

Submission to the Finance and Public Administration Inquiry on the National Performance Framework: Ambitions into Action

29th March 2022

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

The Commission welcomes the opportunity to respond to the Finance and Public Administration Committee's inquiry into how the National Outcomes shape Scottish Government policy aims and spending decisions, and in turn, how this drives delivery at national and local level.

The Commission has responded to a selection of the proposed questions of relevance to our experiences of using the National Outcomes in the NPF.

1. To what extent do the National Outcomes shape how your organisation works?

The National Outcomes shape how the Commission works, by being a key area of strategic focus. The Commission's primary engagement with the National Performance Framework (NPF) since 2013 when Scotland's first Nation Action Plan (SNAP) was launched, has been through supporting its development to better measure progress that reflects the Scottish Government's human rights obligations and the progress on delivering the Sustainable Development Goals (SDGs).

Prior to the launch of the 2018 NPF, the Commission engaged with the NPF team in the following ways:

- Supported development of the methodology of review;
- Facilitated the review workshop on the potential for a National Outcome on human rights;
- Reviewed early drafts of the new framework;
- Undertook a gap analysis of NPF indicators compared the SDG indicators;
- Helped to develop and craft the wording for the human rights National Outcome;
- Produced a mapping of links between the 2018 National Outcomes, Related human rights, related core and supporting SDGs and SNAP outcomes;
- Engaged with the NPF team and the Head Statistician to promote human rights based indicators and to explore and try to improve

potential indicators across the NPF, with a specific focus on measuring human rights progress.

Following the launch of the 2018 NPF, the Commission engaged with the NPF team in the following ways:

- Fed into the Scottish Government process of developing a new indicator for human rights;
- Supported the scoping and tendering process for a new human rights indicator, although we expressed disappointment in the choice of indicator - it will measure subjective happiness with a service, not whether rights have been realised. We also remain concerned with the total lack of human rights experience in the team set to develop it and although due in 2020, the indicator remains under development);
- Facilitated knowledge exchange events in Edinburgh on how to and the importance of, taking a Human Rights Based Approach (HRBA) to the NPF. These events involved Scottish Government Director Generals, civil service staff and the 3rd sector, listening to expertise from the Office of the High Commissioner for Human Rights (OHCHR), Danish Institute for Human Rights (who are global experts on the connections between SDGs and human rights) and the Global Alliance for National Human Rights Institutions (GANHRI).

Currently, the Commission is engaging with the NPF:

- As a representative of the SDG Network Scotland, participating in the NPF Research Advisory Group.
- As a member of the Equality Budget Advisory Group the Commission regularly promotes the need for better connections between the budget and National Outcomes.

When the next review takes place the Commission hopes to engage in the review process, once again promoting the value of taking a HRBA to the process and outcome, including the development of human rights based indicators across the NPF as well as indicators for the human rights outcome that are fit for purpose. The NPF has transformative

potential, that Commission believes is not being realised in its current form. The indicators as they stand do not enable progress in human rights to be adequately measured (see response to question 10 for more information)

2. How do you know which National Outcomes your organisation contributes towards? How do you demonstrate this to your organisation and more widely to others?

As noted in answer to Question 1, there are aspects of all the National Outcomes that have relevance to human rights, which reflects the fundamental principle that human rights are universal, indivisible, interdependent and interrelated (Vienna Declaration 1993). This is not currently understood, nor presented within the narrative of the NPF. However, since the last NPF review there has been significant development in the field of human rights in Scotland. This parliamentary term will see the development of new human rights legislation which will:

- reaffirm the relevant rights in the Human Rights Act;
- Incorporate:
 - the International Covenant on Economic, Social and Cultural Rights
 - the Convention on the Elimination of All Forms of Discrimination against Women
 - the Convention on the Elimination of All Forms of Racial Discrimination
 - the Convention on the Rights of Persons with Disabilities
- Include:
 - A right to a healthy environment for everyone
 - A right of older people to a life of dignity and independence
 - Equality rights for LGBTI people.

If the Scottish Government is to effectively implement the new human rights legislation, it will be critical to develop an understanding on how the NPF and the human rights framework connect and to develop this narrative during the next review.

Human rights and equality are often perceived as an add-on consideration in policy issues, rather than being viewed as a central framework to start and to build from. Developing this understanding and building capacity on the foundational relevance of the human rights framework remains key to the Commission’s work on the NPF.

Below we have set out the direct connections between the human rights framework and each current National Outcome (previously shared with Scottish Government).

