



Respondent Information Form

**Consultation: Guidance on engaging communities in decisions relating to land**

Are you responding as an individual or an organisation?

Organisation

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**CONSULTATION SUBMISSION:**  
**Guidance on engaging communities**  
**in decisions relating to land**  
**June 2017**

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The Scottish Human Rights Commission 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.

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## **Introduction**

Internationally agreed human rights provide both the legal framework and practical guidance for protecting the wide range of human rights that are affected by decisions on land use and ownership. The Commission provided a summary of this framework to the Scottish Government in February 2015, an extract of which is included here on page 6. This legal framework and guidance helps to identify the substance of the debate on land reform, and facilitate the common space for an informed and constructive dialogue on the issue.

The right of public participation requires that everyone should have the opportunity to have a say in law reforms and public policy decisions that affect any of their human rights, which includes decisions on land use and ownership. Participation enables a process in which a changing society determines the relationship between land and people. It helps determine the public interest when the law requires that human rights be balanced, whether between individuals or between an individual and the wider society.

Participation is based on a fundamental principle of human rights that considers individual autonomy and self-determination to be part of basic human dignity.

Section 44(2) of the **Land Reform (Scotland) Act 2016** states that in preparing the Guidance, Scottish Ministers must have regard to the desirability of promoting respect for and observance of human rights. It is of concern, therefore, that the guidance being consulted upon here contains no mention of the relevance of human rights in relation to land reform or the right to participation.

Participation is a central component of taking a human rights based approach. The Commission believes that promoting such an approach within this guidance would support all duty bearers to fulfil their obligations with regard to community engagement, thereby facilitating transparent, inclusive and accountable decision-making.

The Commission welcomes the opportunity to comment on the draft Guidance on engaging communities in decisions relating to land and hopes the following comments provide a helpful basis for enhancing and better fulfilling the right to participation. The Commission has focused on the questions where it feels it can add best value.

### Summary of Recommendations:

1. The Guidance should promote taking a human rights based approach to participation.
2. The relevant Sustainable Development Goals (SDGs) should be explicitly included within the Guidance.
3. The Guidance should give consideration to the potential practical and financial barriers to participation people may face and how these barriers may be overcome.
4. The Guidance should explicitly set out the obligations of landowners and other duty bearers with regards to complaints and redress mechanisms.
5. The National Standards for Community Engagement should be included within the Guidance.
6. The best practice principles of the Aarhus Convention should be included in Section 2 of the Guidance.
7. The additional points suggested by the Commission should be included under the 'Collaborative' and 'Ongoing' headings in Section 3 of the Guidance.
8. The National Standards for Community Engagement and the relevant parts of the Maastricht Recommendations on Promoting Effective Participation in Decision-Making in Environmental Matters should be included in Section 3 of the Guidance.
9. The Guidance should promote co-design as a potential engagement method.
10. The relevant sections of the Maastricht Recommendations should be included under Section 6 of the Guidance.

## Question 1:

Does the draft Guidance (Chapter 3 of this consultation) respond appropriately to the considerations of Section 44(2) of the Act? Please explain your answer.

As it currently stands, the Commission does not believe that the draft Guidance (Chapter 3 of this consultation) responds appropriately to the considerations of Section 44(2) of the Act. We suggest the following issues are taken account of to improve the current draft Guidance.

### Promoting respect for and observance of human rights, s.44(2) paragraph (a)

Human rights protections are among the overarching aims of the government's forthcoming land rights and responsibilities statement, as required by s.1 of the **Land Reform (Scotland) Act 2016** ("the Act"). Section 44(2) of the Act requires Scottish Ministers to issue "guidance about engaging communities in decisions relating to land which may affect communities." The Act states that in preparing the Guidance, Scottish Ministers must have regard to the desirability of promoting respect for and observance of human rights. The guidance must therefore be applicable in **any** decisions under the Act potentially affecting the human rights of communities.

However, within the Guidance itself, there is no mention at all of human rights, or any other relevant international or domestic law or guidance which have a crucial bearing on participation.

