

Call for inputs – Special Rapporteur on the rights to freedom of peaceful assembly and of association

May 2021

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What is the role that the rights to freedom of peaceful assembly and of association plays in climate justice? What are examples of contributions by civil society to climate justice in your State? What has been the impact of their work over the last 5 years?

The role of rights to freedom of peaceful assembly and association in climate justice¹

“Never doubt that a small group of thoughtful, committed, organized citizens can change the world: indeed, it is the only thing that ever has.”²

While evidence of the urgency of addressing the twin crises of climate change and biodiversity destruction has mounted, governments and businesses have failed to make sufficiently bold and sustained changes to protect our environment. The Paris Agreement has resulted in countries including Scotland and the UK setting emissions targets, but there is no accountability mechanism built into the United Nations Framework Convention on Climate Change (UNFCCC). While the UK, and Scotland in particular, have set some of the toughest climate change targets in the world, the route to ensuring these targets are met is still unclear.³ As a result, individuals and civil society have had to bear the responsibility of advocating for more urgent, robust and effective measures to tackle climate change and protect and restore nature. These efforts, often achieved by way of protest, have been integral to pushing governments and businesses to be more ambitious in setting targets and taking concrete steps to meet those targets.⁴

The right to freedom of assembly and association, which is protected by law in Scotland,⁵ guarantees that people can join with others to collectively express, promote, pursue and defend their interests, including opinions on the environment and climate change.⁶

Activity engaging the rights of assembly and association has been critical in raising awareness and understanding among the wider population, which is essential to garnering widespread support for the transformation that is required to reduce our negative impact on the environment. In particular it has drawn attention to the impact climate

change is already having in other countries, where people are already losing their lives and livelihoods. This is all the more important in Scotland, as a country that has contributed and continues to contribute disproportionately to environmental destruction and climate change, along with other more wealthy countries, but where the worst effects of climate change are not yet being felt.

Civil society and climate justice in Scotland

Civil society and grassroots climate groups have a rich tradition of exercising their rights to free speech and to protest in Scotland in order to highlight pressing environmental issues.

Over the last five years the campaigns of activists and civil society have undoubtedly contributed to increased awareness and understanding of the environmental crisis and to far stronger commitments to reducing carbon emissions and to making green policy decisions.⁷

Examples of contributions:

- Groups such as Stop Climate Chaos Scotland⁸ and Friends of the Earth Scotland⁹ have been very active for many years, raising awareness and campaigning for the necessary measures to ensure a healthy environment and a 'just transition'¹⁰ away from environmentally destructive industries including through assembly and association.¹¹
- Extinction Rebellion Scotland¹² have undertaken numerous campaigns to highlight the climate and ecological crisis. For example, protesting at the Faslane nuclear base,¹³ blocking roads in Edinburgh city centre,¹⁴ disrupting events involving oil company executives,¹⁵ marching in cities to highlight the need to protect Scotland's wildlife,¹⁶ and campaigning for land reform and an effective just transition away from oil and gas.¹⁷ They also campaigned for a citizens assembly to be set up to consider measures that should be taken to address climate change and for governments and councils to declare a climate emergency.

Scottish campaigners also often attend large protest events in London.¹⁸

- Children and young people have played a key role in protesting lack of adequate action on climate and nature. In 2019 thousands of children and young people from across Scotland joined a global climate strike to demand urgent action on climate change.¹⁹ They were joined by businesses, charities and other organisations.²⁰ Many children and young people in Scotland take part in Fridays for Future, often assembling outside their school during school hours to protest the inadequacy of the response to the climate crisis.²¹
- Grassroots, community action has included organising to protest planned development in national parks, involving woodland marches and mass picnics, which resulted in planning permission being withdrawn, at least temporarily.²²
- During the Covid-19 pandemic, restrictions on people's right to assemble and protest have been in place, as discussed below. This has resulted in far fewer climate actions taking place, but smaller assemblies have occurred²³ and climate actions have continued online.²⁴

Examples of impact:

- As a result of sustained campaigning by individuals, civil society, and the Commission's own work on climate change and human rights, in 2012 the Scottish Parliament became the first legislative body in the world to explicitly recognise and support the concept of climate justice. It also set up a Climate Justice Fund to help tackle the effects of climate change in the poorest, most vulnerable countries; and made it a legal requirement that the Scottish Government prepare and regularly update a Climate Change Plan, having regard to the principles of climate justice and just transition. The Climate Change Plan was recently updated.²⁵ In 2017 the

