

The Environment, Climate Change and Land Reform Committee Submission on Green recovery

17 August 2020

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.

www.scottishhumanrights.com

"This is not a time to neglect human rights; it is a time when, more than ever, human rights are needed to navigate this crisis in a way that will allow us, as soon as possible, to focus again on achieving equitable sustainable development and sustaining peace."

UN Secretary-General Report, 'Human Rights and COVID-19: we are all in this together'

Submission from Scottish Human Rights Commission

Introduction

The Commission welcomes the opportunity to respond to the Environment, Climate Change and Land Reform Committee's Call for Views on a Green recovery with a focus on the impact of COVID-19 on the Scottish Government's Budget 2021-22. It is the view of the Commission that Scotland can lead in a 'Green Recovery' from the pandemic and 'build back better', but for that to happen, human rights are central to this approach. COVID-19 has highlighted that we must improve our social protection systems and live in harmony with the environment if we are to have a sustainable future.

The COVID-19 pandemic has exposed the harmful effects of longstanding inequalities and indirect discrimination on people's rights in Scotland — especially their economic and social rights. A potential positive by-product of the pandemic, however, has been the opportunity to witness the impact of behaviour change on the environment, emissions and patterns of consumption.

Much current discourse is questioning "how do we build back better?" There is evidence of recognition that before the pandemic, things were not working for everyone, nor were they working for our environment. There also appears to be an appetite for wholesale change. However, truly building back better and delivering transformational change, means that tackling Scotland's pre-existing inequalities and the way in which people consume and utilise resources, must be at the heart of how we move forward as a society.

Moving forward, all possible levers available to the Scottish Government to address these inequalities and tackle consumption patterns, emissions targets and negative impacts on our environment, need to be examined and must be connected to the government's budgetary commitments.

What key policies, actions and immediate priorities are needed to deliver a green recovery?

Human Rights Based Approaches

The Commission believes that the legislative, policy and practice responses to the pandemic should be grounded in human rights laws and standards. The human rights framework both articulates the legal obligations upon governments as well as providing a set of standards and principles which provide a framework for the balancing of competing interests. In the context of COVID-19, human rights standards and principles provide a means of taking transparent, accountable and participative decisions that require the balancing of competing interests and priorities, at a time when trust and public confidence is critical.

Human rights based approaches call for the implementation of domestic and international human rights obligations. They also require that processes are in place to enable the full participation and empowerment of the people whose rights are affected, robust scrutiny and accountability is undertaken, and efforts are made to support and protect the rights of those groups of people who are disproportionately affected by measures taken. The Commission captures the importance of these principles in taking a human rights based approach through the PANEL acronym (Participation, Accountability, Non-discrimination, Empowerment and Law). See Appendix 1 for further explanation of what PANEL means in practice.

Economic, Social and Cultural (ESC) Rights

The UN Secretary-General has noted that countries that have previously invested in protecting economic and social rights are more likely to be resilient to the impacts of this pandemic and that the promotion and protection of these rights in economic recovery processes need to be viewed as a critical aspect of a future prevention and preparedness strategyⁱ.

Incorporation of ESC rights into domestic law in Scotland (as is currently being developed by the Government's National Task Force for Human Rights Leadership) will secure a more comprehensive and systematic approach is taken to the implementation of rights in practice - securing a commitment to dignity for all in the longer term as we seek to re-build following this pandemicⁱⁱ. We refer the Committee to our report to the Advisory Group on Economic Recovery for a fuller explanation of a rights based approach to rebuilding the economy in the wake of COVID-19ⁱⁱⁱ.

The Right to a Healthy Environment

The right to a healthy environment has yet to be incorporated into a human rights law as a standalone right (this will be included in the new human rights legislation in Scotland being developed by the National Task Force). It is, however, of clear relevance to a whole range of other rights, including both civil and political as well as economic, social and cultural rights. These include:

- The right to an adequate standard of living^{iv}
- The right to housing^v
- The right to health^{vi}
- The right to private and family life^{vii}
- The right to information and to free expression^{viii}
- The right to peaceful assembly^{ix}
- The right to democratic participation^x
- The rights to work and to just and favourable conditions of work^{xi}

In developing the content of this right, the National Task Force is drawing particularly on the Framework Principles on Human Rights and the Environment^{xii} developed by John Knox, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. These principles set out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.

Leading up to COP26 (initially to take place in November 2020) there was strong international momentum (especially from the UK, South

Africa, Germany and by the Council of Europe^{xiii}) for the global recognition of this right in 2020, but this was unfortunately disrupted by COVID-19. With a revised date for COP26 of November 2021, the Commission envisages a continued and increased focus on the development of this right, with a particular focus on Scotland as it develops this right and hosts COP26.

