

MINUTE OF WRITTEN SUBMISSION

In accordance with rule of court 25A.7

On behalf of

THE SCOTTISH HUMAN RIGHTS COMMISSION

Bridgeside House, 99 McDonald Road, Edinburgh EH7 4NS

in causa

THE SCOTTISH MINISTERS

Petitioner

against

JIM MONGAN

Respondent

INTRODUCTION

1. The court, by interlocutor of 20 May 2026, granted intimation of, *inter alia*, a compatibility question arising in these proceedings upon the Scottish Human Rights Commission ("SHRC") and allowed written notification of an intention to take part in these proceedings. The SHRC having intimated its intention to take part, produces this minute of written submission in accordance with rule of court 25A.7. The SHRC wishes to confine the extent of its participation in these proceedings to these written submissions only.
2. The SHRC is a statutory body established by the *Scottish Commission for Human Rights Act 2006* ("the 2006 Act"). Under section 2 of the 2006 Act, the SHRC has a general duty to promote human rights and to encourage best practice in relation to human rights. Under section 2(2)(b) of the 2006 Act, those "*human rights*" are defined to include those contained in any international convention, treaty or other international instrument ratified by the UK.

3. The SHRC provides these written submissions to assist the court in these proceedings. In particular, the SHRC wishes to draw the court's attention to the UNCRC requirements regarding: non-discrimination (Article 2); the best interests of the child as a primary consideration (Article 3); and the importance of providing culturally appropriate accommodation (Article 27) under the *United Nations Convention on the Rights of the Child (Scotland) Act 2024* ("the 2024 Act").
4. The work of the SHRC has recently highlighted and raised concerns about historic and ongoing State practices in respect of Scottish gypsy travellers, including in its January 2026 report titled *"No man's land" A human rights assessment of the 'Tinker Experiment' and redress for its victims*.

UNCRC COMPATIBILITY QUESTION ARISING IN THESE PROCEEDINGS

5. Insofar as relevant to the SHRC, these proceedings concern a petition brought by the Petitioner seeking an order for interdict and interdict *ad interim* prohibiting the Respondent and his family from returning to and entering an area of land in Edinburgh. The petition is presented at both common law and in terms of section 46 of the Court of Session Act 1988. The Petitioner avers they are the proprietor of that land. The Respondent avers that he is an Irish Traveller. The Petitioner and Respondent agree that the Respondent lives on the land in question, together with his partner and their eleven children, aged between 15 years old and 2 months old respectively.
6. The Petitioner and Respondent also agree that the culture and identity of the Respondent and his family involve living in caravans. The Respondent asserts that he and his family would be content to move from the land in question if an offer of an alternative, culturally appropriate site were made available. The Respondent asserts that the Petitioner has not made any such offer and that no alternative sites are available.
7. The Respondent asserts that his proposed removal and that of his family from the land in question would be unlawful, including under Articles 8 and 14 of the ECHR. The Respondent also seeks to assert the rights of his children and cites in support Articles 2, 3, 8, 12, 14, 16, 24, 27, 28, 29 and 30 of the "UNCRC requirements", as defined under section 1(2) and contained in Schedule 1 to the 2024 Act. The Respondent asserts that, especially in the absence of a suitable

alternative site, the proposed eviction would breach the UNCRC requirements and render him and his family homeless.

8. Under section 6(1) of the 2024 Act, it is unlawful for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements. The term “*public authority*” is defined under section 6(5)(a)(i) and (ii) of the 2024 Act to expressly include both the Petitioner and the court. The Respondent asserts that in seeking eviction of the Respondent’s children, the Petitioner is purporting to exercise a function to which the 2024 Act applies.
9. In this regard, the SHRC would endorse the purposive approach to the interpretation of section 6 of the 2024 Act taken by the High Court of Justiciary in *Lord Advocate’s References* 2025 SLT 101 at paragraphs [42] – [48] and Lady Drummond in *Glasgow City Council v Stringfellow* [2026] CSOH 19 at paragraphs [105]-[108] when a court is determining whether a public authority is acting in connection with a relevant function. For the purpose of these written submissions, the SHRC proceeds on the assumption that the Petitioner would be acting in connection with a relevant function.
10. For the avoidance of doubt, the SHRC takes no position directly in support of, or in opposition to, the orders sought by the Petitioner.

