



Creating a Fairer Scotland:

A Human Rights Based Approach to Tackling Poverty

“Overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of fundamental human rights. Everyone everywhere has the right to live with dignity, free from fear and oppression, free from hunger and thirst, and free to express themselves and associate at will.”ⁱ

Nelson Mandela

The Scottish Human Rights Commission (SHRC) was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland. The Commission supports Scotland’s National Action Plan on Human Rights (SNAP) and contributes to the Adequate Standard of Living Human Rights Action Group in raising awareness of economic, social and cultural rights in Scotland.

Executive Summary

Poverty is a human rights issue. It is both a symptom and systemic cause of violations of international human rights that are established in law – including rights associated with work, education, health and housing and an adequate standard of living.

Poverty erodes the values of dignity and equality that underpin all international human rights. “Austerity” measures introduced since the 2008 economic recession have led to significant public spending cuts, changes to social security and reductions in public services that have deepened what was already an entrenched problem of poverty in Scotland. These changes, combined with rising living costs, have disproportionately affected children, disabled people, women, black and ethnic minority communities and older people.

The political climate and energised civic activism following the 2014 independence referendum and 2015 UK general election have together created a space where Scotland, as a country, is now considering how best to realise the ideal of social justice in practice. A national conversation is taking place, initiated by the Scottish Government, asking what a fairer Scotland should look like in 2030, and what steps should be taken to make that vision a reality.

The Commission, and many of our partners working together on Scotland’s National Action Plan for Human Rights (SNAP), believe that human rights provide both **a legal and conceptual foundation to social justice, as well as the means to put it into practice.** Human rights are non-political, international legal standards; they are also a set of values and principles that can be applied outside the courtroom, throughout public policy and services.

The international human rights system, and in particular the International Covenant on Economic Social and Cultural Rights (ICESCR), provides both a minimum floor and progressive legal standard for social justice. **Tackling**

poverty through human rights de-politicises what it is a matter of law, rather than viewing it as a matter of charity, principle or political aspiration.

The Commission recognises the efforts that have been made by the Scottish Government to promote all human rights through its commitments under SNAP.

As part of the Commission's contribution to SNAP and as a member of the "Adequate Standard of Living" Human Rights Action Group this paper elaborates on the international human rights standards which underpin social justice. It also recommends a series of practical steps that would help realise rights as an integral part of creating a fairer Scotland. In order to practically achieve the realisation of economic, social and cultural rights and create a fairer Scotland the Commission recommends 5 actions:

Empowerment:

1. Support people throughout Scotland to know and claim their rights.

Ability:

2. Introduce human rights based budgeting and budget analysis across all public spending.
3. Develop and implement integrated human rights impact assessments for all policy, practice and decision making.

Accountability:

4. Incorporate the rights contained in the International Covenant on Economic, Social and Cultural Rights into Scotland's domestic law.
5. Align human rights outcomes with the National Performance Framework.

The human rights standards

Human rights are binding international laws which set a standard of living below which no person should fall. This means that **alleviating poverty is not just a matter of charity, principle or political aspiration; it is a non-political legal standard that is binding on the Scottish Government, Scottish Parliament and Scottish public authorities.**

Under the Scotland Act 1998, both the Scottish Government and Parliament must observe and implement all of the UK's international human rights obligationsⁱⁱ such as ICESCR and the European Social Charter, as well as acting compatibly with the European Convention on Human Rights (ECHR) through the Human Rights Act 1998(HRA).ⁱⁱⁱ Ensuring that all concerned have a meaningful understanding of their obligations will be crucial to ensuring that law, policy and practice in Scotland are fully compliant, and that rights are realised in a "Fairer Scotland."

A few of the most relevant rights are outlined below. (It should be understood however that all human rights are fundamental to a fair and just society and all rights are interdependent – i.e. the exercise of one depends on the fulfillment of the others).

The Human Rights Act 1998 and European Convention on Human Rights

The HRA and ECHR protect a number of rights that are often described as civil and political in nature. Many of these are relevant to people who experience poverty.

For example, article 3 of the ECHR prohibits torture and **inhuman or degrading treatment** or punishment and requires positive measures for protection from ill treatment. The House of Lords, now the Supreme Court, has held that refusal of financial support, including refusal of access to accommodation or food may breach Article 3 where the individual would otherwise be destitute.^{iv}

Article 2 protects the **right to life**. The UN Human Rights Committee has found that under the right to life in international law states should take “all possible measures to...increase life expectancy”, including eliminating malnutrition.^v In a Scottish case at the House of Lords it was considered the right to life could be relevant in situations where the quality of housing or accommodation was so bad that it imperiled the life of residents.^{vi}

Article 8 of the ECHR requires the respect for private and family life, home and correspondence. As the European Court of Human Rights has stated, the element of private life encompasses, among other things, “aspects of an individual’s physical and social identity including the right to personal autonomy, personal development and to establish and develop relationships with other human beings and the outside world”.^{vii} Or more broadly “to conduct one’s life in the manner of one’s choosing”.^{viii} Article 8 is a qualified right. This means that although the state can interfere with it, it must do so in a way that is legal, necessary and proportionate. Article 14 of the ECHR means that all ECHR rights must be exercised without discrimination on any ground.