The concept of participation is not merely good practice but a legal obligation firmly rooted in international law. Indeed, numerous international conventions<sup>1</sup> set out the right to participation, including for specific groups such as women, children, disabled people, minorities and indigenous people. Participation is a key element of the human rights framework and an essential prerequisite to the enjoyment of other human rights.

International human rights law imposes certain procedural obligations on the state related to participation, access to information and effective monitoring. Providing information and ensuring transparency of decision-making are not enough. A proactive approach is required.

In practical terms, human rights law requires that the voices of people whose rights are affected by a decision, are heard throughout the process of making and implementing that decision.

Participation of individuals in decision-making also helps ensure that systems are responsive to the particular needs of disadvantaged groups. This in turns helps duty bearers comply with anti-discrimination and equalities duties. Mechanisms to satisfy these procedural

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<sup>1</sup> See Appendix 1 for further details

requirements of participation, access to information and transparency, as well as due process in decision-making, are required. A failure to include these may amount to violations of these international obligations.

**Recommendation 1: The Guidance should promote taking a human rights based approach to participation.**

This means that international human rights standards are used to ensure that people’s human rights would be put at the very centre of decisions over land use. A human rights based approach will empower communities to know and claim their rights and allow duty bearers to fulfil their human rights obligations. It creates solid accountability so people can seek remedies when their rights are violated.

The PANEL principles are one way of breaking down what a human rights based approach means in practice. PANEL stands for Participation, Accountability, Non-Discrimination and Equality, Empowerment and Legality. The Commission recommends that the guidance specifically refers to these principles and includes a recommendation that they be applied in all engagement under s.44 of the Act.

Participation	People should be involved in decisions that affect their rights.
Accountability	There should be monitoring of how people’s rights are being affected, as well as complaints mechanisms and remedies if things go wrong.
Non-Discrimination and Equality	Nobody should be treated unfairly because of their age, gender, ethnicity, disability, religion or belief, sexual orientation, gender identity or any other personal characteristic. People who face the biggest barriers to realising their rights should be prioritised when it comes to taking action.
Empowerment	Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.
Legality	Approaches should be grounded in the legal rights that are set out in domestic and international law.

The Legality aspect of PANEL highlights the fact that land rights are underpinned by international human rights standards which provide a framework for the current Guidance. As stated in previous submissions<sup>2</sup>, the relevant legal framework in this context is as follows:

“Land rights can be understood as either as a self-standing right for certain beneficiaries (indigenous and specific communities) or as an **essential component for the realisation of other human rights**, particularly economic social and cultural rights such as the right to an adequate standard of living (Article 11, ICESCR), including food and water, right to housing and the right to development.

Despite the absence of a clear reference to land rights within the main international human rights instruments, there has been an increased focus within international jurisprudence on land rights as a human rights issue.

The UN Committee on Economic, Social and Cultural Rights recognises the **link between access to natural resources and the enjoyment of the right to** an adequate standard of living particularly on relation to housing and food, as well as the special vulnerability of those who depend on natural resources, where it notes that:

*‘[s]ocially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.’*

Under article 11, paragraph 2 (a), of the Covenant, States are committed to *‘developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources’*.

As noted by Olivier De Schutter, the former UN Special Rapporteur on the right to food:

*“this should be understood as encouraging agrarian reform that leads to more equitable distribution of land for the benefit of smallholders, both because of the inverse relationship between farm size and productivity and because small-scale farming (and more closely linking the farmer to the land) may lead to a more responsible use of the soil.”*

In addition, Article 2(1) of ICESCR sets out State parties' key obligations with regard to the implementation of the rights in the Covenant. According to that provision, States are under a duty to take steps to the maximum of their available resources, using all appropriate means, to achieve the full realisation of Covenant rights progressively.

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<sup>2</sup> Scottish Human Rights Commission, *Response to Consultation The Future of Land Reform in Scotland*, February 2015. See also SHRC *Written Evidence to Rural Affairs, Climate Change and Environment Committee on the Land Reform (Scotland) Bill*, September 2015, available [here](#). Please see original documents for full referencing.

