

Building a new human rights framework for Scotland: Key legal features

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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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'To deny people their human rights is to challenge their very humanity.'
– Nelson Mandela

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1. Executive Summary

This document summarises the Commission's vision on the key legal features for the proposed new Human Rights Bill for Scotland, explaining what the Commission considers are essential to create truly world-leading legislation.

The key legal features are grounded in international human rights law and the best practice of countries that have already legislated to provide substantial protection for economic, social, cultural and environmental rights.

Background

The Human Rights Act has had a significant positive impact on people across the UK in many areas. It has been an essential catalyst in encouraging and promoting a human rights culture in the design and delivery of services across Scotland.

However, economic, social, cultural and environmental rights, are not explicitly covered by the European Convention on Human Rights or the Human Rights Act. Economic, social and cultural rights are all essential to living a dignified life, and all human rights are universal, indivisible and interdependent, making up one cohesive body of law. It is essential that economic, social, cultural and environmental rights are incorporated into national law alongside civil and political rights, in order that all rights have equal status and enforceability in Scotland.

Incorporating economic, social, cultural and environmental rights into national law will lay an essential foundation for the development of more specific policies and laws to uphold them. It will bring them closer, making them more relevant and present for policy developers, legislators, duty bearers, and rights holders. It will also ensure that breach of these rights is justiciable, allowing people to access a suitable remedy.

A new era for Human Rights

The Commission therefore fully supports the Scottish Government's commitment to incorporate a range of international human rights, set out in UN treaties ratified by the UK, into Scots law. These cover economic, social, cultural and environmental rights, as well as specific protections for disabled people, women and girls, people from black and minority ethnic communities, older persons and LGBT+ persons.

The Commission further supports the Scottish Government's commitment that this legislation should be "world leading". This is an opportunity to build on international best practice, learning from other countries, and going further to enshrine the strongest possible protections within the competence of the Scottish Parliament, and the most effective mechanisms for implementation and accountability.

The Commission also agrees with the National Taskforce on Human Rights Leadership that the new legislation should be **internationalist**, **maximalist**, **multi-institutional** and **world leading**.

Internationalist

The new legislation must guarantee the domestic protection of treaties ratified by the UK and keep pace with international rights developments.

To ensure a truly internationalist approach, it must include the following key features:

- incorporation of all of the rights enshrined in the international human rights treaties;
- an obligation to interpret such rights in accordance with international law;
- an obligation to take into account the international standards produced by treaty monitoring bodies, such as general comments, statements and concluding observations;
- provisions ensuring the obligations in international law for both public bodies and private actors are enshrined in the legislation.

Maximalist

The new legislation should aim to achieve the most effective promotion and protection of human rights possible within Scotland's constitutional arrangements.

To ensure a maximalist approach, the Bill should incorporate all of the rights set out in the ratified treaties as well as additional rights for older persons, LGBT+ persons and the right to a healthy environment. It should also, to the greatest extent possible, guarantee the rights of those historically marginalised are protected and realised.

Multi-Institutional

The new human rights framework should create a system where human rights leadership and responsibility are shared among Parliament, government at all levels, the Courts, regulators, ombudspersons, inspectorates and the National Human Rights Institution.

For a multi-institutional approach to be successful:

- clear and strong obligations need to be placed on scrutiny bodies, local authorities, and Scottish public bodies;
- the Scottish Parliament should be given an important role in ensuring that further legislation is compatible with the Human Rights Bill;
- courts should be provided with the possibility of granting all forms of reparations under international human rights law and required to assess compliance with the duties under a standard of review that is appropriate for the adjudication of human rights;
- Scotland's National Human Rights Institution should be given an appropriate mandate and powers to ensure it can play a strong role in human rights promotion and protection.

World-leading

The new Human Rights Bill must aspire to be bold, progressive and inspirational to the international community.

Many countries in the world have incorporated economic, social, cultural and environmental human rights in their domestic legal framework.

Some have strong mechanisms of accountability and easy processes to access justice. Others have strong mechanisms to prevent harm, ensuring that systematic human rights violations don't occur.

Scotland should draw on these best practice examples and ensure that the new Human Rights Bill:

- places a duty to respect human rights on all private actors, along with further duties on those private actors that directly provide human rights services;
- guarantees human rights to LGBT+ persons and older persons, although these rights have not yet been recognised in a binding international legal document;
- requires judicial and non-judicial routes to remedy that are accessible, affordable, timely and effective;
- puts in place mechanisms that require planning, coordination, and prioritisation to ensure the progressive realisation of rights;
- requires that minimum core obligations are defined through a participatory process and detailed in further legislation;
- ensures that human rights budgeting will be applied;
- puts in place strong monitoring mechanism.

The Key Aims

The Commission considers the new Human Rights Bill for Scotland should be grounded on four objectives:

1. Ensure a rights-based country.

One of the fundamental aims of the new legislation is to ensure all legislation, policy, planning, and services in devolved areas are compliant with the incorporated rights.

To achieve this, the rights and duties must be clear and easily accessible to all, including to duty-bearers, who must understand

what they need to do to make "rights real", and to rights holders, so they can identify and assert their rights.

Obligations that are inherent to economic, social and cultural rights, such as "minimum core", "progressive realisation" and "maximum available resources" must be clearly defined on the face of the Bill. The range of duty-bearers must also be identified.

2. Make rights justiciable.

The bill must provide people with the ability to receive redress when their internationally protected rights are violated.

Access to an effective remedy for breach of the incorporated rights, which is required under human rights law, will require clear interpretive duties be included in the Bill. It will also necessitate consideration of the appropriate standard of review applicable to these claims and the remedies available to courts, tribunals and administrative decision-makers. In addition there will need to be a commitment to tackle the major barriers to access to justice for human rights claims in Scotland, including legal and procedural complexity, the lack of legal aid and/or free advice and representation services, the high costs associated with litigation, and the considerable time, emotional resources and energy required to pursue a human rights claim.

3. Advance rights.

The Bill is also a chance to protect rights not yet found in binding international human rights instruments the UK has ratified, such as the right to a healthy environment. Additionally, it's an opportunity to advance rights not found in full in international law, such as particular rights for older persons and for LGBT+ persons.

4. Protect best practices.

In addition to incorporating new international human rights, the Bill presents an opportunity to enshrine existing best practice not yet legally protected in Scotland into law, for example, legislative consultation or the creation of human rights action plans.

The essential elements of the Bill

In order to secure an internationalist, maximalist, multi-institutional and world-leading Bill, the Commission considers it must contain the following essential elements:

THE RIGHTS

- Incorporate the rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), to the fullest extent possible within the limits of the Scottish Parliament's legislative competence.
- Incorporate the rights enshrined in the International Convention on the Elimination of Racial Discrimination (ICERD), to the fullest extent possible within the limits of the Scottish Parliament's legislative competence.
- Incorporate the rights enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to the fullest extent possible within the limits of the Scottish Parliament's legislative competence.
- Incorporate the rights enshrined in the Convention on the Rights of Persons with Disabilities (CRPD), to the fullest extent within the limits of the Scottish Parliament's legislative competence.
- Incorporate the right to a safe, clean, healthy and sustainable environment as a human right, in line with the UN Human Rights Council Declaration and international best practice, including the substantive and procedural protections.

- Incorporate the rights of older people recognised in article 25 of the EU Charter of Fundamental Rights, as well as the rights derived from the United Nations Principles for Older Persons, drawing on the Inter-American Convention on Protecting the Human Rights of Older Persons as a reference to further the rights of older people in Scots Law.
- Incorporate specific rights for LGBT+ persons that are drawn from international human rights standards, including:
 - The right of LGBT+ people to freely live and manifest their sexual orientation and gender identity.
 - The right of LGBT+ people to live a dignified life that is free from violence, hatred and discrimination of any type.
 - The right of LGBT+ people to live in an environment where their civil, political, economic, social and cultural rights can be fully realised.
- Include an equality clause which provides equal access to the rights contained within the Bill for everyone.

PURPOSE AND INTERPRETATION

- Include a purpose clause that:
 - Recognises the value of human dignity, as well as the universality, indivisibility, interdependence and interrelatedness of all human rights.
 - Makes clear that the purpose of the Bill is to incorporate international human rights standards and to keep pace with evolving international human rights law , to the fullest extent possible within the competence of the Scottish Parliament.

- Include an interpretative clause which obliges duty-bearers and adjudicators to:
 - Interpret the rights in the framework in line with the purpose clause, ensuring they fulfil the human dignity, universality, indivisibility, interdependence and interrelatedness of all human rights.
 - Interpret the rights in accordance with international human rights laws ratified by the UK, particularly ICESCR, CERD, CEDAW, and CRPD.
 - Take into account international legal standards, such as General Comments, Statements, Reports, Recommendations and Concluding Observations.
 - Allow duty-bearers and adjudicators the possibility of taking into account comparative legislation and judicial decisions.

THE DUTIES

- Set out a clear duty to comply with the rights and obligations contained in the framework.
- Set out a clear duty to progressively realise the rights contained in the Bill and clarify the key elements of that obligation, as developed by the UN Committee on Economic, Social and Cultural Rights.
- Set out clearly the obligation to use maximum available resources to progressively realise the rights included in the Bill, including:
 - a definition of resources
 - the conditions of resource mobilisation, allocation, and expenditure;
 - the grounds of non-compliance with the obligation; and

- the obligation to ensure the use of human rights budgeting.
- Set out the scope of Minimum Core Obligations, as follows:
 - An obligation should be placed on relevant duty-bearers to ensure the minimum essential levels of economic, social, and cultural rights for people to live a dignified life.
 - These essential levels must be defined in further secondary legislation, after a participatory process that takes careful consideration of the views of those with lived experience, technical expertise and policy makers.
 - The secondary legislation should be reviewed at least every 10 years, to ensure that essential levels are a reflection of the technological, societal, financial and environmental reality of the country. The process should continue to ensure the views of those with lived experienced, technical expertise and policy makers provide the basis for any changes.
 - The legislation should include an impossibility test, that allows duty bearers to avoid responsibility for failing to meet minimum core obligations only 'if the duty-bearer can demonstrate that, in spite of all of its efforts, it could not comply with achieving the minimum core obligations.'
- Clearly set out a prohibition on retrogression in accordance with international legal standards developed by treaty monitoring bodies.
- Set out the Respect, Protect and Fulfil duties, as developed in international human rights law, to provide additional legal

certainty and clarity regarding overall obligations on duty-bearers.

- Put an obligation on all businesses to respect the rights incorporated in the Bill, plus an obligation on all service providers, public and private, to comply with its rights and obligations.

A MULTI-INSTITUTIONAL APPROACH

- Introduce a new standard of review for the adjudication of incorporated rights, taking into account international legal standards and comparative best practices.
- Include the full range of remedies according to international law, allowing judges to order measures of restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition when appropriate to the facts of the case.
- Ensure the Scottish Parliament plays an important role in the protection and realisation of human rights by providing:
 - For the Equality, Human Rights and Civil Justice Committee to perform pre-legislative scrutiny of all proposed legislation being introduced, and determine the compatibility of such proposed legislation with the Human Rights Bill.
 - For an assessment of resources available to the Equality, Human Rights and Social Justice Committee to ensure they are sufficient to deliver on its revised mandate.
 - A requirement for a broader statement of compliance from the Presiding Officer and the member in charge of legislation covering all applicable international obligations.

- For additional checks for human rights compliance for amendments and subordinate legislation.
 - A requirement for effective and transparent Human Rights Impact Assessments of primary and secondary legislation.
 - That expert analysis of human rights issues must be available to MSPs for all aspects of their Parliamentary work.
 - For a human rights-based approach to Parliament's scrutiny of the Scottish budget.
 - For internal structures to ensure it can fulfil its responsibility to protect and realise human rights. These structures should ensure rigorous, regular and systematic monitoring of the Scottish Government's performance of its responsibilities to secure human rights in areas of devolved competence.
- Clearly set out a duty on all Scottish Regulators, Inspectorates and Ombudspersons to ensure the institutions they regulate or oversee comply with the new statutory framework, as well as to ensure they mainstream human rights within their own work.
 - Strengthen Scotland's National Human Rights Institution, the Commission, by expanding its mandate, including by adding a protection mandate, expanding its powers and guaranteeing adequate resources to enable it to fulfil that mandate, all in collaboration with the Commission to protect its independence.

IMPLEMENTATION AND MONITORING

- Include an obligation to provide Accessible, Affordable, Timely, and Effective routes to remedy for human rights breaches (the AATE framework), covering all routes, including administrative or quasi-judicial and judicial. The specific elements of this AATE framework could be laid out in the legislation or detailed in further secondary legislation.
- Provide for the creation of a human rights advice service to ensure everyone has access to appropriate and accurate information about their protected rights and their routes to remedy, if or when needed.
- Make resources available for a public awareness campaign on the new human rights legislation.
- Create a Human Rights Scheme to support the progressive realisation of the rights incorporated in the Bill.
- Put Scotland's National Action Plan for Human Rights on a legislative basis.
- Guarantee regulators, inspectorates, ombudspersons and Scotland's National Human Rights Institution are provided with the appropriate powers and resources to ensure effective human rights monitoring.
- Guarantee the provision of human rights education, in accordance with the principles enshrined in the United Nations Declaration on Human Rights Education and Training, including introducing human rights education into the Curriculum for Excellence, and making it compulsory for law students. Additionally, the Commission considers the Scottish Government should immediately start to draw up plans to guarantee effective capacity building of both right-holders and duty-bearers.

2. Background to the Bill: Strengthening human rights laws

The Commission has been calling for all human rights, particularly economic, social and cultural rights, to be enforceable in Scotland for over a decade. The Commission has worked to secure stronger legal protection for economic, social and cultural rights, and to raise awareness of what these rights include.

In 2014, the Commission hosted a lecture commemorating International Human Rights Day. The lecture was given by James Wolffe QC, then Dean of the Faculty of Advocates, and was titled 'Economic and Social Rights in Scotland: Lessons from the Past; Options for the Future.' In his lecture, Wolffe argued that if we consider the progressive realisation of economic and social rights to be amongst the fundamental commitments to which we collectively adhere then there was a case for that to be reflected in Scots law and give citizens the power to hold their government to account for the manner in which it addresses such commitments.¹

In 2015, the Commission hosted a national conference entitled "Putting the Justice into Social Justice" with the First Minister of Scotland as a guest speaker. This conference shared international experiences of incorporating economic, social and cultural rights into law. In her speech, the First Minister pledged to include human rights in Scotland's national performance framework and to consider how to incorporate more international rights into Scotland's domestic law.

Throughout 2017 and 2018, the Commission ran a series of workshops aimed at broadening understanding and support for economic and social rights in Scotland, such as the right to social security, right to food, right to the highest attainable standard of health and right to housing. The workshops were designed for a broad audience of rights holders, civil society organisations, public bodies and government who have an interest in the implementation of economic and social rights in Scotland.

In May 2018, the Commission organised a high-level seminar on “Incorporation and Justiciability of Economic, Social and Cultural Rights” with guest speaker, Virginia Bras Gomez, Chair of the United Nations Committee on Economic, Social and Cultural Rights. Bras Gomez expressed that the Scottish Parliament and Government had a golden opportunity to implement the International Covenant on Economic, Social and Cultural Rights in a way that will ensure consistency between law, policy and practice. She further stressed that the effective incorporation of international human rights standards enshrined in the UN core human rights treaties that are universal and interconnected is fundamental for sound, integrated and coherent economic and social policies. States that ratify these treaties do so out of their own free will and are bound by their provisions. They have legal, political and moral responsibilities towards their people, in particular those most in need of protection.

In November 2018, the Commission published a new report into models of incorporating international human rights standards into law, authored by Professor Katie Boyle, Chair of International Human Rights Law at the University of Stirling. The report, titled “Models of Incorporation and Justiciability for Economic, Social and Cultural Rights,” highlighted that people in Scotland have limited recourse to human rights laws when it comes to realising their economic, social and cultural rights. This accountability gap affects people's rights to an adequate standard of living, health, housing, food and social security, among others.²

Professor Boyle's report also detailed how countries around the world, from Germany and Sweden to South Africa and Argentina, have stronger laws and stronger accountability processes for economic, social and cultural rights than exist in Scotland. Around 65 countries globally, including 12 in Europe, explicitly enshrine these rights in their constitutions, while others such as Finland also build in parliamentary scrutiny of whether they are being implemented. The report demonstrated the opportunity for Scotland to learn from these systems, building on its existing laws and legal remedies as well as parliamentary processes to better protect a broader range of human rights.

In 2018 the Commission was also an active member of the First Minister's Advisory Group on Human Rights Leadership (FMAG). In December 2018 FMAG issued seven recommendations to the First Minister:

1. To bring forward an Act of the Scottish Parliament which provides human rights leadership. The Act would establish a new human rights framework to improve people's lives. It would set out for the first time and in the one place the rights belonging to everyone in Scotland. The Act should include those rights already provided by the Human Rights Act and additional rights drawn from UN treaties including economic, social, cultural, environmental rights, the rights women, minority ethnic communities, disabled people, as well as to further protect the rights of older persons and LGBTI persons.
2. A public participatory process should be held, as a vital part of the preparation of the Act and its implementation.
3. Capacity-building should be ensured, to enable effective implementation of the Act to improve people's lives.
4. A Scottish Government National Mechanism for Monitoring, Reporting and Implementation of Human Rights should be set up.
5. Development of human rights indicators for Scotland's National Performance Framework would be needed.
6. Process of implementation of the recommendations of the Advisory Group should be led by a National Taskforce.
7. Integration of any further devolved powers into the framework as proposed in Recommendation 1 and, if independence, a written constitution including a bill of Rights for Scotland.