Article 1 of Protocol 1 to the ECHR protects the peaceful enjoyment of possessions, more commonly referred to as the right to property. The European Court of Human Rights has found that certain social and welfare payments can fall within the scope of Article 1 of Protocol 1.^{ix} Like Article 8, Article 1 of Protocol 1 is a qualified right. This means that where a welfare payment comes within the scope of Article 1 of Protocol 1, interferences with the right, such as the dramatic reduction or removal of that payment, must be reasonable and go no further than is necessary. Article 2 of Protocol 1 protects the right to an effective education.

International Covenant on Economic, Social and Cultural Rights

ICESCR was ratified by the UK in 1976. It requires the UK to respect, protect and fulfill the following rights known as economic, social and cultural rights (ESC rights):

- **Work**, under "just and favourable conditions", with the right to form and join trade unions (Articles 6, 7, and 8);
- **Social security**, including social insurance (Article 9);
- **Family life**, including paid parental leave and the protection of children (Article 10);
- **An adequate standard of living**, including adequate food, clothing and housing, and the "continuous improvement of living conditions" (Article 11);
- **Health**, specifically "the highest attainable standard of physical and mental health" (Article 12);
- **Education**, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity" and enable all persons to participate effectively in society (Articles 13 and 14);
- **Participation** in cultural life (Article 15).^x

Each right is defined in detail through the General Comments of the Committee on Economic, Social and Cultural Rights (the Committee), which monitors implementation of the rights by states around the world. This includes identifying specific actions which must be undertaken to realise the rights.

States are bound to ensure minimum human rights regardless of their resource constraints. For ESC rights, minimum core requirements include available foodstuffs for the population, essential primary health care, basic shelter and housing, and the most basic forms of education.^{xi} The human rights legal framework spells out those responsibilities with the following three obligations:

- **Respect** – the obligation to respect requires governments to refrain from interfering directly or indirectly with the enjoyment of economic, social and cultural rights

- Protect – the obligation to protect requires governments to prevent third parties, such as the private sector, from interfering in any way with the enjoyment of economic, social and cultural rights
- Fulfill – the obligation to fulfill requires governments to adopt the necessary measures to achieve the full realisation of economic, social and cultural rights

The principle of “progressive realisation” is of particular importance to ESC rights. This principle acknowledges that the full realisation of certain rights will take time to achieve and will be subject to constraints on the state’s resources. Article 2 of the ICESCR creates a duty on all parties to:

take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

The requirement to "take steps" means there is a continuing obligation to work towards the realisation of the rights contained in ICESCR. The Committee also interprets the principle as establishing minimum core obligations to provide, at the least, minimum essential levels of each of the rights. If the state’s resources are highly constrained, it should include the use of targeted programmes aimed at the vulnerable.^{xii}

In the context of austerity measures, the Chairperson of the Committee, Ariranga G Pillay (former Chief Justice of Mauritius), has advised states that they should “avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights”.^{xiii} Chief Justice Pillay noted four requirements for any retrogressive, or backwards, measure. These were, in summary:

1. that it is temporary and covering only the period of crisis;
2. that it is necessary and proportionate, in that any other measure would be more detrimental to the realisation of ESC rights;
3. that it is not discriminatory and includes all possible steps to mitigate inequalities and disproportionate impact on the most marginalised;

4. that the minimum core content, which the International Labour Organisation states as being the “social protection floor”, is upheld at all times.

It is clear therefore that international laws requires economic, social and cultural rights to be upheld even in time of financial constraint. **Legislative, policy and decision making processes should therefore built around the guiding principles of the international framework of law**, (see annex A), in particular ICESCR.

Finally, in relation to all ESC rights there is a prohibition on discrimination which is effective immediately with respect of the rights contained in the Covenant.^{xiv}

Other international human rights

Treaty obligations from other human rights instruments are also relevant to social justice. For example, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) includes rights to an inclusive education, a decent standard of living, support to participate in society and live in the community, accessible physical environments and information and equality. The United Nations Convention on the Rights of the Child (CRC) includes rights to an adequate standard of living and education. The full range of rights protected are not outlined in this briefing paper but links can be found in Annex A.

Procedural obligations

International human rights also require **certain procedural obligations** to be met which are highly relevant to creating a Fairer Scotland. These include obligations about **participation, access to information and effective monitoring**.

