) Special health treatment units, which could be part of the general hospitals.

Specifically regarding children's rights, it can do so by relying on the criteria of Article 24 UNCRC, as a starting point.<sup>22</sup> Environmental degradation affects all aspects of the child's life and therefore a wide range of their rights. It is important to have a starting point of human rights provisions to make a practically feasible change to begin with, which can be further developed in due course.<sup>23</sup>

For this reason, there is a need for monitoring of specific levels of certain substances, for example mercury, persistent organic pollutants, for each developmental stage of the child (this can also be part of the preventative measures). For most substances the levels provided by international organisations are for the general public. It is not apparently clear whether they are safe for children.<sup>24</sup>

Treatment of environmental disease in children will fulfil Scotland's obligation under the UNCRC – especially Articles 24 (the right to health) and 6 (survival and development), the latter being one of the fundamental principles of the interpretation of the Convention. Moreover, it will fulfil a number of Sustainable Development Goals (SDG), including but not limited to, SDG 3 'Good Health and well-being'.<sup>25</sup>

**Accountability for loss** can take the form of judicial redress when all other remedies are exhausted (in accordance with the Aarhus Convention). Mechanisms of less costly redress must be provided, for example mediation, restorative justice.

**Healthy ecosystem** "is one that is sustainable – that is, it has the ability to maintain its structure (organization) and function (vigor) over time in the face of external stress (resilience)." (drawn from academic literature suggested by UN Special Rapporteur David Boyd: Robert Costanza and Michael Mageau, "What is a healthy ecosystem?" Aquatic Ecology 33: 105–115, 1999).

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<sup>22</sup> Angeliki Papantoniou, *Children and the Environment* 2021

<sup>23</sup> ibid

<sup>24</sup> ibid

<sup>25</sup> ibid

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### 3. The evidence base

#### **All Our Rights In Law: A report to the National Taskforce on Human Rights Leadership on views and concerns from the wider public**

“It was very notable that many of the views and concerns raised around [the right to a healthy environment] were from children and young people.”

#### **‘All Our Rights in Law’: Conversation with children and young people hosted by Together (Scottish Alliance for Children’s Rights) – January 2021**

“There’s a significant mental health impact related to the environment e.g climate change – climate anxiety, it feels like everything is hopeless. If there is proper action taken by Scottish Government, it would offer some great reassurance and hope to young people.”

“The government should take every possible measure to make sure it’s not unnecessarily damaging the environment or allowing other groups or people to do so.”

“The government should also encourage people to make responsible decisions which are less damaging for the environment.”

“Most laws get forgotten as there are so many of them. Politicians also forget that they exist. Need to remind them that we’re entitled to what is in these laws.”

Participants also spoke of the importance of:

- the new human rights law supporting active travel and ending investment in fossil fuels, and helping people access clean water, food and a clean and healthy environment everywhere so that people are healthier and they can do their jobs better;
- decision makers listening to children and young people’s views about the environment and taking these into account; and
- mechanisms and supportive structures helping children and young people claim their rights.

Reports of the three roundtables on the right to a healthy environment (including contributions from the former and current UN Special Rapporteurs on Human Rights and the Environment, as well as former Special Rapporteur on Toxics and Human Rights; and case studies from the Scottish Land Commission, Public Health Scotland, SEPA and SNH).

- Baskut Tuncak, former UN Special Rapporteur on Toxics underscored that the UNCRC is important in supporting the recognition and protection of all the elements of a right to a healthy environment, benefitting other groups of rights-holders. He therefore noted that, being in the process of incorporating the UNCRC, Scotland has an opportunity to do

“something ground-breaking” and tangible on children’s right and the environment. He also noted that it is important to consider the environment as widely as possible, and that enhanced access to justice can reinforce prevention of environmental degradation.

- UN Special Rapporteur on Human Rights and the Environment Professor David Boyd, emphasised that the right to a healthy environment can catalyse the rapid, systemic and transformative change that is needed to address multiple global environmental crises. He noted he was impressed with proposed key features including both the substantive and procedural components of the human right to a healthy environment. He underscored the need to formalise concrete opportunities for children to participate in decision-making and accountability processes.
- SEPA and SNH case studies illustrate existing good practices in bringing together public bodies, businesses and community representatives who want to make a positive difference to place and in engaging with those who would/could not normally access consultation process. They emphasised multiple benefits (health, education, anti-social behaviour, economic prospects, isolation, natural flood management, disability, biodiversity) arising from relying on existing natural features (“do what nature would do”).