Climate Justice Fund was split into two programmes focused on projects in Malawi, Zambia and Rwanda.²⁶

- Mobilisation by civil society, including large peaceful protests, put pressure on the Scottish Parliament to strengthen 2019 climate legislation.²⁷
- On 28 April 2019 the Scottish Government became the first in the world to declare a climate emergency.²⁸
- Scotland's Climate Assembly was established by an Act of the Scottish Parliament in 2019. It brings together a group of people, broadly representative of the Scottish population, to consider how to tackle the climate emergency in an effective and fair way.²⁹ The Assembly will make recommendations to the Scottish Parliament on how best Scotland can tackle climate change.³⁰ This innovative approach to the climate crisis has facilitated people's right to assemble and exchange ideas.³¹
- In November 2019 the National Portrait Gallery of Scotland announced that it would end its relationship with large oil companies.³²
- Some local authorities have permitted school pupils to take a limited amount of time off school to protest the inadequate response to climate change, in solidarity with their actions and in recognition of the importance to young people.³³
- Divest Strathclyde, a local group of climate activists, have campaigned to persuade the Strathclyde Pension Fund, run by the City of Glasgow Council, including through protest, to divest from fossil fuels.³⁴ In April this year Glasgow City Council voted overwhelmingly to end fossil fuel investment.³⁵
- The Scottish Government recently committed to enshrining the right to a healthy environment in law.³⁶

What are the challenges your State faces in respecting, protecting and fulfilling the rights to peaceful assembly and association rights of those seeking to advance climate justice? For example, what sort of restrictions on peaceful protest does climate defenders face in your country? What are the most common restrictions on the right to freedom of association facing those engaged in climate justice activism, including operation and access to funding barriers? What are the legal grounds and rationale of these restrictions? How do these restrictions impact climate defenders from at-risk groups, in particular, children and youth, indigenous peoples and women and girls?

Challenges facing Scotland in respecting, protecting and fulfilling the rights to peaceful assembly and association

As in other countries, Scotland faces challenges in respecting, protecting and fulfilling the rights to peaceful assembly and association rights of those seeking to advance climate justice.

Police Scotland, as the public authority responsible for policing protests, must carefully balance the right to protest with public safety and the protection of the rights and freedoms of others. Police Scotland also face particular challenges in the isolated incidents where protesters may become violent.

The UK Government has reserved authority over a number of areas of policy affecting people in Scotland and the environment, including the granting of oil and gas licences.³⁷ People living in Scotland regularly travel to London to participate in large climate related events, where the UK Government is responsible for respecting and fulfilling the rights to peaceful assembly and association.³⁸

Scotland is on a progressive path in relation to the enforceability and justiciability of rights, and has recently committed to incorporating international treaties into law, as well as a new right to a healthy environment.³⁹ However, the UK Government's Independent Review of the Human Rights Act foreshadows reforms which may weaken respect for civil and political rights across the UK. For example, depending on the outcome of the review, Scottish courts may be prevented from

applying Strasbourg jurisprudence to the extent they do now, and from declaring legislation incompatible with the rights contained in the ECHR.⁴⁰ The majority of responses to the Review, including the UK Parliament's Joint Committee on Human Rights,⁴¹ recommended no change to the Human Rights Act.⁴²

The Commission also notes that the UK Government's Police, Crime and Sentencing Bill has raised widespread concerns among civil society and others regarding restrictions to the right to protest in England and Wales. The UK Parliament's Joint Committee on Human Rights has noted a number of concerns regarding enhanced police powers, increased sentences for breaching conditions on assemblies and processions, new offences targeted at persons residing on land without permission and related powers to seize property.⁴³ Several protests took place in between March and May 2021 in response to the Bill.⁴⁴

Restrictions facing climate defenders

Under the European Convention on Human Rights (ECHR), there is a positive duty on both governments and public authorities such as the police, to protect and enable peaceful protests. The right to protest is not an absolute right however, and so restrictions to the right to freedom of assembly and association are permitted.⁴⁵ These restrictions must be in accordance with the law and necessary in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. They must also be proportionate, going no further than necessary. Restrictions can take many forms, such as statutes, regulations, local government policies, police guidance and tactical decisions on the ground.