Fundamentally, human rights require that the voices of people whose rights are affected by a decision, are heard throughout the process of making and

implementing that decision. The procedural legal obligation of **participation of individuals in decision making and where appropriate the design of services** is considered to help ensure that systems are responsive to the particular needs of disadvantaged groups. A failure to include mechanisms to satisfy these procedural requirements of participation, access to information and transparency and due process in decision making may amount to violations of these international obligations.^{xv}

Human rights protections therefore give weight to participation, involvement and transparency in the future of public service provision and models of co-production being adopted.^{xvi}

In practice, those living in poverty tend to be living in conditions which violate multiple international legal standards. For example, people who cannot access work or an adequate standard of living may also be unable to access adequate housing, their health may be affected by their living conditions and children can be adversely affected through poor health and difficulty accessing education. At the same time, participation in civil and political rights such as voting can be negatively affected through associated barriers such as lack of access to information, education and geographical and social isolation caused by poverty. Furthermore, poverty and poverty-related issues tend to affect more vulnerable groups disproportionately – so for example, women, children, disabled people and people from ethnic minority communities are more likely to be affected by poverty than others. Arguably, living in poverty itself creates a vulnerable group – or a group of people who do not have access to the same rights as those living out of poverty.

In short, international human rights law, developed over the past several decades, contains detailed non-political standards for governments as they seek to realise a broad range of rights. They provide invaluable, concrete guidance to governments committed to values of social justice and equality.

A human rights based approach to creating a Fairer Scotland

A human rights based approach is about ensuring that **both the standards and the principles of human rights are integrated into policymaking, as well as the day to day running of organisations and delivery of services.**

The Commission recommends five concrete actions to embed a human rights based approach into creating a Fairer Scotland.

Empowerment:

1. Support people throughout Scotland to know and claim their rights.

Ability:

2. Introduce human rights based budgeting and budget analysis across all public spending.
3. Develop and implement integrated human rights impact assessments for all policy, practice and decision making

Accountability:

4. Incorporate the rights contained in the International Covenant on Economic, Social and Cultural Rights into Scotland's domestic law.
5. Align human rights outcomes with the National Performance Framework.

Empowerment

1. Support people throughout Scotland to know and claim their rights.

Framing poverty as a human rights issue allows **people – “rights holders” - to articulate their claims as legal rights rather than aspirations.** In this way a human rights based approach can provide a very powerful toolkit to people as both a means of advocating for change and for holding government and public bodies to account.

Case example

Human Rights Based Approach to Tenant Participation

Participation and the Practice of Rights and the Seven towers Belfast

In Belfast, Northern Ireland, the Seven Towers Residents Group, supported by the Participation and Practice of Rights project, employed a human rights based approach to hold the local housing authority to account and bring about improvements to their living conditions.

The Seven Towers were built to provide social housing in the 1960s. They are located in North Belfast, one of the most deprived areas of Northern Ireland. In 2007, residents of the towers were experiencing severe problems with dampness, poor sewerage, pigeon excrement and ineffective, high-cost heating and electricity. In addition, many families with children were being housed in the Towers, despite recognition from the Northern Ireland Housing Executive that the Towers were not an appropriate place for families. These conditions violated a number of international human rights, in particular the right to adequate housing (Article 11 ICESCR). The poor housing was adversely impacting on the ability of residents to realise other rights, for example their right to health and the right to education and play of the children.

The organisation Participation and the Practice of Rights (PPR) supported the residents to identify priorities for change and to understand and articulate the problems they were experiencing in terms of human rights. Residents held

the Northern Ireland Housing Executive to account by; collecting evidence which demonstrated how the conditions failed to meet agreed international human rights standards as well as local housing standards, setting timescales for change, monitoring progress and holding regular meeting with Ministers and civil servants.

The group achieved significant improvements in the flats including; the removal of pigeon waste from communal landings, the replacement of the sewage system and changes to multi-million pound plans which ignored residents' needs and priorities, and the re-housing of the majority of families into more suitable accommodation.

Following the success of the Seven Towers project, in 2012 PPR supported individuals and families on the housing waiting list to launch the 'Equality Can't Wait' campaign, which calls for a time-bound, resourced strategy to tackle housing inequality in North Belfast.

As part of SNAP, a pilot project with PPR and the Edinburgh Tenants Federation has recently commenced which looks to learn from and replicate the Seven Towers work within a Scottish context. The learning from this project may be of interest elsewhere in demonstrating the value of empowerment of local communities to know and understand their rights, the importance of the participation and inclusion of people in making decisions which affect their lives.

Ability

For organisations with human rights responsibilities – “duty bearers” - a human rights based approach can be achieved by introducing processes and procedures that place human rights compliance at the heart of the decision making process.

2. Introduce human rights based budgeting and budget analysis across all public spending.

The public budget is the principal economic policy document of any government. Effective realisation of human rights in Scotland cannot occur unless that budget is brought within the human rights framework. However, at present the Scottish budget is not rights-based.