Scottish Land Commission’s note for further discussion: Right to a Healthy Environment/Land Reform (2020) expresses “strong support [for] an ambitious approach in which such a right helps unlock action to realise progressive improvements to a healthy environment. This would reflect Scotland’s leadership approach in both environment and human rights, and complement the approach taken to land-related rights and responsibilities.

The note lists the following are areas of potential collaboration, where a right to a healthy environment could strengthen policy and action, and which, in turn, could provide opportunities to build capacity and operationalise such a right: *Vacant and derelict land; Planning and community engagement; Capacity Building – Land Rights and Responsibilities; and Meeting Scotland’s Climate Change Targets.*

Briefing by the Environmental Rights Centre for Scotland on behalf of Scottish Environment LINK 35 members (support by Badenoch and Strathspey Conservation Group; Environmental Rights Centre for Scotland; Friends of the Earth Scotland; Keep Scotland Beautiful; RSPB Scotland; Scottish Wild Land Group; Scottish Wildlife Trust; Woodland Trust Scotland; WWF Scotland) supports recognition of the human right to a healthy environment in its substantive and procedural environmental dimensions.

RSPB Case studies on Human Right to a Healthy Environment and Planning Decisions indicated that a right to a healthy environment could help deliver these goals by giving the environment higher status in decision-making and ensuring that decision makers can be held accountable.

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Environmental Rights Centre for Scotland (ERCS), “Why Scotland needs a human right to a healthy environment”, 2 February 2021 and ERCS, brief “The case for a substantive right to a healthy environment: case review” (October 2020) expresses support for a codified substantive right that can reprioritise the pursuit of environmental protection over unsustainable economic drivers to the benefit of children, the elderly, and those suffering ill health, who are more negatively impacted by environmental health hazards, but are often least responsible for causing environmental damage.

# Annex E - National Taskforce for Human Rights Leadership Summary of Public and Political Engagements

This table records the public engagement undertaken by Taskforce to gather evidence to inform its report. Further information about the views gathered in these discussions is available at the [Taskforce Website](#).

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Civil Society Reference Group	25 & 26 June 2020	Amnesty International, British Institute of Human Rights, CRER, Deaf Scotland, Freedom from Torture, Friends of the Earth Scotland, Human Rights Consortium Scotland, Interfaith Scotland, Justice, LGBT Youth Scotland, Muslim Council of Scotland, National Taskforce for Human Rights Leadership, Poverty Alliance, Quakers, RNIB Scotland, Scottish Care, Scottish Government, Scottish PEN and the Jewish Leadership Council.
The Human Right to a Healthy Environment Roundtable	29 June 2020	Academic Advisory Panel, Canopus Scotland, Common Weal, Faculty of Advocates, Former UN Special Rapporteur on Human Rights and the Environment, Friends of the Earth, Law Society, LINK, National Taskforce for Human Rights Leadership, Queen Margaret University School of Law, RSPB, Scottish Crofting Commission, Scottish Government, Scottish Human Rights Commission, Scottish Parliament, SEPA and University of Strathclyde.
Taskforce meeting with Engender	30 June 2020	Engender, National Taskforce for Human Rights Leadership, Scottish Human Rights Commission, Scottish Government and Professor Nicole Busby