There are a number of pieces of legislation which are relevant to the right to freedom of assembly in Scotland.⁴⁶ Different conditions are imposed depending on whether a protest takes place in the form of a procession or as a static demonstration. For example, the number of participants in assemblies can be restricted if there is a clear connection with a legitimate ground, for example where public safety considerations

dictate a maximum crowd capacity or physical distancing is required to protect public health.

The right is also restricted by the actions of the police, who have significant powers to use crowd control measures and to arrest people they consider are breaching the peace.

The use of new technologies in policing in Scotland and the UK, such as facial recognition technology and drones, may be an additional barrier to participation in peaceful assembly and engages the right to privacy.⁴⁷ Similarly, evidence of covert policing activity, involving undercover officers monitoring environmental activists, may have a negative impact particularly on female activists.⁴⁸

Restrictions have also been imposed by Scottish courts, such as fining an environmental organisation in a case which also highlights the role of private property rights in restricting freedom of assembly.⁴⁹ However, courts and tribunals have also taken positive steps, such as recognising that a deeply held belief that “mankind is duty-bound to act on catastrophic climate change” is protected under the Equality Act 2010.⁵⁰

Restrictions on the right to protest may also come from third parties. For example, businesses may penalise employees taking part in the global climate strikes when they are required to be at work.⁵¹

The most significant restrictions to the right to freedom of assembly in Scotland have been implemented in response to the Covid-19 pandemic. These were imposed by secondary legislation, which for a number of months prohibited people leaving their homes without a reasonable excuse and set restrictions on how many people can meet inside homes and in public spaces.⁵² This allowed police powers to issue fines to organisers and peaceful protesters breaching lockdown restrictions. Concerns have been raised regarding the sufficiency of the justification for a ban on outdoor gatherings, given the risk of infection outdoors appears to be much lower.⁵³ Blanket policies preventing the right to protest are likely to be unlawful due to incompatibility with the ECHR.⁵⁴ Frequent changes to the level and severity of restrictions on gatherings, and a lack of clarity on this at the beginning of the pandemic

may have made it difficult for members of the public to be sure of the legality of protests.

The impact of restrictions on at-risk groups

Certain groups face barriers to participation in the right to freedom of assembly.

- Children and young people may face barriers to participation, particularly from school or parents. However, we are pleased to note the Scottish Government's support for children and young people exercising their right to protest, most recently through a Bill in the Scottish Parliament which incorporates the UN Convention on the Rights of the Child into law. This will protect children and young people's right to freedom of assembly, and give young people a method of redress when their rights are not upheld.⁵⁵
- Disabled people in particular face barriers to exercising their right to protest. It has been highlighted that police discriminated against disabled protesters at the Extinction Rebellion protests held in October 2019 in London.⁵⁶ Specific allegations related to the police's decision to confiscate equipment intended to make it safe and accessible for disabled people to attend the protests, and the decision to arrest a wheelchair-user and her personal assistant during a solo peaceful protest outside police headquarters.⁵⁷ Disabled people are also concerned that English police forces have taken pictures of them to pass on to the government department in charge of welfare payments.⁵⁸
- Asylum seekers and refugees are often marginalised in society, with few opportunities to engage in political activity, due to restricted rights to work and vote.⁵⁹ Many will have direct experiences of the impact of climate change in their country of origin. In Scotland, they may face barriers to exercising their right to assemble due to precarious immigration status and concerns over police action.

What is the role of business corporations, particularly the fossil fuel industry, in this context? How can States better protect climate defenders' peaceful assembly and association rights from threats and attacks originated by corporations' action or inaction?

States play the primary role in ensuring that climate defenders' peaceful assembly and association rights are protected. This means that where businesses act in a way which undermines the right to freedom of assembly, in accordance with the ECHR, the Scottish and UK Governments may be required to intervene to secure protection of those rights.⁶⁰

However, due to our heavy reliance on the oil and gas sector in Scotland, activists are concerned that the close links between fossil fuel companies, governments and investors are preventing progress towards greener policies. Many believe that police enforcement of criminal laws on trespassing for example,⁶¹ is evidence of the police acting in corporations' best interests, rather than facilitating the right to peaceful protest. Wealthy corporations are also well placed to make full use of the court system to enforce their property rights through interdicts and injunctions, which are backed up by criminal sanctions. The courts have found that only in exceptional circumstances would the right to freedom of expression be granted in relation to protests on private property.⁶² This is particularly important in Scotland, as the majority of the country is privately owned.