Currently, the Scottish Government is mandated to develop and implement Equality Budgeting so as to more effectively challenge discriminatory practices and further equality. The processes that have been developed to produce the annual Equality Statements accompanying the budget represent very important advances for the realization of social justice in Scotland. These include:

- a central concern for the most vulnerable in Scottish society;
- a recognition that the budget should be used to fight discrimination and advance equality;
- the gathering and analysis of a broad range of data to provide evidence on which to base the design of policies, plans and programmes, and to monitor the impact of the same on equality populations in the country;
- a focus not simply on the intended, but more importantly the actual impact of policies and the budget on vulnerable groups; and
- the involvement of affected populations in designing and assessing the impact of policies, plans and programmes.

Human rights budgeting could build on these and other critical elements of Equality Budgeting. Indeed, these elements would be essential if the public budget were to be brought within a human rights framework. At the same

time, a human rights framework would add value to efforts to realise social justice in Scotland. This added value would include:

- Ensuring that the principal economic policy document of the government is developed and implemented not simply in line with the priorities of a particular government, but in keeping with the human rights law that binds all governments, regardless of who is in power.
- Ensuring that the government gives appropriate priority within the budget to spending on critical areas for human rights such as health, education, access to justice and work.
- Focusing on continually enhancing the availability, accessibility and quality of critical government goods and services for everyone.

Case example

Budget Analysis, equality and the use of maximum available resources: A case from the City of Buenos Aires

The Constitution of the City of Buenos Aires, Argentina, guarantees education for all children from 45 days of age. Despite the guarantee, there are long waiting lists to get into school. Those waiting lists are longer in the poorer areas of the city, where there is more demand, and classrooms are more crowded. In 2007, after government refused to correct this situation despite significant public attention to the issue, a civil society organization, the Asociación Civil por la Igualdad y la Justicia (ACIJ), filed a case in the courts. Part of the evidence the organisation put before the court was findings from a budget analysis, which showed that despite the needs in the poorer areas, more of the Department of Education's infrastructure budget was being directed to the better-off areas of the city. In addition, although the government claimed that it did not have the resources to build more classrooms in other areas, analysis of spending showed that the Department had consistently under-spent its infrastructure budget over a number of years. Therefore there was funding available to rectify the situation.

After some extended litigation, the court agreed that the right to education of children in the city's poorer areas was being violated by this discriminatory practice, and that the government was failing to use the maximum of available resources to rectify the situation. After appeals by government, and as the highest court was getting ready to rule against the government, a new city government was elected that made a commitment to develop a plan to construct new classrooms and extend access to early childhood education to all children in the city. Since 2011 the Department of Education of the City of Buenos Aires has been implementing the plan, which will increase access to early childhood education for children in the poorer parts of the city.

3. Develop and implement integrated human rights impact assessments for all policy, practice and decision making

Equality and human rights impact assessments (EQHRIAs) are an important mechanism for enabling equality and human rights considerations to be embedded into the policies, practices, procedures and priorities of both government and public bodies in Scotland.^{xvii}

In an environment where there are financial constraints, a human rights framework can provide objective guidance which will assist balanced decision making on the use of resources. These criteria include:

- maintaining those minimum services and standards necessary to enable a dignified existence;
- prioritising the most vulnerable and ensuring no direct or indirect discrimination;
- limiting the extent and duration of any retrogression through identifying and using the maximum available resources for the progressive realisation of rights.

The adoption of a human rights based approach can set legal 'red lines' below which state actions must not fall, for example by ensuring the cumulative effects of policy and practice render nobody destitute. It also ensures there is no disproportionate impact upon the most vulnerable by requiring a reasonable balance to be struck between any such impact and the potential cost savings. In this way better outcomes and improved performance will be achieved through taking account of the rights of individuals whose interests may otherwise be overlooked.

EQHRIAs can also encourage individuals and communities to participate in decision making processes, giving them ownership of decisions and transforming institutional cultures and decision making.

Impact assessments are one means through which to ensure compliance with the law and put rights at the heart of policy and

decision making. Proactively taking account of human rights and equality in the exercise of public functions will provide assurances rather than assumptions that actions are fair, not arbitrary, and that they comply with the law, preventing human rights violations before they require redress and added expense.

The Commission recommends approaches to human rights impact assessment are further explored by the Scottish Government as an overarching or integrated framework or guiding tool for the proliferation of impact assessment methodologies.

Case example

Equality and human rights impact assessment on impact of public spending cuts on women in Coventry

A equality and human rights impact assessment (EQHRIA) was carried out by the Centre for Human Rights in Practice at the University of Warwick (CHRIP) and Coventry Women's Voices (CWV) in 2011. It analysed the public spending cuts that were underway and their potential human rights and equality impacts on women in Coventry.

The report concluded that many of the spending cuts would have a disproportionate impact on women. Others would affect both women and men equally but have a potentially damaging impact on certain groups of women (for example changes to benefits for disabled people which would affect both disabled women and disabled men). Taken together these cuts were considered to lead to greater inequality between women and men in Coventry. For some women the combination of cuts was considered to have a negative impact on their human rights.