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Taskforce meeting with Children and Young People Organisations	7 July 2020	Action for Children, Barnardo's Scotland, Care Protection, Children in Scotland, Children's Health Scotland, Children's Parliament, Equality and Human Rights Commission, Home Start UK, NSPCC, Parenting Across Scotland, Quakers in Britain, Scottish Commission for Learning Disability, Scottish Government Scottish Youth Parliament, Scottish Youth Parliament, Together Scotland, Together Scotland, UNICEF, Who Cares? Scotland and Youth Link Scotland.
SCEN Human Rights Sub-Group	28 July 2020	Aberdeen City Council, Angus Council, COSLA, East Ayrshire Council, East Renfrewshire Council, Falkirk Council, Fife Council, Glasgow City Council, Highland Council, Inverclyde Council, Midlothian Council, National Taskforce for Human Rights Leadership, Scottish Borders Council, Scottish Government, Shetland Islands Council, South Lanarkshire Council, Stirling Council, West Dunbartonshire Council and West Lothian Council.
Meeting with Who Cares? Scotland	5 August 2020	National Taskforce for Human Rights Leadership, Scottish Government and Who Cares? Scotland
COSLA Special Interest Group	12 August 2020	COSLA and National Taskforce for Human Rights Leadership.
Older People Strategic Action Forum (OPSAF) Roundtable	20 August 2020	Faith in Older People, Glasgow Disability Alliance, Hourglass, Human Rights Consortium Scotland, National Taskforce for Human Rights Leadership, Outside the Box, Scottish Government and Scottish Pensioners Forum.
LGBTI+ Rights Roundtable	21 August 2020	Respect Me, LGBT Youth, Stonewall Scotland, Equality Network, National Taskforce for Human Rights Leadership and Scottish Government.

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Health & Wellbeing Rights Roundtable	25 August 2020	CORRA, COSLA, Edinburgh University, Improvement Service, Inclusion Scotland, National Taskforce for Human Rights Leadership, NHS Lothian, Scottish Community Safety Network, Scottish Government, Scottish Human Rights Commission, SNAP, South Ayrshire Health & Social Care Partnership, The Consultation Institute and Voluntary Health Scotland.
The Human Right to a Healthy Environment	28 August 2020	COSLA, Environmental Rights Centre for Scotland, Former UN Special Rapporteur on Toxics, Friends of the Earth Scotland, National Taskforce for Human Rights Leadership, NatureScot, Public Health Scotland, Queen Mary University London, RSPB Scotland, Scottish Environment LINK, Scottish Government, Scottish Human Rights Commission, Scottish Land Commission, Scottish Parliament, SEPA, Strathclyde University and University of Stirling.
Women's Rights Roundtable	28 August 2020	Academic Advisory Panel, COSLA, Engender, National Taskforce for Human Rights Leadership, Scottish Women's Aid and Scottish Women's Convention.
Access to Justice Roundtable	1 September 2020	Law Society of Scotland, University of Stirling, Faculty of Advocates, National Taskforce for Human Rights Leadership and Scottish Government.
Health & Social Care Rights Roundtable	8 September 2020	Chair of the Mental Health Legislation Review, COSLA, Health and Social Care Alliance, Healthcare Improvement Scotland, Inclusion Scotland, National Taskforce for Human Rights Leadership, NHS Lothian, Royal College of Psychiatrists, Scottish Care, Scottish Human Rights Commission, SNAP, South Ayrshire Health & Social Care Partnership and UNISON.

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Disability Rights Roundtable	17 September 2020	Alliance, Equality and Human Rights Commission Scotland, Glasgow Disability, Inclusion Scotland, Macular Society, National Taskforce for Human Rights Leadership, SAMH, SCLD, Scottish Government, Scottish Human Rights Commission and VOX Scotland.
Local Authority Roundtable	17 September 2020	Aberdeenshire Council, Association of Local Authority Chief Housing Officers, COSLA, Dumfries and Galloway City Council, Dundee City Council, Fife Council, Glasgow City Council, National Taskforce for Human Rights Leadership, Renfrewshire Council, Scottish Government, Scottish Human Rights Commission and South Lanarkshire Council.
Civil Society Reference Group	29 September 2020	Age Scotland, Amnesty, Article 12, Chartered Institute of Housing, Children's Health Scotland, Children's Parliament, Criminal Justice Voluntary Sector Forum, Deaf Scotland, EIS, Engender, Equality Network, ERCS, Fife Centre for Equalities, Friends of the Earth Scotland, Glasgow Disability Alliance, Govan Law Centre, Health & Social Care Alliance, Home Start, Howard League, Inclusion Scotland, Justice, JustRight Scotland, LGBT Youth, LSA, Making Rights Real, Muslim Council of Scotland, Partners in Advocacy, Quakers, SCDC, Scottish Centre for Learning Disabilities, Scottish Environment Link, Scottish Independent Advocacy Alliance, Scottish Refugee Council, Scottish Rural Action, Shelter, Together, UNICEF and Who Cares? Scotland