Courts must weigh up the rights to freedom of expression and peaceful assembly, with the right of proprietors to enjoy their property without interference (contained in Article 1, Protocol 1 of the ECHR). Invariably, the courts have struck the balance in favour of proprietors, often on the basis that protesters can exercise their rights to peaceful assembly elsewhere. A number of factors have been considered by courts in assessing the proportionality of the restrictions on freedom of peaceful assembly and expression, namely the extent to which the protest breaches domestic law, the importance of the location to the protesters, the duration of the protest, the degree to which the protesters occupy land and the extent of the interference the protests causes to the rights of others.⁶³

The Scottish Government and Police Scotland should ensure that they are balancing the rights to property and freedom of assembly in an appropriate way, recognising the full extent of the right to protest. It is notable that in the case of *Appleby v UK* the European Court of Human Rights held that where the bar on access to property has the effect of preventing the exercise of freedom of expression, a positive obligation could arise for the State to protect the enjoyment of Convention rights by regulating property rights.⁶⁴

Businesses in Scotland, particularly those in the oil and gas sector, often have a disproportionate impact on climate change through polluting activities.⁶⁵ Businesses therefore have a very important role to play in mitigating their effects on the environment and ensuring they commit to environmental obligations. Over recent years, it has been recognised internationally that non-state actors should bear greater social responsibility. States should ensure that businesses are held to environmental standards. The Scottish Government should therefore ensure businesses adopt models which put social and environmental sustainability at the core of their business and that they are bound by the same rules that apply to public authorities under the Aarhus Convention in terms of disclosure of environmental information, public participation and access to justice.

What is the role of multilateral institutions, including bodies and processes within the United Nations Framework Convention on Climate Change, in supporting individual's peaceful assembly and association rights in the context of climate action? What type of measures should be adopted by multilateral institutions to promote and ensure affected communities and climate defenders can enjoy these freedoms without fear of reprisals and attacks? How should multilateral institutions better support States in fulfilling their obligations to respect, protect and facilitate the rights to peaceful assembly and of association of climate defenders and affected communities?

Multilateral institutions play a key role in setting standards and providing frameworks for States to implement in relation to climate justice and

freedom of assembly. These institutions can shine a spotlight on repressive practices and hold governments to account.

The Conference of Parties (COP26) of the UN Framework Convention on Climate Change is due to be held in Glasgow in November 2021. In Scotland, this is likely to be one of the most important events in recent times where people's right to freedom of peaceful assembly must be upheld. The UN will be taking control of the Scottish Event Campus (where the conference is to take place). It must therefore ensure Scottish people, and those travelling to Scotland for the conference, are able to peacefully protest. For many this will be a crucial opportunity to persuade governments to do their utmost to protect our shared environment. Ensuring that host states facilitate peaceful protest at COP should be a key part of the arrangements put in place between UNFCCC and the host states.⁶⁶ In this case the official COP host state is the UK, but as the event will take place in Scotland protest activity around the event will be policed by Police Scotland and by English police forces invited to Scotland. This raises particular concerns where different jurisdictions within the UK have different approaches to policing protests. The requirement to facilitate peaceful assembly and association should be emphasised to both the UK and the Scottish Governments and assurances sought regarding the arrangements that will be in place.

What measures and actions should States take to ensure the promotion and protection of freedom of peaceful assembly and of association in the context of climate action?

States should adhere to human rights standards contained in international law. One way to strengthen these rights is for states to directly incorporate the international human rights to freedom of assembly, association and expression into national law, and to provide individuals with an effective remedy where their right to freedom of peaceful assembly has been breached. It is also very important that states comply with environmental treaties such as the Aarhus Convention, which requires states to ensure that people can

meaningfully participate in decisions relating to the environment and that they have access to justice.

States should also ensure that projects supported by climate finance mechanisms respect and protect all human rights, including the rights of freedom of assembly and association.⁶⁷ States should review their wider international trading and investment practices to ensure that they avoid investment in activities and projects where the companies and/or governments involved are failing to respect the right to peaceful assembly and association.