Principles for a Green Recovery

The Committee asked specifically whether the principles of sustainable development (as set out in their annexe), and those for a resilient recovery, as proposed by the UK Committee on Climate Change, provide a comprehensive framework for guiding an effective green recovery in Scotland?

The Commission would propose that whilst both contain important principles to drive a green recovery, neither explicitly recognise human rights or Scotland's human rights obligations. The UK (and Scotland's) existing human rights obligations provide a solid internationally agreed framework of standards and guidance for the advancement of human progress and a green recovery. This needs to be reflected in the principles for a green recovery in Scotland.

Below are a range of areas where the Commission recommend that the Committee draw on to further develop the principles.

1. UN Secretary-General Recommendations

Given the interdependent nature of rights, many actions taken to combat, mitigate and adapt to climate change will have the potential to impact on the enjoyment on a wide range of rights in a positive way.^{xiv}

The UN Secretary-General has called for countries to “build back better” from the crisis^{xv}, identifying six specific recommendations which the Commission would encourage the Committee to explore (plus an additional action the Commission considers important). These are set out in Box 1 below.

Box 1: UN Secretary-General Recommendations

- With the large amounts of money set to be spent on recovery from COVID-19, this must deliver new jobs and businesses through a clean, green transition.
- Where taxpayers' money is used to rescue businesses, it must be tied to achieving green jobs and sustainable growth. Taxation and fiscal policy is important here (See next section).
- Fiscal firepower must drive a shift from the grey to green economy, empowering societies and people to be more resilient.
- Public funds should be used to invest in the future, not the past, and flow to sustainable sectors and projects that help the environment and the climate. Fossil fuel subsidies must end, and polluters must start paying for their pollution.
- Climate risks and opportunities must be incorporated into the financial system as well as all aspects of public policy making and infrastructure.
- Work together as an international community.
- **SHRC addition: [Improve current rights protections frameworks, including a new right to a healthy environment].

2. Sustainable Development Goals

The 2030 Agenda for Sustainable Development^{xvi} is intended to be a transformational agenda which provides a plan of action for people, planet and prosperity which is grounded in human rights. The 17 Sustainable Development Goals (SDGs) and its 169 targets are an urgent call for action by all countries. They provide a cohesive and indivisible combination of the three dimensions of sustainable development: the economic, social and environmental. At their heart, they seek to realise everyone's human rights, stimulating action to eradicate poverty in all its forms and in doing so heal and secure the planet for future generations, leaving no one behind. The UN Secretary-

General has now expressed grave concern that COVID-19 is undermining sustainable development, just at the time when efforts were already in need of acceleration in order to be realised. The UN Secretary-General has also noted that:

“the 2030 Agenda, underpinned by human rights, provides a comprehensive blueprint for sustainable recovery from the pandemic”^{xvii}.

The Commission has worked for a number of years to support the integration of the SDG agenda, human rights framework and the Scottish Government’s National Performance Framework (NPF). Whilst much work remains to be done to fully integrate these mutually supportive frameworks, the NPF should provide the necessary framework for policy and budgetary development, implementation and monitoring of a green recovery.

3. Climate Change

When specifically focusing on climate change, there is a need for the Government focus on more than just ambitious climate action targets. Taking a human rights based approach to climate change highlights the need for an accountability mechanism for Scotland’s targets, technological transfers and a focus on the social human rights implications of climate justice. Climate crisis, logging and de-forestation, increasing urbanisation, as well as illegal trading in wildlife, are among the many factors which contribute to environmental degradation.

4. Business and Human Rights Principles

The Commission encourages the Committee to consider existing supportive human rights principles around the conduct of business. There should be no return to “business as usual” and businesses need to comply with the UN Guiding Principles on Business and Human Rights^{xviii}, as well as several criteria that needs to be developed specifically relating to the green-energy industry.

It is crucial to ensure that there is sustainable corporate governance to *“ensure environmental and social interests are fully embedded into*

business strategies and operations". This has been supported by the EU Commission (proposal for COVID-19 recovery)^{xix}.

How should the 2021/22 Budget support a green and sustainable recovery?

Resources and rights are inextricably linked to improved outcomes for rights-holders. It is vital, therefore, that decisions about recovery from COVID-19 and the forthcoming 2021-22 budget are informed by and rooted in a comprehensive and robust rights-based analysis.

The Commission has long advocated for taking a human rights based approach to budgeting, most recently calling (in response to the Advisory Group on Economic Recovery), for this approach to support Scotland's economic recovery and future budgeting processes (including how parliament scrutinises the budget)^{xx}.

This means using human rights principles to shape the budgetary process, whilst using the human rights standards to shape the budget's goals. Human rights standards and principles can guide transparent, accountable and participatory decisions that require balancing competing interests and priorities. In the context of COVID-19, a time when trust and public confidence is both fragile and critical, this is more important than ever.