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Public Sector Reference Group	29 September 2020	Bòrd na Gàidhlig, Care Inspectorate, Community Justice Scotland, Community Safety Network, COSLA, Children and Young People's Commissioner Scotland, Dumfries Council, Healthcare Improvement Scotland, Information Commissioner's Office, National Taskforce for Human Rights Leadership, Nature Scotland, NHS 24, NHS Tayside, North Ayrshire Council, Prison Inspectorate, Public Health Scotland, Renfrewshire Council, Scottish Funding Council, Scottish Government, Scottish Human Rights Commission, Scottish Prison Service, SCTS, SEPA and Social Work Scotland.
Meeting with Council of Ethnic Minority Voluntary Sector Organisations (CEMVO)	7 October 2020	Council of Ethnic Minority Voluntary Sector Organisations, National Taskforce for Human Rights Leadership and Scottish Government.
Faith Groups Roundtable	8 October 2020	Catholic Parliament Office, Evangelical Alliance, Forum of Britain, Humanist Society Scotland, Interfaith Scotland, Jewish Council Leadership, Muslim Council of Scotland, National Taskforce for Human Rights Leadership, Quakers, Scottish Council of Jewish Communities, Scottish Government and Scottish Human Rights Commission.
Meeting with Coalition for Race Equality and Rights (CRER)	9 October 2020	Coalition for Race Equality and Rights, National Taskforce for Human Rights Leadership and Scottish Government.
Second Disability Rights Roundtable	14 October 2020	Inclusion Scotland, Glasgow Disability Alliance, Disability Equality Scotland, National Taskforce for Human Rights Leadership and Scottish Government.

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Meeting with BEMIS Scotland	30 October 2020	BEMIS Scotland, National Taskforce for Human Rights Leadership and Scottish Government.
Meeting with the Scottish Independent Living Coalition	2 November 2020	Deaf Scotland, Glasgow Disability Alliance, Inclusion Scotland, Lothian Centre for Independent Living, National Taskforce for Human Rights Leadership, People First, People for Scotland, Scottish Government and SILC.
Meeting with the Independent Review of Social Care in Scotland	3 November 2020	Independent Review of Adult Social Care in Scotland, National Taskforce for Human Rights Leadership and Scottish Government.
Meeting with Scottish Independent Advocacy Alliance	4 November 2020	Advocacy Highland, AdvoCard Edinburgh, CAPS Independent Advocacy, Dundee Independent Advocacy, Dunfermline Advocacy, Dunfermline Advocacy, Lomond & Argyll Advocacy, National Taskforce for Human Rights Leadership, Partners in Advocacy, Patients Advocacy Service, Perth & Kinross Independent Advocacy, Royal Edinburgh Hospital, Scottish Government, Scottish Human Rights Commission and SIAA.
Meeting with Audit Scotland	11 November 2020	Audit Scotland, National Taskforce for Human Rights Leadership and Scottish Government.
Meeting with Professor Alison Phipps, Chair, New Scots Refugee Integration Strategy Core Group	3 December 2020	New Scots Refugee Integration Strategy Core Group, National Taskforce for Human Rights Leadership and Scottish Government.
Meeting with the Scottish Land Commission	3 December 2020	National Taskforce for Human Rights Leadership and Scottish Land Commission.

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Older People Strategic Action Forum (OPSAF) Meeting	4 December 2020	Age Scotland, Faith in Older People, National Taskforce for Human Rights Leadership, Outside the Box, Scottish Government, Scottish Human Rights Commission, and Scottish Older People's Assembly, Scottish Pensioners Forum and the UN Independent Expert on the Enjoyment of all Human Rights by Older People.
Access to Remedy Roundtable	7 December 2020	JustRight Scotland, EHRC, Citizens Advice Scotland, CYPSC, SCJC, SHRC, Law Society Scotland, Faculty of Advocates, Clan Chidlaw.
CRPD Reference Group	8 December 2020	Alliance, Edinburgh Napier University, Glasgow Disability Alliance, Inclusion Scotland, Law Society Scotland, Mental Welfare Commission Scotland, National Taskforce for Human Rights Leadership, Scottish Commission for Learning Disability, Scottish Government, Scottish Human Rights Commission, and Scottish Independent Living Coalition.
CERD Reference Group	9 December 2020	SHRC, Coalition for Racial Equality and Rights (CRER), BEMIS, Radiant and Brighter, Govan Community Project, Anti-racist Intercultural Youth Scotland, Scottish Minority Women's Network, Progress in Dialogue, Perth and Kinross Associations for Voluntary Service Minority Communities Hub and Law Society of Scotland Equalities Law Sub-Committee.
CEDAW Reference Group	14 December 2020	COSLA, Engender, Scottish Women's Aid, Amnesty International, Close the Gap, Law Society of Scotland, Scottish Government and Scottish Human Rights Commission.