On 10 December 2018 the First Minister welcomed the report from FMAG and supported the recommendations. She indicated that she "share[d] the ambition in this report that Scotland should introduce a human rights statutory framework and [she] support[ed] their recommendation that this should be done through public engagement, working across the public sector, civic society and parliament. As a first

step [she] w[ould] establish a National Taskforce, early in 2019, to progress these plans.”

The National Taskforce on Human Rights Leadership was setup in 2019 and held its first meeting on October 2019. The Commission was an active member of the Taskforce, advocating for a strong human rights framework. On 12 March 2021, the Taskforce published its final report setting out its recommendations and evidence base to the Scottish Government for establishing a statutory framework for human.³ The Taskforce’s recommendations were underpinned by extensive public engagement with a wide range of representatives from the public sector, civil society and human rights experts.

The Taskforce recommended the UN treaties on economic social and cultural rights, women’s rights, disabled people’s rights and the rights of black and ethnic minority people are all incorporated into Scots law. It also recommends a right to healthy environment, as well as rights of older people and LGBTI people are included in a new statutory framework. The report contained 30 recommendations in total which relate to both the content of a new human rights law as well as ensuring it is developed and implemented effectively.

On March 2021 the Scottish Government accepted all 30 recommendations and committed to taking them forward to ensure a world-leading human rights legislation.⁴ The commitment of incorporating four UN Human Rights Treaties and bring forward a new human rights legislation was also reflected in the SNP's 2021 Scottish Parliament Election Manifesto,⁵ as well as in the Manifesto of the Scottish Greens,⁶ the Scottish Labour,⁷ and the Scottish Liberal Democrats.⁸ This commitment was also confirmed in the Scottish Government’s Programme for Government 2021-22.⁹

The Commission trusts that these commitments will be upheld, and human rights law in Scotland will be strengthened during this Scottish Parliamentary term, with a new legislative framework Bill that is internationalist, world-leading, multi-institutional and maximalist.

3. The Rights

As a member of the National Taskforce on Human Rights Leadership, the Commission recommended the incorporation – within devolved areas – of the following treaties:

- The International Covenant of Economic, Social and Cultural Rights
- The Convention on the Elimination of Racial Discrimination
- The Convention on the Elimination of Discrimination Against Women
- The Convention on the Rights of Persons with Disabilities

The Taskforce also recommended that protection should be afforded to older persons and to LGBT+ persons, which the Commission considers can be an opportunity to enhance the protection of the rights of such persons.

The Commission explains here what these rights mean, what are the current issues people face in Scotland, and what are the potential benefits of incorporating these rights.

3.1. Economic, Social and Cultural Rights

3.1.1. ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is an international human rights treaty, which the UK has been bound to comply with since ratifying it in 1976.

ICESCR recognises that everyone, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, have a basic set of fundamental human rights that are necessary to live a dignified life that is free from fear and want.

Among others, ICESCR guarantees the following rights:

- The right to work
- The right to social security

- The right to adequate food
- The right to clothing
- The right to adequate housing
- The right to health
- The right to education
- The right to take part in cultural life

3.1.2. The current issues

Despite the ratification of ICESCR, people in Scotland face many issues in enjoying their economic, social and cultural rights. Over the past few years, the Commission has received evidence on these various challenges and expressed concern.¹⁰

Through engagement and participation the Commission has heard that poverty and inequality, the denial of an adequate standard of living and all that entails, are some of the key concerns for people in Scotland. These concerns mirror a number of the areas in which Scotland is failing in its human rights obligations.

The Commission recently reported to the United Nations Universal Periodic Review. This is essentially a report card looking at how the State is performing against the full range of its international human rights obligations, covering all of the UN treaties. In the report, the Commission highlighted a number of particular failings related to economic, social and cultural rights.

In Scotland, 26% of children are officially recognised as living in poverty;¹¹ 68% of whom live in working households.¹² 60% of adults living in poverty also live in working households.¹³ The Commission has expressed that, despite welcome mitigation measures by the Scottish Government,¹⁴ and the Child Poverty Action Plan,¹⁵ the current cost of living crisis¹⁶ will push many more into poverty.¹⁷

Scotland has unacceptable food insecurity, especially amongst are children,¹⁸ with a 43% increase in the number of food parcels distributed 2016-2020 in Scotland.¹⁹ None of Scotland's dietary goals have been met since their introduction in 1996.²⁰

Prior to the current energy crisis 25% of Scottish households were already estimated to live in fuel poverty,²¹ with rates varying by housing sector,²² geography,²³ fuel type,²⁴ on/off grid²⁵ and payment type.²⁶

1.5 million people in Scotland are struggling with the cost of keeping a home; living in damp, dangerous conditions; overcrowded or in fear of losing their home.²⁷ One fifth of current renters say they must decide between paying rent or bills/food.²⁸

There are currently 61,000 properties awaiting adaption, with 10,000 people waiting on the housing list for adapted houses. Only 1% of housing is wheelchair accessible.²⁹

Reports indicate³⁰ that a household is made homeless every nineteen minutes in Scotland, with many being families with children.³¹ Single men make up almost 50% of all homeless households.³² Others at high risk include LGBT+ young people,³³ transgender people,³⁴ young people under 25,³⁵ survivors of domestic abuse³⁶ and people with No Recourse to Public Funds.³⁷

Scotland's progress in life expectancy and health improvements in recent years has stalled and was never experienced universally. The biggest risk factor across a range of health issues, including death, being deprivation.³⁸

The rates of overweight and obesity for both children and young people are among the highest in the developed world.³⁹ 65% of adults in Scotland are overweight.⁴⁰

Scotland has a higher mortality rate for under-18s than any other Western European country, with over 300 children and young people dying each year.⁴¹

Scotland's drug deaths have increased every year since 1996, with a particularly steep rise since 2013. The 2019 rate of 318 per million population aged 15-64 is over 3.5 times that for the UK as a whole, and higher than that of any European country.⁴²

3.1.3. What would incorporation of ICESCR achieve

Through various engagements, the Commission has heard about the impacts that incorporating ICESCR would have in Scotland.

The Commission has heard from civil society organisations and people with lived experience that incorporation of ICESCR would allow for greater ability to hold the Government to account on rights implementation through the increased visibility on rights and progress to realise them. It would also make economic, social and cultural rights more immediately tangible and relevant to people, making them feel closer to home.⁴³

Overall, many have expressed that domestic incorporation of economic, social and cultural rights would lead to them being taken more seriously by all, particularly duty-bearers, which would then lead to a more human rights-based culture where rights are embedded and respected in every part of society.⁴⁴

As economic, social and cultural rights are rights essential for people to live a dignified life, many have expressed to the Commission that incorporation would give marginalised individuals and communities voice and increased power, increase their active citizenship, with people feeling able to be active contributors to rights being realised.

The Commission considers that incorporation of ICESCR is the next important step for Scotland in guaranteeing and realising economic, social and cultural rights. Although incorporation will not solve all the challenges described above, it will provide the means and guidance for these challenges to be addressed. ICESCR provides the tools to ensure that implementation is done in way that prioritises those at a higher risk, it provides for a country to create a coherent set of policies to realise rights effectively, and it provides the guidance on how to ensure progress is guaranteed in the future.

To be maximalist and internationalist, the Bill must incorporate all the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, to the fullest extent possible within the limits of the Scottish Parliament's legislative competence.

3.2. The rights of minority ethnic communities

3.2.1. CERD

The International Convention on the Elimination of Racial Discrimination (CERD) is an international human rights treaty that aims to eliminate all forms of racial discrimination and to promote understanding amongst all races. Since ratifying CERD in 1969 the UK has been bound to comply with the obligations it contains.

CERD clarifies that racial discrimination is “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

CERD places clear obligations to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, in particular:

- Eradicating racial hatred and incitement to hatred
- Combatting prejudices which lead to racial discrimination
- Guaranteeing the enjoyment of civil, political, economic, social and cultural rights without discrimination on grounds of race, colour, or national or ethnic origin.

3.2.2. The current issues

More than 50 years since the UK ratified CERD, various issues continue to affect the full enjoyment of human rights of minority ethnic communities, including in Scotland.

In the Commission’s report to the UN Human Rights Council, on the UK’s Universal Periodic Review, the Commission highlighted a number of particular failings related to the rights of minority ethnic communities.

The Commission has heard, for example, that the cumulative changes to public spending from 2010–2011 to 2021–2022 will fall the hardest on Black households.⁴⁵ Meanwhile, little is known about whether there is

equal access to and experience of the social security system for people from different ethnic backgrounds. More in-depth information about specific aspects of the system is required in order to understand the structural inequalities across the system.⁴⁶

One main driver of poverty for minority ethnic groups is the combination of the minority ethnic pay gap and the large wealth gap between white and minority ethnic families in the UK.⁴⁷

Concern has been noted over racial bias within approved applications in the Scottish Social Security system. Although available data for different minority ethnic communities is very limited, Asian applicants (who form the largest group of minority ethnic applicants) are least likely to have their applications approved.

A disproportionate number of people from minority ethnic communities are subject to compulsory treatment orders⁴⁸. Risk to oneself and/or to others is one of the criteria that must be met for authorising involuntary treatment. The evidence indicates that more people who were black or of mixed or multiple ethnicity were perceived as a greater risk to themselves and others, whereas all categories of white people were more often perceived as a risk to themselves.⁴⁹ Gender also exerts a role on perception of risk to self and others with 48.8% of black women perceived to be of risk to themselves and others, compared to 33.8% of white Scottish women were considered to be both a risk to themselves and to others.⁵⁰

3.2.3. What would incorporation of CERD achieve

Through various engagements, the Commission has heard about the impacts that incorporating CERD could have in Scotland.

People have told the Commission that incorporation would represent a positive next step, although not the end of the journey in guaranteeing rights for minority ethnic communities. This could lead, for example, to further legislative opportunities and other potentially successful policy interventions.⁵¹

Incorporation would also guarantee better alignment with international law, and encourage an equality and human rights based approach to understanding and addressing racial inequality in all aspects of society.⁵²

The Commission also heard that effective engagement with historically marginalised communities requires establishing a relationship of trust, for which a key component is acknowledgement of the wrongs committed against that group in the past. Although incorporation of CERD would focus on legal obligations found in international law, it has the potential to also serve as a catalyst which ignites the needed corresponding changes to policy and practice to address historical issues.⁵³

The Commission also acknowledges the academic work done to support the work of the National Taskforce,⁵⁴ which provides a clear legal and policy analysis on the benefits of incorporating CERD.

In particular, the research indicates that although the scope and nature of CERD's provisions overlap with the protection provided by EU and domestic laws, CERD is more comprehensive than either as it imposes a set of principles and clear aims that cut across all areas of state policy. Therefore, incorporation could strengthen the current rules, providing Scotland's race framework with the necessary policy tools for an enhanced approach to racial equality.⁵⁵

The research also indicates that incorporation has the potential to strengthen this commitment by making CERD's provisions justiciable which would have a direct effect on a range of devolved policy areas including health, housing, education and training, civil and criminal justice. Increased emphasis would be placed on the protection and fulfilment of the rights of racial groups and ethnic minority communities in these areas.

The realisation of the right to non-discrimination and equality through access to judicial and non-judicial remedies are essential forms of accountability. However, Busby and McCall-Smith argue that the benefits of incorporation would go beyond litigation, by bringing cohesion and dynamism to the existing framework thereby increasing its effectiveness.⁵⁶

To be maximalist and internationalist, the Bill must incorporate all the rights enshrined in the International Convention on the Elimination of Racial Discrimination, to the fullest extent possible within the limits of the Scottish Parliament's legislative competence.

3.3. The rights of women

3.3.1. CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international human rights treaty that places obligations on states to realise the human rights of women and girls. This includes setting out the rights that women and girls enjoy in the pursuit of equality between the sexes and the elimination of discrimination against women in addition to requiring states to adopt measures to change cultural norms and practices which are “based on the idea of the inferiority or the superiority of either of the sexes”. Since ratifying the treaty in 1986 the UK has been bound to comply with the obligations set forth in this international agreement.

CEDAW sets out a series of individual rights based on the notion of substantive equality, obliging states to do more than guarantee equal treatment and formal equality of opportunity and non-discrimination and is additionally results focused. In doing so, the convention defines discrimination as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

This guarantee of equality further sets out specific rights that the states undertake to protect and fulfil for individual women, covering civil and political rights and ESC rights, for example:

- The right to vote and to stand for election
- The right to education

- The right to health
- The right to work, including the right to the same employment opportunities and equal remuneration
- The right to social security
- The right to family benefits
- The right to bank loans, mortgages and other forms of financial credit
- The right to participate in recreational activities, sports and all aspects of cultural life.

3.3.2. The current issues

Despite the ratification of CEDAW, and various legislative and policy initiatives, there are various issues affecting the enjoyment of the rights of women in Scotland. During the last few years, the Commission has received evidence on some of these challenges, which demonstrate that women in Scotland continue to be in a situation of vulnerability.

In the Commission's report to the UN Human Rights Council, on the UK's Universal Periodic Review, the Commission highlighted a number of particular failings related to the rights of women.

The Commission reported that at least 17% of women in Scotland have experienced the use of force from a partner/ex at some point in their lives,⁵⁷ although domestic abuse and sexual violence remain under-reported, with just 22% of victims/survivors of rape and 12% of women who were victim-survivors of other type of sexual offence reporting to the police. Access to justice remains limited for victims of domestic abuse and sexual violence, although 82% of 62,907 domestic abuse incidents for 2019-20 had a female victim and male perpetrator.⁵⁸ Minority ethnic women face higher levels of domestic homicide and abuse driven suicide.⁵⁹ Disabled women are twice as likely to experience men's violence as non-disabled women.⁶⁰ Impacts associated with domestic abuse have been magnified by lockdown as opportunities to seek support were curtailed, leaving women and children isolated with their abuser.⁶¹

One in ten women in Scotland has experienced rape⁶² and reports of sexual crimes continue to rise – against a backdrop of police recorded crime at its lowest level since 1974.⁶³ Rape has the lowest conviction rate of any type of crime.⁶⁴

Gendered issues in the social security system long pre-date the pandemic, and cuts and policy changes since 2010 have increased children's, women's and in-work poverty.⁶⁵ Women are twice as likely to rely on the social security system for all or part of their income compared with men, with 86% of cuts to welfare and public services between 2010 and 2020 estimated to have come from women's incomes. Women are more likely to work in low paid roles and sectors and to work in part time and / or precarious work. Scotland's gender pay gap persists at 10.1%.⁶⁶ Childcare costs in Scotland are some of the most expensive as a proportion of income in the world.

Women continue to be underrepresented in politics and public life, with just 35% of councillors returned at the recent (2022) Local Government Elections being women.⁶⁷ Women experience significant health and wellbeing inequalities and are more likely than men to experience poor physical health throughout their lives. These factors combine to ensure that women's access to public life and public spaces is restricted

3.3.3. What would incorporation of CEDAW achieve

Through various engagements, the Commission has heard about the impacts that incorporating CEDAW would have in Scotland.

In particular, civil society organisations have expressed that existing human rights protections for women are currently at risk, which has been exacerbated by the Covid-19 pandemic and the impacts of Brexit. This makes incorporation of CEDAW an important and high priority measure, as without incorporation of CEDAW, a new bill solely focus on general rights would risk entrenching existing structural inequality and hierarchies. This would result in a differential impact on how women and men benefit from the realisation of rights. Therefore, incorporation of CEDAW is an essential safeguard for protections that could otherwise be removed, such as women's rights in the workplace.⁶⁸

The Commission also acknowledges the academic work done to support the work of the National Taskforce, which provides a clear analysis on the benefits of incorporating CRPD.

The research highlights that incorporation of CEDAW can facilitate gender mainstreaming aligned with and supported by existing and new duties.⁶⁹ CEDAW has much to offer to the policy framework through its

normative potential, for example, as a means of shaping policy and providing direction.

Busby has argued that making CEDAW more visible in Scots law through incorporation has the potential to open up its use as a powerful awareness-raising tool in relation to women's existing right to equality and continued disadvantage. As well as assisting in its justiciability, this process could catalyse CEDAW's use as an agenda-setting framework capable of engendering the Public Sector Equality Duty, Fair Scotland Duty and the proposed duties relating to social, economic, cultural and environmental rights in Scotland.⁷⁰

The Commission also notes that CEDAW challenges gender-neutral laws, policies and practices to battle legal and real inequalities between the sexes, and sets out individual rights that women and girls inherently own. In ratifying CEDAW, states have an obligation to account for differences in position through targeted and gendered treatment.

Incorporation of CEDAW may further advance a rights-based approach to inequality of women and girls in domestic policy. Gender mainstreaming, already provided for in Great Britain chiefly through the Equality Act 2010 and the Public Sector Equality Duty and in Scotland the Scotland-Specific Duties, can be enhanced through a rights-based formula that uses the individual rights and the definition of discrimination in Article 1 of CEDAW as a minimum floor for realising substantive equality.⁷¹ This could potentially be achieved through greater use of specific articles within mainstreaming reports, outcomes reports and equality impact assessment, as required under the PSED.

The existing GB equality framework represents a more formal equality approach than the substantive equality foreseen by CEDAW. It relies on the general duty under PSED to advance equality of opportunity as opposed to CEDAW's proactive accounting for deeply rooted inequalities between the sexes.

Accountability could be greatly strengthened through domestic law. Individual women and girls could in this way challenge decisions that did not adequately protect and realise their rights and therefore undermined their social, political, cultural or economic position as individuals or as a

class. Currently, although courts may look at international materials to support interpretation of the law, there is limited evidence of this primary level of awareness in UK court proceedings, for example, in interpreting Article 14 of the ECHR (non-discrimination).