The Committee is clear that "by all appropriate means" must be interpreted in the fullest sense possible. Measures which may be considered "appropriate" for the purposes of article 2 (1) include, but are not limited to legal, administrative, financial, educational and social measures.

States should allocate the maximum available resources (including land) to achieve the core obligations in the Covenant. Where States fail to do so, they must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations".<sup>3</sup>

In a recent visit to Scotland, the United Nations (UN) Special Rapporteur on the Right to Food, Hilal Elver, highlighted Scotland's opportunity to lead on the right to food through the forthcoming Good Food Nation Bill and the role of land reform issues:

*"I congratulate the Scottish Government on the progress it has made so far, and encourage them to show leadership by protecting and progressing the right to food in the Good Food Nation Bill...Scotland has some challenges on the right to food, including high levels of food insecurity and diet related health inequalities, problems with access to land, and an agricultural subsidy scheme that is not aligned to social, environmental, and climate commitments – but you also have many opportunities."*<sup>4</sup>

Likewise the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, emphasised the vital role of land in ensuring an adequate standing of living in his report of 2007, stressing:

*"the relationship between the right to land and congruent human rights and their implementation, in particular in regard to adequate housing and the right to food and work as a means to combat poverty, discrimination, violence, evictions and displacement"*<sup>5</sup>

The Commission has stressed that Scottish Ministers are empowered by the Scotland Act 1998 to observe and implement international human rights obligations.

The rights enshrined under the **European Convention on Human Rights** (ECHR) have been incorporated into domestic law, including the right of individuals to "peaceful enjoyment of possessions". However the ECHR requires that this right needs to be balanced with the public interest and permits a government to control the use of land. This is why, for

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<sup>3</sup> Scottish Human Rights Commission, *Response to Consultation The Future of Land Reform in Scotland*, February 2015. See also SHRC *Written Evidence to Rural Affairs, Climate Change and Environment Committee on the Land Reform (Scotland) Bill*, September 2015, available [here](#).

<sup>4</sup> See Nourish *Press Release, 2017*: <http://www.nourishscotland.org/wp-content/uploads/2017/03/UN-Expert-says-Scotland-can-be-European-Leader-on-Right-to-Food-RELEASE.doc>

<sup>5</sup> *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, ¶ 31, 33, UN Doc. A/HRC/4/18 (Feb. 5, 2007)

example, compulsory purchase orders have been around for a long time and comply with the ECHR.

Though it is the ECHR which is most often referred to in the land reform debate in Scotland, these obligations go beyond the ECHR. It is the broader international human rights framework that needs to become more visible in this debate in Scotland because it helps to inform the public interest.

**The International Covenant on Economic, Social and Cultural Rights (ICESCR)** places a duty on Ministers to use the maximum available resources to ensure the progressive realisation of rights like the right to housing, food and employment. Those resources include land and income from land. ICESCR states specifically that individuals have the right to an adequate standard of living, including the right to adequate housing, food, decent work and the highest attainable standard of health. Whilst clearly not all of these rights can be immediately guaranteed overnight in all countries, governments have agreed that they do have the duty to use the maximum available resources to progressively realise these rights.

In a practical sense, land is relevant to these rights in two major ways: Firstly, access to land and the opportunity to own land is a means by which individuals can support themselves and in this way exercise their right to work and to maintain an adequate standard of living without state assistance. Secondly, land (and income therefrom) is part of the state's "maximum available resources" which it is under an international obligation to use to assist those individuals who cannot support themselves, stepping into to fulfil those individuals' human right to an adequate standard of living.

Looked at through this broader human rights law lens, land is as a national asset, with key questions arising of how to strike the most appropriate balance between the legitimate rights of landowners, the wider public interest and the rights of individuals – including the right to an adequate standard of living as set out above. Of course this certainly does not mean that all responsible landowners, including our farming community, should be dispossessed. Nor, however, does it mean that a government is powerless if, for example, abandoned or neglected land can be put to better use.