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Public Sector Reference Group	15 December 2020	Care Inspectorate, Children and Young People's Commissioner Scotland, COSLA, Information Commissioner's Office, Mental Welfare Commission, Mental Welfare Commission, National Taskforce for Human Rights Leadership, NHS Education for Scotland, Prisons Inspectorate, Public Health Scotland, Renfrewshire Council, Scottish Community Safety Network, Scottish Government, Scottish Human Rights Commission and Scottish National Heritage.
Taskforce meeting with Who Cares? Scotland	15 December 2020	Who Cares? Scotland, Scottish Human Rights Commission and Human Rights Consortium.
United Nations	12 January 2021	Gianni Magazzeni
The Human Right to a Healthy Environment Roundtable	25 January 2021	Canopus, CYPICS, Environmental Standards Scotland, ERCS, Friends of the Earth, Law Society, Living Law, National Taskforce for Human Rights Leadership, NatureScot, QMU, RSPB, Scot Link, Scottish Government, Scottish Human Rights Commission, Scottish Parliament, Stirling University, Strathclyde University and the UN Special Rapporteur on the Environment.

<b>Meeting</b>	<b>Date</b>	<b>Attending</b>
Civil Society Reference Group	27 January 2021	Alliance, Amnesty, Article 12 in Scotland, Chartered Institute of Housing, Church of Scotland, Civil Society Network, Deaf Scotland, Edinburgh Tenants Federation, Engender, Freedom from Torture, Glasgow Disability Alliance, Human Rights Consortium Scotland, Inclusion Scotland, LINK, Making Rights Real, National Taskforce for Human Rights Leadership, Nourish, Scottish Community Development Centre, Scottish Commission for Learning Disabilities, Scottish Care, Scottish Government, Law Society, Scottish Human Rights Commission, Stonewall, Together Scotland and Who Cares? Scotland.
2nd LGBTI+ Rights Roundtable	27 January 2021	LGBT Youth, Stonewall, Equality Network
Meeting with Audit Scotland	8 February 2021	Audit Scotland, National Taskforce for Human Rights Leadership and Scottish Government.

This table records the political engagement undertaken by Professor Miller to introduce the work of the Taskforce.

Name	Organisation	Date
Willie Rennie MSP	Liberal Democrats	27 August 2020
David McGill and Huw Williams	Scottish Parliament	8 September 2020
Alex Cole-Hamilton MSP	Liberal Democrats	11 September 2020
Professor Alan Page	Independent Review of Administrative Law	2 October 2020
Welsh Government Officials	Welsh Government	6 October 2020
Lord Jim Wallace	Liberal Democrats	8 October 2020
Northern Irish Government Officials	Northern Irish Government	13 October 2020
Wendy Chamberlain MP	Liberal Democrats	15 October 2020
Pauline McNeill MSP	Labour	9 November 2020
Patrick Harvie MSP	Greens	23 November 2020
Jeremy Balfour MSP	Conservatives	30 November 2020
Tom Mullen	Independent Human Rights Act Review	12 January 2021
Joanna Cherry MP	SNP	29 January 2021
David Lammy MP	Labour	1 February 2021
Michael O'Flaherty	European Union Agency for Fundamental Rights	4 February 2021

# Annex F – Glossary of Terms

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## **Aarhus Convention**

The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters that was adopted in June 1998 in Aarhus, Denmark.

## **Accountability**

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

## **Act**

Primary legislation which creates a new law or changes an existing law.

## **Best practice**

A working method or set of working methods that is officially accepted as being the best to use in a particular scenario.

## **Bill**

Is a formal proposal for primary legislation to create a new law, or a change in the law, that is put forward for consideration by Parliament.

