

Equality Evidence Strategy 2023-25: Consultation Paper

7 October 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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1. Introduction

The Commission welcomes this opportunity to respond to the Scottish Government’s consultation on Scotland’s Equality Evidence Strategy 2023-25. The existing [Equality Evidence Strategy 2017 to 2021](#) responds to calls to improve the equality database,¹ aiming to create an approach to such evidence that is “*more wide-ranging and robust, enabling national and local policy makers to develop sound, inclusive policy and measure the impact on all of Scotland’s equality groups.*”²

While the Consultation concerns the *equality* evidence strategy, the Commission asserts that data is a public good that enables policymakers and practitioners to develop public services that meet individual’s needs. The present consultation paper notes the forthcoming updated Mainstreaming Equality and Human Rights Strategy and the need to align approaches between the Mainstreaming Strategy and the Equality Data Improvement Programme (EDIP).

The Commission does not have a mandate across equalities nor the use of data to support the fulfilment of obligations under the Equality Act 2010, which is the remit of the Equality and Human Rights Commission in Scotland. However, equality and non-discrimination are a human rights concern and integral to the realisation of all human rights, as recognised in a number of international treaties and their interpretations.³

1 <https://www.equalityhumanrights.com/en/britain-fairer/scotland-fairerintroduction/scotland-fairer-report>

2 See

<https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2017/07/scotlands-equality-evidence-strategy-2017-2021/documents/00522512-pdf/00522512-pdf/govscot%3Adocument/00522512.pdf>

3 Including the International Covenant on Civil and Political Rights (articles 2.1, 14, 24, 25 and 26); the International Covenant on Economic, Social and Cultural Rights (article 2.2); the Convention on the Elimination of All Forms of Racial Discrimination (articles 1, 2, 4 and 5); the Convention on the Rights of the Child (article 2); the Convention on the Elimination of

Additionally, the forthcoming incorporation of Human Rights treaties into domestic law, including equality provisions set out in those treaties, treaties concerning the rights of marginalised groups and new equality provisions to protect rights of other groups, all require close links between the strategy and human rights obligations. Progress indicators for human rights obligations are a complex and continuously developing concept, with multiple, context specific considerations, not limited to one methodology.⁴

The Commission therefore has a high level interest in ensuring that equality obligations are well understood and delivered with appropriate information and competence, in addition to our wider understanding of data as integral to realisation of individual rights for all people.

This response is also informed by the Commission's experiences as a data user under our general duty to promote and protect human rights,⁵ including equality related evidence.⁶ The Commission routinely uses evidence from Government sources, such as the equality evidence finder⁷, alongside lived experience gathered under a range of

All Forms of Discrimination Against Women (articles 2, 3, 4 and 15) the Convention on the Rights of Persons with Disabilities (articles 3, 4, 5 and 12) and being discriminatory been interpreted as falling within "degrading" treatments for the purposes of the Convention Against Torture. Equality in the scope of the European Convention of Human Rights is also protected by virtue of Article 14: "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

4 Till Muller, "Human Rights: International Protection, Monitoring, Enforcement," German Yearbook of International Law 48 (2005): 717-720

5 Scottish Commission for Human Rights Act 2006 s.4

6 See for example, our submission to the UK Universal Periodic Review published in 2022, which highlights a number of rights issues for groups also covered by Protected Characteristic Groups. See https://www.scottishhumanrights.com/media/2321/22_08_10-upr-full-report-designed.pdf

7 The Commission draws on a number of sources – government and non-government – in our domestic and international analysis. This includes but is not limited to social security

methodologies, evidence from civil society, academics and other domestic and international organisations to conduct our analysis of Scotland’s human rights position and especially for marginalised groups.⁸ The Commission does not have a mandate to produce comprehensive analysis across protected characteristic groups in our work. However, equality data can be useful in assessing where particular groups face additional barriers to claiming human rights protection.

official statistics, police Scotland data, the Scottish Crime and Justice Survey, Homelessness data collections, Census data and Scottish Household Survey.

⁸ The Commission has a statutory obligation to have regard to “ human rights of those groups in society whose human rights are not, in the Commission's opinion, otherwise being sufficiently promoted.” See section 2. [Scottish Commission for Human Rights Act 2006 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2006/14/section/2)

1.1. Proposed actions

The actions outlined in the consultation paper represent primarily concrete and deliverable modifications to existing collection methods and resulting publications. This is to be welcomed, allowing for data managers to assess what difference the changes deliver for quality and outcomes for the groups identified. However, it is unfortunate that all groups remain unequally served by the scope of the actions as indicated by the Equality Variable column.

In particular, we note that few actions will result in improvements in the data for transgender persons and sexual orientation. A greater focus on new data sources and qualitative datasets may improve access to information where sample size is a particular concern. Embedding a human rights based approach to data and evidence requires close consultation with marginalised groups to build trust and assess unintended gaps in evidence due to survey or dataset design. No one dataset will produce a fully comprehensive picture.

While we recognise that the strategy is deliberately short term and focused on concrete improvements to existing datasets, in the medium term the Scottish Government aims to set out an Equality and Human Rights Mainstreaming strategy across the devolved public sector. It is therefore an opportune time to consider whether new datasets or evidence sources can be explored under the framing of human rights obligations and the National Performance Framework (NPF).

The Commission, therefore, encourages the Scottish Government to commit to exploring opportunities to align the Equality Evidence Strategy with data needs under human rights monitoring and the national performance framework within the 2023-2025 strategy ahead of the NPF refresh and the new Human Rights Bill for Scotland.

We would also encourage the Scottish Government to embed a human rights based approach to the equality evidence it collects, analyses and uses, through the next iteration of the strategy. This consultation response sets out a number of considerations that the Scottish Government should explore in the next Equality Evidence Strategy,

mindful of the wide use of the data covered beyond equality regulations. The Commission recommends that:

- the Scottish Government explicitly acknowledges the use of equality data in human rights monitoring, decision-making and scrutiny throughout the strategy;
- the Scottish Government intensifies efforts to expand the collection, analysis and use of evidence through the strategy to coincide with the forthcoming equality and human rights mainstreaming strategy;
- the Scottish Government embeds a human rights based approach to data and evidence;⁹
- the Scottish Government amend the vision set out in the strategy to include obligations under international and domestic human rights frameworks;
- the Scottish Government takes the opportunities to align the Equality Evidence Strategy with data needs under human rights monitoring and the national performance framework.