The report reflected the potential negative impacts of the cuts on women in the areas of employment, housing, income, education and training, violence, health and social care, legal advice service, women's voluntary organisations.

Recommended actions for public bodies included the following:

- To consider the potential impact of all budget cuts on equality and human rights and carefully monitor the actual impact.
- To take account of the combined impact of different cuts on particularly vulnerable groups in their assessments and monitoring.
- To ensure that they co-ordinate their policies and practices where multiple agencies have an impact on a particular issue.
- To pay due regard to the role played by women's organisations and voluntary organisations providing services to women in tackling discrimination and in protecting women's human rights.^{xviii}

Case example

Fife Council and Equality and Human Rights Impact Assessment of the impact of Welfare Reform legislation on lone parents

In 2013 Fife Council piloted an impact assessment on the impact of Welfare Reform legislation on the lives of lone parents in Fife.

As a result of the EQHRIA a number of significant issues were identified. From the workshop session and from the interviews conducted as part of the pilot, it was clear that people's quality of life and dignity was being affected with potential human rights impacts due to welfare reform changes.

Evidence was presented of people being unable to cope with the change in their circumstances due to welfare reform and contemplating suicide (right to life issue). This flagged the increased need for joined up and/or additional support being made available for vulnerable adults with mental health issues. Recommendations resulting from the work included improved exchange and sharing of information regarding suicide risk and prevention as well as adult and child protection.

Further evidence was presented of physical and mental suffering due to changes in financial circumstances and in some cases adults not being able

to look after children, leading to child protection issues. Other rights issues included people having to choose between heating their homes or buying food, children going to school in damp clothing because families cannot afford to heat their homes(Private home and family life issues). This highlighted the need for information sharing about additional support initiatives such as insulation, food banks and credit unions, as well as be a greater awareness of adult and child protection issues. It also led to the recommendation of training and awareness raising for frontline staff.

Those involved with the pilot heard evidence about an increase in people being sanctioned for failing to comply with conditions through the cessation of benefits with little prior notice. There was found to be little or no support available to deal with the sanction letter or appeals process. Claimants were also unaware that the sanctions may be at the discretion of Job Centre staff. This led to a recommendation that funding should be provided to local groups and law centres to help people appeal such decisions. Dialogue with Job Centres was also considered in order to examine their work provision programmes for lone parents and the sanctioning of lone parents where this would have a disproportionately negative impact. Additional steps which were considered included the inclusion of childcare in the work programme and flexibility of “sign on” times to fit around childcare responsibilities.

A considerable number of issues related to the rights to respect for private, home and family life. These included lone parents and children living in inadequate and sub-standard accommodation which could not be maintained or heated due to lack of resources; shared accommodation giving rise to child protection issues; literacy levels, privacy issues and inadequate childcare provision acting as barriers to people being able to complete job and benefit applications. This led to recommendations around better information sharing for frontline staff to improve support for affected lone parents as well as local support to help people complete information online and in private, with support to access affordable childcare.

Immediate sanctions removing benefits were considered to engage the right to peaceful enjoyment of their possessions, which requires striking a fair

balance between the right of the individual and the public interest. Again, this highlighted the need for engagement with job centre staff to ensure that they are sensitive to the situation of lone parents and other vulnerable individuals when exercising their discretion in applying sanctions. It also identified the need for additional support to people in the appeals process.^{xix}

Accountability

A human rights based approach also requires robust checks and accountability in the decision making process – it should not just be the responsibility of those with rights to hold those with duties to account. To strengthen the accountability framework of laws, regulation and monitoring, the Commission recommends the following progressive steps, which demonstrate good practice and leadership at an international level.

4. Incorporate the rights contained in the International Covenant on Economic, Social and Cultural Rights into Scotland’s domestic law.

The UK has yet to incorporate ICESCR into our various domestic legal systems, including in Scotland.^{xx} This means the rights contained in ICESCR are not directly justiciable in our courts and so do not receive the same protection in Scotland as those protected by the Human Rights Act 1998 (rights such as the right to vote, the right to a fair trial and the right to life).

There are examples of the judiciary implementing ESC rights through the rubric of civil and political rights, through equality legislation, or through direct incorporation of international standards as part of the common law. However, these developments do not reflect a move towards full incorporation or protection of ESC rights; rather, they are simply examples of where the protection of ESC rights has been partially extended by the judiciary.

Under the existing constitutional framework in Scotland, the Scottish Parliament has the devolved competence to legislate with a view to implementing and complying with international legal obligations.^{xxi} It is

therefore within the power of the Scottish Parliament to incorporate ICESCR in relation to devolved areas, including education, housing and health. The Scottish Government, through its commitment to implementation of SNAP, has committed to explore the benefits and implications of incorporation of the UK international obligations, including ICESCR, in Scotland.