## **Bonavero Institute**

The Bonavero Institute of Human Rights is a research institute within the Faculty of Law at the University of Oxford.

## **CAT**

The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) is an international human rights treaty adopted in 1985 by the United Nations General Assembly.

## **CEDAW**

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international human rights treaty adopted in 1979 by the United Nations General Assembly.

## **CERD**

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is an international human rights treaty adopted in 1965 by the United Nations General Assembly.

## **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.

## **Civil society**

Is the “third sector” of society, along with government and business. It comprises civil society organisations and non-governmental organisations.

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### **Comparative law**

This is a field of law which looks to compare experiences in different countries or jurisdictions, for various purposes, such as undertaking legal reform.

### **Concluding Observations**

Concluding observations are the observations and recommendations issued by a treaty body after consideration of a State party's report. Concluding observations refer both to positive aspects of a State's implementation of the treaty and areas where the treaty body recommends that further action needs to be taken by the State.

### **COP 26**

The 26th UN Climate Change Conference of the Parties to the UN Framework Convention on Climate Change, being held in Glasgow in November 2021.

### **Council of Europe**

This organisation protects human rights, democracy and the rule of law through overseeing the implementation of the ECHR. Founded in 1949, the Council of Europe includes 47 member states, 27 of which are members of the European Union.

### **Covid**

The infectious disease caused by the coronavirus that led to a global pandemic being declared by the World Health Organization in March 2020.

### **CRPD**

The Convention on the Rights of Persons with Disabilities (CRPD) is an international human rights treaty adopted in 2006 by the United Nations General Assembly.

### **Devolved competence**

Devolution is a system of government which allows decisions to be made at a more local level. In the UK there are several examples of devolved government including devolved legislatures like the Scottish Parliament. The Scottish Parliament has power over all aspects of life in Scotland which are not reserved under the Scotland Act 1998. The powers it has fall within devolved competence.

### **Duty-bearers**

Are those who have a particular obligation or responsibility to respect, promote and fulfil human rights and to abstain from human rights violations, including, Governments, public bodies and other actors.

### **European Convention on Human Rights**

The European Convention on Human Rights (ECHR) is a Council of Europe (not EU) treaty that protects civil and political rights of people in countries that belong to the Council of Europe, it came into force in 1953.

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

Rights which we need to live in dignity, for example rights to health, housing, food, social security, and protection against poverty.

## **Equality and Human Rights Commission**

The Equality and Human Rights Commission (EHRC) is an independent public body which operates across the UK. In relation to human rights in Scotland, the EHRC's remit covers human rights issues arising in reserved areas.

## **Equalities and Human Rights Committee**

A committee of the Scottish Parliament which considers and reports on matters relating to equalities and human rights including their observance.

## **Equality Act**

The Equality Act 2010 provides a legal framework to protect the rights of individuals from unfair treatment and promotes a fair and more equal society.

## **European Charter of Fundamental Rights**

The EU Charter of Fundamental Rights enshrines certain political, social and economic rights for EU citizens. The Charter became legally binding on EU member states when the Treaty of Lisbon entered into force in December 2009.

## **European Social Charter**

A Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights. The original version from 1961 has been ratified by the UK. A revised version from 1996 has not yet been ratified by the UK, so is not in force as respects the UK.

## **European Union (EU)**

Is a group of 27 countries that operates as a cohesive economic and political block.

## **Fairer Scotland Duty**

Places a legal responsibility on particular public bodies in Scotland (under Part 1 of the Equality Act) to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions.

## **First Minister's Advisory Group (FMAG) Report**

The FMAG on Human Rights Leadership was set up by Scotland's First Minister to make recommendations on how Scotland can continue to lead by example in the field of human rights. The report was published on 10 December 2018.

## **First Minister's National Advisory Council on Women and Girls**

The National Advisory Council on Women and Girls exists to advise the First Minister on what's needed to tackle gender inequality in Scotland through annual reports that demonstrate their findings and recommendations.

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## General Comments

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

## Human rights

Are the basic rights and freedoms that belong to every person in the world. They can never be taken away, although they can sometimes be restricted.

## Human Right Act

The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It incorporates most of the rights set out in the European Convention on Human Rights (ECHR) into domestic British law.

## ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is an international human rights treaty adopted in 1966 by the United Nations General Assembly.