Taking a human rights based approach to the budget to support Scotland's economic recovery would involve setting out Scotland's core human rights obligations across all rights: civil, political, economic, social, cultural and environmental. Then, with the meaningful participation of rights-holders, and with reference to all available guidance^{xxi}, exploring the resources required to improve rights realisation in accordance with Scotland's fiscal envelope.

'Building back better' must also involve considering whose voices are heard in, and how different groups are affected by, the Scottish Government's fiscal decisions — with reference to human rights standards to make that assessment. Human rights standards, by themselves, do not provide all the answers on what specific choices and

trade-offs the government should make, although they do provide a guiding decision making framework. How choices are discussed and made is therefore key in determining the extent to which different human rights obligations are met or not.

Previous submissions and publications by the Commission provide further detail on a range of areas relevant to the issue of budgeting and we suggest that these should be considered alongside this submission^{xxii}.

Implications for taxation

The Commission has previously submitted evidence to the Scottish Parliament and Government on a human rights based approach to taxation in Scotland^{xxiii}. Whilst there is ongoing uncertainty about the exact impact of COVID-19 on future devolved tax revenue^{xxiv}, it is very clear that it will be considerable. The issue of how and who we tax in Scotland has been explored before, with limited steps taken towards a more progressive system of taxation. Scotland can choose to approach COVID-19 economic recovery by creating a more progressive system that maximises available resources in line with its human rights obligations. Public and political support^{xxv} for the willingness to put conditions on financial bailouts for those who are resident in tax havens for example, highlights growing political will to explore the fairness of how revenue is generated as we enter the recovery phase.

Human rights law is also clear that even in times of severe resource constraints – whether caused by a process of economic adjustment, recession or a pandemic induced economic crisis – vulnerable members of society must be protected. Therefore, fiscal policy should ensure equality, through being progressive and assisting the most disadvantaged individuals and groups in society.

The Center for Economic and Social Rights in New York^{xxvi} has published a “Comprehensive Response to COVID-19 Demands Redistributive Fiscal Policies” which sets out a range of fiscal policy options recommended by the Initiative for Human Rights Principles in Fiscal Policy^{xxvii}. Many of their proposed options would be relevant for

consideration and should be encouraged within the UK context. Whilst acknowledging that the majority of levers will not be in the gift of the Scottish Government, there are some areas where Scotland would also have devolved capacity to explore, see Box 2 below. The Commission would add to this list, a recommendation to explore environmental tax reform to support the delivery of a zero-carbon economy in Scotland.

Box 2 Human rights based fiscal options^{xxviii}

1. Taxes on wealth and corporate revenues from sectors making extra profits due to the pandemic (such as the digital economy, the financial sector in general, pharmaceuticals, and insurance companies with extraordinary returns).
2. Budgetary reallocations (for example, from military and other non-priority expenditures to sectors such as health and social security), and the suspension of unnecessary tax exemptions not yet in force.
3. Coordinated funding by central banks, based on future tax reforms that eliminate preferential tax privileges, correct the weaknesses of tax collection, and make tax systems more progressive, especially through increasing income tax for top earners and through wealth taxes.
4. Effective policies against tax avoidance and evasion, which have deprived States of valuable resources that are more needed than ever; and refraining from granting benefits of any kind to corporations that do not comply with their tax duties and/or make use of tax havens^{xxix}.
5. Countries should consider assuming a coordinated position in international negotiations on tax issues, to end the race to the bottom in corporate taxation^{xxx}. **This would be equally relevant in the context of Brexit.
6. Reform of restrictive fiscal rules, through escape clauses^{xxxi} and prioritisation of expenditures to respond to the emergency.

End.

ⁱ See <https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-vonline.pdf>

ⁱⁱ See recommendations of the First Minister's Advisory Group on Human Rights Leadership <https://humanrightsleadership.scot/> and work of the SHRC <https://www.scottishhumanrights.com/economicsocial-cultural-rights/strengthening-economic-social-cultural-rights/>

ⁱⁱⁱ Please see our website for a collated page on all aspects of our work on COVID-19 Scottish Human Rights Commission <https://www.scottishhumanrights.com/covid-19/>

^{iv} Article 11 of the International Covenant on Economic, Social and Cultural Rights.

^v Article 11 of the International Covenant on Economic, Social and Cultural Rights.

^{vi} Article 12 of the International Covenant on Economic, Social and Cultural Rights.

^{vii} Article 8 of the European Convention on Human Rights and Human Rights Act 1998.

^{viii} Article 8 of the European Convention on Human Rights and Human Rights Act 1998.

^{ix} Article 8 of the European Convention on Human Rights and Human Rights Act 1998.