1.2. Vision

The existing vision:

“Scotland's equality evidence base becomes more wide-ranging and robust, enabling national and local policy makers to develop sound, inclusive policy and measure the impact on all of Scotland's equality groups”

is grounded in the need to use and improve equality evidence in order to develop inclusive policy. The Commission considers this vision to be realistic and likely to lead to positive outcomes. However, we suggest

⁹ As set out by OHCHR:

<https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>

that the outcomes for all groups could be strengthened by adding explicit reference to human rights obligations under international and domestic human rights frameworks. This would provide a basis to develop a meaningful human rights based approach to the collection, analysis and use of data, build relationships and expand the data ecosystem with greater opportunity to understand the needs of groups protected by equality and human rights laws.

2. The role of data for human rights realisation

2.1. Measuring human rights situations

Under international and domestic human rights law, the Scottish Government has obligations to respect, protect and fulfil human rights. These obligations apply to all government activity, including decisions around resource generation, allocation and spend.

Of particularly strong relevance to the Commission's current strategic priorities, there is the obligation to demonstrate progressive realisation of economic, social, and cultural rights in Scotland under international human rights law. This requires the use of 'maximum available resources' to meet a minimum level of rights provision, progressively realise rights over time, and ensure retrogressive steps that reduce the fulfilment of people's rights are not deliberately pursued nor necessary.

Commitments to incorporate the International Covenant on Economic, Social and Cultural Rights and rights for specific groups protected by international treaty law require consideration at this point in time. Possible new obligations concerning budget, policymaking and practice are all likely to require evidence with data and human rights implications.

Human rights concerns in every area are engaged by data collection, storage, analysis and publication. Understanding data can support the fulfilment of human rights and deliver accountability for their progressive realisation and other international human rights law obligations.

Measuring compliance with human rights norms has moved from a purely legal / political analysis focused primarily on case law analysis towards a broader evaluation that prioritises with other modes of inquiry.

International human rights reporting increasingly relies on both qualitative and quantitative indicators, with a suite of global programmes that aim to rank human rights compliance of states emerging since the 1980s.¹⁰ This has led to the Office of the High Commissioner for Human Rights developing good practice guidelines for the use of indicators in evaluating compliance and progress.¹¹

2.2. Human rights based indicators

The methodological approach and conceptual framework for human rights based indicators was developed by the then Special Rapporteur for Health, Paul Hunt (member of the FM's advisory group on human rights leadership) and has been further developed by the Office of the High Commissioner for Human Rights (OHCHR).¹² This approach was designed primarily to assist states:

- to monitor compliance with international human rights treaties;
- to support their reporting duties under the treaties and to improve the quality and consistency of reports submitted.
- support the potential to be used to assess performance in relation to planned outcomes.

Best practice of this methodology allows for three types of human rights indicators, namely: **structure, process and outcome** indicators. Together they address the essential aspects of human rights implementation, namely: **commitment, effort and result**.

Structure indicators measure a state's **commitment** or intention to abide by international human rights law, for example ratification of international treaties or creation of domestic laws and policies;

10 Human Rights Measurement Initiative – The first global initiative to track the human rights performance of countries - <https://humanrightsmeasurement.org/>

11 See <https://www.ohchr.org/en/publications/policy-and-methodological-publications/human-rights-indicators-guide-measurement-and>

12 See <https://www.ohchr.org/en/instruments-and-mechanisms/human-rights-indicators>

Process indicators measure the **efforts** to translate standards into results, such as budget allocations or service coverage;

Outcome indicators measure a state's human rights performance, evaluating the **results** of its human rights policies.

Equality evidence is of particular importance to outcome indicators as understanding variances in outcomes by population groups is vital to realising the rights of the most marginalised individuals.

It is clear from the guidance that human rights indicators should also address cross-cutting issues, namely: participation; accountability and non-discrimination. These cross-cutting issues are foundational blocks of a HRBA and they help to shift the focus of analysis to the most marginalised and excluded. They support a deeper analysis of political and social power relationships in the public (and private) sectors.

2.3. Equality as a human rights concern

Individuals face barriers to claiming their human rights because policy and practice has been shaped around deeply rooted structural inequalities and bias. These structural concerns mean that communities of interest have different experiences of accessible or quality of treatment, from health outcomes to criminal justice.

The Commission does not have a mandate across equalities nor the use of data to support the fulfilment of obligations under the Equality Act 2010, which is the remit of the Equality and Human Rights Commission in Scotland. However, equality and non-discrimination are a human rights concern and integral to the realisation of all human rights, as recognised in a number of international treaties and their interpretations.¹³ The Commission therefore has a high level interest in

13 Including the International Covenant on Civil and Political Rights (articles 2.1, 14, 24, 25 and 26); the International Covenant on Economic, Social and Cultural Rights (article 2.2);

ensuring that equality obligations are well understood and delivered with appropriate information and competence.

Understanding community experiences can help to identify and target the constraints on an individual's human rights in specific settings and that work in concert to maintain social hierarchies. International human rights law prohibits discrimination on a number of grounds - race, ethnic origin, sex / gender, age and disability – but often varies by convention, taking into account the temporal and political context – and some conventions offer an open ended list. ICESCR for example refers to discrimination on the basis of “other status”, as also seen in the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).

Other grounds seen in international law include age, nationality, marital and family status, health status, gender identity, place of residence and economic and social situation. These categories of protection often but not always overlap with the characteristics in UK equality law. For example, the Convention on the Elimination of Racial Discrimination defines the scope of protection as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”.¹⁴ The Equality Act 2010 defines the protected characteristic of

the Convention on the Elimination of All Forms of Racial Discrimination (articles 1, 2, 4 and 5); the Convention on the Rights of the Child (article 2); the Convention on the Elimination of All Forms of Discrimination Against Women (articles 2, 3, 4 and 15) the Convention on the Rights of Persons with Disabilities (articles 3, 4, 5 and 12) and being discriminatory been interpreted as falling within “degrading” treatments for the purposes of the Convention Against Torture. Equality in the scope of the European Convention of Human Rights is also protected by virtue of Article 14: “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

race as “includes (a) colour; (b) nationality; and (c) ethnic or national origins.”¹⁵¹⁶

These differences can often be subverted in practice, but may mean public bodies are collecting data on the basis of domestic legislation that does not perfectly accord with international frameworks or indicators. OHCHR indicates that full compliance with the range of human rights protections under international law would also require assessment on the basis of *displacement status, religion, civil status, income, sexual orientation and gender identity*.¹⁷

Therefore, while treaties can be a useful guide for assessing the scope of state’s human rights obligations to prevent or respond to inequality and discriminatory practices, categories for measurement and analysis are imperfectly identified and subject to evolving understanding and domestic contexts.