States must have robust measures in place to protect freedom of assembly, in both law and practice. This includes ensuring that police receive training in taking a human rights based approach and prioritising de-escalation, and are supported to strike a proportionate balance in facilitating the right to protest, even where this results in a degree of inconvenience for proprietors such as businesses. This should be accompanied by a process for independent review of police and local authority decision-making in relation to protests. At a local level, authorities and police who are responsible for regulating events, should ensure meaningful and proactive involvement with those seeking to protest, to ensure the right to freedom of assembly is supported.

What actions do you suggest the Special Rapporteur can take to assist States in fulfilling their obligations to respect, protect and facilitate the rights to peaceful assembly and of association of climate defenders and affected communities?

The Special Rapporteur plays a unique role in investigating and highlighting global human rights issues. In order to improve respect for freedom of assembly in relation to climate justice, we ask the Special Rapporteur to highlight states' obligations to refrain from interfering with climate defenders seeking to exercise their rights to peaceful assembly. We also ask that the Special Rapporteur calls on states to protect climate defenders from threats, violence and harassment.

The COP26 will put both the UK and Scotland into sharp focus in relation to their own responsibilities to act on climate change. It will inevitably be accompanied by individuals seeking to put pressure on politicians and highlight the role of companies in the worsening climate crisis. We see this as an opportunity to encourage both the UK and Scottish Governments to demonstrate human rights leadership in policing the event. We ask that the Special Rapporteur takes steps to highlight the importance of obligations in relation to freedom of peaceful assembly and association to the UK and Scottish Governments, in advance of COP26. We also ask the Special Rapporteur to provide support and guidance to ensure that the right to peaceful assembly and association is facilitated.

Conclusion

The freedom to protest peacefully about the climate emergency is a core pillar of a democratic society in order to challenge leaders and businesses to ensure a better shared future for the planet. Covid-19 has demonstrated that now more than ever, we need human rights laws which ensure that the principles of dignity and equality underpin the decisions taken by governments. As such, the rights to freedom of assembly and association must be safeguarded for all people in relation to all climate-related actions.

¹ In responding to this consultation we have understood climate justice in its broadest sense: covering

both environmental issues - climate change and biodiversity loss - and the ethical and political dimensions which are inextricably linked. The poorest countries and islands and citizens in the most vulnerable situations – women, children, older people, black and minority ethnic groups and those facing poverty – suffer most from the effects of climate change and environmental degradation while having done the least to contribute to it.

² Margaret Mead, anthropologist, recipient of the Planetary Citizen of the Year Award in 1978.

³ The Climate Change (Emissions Reductions Targets) (Scotland) Act 2019 sets targets to reduce Scotland's emissions of all greenhouse gases to net-zero by 2045 at the latest. However, the Climate Change Committee noted that in order to reach this, both UK-wide and Scottish policies must ramp up significantly, see <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf>.

⁴ Options such as climate litigation are also available to raise climate issues in courts. However, practical barriers prevent climate defenders from bringing public law challenges against the UK and Scottish Governments or other public authorities. Access to justice issues are a long-standing problem, resulting from the high cost of asserting rights in court, strict rules on standing to bring claims, short timescales for raising a judicial review of an administrative decision and barriers to receiving legal aid. The [Aarhus Convention's Compliance Committee have found Scotland to be non-compliant](#) with the requirements to ensure that NGOs and members of the public are able to challenge situations where their Convention rights are denied or national environmental laws are broken.

⁵ The Human Rights Act 1998, which incorporates the European Convention on Human Rights (ECHR) (including the rights to freedom of assembly and association), allows individuals in Scotland to take a public authority to court where they consider that their rights under the ECHR have been breached. The Scotland Act 1998 ensures that the Scottish Parliament cannot legislate in a way which is incompatible with rights contained in the ECHR.

⁶ This covers participation in private and public meetings, processions, mass actions, demonstrations, pickets and rallies.

⁷ It is not possible to scientifically track through particular protest events or campaigns to specific outcomes for the purpose of this response. Instead we have listed some examples of high profile civil society activities which appear likely to have had an influence in terms of securing the positive policy developments we have also listed.