## Incorporation

The idea of including UN treaty rights within our domestic law in Scotland. Although after ratifying a treaty a state has consented to be bound by the treaty in international law, unless the rights are incorporated into our law they can be difficult to uphold under our law.

## Independent advocacy

Is a way to help people have as much control as possible over their own lives, it is standing alongside people who are marginalised and speaking on behalf of people who are unable to do so for themselves.

## 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.

## Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women and domestic violence opened for signature in 2011 in Istanbul, Turkey.

## Judiciary

The judicial authorities of a country; judges collectively.

## Legislation

A law or set of laws, usually suggested by Government, approved by Parliament.

## Maximum available resources

The idea that a country spends as much of its budget as it can on making economic, social and cultural rights real.

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### **Non-regression**

The idea that things should get better, not worse; governments should not take decisions which they know will create setbacks in making rights real.

### **National Performance Framework (NPF)**

Is a Scottish Government framework that provides broad measures of national wellbeing covering a range of economic, health, social and environmental indicators and targets.

### **Pandemic**

The worldwide spread of a new disease. In this report, 'pandemic' refers to the 'Covid pandemic'.

### **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 straight away. However, governments still have to take continual action toward realising rights.

### **Public Sector Equality Duty**

The duty in section 149 of the Equality Act on public authorities to have due regard, when carrying out their functions, to the equality and non-discrimination needs listed in that section.

### **Ratify/Ratification**

An act by which a State signifies an agreement to be bound in international law by the terms of a particular treaty. To ratify a treaty, the State first signs it and then fulfils its own national legislative requirements.

### **Regression**

A return to a previous and less advanced or worse state. The opposite of non-regression.

### **Remedies**

In international human rights law, appropriate remedies can come in the form of:

**Restitution** – restoring the victim to the original situation before their rights were violated;

**Compensation** – providing economic damages;

**Satisfaction** – can include: finding out the truth, an apology, proper investigation and commemorations and tributes;

**Rehabilitation** – including medical and psychological care as well as legal and social services; and

**Guarantees of non-repetition** – steps so that the violation cannot occur again.

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## 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.
- Protect means that governments must protect people's rights from being violated by the actions of others.
- Fulfil means that governments must take positive steps to ensure that people's rights are real.

## Rights-holders

Are individuals who can, therefore, ask that their human rights are respected. Duty-bearers are responsible for upholding rights, they can be held accountable for not respecting the rights of individuals.

## Scottish Human Rights Commission

The Scottish Human Rights Commission is an independent public body which promotes and protects human rights for everyone in Scotland.

## Scotland's National Action Plan for Human Rights (SNAP)

SNAP – Scotland's National Action Plan for Human Rights – was launched in 2013 as a roadmap to giving effect to Scotland's international human rights obligations.

## Scrutiny bodies

Made up of regulators, inspectorates and complaints handling bodies (there may often be overlap between these three areas):

### Regulators/regulatory body

Exercise a regulatory function, including; imposing requirements, restrictions and conditions, setting standards in relation to any activity, and securing compliance, or enforcement. Regulatory bodies are usually established and given powers by an Act.

### Inspectorates

Bodies which inspect and report on organisations/activities in their relevant field.

### Complaints-handling bodies

Bodies who look into complaints about companies and organisations (an ombudsman is a person who has been appointed to look into such complaints).

## Structural interdict

A remedy for structural issues whereby the courts order a set of measures to be implemented, then play a part in monitoring the compliance of the measures until the court is satisfied the violation has been remedied.

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**Sufficient interest**

In law, 'standing' is the ability of a party to demonstrate to the court sufficient connection to the case in order to bring an action. While standing differs between jurisdictions, a person or organisation with the ability to demonstrate 'sufficient interest' is one of many methods of determining standing internationally.

**Treaty**

A treaty is an international agreement concluded between States in written form and governed by international law.

**Treaty body**

A committee of independent experts appointed to monitor the implementation by State parties of the core international human rights treaties.

**UNCRC**

The United Nations Convention on the Rights of the Child (UNCRC) is an international human rights treaty adopted in 1989 by the United Nations General Assembly.

**UNCRC (Incorporation) (Scotland) Bill**

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament on 1st September 2020.

**United Nations (UN)**

Is an international organisation founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter.



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