To be maximalist and internationalist, the Bill must incorporate all the rights enshrined in the Convention on the Elimination of All Forms of Discrimination against Women, to the fullest extent possible within the limits of the Scottish Parliament's legislative competence.

3.4. The rights of disabled people

3.4.1. CRPD

The Convention on the Rights of Persons with Disabilities (CRPD) is an international human rights treaty. It makes it clear that disabled people have the same rights as non-disabled people and should not be seen or treated as mere recipients of welfare. CRPD sets out what should be done to break down the barriers that prevent disabled people from realising all of their human rights. The UK has been bound to comply with the obligations in CRPD since ratifying it in 2009.

CRPD defines persons with disabilities as: “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Most importantly, CRPD clarifies what certain fundamental rights actually mean in the context of disability. It also clarifies what these rights mean for specific groups, such as children with disabilities. Additionally, CRPD places obligations on governments to take active steps to make sure people with disabilities can enjoy their human rights.

3.4.2. The current issues

The Commission has heard of the various issues affecting the enjoyment of the rights of disabled people in Scotland. In the

Commission's report to the UN Human Rights Council, on the UK's Universal Periodic Review, the Commission highlighted a number of particular failings related to the rights of disabled people.

In Scotland, 42% of children in relative poverty in 2017-20 were in a family with at least one disabled person.

The cost of living has risen for disabled people during the Covid-19 pandemic. Pre-Covid disabled people in Scotland spent on average £632 a month on excess costs (the highest excess costs in the UK) related to living as disabled (including increased use of heating, special equipment, and care costs). Once these costs are accounted for, 48% of disabled households in Scotland are living in poverty (half a million disabled people and their families). Moreover, 46% of those in the most deprived quintile had a limiting longstanding illness (compared to 25% of people living in the least deprived quintile).⁷²

The Scottish Government's own analysis shows that households where someone is disabled are at even greater risk of poverty compared to a household where no-one is.⁷³

Legacy social security benefits were not raised in line with the £20 Universal Credit uplift during COVID-19, and this has particularly impacted disabled people. Twenty percent of disabled women also reported losing government support since the start of the crisis.⁷⁴

Serious issues continue to exist on the realisation of reproductive and maternity rights of disabled women in Scotland. The majority of relevant Scottish Government policy frameworks continue to make very little reference, if any, to the sexual and reproductive health of disabled people. For example, the government's key strategy for delivering on the rights articulated in the CRPD for disabled people, does not mention reproductive and sexual health.

3.4.3. What would incorporation of CRPD achieve

Through various engagements, the Commission has heard about the impacts that incorporating CRPD would have in Scotland.

The Commission notes that civil society organisations have expressed that incorporation of CRPD would provide a framework for a mutual

understanding of what rights-holders can expect from public bodies, with clear obligations, both positive and negative. Organisations also expressed that disabled people's rights were often seen as an afterthought in public bodies thinking and planning, due to the specific ways in which their rights need to be delivered, and are therefore seen as more dispensable. Therefore incorporation should be able to provide a cultural change, with the rights of disabled people being met as part of wider society, not as within a welfare system.⁷⁵

Civil society organisations and people with lived experience have also expressed that incorporation needs to ensure that: a) mechanisms exist to make rights real, meaningful, and accessible; b) clear obligations are placed on duty-bearers; and c) disabled people are ensured supportive decision-making and effective participation.⁷⁶

The Scottish Commission for People with Learning Disabilities has also indicated that incorporation of CRPD has the potential to meaningfully tackle the most serious rights infringements facing people with learning/intellectual disabilities, for example, deprivation of liberty and removal of justice. Moving forward, it would allow us to progressively address individuals' experience of exclusion from social, political and civil citizenship and their experience as 'others' who live their lives on the peripheries of society.⁷⁷

The Commission also acknowledges the academic work and other reports done to support the work of the National Taskforce, which provides a clear legal and policy analysis on the benefits of incorporating CRPD.

In particular, McCall-Smith detailed how existing laws in Scotland fail to recognise the interdependent, interrelated and indivisible nature of disabled people's rights as protected by the CRPD framework. Incorporation presents the opportunity to address this gap in Scots law.⁷⁸

The research done further demonstrates that while Scotland does have a range of laws, policies and national strategies specific to the promotion of disabled people's rights, such as the Social Care (Self-directed Support) Act 2013 and A Fairer Scotland For Disabled People 2016–

2021 Delivery Plan, implementation is inconsistent at best and has failed to enable disabled people to exercise some of their most fundamental human rights and fully participate in their communities.

The research by Busby and McCall-Smith demonstrates that there is a lack of cohesion in relation to the protection of rights of disabled people. This is evident, for example, with existing laws that display a lack of disabilities-specific language, in combination with a general lack of awareness of some of the barriers experienced by disabled people in Scotland. Incorporation of CRPD would enhance disabled peoples' rights as CRPD offers a more holistic approach, requiring participative processes put in place for policy formulation. This would then lead to a deeper understanding of how individuals can be enabled to utilise their existing rights based on a social model of disability.⁷⁹

To be maximalist and internationalist, the Bill must incorporate all the rights enshrined in the Convention on the Rights of Persons with Disabilities, to the fullest extent within the limits of the Scottish Parliament's legislative competence.

3.5. Right to a healthy environment

3.5.1. The right

The Taskforce recommended the incorporation of a right to a healthy environment. It acknowledged in its report that this would allow Scotland to keep up with other nations across the world, as more than 100 countries have already included a human right to a healthy environment in their domestic law.⁸⁰

The Taskforce also highlighted that recognition of the right had proved to have real advantages, including:

- Raising awareness that human rights norms require protection of the environment, and highlighting that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom;

- Providing a basis for the enactment of stronger environmental laws;
- Providing a safety net of protection against gaps in statutory laws, particularly when the right is applied by the judiciary;
- Creating opportunities for better access to justice.

On the 5 October 2021, the United Nations Human Rights Council approved a Declaration recognising the right to a healthy environment as a human right. In particular, it recognised:

- The right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;
- The right to a clean, healthy and sustainable environment is related to other rights and existing international law.⁸¹

The Human Rights Council justified the recognition of the right to a healthy environment based on the recognition that sustainable development and the protection of the environment contribute to and promote human well-being and the enjoyment of human rights, including the rights to: life; the enjoyment of the highest attainable standard of physical and mental health; an adequate standard of living; adequate food; housing; safe drinking water and sanitation; and participation in cultural life, for present and future generations.⁸²

The Human Rights Council also recognised that the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a safe, clean, healthy and sustainable environment, and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights.

The Human Rights Council also recognised that part of the vital protection of a clean, healthy and sustainable environment, include:

- the rights to seek, receive and impart information;
- to right to participate effectively in the conduct of government and public affairs and in environmental decision-making; and
- the right to an effective remedy.

3.5.2. The Aarhus Convention

The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted in 25 June 1998 and ratified by the UK in 2005.

The Aarhus Convention establishes a number of rights in relation to the environment. States that ratify the Convention are required to make the necessary provisions so that public authorities will contribute to these rights to become effective.

The Aarhus Convention guarantees:

- The right of everyone to receive environmental information that is held by public authorities. This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment.
- The right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment.
- The right to review procedures to challenge public decisions that have been made without respecting the such rights or environmental laws in general.

3.5.3. The current challenges

Scotland's legal system remains⁸³ noncompliant with the Aarhus Convention due to the excessive costs of taking legal action.⁸⁴

Scotland's emissions during 2019 were down by 51.5% since the 1990 baseline, but this falls short of the annual target of a 55% reduction.⁸⁵ Transport Scotland is a major contributor to Scotland's emissions which have only fallen by 2-3% since 1990.⁸⁶

Scotland's biodiversity is now more depleted than in 88% of 240 countries and territories across the world.⁸⁷

The 3rd UK Climate Change Risk Assessment show an increase the urgency scores for 25 risks from climate change in Scotland have increased since the previous assessment five years ago. Only one risk has decreased and some new risks have emerged.⁸⁸

3.5.4. What would incorporation of the right achieve

As acknowledge by the Taskforce, the recognition of a human right to a healthy environment "has proved to have real advantages" in other countries. Particularly, it raises awareness that human rights norms require protection of the environment and highlights that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom. In other countries, it has also helped to raise the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws. Finally, in countries where it is applied by the judiciary, it has helped to provide a safety net to protect against gaps in statutory laws and created opportunities for better access to justice.

Enshrining a right to a healthy environment also helps to recognise the inter-dependence between international human rights obligations and international environmental law obligations, which works in two ways:

1. A safe, clean and healthy environment is necessary for the fulfilment of the human rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living including the rights to food and to housing, to safe drinking water and sanitation, to participate in cultural life.

2. The exercise of such human rights as the right to a healthy environment, to freedom of expression and association, to education, information, participation and effective remedies are vital to the protection of the environment.

The Commission also agrees with the Taskforce that the recognition of a human right to a healthy environment can provide benefits in terms of policy coherence and reflect other human rights developments in Scotland, particularly through transformative partnerships and place/community-based approaches.

To be maximalist and internationalist, the new human rights bill must incorporate the right to a safe, clean, healthy and sustainable environment as a human right, in line with the UN Human Rights Council Declaration and international best practice, including the substantive and procedural protections.

3.6. Right for older people

The Taskforce recommended that the new legislation include a right that ensures the protection of older people. This is to be a right of older people to lead a life of dignity and independence and to take part in social and cultural life, as was previously protected in domestic legislation through the EU Charter of Fundamental Rights.⁸⁹

In addition to the protection provided by the EU Charter, the Commission considers that there are other international standards that can be incorporated into Scots Law to provide greater protection to older people.

The new legislation could incorporate the United Nations Principles for Older Persons, as Adopted by General Assembly in 1991.⁹⁰ These Principles recognise that opportunities must be provided for willing and capable older persons to participate in and contribute to the ongoing activities of society, which are grounded in protections afforded in international human rights law.⁹¹ It recognises five core principles necessary for the protection of the rights of older persons: Independence, Participation, Care, Self-fulfilment, and Dignity.

In particular, the principle of independence recognises the rights, among others, to:

- Participate in determining when and at what pace withdrawal from the labour force takes place.⁹²
- Be able to live in environments that are safe and adaptable to personal preferences and changing capacities.⁹³
- Be able to reside at home for as long as possible.⁹⁴

The principle of participation recognises the rights of older persons to:

- Remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations;⁹⁵
- Be able to form movements or associations of older persons.⁹⁶

The principle of Care recognises the rights of older persons to:

- Benefit from family and community care and protection in accordance with each society's system of cultural values.⁹⁷
- Access health care to help them maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness.⁹⁸
- Be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.⁹⁹

The principle of self-fulfilment recognises the rights of older persons to:

- Be able to pursue opportunities for the full development of their potential.¹⁰⁰

- Have access to the educational, cultural, spiritual and recreational resources of society.¹⁰¹

The principle of dignity recognises the rights of older persons to:

- Be able to live in dignity and security and be free of exploitation and physical or mental abuse.¹⁰²
- Be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.¹⁰³

Although not binding on the UK, the Inter-American Convention on Protecting the Human Rights of Older Persons is the only existing international treaty in this area. The Commission considers that this instrument represents comparative best practice, which the Scottish Government can use as inspiration.

The Convention recognises 15 core principles applicable to the rights of older people. These are:

1. Promotion and defence of the human rights and fundamental freedoms of older persons;
2. Recognition of older persons, their role in society, and their contribution to development;
3. The dignity, independence, proactivity, and autonomy of older persons;
4. Equality and non-discrimination;
5. Participation, integration, and full and effective inclusion in society;
6. Well-being and care;
7. Physical, economic, and social security;
8. Self-fulfilment;
9. Gender equity and equality, and the life course approach;

10. Solidarity and the strengthening of family and community protection;
11. Proper treatment and preferential care;
12. Differentiated treatment for the effective enjoyment of rights of older persons;
13. Respect and appreciation of cultural diversity;
14. Effective judicial protection;
15. Responsibility of the State and participation of the family and the community in the active, full, and productive integration of older persons into society, and in the care of, and assistance to, the older person, in accordance with domestic law.¹⁰⁴

The Convention also obliges states to adopt measures that prevent, punish, and eradicate practices that contravene the principles and rights enshrined in the treaty such as isolation, abandonment, prolonged physical restraint, overcrowding, expulsion from the community, deprivation of food, infantilisation, medical treatments that are inadequate or disproportional or that constitute mistreatment or cruel, inhuman, or degrading treatment or punishment that jeopardizes the safety and integrity of older persons.¹⁰⁵

Furthermore, the Convention recognises specific rights for older people, such as the right to:

1. Life and dignity in old age;¹⁰⁶
2. Independence and autonomy;¹⁰⁷
3. Participation and community integration;¹⁰⁸
4. Safety and a life free of violence of any kind;¹⁰⁹
5. Give free and informed consent on health matters;¹¹⁰

6. Receive long-term care that protects and promotes their health, provides social services coverage, food and nutrition security, water, clothing, and housing;¹¹¹
7. Privacy and intimacy, regardless of the environment in which they live;¹¹²
8. Recreation, leisure, and sports;¹¹³
9. Accessibility and personal mobility.¹¹⁴

To be maximalist, internationalist, and world-leading, the new human rights bill must incorporate the rights of older people recognised in article 25 of the EU Charter of Fundamental Rights, as well as the rights derived from the United Nations Principles for Older Persons, drawing on the Inter-American Convention on Protecting the Human Rights of Older Persons as a reference to further the rights of older people in Scots Law.

3.7. Rights for LGBT+

3.7.1. The rights

The Taskforce recommended a clause in the Bill that would require the full and equal enjoyment of rights for LGBTI people. It recognised that, in the absence of a specific UN treaty for LGBTI people, the right of equal access to the full enjoyment of all the above rights belonging to everyone should be provided by an equality clause within the Bill establishing the new framework

The Commission has emphasised that in order to secure a fair and inclusive Scotland, effective measures need to exist to ensure that LGBT+ people have the opportunity to find happiness through the fulfilment of aspirations connected to the orientation and identities that are inherent to them.¹¹⁵ LGBT+ people should be able to live a life of dignity in a society that welcomes diversity and does not force anyone to hide or change who they are.

The Commission also echoes words of the UN Independent Expert on Sexual Orientation and Gender Identity that “being compelled to negate or conceal sexual orientation and gender identity, and the legitimate desires and aspirations inextricably linked to them, holds no redeeming social value. Self-unawareness, self-hatred and lying should not be encouraged by any societal norm or forced on any person as the only way to avoid violence and discrimination.”¹¹⁶ The satisfaction of LGBT+ persons’ civil, political, economic, social, cultural, and environmental rights is also key to unleashing the full potential of their contributions to society.¹¹⁷

The international legal standards developed by treaty monitoring bodies, the UN Special Rapporteur on Sexual Orientation and Gender Identity, and other regional human rights bodies such as the Inter-American Commission on Human Rights, demonstrate that there are other intrinsic rights that LGBT+ should be secured. These are:

- LGBT+ persons have the right to freely live and manifest their sexual orientation and gender identity.
- LGBT+ persons have a right to live a dignified life that is free from violence, hatred and discrimination of any type.
- LGBT+ persons have a right to live in an environment in which their civil, political, economic, social and cultural rights can be fully realised.

3.7.2. Current issues

The Commission has heard of the serious issues that LGBT+ persons continue to face in the enjoyment of their rights.

One in four LGBT+ persons, including up to 80% of Transgender people, experience domestic abuse in their lifetime.¹¹⁸

Fear of homophobia/biphobia/transphobia make LGBT+ young people less likely to seek help. Significant barriers exist to reporting abuse and accessing appropriate support.¹¹⁹

Research shows that bullying against LGBT+ persons is prevalent in education settings across Scotland.¹²⁰

LGBT+ persons often struggle to access appropriate healthcare services.¹²¹

Research done in relation to LGBT+ young people indicate that there has been a reduction overall in the percentage of young LGBT+ people rating Scotland as a good place to be LGBTI over the last five years. This was 81% in 2017 and has fallen to 65% in 2022.¹²²

Just 17% of young LGBT+ people surveyed report that they would feel confident reporting a hate crime to the police if they experienced one.¹²³

Only 25% of the people who have received formal sex education classes have seen LGBT+ topics discussed within them.¹²⁴

Only 10% of people surveyed rated the experience of school for LGBT+ people as 'good', and 70% of gay/lesbian participants report experiencing bullying due to their sexual orientation at school.

To be maximalist and world-leading, the new human rights bill must incorporate specific rights for LGBT+ persons that are drawn from international human rights standards, including:

1. The right of LGBT+ people to freely live and manifest their sexual orientation and gender identity.
2. The right of LGBT+ people to live a dignified life that is free from violence, hatred and discrimination of any type.
3. The right of LGBT+ people to live a in an environment in which their civil, political, economic, social and cultural rights can be fully realised.

3.8. Equality clause

The Taskforce recommended that there be a clause in the bill that ensured equal access to all substantive rights set out in the framework. Such a provision would articulate a general right to equality and non-discrimination in respect of the rights included in addition to some

guarantee of protection for older persons and LGBTI people, for whom no single UN human rights framework exists.

Overall, the Commission acknowledges that ‘equal opportunities’, and therefore equality law, is a reserved matter subject to certain limited exceptions.¹²⁵ An equality provision, or provisions, would therefore be required to take into account the general reservation of equal opportunities under the Scotland Act 1998.¹²⁶ The general reservation is subject to limitations of specific devolved competence in respect of ‘the encouragement (other than by prohibition or regulation) of equal opportunities and in particular the observance of equal opportunity requirements.’