⁸ For more information on their activities see: <https://www.stopclimatechaos.scot/>

⁹ <https://foe.scot/>

¹⁰ A 'just transition' means moving to a more sustainable and green economy, in a way that is fair to those who stand to lose economically, such as those working in polluting industries.

¹¹ For examples of their activities see: [Get Involved - Friends of the Earth Scotland \(foe.scot\)](#)

¹² Extinction Rebellion is a global environmental movement with the stated aim of using nonviolent civil disobedience to compel government action on climate change.

¹³ [Extinction Rebellion block Faslane nuclear base entrance - BBC News](#)

¹⁴ [29 arrests during climate change protest | The Edinburgh Reporter](#)

¹⁵ [Charges against National Museum climate protesters dropped | The Scotsman](#)

¹⁶ [Extinction Rebellion march through Edinburgh streets over Scottish wildlife persecution - Edinburgh Live](#)

¹⁷ [Climate change protesters lock themselves to Scottish Parliament | The Scotsman](#)

¹⁸ [12 Scots arrested in Extinction Rebellion protests in London overnight | HeraldScotland](#)

¹⁹ [Climate change protests in Scotland: 'It's up to us' - BBC News](#)

²⁰ [Scottish organisations to join Global Climate Strike \(foe.scot\)](#)

²¹ [Fridays For Future Scotland \(climatestrike.scot\)](#)

²² [Neighbours rally together to protest against Loch Lomond Flamingo Land plans - Daily Record](#)

²³ [Activists protest outside Holyrood demanding Scotland invests more in green jobs and businesses | The Scotsman](#); [Climate activists in 'silent protest' over fossil fuel pension fund investment - Daily Record](#);

²⁴ A broad coalition of over 80 organisations across Scotland calling for a "Just and Green Recovery" from the crisis. The recovery plan details a programme of green job creation and climate action which will create thousands of jobs across the Scotland. It also sets out what actions should be taken to ensure Scotland meets its climate targets and delivers a Just Transition away from fossil fuels, see <https://foe.scot/campaign/just-green-recovery-for-scotland/>.

²⁵ [Securing a green recovery on a path to net zero: climate change plan 2018–2032 - update - gov.scot \(www.gov.scot\)](#)

²⁶ <https://www.gov.scot/policies/international-development/climate-justice-fund/>

²⁷ [People Power delivers increased action in the Climate Bill \(foe.scot\)](#)

²⁸ [Scotland and Wales: World's first governments to declare a climate emergency - Climate Emergency Declaration](#)

²⁹ The Climate Assembly consists of over 100 members broadly representative of the population in terms of age, gender, household income, ethnicity, geography, rurality, disability, and attitude towards climate change.

³⁰ The Assembly's Interim Report was laid in the Scottish Parliament on 24 March 2021, and a full report will be presented in June 2021. Government Ministers must publish a statement outlining how they will respond to the Assembly's recommendations within 6 months of the final report.

³¹ Note that some groups have been critical of the process as not providing an adequate response needed to address the scale of the climate crisis.

³² [Scottish National Portrait Gallery to end BP relationship | The Edinburgh Reporter](#)

³³ [Schools give Tayside and Fife pupils permission to miss classes to protest climate change \(thecourier.co.uk\)](#); [Pupils in Edinburgh given one day off a year to protest climate change | UK News | Sky News](#)

³⁴ [Divest Strathclyde - Glasgow Calls Out Polluters \(gcop.scot\)](#)

³⁵ [Glasgow City Council votes overwhelmingly to end fossil fuel investments - Scottish Greens](#)

³⁶ In March 2021, the Scottish Government [committed to introducing a new Human Rights Bill](#) that will incorporate international human rights into Scots law. It is intended that a new right to a healthy environment will be incorporated, drawing on international best practice to formulate the rights.

³⁷ Due to the devolution arrangements in Scotland, matters related to the environment, policing and criminal justice are devolved to the Scottish Government. Other matters are within the UK Government's remit, such as regulation of industry and equalities legislation.