It does mean however that the balance of power between landowner, state and non-landowner must take into account the state's legal obligations, the individual's rights and where necessary the role of the public interest. This balance may shift over time. The Commission believes that a human rights based approach of this nature will lead to more constructive dialogue between landowners, government and communities. It will promote the better use of land, whether private or otherwise. It should also reduce unnecessary polarisation as well as recourse to litigation and provides a process whereby a fair balance is struck between the landowner and the public interest served by land reform. This will also enable Scotland to meet its responsibilities in terms of the UN Sustainable Development Goals.

**Promoting respect for relevant internationally accepted principles and standards in relation to land (paragraph b), furthering the achievement of sustainable development in relation to land (paragraph e).**

As explained above, we consider the “relevant internationally accepted principles and standards” to be the human rights standards. However, as with human rights, there is no discussion within the draft Guidance of the need to further either of the aspects mentioned under this heading.

**UN Sustainable Development Goals**

Of particular note with regard to s.44(2)(e) is the absence of any reference to the post-2015 Sustainable Development Goals (SDGs). The process of arriving at the post-2015 development agenda was Member State-led with broad participation from major groups and other civil society stakeholders, including National Human Rights Institutions.

Scotland was one of the first countries in the world to adopt the SDGs, which is a global effort to tackle poverty and inequality and promote sustainable development for all. The SDGs reiterate the significance of land for the development agenda- in particular to end hunger, achieve food security and improved nutrition, and promote sustainable agriculture (Goal 2); to achieve gender equality and empowerment (Goal 5) and to protect, restore and promote sustainable use of ecosystems, forests and reverse biodiversity loss (Goal 15).

As the national plans for the SDGs are adopted and implemented, it will be necessary to examine the broader framework in order to use land as an asset that contributes to environmental objectives, meets the needs of all people in existing and future communities, and builds a strong and sustainable economy providing prosperity for all.

**Recommendation 2: Given the importance of land for the development agenda, the relevant SDGs should be explicitly included within the Guidance.**

**Encouraging equal opportunities (paragraph c) and furthering the reduction of inequalities of outcome due to socio-economic disadvantage (paragraph d).**

It is clear that there are good intentions behind the draft Guidance with reference to encouraging equal opportunities and reducing inequalities of outcome due to socio-economic disadvantage, which are to be welcomed.

However, there is no evidence within the draft Guidance of how people with personal experience of poverty can be supported to participate by land owners or managers. There are no practical tips around facilitating participation, for example by reimbursing expenses, organising transport, covering care costs etc. In order for participation to be inclusive and

realisable for all, consideration must be given to the potential practical and financial barriers to participation that are faced by many.

**Recommendation 3: The Guidance gives consideration to the potential practical and financial barriers to participation people may face and how these barriers may be overcome.**

### **Question 2:**

**Do you agree with our proposed scope for the Guidance? Please explain your answer.**

Notwithstanding the gaps already highlighted (e.g. human rights framework; Sustainable Development Goals), the Commission believes that the scope for the draft Guidance is appropriate, with one exception - accountability.

Currently the draft Guidance covers:

- Why should I engage with communities?
- Best practice principles for fair engagement
- When should I carry out engagement?
- How should I engage?
- Who should I engage?

As noted in response to question 1, in addition to participation, another key component of a human rights based approach is accountability. If and when things go wrong, people need to have access to complaint mechanisms and effective remedies. The Commission believes that the draft Guidance must set out explicitly what is expected of land owners and other duty bearers with regard to their obligations regarding a suitable complaints and redress mechanism.

**Recommendation 4: The Guidance explicitly sets out the obligations of landowners and other duty bearers with regards to complaints and redress mechanisms.**

### **Question 4:**

**Do you agree with our approach to using the National Standards for Community Engagement to inform this Guidance? Please comment if you have ideas on how we could better integrate these Standards.**

With regard to question 4, the Commission believes that it is helpful to align the standards within the draft Guidance with the National Standards for Community Engagement.