Additionally, the Scottish Parliament has the competence to create additional duties for Scottish public authorities to carry out their functions in a way which acknowledges the need to observe the equal opportunity requirements. This has enabled Scotland Specific Duties to be created to support the general mainstreaming duty in the 2010 Act. Following the Smith Commission, a new exception to the general reservation was added, the scope of which remains untested by courts:

“Equal opportunities in relation to the Scottish functions of any Scottish public authority or cross-border public authority, other than any function that relates to the inclusion of persons in non-executive posts on boards of Scottish public authorities with mixed functions or no reserved functions. The provision falling within this exception does not include any modifications to the Equality Act 2010, or of any subordinate legislation made under that Act, but does include –

- a. Provision that supplements or is otherwise additional to provision made by that Act;
- b. In particular, provision imposing a requirement to take action that that Act does not prohibit;

- c. Provision that reproduces or applies an enactment contained in that Act, with or without modification, without affecting the enactment as it applies for the purposes of that Act.”

These competences have enabled the Scottish Parliament to pass legislation that encourages respect for equality, but cannot legislate to achieve equality objectives. However, secondary legislation or provisions that enable public bodies to better deliver against the Equality Act 2010 are possible, for example the Scottish National Investment Bank Act 2020, the Planning Act 2019 and the Social Security Scotland Act 2018.

The definition of ‘equal opportunities’ under the Scotland Act is wide, specifically, the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. This extends beyond the Equality Act, and has been found to mean that categories, or protected characteristics may not be combined or altered by the Scottish Parliament’s additional categories through which equality obligations flow.¹²⁷

Specifying the relationship between any new general equality and non-discrimination provision or provisions and the Equality Act 2010 requires further consideration based on the model pursued. However, it is clear that additional obligations within Scottish competencies to further equality obligations are permissible provided they extend from the framework of the 2010 Act, which is unmodifiable. This therefore limits the framing of the clause but does not prevent its inclusion. Both the Public Sector Equality Duty (PSED) and Fair Scotland Duty (FSD) require public bodies to give ‘due regard’ to eliminating non-discrimination and advancing equality of opportunity between persons with protected characteristic.

However, any additional obligations created as part of the bill or to support its implementation through regulation to support the delivery of the PSED or FSD could not extend to positive obligations, something

actively encouraged by CEDAW, for example, in the form of temporary measures. There is limited scope to craft provisions that extend to special treatment to account for inequality in an effort to realise equality as a human right.¹²⁸ This difference between the formal equality approach of UK equality law and the substantive equality approach encouraged by international treaties requires further consideration in relation to the extent to which additional obligations to support a more human rights-based delivery of existing equality obligations, for which the EHRC is the regulator and monitors compliance.

Even if the equality clause is limited in respect of accountability to the extent of the Equality Act 2010 and any subsidiary tools, it would still allow for a powerful interpretative tool in respect of international standards for minorities and discriminated-against groups in respect of the substantive content of the Act. While not a constitutional guarantee of equality for all, its inclusion could strengthen existing tools and encourage more progressive approaches to mainstreaming in public policy that enables realisation of rights.

To be maximalist, the new human rights bill must include an equality clause which provides equal access to everyone to the rights contained within the Bill.

4. Purpose and Interpretation

4.1. Purpose clause

The Taskforce recommended the inclusion of a purpose clause in the bill which recognised human dignity as the underpinning of all human rights. The Taskforce considered that this would aid in the interpretation of the rights and duties within the framework by being clear and explicit about its purpose. For example, when seeking to interpret the framework legislation in their consideration of cases before them, the courts and tribunal system may benefit from a clearly expressed intent and will of Parliament.

The Commission considers that a purpose clause can be instrumental in securing a strong and consistent human rights framework, which aligns itself with international human rights law.

The value of human dignity plays an important role underpinning international human rights law. This is evident since the proclamation of the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR recognised in its preamble the inherent dignity and the equal and inalienable rights of all human beings as the foundation of freedom, justice and peace in the world. The preamble also reaffirms the global faith in the dignity and worth of all human beings. Most importantly, article 1 of the UDHR recognised that “All human beings are born free and equal in dignity and rights.”

Human Dignity has, therefore, played an important role in how other international human rights obligations have been agreed. This is evident, for example, in ICESCR. The preamble indicates that “in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and therefore, the rights in ICESCR “derive from the inherent dignity of the human person.”¹²⁹

The underpinning value of human dignity has assisted the UN Committee on Economic, Social and Cultural when interpreting ICESCR.

For example, in relation to the right to housing, the Committee determined that the inherent dignity of the human person requires that the term “housing” be interpreted in a way that takes account various considerations. Most importantly, that the right to housing should be ensured to all persons irrespective of income or access to economic resources and must be read as referring not just to housing but to adequate housing.¹³⁰ In relation to the right to water, the Committee determined that human dignity is central in how to assess the enjoyment and realisation of the right to water.¹³¹ Further, in relation to the right to health, the Committee concluded that States have an obligation to provide care to older persons that can spare them pain and enable them to die with dignity.¹³²

Other jurisdictions, such as South Africa, have also included human dignity as the core foundational value of the country.¹³³ Based on such value, the Constitution requires that human rights are interpreted in a way that promotes the values that underlie an open and democratic society based on human dignity, as well as equality and freedom.¹³⁴ The South African Constitution has therefore used human dignity to interpret human rights in various decisions. For example, in case related to cultural rights, the Court determined that cultural practices are protected because they are central to one’s human identity and hence to human dignity. Therefore, the Court stressed that this protection flows from the fact that human dignity and cultural identity are inseparably linked to one’s sense of self-worth.¹³⁵

The Commission also considers that the purpose clause should acknowledge the core principles of universality, indivisibility, interdependence and interrelatedness¹³⁶ to guide the operationalisation and justiciability of the rights contained in the bill. Duty-bearers and interpretative bodies would be able to rely on such principles to determine that in order to realise one right, other rights necessarily need to be taken into account, and therefore, the protection and realisation of one right cannot be done in isolation.

To be maximalist and internationalist, the new human rights bill must include a purpose clause that recognises the value of human dignity, as well as the universality, indivisibility, interdependence and

interrelatedness of all human rights, and makes clear that the purpose of the Bill is to incorporate international human rights standards and to keep pace with evolving international human rights law, to the fullest extent possible within the competence of the Scottish Parliament

4.2. Interpretative clause

Interpretative clauses play an important role in ensuring that judicial and administrative bodies adjudicate human rights based on a country's core foundational values. They often also ensure that the interpretation of rights are consistent with international human rights law, and with the jurisprudence and doctrine of Treaty Monitoring Bodies and others.

The Taskforce recommended a provision in the Bill that acknowledges that nothing within it shall affect any provisions from domestic law or international law which are more conducive to the realisation of the rights within the framework.

It also recommended that the framework be interpreted in alignment with international standards. In order for this to be achieved, the Taskforce recommended that courts and tribunals should pay regard to international law. This should include decisions, General Comments, Statements and Concluding Observations from treaty monitoring bodies, as well as judgements, decisions, declarations or advisory opinions of the European Court of Human Rights and other sources.

The Commission has indicated in the past that UN Treaty Body Committee General Comments 'are the authoritative view of the Committee which oversees a particular human rights treaty as to the substance of the rights.'¹³⁷ They provide an authoritative explanation of the normative content of the rights set out in the UN Conventions, including:

- the general and specific obligations on States and public authorities;
- immediate and progressive obligations on States and public authorities; and

- examples of what would constitute a violation of any given right and the limited circumstances in which these could be justified.

They will be invaluable to public authorities as they look to interpret international rights within a Scottish context for the purposes of law and policy making, as well as to courts and tribunals in making judgments on the actions or omissions of public authorities. This has been the case of other countries that have used general comments to adequately and effectively protect and realise economic, social and cultural rights.¹³⁸

The Commission also considers that an interpretative clause must be able to secure that the rights in the new framework are interpreted in a way that is consistent with international law. This can be modelled on other jurisdictions that require that human rights are interpreted in accordance to the treaties ratified by the country. For example, Spain's Constitution requires that "[p]rovisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain."¹³⁹

The Constitution of South Africa, also enshrines an interpretative clause which requires, when interpreting rights, a court or tribunal: a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; b) must consider international law; and c) may consider foreign law.¹⁴⁰ In addition, the Constitution also requires duty-bearers to apply international law in the interpretation of any domestic piece of legislation. This is, the Constitution requires that: "[w]hen interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law."¹⁴¹

Similarly, the Constitution of Colombia requires all laws, including the Constitution itself, to always be read in accordance to international law. The Constitution reads: "International treaties and agreements ratified by Congress that recognise human rights and prohibit their limitation in states of emergency have domestic priority. The rights and duties

mentioned in this Charter shall be interpreted in accordance with international treaties on human rights ratified by Colombia.”¹⁴²

The practice of these countries have ensured that the interpretation of human rights protected in the domestic legislation is aligned with the international obligations they have adhered to. Instrumental to ensure this, has been the usage of general comments and other interpretative documents issued by treaty monitoring bodies and mandate holders, which have allowed for a more holistic interpretation of rights. For example, Constitutional Court of Colombia has ensure that the protection of cultural rights of indigenous peoples was guaranteed by the interpreting the Constitution in accordance to ICESCR and other instruments, using various relevant general comments.¹⁴³

Furthermore, the Taskforce also recommended that courts and tribunals may consider comparative law where relevant. This will be particularly relevant, as Scotland will be able to learn from the experience of other countries that have had positive experiences with adjudicating economic, social, cultural and environmental rights.

To be internationalist, the new human rights bill must include an interpretative clause which obliges duty-bearers and adjudicators to:

1. Interpret the rights in the framework in accordance with the purpose clause, and therefore, ensure that rights are interpreted in accordance with human dignity and the universality, indivisibility, interdependence and interrelatedness of all human rights.
2. Interpret the rights in accordance with international human rights laws ratified by the UK, particularly, ICESCR, CERD, CEDAW, and CRPD.
3. Take into account international legal standards, such as General Comments, Statements, Reports, Recommendations and Concluding Observations.
4. Allow duty-bearers and adjudicators the possibility of taking into account comparative legislation and judicial decisions.

5. The Duties and duty-bearers

5.1. Duty to comply

The Taskforce acknowledged that there will be a need to provide a sufficient period of time to make any necessary preparations for the commencement of the compliance duty, including the necessary culture change. It suggested that one way to do this would be to have a duty to pay due regard to the rights contained within the Act. This duty would come into effect at the commencement of the Act. A “sunrise clause” would then trigger the commencement of a duty to comply with the rights contained within the Act.

This duty of compliance is to provide rights-holders with access to an effective remedy where necessary, as required by international human rights law.

The Commission considers that it is important for such duty to be clarified in the legislation, to secure both legal certainty and the effective implementation of human rights. Particularly, the Commission considers that it is important to clarify that a duty to comply implies both obligations of conduct and obligations of result. A duty to comply requires the outcome that rights are respected while at the same time requiring that knowledge and understanding of human rights are embedded in policy making processes.

A duty to comply, therefore, necessarily entails that services, goods and policies that relate to human rights are provided adequately under international law. For example, in relation to the right to health, a duty to comply would be satisfied not only by creating health services but also by ensuring that such services are available, accessible, acceptable and of good quality. These conditions of acceptability (formally called the ‘normative content’ of a right), should be part of how a duty to comply is realised.

A duty to comply will also need to be directly related to the inherent obligations attached to economic, social and cultural rights, as described below.

To be maximalist and multi-institutional, the new human rights bill must set out a clear duty to comply with the rights and obligations contained in the framework.

5.2. The inherent obligations attached to economic, social and cultural rights

5.2.1. Progressive realisation

The International Covenant on Economic, Social and Cultural Rights recognises that the realisation of economic, social and cultural (ESC) rights cannot be achieved overnight. Article 2.1 of ICESCR obligates states to ensure that they effectively use the maximum of their available resources to progressively achieve the full enjoyment of ESC rights for all. States are required to move towards the full realisation of ESC rights, rather than being obligated to achieve this goal immediately.

The key elements of the obligation of progressive realisation¹⁴⁴ are as follows:

- The obligation implies that states need to move as expeditiously and effectively as possible to ensure to realisation of ESC rights;
- There is an immediate obligation, which is to take steps. This obligation is not subject to the availability of resources; it is an absolute requirement;
- Steps towards the goal must be taken within a reasonably short time following ratification; and
- Steps to realise rights should be deliberate, concrete and targeted as clearly as possible.

To be maximalist, internationalist, and multi-institutional, the new human rights bill must set out a clear duty to progressively realise the rights contained in the Bill and clarify the key elements of the obligation, as developed by the UN Committee on Economic, Social and Cultural Rights.

5.2.2. Maximum available resources

As seen above, the obligation to use maximum available resources is intrinsically linked to the obligation of progressive realisation. However, the obligation to use maximum available resources to progressively realise the rights is an obligation of immediate effect, which means that states are obliged to comply with it from the moment of ratification. States are obliged to continually mobilise resources to secure the highest level of protection and realisation of rights as possible as their resources allow.

Resources can legitimately be interpreted more expansively to include human, technical, scientific, cultural, natural resources. Overall, resources should always include:

- Government expenditure, government revenue, development assistance, and monetary policy and financial regulation; and
- Public resources as well as those available in the wider society, including private resources mobilised to fulfil ESC rights.

For a state to comply with its obligation to use the maximum of its available resources to realise economic, social and cultural rights, certain conditions need to be met in terms of recourse mobilisation, recourse allocation, and resource expenditure.¹⁴⁵

Resource mobilisation involves a process through which a country raises and its own resources to provide for its population (in other words, recourse creation).¹⁴⁶ For such reasons, taxation is of critical importance in terms of resource mobilisation, as it represents a sustainable source of public revenue. It is also a powerful redistributive tool, and a critical area to enhance democratic process principles, accountable governance and active citizenship.¹⁴⁷ Most importantly, in order to ensure the compliance of the obligation of maximum available resources, taxations should ensure adequate and sufficient revenue is guaranteed, and particularly, to be fair, progressive or socially equitable.

In terms of resource allocation, the conditions are as follows:

- It needs to be equitable, which demands that disadvantaged groups be prioritised in all resource allocation decisions;
- It needs to be effective, which means that cost effective considerations need to take place, taking into account the obligations to respect, protect and fulfil rights;
- It needs to ensure that all minimum core obligations are met, as a matter of priority (see section below);
- It needs to ensure that even in times of severe resource constraints, vulnerable members of society are protected by the adoption of relatively low-cost targeted programmes.

In terms of resource expenditure, the essential conditions for the obligation of maximum available resources to be met are:

- Allocated funds should not be wasted;
- Policies, goods and services should ensure value for money;
- States must uncover and remedy root causes of inefficiency and ineffective spending;
- States are required to tackle corruption and ill-spending.

There are certain procedural conditions that are attached to the obligation. Particularly, resource decisions should be always guided by the principles of transparency, participation, and accountability. By making budgetary decisions more democratic it overcomes the difficulty in determining an appropriate margin of discretion that governments and parliaments should have regarding resource decisions.

Human rights law and its overall framework has important implications in informing guidance on economic governance, a guidance that would not entail a 'neat ranking of policy options based on technical analysis' but instead stress the importance of 'well informed democratic process, grounded in human rights law.'¹⁴⁸ Human rights budgeting, as promoted

by the Commission over a number of years, could play a pivotal role in ensuring compliance with the obligation of maximum available resources and progressive realisation, through a more participatory and democratic mechanism.

Although the state has a wide range of autonomy to determine the best way to allocate resources, the autonomy of resource policy or allocation is limited by other human rights standards. This, for example, implies that states will have to prioritise the allocation of resources particularly for those who are most excluded, disadvantaged and marginalised.

The Committee on Economic, Social and Cultural Rights has also developed in its practice a set of presumptions in relation to non-compliance with the obligation of maximum available resources.¹⁴⁹ In particular, unless the state can demonstrate the opposite, there is a presumption of non-compliance when:

- Retrogressive measures regarding financing have been taken;
- There is squandering of resources, particularly when there is corruption or ill-spending;
- Stagnant public expenditure has taken place with respect to financing ESC rights;
- Expenditure is lacking in areas deemed most urgent;
- There is evidence of a prolonged and strong economic growth that has not been followed by the allocation of resources for ESC rights expenditure;
- Tax policy is either insufficient or discriminatory in nature;
- There are high levels of economic inequality.

Overall, the obligation of maximum available resources paves the way for broader concerns related to distributive justice.¹⁵⁰ Often, public resources are aimed at the protection of some people, without taking into account the pressing needs of those at a higher risk. This can be critical, for example, if resources are not being used to comply, a matter

of priority, with a country's minimum core obligations (as explained below). A clear and effective incorporation of this obligation could lead the way for duty-bearers to use available resources to ensure a fairer and more equitable Scotland.

To be maximalist, internationalist, and multi-institutional, the new human rights bill must clearly set out the obligation to use maximum available resources to progressively realise the rights included in the Bill, including: a clear definition of resources; the conditions of resource mobilisation, allocation, and expenditure; the grounds of non-compliance with the obligation; and the obligation to ensure the use of human rights budgeting.

5.2.3. Minimum core obligations

Although the realisation of economic, social and cultural rights are subject to the availability of resources, and therefore are to be realised progressively, there are some obligations that are of immediate effect. The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that there is a continuous obligation to satisfy, at the very least, the minimum essential levels of each of the rights.¹⁵¹ These obligations are considered to be of such importance, and so essential to the rights themselves, that resources need to be prioritised to ensure they are satisfied before anything else.