INTERPRETATION OF THE UNCRC REQUIREMENTS

11. Section 4 of the 2024 Act states that a court or tribunal determining a question in connection with the UNCRC requirements may take in account various things listed in section 4(2), in so far as relevant to the interpretation of the UNCRC requirements in those proceedings. Those things include: General Comments (s4(2)(c)); concluding observations (s4(2)(d)); recommendations following days of general discussion (s4(2)(f)); and other international law and comparative law (s4(2)(g)).
12. Where relevant to the interpretation of the UNCRC requirements in these proceedings, the SHRC draws the court’s attention to these things below.

ARTICLE 2 (Rights of the child as set out in the UNCRC are respected without discrimination of any kind)

13. In these proceedings the Respondent asserts that the interference with his private life and that of his family amounts to discrimination on the basis of their status as Irish Travellers and therefore contrary to Articles 8 and 14 ECHR. In respect of the UNRC requirements and the rights of his children, the Respondent cites *inter alia* Article 2 and Article 16.
14. Article 2 provides that the rights of the child set out in the UNCRC are to be respected without discrimination of any kind. The Committee on the Rights of the Child has also identified Article 2 as one of the four general principles of the UNCRC, alongside Articles 3, 6 and 12: see General Comment 12 (2009) on the right of the child to be heard at paragraph 2. As a general principle, Article 2 is therefore not only a right in and of itself, but it is: (a) linked to those other general principles; and (b) should be considered in the interpretation and implementation of the other UNCRC requirements.

Concluding Observations to the UK (2023)

15. Section 4(2)(d) of the 2024 Act enables the court to take into account Concluding Observations, so far as relevant to the interpretation of the UNCRC requirements in those proceedings.
16. The SHRC would highlight the views of the Committee on the Rights of the Child in its Concluding Observations on the sixth and seventh periodic reports of the UK (2023) at paragraphs 5, 19 and 20:

“5. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party’s attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: non-discrimination (para. 20), abuse, neglect and sexual exploitation and abuse (para. 33), children deprived of a family environment (para. 38), mental health (para. 43), asylum-seeking, refugee and migrant children (para. 50) and administration of child justice (para. 54).”

...

“Non-discrimination

19. *The Committee remains deeply concerned about persistent discrimination, such as through expressions of racism and bullying, against children in disadvantaged situations, including children belonging to minority groups and lesbian, gay, bisexual, transgender and intersex children; insufficient progress in ensuring the protection of all children under 18 years of age against discrimination on the grounds of their age; and the overrepresentation of children of Asian and African descent and Muslim, Roma, gypsy and traveller children in the criminal justice system and the large proportion of these groups of children who are living in poverty."*

20. *The Committee reiterates its previous recommendations and urges the State party:*

(a) To implement targeted policies and programmes to combat racist and xenophobic activities and to eliminate discrimination against children in disadvantaged situations, including children belonging to ethnic minority groups, asylum-seeking, refugee and migrant children, Roma, gypsy and traveller children, children with disabilities, children in alternative care, children of incarcerated parents, children of unmarried parents, lesbian, gay, bisexual, transgender and intersex children, socioeconomically disadvantaged children and children in the justice system".

17. Against this background, where the Committee on the Rights of the Child has expressed deep concern about persistent discrimination against gypsy and traveller children and recommended the elimination of that discrimination, the SHRC would stress the importance of Article 2 (non-discrimination) and its relevance to these proceedings, both as a right in and of itself but also in the interpretation and implementation of the other UNCRC requirements, including Article 27.

Article 16 UNCRC

18. Article 16(1) provides that no child shall be subjected to arbitrary and unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation. Article 16(2) provides that the child has the right to the protection of the law against such interference or attacks.

19. The SHRC notes that Article 16 of the UNCRC requirements was the subject of recent judicial consideration in *Edinburgh Council v SP* 2026 UT 34. The Upper Tribunal held at paragraph [34] that whilst Article 16 contained no express

parallel provision to Article 8(2) ECHR, interferences could be justified in a similar way to the justification process under Article 8(2) ECHR. As reflected at paragraph [35], the parties in that case were agreed that the four-stage proportionality test applicable in relation to Article 8 ECHR would also apply in the proportionality assessment under Article 16 of the UNCRC requirements. Namely:

- (i) Whether the objective is sufficiently important to justify the limitation of a protected right;
- (ii) Whether the measure is rationally connected to the objective;
- (iii) Whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and
- (iv) Whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent the former will contribute to its achievement, the former outweighs the latter.