National outcome	Related human rights
<p><u>ECONOMY:</u></p> <p>We have a globally competitive, entrepreneurial, inclusive and sustainable economy</p>	<ul style="list-style-type: none"> • UN Guiding Principles on Business & Human Rights: Respect, Protect & Fulfil • Right to work and to just and favourable conditions of work • Prohibition of slavery, forced labour and trafficking of persons • Prohibition of child labour • Right to equal pay for equal work • Right to social protection to mothers (maternity cover) • Equal rights of women in relation to employment • Equal rights of women to financial credit and rural infrastructure • Right to economic resources • Supporting young people’s right to work, training or education • Right to access information • Right to enjoy the benefits of scientific progress
<p><u>HUMAN RIGHTS:</u></p> <p>We respect, protect and fulfil human rights and</p>	<p>Human Rights Framework in Scotland</p> <ul style="list-style-type: none"> • Universal Declaration of Human Rights 1948; • European Convention for the Protection of Human Rights and Fundamental Freedoms 1950; • UN Refugees Convention 1951; • European

live free from
discrimination

Social Charter 1961 ; • International Convention on the Elimination of Racial Discrimination 1965; • International Covenant on Economic, Social and Cultural Rights 1966; • International Covenant on Civil and Political Rights 1966; • International Convention on the Elimination of all forms of Discrimination against Women 1979; • Convention Against Torture and other forms of cruel, inhuman and degrading treatment or punishment 1984; • European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987
• Human Rights Act 1998; • European Charter for Regional or Minority Languages 1992; • Framework Convention for the Protection of National Minorities 1995; • Convention on the Rights of the Child 1989; • Council of Europe Convention on Action against Trafficking in Human Beings 2005; • Convention on the Rights of Persons with Disabilities 2006; • Universal Declaration on Human Rights Education and Training 2011; • Council of Europe Convention on preventing and combating violence against women and domestic violence 2011; • Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2018.

• **Human Rights Based Approach & Develops a culture of human rights**

• **Right to non-discrimination and equality**

• **Right to participate in public affairs**

• **Elimination of all forms of discrimination against women**

• **Effective monitoring & the collection and dissemination of disaggregated data (evidence)**

A necessary requirement for states to comply with

	<p>their legal obligations to ensure equality and non-discrimination in progressively realising economic, social and cultural rights</p>
<p><u>INTERNATIONAL:</u> We are open, connected and make a positive contribution internationally</p>	<ul style="list-style-type: none"> • International cooperation to support the realisation of rights • Freedom of movement • Right to non-discrimination and equality • Freedom of expression • Refugee Integration & the right to seek asylum
<p><u>POVERTY:</u> We tackle poverty by sharing opportunities, wealth and power more equally</p>	<ul style="list-style-type: none"> • Right to an adequate standard of living (including access to housing, clothing and food; freedom from destitution) • Right to social security • Equal rights of women in economic life • Right to adequate food • International cooperation, including ensuring equitable distribution of world food supplies • Prohibition of inhumane or degrading treatment (including destitution)
<p><u>COMMUNITIES:</u> We live in communities that are inclusive, empowered, resilient and safe</p>	<ul style="list-style-type: none"> • Right to access information • Freedom of expression • Right to participate in public life & affairs • Right to adequate housing, including land and resources • Access to sustainable modern energy • Accessibility of transportation, facilities and services • Right to life, liberty and the security of the person • Protection of children from all forms of violence, injury or abuse, neglect,

	<p>maltreatment or exploitation, sexual abuse</p> <ul style="list-style-type: none"> • Elimination of violence against women and girls • Right of disabled people to freedom from exploitation, violence and abuse • Prohibition of slavery, forced labour and trafficking of persons • Right to respect for private, family and home life (including personal autonomy, and physical and mental integrity) • Right to humane treatment of persons deprived of their liberty
<p><u>CHILDREN AND YOUNG PEOPLE:</u> We live in the best place for children to grow up</p>	<ul style="list-style-type: none"> • UN Convention on the Rights of the Child (All articles within CRC) • Right to non-discrimination and equality <p>Cross reference other Outcomes for issues relating to children and: human rights, education; independent living; freedom from poverty, and violence; health; culture; housing; safe communities; participation; justice & accountable institutions.</p> <ul style="list-style-type: none"> • Refugee Integration & the right to seek asylum
<p><u>EDUCATION:</u> We are well educated, skilled and fulfil our potential</p>	<ul style="list-style-type: none"> • Right to education • Right to human rights education • Equal rights of women and girls in the field of education • Right to work, including technical and vocation training • Right to higher education and in particular by the progressive introduction of free education • International cooperation - particularly in