The Committee on Economic, Social and Cultural Rights has indicated that:

“a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant. If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely

deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned.¹⁵²

The purpose of the minimum core obligation is to recognise that although the implementation of economic, social and cultural rights require resources that are not always available, there are certain obligations that are of such importance that states need to act as a matter of priority to fulfil them. Therefore, states have irreducible obligations to meet, regardless of the availability of resources or any other factors and difficulties.¹⁵³

Therefore, the Committee has noted that Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources”. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.¹⁵⁴ To determine the appropriateness of such resources, the mobilisation, allocation and expenditure of a country’s maximum available resources would need to be addressed.

Minimum core obligation has been defined by reference to a wide range of interests and values – ranging from bare survival, a life with dignity, subsistence minimum and enabling a minimum level of participation in society.¹⁵⁵

Many countries embed the right to a social minimum reflecting the concept of the minimum core, a social floor that ensures no one falls into destitution. According to constitutional theory, a minimum level of subsistence is also a constitutional essential for the functioning of a democracy. This is premised on the idea that people need to be able to access basic essentials in order to participate in society and facilitate genuine autonomy. Often the threshold for assessing compliance with a minimum level is based on the concept of human dignity. The approach of an absolute minimum guarantee is evident, for example, in the

constitutions of Germany ('existenz minimum'), Belgium ('minimex'), Switzerland ('conditions minimales d'existence'), Colombia (minimo vital) and Brazil ('mínimo existencial'). There is no such constitutional guarantee to a basic minimum in the UK or Scotland at the moment.¹⁵⁶

There are three different approaches to the way minimum core obligations are understood and protected:

- The essence approach, which is based on the protection values such as dignity, liberty, equality and freedom.
- The consensus approach, which is based on the minimum consensus that exists around economic and social rights.
- The obligations approach, which focuses on creating obligations to ensure the protection of essential levels of a right, rather than protecting minimum entitlements.¹⁵⁷

In line with the proposed purpose and interpretative clause of the new legislation (as detailed below), the Commission considers that the essence approach is the most adequate and the principle of dignity should be used as the guiding value in the definition of what constitutes minimum core obligations.

This approach would also take into account that minimum core obligations can change over time, as an assessment about feasibility may change in light of factors such as climate change or technological and scientific advances. Access to the Internet or to antiretroviral drugs, for example, can come to be part of the minimum core of the human rights to education and health, respectively, as the cost of providing them decreases over time. The minimum core of a human right is therefore not forever set in stone, but can evolve over time.¹⁵⁸

To be maximalist and world-leading, the new human rights bill must clearly set out the scope of Minimum Core Obligations, as follows:

1. an obligation on relevant duty-bearers to always ensure the minimum essential levels of economic, social, and cultural rights needed for people to live a dignified life;

2. The essential levels must be defined in further secondary legislation, after a participatory process that takes careful consideration of the views of those with lived experienced, technical expertise and policy makers.

3. The Secondary legislation should be reviewed at least every 10 years, to ensure that the essential levels are a reflection of the technological, societal, financial and environmental reality of the country. The process should continue to ensure that the views of those with lived experienced, technical expertise and policy makers provide the basis for any changes.

4. The legislation should include an impossibility test, that allows duty bearers to avoid responsibility for failing to meet minimum core obligations only 'if the duty-bearer can demonstrate that, in spite of all of its efforts, it could not comply with achieving the minimum core obligations.'

5.2.4. Non-retrogression

Inherent in the obligation to progressively realise rights, is the obligation not to take retrogressive steps. This means that states have an overall obligation to ensure that the existing levels of enjoyment of human rights do not deteriorate.

Retrogressive measures might include cuts to programs related to rights or the withdrawal of funding of services aimed to achieve the realisation of human rights.

There is a strong presumption that retrogressive measures taken in relation to the rights protected under ICESCR are prohibited. If any deliberately retrogressive measures are taken, a state has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the state.

Retrogressive measures can be *de jure* (entitlements guaranteed in laws are revoked) or *de facto* (backsliding the actual rights enjoyment).¹⁵⁹ Overall, the Committee's practice has been to, firstly, strongly prohibit retrogression (effectively underscoring the principal obligation upon states to progressively improve their realisation of rights), with only the second stage contemplating what exceptional circumstances might permit in terms of backwards steps.

Based on the Committee's practice, the Commission recommends that retrogressive measures should be generally prohibited and only justified when a duty-bearer can demonstrate the following concurring elements:

1. the maximum available resources were not sufficient;
2. the most careful consideration was made, including holding a participatory process to hear the views of rights-holders;
3. a proportionality analysis was made, ensuring that when different options were available, the duty bearer took the one that was less negatively impactful for human rights;
4. the measures were not directly or indirectly discriminatory; and
5. those most at risk were prioritised.

To be maximalist, internationalist, and multi-institutional, the new human rights bill must clearly set out a prohibition on retrogression which is in accordance with international legal standards developed by treaty monitoring bodies.

5.3. Respect, Protect, and Fulfil

The Commission also considered that the framework would further benefit by providing clarity on the overarching obligations attached to duty-bearers in relation to human rights. This can be achieved by having a clear definition on the face of the Bill as to what these obligations mean, in relation to the duty to comply (as described in section 5.1 above).

Compliance with the duties to respect, protect and fulfil – technically called the tripartite typology of obligations – is essential to ensure the full realisation of human rights. Realisation will not be achieved through compliance with one or other of these three duties. All duties imposed by human rights treaties are interrelated and must be performed if the rights contained in those instruments are to be fully guaranteed. Therefore, the different duties cannot be analysed in isolation. All interrelate in a complex manner and the full protection of a given right contained in a human rights treaty cannot be achieved by relying merely on one or two of them but must involve the performance of all duties. If States concentrate their efforts on only one type of duty, the protection of a given right becomes more difficult to achieve.¹⁶⁰

5.3.1. Respect

The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of a right.¹⁶¹

The duty requires states not to take any measures that result in denying or limiting access to the enjoyment of any human right. It includes abstaining from enforcing discriminatory practices as state policy. The actions or policies that contravene this include the adoption of laws or policies manifestly incompatible with the standards set forth in international human rights treaties or other international legal obligations or in pre-existing domestic law, and the repeal or suspension of legislation necessary for the continued enjoyment of rights.¹⁶²

5.3.2. Protect

The obligation to protect requires states to take all necessary measures to ensure that individuals under their jurisdiction are protected from infringements of rights by third parties (individuals, groups or organisations, public or private). States are required to adequately regulate the action of other entities, preventing them from denying or limiting the enjoyment of rights.¹⁶³

5.3.3. Fulfil

Finally, the obligation to fulfil requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of all rights. This obligations can be understood as having a further subset of obligations: fulfil-facilitate, fulfil-provide, and fulfil-promote.

Facilitate

The obligation to fulfil (facilitate) requires states to take positive measures that enable and assist individuals and communities to enjoy the protected rights.

Provide

States are also obliged to fulfil (provide) a specific right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. However, the extent of this obligation is always subject to the test of the maximum available resources of a country.

Promote

The obligation to fulfil (promote) requires states to undertake actions that create, maintain and restore the rights of its population. This duty requires States to undertake a variety of different actions, such as: research on the Covenant's rights; the provision of information to individuals under their jurisdiction; to provide training; to ensure the dissemination of appropriate information relating to human rights; and to support people in making informed choices about their enjoyment of these rights.¹⁶⁴

To be maximalist and internationalist, the new human rights bill must clearly set out the Respect, Protect and Fulfil duties, as developed in international human rights law, to provide additional legal certainty and clarity regarding the overall obligations on duty- bearers..

5.4. Private actors

Human Rights is the responsibility of all. This fundamental principle has been recognised since the adoption of the Universal Declaration on Human Rights. The Declaration reads: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”¹⁶⁵

In the past decade there has been increasing awareness of the positive and negative impacts that private actors, particularly business enterprises, have in the realisation of rights.¹⁶⁶

In 2011 the UN Human Rights Council unanimously adopted the Guiding Principles on Business and Human Rights (UNGPs). In its resolution, the Human Rights Council emphasised that transnational corporations and other business enterprises have a responsibility to respect human rights. It also recognised that proper regulation – including through national legislation – of transnational corporations and other business enterprises and their responsible operation can contribute to the promotion, protection and fulfilment of and respect for human rights and assist in channelling the benefits of business towards contributing to the enjoyment of human rights and fundamental freedoms.

Overall, the Human Rights Council expressed its concern that weak national legislation and implementation cannot effectively mitigate the negative impact of globalisation on vulnerable economies, fully realise the benefits of globalisation or derive maximally the benefits of activities of transnational corporations and other business enterprises, and that further efforts to bridge governance gaps at the national, regional and international levels are necessary.

Therefore, the UNGPs recognise that businesses have an obligation to ‘respect’ human rights and implies an obligation to ‘avoid infringing on the human rights of others and [...] address adverse human rights impacts with which they are involved.’¹⁶⁷ The UNGPs stress that this obligation to respect include the rights that are enshrined in the International Bill of Human Rights – civil, political, economic, social and cultural – among other fundamental rights.¹⁶⁸

The UNGPs require businesses to avoid causing or contributing to human rights violations in their activities, to address the impacts if they occur, and to seek to prevent or mitigate such violations that are directly linked to its operations, regardless if the business has contributed to those impacts.¹⁶⁹ The UNGPs places particular importance on the obligation of human rights due diligence, as a mechanism to identify, prevent, mitigate, and account for possible human rights violations.¹⁷⁰ It therefore requires businesses to ensure that a process exists in which it can assess 'actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed'.¹⁷¹

The UNGPs also recognise that businesses must provide for, or cooperate in, the remediation of human rights adverse impacts, when it has identified that it has caused or contributed to it.¹⁷² To ensure this, businesses are required to create or participate in effective operational-level grievance mechanisms to respond to those who have been adversely impacted.¹⁷³

These operational grievance mechanism need to comply with international standards, ensuring that it is legitimate, accessible, predictable, equitable, transparent, rights-compatible, continuously improving, based on engagement and dialogue.¹⁷⁴ Both the existence of the mechanism and its procedure must be made clear and public to all possible users, in an appropriate, relevant, and understandable language.

The UN Committee on Economic, Social and Cultural Rights has also stressed that States are always obliged to regulate private actors in order to ensure that the services they provide are accessible to all, are adequate, are regularly assessed in order to meet the changing needs of the public, and are adapted to those needs.¹⁷⁵

The Committee has called for States to subject private providers to strict regulations that can impose 'public service obligations' in the way they operate, which includes requirements such as:

1. universality of coverage and continuity of service,
2. adequate pricing policies;

3. good quality requirements, and
4. user participation.¹⁷⁶

The Commission considers that the new human rights framework will not be effective if business enterprises are not given specific duties. The Commission considers that, in line with the UNGPs and with past legislation (such as the Human Rights Act), these duties should be as follow:

1. A duty on all business enterprises to respect human rights, and provide redress with their actions or omission have cause or contributed to a human rights violation; and
2. A duty on business enterprises who provide services that aim at the realisation of human rights (such as health, water, education, housing) to comply with the rights and obligations contained in the framework.

The Commission considers that there might be scope for further secondary legislation to put forward, which would provide more certainty and clarity over the specific scope and limits of such obligations.

To be maximalist and world-leading, the new human rights bill must clearly set out an obligation on all business enterprises to respect the rights incorporated in the Bill, as well as an obligation on all service providers, public and private, to comply with the rights and obligations in the Bill.

6. The multi-institutional model

6.1. Role of courts

6.1.1. Reasonableness test

The standard of review of what constitutes a reasonable measure for the realisation of economic, social, cultural and environmental rights requires careful consideration.

A reasonableness test developed in international law and other domestic case-law is more expansive and comprehensive than the ‘*Wednesbury*’ reasonableness test in the UK. The threshold for unreasonableness is high in jurisprudence across the UK, as an action (or omission) must be “so outrageous and in defiance of logic...that no sensible person who had applied his mind to the question ... could have arrived at it.” This degree of review means that the onus of proving ‘unreasonableness’ rests with the applicant and the court requires a high degree of ‘irrationality’ to find a matter unreasonable.¹⁷⁷

In order to ensure access to justice and effective remediation for violations of economic, social, cultural and environmental rights, it is essential to change the traditional reasonableness review used in Scotland and develop other means of assessing human rights compliance,¹⁷⁸ particularly by incorporating in the framework the reasonableness test developed in accordance to international law. Specific attention should be placed on the criteria developed by the Committee on Economic, Social and Cultural Rights in interpreting the justiciability of the Optional Protocol of the Covenant, as well as other domestic jurisdictions such as South Africa.

The reasonableness standard must go beyond an entitlement just a reasonable policy – the starting point of examination should always be the rights and dignity interests of rights-holders.¹⁷⁹ Therefore, reasonableness cannot lead to a right to a process, but it must take into account the essential conditions of the rights that are incorporated. Hence, when determining the reasonableness of a measure, administrative and judicial bodies must pay due regard to the

interpretative clause of the framework, consequently placing human dignity at the right and centre of its analysis.

It is important to emphasise that if the Wednesbury test was not modified and a reasonableness test that closely mirrored the practice of the UN Committee on Economic, Social and Cultural Rights was not implemented, the full accountability of violations for these rights would be put into question.

For such purposes, the administrative and judicial bodies should take into account if a duty-bearer can demonstrate that:

- a) the measures taken by the duty-bearer ensure the minimum essential levels for a person to live a dignified life;
- b) the measures taken were deliberate, concrete and targeted towards the fulfilment of the rights in the framework;
- c) the measures taken were coordinated, coherent and comprehensive;
- d) the duty-bearer implemented such measures in a non-discriminatory and non-arbitrary manner;
- e) the duty-bearer's decision not to allocate available recourses was in accordance with the obligations set forth in the Bill and international law;
- f) the duty-bearer made a proportionality analysis, by ensuring that when different options were available, it adopted the option that was least restrictive on the enjoyment of human rights;
- g) the time frame in which the steps were taken;
- h) the measures took into account the precarious situation of disadvantaged and marginalised individuals or groups, and prioritised grave situations or situations of risk
- i) the measures implemented were based on a transparent and participative decision-making processes;

- j) When retrogressive measures were implemented, the duty-bearer can demonstrate that the decision was based on the most careful consideration and can be justified by reference to the totality of the rights provided for in the framework and by the fact that full use was made of available resources.

To be maximalist and internationalist, the new human rights bill must introduce a new standard of review for the adjudication of the incorporated rights, which takes into account international legal standards and comparative best practices. In line with such standards, the Commission recommends for further consideration to also be given on placing the burden of proof for demonstrating that a policy or decision was reasonable to lie on the duty-bearer. For a transformative process, consideration should also be given on the need to have an inquisitorial system for human rights claims.

6.1.2. Remedies

The effectiveness of a remedy will necessarily depend on the appropriateness of the reparations ordered in a specific case. The right to an effective remedy necessarily entails the right to appropriate and effective reparation.¹⁸⁰ Specific situations require different forms of remedies, as some might be more appropriate under certain circumstances than others. The standard of international human rights law, applicable to repair violations of economic, social and cultural rights,¹⁸¹ is that appropriate remedies can come in the forms of: a) restitution; b) compensation; c) rehabilitation; d) satisfaction; and e) guarantees of non-repetition.¹⁸²

Restitution

Wherever it is possible, the state must restore the victim to the original situation before the human rights violation occurred. Restitution includes, as appropriate: enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property, among others.

It is important to mention, however, that in many situations relating to economic, social and cultural rights, restitution might not be an

appropriate solution as the victim might have been suffering from multiple human rights violations before the specific breach in question. For example: To return someone to her previous social housing, when such place was uninhabitable given lack of electricity, heating, or high levels of dampness.

Compensation

Compensation should be provided for any financially assessable or determinable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting violations of international human rights law such as:

- Lost opportunities, including employment, education and social benefits;
- Material damages and loss of earnings, including loss of earning potential;
- Moral damage;
- Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

Rehabilitation

Rehabilitation should include medical and psychological care as well as legal and social services that might be necessary to repair the human rights violation caused.

Satisfaction

Measures of satisfaction should include, where applicable, any or all of the following:

- Effective measures aimed at the cessation of continuing violations;
- Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's

relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;

- An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- Public apology, including acknowledgement of the facts and acceptance of responsibility;
- Judicial and administrative sanctions against persons liable for the violations;
- Commemorations and tributes to the victims;
- Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

Guarantees of non-repetition

This form of reparation is intended to ensure that current violations are not perpetuated over time. They intend to respond to structural situations, that require measures that go beyond the sole victim of the case in question. They are called structural interdicts in some countries, and when implemented correctly, they can prevent further human rights violations and ensure that others do not require to access the judicial system to ensure their rights. In general, guarantees of non-repetition should include, where applicable, any or all of:

- Reviewing, reforming, or striking down laws contributing to or allowing human rights violations;
- Requiring policies to be reviewed or changed in order to comply with human rights standards;
- Requiring appropriate authorities to create new policies in order to satisfy a human rights obligations and prevent future harm.

To be maximalist and internationalist, the new human rights bill must include the full range of remedies according to international law, allowing judges to order measures of restitution, compensation, rehabilitation, satisfaction, and/or guarantees of non-repetition when appropriate to the facts of the case.

6.2. Role of Parliament

Legislatures have three essential functions to perform in a democratic society. First, the Parliament has the function to represent the people; when performing this function it has to reflect faithfully the diversity of the society. Second, the Parliament has a legislative function, as it is in charge of developing the legal framework of a State. Third, the Parliament, as oversight body, scrutinises the actions and policies developed by the executive branch.

There is increasing recognition of the importance of national parliaments in protecting and promoting human rights. The United Nations,¹⁸³ Council of Europe,¹⁸⁴ European Union,¹⁸⁵ and the Commonwealth¹⁸⁶ have all focused attention on the role of national parliaments. The developing understanding of what makes parliaments effective human rights guarantors provides significant opportunities for the Scottish Parliament to strengthen its role within the new human rights framework.