³⁸ In England and Wales, the main powers relating to protests in the streets are contained in the Public Order Act 1986, which allows the police to impose conditions on assemblies, if necessary to prevent serious public order, serious damage to property, serious disruption to the life of the community or intimidation of others (s.14). This section also applies to Scotland. The Act makes it an offence not to comply with conditions, including up to 3 months in prison. In addition, there are specific powers in relation to demonstrations in London (s.132-138 of the Serious Organised Crime and Police Act 2005), which require advance notice of protests. Police can also impose restrictions for a wider range of purposes. There are also provisions prohibiting trespassing on private property, similar to those in Scotland.

³⁹ In March 2021 the Scottish Government passed an Act of the Scottish Government incorporating the UN Convention on the Rights of the Child into law. The Scottish Government has also committed to incorporating further international treaties (ICESCR, CEDAW, CERD and CRPD).

⁴⁰ The Commission's consultation response to the review of the Human Rights Act can be found here: <https://www.scottishhumanrights.com/media/2160/review-of-the-human-rights-act-vfinal.pdf>.

⁴¹ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/149724/no-case-for-reform-of-the-human-rights-act-says-joint-committee-on-human-rights/>.

⁴² <https://www.gov.uk/guidance/independent-human-rights-act-review#call-for-evidence-responses>.

⁴³ <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/152774/police-crime-sentencing-and-courts-bill/>.

⁴⁴ [Thousands march through London in biggest 'kill the bill' protest yet | The Guardian](#)

⁴⁵ Art 11 of the ECHR.

⁴⁶ Examples include: the Civic Government (Scotland) Act, which requires organisers to give notice to the local authority about their intention to march; the Public Order Act 1986, which allows the police to impose conditions on assemblies and sets out chief constables' powers during a march or parade; the Terrorism Act 2000, which relates to being members or supporting organisations forbidden by law; the Land Reform (Scotland) Act 2003 which allows orders to temporarily prevent people from having rights of access to land; and the Control of Pollution Act 1974 which relates to the use of loudspeakers. Licensing and road traffic legislation may also be applicable.

⁴⁷ See the [UN Human Rights Committee's General Comment No. 37](#) on Article 21 of the International Covenant on Civil and Political Rights (right of peaceful assembly).

⁴⁸ [Police investigate officer who infiltrated environmental groups | Mark Kennedy | The Guardian](#)

⁴⁹ *Transocean Drilling UK Ltd v Greenpeace Ltd* [2020] SLT 825. In this case the environmental organisation Greenpeace was fined £80,000 for contempt of court for breaching an interim interdict or court order which prohibited them and persons unknown from entering onto or approaching a North Sea oil rig. Greenpeace argued that the protest was a conscientious act protected by articles 10 and

11 of the ECHR. The court found that as a corporate entity, Greenpeace was subject to the court order and that its active support and resources for the individuals approaching the rig made Greenpeace responsible for their actions. The court further held that the imposition of a sanction was necessary to maintain the court's authority and for the protection of the rights and freedoms of others.

⁵⁰ In *Grainger plc v Nicholson*, the Employment Appeal Tribunal found that protection against discrimination in an employment context can cover protection of an employee's genuinely held belief in the need to act to mitigate climate change. Other cases which have found in favour of protesters are *Jones & Others v The Commissioner of Police for the Metropolis* [2019] EWHC 2957 (Admin), where the High Court in England quashed an order imposing a requirement for protesters to cease protests as it found that the protest did not fall within the definition of a public assembly and that it was therefore unlawful. In addition, six Extinction Rebellion protesters were recently cleared of causing criminal damage by a jury, despite being directed by the judge that there was no lawful excuse for their actions, see <https://www.bbc.co.uk/news/uk-england-london-56853979>.

⁵¹ The rules in relation to striking in the UK do not cover situations relating to climate change.

⁵² Static protests and demonstrations have been allowed under restriction levels 0-3, provided steps are taken to minimise the spread of the virus, such as use of face masks, social distancing, use of hand sanitiser, and participants using a track and trace app. However, during the level 4 'lockdowns' in Scotland (the most severe restrictions), the right to peaceful assembly was prohibited, see the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, and the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020. In November 2020, the Scottish Government issued guidance on protests and demonstrations during Covid-19, see <https://www.gov.scot/publications/coronavirus-covid-19-protests-and-demonstrations/>. Marches and parades have been subject to different restrictions, see <https://www.gov.scot/publications/coronavirus-covid-19-guidance-on-marches-and-parades/>.