ARTICLE 3 (Best interests of the child shall be a primary consideration)

20. Article 3 of the UNCRC provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

General Comment 14 (Best interests of the child as a primary consideration)

21. The SHRC submits that the requirements of Article 3 are helpfully elaborated upon by the Committee on the Rights of Children General Comment 14 (2013) on the right of the child to have his or best interests taken as a primary consideration.

22. By virtue of section 4 of the 2024 Act, General Comment 14 has already been the subject of judicial consideration by the Scottish courts in *X, Principal Reporter* [2026] CSOH 15 at paragraph [20] and in *Glasgow City Council v Stringfellow* [2026] CSOH 19 at paragraph [112].

23. As a starting point, the Committee on the Rights of the Children at paragraph 82 of General Comment 14 has observed:

“... [O]ne needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognized in the Convention and its Optional Protocols, and the holistic development of the child.”

24. Further, as recognised in X, *Principal Reporter* [2026] CSOH 15 at paragraph [20], the Committee on the Rights of the Child General Comment 14 at paragraph 6 has underlined that the child’s best interests should be understood as a threefold concept:

“6. The Committee underlines that the child’s best interests is a threefold concept:

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s interests have been weighed against other considerations, be they broad issues of policy or individual cases.”

25. The SHRC considers that this third (rule of procedure) limb, under paragraph 6(c) of General Comment 14, is particularly instructive in the context of these

proceedings. For example, in *X, Principal Reporter* [2026] CSOH 15, the court held at paragraph [52] that the impugned decision “fell foul” of paragraph 6(c) of General Comment 14 since it contained “no evaluation of the possible impact of the decision on the petitioner, nor does it show that his right to have his interests evaluated has explicitly been taken into account” and the decision was therefore not UNCRC compliant.

26. In terms of treating the best interests of the child as a primary consideration, the Committee on the Rights of the Children General Comment 14 at paragraph 39 has also recognised there may be a need for a careful balancing exercise with other interests:

“... If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child’s interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.”

Child Rights and Wellbeing Impacts Assessment (CRWIA)

27. The Petitioner avers that prior to raising these proceedings, in partnership with the City of Edinburgh Council, the Petitioner prepared an Equality Impact Assessment and a Child Rights and Wellbeing Impacts Assessment (“CRWIA”) (petition as adjusted 4 June 2026, at statement 5). Under section 17(1) of the 2024 Act, a CRWIA is an assessment of the likely effects (if any) of a legislative provision on, or decision of a strategic nature relating to, the rights and wellbeing of children. Under section 17(3) of the 2024 Act, the Petitioner must prepare and publish a CRWIA assessment in relation to decisions of a strategic nature relating to the rights and wellbeing of children as required by, and in accordance with, the Children’s Rights Scheme as established under section 14 of the 2024 Act.
28. The SHRC has no further detail on that CRWIA. Nevertheless and in any event, the SHRC would emphasise the need for a public authority’s decision concerning a child or children to be sufficiently reasoned in order to satisfy Article 3, consistent with the procedural limb of paragraph 6(c) of General Comment 14. That decision must demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected.

29. In this regard, the SHRC highlights paragraph 97 of General Comment 14 as instructive of the approach which must be taken by a public authority under the 2024 Act:

“97. In order to demonstrate that the right of the child to have his or her best interests assessed and taken as a primary consideration has been respected, any decision concerning the child or children must be motivated, justified and explained. The motivation should state explicitly all the factual circumstances regarding the child, what elements have been found relevant in the best-interests assessment, the content of the elements in the individual case, and how they have been weighted to determine the child’s best interests. If the decision differs from the views of the child, the reason for that should be clearly stated. If, exceptionally, the solution chosen is not in the best interests of the child, the grounds for this must be set out in order to show that the child’s best interests were a primary consideration despite the result. It is not sufficient to state in general terms that other considerations override the best interests of the child; all considerations must be explicitly specified in relation to the case at hand, and the reason why they carry greater weight in the particular case must be explained. The reasoning must also demonstrate, in a credible way, why the best interests of the child were not strong enough to be outweigh the other considerations. Account must be taken of those circumstances in which the best interests of the child must be the paramount consideration (see paragraph 38 above)” (underlining added).

30. Even prior to incorporation of the UNCRC via the 2024 Act, it was well-established that the best interests of the child must be a primary consideration in, for example, the proportionality assessment under Article 8 ECHR in the immigration context: *Zoumbas v SSHD* [2013] 1 WLR 3690 at paragraph [10].