The Commission has expressed its view in the past that the legislature can play one of the most significant roles in ensuring that ESC rights are incorporated and enforced, including by designing and delivering legislation which sets out ESC rights as legal standards. In addition, the legislature can play an important role as an accountability mechanism in the review of legislation before it is passed to ensure that it is compliant with human rights. The Finnish legislative model demonstrates how the Parliament can act as an important accountability mechanism and guarantor of human rights by conducting pre-legislative scrutiny.¹⁸⁷

6.2.1. The Role of the Equalities, Human Rights and Civil Justice Committee (EHRCJ):

The Commission acknowledges that specialised parliamentary human rights committees (such as the Equalities, Human Rights and Civil

Justice Committee of the Scottish Parliament) have an important role to play in the protection and realisation of human rights. Among several activities the Committee could perform are:

- Pre-legislative scrutiny;
- Post-legislative scrutiny;
- Scrutiny of secondary legislation;
- Scrutiny of executive response to human rights judgements of courts;
- Scrutiny of compliance with and implementation of international human rights obligations;
- Inquiries into topical human rights issues;
- Scrutiny of government policy generally for human rights compatibility;
- Monitoring the adequacy of the national system for the protection of human rights; and
- Human rights scrutiny of national budgets.

It is important to stress that the experience from other countries with specialist committees shows that one of the key challenges is ensuring that the committee has the proper resources for the broad functions it is undertaking, particularly by having an adequate number of staff with expertise in human rights law and policy supporting the Committee, in the parliamentary legal service, and in the parliamentary research service.¹⁸⁸ This would need to be guaranteed if EHRCJ was given an important role with the new legislation.

6.2.2. The role of other Committees

In addition to the important role that EHRCJ can play, it is important that human rights are fully mainstreamed into all of the Parliament's work. Within its area of competence, each parliamentary committee should consistently take human rights into consideration in both its legislative scrutiny and broader thematic work.

The Commission has noted in the past some good examples of Committees engaging with human rights considerations on issues such as on policing, prison monitoring, mental health, and land reform, but the Commission considers that the challenge is to make this systematic so

that a robust human rights analysis is embedded into the Parliament's processes and structures.

- In previous evidence to Parliament, the Commission has suggested that the broader mainstreaming of human rights could be improved by a member of each committee being designated as a Human Rights Liaison. In the past, the Justice Committee, for example, appointed such a person which allowed for the building of expertise, with specific committee time devoted to reporting on human rights issues. The Commission continues to call for the Scottish Parliament to explore the value of Human Rights Liaisons for each Committee.

6.2.3. The role of the Presiding Officer

Section 31(2) of the Scotland Act sets out a requirement to make a statement as to whether the provisions of a Bill would be within the legislative competence of the Parliament.¹⁸⁹ The Presiding Officer is not obliged to seek any advice before making the statement, but in practice parliamentary lawyers provide advice, seeking counsel's opinion when necessary. The legal advice informing the statement is never disclosed and is protected under the exemption for legal advice under Freedom of Information legislation.¹⁹⁰ The Commission, however, considers that there is merit in the Presiding Officer issuing a more extensive report which explains the consideration used to arrive to the conclusion that a propose bill fall within the legislative competence of the Scottish Parliament.

Currently the check on legislative competence relates only to the rights contained within the Human Rights Act 1998 and does not include wider consideration of the international human rights obligations that are within the competence of the Scottish Parliament.¹⁹¹ The Commission has expressed in the past that there is value in a broader statement of compliance covering all of the international human rights obligations. This would be particularly more acute once such international human rights treaties have been incorporated through the new human rights legislation.

The Commission has also expressed its concern that there is no procedural mechanism which permits or requires the Presiding Officer to

re-evaluate the decision on competence at later stages of the bill. There is no procedure whereby the Presiding Officer could consider the competence of an amendment to a bill, or in relation to subordinate legislation. Given the significant number of amendments to the Bills and the wide ranging impact of subordinate legislation, the lack of this procedural check is an issue. The Commission has expressed in the past that it is important that additional checks for human rights compliance should be put in place for amendments and subordinate legislation.

6.2.4. The role of a person in charge of a new bill

Section 31(1) of the Scotland Act 1998 as amended by the Scotland Act 2012 provides that the person in charge of a bill being introduced must make a statement that she or he considers the bill to be within the competence of the Parliament.

The Standing Orders of the Parliament reflect this at Rule 9.3, providing that a person in charge of a bill must provide not only a statement of compliance, but also a policy memorandum which includes an assessment of the effects, if any, of the bill on human rights and other matters.¹⁹² This policy memorandum may be significant in assessing the compatibility of legislation with Convention rights, particularly in applying the test of proportionality.¹⁹³ However, these policy memoranda are often limited in their scope and do not take into account other international human rights treaties not incorporated into domestic legislation.

The Commission considers that effective and transparent Human Rights Impact Assessments¹⁹⁴ are necessary to ensure that human rights and a culture of human rights can be systematically mainstreamed and embedded into the law, as well as policies, practices, procedures and priorities of government, public and private bodies.¹⁹⁵ Therefore, the policy memorandum in the introduction of any new bill should take into account all international human rights law treaties incorporated in the new legislation.

6.2.5. The overall work of Parliament

Overall, compliance with human rights obligations is part of the fabric of the Scottish Parliament. The four key principles of the Scottish Parliament are Power Sharing, Accountability, Accessibility and Equal Opportunities. These aim to provide an open, accessible and above all participative Parliament, which takes a proactive approach to engaging with the Scottish people – in particular those groups traditionally excluded from the democratic process.

These principles accord strongly with the underpinning principles of a human rights based approach of Participation, Accountability, Non-discrimination, Empowerment and Legality (the PANEL principles). The Commission believes that by further embedding a rights based approach in the structures and processes of the Scottish Parliament it will strengthen its effectiveness to deliver the best outcomes for the lives of people in Scotland.

To be multi-institutional, the new human rights bill must ensure that the Scottish Parliament plays an important role in the protection and realisation of human rights by providing:

- 1.** For the Equality, Human Rights, and Civil Justice Committee to perform pre-legislative scrutiny of all proposed legislation being introduced and determine the compatibility of such proposed legislation with the human rights bill.
- 2.** For an assessment of resources available to the Equality, Human Rights, and Social Justice Committee to ensure that they are sufficient to deliver on its revised mandate.
- 3.** A requirement for a broader statement of compliance from the Presiding Officer and the member in charge of legislation covering all applicable international obligations.
- 4.** For additional checks for human rights compliance for amendments and subordinate legislation.

5. A requirement for effective and transparent Human Rights Impact Assessments of primary and secondary legislation.
6. That expert analysis of human rights issues must be available to MSPs for all aspects of their Parliamentary work.
7. For a human rights based approach to the Scottish Parliament's scrutiny of the Scottish budget.
8. For internal structures to ensure that it can fulfil its responsibility to protect and realise human rights. These structures should ensure rigorous, regular and systematic monitoring of the Scottish Government's performance of its responsibilities to secure human rights in areas of devolved competence.

6.3. Role of Regulators, scrutiny bodies and ombudspersons

Under the current legislative framework, it has been recognised that Regulators, Inspectorates and Ombudspersons (RIOs) often do not embed human rights standards or approaches into their ways of working. In practice, this means that although RIOs are obliged to comply with human rights standards themselves, their monitoring or inspection activities are not grounded in human rights. In other words, they do not routinely apply a human rights lens to the body or activity they are tasked with scrutinising. If this is not addressed, it will create a further accountability gap in relation to the implementation of the new rights by public bodies.

RIOs play a significant role in driving the culture within public services. The Commission therefore believes a further duty should be placed on RIOs which obliges them to implement their respective mandates and powers in a manner that is consistent with and gives further effect to the new rights.

A human rights based approach requires building the ability of the duty bearer to meet their obligations as well as enabling rights holders to

know and claim their rights. It also includes a robust system of accountability. The Commission believes it is vital that, if public bodies in Scotland are to successfully fulfil their duties to comply with the new rights set out in the Scottish Framework, regulation, inspection and complaints handling in relation to public bodies must be specifically linked to those rights.

A true and effective multi-institutional approach needs to ensure that RIOs play an important role. The importance of RIOs both in ensuring compliance with human rights obligations and in acting as catalysts for wider change is without question. There is a great deal to learn from other duties, most notably under equality law, and the approach RIOs have taken to their work in the absence of explicit duties placed upon them. While there are undoubtedly examples of good practice, the Commission believes the potential of RIOs in furthering human rights has not been fully harnessed.

The Scottish framework should therefore set out specific duties of RIOs in relation to the new rights; this would avoid perpetuating current variations in practice and, in turn, maximise the potential of RIOs in ensuring the framework delivers on the fulfilment of human rights for people in Scotland. This should be done by not only placing a duty for RIOs to comply with the framework, but by giving them the power to ensure compliance in the organisations they oversee.¹⁹⁶

To be multi-institutional, the new human rights bill must clearly set out a duty on all Scottish Regulators, Inspectorates and Ombudspersons to ensure that the institutions they regulate or oversee comply with the new statutory framework, as well as to ensure that they mainstream human rights within their own work.

6.4. Role of SHRC

6.4.1. Role of an NHRI

As acknowledged by the United Nations, National Human Rights Institutions (NHRI) are the cornerstone of domestic human rights protection systems and serve as a bridge between international human rights norms and the state.

NHRI's are unique and do not resemble other parts of government or other public authorities, particularly, as they are not under the direct authority of the executive, legislature or judiciary, and never should be. The classification of an NHRI as a public body has important implications for the regulation of its accountability, funding and reporting arrangements. If the administration and expenditure of public funds by an NHRI is regulated by law, such regulation must not compromise its ability to perform its role independently and effectively.¹⁹⁷

National human rights institutions have a statutory legal basis and particular legal responsibilities as part of the state apparatus. Overall, they are neutral fact finders, not advocates for one side or another.

NHRIs are not only central elements of a strong national human rights system, but they also act as an important bridge between civil society and governments; they link the responsibilities of the state to the rights of all persons, and they connect domestic legislation to regional and international human rights laws and mechanisms.

NHRIs are assessed based on the Paris Principles. The Principles constitute a set of internationally recognised standards to assess the credibility, independence and effectiveness of NHRIs, which were adopted by the United Nations General Assembly in 1993. NHRIs functions or activities are described in the Paris Principles as "responsibilities", meaning that these are things that these institutions are obliged to do. The Paris Principles require NHRIs to have as wide a role as possible, with two main responsibilities, in particular:

- **Human rights promotion:** creating a national culture of human rights where tolerance, equality and mutual respect thrive.
- **Human rights protection:** helping to identify and investigate human rights abuses, to bring those responsible for human rights violations to justice, and to provide a remedy and redress for victims. NHRIs should have a legally defined mandate to undertake these functions and to issue views, recommendations or even seek remedies before the courts.

The Paris Principles require NHRIs to be given as broad a mandate as possible, which must be clearly set forth in a constitutional or legislative

text, specifying its composition and its sphere of competence. The Principles state that NHRIs should have the following responsibilities:

- i. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicise them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - Any legislative or administrative provisions, as well as provisions relating to judicial organisations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - Any situation of violation of human rights which it decides to take up;
 - The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.
- ii. To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights

instruments to which the State is a party, and their effective implementation;

- iii. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- iv. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- v. To cooperate with the United Nations and any other organisation in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- vi. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- vii. To publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

The Paris Principles stress that NHRIs must have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent and not be subject to financial control which might affect its independence.

The Committee on Economic, Social and Cultural Rights has noted that NHRIs have a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. In its General Comment 10 – ‘On the role of national human rights institutions in the protection of economic, social and cultural rights’ – the Committee

indicated that some of the activities that NHRIs can perform to ensure the protection and realisation of ESC rights are:

- The promotion of educational and information programmes designed to enhance awareness and understanding of economic, social and cultural rights, both within the population at large and among particular groups such as the public service, the judiciary, the private sector and the labour movement;
- The scrutinising of existing laws and administrative acts, as well as draft bills and other proposals, to ensure that they are consistent with the requirements of the International Covenant on Economic, Social and Cultural Rights;
- Providing technical advice, or undertaking surveys in relation to economic, social and cultural rights, including at the request of the public authorities or other appropriate agencies;
- The identification of national-level benchmarks against which the realisation of Covenant obligations can be measured;
- Conducting research and inquiries designed to ascertain the extent to which particular economic, social and cultural rights are being realised, either within the State as a whole or in areas or in relation to communities of particular vulnerability;
- Monitoring compliance with specific rights recognised under the Covenant and providing reports thereon to the public authorities and civil society; and
- Examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State.¹⁹⁸

Researchers have also indicated that,¹⁹⁹ reading all other general comments and recommendations through country reporting of the Committee, as well as comparative best practices, other activities that NHRIs should be able to perform are:

- Conducting public inquiries in cases where there is evidence to suggest a violation of ESC rights or in cases of systemic violations of ESC rights;
- Monitoring government policy and budgets and recommending change so that they advance ESC rights;
- Advising government departments and institutions, and the private sector, on how best to integrate practices into policy, budgets, and legislation that best advances ESC rights;
- Inquiring into violations and abuses on its own initiative;
- Acting as an independent amicus curiae in litigation before courts, and in other interventions before administrative tribunals or other independent commission;
- Issuing guidance (as treaty bodies do through general comments) on ESC rights that will help develop a fuller and richer understanding of these rights, especially in the particular context in which the NHRI operates;
- Submit reports to treaty monitoring bodies and contribute to the Universal Periodic Review;
- Conducting joint campaigns with NHRIs from other countries on themes of common interest;
- Developing national action plans for the advancement of human rights;
- Monitoring the implementation of judicial decisions;
- Documentation and research;
- Preparing an annual report on the state of human rights, to be submitted to Parliament and be placed before the public;

- Requesting direct information from ministers and other government authorities on how they are advancing human rights and requiring regular reporting on such measures;
- Conducting periodic consultations with the public and private sectors on the progress achieved in advancing ESC rights;
- Interacting regularly with the media to ensure that ESC rights figure in media reports and analysis;
- Monitoring recommendations of the international human rights treaty monitoring bodies;
- Contributing to the development of global standards on human rights.

6.4.2. The Scottish Human Rights Commission

The Scottish Human Rights Commission was created through an Act of the Scottish Parliament in 2006. The parts of the Act establishing the Commission came into force on 8 November 2007.²⁰⁰

Section 2 of the Act sets out that the Commission has a general duty to promote awareness, understanding and respect for human rights and, in particular, to promote best practice in relation to human rights. Despite the Paris Principles, the Commission was not given a legislative mandate to protect human rights.

In order to fulfil the duties, the Commission has a number of powers. These include the power to publish advice, guidance and ideas, conduct research and provide education and training. The Commission may also review and recommend changes to law, policy and practice.

The Commission is allowed to work with other people in exercising its functions and must seek to ensure that it is not duplicating the work other people are already doing. The Parliament envisaged that the Commission would develop formal memorandums of understanding with some organisations such as the EHRC and SCCYP.

The Commission also has the power to conduct inquiries (under some strict conditions) and to intervene in civil proceedings before a court in certain circumstances.

In keeping with the Paris Principles the Commission is independent from government and accountable to the Scottish Parliament. The independence of the Commission is essential to it being able to fulfil its functions as the promotion of human rights may require the Commission to be critical of existing practices or provide critical advice in relation to policies and legislation enacted by the Parliament or Government.

6.4.3. Strengthening the SHRC

The Taskforce stressed that relevant organisations had to have the appropriate powers to implement the statutory framework. In particular, it recommended there should be extension of the powers of the Commission, to promote and ensure further compliance with human rights. This is to ensure that Scotland's national human rights institution is robust enough to support the effective operationalisation and implementation of the new human rights legislation.

The Taskforce further indicated that, as the institution mandated to promote best practice in relation to human rights and monitor compliance with human rights, the Commission could be provided with the power to be able to raise proceedings in its own name and conduct investigations. It also recommended that further powers to be considered.

Comparative best practices of other sister NHRIs across the world demonstrate the range of powers needed for a national human rights institution to be able to truly promote and protect human rights, particularly those that operate where economics, social, cultural and environmental rights have been incorporated into the domestic legislation. Some of these powers include:

- **Providing general and/or legal advice to rights-holders.** This is often provided through various mechanisms, such as face-to-face advice, help-line services, written/email advice, among other mechanisms.

- **Raising proceedings in its own name.** This enables NHRIs to hold duty-bearers to account, particularly for those issues of a structural nature, reducing the burden on individual victims to address societal problems through expensive and complex judicial procedures.
- **Issue binding guidance.** This provides NHRIs with the ability to further elaborate on the specific content of human rights, providing more clarity and legal certainty. NHRIs are also able to use this power to ensure that domestic human rights legislation is clearly in line with international human rights law. Therefore, NHRIs use this as a means of providing a more holistic interpretation of certain rights, providing guidance similar to those issued by Treaty Monitoring Bodies in their General Comments, for the national context.
- **Issue general guidance.** Unlike binding guidance, this power provides an NHRI with the ability to give further recommendations to duty-bearers on how best to protect, respect and realise human rights, as a matter of best practice.
- **Issue annual reports.** There are various annual reporting mechanisms present in NHRIs. All issue an annual report that relates to operational plan and finance, while some issue more holistic reports as well. For example, some NHRIs issue a “State of the Nation” report, which brings attention to the issues of concern in a country. Often, the issuing of such report is attached to an obligation on Parliament to discuss the findings.
- **Investigate.** Most NHRIs in the world have some form of an investigative power. This power is often deemed to be of usefulness and relevance, particularly to address structural issues without relying on judicial procedures.
- **Hold public hearings and require authorities to be present.** These hearings can be part of an investigation, but also used to

perform regular monitoring of the implementation of rights. NHRIs with such power consider that it has great impact, as it helps bring wide societal attention (through press and civil society) on particular human rights issues. This also provides NHRIs with direct information from victims and duty-bearers, and serves as a way to echo such concerns widely and to keep a historical record.