The Committee on Economic, Social and Cultural Rights (the body responsible for overseeing implementation of the ICESCR) has called for justiciable remedies^{xxii} for violations of ESC rights to be made available.^{xxiii} The Committee also indicates that a blanket refusal to recognise the justiciable nature of ESC rights is considered arbitrary and that, ideally, ESC rights should be protected in the same way as other rights within the domestic legal order.^{xxiv}

The Commission recommends that Scotland give full legal effect to ICESCR in domestic law and provide an effective remedy for victims of all violations of ESC rights, in line with the recommendations of the Committee. We welcome the opportunity to explore this with the Scottish Government and others at an Innovation Forum to be held, as part of SNAP, on 9 December 2015.

Case example

Constitution of Finland

In Finland the Constitution requires Parliament to legislate to protect socio-economic rights. The Constitution lists the rights and it is for Parliament to decide how to protect them in various legislative frameworks.

In order to ensure that the passage of legislation complies with human rights, including ESC rights, there is a human rights Committee that reviews and evaluates the legislation before it is passed. This is called *ex ante* review.

The Human Rights Committee makes its decision on the compatibility of legislation after listening to constitutional and human rights experts. These decisions are not politically motivated but based on legal standards. The

decisions of the Committee are binding on Parliament.

This system supports a human rights affirmative framework where compliance with human rights is compliance with the rule of law. This is not a political choice but a legal obligation.

If Parliament does not enact adequate legislation then the court can intervene and declare this unconstitutional. This is *ex post* judicial review of legislation.

5. Align human rights outcomes with the National Performance Framework.

There are a number of monitoring and measurement frameworks which are relevant to the task of measuring progress towards a fairer Scotland, including the realisation of human rights. These include the Sustainable Development Goals, the National Performance Framework and the SNAP Outcomes Framework. There is a key opportunity to align these frameworks to embed human rights, and therefore social justice, into the governance and reporting framework of Scotland.

At an international level there is an obligation on all member states (including Scotland within the UK state) to monitor and report on progress made towards the realisation of human rights set out in the core treaties. The UN Committee on Economic, Social and Cultural Rights (the Committee) will examine the UK's progress on implementation of ICESCR in 2016.

The Committee has previously stated that State Parties have an immediate obligation to adopt a strategy and plan of action to realise the rights in the Covenant which contain time bound goals, are subject to continuous monitoring and pay particular attention to vulnerable or marginalised groups.^{xxv} Both the social justice action plan and SNAP are key commitments towards meeting this obligation. In a recent review by the UN Human Rights

Committee, SNAP was welcomed as a positive aspect of progress towards implementation of the International Covenant on Civil and Political Rights.^{xxvi}

In line with international best practice, SNAP contains a carefully constructed monitoring framework consisting of seven outcomes against which the progress of rights realisation will be measured to 2030. Human rights based indicators are being developed against which to assess progress.

A concerted effort has been made to align the SNAP outcomes with both the Post-2015 Sustainable Development Goals and Scotland's National Performance Framework. This is in recognition that the SNAP monitoring framework sits in parallel to the monitoring and reporting requirements for the Post-2015 Sustainable Development Goals (SDGs), to which the Scottish Government has already committed. The SDGs are a proposed set of goals and targets relating to future international development, including ending poverty and hunger, improving health and education, making cities more sustainable, combating climate change, and protecting oceans and forests. The United Nations Summit for the adoption of the Post-2015 Development Agenda will be held in September 2015. Countries which have committed to the goals, such as Scotland, will report against progress towards achieving the goals.

At a domestic level, the National Performance Framework contains the 16 National Outcomes setting out government priorities over the next ten years with an accompanying 50 National Indicators, covering key areas of health, justice, environment, economy, and education measure progress.

The Commission calls on the Scottish Government to **explore the commonalities and systematically integrate the relevant outcome frameworks, in particular the National Performance Framework and the Post-2015 Sustainable Development Goals with the SNAP human rights outcomes framework.** Any action plan on social justice will have to take account of these different monitoring frameworks and the Commission believes putting rights at the heart of this can facilitate a joined up approach.

Such an aligned approach would be regarded as an example of best practice internationally, both in reporting against the SDGs, in the upcoming Universal Periodic Review of human rights in the UK, and in regular monitoring of all core international human rights treaties.

Case study

SNAP Outcomes and Monitoring Framework

One of the key elements of UN best practice in the development and implementation of National Action Plans for Human Rights is effective monitoring.

As such, a Monitoring Progress Group (MPG) was developed just prior to the launch of SNAP to support this on-going work. The group contains a mixture of independent academic advisors and members from key SNAP partner organisations with responsibility for measuring progress in their own areas including, the Scottish Government National Performance Framework, the Local Improvement Service, Audit Scotland, NHS Health Scotland and the Equality and Human Rights Commission.