ARTICLE 12 (Where a child is capable of forming their own views, they have a right to express those views freely in respect of matters which affect them)

31. Article 12 provides for a child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child and in particular to be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body.

32. In the current proceedings, the Petitioner and Respondent both appear to agree that the court requires to provide the Respondent's children with the opportunity to be heard in these proceedings, whether directly or through a representative or an appropriate body.
33. The SHRC observes in this context that article 12(2) of the UNCRC requirements is not proscriptive as to the means by which children's views are put to the court. It will be for the court, as a public authority under s6 of the 2024 Act, to satisfy itself that it has sufficient information before it in order to discharge this obligation. For example, the SHRC is aware of at least one Scottish case in which the court itself appointed an interested party as curator *ad litem* in order to ensure that the judicial review proceedings were themselves UNCRC compliant by representing the interests of a child and obtaining their views: *X, Principal Reporter* [2026] CSOH 15 at paragraph [6].

General Comment 12 (Right of the child to be heard)

34. The SHRC further submits that the Committee on the Rights of the Child General Comment 12 (2009) on the right of the child to be heard is helpful in elaborating upon the ambit of Article 12 of the UNCRC requirements.
35. As a starting point, paragraph 2 of General Comment 12 states:

"2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights."

36. Article 12, like Article 2, is therefore not only a right in and of itself, but should also be considered in the interpretation and implementation of the other UNCRC requirements. For example, ensuring that the views of children are properly taken into account is an essential element when assessing and determining a child's best interests under Article 3.
37. The SHRC would also highlight the following aspects of General Comment 12 in particular as useful in elucidating how to interpret and apply Article 12:

- The presumption should be that that the child has the capacity to form his or her own views and that he or she has the right to express them (paragraph 20, GC12).
- Nor does Article 12 impose an age limit on the right of the child to express his or her views (paragraph 21, GC12).
- Article 12 stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views (paragraph 28, GC12).
- If the child is capable of forming her or his own views in a reasonable and independent manner, the decision maker must consider the views of the child as a significant factor in the settlement of the issue (paragraph 44, GC12).
- Article 12(1) provides that States Parties “*shall assure*” the right of the child to freely express his or her views. “*Shall assure*” is a legal term of special strength, which leaves no leeway for State Parties’ discretion; they are under strict obligation to undertake appropriate measures to fully implement this right for all children (paragraph 19, GC12).

ARTICLE 27 (Right of every child to an adequate standard of living):

38. Article 27 provides that State Parties recognise the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. A child’s wellbeing is therefore broadly conceptualised.
39. In these proceedings the Respondent avers that since settling at the land in question, both he and his family have become assimilated into the local community. For example, the Respondent asserts that: four of his children attend the local primary school; he and his family are registered locally for dental care and now receive appropriate treatment; and that he and his younger children are registered with the local General Practitioner and receive appropriate medical support there. The SHRC considers that aspects of the children’s lives such as these, if borne out by the evidence, are relevant in determining whether Article 27 of the UNCRC requirements is complied with.

Cultural adequacy

40. The SHRC further considers that when assessing the UNCRC requirements as a whole, culture is an important part of a child's wellbeing. The Respondent cites *inter alia* Articles 8 and 30 of the UNCRC requirements in seeking to assert the rights of his children.
41. Article 8 requires States Parties to undertake to respect the right of the child to preserve his or her identity, including name and family relations as recognised by law without unlawful interference. Article 30 provides that in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Alternative, culturally appropriate accommodation

42. In these proceedings, the Respondent asserts that he and his family would be content to move from the land in question if an offer of an alternative, culturally appropriate site were made available. The Respondent asserts that the Petitioner has not made any such offer and that no alternative sites are available. The Respondent also asserts that, especially in the absence of a suitable alternative site, the proposed eviction would breach the UNCRC requirements and render him and his family homeless.
43. The Respondent also avers that his mental health suffered significantly when housed in a council house previously and that other members of his wider family have suffered significantly when living in permanent houses. The Respondent asserts that a living arrangement of separate accommodation for him and his partner would be manifestly inappropriate for the family and inconsistent with their cultural identity.
44. With respect to a child's standard of living, the SHRC submits that it is clear from the terms of Article 27(3) of the UNCRC requirements itself that this includes housing:

"3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material

assistance and support programmes, particularly with regard to nutrition, clothing and housing" (underlining added).