2.4. Using data to assess human rights country situations

Robust and broad data is necessary to meet a number of explicit and implicit purposes to prevent and respond to human rights concerns:

- **Measuring progress:** indicators and available data to assess performance are necessary to ensure and report on compliance with international and domestic obligations. Indicators can help establish how the general public (or group protected by the specific obligation) are faring, however disaggregation by enumerated groups or status can strengthen this analysis.

15 <https://www.legislation.gov.uk/ukpga/2010/15/section/9>

16 See also disability definition <https://www.equalityhumanrights.com/en/publication-download/united-nations-convention-rights-persons-disabilities-what-does-it-mean-you>

17 [GuidanceNoteonApproachtoData.pdf \(ohchr.org\)](#)

- **Responding to need:** design of policy and practice should include targeting and mitigating steps that meets the needs of all. Equality and Human Rights Impact Assessment, Childs Rights and Wellbeing Assessments and other forms of Impact Assessment are invaluable tools to support this process, but each requires robust understanding of need in order to be effective.
- **Budget and resource allocation:** access to transparent fiscal data on resource generation, allocation and spend is necessary to demonstrate the delivery of a minimum core and provide evidence of the progressive realisation of economic, social, and cultural rights in Scotland. Fiscal data is needed to support a detailed analysis of the links between policy intention and rights realisation in practice.
- **Accountability and reporting:** a number of international and domestic accountability mechanisms such as treaty body reporting or tribunal assessments require evidence of actions taken by states to improve access to rights protection over time. Other interested stakeholders will also have an interest in demonstrating the impacts of such measures by reference to domestic evidence.

A number of existing human rights requirements for equality data uses are further outlined below.

2.4.1. UN Treaty Body Reporting

The range of methodologies used for evaluating human rights has grown over the past few decades as the value of indicators has been theorised.¹⁸ The UN Committee on Economic, Social and Cultural Rights was one of the first human rights bodies to delve into the difference between *de jure* and *de facto* human rights and international obligations

¹⁸ See for further information, the work of Todd Landman, Edzia Carvalho explores the history of measurement frameworks has responded to the developing understanding of the substantive content of human rights norms - Landman, T., & Carvalho, E. (2009). Measuring human rights. (1st ed.) Routledge Taylor & Francis Group.

and develop schema with the aim of assessing outcome obligations.¹⁹ The 1986 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights further set out that a violation of ESC rights occurs if the state wilfully fails to meet a generally accepted international minimum standard of achievement, which is within its power to meet or deliberately halts the progressive realisation of a right, unless it is acting within a limitation permitted by the Covenant or it does so due to a lack of available resources or force majeure.²⁰

The UNCRPD specifically includes an obligation (Article 31 of the convention) to gather “appropriate information, including statistical and research data, to enable [states] to formulate and implement policies to give effect to the Convention.”²¹

Good practice models for assessing compliance have subsequently been led by OHCHR,²² and endorsed by a growing number of treaty bodies, as well as the Council of Europe, who have endorsed the OHCHR focus on indicators to address “implementation gaps”.²³

Data and evidence form a vital role in the process of treaty body reviews and the Universal Periodic Review. Both processes require the state and other actors – including NHRIs – to report on its work to realise the protection of human rights commitments. The treaty body (and in the case of the UPR, UN member states through the Working Group on Universal Periodic Review²⁴) make non-binding recommendations for member states, including reforms to domestic law and policy. During subsequent reviews, the State is expected to report on implementation

19 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 1: Reporting by States Parties, 27 July 1981, E/1989/22, available at:

<https://www.refworld.org/docid/4538838b2.html> [accessed 14 October 2022]

20 The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 9 Hum. RTs. Q. 122, 131 (1987).

21 [Convention on the Rights of Persons with Disabilities | OHCHR](#)

22 [Human Rights Standards for Data Disaggregation - OHCHR - Background Document.pdf](#)

23 [17th Plenary Session \(coe.int\)](#)

24 For information, see [Working Group on the Universal Periodic Review | OHCHR](#)

of the recommendations received in the previous cycles, providing evidence to support its assessment.

While the UPR is a state-led process and the treaty bodies are expert-led, both processes are comparable in their approaches to monitoring compliance with international standards is similar in being focused on evaluation of country-specific human rights realisation over time. Evidence from states and stakeholders is used to identify legal, policy and practice gaps in protection and opportunities for greater compliance at a population level. This approach is distinct from individual complaints mechanisms that assess and respond to specific violations.

2.4.2. The Sustainable Development Goals

The UN Agenda to 2030 and the Sustainable Development Goals (SDGs) set out targets for progress grounded in the realisation of international human rights standards. The SDGs create an explicit bridge between human rights and human development that focuses on addressing the most socially and economically marginalised in the global community.²⁵

The 2030 Agenda for Sustainable Development makes clear that states have the primary ownership of the goals, and calls for “data, which is high-quality, accessible, timely, reliable and disaggregated by sex, age, race, ethnicity, migration status, disability and geographic location and other characteristics relevant in national contexts.” The Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law.²⁶

25 See [Human Rights ‘Intrinsic’ to Sustainable Development, Deputy Secretary-General Tells Human Rights Council, Stressing Need to Empower Youth | UN Press](#)

26 UN General Assembly, 20th Session, 21 October 2015, Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc., A/RES/70/1, para. 74(g)

In order to assess progress towards the 2030 Agenda, a framework of 232 indicators, has been agreed by UN states²⁷, and which are intended to be complimented by national indicators, such as Scotland's National Performance Framework.²⁸

Estimates by the Danish Institute for Human Rights (DIHR) show that almost half of global SDG indicators have the potential to yield data that is directly relevant for monitoring specific human rights instruments with a further 10% indirectly linked to specific instruments and 40% will generate information supporting a broad human rights analysis.²⁹ A number of programmes such as the Global Partnership for SDG Data³⁰ and Everyone Counts³¹ have sought to enhance the focus on community voices and participatory approaches to SDG monitoring, understanding that a focus on the most marginalised is vital to meeting the Goals.

