

Briefing: Empire, Slavery and Scotland's Museums Project

May 2021

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.

This briefing has been prepared to support the Empire, Slavery and Scotland's Museums: Addressing our Colonial Legacy project being run by Museums Galleries Scotland (MGS).

www.scottishhumanrights.com

Human Rights Based Approaches¹

Human Rights Based Approaches require that any project, organisation or initiative is grounded in human rights laws and standards. The ultimate aim of any Human Rights Based project is to ensure that those standards are realised in practice.

However, Human Rights Based Approaches are also concerned with the process, or the way we seek to go about implementing human rights standards. Any human rights based approach should embody the following principles, known as the PANEL principles.

Participation - Everyone has the right to participate in decisions which affect them. Participation must be active, accessible and meaningful. How do you ensure that rights holders participate meaningfully in your activities?

Accountability – There should be monitoring of how people’s rights are affected and remedies for when things go wrong. Can you identify who the duty bearers are? These are the people or organisations with human rights obligations.

Non-discrimination - All forms of discrimination should be addressed. The people who are furthest away from being able to realise their rights should be prioritised.

Empowerment - Everyone should understand their rights and be supported to take part in developing policy and practices which affect their lives. How does your organisation or project help rights holders understand and claim their rights?

Law - Approaches should be grounded in the legal rights that are set out in domestic and international human rights law. What human rights are affected by this activity? What are the standards that need to be met?

Human Rights Norms and Standards

Human rights based approaches can take many forms and there is no one-size-fits all methodology. However, it is often helpful for a project or

organisation which is looking to take a human rights based approach to start with the 'L' of PANEL. This means engaging with the relevant norms and standards which are set out in human rights law, primarily in international human rights treaties such as:

- European Convention on Human Rights
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention Against Torture (CAT)

It should be noted that of these international conventions have been signed and ratified by the UK and therefore the obligations they contain apply to the UK and Scottish Governments. Obligations in the ECHR are enforceable through the Human Rights Act 1998. In March 2021, the [National Task Force on Human Rights Leadership](#) recommended that the rights in four further conventions (ICESCR, CERD, CEDAW, CRPD) should be enforceable in Scots law.

Of course, depending on the nature and subject matter of any particular project, some of these rights, norms and standards will be more relevant than others.

Empire, Slavery and Scotland's Museums

The 'Empire, Slavery & Scotland's Museums: Addressing our Colonial Legacy' project seeks to review how Scottish museums and galleries can better address the legacies of slavery, empire and colonialism at every level. The project will make recommendations as to how to:

- recognise and represent a more accurate portrayal of Scotland's colonial and slavery history;
- identify what further steps should be taken to ensure people in Scotland are aware of the role Scotland played and how that manifests itself in our society today;
- reflect, interpret and celebrate the wide ranging and positive contributions that ethnic minority communities have made and continue to make to Scotland.

The project will focus on several important areas of museums and galleries' activity, including research, collections, interpretation, education and a new museum on slavery. The Project Manager is currently undertaking a full PANEL analysis of the project to identify where and how the PANEL principles can be applied across the work, for example, considering how people and communities directly affected by the legacy of empire, slavery and colonialism can be involved in the review. To support this work, the Commission is examining the relevant human rights norms and standards and undertaking an analysis of which of these are most relevant to the project, and which could support the development of relevant indicators and measures of progress.

The impacts of empire, slavery and colonialism upon Scotland's history, culture and people are wide-ranging and therefore a relatively broad approach to identifying relevant human rights norms and standards has been taken. These include:

- the prohibition on slavery;
- rights to culture and participation in cultural life, as well as broader rights to participate in public life;
- rights to education;

- rights to non-discrimination in the access and enjoyment of other rights, including an intersectional approach, considering the multiple identities of people accessing culture;
- a consideration of the role that culture can play in rights to remedy and redress.

It should also be recognised that all human rights are interdependent and inter-related, and that anything that has a detrimental effect on one right will likely also impact others. For example, restrictions on freedom of expression will also affect the kinds of cultural outputs available to the population and therefore the right to participate in cultural life.

Relevant Rights Standards

International Covenant on Economic, Social and Cultural Rights (ICESCR)²

The International Covenant on Economic, Social and Cultural Rights protects rights such as the right to health, the right to housing, the right to an adequate standard of living and the right to participate in cultural life. Article 15 of the Covenant sets out that:

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Article 13 of the Covenant refers to the right to education and notes the role of this in increasing understanding tolerance and friendship between racial, ethnic and religious groups:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Rights set out within human rights treaties are interpreted and elaborated by the Committee which is in charge of monitoring the treaty in 'General Comments' or 'General Recommendations.' These provide authoritative interpretations of the rights. There are several General Comments developed by the CESCR Committee which are of relevance to the Empire, Slavery and Scotland project. These include:

[General Comment 13³](#) - right to education, in particular reference to culturally appropriate education and education on rights issues

'through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values.'