However, one suggestion for improvement would be to include these within the draft Guidance itself. This would make it as easy as possible for landowners and managers to see what is required of them.

**Recommendation 5: Include National Standards for Community Engagement within the Guidance.**

### Question 6:

**Have we identified appropriate reasons for why community engagement should take place in section 2 of the draft Guidance? Please explain your answer.**

This section could be improved by direct reference to the legal basis of the right to participation, the benefits of participation for all stakeholders, the value of a human rights based approach to law and policy on land issues in Scotland and the contribution the draft Guidance makes to support the SDGs (see detail within the answer to Question 1).

This would be an appropriate place to reference the value of using a human rights based approach to land reform. Such a framework serves to reduce unnecessary polarisation as well as recourse to litigation and provides a process whereby a fair balance is struck between the landowner and the public interest served by land reform (see detail within the answer to Question 1).

An additional reason that should be emphasised in the guidance is the environmental impact of land use, since all members of society and the community of nations have a stake in this issue. In relation to uses of land which would have significant impact upon the environment, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ([the Aarhus Convention](#)), to which the UK is a signatory, is key.

The Convention empowers people with the rights to easily access information, participate effectively in decision-making in environmental matters and to seek justice if their rights are violated. They protect every person's right to live in an environment adequate to his or her health and well-being. While the **Aarhus Convention** sets out the relationship between governments and members of the public, it is clear that governments have responsibilities to ensure that private actors are adhering to the engagement requirements within the Convention, for example by:

*“encouraging operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products” (Article 5, 6).*

Acknowledgement of these best practice principles within the Convention would be welcome in Section 2 of the Guidance.

**Recommendation 6: Include the best practice principles of the Aarhus Convention in Section 2 of the Guidance.**

### **Question 7:**

**Have we identified appropriate best practice principles in section 3 of the draft Guidance? Please explain your answer.**

This Commission welcomes the best practice principles set out in Section 3. However, these principles could be enhanced further by a human rights based approach. One of these is the importance of ensuring that engagement is inclusive and enables those who are at the greatest risk of marginalisation to take part.

The Commission would therefore suggest including the following points under ‘Collaborative’:

- Engagement processes can be developed alongside communities to ensure they are as effective and inclusive as possible. This may lead to some adaptations to initial plans, but will usually deliver a more inclusive process and a better outcome.
- Communities must be clear at the start of a process which are the outcomes and/or decisions they can influence and who will take the final decision.
- There may be issues of trust and of power at play within land-related consultation exercises. Spending time building trust without seeking to understand people’s views immediately can pay dividends.

The Commission would also add that you may wish to include the following point under ‘Ongoing’:

- Accessible feedback is provided to the community in a number of formats and via a variety of media, on the final decisions taken and the reasons for it.

It may be useful to note in this section that, as a general rule, providing several different types of opportunities to participate, for example: surveys; meetings; social media chats; telephone questionnaires; written consultation answers and so on, can help to overcome barriers and boost response and engagement.

Finally, it may be helpful to include within this section both the National Standards for Community Engagement and relevant parts of the Maastricht Recommendations on Promoting Effective Public Participation in Decision-Making in Environmental Matters,<sup>6</sup>

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<sup>6</sup> The Maastricht Recommendations on *Promoting Effective Public Participation in Decision-making in Environmental Matters*, were prepared by the Task Force on Public Participation in Decision-making under the Convention on Access to Information, Public Participation

particularly sections D, E and F, which both have useful suggestions for landowners and managers who are planning engagement activities. A copy of the Maastricht Recommendations accompanies this consultation response.