OHCHR has developed guidance to support the design of indicators to monitor state activities towards the 2030 Agenda. This includes a need for **structural, process and outcome indicators** (as discussed above in section 2.2).

2.4.3. Domestic human rights protections

The Commission's remit does not extend to equality law and therefore compliance or performance of the Public Sector Equality Duty is beyond the scope of these comments. However, we note that the PSED and the Scotland Specific Duties are vital tools in resource allocation in Scotland.³² As a result, any assessment of the compliance of the state's

27 [United Nations Sustainable Development Goals \(ncf.uk.com\)](https://ncf.uk.com)

28 [Sustainable Development Goals | National Performance Framework](#)

29 See

https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/dihr_human_rights_and_data_oct_2017.pdf

30 [Global Partnership for Sustainable Development Data \(data4sdgs.org\)](https://data4sdgs.org)

31 [Everyone Counts: Using citizen-generated data to monitor progress against the SDGs | Department of Economic and Social Affairs](#)

32 Jennifer Sigafos, "Using Equality Legislation as a Sword," International Journal of

fulfilment of ESC rights and the equality and non-discrimination components of human rights, including rights protected the Human Rights Act, will largely require the same or similar compliance with the Equality Act obligations.

Evidence gathered and analysed by population group can also be invaluable in assessing progress towards statutory targets such as child poverty targets, and support targeting action to address unmet needs to realise the rights of specific groups in meeting the high level target.

The Commission has undertaken a body of work looking at how equality impact assessments (EqIA) can be best utilised to support a wider human rights based approach to policy design and implementation that leads to better outcomes for individuals and communities.³³ This project was supported by a wide range of public, private and third sector stakeholders and was endorsed by the UN Independent Expert on foreign debt and human rights who explored this particular work when developing his Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies³⁴. These guidelines highlighted that human rights need to be a central factor of good policymaking if economic reforms are to “*help advance societies, rather than hinder people’s lives*”.

Through the pilot project, we set out building blocks of best practice to: “*Building Block 6: EQHRIAs should be supported by robust and reliable evidence which is sufficient to support any conclusions and recommendations that are reached. Where insufficient evidence exists, assessors should identify processes for collecting evidence that fills the gaps.*”³⁵

Discrimination and the Law 16, no. 2-3 (June/September 2016): 66-82

33 See [EQHRIA Home - SHRC - Equality & Human Rights Impact Assessment \(scottishhumanrights.com\)](https://scottishhumanrights.com)

34 See https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/57

35 See <https://eqhria.scottishhumanrights.com/eqhriaevidence.html>

A number of UN human rights committees have proposed the use of human rights impact assessments to support better policy making and fiscal decisions. A long standing criticism of the Equality and Human Rights Budget and Advisory Group (previously EBAG) and the Commission as part of that group, is that some Scottish Government initiatives appear to retrofit Equality and Human Rights Impact Assessments to their processes rather than integrating them as core parts of policy design, development, and decision-making.

The new mainstreaming strategy on equalities and human rights provides a timely opportunity to build the necessary capacity to undertake, and support for, improved equalities and human rights assessments. Given the broader use of equality data across human rights, human development and other progress assessment tools, we recommend that the next Equality Evidence Strategy explicitly acknowledges the use of equality data in human rights monitoring, decision-making and scrutiny throughout, also allowing for emerging practice and new models to emerge through the Scottish Government's current equality and human rights mainstreaming and human rights incorporation agendas.

3. Scottish human rights indicators and evidence

3.1. Scotland's National Action Plan, SDGs & the NPF

The Commission has long advocated for the improved national measurement of human rights progress in Scotland. Since 2015 the Commission has worked to ensure that the SDGs were reflected within the measurement framework for Scotland's First National Action Plan for Human Rights (SNAP), and the timescale (2013 to 2030) and content of SNAP's long term 2030 Outcomes were consciously influenced by the SDG Agenda. One of those outcomes focuses on embedding human rights within national measurement frameworks.

Therefore, following the Scottish Government's commitment to the SDG Agenda, the Commission, encouraged the Government to embed human rights and reflect their SDG obligations within their own National Performance Framework. To facilitate this, the Commission developed a

small working group involving the Scottish Government leads for the SDGs, National Performance Framework and Human Rights. The work was brought within the Scottish Government's early Open Government Partnership Action Plan (Action 2).³⁶

In the last review of the NPF (published 2018) the Commission engaged with the NPF team to support the development of the methodology of review, build capacity³⁷ on the mutually supportive nature of the human rights, SDG and NPF frameworks and supported the development of a National Outcome on human rights. We also 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.

The Commission welcomed the inclusion of a specific National Outcome on Human Rights in 2018 and has tried to support the improvement of the associated indicators, including supporting the process of developing a new indicator for human rights. However the new indicator remains under development, and the existing indicators remain unfit for purpose (as indicated to the team at the point of launch).

We have expressed concern that more work is needed to strengthen the measurement indicators across the NPF³⁸ as part of current reforms in order to progress as human rights based indicators, as defined by the UN High Commissioner for Human Rights.³⁹

36 See <https://www.opengovpartnership.org/>

37 This included undertaking a gap analysis of NPF indicators compared the SDG indicators; and producing a mapping of links between the 2018 National Outcomes, Related human rights, related core and supporting SDGs and SNAP outcomes.

38 See <https://www.scottishhumanrights.com/media/1764/npf-debate-briefing-for-msps.docx>

39 See

https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf

In 2019, the Commission, in partnership with the Scottish Government Performance and Outcomes team, hosted discussions between international experts from the Office of the United Nations High Commissioner, the Danish Institute for Human Rights and the Scottish Government. Three separate meetings engaged a range of stakeholders (within and external to government) on embedding a HRBA to the National Performance Framework (NPF) and the development of human rights based indicators.

The overall focus of these meetings was to increase understanding at all levels of government and within the [SDG Network](#)⁴⁰ and wider civil society as to the value of and practicalities involved in embedding and fully integrating human rights and SDGs within the way Scotland measures national progress.⁴¹

3.2. Human Rights Tracker Tool

For a number of years the Commission has hosted discussions with the Scottish Government (and Parliament) about the role for and benefit of developing a human rights tracker tool. This will become even more critical as a means to showing progress with the effective implementation of international human rights treaties into scots law.