The MPG has made a conscious effort to align where relevant its monitoring timeframe, outcomes and indicators with those of the National Performance Framework, Post-2015 SDGs and, going forward with the social justice outcomes. The SNAP 2030 outcomes, which will be accompanied by human rights indicators^{xxvii} are set out below:

Empowerment & Participation

Outcome 1: Each of us is empowered to understand and embrace the value of human rights, asserting them in all parts of our lives.

Outcome 2: Each of us can participate in shaping and directing decisions that affect our human rights.

Ability

Outcome 3: Organisations providing public services contribute to a human rights culture by valuing and putting human rights at the heart of what they do.

Outcome 4: Scotland increasingly implements its international human rights obligations, influences and learns from international experience and promotes human rights in all of its international engagements

Accountability

Outcome 5: All organisations are held to account for the realisation of people’s rights through international and domestic laws, regulation and monitoring.

Non-discrimination & Equality

Outcome 6: Each of us has access to and can enjoy quality public services, which respect our dignity, irrespective of who we are or where we live.

Outcome 7: Each of us experiences improved opportunities and life outcomes whilst Scotland experiences an overall reduction in inequality of opportunity and outcomes.

The First Minister of Scotland, Nicola Sturgeon, has recognised the connections between these complementary platforms of monitoring and accountability in her announcement of commitment to SDGs:

“We are in the fortunate position that Scotland’s aims and ambitions, enshrined in our National Performance Framework and Scotland’s National Action Plan on Human Rights– such as tackling inequality ensuring access to high quality education and healthcare – are already a key part of the Sustainable Development Goals. This will allow us to measure and report on progress in achieving the SDGs in Scotland.”^{xviii}

By continuing on this journey and **systematically integrating these complementary platforms** Scotland has the potential to be an international

leader in human rights, social justice and sustainable development monitoring and reporting.

Conclusion

By virtue of being a modern democracy committed to international human rights standards, the eradication of poverty is a matter of law, not of political choice. Unfortunately, it is not a matter of choice for those who live in poverty. The right to freedom from poverty and destitution holds the same status and has the same kind of meaning as the right to freedom from discrimination, the right to a free trial or the right to vote. Unfortunately, the legal system and decision-making processes do not always reflect these standards, which means additional barriers exist to tackling systemic poverty.

Embedding a human rights based approach to poverty and social justice will help to mainstream human rights legal standards into law and policy formation, decision making and practice, as part of creating a fairer Scotland. It will also help people hold public bodies to account when decisions or policies result in continuing violations of human rights. It will create a transparent system where all parties understand and work with existing legal standards in addressing poverty and violations of other human rights associated with poverty.

The Commission welcomes further discussion on a human rights based approach to creating a fairer Scotland – a Scotland where everyone can live a life of human dignity, irrespective of who they are or where they live.

Annex 1 Links to International treaty standards

International Covenant on Economic, Social and Cultural Rights

Article 2

Non-discrimination in the enjoyment of rights

General Comment No. 20 (2009) - UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20

Article 6

The right to work

General Comment No.18 (2006) - UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18

Article 7

The right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Draft General Comment in progress

See also General Comment No.18 (2006) - UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18

Article 8

The right of individuals to join unions, collective rights of unions to function freely, right to strike

See also General Comment No.18 (2006) - UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18

Article 9

The right to social security and social insurance

UN General Comment No.19 (2008)^{xxix}

Article 10

Rights associated with the family, including maternity leave and rights of the child

Article 11

The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

UN General Comment No.12 (1999) the right to adequate food^{xxx}

UN General Comment No.4 (1991) the right to adequate housing^{xxxi}

Article 12

The right of everyone to the enjoyment of the highest attainable standard of physical and mental health

UN General Comment No. 14 (2000)^{xxxii}

Article 13

The right to education

General Comment No.13 (1999)^{xxxiii}

Article 14

The right to free primary education

Article 15

The right of everyone to take part in cultural life

UN General Comment No.21 (2009)^{xxxiv}

Other core international treaties addressing human rights:

ICERD	<u>International Convention on the Elimination of All Forms of Racial Discrimination</u>	21 Dec 1965	<u>CERD</u>
ICCPR	<u>International Covenant on Civil and Political Rights</u>	16 Dec 1966	<u>CCPR</u>
ICESCR	<u>International Covenant on Economic, Social and Cultural Rights</u>	16 Dec 1966	<u>CESCR</u>
CEDAW	<u>Convention on the Elimination of All Forms of Discrimination against Women</u>	18 Dec 1979	<u>CEDAW</u>
CAT	<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>	10 Dec 1984	<u>CAT</u>
CRC	<u>Convention on the Rights of the Child</u>	20 Nov 1989	<u>CRC</u>
ICRMW	<u>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</u>	18 Dec 1990	<u>CMW</u>
	<u>International Convention for the Protection of All Persons from Enforced Disappearance</u>	20 Dec 2006	
ICRPD	<u>Convention on the Rights of Persons with Disabilities</u>	13 Dec 2006	<u>CRPD</u>

ⁱ Nelson Mandela, "While poverty persists, there is no freedom", 4 November 2006, the Guardian, synopsis of speech given when Mandela became Amnesty International ambassador of conscience in Johannesburg

ⁱⁱ Scotland Act 1998, Schedule 6, para 7(2).