^x Article 25, International Covenant on Civil and Political Rights.

^{xi} Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights.

^{xii} See <https://undocs.org/A/HRC/37/59> and <http://srenvironment.org/framework-principles#:~:text=Framework%20Principles%20on%20Human%20Rights%20and%20the%20Environment,of%20a%20safe%2C%20clean%2C%20healthy%20and%20sustainable%20environment.>

^{xiii} See <https://www.coe.int/en/web/human-rights-rule-of-law/-/environment-and-human-rights-towards-a-right-to-a-healthy-environment->

^{xiv} For example, as noted by the Commission's Adequate Standard of Living Reference Group on their submission on a Just Transition, policies which aim to improve the energy efficiency of homes will have a positive impact on the right to housing, health and adequate standard of living while also reducing emissions. When viewed through a human rights lens, and acted on through rights based processes, relevant policy interventions will have tangible benefits for people across Scotland. See

<https://www.scottishhumanrights.com/media/2052/jtc-adequate-standard-of-living-reference-group.pdf>

^{xv} see more here: <https://www.un.org/en/un-coronavirus-communications-team/un-urges-countries-%E2%80%98build-back-better%E2%80%99>

^{xvi} See: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

^{xvii} See:

https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf

^{xviii} See https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

^{xix} See <https://www.business-humanrights.org/en/eu-commission-presents-proposal-for-post-covid-19-recovery-plan-includes-initiative-on-sustainable-corporate-governance-in-2021>

^{xx} The Commission's submissions are available at:

<https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-vonline.pdf> ;

https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf ; <https://www.scottishhumanrights.com/covid-19/economic-social-and-cultural-rights/>

^{xxi} For example see the current UN recommendations relevant to COVID-19 for the UK https://www.ohchr.org/Documents/Events/COVID19/Infographics/UNITED_KINGDOM_OF_GB_AND_NORTHERN_IRELAND.pdf and more generally - General Comments and recommendations produced by Treaty Body Committee and Special Procedures: <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

^{xxii} Human Rights Budget Work: What, Why and How?

<https://www.scottishhumanrights.com/media/1902/hrbw-collected-briefing-papers-vfinal.docx> • Submission to Scottish Government consultation on devolved taxes

<https://www.scottishhumanrights.com/media/1882/shrc-response-to-scottish-government-consultation-on-devolved-tax-policy-framework.docx> • Submission to the Finance Committee: A Scottish Approach to Taxation

<https://www.scottishhumanrights.com/media/1697/shrc-submission-to-finance-committee-sep2016.doc> •

Submission to Scottish Parliament Finance Committee Inquiry: Impact of COVID-19 on public finances and

Fiscal Framework

https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf • Submission to Advisory Group on Economic Recovery: Human Rights and Economic Recovery
<https://www.scottishhumanrights.com/media/2035/advisory-group-on-economic-recovery-call-for-views-online.pdf> • Summary Report: Open Budget Survey Results for Scotland's 2017- 18 Budget (Summary)
<https://www.scottishhumanrights.com/media/2013/scotland-2019-obi-summary-report-vfinal.pdf>

^{xxiii} Submission to Scottish Government [consultation on devolved taxes](#); Submission to the Finance Committee: [A Scottish Approach to Taxation](#)

xxiv See

https://www.scottishhumanrights.com/media/2034/20_05_fincom_covid_publicfinances_humanrights_vfinal.pdf

xxv See <https://www.independent.co.uk/news/business/news/scotland-tax-have-ban-coronavirus-bailout-fund-a9526006.html>; <https://www.theguardian.com/politics/2020/may/21/scotland-bans-covid-19-support-firms-tax-havens>; <https://www.taxjustice.net/2020/05/21/scotland-joins-wave-of-countries-blocking-tax-haven-tied-corporations-from-receiving-covid-19-bailouts-tax-justice-network-responds/>

^{xxvi} A key partner in the Commission's human rights budget work project.

^{xxvii} See <https://derechosypoliticafiscal.org/es/>

This is drawn from current work of the Initiative who are developing an instructive resource: Rights Principles and Guidelines in Fiscal Policy: <https://derechosypoliticafiscal.org/index.php/es/principios-iii#principio-09>

^{xxviii} See <https://www.cesr.org/comprehensive-response-covid-19-demands-redistributive-fiscal-policies>

^{xxix} See <https://www.bloomberg.com/news/articles/2020-04-18/denmark-extends-business-aid-to-increase-spending-by-15-billion>

^{xxx} See <https://www.cesr.org/sites/default/files/OCDE%20Submission%20-%20Blast%20ES.pdf>

^{xxxi} See <https://derechosypoliticafiscal.org/index.php/es/principios-iii#principio-09>