The New Zealand's Human Rights Action Plan was the genesis for the Commission's interest in a model that could identify and map Human Rights Treaties information and SMART track corresponding government action. New Zealand had the best global practice in terms of its reporting being transparent and accountable to civil society.⁴²

40 See <https://globalgoals.scot/sdg-network-scotland/>

41 See <https://www.scottishhumanrights.com/news/commission-welcomes-international-experts-to-explore-a-rights-based-approach-to-the-national-performance-framework/>

42 The NZ Government uses the 'Open Source' model (developed by Impact OSS) to report against and track the progress the NZ Government is making on Universal Periodic Review (UPR) recommendations, according to subject and theme.

The Commission's interest in developing a similar tracking system originated from discussions around a monitoring mechanism for the actions within the second iteration of Scotland's National Action Plan (SNAP), and the Commission believes that a model similar to the NZ model would assist in measuring and tracking SNAP 2 going forward as well as having a primary aim of supporting scrutiny of Scotland's human rights progress – both to monitor progress and identify gaps in rights realisation. This will ultimately enable better targeted action to help improve outcomes for people. This model enables information to be housed in a way that is transparent, and also crucially engages the participation of duty-bearers and rights-holders. In particular, supporting Parliamentary scrutiny to be increasingly informed by human rights and human rights based approaches in practice.

It would also allow viewing human rights progress through a variety of lens including:

- Groups of interest, including equalities groups;
- Thematic Issues
- Existing human rights obligations (international and domestic);
- Concluding observations & recommendations from UN Treaty Bodies and Special Procedures;
- 2030 Sustainable Development Goals;
- SNAP 2030 Outcomes;
- NPF Outcomes.

Development of this style of tracker has received strong support from the SNAP Development Working Group (that helped to develop the first draft of SNAP 2) and its wider stakeholders, as well as positive feedback from the Scottish Parliament's Equality and Human Rights Committee.

The Scottish Government did undertake a Discovery Project on the development of a tracker tool, but this work has now been parked for over a year due to 'other priorities', with no timescale for when development will be back on track.

3.3. Scottish Data to support Incorporation implementation and Monitoring

The Scottish Government's commitment to incorporation should also be more clearly linked to the Equality Evidence Strategy. The period 2023-2025 is a critical opportunity to put in place the tools necessary to prepare public bodies for new human rights related obligations. The incorporation of international frameworks for specific groups and the inclusion of equality clause means that preventing and mitigating ill-effects for groups protected by the new legislation will require evidence.⁴³

While the Bill is yet to be written, recommendations 4 and 5 from the First Ministers Advisory Group on Human Rights Leadership,⁴⁴ focused on the need for a Scottish Government National Mechanism for Monitoring, Reporting and Implementation of Human Rights (R4) and Development of human rights-based indicators for Scotland's National Performance Framework (NPF) (R5), which would require the development of human rights-based indicators to more appropriately measure the outcomes of not only the new human rights framework but also the National Performance Framework as a whole. It further noted that both qualitative data, including the lived experience of rights-holders, and quantitative data, disaggregated where necessary, would inform such monitoring of outcomes.⁴⁵

Subsequently the Taskforce recommended that further consideration should be given to the development of a National Mechanism for Monitoring, Reporting and Implementation.⁴⁶

43 SG Response to the Taskforce March 2021

44 See <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

45 See <https://humanrightsleadership.scot/wp-content/uploads/2018/12/First-Ministers-Advisory-Group-on-Human-Rights-Leadership-Final-report-for-publication.pdf>

46 See

<https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/03/national-taskforce-human-rights-leadership-report/documents/national-taskforce-human-rights-leadership-report/national-taskforce-human-rights-leadership-report/govscot%3Adocument/national-taskforce-human-rights-leadership-report.pdf>

The CRC Bill expected to be passed into law within the coming months includes provisions aimed at implementation: the publication of the Children's Rights Scheme, public body reporting duties. Impact Assessments and new support guidance and toolkits for public bodies. Each will require access to different forms of data to evaluation implementation. Similar provisions aimed at implementation are likely to be the subject of detailed consideration in the forthcoming human rights framework. A duty to consider or a due regard duty affecting public policy and practice is one option for maximising compliance.

For these reasons, we recommend that the Scottish Government intensifies efforts expand the collection, analysis and use of evidence through the strategy to coincide with the forthcoming equality and human rights mainstreaming strategy, including commitment to the development of the Human Rights Tracker Tool.

4. Embedding a Human Rights Based Approach in the Equality Evidence Strategy

Policymaking and resource generation, allocation and spend requires an evidence base. The UN General Assembly has adopted a resolution on the Fundamental Principles of Official Statistics which sets out Principles to support global acceptance and support for official statistical information as a vital public good.⁴⁷ Data allows us to measure and respond to lack of progress towards equality, human rights and human and global development. However, data also requires the general public to meaningfully comply with requests for information, often personal and identifying information, and therefore should rightly be subject to clear parameters and accountability for any misuse.

The Commission strongly encourages a human rights based approach (HRBA) to all policy and practice. The PANEL principles - Participation, Accountability, Non-Discrimination, Empowerment and Legality - can be

⁴⁷ See <https://unstats.un.org/unsd/dnss/gp/FP-New-E.pdf>

one useful framework through which to analyse the extent to which rights are put at the centre of practice.⁴⁸ A HRBA can improve public trust and shared ownership, expand the scope of activity and ensure that legal and policy requirements are met in relations to all stakeholders.

OHCHR has further endorsed the principle of a HRBA to data, arguing that HRBA can “bring together relevant data stakeholders and develop communities of practice that improve the quality, relevance and use of data and statistics consistently with international human rights norms and principles.”⁴⁹ Setting a clear underlying framework based on human rights can engender confidence and trust from groups whose inclusion or exclusion in data collection, analysis and use is informed by historic bias and marginalisation by the state.

The UN High Commissioner for Human Rights has published a Guidance Note to support a human rights-based approach to data collection and disaggregation.⁵⁰ The Note aims to establish a common understanding of high level principles surrounding data to support the implementation of Agenda 2030. The preliminary principles set out under a human-rights based approach to data include:

- **Participation** – the involvement of groups of interest in all aspects of data collection activities, including the identification of data needs, selection and testing of appropriate methodologies, the collection and storage, dissemination, analysis and interpretation.
- **Data-Disaggregation** – more detailed data analysis to identify inequalities among population groups.