ⁱⁱⁱ Scotland Act 1998, s29 (2), s57.

^{iv} *R v Secretary of State for the Home Department ex parte Limbuela* [2005] UKHL 66.

^v UN Human Rights Committee, *General Comment No. 06: The right to life (art. 6)*, 30/04/1982.

^{vi} *Mitchell v Glasgow City Council* [2009] UKHL 11; [2009] WLR (D) 65, per Lord Rodger (para 69): "if the Council had allowed their housing stock to fall into disrepair, so that tenants were at risk of suffering life-threatening injuries or of becoming seriously ill, the Council could have been in breach of article 2."

^{vii} *Evans v UK*, Grand Chamber (2007) citing *Pretty v UK* (2002)

^{viii} *Pretty v UK* (2002)

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- ^{ix} See for example *Nagy v Hungary* (53080/13) unreported 10 February 2015 (ECHR); *Asmundsson v Iceland* (2005) 41 EHRR 42.
- ^x An outline of these rights is provided for in Annex A.
- ^{xi} General Comment 3: The Nature of States Parties Obligations. Committee on Economic, Social and Cultural Rights.
- ^{xii} It is recognised that land is also a vital resource that is capable of being allocated to achieve the core obligations set out ICESCR See the Commission’s Consultation Submission on the Future of Land Reform in Scotland, February 2015. Available at: <http://www.scottishhumanrights.com/news/latestnews/landreformsubmissionfeb15>
- ^{xiii} Letter from Ariringa G Pillay to All States Parties to the International Covenant on Economic, Social and Cultural Rights dated 16 May 2012 - <http://www2.ohchr.org/english/bodies/cescr/docs/LetterCESCRtoSP16.05.12.pdf>
- ^{xiv} Article 2(2) ICESCR
- ^{xv} Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights; 8 June 2009; E/2009/90; para 33
- ^{xvi} The UN Convention on the Rights of Persons with Disabilities also includes procedural obligations of participation requiring that in other decision-making processes concerning issues relating to persons with disabilities States “shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations” (article 4 (3)). Article 8 of the ECHR also confers a right of participation in decision making in some circumstances where Article 8 rights are at stake E.g. Case OF Taskin and other v. Turkey (Application no. 46117/99), 10 November 2004 regarding environmental matters; *McMichael v United Kingdom* (1995) 20 EHRR 205; *TP&KM v UK* (Application No. 28945/95 – Judgment 10 May 2001)
- ^{xvii} See <http://www.scottishhumanrights.com/eqhria/eqhriahome>
- ^{xviii} See http://www2.warwick.ac.uk/fac/soc/law/research/centres/chrp/publications/unravelling_equality_full.pdf
- ^{xix} See <http://www.scottishhumanrights.com/eqhria/eqhriapilotstudiesife>
- ^{xx} For a discussion on the dualist system of incorporation see Anthony Aust, *Handbook of International Law*, 2nd Ed. (Cambridge University Press 2010), pp.75-76. An example of a non-incorporated treaty dealing with ESC rights is the International Covenant on Economic Social and Cultural Rights, UN General Assembly, 16 December 1966, United Nations, Treaty Series, vol. 993, 3
- ^{xxi} Paragraph 2(b) of Schedule 5 of the Scotland Act
- ^{xxii} A ‘justiciable remedy’ is a remedy granted by a court. For the purposes of this paper ‘justiciability’ refers to the adjudication of a right by a court.
- ^{xxiii} UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, 3 December 1998, E/C.12/1998/24, para.10
- ^{xxiv} General Comment No. 9 *ibid*
- ^{xxv} Committee on Economic, Social and Cultural Rights, General Comment 14, para 43 (f)
- ^{xxvi} Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland, July 2015, CCPR/C/GBR/CO/7
- ^{xxvii} See Office of the High Commissioner of Human Rights on human rights indicators - <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx> and HRMF- <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-measurement-framework/>
- ^{xxviii} Leading the way in tackling inequality- <http://news.scotland.gov.uk/News/Leading-the-way-in-tackling-inequality-1b49.aspx> 19 July 2015
- ^{xxix} UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008, E/C.12/GC/19
- ^{xxx} UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999
- ^{xxxi} UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, 13 December 1991, E/1992/23
- ^{xxxii} UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4

^{xxxiii} UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, available at: <http://www.refworld.org/docid/4538838c22.html>

^{xxxiv} UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, E/C.12/GC/21

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