⁵³ The UK Parliament's Joint Committee on Human Rights (JCHR) noted in their report '[The Government response to covid-19: freedom of assembly and the right to protest](#)', that they had not been provided with evidence on the precise risk posed by outdoor protests in respect of the spread of covid-19. However, in evidence to the Science and Technology Committee on 9 March 2021, the Government's Chief Scientific Adviser, has stated that "outdoors is much lower risk than indoors, but it is not completely risk free. It is the case that it is difficult to see how things like large beach gatherings and so on can cause a spike. The same was the case in a protest march in New York; they did not really see any spikes after that..."

⁵⁴ In the English case of *R (Dolan and others) v Secretary of State for the Health Department and the Secretary of State for Education* [2020] EWCA Civ 1605, the Court of Appeal held that the Regulations (which are substantially similar to those in Scotland), must be read in such a way as to give effect to Articles 10 and 11 ECHR, and that exercising one's right to assembly may constitute a 'reasonable excuse' for not adhering to the restrictions. In the subsequent English case of *Leigh, Birley, Shah and Klingler v The Commissioner of the Police of the Metropolis* (CO/9191/2021), the court held that it was inappropriate to treat the Regulations as if they gave rise to a blanket prohibition on gatherings for protest, which would be unlawful.

⁵⁵ See article 15 UNCRC Bill (as passed) here: <https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf>. While the Bill has been passed by the Scottish Parliament, it has not yet been given royal assent by the UK Government.

⁵⁶ <https://netpol.org/>.

⁵⁷ <https://www.disabilitynewsservice.com/mets-disabled-advisers-lodge-complaint-over-police-discrimination-during-xr-protests/>.

⁵⁸ <https://www.disabilitynewsservice.com/international-human-rights-experts-to-meet-disabled-protesters-as-part-of-uk-probe/>. The UN Human Rights Committee's [General Comment No.37](#) confirms that governments should not collect personal data to intimidate participants.

⁵⁹ People with limited leave to remain cannot vote in Scottish elections. Since 2020 however, those with leave to remain, including refugees, can vote.

⁶⁰ In the case of *Gustafsson v Sweden* (1996) 22 EHRR 409, the court ruled that the state's obligation to protect a personal opinion can extend to treatment connected to collective bargaining, where such treatment impinges on freedom of association.

⁶¹ Currently, there is no right of entry to private property or all publicly owned property, in order to hold a protest. This means that if individuals are protesting on private land they can be arrested for trespassing, in accordance with the Trespass (Scotland) Act 1865. However, see *Appleby v UK*, App. No. 44306/98, 6 May 2003, para. 47.

⁶² In *Shell UK Ltd v Stichting Greenpeace* [2020] CSOH 7 A335/19, Shell sought an interdict in the courts to prevent any employees or volunteers of Greenpeace from approaching four offshore installations. This followed the occupation by activists of a partially decommissioned oil platform in the North Sea, to highlight the polluting effect on marine life of leaving such structures to degrade, see <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csoh7.pdf?sfvrsn=0>. See also *Transocean Drilling UK Ltd v Greenpeace Ltd* [2020] SLT 825 (above), where a private company secured an interdict to prevent access to private property for the purposes of protesting.

⁶³ *Director of Public Prosecutions v Ziegler* [2019] EWHC 71 (Admin). Note that this case is currently being appealed to the Supreme Court and the final judgment is awaited, see <https://www.supremecourt.uk/cases/uksc-2019-0106.html>.

⁶⁴ App. No. 44306/98, 6 May 2003, para. 47. However in this case no breach of the right to freedom of assembly was found.

⁶⁵ For example, a group of local residents have been campaigning against the long-term social, health and environmental impacts they have faced from operations at Mossmorran Petrochemical facilities operated by Shell and ExxonMobil, see <https://mossmorran.org.uk/>.

⁶⁶ Note that in advance of COP24, Poland introduced legislation prohibiting participation in spontaneous assembly for the duration of the conference and authorising the collection of personal data, see <https://www.hrw.org/news/2018/02/01/polish-crackdown-ahead-climate-talks>.

⁶⁷ There are a number of climate financing mechanisms in place nationally and transnationally. These allow states with more financial resources to assist developing states to reduce the impacts of climate change. See <https://www.icao.int/environmental-protection/Pages/financing.aspx>.