48 See https://www.scottishhumanrights.com/media/1814/shrc_panel_self-assessment_tool_vfinal.pdf

49 See

<https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf>

50 *ibid.*

- **Self-identification** – data is provided by individuals about themselves and at their discretion in accordance with the principle of “doing no harm.”
- **Transparency** – data should be disseminated as quickly as possible, in accessible language and formats and in line with the freedom to receive and impart information, as set out in international human rights treaties.
- **Privacy** – data should respect confidentiality, stored securely and robust data protection should be supervised by an independent body.
- **Accountability** – data should be used to ensure human rights actors are held to account and National Statistical Offices are themselves duty-bearers subject to human rights obligations.

While OHCHR’s principles vary slightly from a PANEL approach, the rational and basic elements of a HRBA are the same. A HRBA reflects the human rights standards protected in a number of international human rights treaties including privacy rights, equality and non-discrimination obligations and developed principles of human rights law and the and relevant equality provisions of treaties.

Assessing legal requirements, ensuring representation and confidence from data subjects and protecting privacy and dignity is critical to developing multi-method data sets that allow for consideration of all group circumstances and policy needs. This supports the stated aims of the EDIP around learning and good practice and expanding the availability of robust datasets.

A range of evidence sources may be needed to understand and respond to human rights situations. We note that qualitative statistics are an important tool, but not the only form of data useful to policymakers and researchers. A range of tools and scales are necessary to meet the

needs of all data subjects and users.⁵¹ Linking data collection to pre-determined national and international indicators can support benchmarking and monitoring, while also responding to concerns of bias or selective measurement.⁵²

4.1. Human rights in the collection of data

A number of human rights concerns are engaged in the collection or proposed collection of any evidence. Firstly, data collection allows us to “measure what we treasure”.⁵³ Decisions on which groups or sub-groups should be included in the data collection and how those groups or sub-groups should be defined are not neutral. In some cases, such as for Equality Act 2010 obligations, the minimum parameters may be pre-determine by law. International human rights law also provides for a number of categories that Scotland has an obligations to prevent from discrimination against in meeting human rights obligations.

Secondly, all individuals but especially historically marginalised groups have significant privacy and dignity concerns engaged by evidence collection. The UN Special Rapporteur on the right to privacy has outlined a number of specific concerns in relation of information gathering in a Report to the Human Council in 2016, arguing for greater recognition of the relationship between privacy and personality.⁵⁴ The right to a private life is generally accepted to include the right to freely develop a personal identity.⁵⁵

51 See

https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/dihr_human_rights_and_data_oct_2017.pdf

52 The World Conference on Human Rights in Vienna recommended indicator analysis to monitor progress and target policy improvement.

53 United Nations Department of Economic and Social Affairs, ‘The Millennium Development Goals Report’ 2015 , pp 10-13

54 <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/71/368&Lang=E>

55 See *Goodwin v the UK* (2002) 35 EHRR 18 at 90

The OECD Recommendation of the Council on Good Statistical Practice,⁵⁶ has also set out standards for National Statistics including:

- the privacy of data providers (including individuals, households, enterprises, administrations, and all levels of government) and guarantee by law the confidentiality of the individual information provided and its use for statistical purposes only, and
- the right to access administrative sources to produce official statistics.

A distinction should be drawn between collecting the *right data* to inform decision-making and using the *right methods*. The focus on pre-existing, largely quantitative sources in the draft Equality Evidence Strategy Actions suggests a focus on areas where data can be collected in sufficient volume to allow for a rich understanding of various needs. In some instances, large data sets can also support deeper analysis and allow for multiple characteristics to be combined in analysis. However other methodologies may be better suited to capturing the experiences of smaller population groups and / or groups with specific needs around support or privacy.

A human rights approach to data collection extends to the information sought as well as the group approached or reported on. Questions or formats should be gender-sensitive, culturally-sensitive and informed by an understanding of population needs. Tools such as the UN Statistics Manual,⁵⁷ the European Institute of Gender Equality Gender Statistics Database⁵⁸ and the Fundamental Rights Agency's Compendium of Practices on Equality Data⁵⁹ can support processes that reflect systemic biases, developing concepts and definitions and accounting for

⁵⁷ [UNSD — Methodology](#)

⁵⁸ See <https://eige.europa.eu/gender-equality-index>

⁵⁹ See <https://fra.europa.eu/en/promising-practices-list>

stereotypes. Such tools at the Scottish Level should be developed in participation with under-represented population groups, going beyond counting to investigating established concepts.

The Commission - and many CSOs - have noted the impacts of large data gaps as a barrier to realisation of individual rights, especially for people from marginalised groups.⁶⁰ In particular, a lack of race related data in a high number of policy areas remains an acute problem for further policy development and measuring impact. Race and ethnicity data is a particularly complex necessity given the range of community needs that need to be understood and responded to in policymaking, involving sometimes fluid population groups of varying size.⁶¹ Responding to data gaps should be a key priority of the next Equality Evidence Strategy and wider data improvement work across Government.

4.2. Human rights in the disaggregation and analysis of data

The analysis of data is well served by a HRBA. For example, the legal obligations set out in treaties can serve as a common framework for developing relevant indicators. Soft law and interpretation from treaty bodies and courts can support establishing more precise indicators, informed by country context, the needs and preferences of data subjects and data user and public explanation of methodology and data use policies.⁶²

Over time, focus on “target groups” has been increasingly been adopted to refer to specific population groups, like women, children, race and ethnic or religious minorities and other marginalised segments of the

60 [22_08_10-upr-full-report-designed.pdf \(scottishhumanrights.com\)](#)

61 [Ethnic group, national identity and religion - Office for National Statistics \(ons.gov.uk\)](#)

62 See

https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf

population the duty bearer should consider to avoid discriminatory practices. As a party to human rights treaties with equality and non-discrimination provisions, the state is obliged to guard against discrimination for some target groups that may form the basis for data disaggregation and analysis.⁶³

As described above, equality grounds in human rights law are not necessarily consistent between treaties nor exhaustive. However, the protected characteristics of the Equality Act largely overlap, and in the devolved context PSED is the available framework to prevent and respond to inequality. Meeting the needs of target groups requires that evidence used and applied to indicators in any domain are disaggregated. The UN Secretary General High Level Panel of Eminent Persons on the Post-2015 Development Agenda that was instructive in the development of the SDGs suggested that Agenda 2030 needed a focus on the ‘neediest’ and analysis of whether they are receiving essential services. The Panel outlined that:

*“indicators should be disaggregated to ensure no one is left behind and **targets should only be considered ‘achieved’ if they are met for all relevant income and social groups**” [our emphasis]*⁶⁴

Building on Equality Evidence, Scotland may over time consider gathering data on a broader range of characteristics as appropriate and based on context for human rights analysis. For example indicators on rurality or socio-economic status may be helpful for some public bodies, and may be usefully combined with Protected Characteristic data to understand particular needs of specific communities, for example, quality of healthcare access for rural women with caring responsibilities.