**Recommendation 7: Include the additional points suggested under ‘Collaborative’ and ‘Ongoing’ headings in Section 3 of the Guidance.**

**Recommendation 8: Include the National Standards for Community Engagement and the relevant parts of the Maastricht Recommendations on Promoting Effective Participation in Decision-Making in Environmental Matters in Section 3 of the Guidance.**

### **Question 9:**

**Have we identified appropriate methods for engaging with communities in section 5 of the draft Guidance? Please explain your answer.**

Section 5 contains a useful range of methods for engagement. It is, however, worth reiterating that utilising multiple methods of engagement can help to ensure that a variety of people can participate.

It is also worth noting that asking the community to co-design an engagement methodology could lead to greater success. Co-designing would help to promote the principles of a human rights based approach and more likely ensure that it was not a tokenistic process which engaged solely ‘the usual suspects’, or with groups or agencies that the land owners believe represent the views of certain vulnerable groups. Co-designing requires an open process with a transparent invitation to participate which can fail if participatory structures are too selective, don’t facilitate a real shift in power relations and are not adequately resourced.

We would reiterate here, the point made in Question 1 regarding the need to assess and address potential practical and/ or financial barriers to participation.

**Recommendation 9: That the Guidance promotes co-design as a potential engagement method.**

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in Decision-making and Access to Justice in Environmental Matters. They were drafted following calls over several years from officials and members of the public for more practical guidance on how to improve the implementation of the Convention’s provisions on public participation in decision-making. The Maastricht Recommendations are based on existing good practice, and are intended as a practical tool to improve the implementation of the Convention’s provisions on public participation in decision-making.

### Question 10:

Have we identified appropriate ways of identifying who to engage with in section 6 of the draft Guidance? Please explain your answer.

The Commission is of the view that section 6 is somewhat limited. There is little regard to equalities or inclusion issues within this part of the draft Guidance. A human rights based approach would ensure non-discrimination both in terms of audiences and methods of engagement and would act as a reminder that it will be important to consider and include the people who are most at risk of marginalisation.

The Commission would recommend including within the draft Guidance, some other relevant elements of the Maastricht Recommendations, particularly Section H, which discusses defining and identifying the public which may participate. These recommendations state:

- Identifying the various groups of stakeholders to be considered, as a minimum, among the public concerned with respect to the proposed activity should be clearly specified.
- Many decisions with an environmental dimension also involve social and economic aspects, and the corresponding interest groups should be included in the public participation in an equitable way; the Commission would add that independent expert input can help to ensure a robust process.
- The procedure should be open to considering all the perspectives, including those opposed to the proposed activity. Including critical voices in the discussion from an early stage will make for a more efficient and effective procedure, and ultimately a better quality decision;
- Attention should be paid to identifying those who could potentially hinder the transparency and balanced nature of the decision-making process, for example, strong lobby groups or those with a special relationship to the decision makers. It may be prudent to monitor their involvement and influence throughout the procedure in order to ensure that a balanced and fair process is maintained throughout;
- Special attention should be paid to identifying groups that are for different reasons hard to reach:
  - Some members of the public may be willing but unable to participate (e.g., vulnerable and/or marginalized groups such as children, older people, women in some societies, migrants, people with disabilities, those with low literacy or language barriers, ethnic or religious minorities, economically disadvantaged groups, those without access to the Internet, television or radio, etc.);

- Others may be able to participate but unwilling to do so (e.g., people with prior bad experiences of participation procedures, those with a lack of time, or who see no benefits in participating, etc.);
- Where such persons are among those identified as potentially affected by the proposed activity or decision, at a minimum efforts should be made to involve organizations or individuals representing such persons;
- The Commission would also include persons who wish to participate and have valuable input but whose employment or personal situation may be put at risk as a result of participating.
- The list of the possible public concerned is not a closed one and should be open to including other individuals or groups who consider themselves to have an interest in the decision-making and wish to be involved in the process.