[General Comment 17⁴](#) - right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, including 'safeguard[ing]the personal link between authors and their creations and between peoples, communities, or other groups and their collective cultural heritage.'

[General Comment 20⁵](#) - non-discrimination in economic, social and cultural rights.

[General Comment 21⁶](#) – Right to participation in cultural life. This sets out the role of cultural rights in building positive social interaction between diverse communities. The right to participation in cultural life is a freedom which can be enjoyed individually or in association with others.

The Committee notes that the right can be broken down into three parts which encompass participation, access and contribution.

Governments have different types of obligations with respect to the right to participate, such as non-interference with the exercise of cultural practices and with access to cultural goods and services, as well as ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods. The General Comment on the right to play⁷, developed by the UNCRC Committee also notes that governments should not consider themselves 'suppliers' of culture, but rather as facilitators of culture.

General Norms Relating to Economic, Social and Cultural Rights

Each of the rights in ICESCR have been interpreted by the UN CESCR Committee to provide specific details about how they should be understood. However, there are additional general norms which apply to all of these rights as a function of Article 2 of ICESCR, which sets out the following:

'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.'

The following general norms have been developed from this Article of the Covenant⁸:

- the realisation of these rights does not have to occur overnight but should continuously improve (**progressive realisation**). In the context of culture, the CESCR Committee has clarified that this means 'the specific and continuing obligation to take deliberate and concrete measures aimed at the full implementation of the right of everyone to take part in cultural life.' In addition, the Committee notes the obligation on governments to adopt 'steps necessary for the conservation, development and dissemination of science and culture.'
- the realisation of these rights depends on governments using the '**maximum of available resources**.' These can be financial resources, but can also include human capital, legislative or judicial measures.
- the realisation of these rights should not get worse (**non-retrogression**)
- discrimination in the realisation of these rights is prohibited.

It is recognized that the first three of these obligations are gradual rather than immediate. However, the obligation of non-discrimination is immediate rather than progressive and requires States to immediately end laws or practices which enable direct or indirect discrimination. The CESCR committee has clarified that this means that in the context of the right to participate in cultural life 'no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services.'

The CESCR committee also recognises that there are specific groups of people who face more barriers than others in accessing culture such as women, children, older people, disabled people and people from minority ethnic communities, migrants, indigenous peoples and people living in poverty.

To be considered as fulfilled or 'realised', economic, social and cultural rights, such as the rights to participate in cultural life, an adequate standard of living, health, housing or social security are measured through consideration of the following standards:

- Available – are the resources needed to realise a right available in sufficient quantities?
- Accessible – can people access these resources?
- Acceptable and adaptable – are the resources available in a way that is culturally and socially acceptable?
- Quality – are the available resources of an adequate and safe standard?

In the specific context of the right to culture, these standards can be understood as set out in General Comment 21:

(a) **Availability** is the presence of cultural goods and services that are open for everyone to enjoy and benefit from,

(b) **Accessibility** consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination. It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. **Accessibility also includes** the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person's choice, and the access of communities to means of expressions and dissemination.

(c) **Acceptability** entails that the laws, policies, strategies, programmes and measures adopted by the State party for the

enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them;

(d) **Adaptability** refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, **which must be respectful of the cultural diversity of individuals and communities**;

(e) **Appropriateness** refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples.

These general norms are applied across the substantive rights in the Covenant. Therefore any consideration of the extent to which e.g. the right to culture is realised must make an assessment of:

- What steps the State is taking in ensuring progressive realisation of the right to culture;
- What resources are being allocated to the enjoyment of the right to culture;
- Whether enjoyment of the right to culture is in any way being 'rolled back';
- To what extent all people in Scotland can enjoy the right to culture without discrimination. Can everyone access culture, and in particular can everyone see examples of their cultural heritage in Scotland's museums?
- What do people think of the quality of displays, exhibits and interpretations?
- From a participation perspective, what say have people had about the way Scotland's national story is told and where are there significant gaps?

These general norms can be helpful in developing indicators of progress. For example, from a baseline of the present day, the following kinds of rights based indicators could be developed. Please note that these are only suggestions - indicators are likely to be most effective at measuring what matters if developed alongside the people and communities engaged in the projects as well as practitioners and academics. This could be through participation in working groups as well as being gathered in the consultation phase.