63 See

<https://www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/DataDisaggregation.pdf>

64 See <https://www.un.org/sg/en/management/hlppost2015.shtml>

The data collected will perhaps depend on specific methodologies or needs.

The Commission asserts that it would be beneficial to explore areas of mutual alignment between equality obligations, human rights obligations and the NPF. Often, disaggregated data is required across the suite of indicators and reporting obligations in order to understand particular vulnerabilities or areas of structural exclusion or marginalisation with particular development and human rights commitments.

Disaggregation is however technically complicated and limited by the scale of collection. Not all evidence sources are suitable to disaggregation, and in some scenarios tensions between privacy and dignity concerns of individuals and public interest in data analysis may arise. The most specific, and therefore useful data may require large survey groups that allow for multiple characteristics to be applied.

A number of non-governmental initiatives aimed at public awareness of specific group's experiences of human rights domains exist and can be used to strengthen and / or interrogate it. Increasingly, digital methods of data collection and analysis are being used more widely, with different levels of human intervention, with systems that can disaggregate and predict trends.

Of course, reliance on algorithms and digital evidence can itself perpetuate human rights concerns. While data protection is not expressly included in the European Convention on Human Rights, the Council of Europe has developed its approach to data to the effect that certain "sensitive" data including personal data revealing racial origin, political opinions, religious or other beliefs, and information on an individual's health or sex life, or on any criminal convictions should not be automatically processed without appropriate safeguards.⁶⁵ The

⁶⁵ See <https://rm.coe.int/convention-108-convention-for-the-protection-of-individuals-with-regar/16808b36f1>

European Court of Human Rights has typically followed, finding that data such as ethnicity, sexual orientation and health status and other sensitive data justifies reinforced protection under Article 8.⁶⁶ All interference with data privacy must be “in accordance with the law”, pursuit of a “legitimate aim” and “necessary in a democratic society”.

Increasingly digitalised versions of data collection and analysis offer opportunity and challenge in expanding the scope and utility of data. The UN Special Rapporteur on the right to privacy has warned that the content and scope of information collected by digital technologies poses significant risks to individual privacy.⁶⁷

Personal characteristic information may also be used to perpetrate rights abuse. In the Netherlands in 2021, an algorithm in the social security system was rediscovered to be reinforcing existing institutional bias of a link between specific race and ethnic groups and criminal activity, with the system flagging non-Dutch nationals as a higher fraud risk than Dutch nationals. The algorithm was a self-learning mechanism that entrenched these biases over time without human analysis or disruption, perpetuating the discriminatory decisions.⁶⁸ This lack of human oversight may exacerbate systemic bias that AI can reflect and perpetuate.

4.3. Using data for human rights purposes

Data is an invaluable tool in reporting to international scrutiny bodies. State parties are required to report to a host of international human rights treaties, as covered above in Section 2.2. These reporting processes can themselves encourage stronger data gathering and

66 *S. and Marper v. the United Kingdom*, [GC], 2008, § 66; *Yvonne Chave née Jullien v. France*, 1991, § 75; *Z v. Finland*, 1997 (§§ 113-114),

⁶⁷ [Etpu \(un.org\)](https://www.un.org/)

⁶⁸ See <https://www.amnesty.org/en/latest/news/2021/10/xenophobic-machines-dutch-child-benefit-scandal/>

analysis over time⁶⁹ and support interventions, especially where analysis from external stakeholders supports closer attention to a specific group. Encouraging dialogue between stakeholders reporting to these processes can help to identify common concerns and support joint working.

As discussed above in Section 3, indicators within the National Performance Framework have the potential to be used to show progress in human rights realisation. This can be achieved through improved human rights indicators for the human rights outcome combined with an understanding of how a wide range of indicators throughout the NPF could have relevance to measuring human rights progress (because there are aspects of all the National Outcomes that have relevance to human rights). However, these indicators and the data that support them 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 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.

Domestically, data should also play an important role in directing budgetary resource and policy design. International guidance for human rights related indicators is clear that relevance of specific indicators should be context specific, requiring local analysis of needs, scope and analytical context in order to assess and target progress.⁷⁰ The more detailed the information, the more in-depth the analysis can be and the

69 See

https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/dihr_human_rights_and_data_oct_2017.pdf

70 See https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/sdg-folder_data.pdf

clearer a causal connection can be made between budgetary decision-making and the progressive realisation of rights.

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. Budget decisions can have discriminatory or positive impacts on different groups of the population and equally they can help to tackle or reinforce structural inequalities. This is why human rights and equalities impact assessments to inform and evaluate budgetary decisions are so crucial.

Transparency is a window into the budget execution of the government, helping the general public to hold the government to account and yet fiscal policies are perceived to be inaccessible to most people. Fiscal transparency requires the provision of comprehensive and accurate information on past, current, and future activities of the government, and the availability of such information can help to improve the quality of decision-making processes. It is an important element in the effective management of public finances, and it helps to build the confidence of the general public in the work of public bodies, thereby contributing to the sustainability of public policy implementation.

In terms of the availability of accessible and transparent data, as the Commission's previous work on Open Budgets⁷¹ and fiscal transparency has shown, there remains a lack of transparency in the Scottish budget to date, which is problematic. There has been welcome progress in the last year, with the creation of the 5-year fiscal transparency project led by the Scottish Exchequer and the inclusion of fiscal transparency goals within the Open Government Partnership Action Plan⁷².