**Recommendation 10: That the Guidance includes the relevant sections of the Maastricht Recommendations under Section 6 of the Guidance.**

### **Question 12:**

**In relation to Part 5 of the Land Reform (Scotland) Act 2016 (as discussed in Chapter 1 of this consultation), we consider the Guidance should contain sufficient certainty so that land owners and land managers can demonstrate that they are fulfilling the expectations of the Guidance, or so that communities can demonstrate that this is not the case. This must be balanced against being overly prescriptive and failing to account for the specific local contexts in which the decision is being taken. Do you agree that, as a whole, the draft Guidance balances these concerns? How could we improve the Guidance in this respect?**

As noted above in response to Questions 1 and 3, human rights based approaches require that there should be accountability where rights, for example participation rights, have not been respected. As it stands, it is not clear what redress a community would have if they felt that the engagement process had been inappropriate, inadequate or inaccessible.

It would be helpful to include information for both landowners and managers as well as communities on this point within the draft Guidance.

End.

Scottish Human Rights Commission, June 2017.

## Appendix 1: Human Rights and Participation

### Universal Declaration on Human Rights (UDHR)

The UDHR provides the foundation of international human rights law. The rights in the Universal Declaration were developed into the following treaties, which include explicit rights to participation.

### International Covenant on Civil and Political Rights

- The right to self-determination means that peoples “freely determine their political status and freely pursue their economic, social and cultural development” (Article 1).
- Everyone shall have “the right and the opportunity... to take part in the conduct of public affairs, directly or through freely chosen representatives” (Article 25).
- Everyone has the right to freedom of expression, including the right “to seek, receive and impart information and ideas of all kinds” (Article 19).
- People have the right to freedom of assembly and association (Article 21).

### International Covenant on Economic, Social and Cultural Rights

- The right to self-determination means that peoples “freely determine their political status and freely pursue their economic, social and cultural development” (Article 1).
- Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, 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. (Article 2,1)
- The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, **property**, birth or other status. (Article 2,2) [emphasis added]
- People have the right to participate in cultural life (Article 15).
- Participation is key to the effective provision of health services (General Comment 14: Right to the Highest Attainable Standard of Health).

### Convention on the Elimination of Discrimination Against Women (CEDAW)

- Seeks the “maximum participation of women on equal terms with men in all fields” (preamble), specifically mandating the elimination of discrimination in political and public life (Article 7) and the participation of women “in the elaboration and implementation of development planning at all levels” (Article 14).

### Convention on the Rights of the Child (CRC)

- Children have rights to freedom of expression (Article 13), freedom of association and assembly (Article 15) and participation in cultural life (Article 31).

### Convention on the Rights of Persons with Disabilities (CRPD)

- Recognizes that disability itself “results from the interaction between persons with

impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (preamble).

- “Full and effective participation and inclusion in society” is one of the “General Principles” (Article 3) of the treaty,
- This is emphasised in terms of:
  - accessibility (article 9),
  - living independently and being included in the community (Article 19),
  - education to ensure participation (Article 24),
  - habilitation and rehabilitation (Article 26),
  - “political rights and the opportunity to enjoy them on an equal basis with others” (Article 29)
  - participation in cultural life (Article 30).

### World Charter for Nature

- All people “shall have the opportunity to participate...in the formulation of decisions of direct concern to their environment” (UN General Assembly, 1982).

### Rio Declaration on Environment and Development

- “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.”
- This includes “appropriate access” to information made widely available to the public (UN General Assembly, 1992).

### Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

- In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the **rights of access to information, public participation in decision-making, and access to justice in environmental matters** in accordance with the provisions of this Convention (Article 1).

### General Comments

General Comments are an authoritative interpretation of the binding obligations in treaties. They provide more detail on how rights within international treaties should be interpreted and, as such, are a useful tool for those seeking to put human rights into practice. They are usually developed by the UN Committees of independent experts which are responsible for monitoring the implementation of the various treaties. General Comments which are relevant to this consultation include:

- ICCPR General comment No. 25: Participation in Public Affairs and the Right to Vote (art 25 of the Covenant)
- ICESCR General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant)
- ICESCR General comment No. 12 The right to adequate food (art. 11 (1) of the Covenant)

- ICESCR General Comment 14: Right to the Highest Attainable Standard of Health (art 12).