- **Require authorities to provide information.** This power is also accompanied by their ability to compel such information through a court procedure, if a duty-bearer does not provide the information requested. This is deemed to be essential for the effectiveness of other activities, such as general reporting or investigations. This power is not to be confused with the power that is conferred to all through legislation such as the Freedom of Information Act, as it enables the NHRI to ask questions about fulfilment of human rights.
- **Scrutinising laws.** NHRIs are often empowered to be able to scrutinise proposed or existing legislation, determine its compliance with human rights and provide recommendations. Other NHRIs are obliged to assess a proposed piece of legislation and provide a human rights analysis to Parliament. This could include either a general analysis or specific set of recommendations on wording/clauses.
- **Requiring regular reporting.** Some NHRIs are empowered to require duty-bearers to report regularly to them on the work and progress to realise human rights, particularly economic, social and cultural rights. This could be part of the basis of an NHRI's annual report, such as those similar to a "State of the Nation" report.
- **Benchmarks and indicators.** Some NHRIs are entitled to develop their own benchmarks and indicators to assess human rights. These indicators are also useful in relation to work around human rights budgeting, and are particularly key for determining if rights are being progressively realised. This power is directly linked to the power to require regular reporting, as described above.

- **Education and Advocacy.** Most, if not all, NHRIs in the world are empowered to provide education and capacity building on human rights. This is often considered to be key to ensure the proper realisation of human rights and an essential component of an NHRI's mandate to promote human rights.

To be internationalist and multi-institutional, the new human rights bill must strengthen Scotland's National Human Rights Institution, by expanding its mandate, including by adding a protection mandate, and expanding its powers to enable it to fulfil its mandate. The framework must also guarantee adequate resources to enable it to fulfil such mandate, all in close collaboration with the Commission to protect its independence.

7. Implementation and Monitoring

7.1. Access to justice and routes to remedy issues

Access to justice is overall considered to be a fundamental right that must be guaranteed in any democratic, participatory, and egalitarian society.²⁰¹ Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.²⁰² In human rights terms, for rights to be respected and properly protected, available effective administrative and judicial routes remedies need to exist. When a right is violated, access to justice is of fundamental importance for the injured individual or community.²⁰³

Under international human rights law, states have an obligation to ensure in law and in reality access to justice for all without discrimination of any kind. For such purposes, states need to facilitate access to independent and effective judicial and adjudicatory mechanisms for all, that can ensure a fair outcome for those seeking redress.²⁰⁴

The *UN Declaration of the High-Level Meeting on the Rule of Law and Access to Justice as a Human Right* emphasises the existence of a right to equal access to justice for all, including legal assistance to vulnerable groups, and affirms the commitment to take all necessary measures to provide fair, transparent, effective, non-discriminatory, and accountable services that promote access to justice.²⁰⁵

A lack of adequate and effective routes to remedy for economic, social and cultural rights at the domestic level creates the perception that social policy is a charitable measure rather than part of an obligation to ensure the enjoyment of international human rights obligations.²⁰⁶ Incorporating economic, social and cultural right into domestic legislation necessarily requires that adequate and effective routes to remedy exist within the national legal system.

According to the international legal standards, routes to remedy need to be accessible, affordable, timely, and effective.

- For routes to remedies to be accessible, they require to be transparent,²⁰⁷ simple,²⁰⁸ ensure legal advice,²⁰⁹ and ensure the possibility of public interest litigation.²¹⁰
- For routes to remedies to be affordable, they must not be costly²¹¹ (ideally they should be free), and sufficient legal aid must be ensured.²¹²
- Routes to remedies need to be prompt,²¹³ ensure that there are no unwarranted delays,²¹⁴ and guarantee mechanisms that can urgently prevent the materialisation of an irreparable harm.²¹⁵
- For routes to remedies to be effective they must, among other things, guarantee the existence of both administrative and judicial procedures,²¹⁶ which can be challenged if necessary.²¹⁷ They must also provide the possibility of collective litigation, where the findings and benefits are generalised beyond the actual litigants.²¹⁸ Remedies cannot be illusionary, and therefore, consequences for non-enforcement must exist.²¹⁹ The effectiveness of remedies is also measured by the appropriateness of the reparations ordered²²⁰ as explained above.

These conditions of accessibility, affordability, timeliness, and effectiveness should be placed for both judicial and non-judicial remedies, including front-line complain handling mechanism. This will provide for all routes to remedy to comply with the international legal standards for effective and adequate access to justice.

For such purposes, the Commission considers that existing mechanisms would require to be enhanced. Further consideration will be required to explore if other mechanism will need to created.

To be internationalist and world-leading, the new human rights bill must include an obligation to provide Accessible, Affordable, Timely, and Effective routes to remedy, covering all routes to remedy, including administrative or quasi-judicial and judicial routes. The

specific elements of this AATE framework could be laid out in the legislation or detailed in further secondary legislation.

7.2. Information and advice for rights holders

As a fundamental prerequisite to the accessibility of routes to remedies for human rights violations, states need to ensure that legal advice is available for those who require it.²²¹ Particularly, a state needs to be able to provide free and competent legal advice and assistance – through whatever institution or mechanism it finds ideal – to those who are not able to afford it.²²²

In terms of access to justice, for routes to remedy to be truly accessible, they first need to be transparent.²²³ Information about their existence needs to be widely available, in different forms and languages, in order to ensure the population is aware of the existence of such routes to remedy. However, simply making information available is not sufficient.²²⁴ The obligation of transparency also implies that the state must properly invest financial resources in providing information relating to the existence of routes to remedy,²²⁵ so there must be a clear effort to communicate the existence of available remedies to the widest possible audience.

The Commission heard evidence through the “All Our Rights in Law” project about the current difficulties in relation to seeking information and advice about human rights. Overall, there was a general comment that people would not know where to go for in-depth advice on human rights. Participants in the project indicated that there is a considerable need to enhance advice provision around human rights, with some suggesting the development of a state-funded service that could be similar to Citizens Advice Bureau.

To be maximalist, the new human rights bill must provide for the creation of a human rights advice service to ensure everyone has access to appropriate and accurate information about their protected rights and their routes to remedy, if or when needed.

7.3. Public awareness campaign

The UN Declaration on Human Rights Education and Training reaffirms that everyone has the right to know about their human rights and fundamental freedoms.²²⁶

This acknowledges that for rights to be meaningful, people need to know about their existence. A rights-holder who effectively does not know she has a right is not able to make someone accountable when such right is breached. Even more critically, a duty-bearer who is unaware it has an obligation to act in way that ensures human rights are respected, protected, and fulfilled, cannot realistically uphold its obligations.

Based on such considerations, the Taskforce recommended that steps needed to be taken to raise public awareness of the new framework, so as to enable its effective implementation and support the development of a human rights culture.

Therefore, the Taskforce recommended that there should be a public awareness campaign which should be big and bold, use all different mediums, including media, be as practical as possible, help counteract any prevailing negative connotations of human rights and that it should include clear routes for more specific information and understanding.

To be maximalist, the new human rights bill must provide for a public awareness campaign, targeted to all members of society, in relation to the new human rights legislation.

7.4. Human rights scheme

The Taskforce recommend for the bill to guarantee a Human Rights Scheme, to secure that implementation of human rights is put in practice. This scheme should be laid in Parliament at regular intervals.

The Taskforce considered that Scottish Ministers should not only be accountable for their actions in relation to the compliance duty, but that they are accountable for planning and reporting how they will fulfil the rights and obligations under the Bill in practice. Therefore, a scheme

would have the potential to drive proactive measures for the realisation of rights and enhance both transparency and scrutiny of steps taken.

The taskforce recommended what reporting on the scheme could include. The Commission, however, considers that the scheme should support the planning of the Scottish Government on how to progressively realise rights. The Commission also considers that the requirement of planning and reporting as part of a scheme should be extended to all duty-bearers, to ensure that all those responsible for the realisation of human rights are required to carefully plan, coordinate and progress rights within their own areas of remit.

For this, the scheme could be aligned with the proposed reasonableness standard of review, ensuring policy coherence. For such purposes, the scheme should include reporting on:

- a) The measures taken to ensure the minimum essential levels for a person to live a dignified life (minimum core obligations);
- b) The concrete and targeted plans to fulfil the rights in the framework;
- c) The proposed coordinated, coherent and comprehensive measures that are in place to realise the rights in the framework;
- d) The measures taken to ensure the maximum available resources needed to realise rights, including in relation to resource mobilisation, allocation, and expenditure (through human rights budgeting, for example);
- e) The measures that are being proposed to respond to, as matter of priority, the precarious situation of disadvantaged and marginalised individuals or groups and those at high risk; and
- f) Plans have been put in place after a transparent and participative decision-making processes.

To be maximalist and multi-institutional, the new human rights bill must guarantee a Human Rights Scheme, aligned with the elements of the proposed standard of review.

7.5. SNAP

The concept of national human rights action plans was developed as part of the World Conference on Human Rights held in Vienna in 1993. It is based on a view that lasting improvements in human rights in any country is ultimately dependent on a country's government and people taking concrete action to bring about positive change.

The fundamental purpose of national human rights action plans in any given country, is to improve the promotion and protection of human rights. In doing so, the lived experience of everyone is improved, especially the most vulnerable in society.

Overall, national human rights action plans:

- Enable human rights obligations to be located within the context of public policy;
- Provide an effective way for a government to move beyond supportive rhetoric for domestic and international human rights and give effective observance to their national and international obligations;
- Help to endorse human rights improvements as realistic goals, achievable (if sufficiently resourced) through practical action that engages all sectors of government and society.

Respecting, protecting and fulfilling rights is a continuous process. Even where countries believe that they have good human rights records, their commitment on economic, social and cultural rights to 'progressive realisation' means that we should always be striving for better.

National human rights action plans should, therefore, be treated as an on-going process. Locating the commitment to a national human rights action plan within legislation would help to ensure on-going commitment is maintained over time, especially with any changes in government.

Placing a commitment to Scotland's National Action Plan on a legislative footing – as a process by which national human rights issues are explored, prioritised and acted upon – would provide the assurance of Scotland's commitment to enact and fulfil the obligations within the new legislation. Some further benefits of ensuring SNAP has a legislative footing are:

- Providing a more democratic and participatory strategy on how to prioritise and realise human rights obligation that is protected in law and less vulnerable to political changes;
- Promoting broader political support for human rights actions plans;
- Creating an important symbol of the commitment of the nation to the promotion and protection of human rights; and
- Promoting a more cooperative relationship between the Scottish Government, public bodies, civil society and overall rights-holders.²²⁷

Following the model presented by the Community Empowerment (Scotland) Act 2015, a provision within the legislation could require Scottish Ministers to periodically (e.g. at least every five years) agree a national human rights action plan for Scotland, which would guide the work of public authorities.

Ministers could be mandated to develop and publish such a plan, following a participative consultation process with people who represent communities in Scotland, and the Scottish Parliament.

The new framework could also require Ministers to report regularly on progress towards the outcomes the national human rights action plan, and review the plan periodically.

The legislation could also provide a duty on Public authorities and other organisations who carry out public functions to engage with the national human rights action plan in carrying out their devolved functions.

Consideration should be placed on how SNAP can be taken into consideration as part of a Human Rights Scheme (as described above).

To be multi-institutional and world-leading, the new human rights bill must guarantee the development, implementation, and monitoring of Scotland's National Action Plan.

7.6. Monitoring

The Commission acknowledges that human rights monitoring is a unique activity, central to the effective implementation and progressive realisation of human rights.

Human rights monitoring seeks to gather information about the human rights situation in a country over time through readily available methods, with the goal of engaging in advocacy to address human rights violations. It also involves a process of documenting human rights violations and practices so that the information can be categorised, verified, and used effectively.²²⁸

Human rights monitoring should be based on principles of:

- Accuracy
- Confidentiality
- Impartiality
- Groups-based sensitivity

The Taskforce indicated that it was essential for effective human rights monitoring that there was both qualitative data, including the lived experience of rights-holders, and quantitative data, disaggregated where necessary. The Scottish Parliament could play a role in providing scrutiny as to whether government action is delivering the intended outcomes, including in relation to strengthened pre-legislative assessment and scrutiny of the proposed Human Rights Scheme.

Most importantly, regulators, ombudsman, inspectorates and Scotland's national human rights institution have a key role to play in monitoring human rights compliance. This would be possible if they are provided with the appropriate powers and duties as described above.

Public authority monitoring and reporting

The Taskforce made clear that it was essential, both for accountability and effectiveness, that there is monitoring and reporting by public authorities of the steps they have taken, and plan to take, to fulfil human rights outcomes. The Taskforce also indicated that it was important that such monitoring and reporting does not simply lead to increased and burdensome paperwork but helps to secure human rights-based policy and practice decision making.

The Commission considers that careful consideration should be placed on how monitoring and reporting is also related to the proposed Human Rights Scheme. Appropriate bodies should be empowered to determine the appropriateness of the reporting and the overall human rights performance of duty-bearers.

Human Rights Budget Monitoring

The Commission has explained in the past that human rights budget scrutiny or analysis involves examining the public budget to assess a government's compliance with its human rights obligations. This is done with the central goal of making public budgets more effective in helping to realise human rights, to ensure that everyone can live a life of human dignity. This involves exploring both the budget process: to ensure that it is participative, transparent and accountable; as well as examining a government's resource generation, allocation and spend with reference to the agreed human rights standards.²²⁹

Human Rights Budget Scrutiny helps to ensure that the process by which a budget is developed, implemented and evaluated is fit for purpose; engages those who it affects; and complies with international obligations, both procedural and rights. It allows governments to be held to account for delivering (or failure to deliver) on their human rights obligations through appropriate resource generation, allocation and spend.

The Taskforce acknowledged the importance of human rights budget scrutiny and monitoring as a part of the framework implementation. Well-functioning budget scrutiny is required to be undertaken by a range of

actors including legislators, auditors, citizens, civil society, national human rights institutions and the media. It will be critical that in the implementation of the new framework these various actors play different roles at different stages of the budget process. Consideration must be given in the next stage of the process as to how this can be best facilitated as part of the framework implementation, and particularly, which bodies should have a role in ensuring human rights budget scrutiny.

To be multi-institutional, the new human rights framework must guarantee regulators, inspectorates, ombudspersons and Scotland's national human rights institution are provided with the appropriate powers and resources to ensure effective human rights monitoring.

7.7. Human Rights Education and Training

The UN Declaration on Human Rights Education and Training emphasis that everyone should have access to human rights education.²³⁰

Education and training is deemed essential for the promotion, protection and fulfilment of all human rights, in accordance with the principles of the universality, indivisibility and interdependence of human rights.²³¹

States have the primary responsibility to promote and ensure human rights education and training, which need to be developed and implemented under the principles of participation, inclusion, and responsibility.²³² This responsibility also includes the adoption of legislative and administrative measures and policies that guarantee human rights education and training, progressively and to the maximum of resources available to the state.²³³

Human rights education and training concerns all parts of society, at all levels, and in all forms.²³⁴ It should therefore build the capacity of both duty-bearers and right-holders. Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights.²³⁵

In particular, for the effective protection and realisation of human rights, states have to ensure the existence of adequate training in human rights

of state officials, civil servants, judges, law enforcement officials and military personnel, as well as promote adequate training in human rights for teachers, trainers and other educators, as well as private personnel acting on behalf of the state.²³⁶

As part of the new legislative framework, human rights education in Scotland should aim to:

- Raise awareness, understanding and acceptance of universal human rights standards and principles, and in particular, the new domestic protection of human rights;
- Develop a national culture of human rights, in which everyone is aware of their own rights and responsibilities in respect of the rights of others;
- Promote a national culture that aims to achieve a free, peaceful, pluralist and inclusive society;
- Pursue the effective protection and realisation of all human rights;
- Ensure equal opportunities for all through access to quality human rights education and training; and
- Contribute to the prevention of human rights violations and abuses.²³⁷

To ensure the capacity building initiatives in Scotland are effective, human rights education and training should:

- Be based on the principles of equality, human dignity, inclusion and non-discrimination;²³⁸
- Be accessible and available to all persons and should take into account the particular challenges and barriers faced by, and the needs and expectations of, persons in vulnerable and disadvantaged situations and groups, including persons with

disabilities, in order to promote empowerment and human development;²³⁹

- Use languages and methods suited to target groups, taking into account their specific needs and conditions;²⁴⁰
- Embrace and enrich, as well as draw inspiration from, the diversity of civilizations, religions, cultures and traditions of different countries, as it is reflected in the principle of universality of human rights;²⁴¹
- Make use of new information and communication technologies, as well as the media, to promote all human rights and fundamental freedoms;²⁴²
- Encourage the use of the arts should be as a means of training and raising awareness in the field of human rights;²⁴³
- Develop and promote the development of strategies, policies, action plans and programmes to implement human rights education and training.²⁴⁴

Furthermore, although capacity building initiatives should be encouraged in all segments of society, the UN recognises that National Human Rights Institutions can play an important role, including a coordinating role, in promoting human rights education and training. This role includes raising awareness and mobilising relevant public and private actors. For such purposes, states should strengthen national human rights institutions and ensure they are independent, effective and sufficiently resourced to deliver and coordinate human rights education and training.²⁴⁵ For the Commission to undertake a significant role in providing human right education in Scotland, it will need to be financially strengthen. This would require further staff to support all of this work, as well as additional resources for materials, travels, facilities, among others.