71 See <https://www.scottishhumanrights.com/media/2014/scotland-2019-obi-report-vfinal.pdf>

72 See <https://www.gov.scot/publications/scotlands-open-government-action-plan-2021-25/>

As part of this work there should also be significant effort made to link fiscal and equality data through the National Performance Framework. Once we have established the links between data, challenges, national priorities, policy objectives and spending allocations in the first instance, the process to evaluate the impact can follow. Tangible measurement of progress requires a connective shift in how we make fiscal decisions, starting with evidenced priorities and defined outcomes leading to resourced policy and programmes that can then be reviewed for impact. Connecting the nine priorities with the human rights framework, the National Performance Framework, the Programme for Government, and the Budget are necessary to facilitate this transformational change in measuring budget impact.

Finally, reporting obligations for public bodies are best supported by robust, disaggregated data that allows for as full a picture as possible to be built up and evaluated. Incorporation of ESC rights provides opportunity to think about new reporting and monitoring approaches. For example, the South African approach to socio-economic rights protected by the constitution includes a role for non-legal bodies such as the South African Human Rights Commission. The SAHRC is given a legal monitoring function, with state organs are obliged to the report on measures they have taken to realise constitutional rights. The SAHRC is then required to report to Parliament.

4.4. Challenges in the use of data for human right purposes

It must also be recognised that there are limits and challenges to the usefulness of data – of all types - to analyse human rights realisation. The Danish Institute for Human Rights outlines four broad thematic issues with the use of data for human rights analysis purposes:

- “The relatively limited aspects of states’ human rights obligations that are monitored through the global indicators (being mainly focused on long- term outcome), the challenges in measuring perceptions, and the reductionist effect of certain indicators.
- “The limitations in the potential for data disaggregation related to the type of indicators, gaps related to disaggregation on the basis

of grounds of discrimination in international law, and the limited capacity of National Statistical Offices (NSOs).

- “The lack of conceptual clarity and/or limited data availability for many of the global indicators.
- “The capacity constraints of many NSOs, and the limited resources available for capacity-building and data collection.”⁷³

Essentially, perceived common features of data quality, scope and analysis cannot be divorced from contextual understanding that varies among states. This makes comparison between states to assess progress difficult. Within a state, benchmarking can be informed by international frameworks and principles but often national indicators will need to complement and supplement international ones, taking into account unique demographic, political / cultural and resource considerations.

A hierarchy between forms of quantitative and qualitative data is often assumed, with statistical information at the top and personal experience disregarded. This can result in marginalised communities or traumatic experiences being further excluded from the established evidence based for human rights policy, law and practice. Alternative forms of data collection by trusted civil society organisations may help to fill these gaps and over time start to build more positive relationships between marginalised groups and official data collection.

A note of caution must also be observed by Government and human rights organisations that data are often interpreted by the public and other users as a statement of fact, when in reality methodological limits across all forms of collection, analysis and use inevitably limit to a “partial truth”.⁷⁴ In reporting the scope or depth of a negative or positive

73 See

https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/dihr_human_rights_and_data_oct_2017.pdf

74 Brian Root, "Statistics and Data in Human Rights Research," American Society of International Law Proceedings 107 (2013): 65-68

impact, reliance on data can obscure, overstate or undermine nuanced experience across population groups.

For this reason, it is vital to create an expansive evidence base that views different methodologies and complementary rather than in a hierarchy.⁷⁵ The Commission recommends that the Scottish Government embeds a human rights based approach to data and evidence into the Equality Evidence Strategy in order to support a pluralistic, multi-purpose and broadly supported evidence-base across equality, human rights and development agendas.

4.5. Building stakeholder relationships in data collection

A key role of NHRIs is to monitor and measure the national human rights situation against international human rights standards. NHRIs often prepare annual status reports on the general human rights situation as well as analysis and research on specific human rights topics. Many NHRIs have a strong focus on discrimination and inequalities, and monitor the situation of vulnerable and marginalised groups and particular rights-holders. Therefore, they can offer valuable guidance in identifying relevant groups for targeted monitoring.

When the Commission was created, one of its first activities was to undertake a three-year research project into the human rights concerns across Scotland to provide an evidence base for its work and for the development of Scotland's first National Action Plan for Human Rights. This research took a mixed methods approach combining reviews of existing social and legal research with primary research with rights-holders. In line with our statutory mandate, particular focus was placed on hearing from those who are marginalised and whose voices are less often heard.

75 NJHR 30:3 (2012), 239-278

The publication of this research⁷⁶ provided an evidence base upon which the Commission continues to build and add to with evidence collected for each treaty review and all of our policy and legal consultation work. Many of the stakeholders in this initial work remain connected to the National Action Plan process a decade on.

4.5.1. OHCHR Memorandum of Understanding (MoU)

In 2019 when visiting for the meetings coordinated with the Scottish Government, DIHR and OHCHR mentioned in Section 3.1, the Commission also arranged a bilateral meeting with between the Head Statistician and the OHCHR. This meeting was primarily focused on discussing the model Memorandum of Understanding (MoU) that has been developed by OHCHR as a tool for the formalisation of collaborative working relationships between National Human Rights Institutions (NHRIs) and National Statistical Offices (NSOs). The MoU seeks to assist parties in sharing knowledge and expertise and in collaborating on official data collection, dissemination and analysis.

Specifically, some of the ways they believe that NHRIs could contribute to official statistical processes are for instance:

- Provision of information about vulnerable or disadvantaged groups and groups at risk of being left behind in the 2030 agenda for Sustainable Development, including support on how to reach out and uphold human rights in data collection on these groups;
- Advice on the publishing and dissemination of the resulting data and on 'return of information' (that is, returning the final data to the groups that have provided it in a way they can access and use); and
- Assistance with interpreting and analysing data on the main groups of interest.

76 See <https://www.snaprights.info/wp-content/uploads/2016/01/Getting-it-Right-An-Overview-of-Human-Rights-in-Scotland.doc>

Simultaneously, they argue that NSOs have much expertise to offer that is relevant to the work of NHRIs, such as in:

- Research design, data analysis and data management
- Availability of official data (or data from other sources) on issues of interest to NHRIs

OHCHR perceives these relationships could be valuable in the context of the state's work toward implementing and measuring progress within the 2030 Agenda for Sustainable Development, and in translating the Merida Declaration adopted by NHRIs at country level.

The Commission and OHCHR were both keen to pursue an MoU, however, interest from the Head Statistician was limited at the time. The Commission remains keen to support such a development (as does the OHCHR).

End.