	<p>relation to children and persons with disabilities</p>
<p><u>FAIR WORK AND BUSINESS:</u></p> <p>We have thriving and innovative businesses, with quality jobs and fair work for everyone</p>	<ul style="list-style-type: none"> • Right to work and to just and favourable conditions of work • Prohibition of slavery, forced labour and trafficking of persons • Prohibition of child labour • Right to equal pay for equal work] • Right to social protection to mothers (maternity cover) • Equal rights of women in relation to employment • Equal rights of women to financial credit and rural infrastructure • Right to economic resources • Supporting young people’s right to work, training or education • Right to access information • Right to enjoy the benefits of scientific progress
<p><u>HEALTH:</u></p> <p>We are healthy and active</p>	<ul style="list-style-type: none"> • Right to life • Right to the highest attainable standard of physical and mental health • Right to reproductive health • Special protection for mothers and children • Right to enjoy the benefits of scientific progress and its application • International cooperation, particularly in relation to the right to health and children’s rights • Right to Independent living <p>This right is integral to the realisation of many of the other rights enshrined in the CRPD, such as equality and non-discrimination, autonomy and</p>

	<p>liberty, legal capacity and freedom of movement.</p> <ul style="list-style-type: none"> • Right to the full enjoyment of life on an equal basis with others
<p><u>ENVIRONMENT:</u> We value, enjoy and protect our environment</p>	<ul style="list-style-type: none"> • Awareness raising, education and human/ institutional capacity on climate change & justice • Right to participation • Right to a safe, clean, healthy and sustainable environment • Right to safe & sustainable drinking water and sanitation • Right to enjoy the benefits of scientific progress • Access to sustainable modern energy • Accessibility of transportation, facilities and services • Right to adequate housing, including land and resources • Right of all people to freely dispose of their natural resources • Protection from natural disasters
<p><u>CULTURE:</u> We are creative and our vibrant and diverse cultures are enjoyed widely</p>	<ul style="list-style-type: none"> • Right to participate in cultural life • Freedom of expression • Right to non-discrimination

3. How empowered is your organisation to do something different (should it wish) to achieve the National Outcomes relevant to you?

Having a specific National Outcome on Human Rights has been significant in raising the profile of the government's existing human rights obligations to respect, protect and fulfil human rights.

At the point of the previous review, there was some discussion about 'mainstreaming' the human rights commitment with the vision of the NPF, however, this was strongly resisted by the Commission. Reason being that there was (and remains) a lack of understanding on how the human rights framework relates to the NPF and the National Outcomes.

The idea of mainstreaming something, can only come when a country's institutions are in a position where concepts are well understood and practice is well established, which was (and remains) not the case. Indeed, we argued that if human rights were said to be mainstreamed and were only referred to within the values section of the NPF, without an explicit human rights outcome nothing would change nor progress.

Four years on, there is still much work to be done to build capacity and understanding on how the NPF and human rights framework connect – however, having that National Outcome over the last four years has allowed a referenced focus on the importance of human rights and progressing human rights realisation in Scotland. Being able to spotlight the inclusion of this Outcome as recognition of the Scottish Government's commitment to human rights has been important for anchoring the work of the First Minister's Advisory Group on Human Rights Leadership, the National Taskforce on Human Rights Leadership and the current developments towards incorporation. It has provided an important accountability lever for the work of the Commission.

For example, over the last four years, the Commission has developed a significant programme of work on human rights budgeting. The National Outcome expressly commits to progress which 'respects, protects and fulfil human rights'. This has specific meaning in the international human rights framework. The 'fulfil' element is linked to the action that the

government must take to realise rights – including budgetary action. A common reason given by State parties for being unable to fulfil their human rights obligations (especially economic, social and cultural rights) is a lack of resources. The commitment to ‘fulfil’ dictates that this reasoning must not go unchallenged. It has enabled the development of a conceptual understanding of how and why human rights are relevant to the budget in the Commission’s work, as well as enabling the Commission and other stakeholders to encourage the government to start to design its budget in compliance with its human rights obligations - ensuring existing resources are used effectively and without discrimination; questioning what effort has been made to generate additional resources and asking if those efforts are adequate and equitable. This work in turn, has / is supporting capacity building within the Equality, Human rights and Civil Justice Committee, COSLA, Local Government Finance Directors and a growing range of 3rd sector organisations.

6. When it comes to spending priorities or providing funding to others, what role do the National Outcomes play?

In relation to the spending priorities of Government, the existence of the National Outcome on Human Rights has helped to raise awareness of the Scottish Government’s obligation to maximise its available resources in order to ‘fulfil’ its human rights obligations. See answer to question 3 regarding human rights budgeting.