Finally, if Scotland is to achieve a true and profound cultural shift in favour of human rights, the teaching of human rights should be required for students at all levels. This will allow for future generations to grow in an environment where human rights is understood as core to Scotland's national identity.

To ensure the transformation of the Scotland's legal culture and ensure human rights is mainstreamed in all aspects of the domestic legal framework, the Commission encourages Universities to provide human rights education, and to make the study of human rights law compulsory for law schools. The Commission also calls on the Law Society of Scotland to consider including human rights law as a qualifying module.

To be maximalist, the new human rights framework must guarantee the provision of human rights education, in accordance with the principles enshrined in the United Nations Declaration on Human Rights Education and Training, including introducing human rights education into the educational curriculum at all levels, and making it compulsory for law students.

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- ¹ Read full lecture <https://www.scottishhumanrights.com/media/1469/wolffe2014lecture.pdf>
- ² See [models of incorporation escr vfinal nov18.pdf](https://www.scottishhumanrights.com/media/1469/wolffe2014lecture.pdf) (scottishhumanrights.com)
- ³ See report at [National Taskforce for Human Rights: leadership report - gov.scot](https://www.gov.scot/publications/leadership-report-2019-2020/pages/14838/attachments/original/1618577646/2021_Scottish_Liberal_Democrats_Manifesto.pdf?1618577646) (www.gov.scot)
- ⁴ See [New Human Rights Bill - gov.scot](https://www.gov.scot/publications/new-human-rights-bill-2021/pages/14838/attachments/original/1618577646/2021_Scottish_Liberal_Democrats_Manifesto.pdf?1618577646) (www.gov.scot)
- ⁵ See <https://www.snp.org/manifesto/>
- ⁶ See https://greens.scot/sites/default/files/ScottishGreens_2021Manifesto_Full_web_version.pdf
- ⁷ See [Scottish-Labours-National-Recovery-Plan.pdf](https://www.scottishlabour.org.uk/publications/scottish-labours-national-recovery-plan-2021-22/) (scottishlabour.org.uk)
- ⁸ See https://d3n8a8pro7vhmx.cloudfront.net/no2nuisancecalls/pages/14838/attachments/original/1618577646/2021_Scottish_Liberal_Democrats_Manifesto.pdf?1618577646
- ⁹ See <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>
- ¹⁰ See the Commission's submission to the UN Human Rights Council's Universal Periodic Review at <https://www.scottishhumanrights.com/media/2303/shrc-submission-upr-2022-vfinal.pdf>
- ¹¹ See <https://www.parlamaid-alba.scot/~media/committ/664> Relative Poverty is defined as below 60% of the median UK income in the current year after housing costs.
- ¹² See <https://www.gov.scot/publications/poverty-income-inequality-scotland-2016-19/> and <https://www.ippr.org/blog/covid-19-how-are-families-with-children-faring-so-far>
- ¹³ See <https://www.gov.scot/publications/poverty-income-inequality-scotland-2016-19/> and <https://www.ippr.org/blog/covid-19-how-are-families-with-children-faring-so-far>
- ¹⁴ See <https://www.scottishhumanrights.com/media/2065/social-security-briefing-shrc-220720.pdf>
- ¹⁵ See <https://www.gov.scot/publications/child-chance-tackling-child-poverty-delivery-plan-2018-22/>
- ¹⁶ Current social security entitlements do not reflect the cost of living and now living standards are being described as facing a 'perfect storm' – due to the impact of rising food prices, prices rises arising from the impact of Brexit; a massive increase in energy prices, a decrease in the Universal Credit uplift (which was provided during the pandemic, ceasing in October 2021), and a 1% rise in National Insurance.
- ¹⁷ See <https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-28-09-2021?meeting=13327&iob=120886>
- ¹⁸ See <https://www.scottishhumanrights.com/media/1845/good-food-nation-shrc-consultation-response-final-4-april-2019.docx>
- ¹⁹ See <http://www.scottishhumanrights.com/media/1845/good-food-nation-shrc-consultation-response-final-4-april-2019.docx> and <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>
- ²⁰ See https://www.foodstandards.gov.scot/downloads/Scottish_Dietary_Goals_-_Adapt_it_sheet.pdf
- ²¹ See <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/6/>
- ²² See <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/6/>
- ²³ Rates of fuel poverty increased in remote rural areas (from 33% to 43%), increasing the gap when comparing overall urban (24%) to overall rural areas (29%). See <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/6/>

²⁴ Levels of fuel poverty among households using electricity as their primary heating fuel have remained the highest, at 43%, compared to households using gas (22%), oil (28%) and other fuel types (31%) as their primary heating fuel in 2019. See <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/6/>

²⁵ 17% of households in Scotland living off the gas grid and reliant on electricity or solid fuel, with bills on average 50% higher than the average Scottish dual fuel bill and 100% higher than the average such bill for the UK. See <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/6/>

²⁶ A higher proportion of households with a pre-payment meter (PPM; electricity, gas or both) were in fuel poverty compared to those without a PPM, 36% compared to 22% respectively. See <https://www.gov.scot/publications/scottish-house-condition-survey-2019-key-findings/pages/6/>

²⁷ At present an estimated 50,000 children live in poverty only after housing costs, therefore the cost of housing is locking these children into poverty. See <https://www.parlaimaid-alba.scot/~media/committ/663>. Over half (51%) of minority ethnic people living in poverty are in unaffordable housing, which means they are spending more than 30% of their income on their housing. This is compared to 44% for white people in poverty. See <https://www.jrf.org.uk/report/review-poverty-and-ethnicity-scotland>. Women's housing situation differs from that of men, and is generally poorer, in terms of affordability, ownership, safety and overcrowding. See https://wbg.org.uk/wp-content/uploads/2021/10/Housing_-_Autumn-2021-pre-Budget-Briefing-1-1.pdf and https://assets.ctfassets.net/6sqqfr111sfj/ZVUQI0UpC2EZd29Bxk5OJ/53a8277675f15aff882faa308939d71a/PDF_copy_of_press_release_including_Notes_to_Editor.pdf

²⁸ See <https://fraserofallander.org/coronavirus-impact-on-economy-society-17-experts/>

²⁹ See <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2021/03/housing-2040-2/documents/housing-2040/housing-2040/govscot%3Adocument/housing-2040.pdf>

³⁰ See <https://scotland.shelter.org.uk/>

³¹ 11,804 children were in households assessed as homeless in 2020-2021. See https://scotland.shelter.org.uk/housing_policy/key_statistics/homelessness_facts_and_research and <https://www.gov.scot/publications/homelessness-scotland-2020-2021/>

³² See <https://www.gov.scot/publications/homelessness-scotland-2020-2021/>

³³ The Homeless Network Scotland and a specialist group of expert reviewers reported that LGBT young people are over-represented in youth homelessness figures, accounting for 24 percent of young homeless people. In addition, 69 per cent of homeless LGBT young people had experience of violence, abuse or rejection at home, expressing fear that this could be exacerbated by the current lockdown. See <https://homelessnetwork.scot/wp-content/uploads/2020/04/Equalities-Homelessness-and-Covid-19v160420.pdf>

³⁴ The Homeless Network Scotland also reported that 80 per cent of transgender people have experienced abuse from a current or former partner and transgender young people who are not yet 'out' may struggle with increased stress during lockdown. See <https://homelessnetwork.scot/wp-content/uploads/2020/04/Equalities-Homelessness-and-Covid-19v160420.pdf>

³⁵ Young people have always been one of the groups at a higher risk of homelessness in normal times, something which has been exacerbated further by COVID-19. Young people are more likely to be low wage earners, possibly with zero-hour contracts and working in the very sectors that have been most impacted on by the lockdown. Young people are also in line to receive lower

levels of social security during this period directly because of their age – for example, young people under 35 are only entitled to the Shared Accommodation Rate to cover housing costs, even if they live alone. <https://fraserofallander.org/fai-publications/fraser-economic-commentary/coronavirus-impact-oneconomy-society-17-experts/>

³⁶ See <https://homelessnetwork.scot/wp-content/uploads/2020/04/Equalities-Homelessness-and-Covid-19v270420-PUBLISHED.pdf>

³⁷ See <https://www.gov.scot/publications/ending-destitution-together/pages/9/>

³⁸ See <https://www.nrscotland.gov.uk/files/statistics/avoidable-mortality/2019/avoidable-mortality-19-report.pdf>; <https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/20/drug-related-deaths-20-pub.pdf>; and <https://www.nrscotland.gov.uk/files/statistics/probable-suicides/2020/suicides-20-report.pdf>.

³⁹ See <https://www.isdscotland.org/Health-Topics/Child-Health/Publications/2019-12-10/2019-12-10-P1-BMI-Statistics-Publication-Summary.pdf>

⁴⁰ Obesity (BMI 30+) ranges from 20% in the least deprived quintile to 35% in the most deprived quintile. Dietary risk factors are the second biggest contributory factor to death and disability in Scotland after smoking. The cost to the economy is estimated to be up to £4.6 billion. See <https://www.gov.scot/publications/scotlands-public-health-priorities/>

⁴¹ Around a quarter of those deaths could be prevented. See https://www.healthcareimprovementscotland.org/our_work/governance_and_assurance/deaths_of_children_reviews.aspx

⁴² The next largest rate was 77 per million for both Sweden and Norway. See <https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/20/drug-related-deaths-20-pub.pdf>

⁴³ See https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf

⁴⁴ See https://hrcscotland.org/wp-content/uploads/2021/03/HRCS_all-our-rights_report_48pp_web_single-pages.pdf

⁴⁵ See Reed and Portes, The Cumulative Impact on Living Standards of Public Spending Changes, Equality and Human Rights Commission, Research Report 120, (2018) at 10

⁴⁶ See <https://www.jrf.org.uk/report/review-poverty-and-ethnicity-scotland>; and https://wbg.org.uk/wp-content/uploads/2021/10/Social-security_-Autumn-2021-pre-Budget-Briefing-1-1.pdf

⁴⁷ See <https://www.runnymedetrust.org/projectsand-publications/employment-3/the-colour-of-money.html>.

⁴⁸ Risk to oneself and/or to others is one of the criteria that must be met for authorising involuntary treatment. Research has found that more people who were black or of mixed or multiple ethnicity were perceived as a greater risk to themselves and others, whereas all categories of white people were more often perceived as a risk to themselves. See https://www.mwscot.org.uk/sites/default/files/2021-09/Racial-Inequality-Scotland_Report_Sep2021.pdf

Gender also exerts a role on perception of risk to self and others with 48.8% of black women were perceived to be of risk to themselves and others, compared to 33.8% of white Scottish women were considered to be both a risk to themselves and to others. See https://www.mwscot.org.uk/sites/default/files/2021-09/Racial-Inequality-Scotland_Report_Sep2021.pdf

⁴⁹ See https://www.mwscot.org.uk/sites/default/files/2021-09/Racial-Inequality-Scotland_Report_Sep2021.pdf

⁵⁰ See https://www.mwscot.org.uk/sites/default/files/2021-09/Racial-Inequality-Scotland_Report_Sep2021.pdf

⁵¹ Evidence provided to the Commission as a member of the Taskforce in the CERD reference group on 9 December 2020

⁵² Evidence provided to the Commission as a member of the Taskforce in the CERD reference group on 9 December 2020

⁵³ Paper by Emma Sullivan “The Added Benefit of Incorporating ICERD in Scotland” Submitted to the National Taskforce

⁵⁴ See Nicole Busby and Kasey McCall-Smith “Incorporation of the CERD and CRPD and Equivalent Rights Provision for LGBTI Communities and Older Persons”

⁵⁵ Nicole Busby and Kasey McCall-Smith “Incorporation of the CERD and CRPD and Equivalent Rights Provision for LGBTI Communities and Older Persons

⁵⁶ Nicole Busby and Kasey McCall-Smith “Incorporation of the CERD and CRPD and Equivalent Rights Provision for LGBTI Communities and Older Persons”

⁵⁷ See <http://www.healthscotland.scot/health-inequalities/what-are-health-inequalities>

⁵⁸ This represents an increase for the fourth year in a row. See <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2021/06/domestic-abuse-statistics-recorded-police-scotland-2019-20/documents/domestic-abuse-statistics-recorded-police-scotland-2019-20/govscot%3Adocument/domestic-abuse-statistics-recorded-police-scotland-2019-20.pdf>

⁵⁹ See <https://store.southallblacksisters.org.uk/reports/safe-and-sane-report/>

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<https://www.togetherscotland.org.uk/news-and-events/news/2020/07/covid-19-examining-the-impact-of-the-pandemic-on-violence-against-women-and-girls/>
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⁶⁷ See [Scotland's councils set to be dominated by men until 2037 | HeraldScotland](https://www.heraldscotland.com/news/scotland-scotland-s-councils-set-to-be-dominated-by-men-until-2037)

⁶⁸ Evidence provided to the Commission as a member of the Taskforce in the CEDAW reference group meeting

⁶⁹ Paper by Nicole Busby “The Essential Features of an Equality Clause and the Potential Incorporation of CEDAW”

⁷⁰ Paper by Nicole Busby “The Essential Features of an Equality Clause and the Potential Incorporation of CEDAW”

⁷¹ Examples could be seen in the Welsh Assembly’s approach to the CRC (and in line with the wording of the PSED), this could require ‘due regard’ to be paid to CEDAW.

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⁷³ See <https://www.jrf.org.uk/report/poverty-scotland-2021>

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⁷⁶ Evidence provided to the Commission as a member of the Taskforce in the Disability roundtable, 17 September 2020

⁷⁷ Scottish Commission for People with Learning Disabilities briefing to the National Taskforce, (2020)

⁷⁸ See Report by Inclusion Scotland and the Health and Social Care Alliance Scotland (the ALLIANCE), authored by Dr Kasey McCall-Smith

⁷⁹ Paper by Nicole Busby and Kasey McCall-Smith “Incorporation of the CERD and CRPD and Equivalent Rights Provision for LGBTI Communities and Older Persons”

⁸⁰ See ANNEX D of the Taskforce Report

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⁸⁴ Aarhus Meeting of the Parties (2011), Decision IV/9i on compliance by the United Kingdom of Great Britain and Northern Ireland, (2014), Decision V/9n on compliance by the United Kingdom of Great Britain and Northern Ireland Paragraph 2(a); (2017) Decision VI/8k concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention; Aarhus Convention Compliance Committee (Aug 2021), Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I and Part II.

⁸⁵ See <https://www.gov.scot/environment-and-climate-change/>

⁸⁶ Although Scotland’s economy-wide emissions targets are 75% reduction by 2030, 90% reduction by 2040 and net-zero by 2045, from a 1990 baseline, analysis conducted by the Scottish Government using the TIMES model has assigned the transport sector its own emissions envelope of 56% reduction by 2030, 70% reduction by 2040 and net-zero by 2045, from a 1990 baseline. TIMES calculates these emission envelopes as the emission reductions needed before emission offsetting. These emission reductions must therefore be achieved through direct emission reductions alone.

⁸⁷ Official analysis by NatureScot⁸⁷, shows that Scotland has also failed to meet 11 of 20 agreed UN targets to protect the environment while one in five animals and plants deemed important to the nation by ministers are under threat⁸⁷. See https://ww2.rspb.org.uk/Images/A%20LOST%20DECADE%20FOR%20NATURE_tcm9-481563.pdf ; <https://www.heraldscotland.com/news/19281510.bid-give-scots-legal-human-right-healthy-environment---ministers-miss-targets-stop-species-extinction/>

⁸⁸ See <https://www.theccc.org.uk/publication/independent-assessment-of-uk-climate-risk/>

⁸⁹ EU Charter of Fundamental Rights, Article 25

⁹⁰ United Nations Principles for Older Persons, as Adopted by General Assembly, 16 December 1991, Resolution 46/91

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²¹⁶ See UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, paragraph 55; and UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, paragraph 55

²¹⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 9: The domestic application of the Covenant, 3 December 1998, paragraph 9

²¹⁸ Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 84; and Inter-American Commission on Human Rights, 'Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights', (2007) paragraph 268.

²¹⁹ Inter-American Commission on Human Rights, 'Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights', (2007) paragraph 251

²²⁰ See for example UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, paragraph 59

²²¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, paragraph 56. See also, UN Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to

Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, paragraph 17; UN Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, paragraph 57

²²² Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 60

²²³ UN Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 2 May 2016, paragraph 49.h

²²⁴ Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 27

²²⁵ Report of the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepulveda, 'Access to Justice', (2012) paragraph 64

²²⁶ Article 1

²²⁷ See some examples at <https://www.ohchr.org/Documents/Publications/training10en.pdf>

²²⁸ See <https://www.endvawnow.org/en/articles/994-what-is-human-rights-monitoring.html#:~:text=Human%20rights%20monitoring%20seeks%20to,to%20address%20human%20rights%20violations.>

²²⁹ Scottish Human Rights Commission, Human Rights Budget Work: What, Why and How? Collated Briefing Paper, (2019)

²³⁰ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 1.1

²³¹ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 1.2

²³² United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 7.1

²³³ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 7.3

²³⁴ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 3.2

²³⁵ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 2.1

²³⁶ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 7.4

²³⁷ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 4

²³⁸ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 5.1

²³⁹ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 5.2

²⁴⁰ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 3.3

²⁴¹ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 5.3

²⁴² United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 6.1

²⁴³ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 6.2

²⁴⁴ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 8.1

²⁴⁵ United Nations Declaration on Human Rights Education and Training, Resolution adopted by the General Assembly on 19 December 2011, A/RES/66/137, article 9