- The proportion of people from different communities and identities accessing museums and galleries in Scotland increases;
- The proportion of exhibits or narratives about empire, colonialism and slavery increases;
- A quality measure about people's level of satisfaction with respect to the way that collections and narratives address Scotland's history in relation to empire slavery and colonialism;
- A quality measure about the extent to which people feel their history or that of their community is reflected in museums;
- The proportion of interpretative material on collections which have come to Scotland because of empire, slavery and colonialism improves.

The MGS would like to take a human rights based approach to the Empire, Slavery and Scotland project. The standards set out above, particularly in relation to Article 15 of ICESCR represent the ultimate goal of respecting, protecting and fulfilling the right to participate in cultural life. They mainly are relevant to the way that any Scottish Government response to the project should be implemented. There are clear obligations deriving from international human rights law on the Scottish Government and other public authorities:

- to ensure that people have access to their own cultural and linguistic heritage and to that of others;
- to promote and explore cultural diversity;

- to preserve, develop, enrich and transmit cultural heritage including, monuments works of art etc;
- to link projects of cultural heritage and diversity and projects aimed at tackling national, racial or religious hatred as part of the obligation to protect;
- to be taught about one's own culture as well as others;
- to ensure that spaces of culture, such as museums are inclusive and accessible to all people in Scotland without discrimination;

However, they also indicate important process elements for the project to bear in mind. For example there is a clear obligation on the project to ensure that people are able to take part freely, in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on their right to participate in cultural life. This will be captured in the participation and empowerment elements of the PANEL framework which has been developed and published separately.

Group rights treaties

These treaties seek to contextualise the universal rights within the experience of particular groups. Each of the treaties around children's, women's, black and minority ethnic people's and disabled people's rights features a right to participate in cultural life, rights to education and to non-discrimination. The treaties recognise the particular barriers these different groups may face in realising these rights, and in particular the experience of discrimination in connection with these rights. For example Article 30 of the CRPD sets out the barriers to participation facing disabled people in accessing cultural life and places obligations upon States to address these. It will be important to reflect on the singularity of different group's experiences of taking part in cultural life when delivering the project and in the subsequent recommendations.

Relevant Special Procedures Mandates

In addition to the Treaty system, the UN also has a so-called ‘Special Procedures’ arm, which includes the work of independent, unpaid experts known as Special Rapporteurs. Special Rapporteurs work under either thematic or country mandates and usually produce a number of reports across their tenure, which often bring together commentary on inter-related rights issues, considering these in the current social and political context. This is distinctive from General Comments developed by Treaty Bodies which are designed to be an authoritative interpretation of the right and are not generally amended to reflect new or evolving contexts. Many of the thematic mandates are relevant to this project and it would be worth investigating their reports for applicable content:

[Special Rapporteur on cultural rights](#)

[Working Group of Experts on People of African Descent](#)

[Special Rapporteur on Minority Issues](#)

[Special Rapporteur on the Rights of Indigenous Peoples](#)

[Special Rapporteur on Contemporary Forms of Racism](#)

[Special Rapporteur on Contemporary Forms of Slavery](#)

[Special Rapporteur on Truth, Justice, Reparation and Guarantees of Non Recurrence](#)

In addition, the UN has also developed a particular framework in relation to the rights of people of African Descent. This focuses on three central workstreams, which are ‘Recognition’, ‘Justice’ and ‘Development.’⁹ Core human rights obligations and standards have been translated into the framework where these are relevant to people’s lives and experiences. Elements of both the recognition and justice workstreams are relevant for MGS’ project and specific measures suggested by the framework have been incorporated into the rights obligations to be considered by each of MGS working groups (published separately).

¹ For more information see <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>

² For the full text of the Covenant www.ohchr.org/en/professionalinterest/pages/cescr.aspx

³ UN Committee on Economic, Social and Cultural Rights, 1999, [General Comment 13 on the right to education](#)

⁴ UN Committee on Economic, Social and Cultural Rights, 2006, [General Comment 17 on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author](#)

⁵ UN Committee on Economic, Social and Cultural Rights, 2009, [General Comment 20 on non-discrimination in economic, social and cultural rights](#)

⁶ UN Committee on Economic, Social and Cultural Rights, 2009, [General Comment 21 on the right of everyone to take part in cultural life](#)

⁷ UN Committee on the Rights of the Child, 2013, 'General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)'

⁸ For more information, please see UN Committee on Economic, Social and Cultural Rights, 1990, General Comment 3: The Nature of States Parties Obligations.

⁹ See www.un.org/en/observances/decade-people-african-descent