8. Where do the National Outcomes sit within the range of priorities and demands on your organisation?

The Commission’s current Strategic Plan (2020-2024) has four central priorities, the second of which is to **strengthen accountability for meeting human rights obligations**. The Commission wants to see a Scotland where those with power are held to account for meeting their human rights obligations. This accountability should extend to all civil,

political, economic, social and cultural rights, and should apply in law, policy and practice. Understanding progress in how well Scotland is realising people's rights is an important element required to inform this accountability. As such, one of the Outcomes under our current Strategic Priority is focused on supporting future development of the NPF to enable it to better measures progress towards realising human rights and makes stronger connections between human rights and achieving the Sustainable Development Goals. This Outcome has a dedicated work stream.

9. To what extent do you work collaboratively with other organisations in delivering the National Outcomes relevant to you?

The most prominent example of collaborative working in delivering the National Outcomes relevant to the Commission's work is [Scotland's National Action Plan \(SNAP\)](#). Scotland's first National Action Plan for Human Rights ran from 2013 to 2017. Working together, more than 40 organisations and individuals achieved over 50 actions. The UN recommends that national human rights action plans like SNAP should be part of a long-term process, and as one action plan draws to an end, another is developed to take its place. SNAP 2 has been under development from 2017 to 2021. Development work includes an independent evaluation of the first SNAP, robust evidence of ongoing human rights issues in Scotland, and a national public participation process.

SNAP2 in itself brings the aims of SDG Goal 17 to life, as a process of collaborative action requiring effective public, public-private and civil society partnerships, building on the experience and resources strategies of partnerships. Thematically the current 40 proposed draft actions cover a wide spectrum of SDG goals (Goals 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 16) and in turn will address issues across the full spectrum of National Outcomes.

10. Please share any examples of good practice, areas for improvement or practices that have not worked so well

Area for improvement

The current indicators for the National Outcome on Human Rights provide only a partial measure of the Outcome. They are focused primarily on civil and political rights, with little consideration of economic, social and cultural rights. With the forthcoming human rights legislation in Scotland, the Commission will make renewed calls for improved indicators during the next review. There is also no indicator for discrimination (despite the development of a validated global SDG indicator by OHCHR, which is available to all countries to use – see https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/SDG_Indicator_16b1_10_3_1_Guidance_Note.pdf).

There are also a wide range of indicators throughout the NPF that could have relevance to measuring human rights progress (because there are aspects of all the National Outcomes that have relevance to human rights as set out in response to Question 2), but these need to be connected to elements of specific rights and be presented and understood as underpinned by the human rights framework within the narrative of the NPF, which they currently are not.

The Commission understands the potential of the NPF to support a vision for progress in Scotland and its importance in measuring progress towards delivery of the SDGs. As it stands though, it only presents a snapshot of result outcome and doesn't allow for an analytical understanding of why these results are what they are, or importantly how to change them where necessary.

In the previous review and again in the forthcoming review, the Commission will recommend the inclusion of human rights based indicators to support this analytical potential. Best practice explains that such indicators help to measure progress across three levels, namely: having the right structures in place with regards to law and

policy, ensuring that the correct processes can support effective implementation (including resources – connecting the budget) and result outcome. Together they address the essential aspects of human rights implementation, namely: commitment, effort and result.

The focus on commitment and effort, as opposed to only measuring result outcome, is one of the areas which make human rights indicators distinct. Result outcome indicators look backwards at results, whereas Structure and Process indicators help governments to look forward and make more progress, e.g. by removing barriers to better outcomes such as systemic discrimination as a result of law or policy, intended or unintended; or identifying insufficient resourcing of good law or policy intentions. Process indicators also strengthen evidence-based policymaking by assisting governments in determining whether their interventions are actually leading to improved outcomes or whether they need to be adjusted.

The Commission acknowledges that human rights based indicators require a cultural change in the approach to measurement of progress at the national level. This simply was not achievable within such a short timescale for indicator development during the previous review, especially given the limited level of understanding about how to take a human rights based approach to monitoring progress and data collection within government. We have previously offered to support this as a means of moving forward during the next review cycle, because this approach has the potential to make the NPF a transformational tool.

Result outcome indicators demonstrate “the what” which by themselves don’t take us very far to where we want to go. Structure tells us “why” we have not made more progress and Process tells us “how” we can make more progress. This is the “power tool” of a human rights based approach to monitoring progress.

End.