General Comment 21 (Children in street situations)

45. The Committee on the Rights of the Children General Comment 21 (2017) on children in street situations also reinforces, at paragraph 50, that "[t]he right to housing is an important component of article 27".

46. Further, paragraph 51 of General Comment 21 states that children, including those in informal or illegal housing, should not be subject to forced eviction prior to the provision of adequate alternative accommodation:

"51. States should take measures to address the structural causes of poverty and income inequalities to reduce pressure on and strengthen precarious families, as a means of offering better protection for children and reducing the likelihood of children ending up in street situations ... With regard to housing, security of tenure is essential for preventing children from coming into street situations. This includes access to adequate housing that is safe, with access to safe drinking water, sanitation and hygiene facilities. Children, including those living in informal or illegal housing, should not be subject to forced evictions prior to the provision of adequate alternative accommodation: States are required to make appropriate provisions for affected children. Child and human rights impact assessments should be a prerequisite for development and infrastructure projects to minimize the negative impacts of displacement" (underlining added).

Concluding Observations to the UK (2023)

47. Section 4(2)(d) of the 2024 Act enables the court to take into account Concluding Observations, so far as relevant to the interpretation of the UNCRC requirements in those proceedings.

48. With respect to how Article 27 should be interpreted and applied, the SHRC would highlight the views expressed by the Committee on the Rights of the Child in its Concluding Observations to the UK (2023) and paragraph 46(c) in particular:

"Standard of living

46. Noting with deep concern the large number of children living in poverty, food insecurity and homelessness, the Committee recommends that the State party:

...

(c) Ensure that the best interests of the child are given primary consideration in all eviction matters, that evictions are not targeted at families belonging to minority groups and that any evictions are always subject to adequate alternatives".

Concluding Observations to the UK (2016)

49. The earlier Committee on the Rights of the Child Concluding Observations to the UK (2016) also stated at paragraph 70:

"Standard of living

70. The Committee is seriously concerned that:

...

(e) In Scotland, adequate and culturally sensitive accommodation for Roma, gypsy and traveller children remains insufficient."

50. Further, at paragraph 71 of those same Concluding Observations to the UK (2016):

"The Committee draws the attention of the State party to target 1.2 of the Sustainable Development Goals, on poverty reduction, and urges the State party to:

...

(g) In Scotland, introduce a statutory duty for local authorities to provide safe and adequate sites for travellers, while ensuring meaningful participation of Roma, gypsy and traveller communities, including children, in planning and decision making processes."

51. The SHRC submits that these Committee recommendations are clear, specific and seek to give effect to Article 27, read together with Articles 2, 3 and 12 of the UNCRC requirements. It is plain that the Committee on the Rights of Child considers housing to be an important component of Article 27 and this includes the need for adequate and culturally appropriate alternative accommodation in the context of eviction.

Other international law

52. By virtue of section 4(2)(g) of the 2024 Act, the court may take into account “other international law” so far as relevant to the interpretation of the UNCRC requirements in those proceedings.
53. The SHRC submits that the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) also provides an aid to interpreting Article 27 of the UNCRC requirements. Article 11 of the ICESCR guarantees the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing and to the continuous improvement of living conditions.
54. The Committee on the Rights of the Child General Comment 21 (2017) underlines this link which exists between Article 27 of the UNCRC and Article 11 of the ICESCR, stating at paragraph 50:

“Adequate housing

50. The right to housing is an important component of article 27 that is particularly relevant for children in street situations. It has been interpreted broadly by the Committee on Economic, Social and Cultural Rights as the right to live somewhere in security, peace and dignity, which clarifies that the concept of “adequacy” in relation to housing requires attention to: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy. Children are among those who suffer disproportionately from the practice of forced eviction. Forced evictions, including through demolition of informal or illegal housing, can make life more precarious for children, forcing them to sleep on the streets and exposing them to further rights violations.”

55. In elaborating upon the right to adequate housing, the Committee on Economic, Social and Cultural Rights General Comment 4 (1991) described the cultural adequacy of housing in paragraph 8(g) in the following terms:

“(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the

cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured."

56. The SHRC would also highlight as relevant to these proceedings the views adopted by the Committee under the Optional Protocol to the ICESCR concerning communication 37/2019 (*Maribel Viviana López Albán v Spain*) of 29 November 2019. The UK has not ratified the Optional Protocol and therefore has not recognised the competence of the Committee to receive and consider such communications. Nevertheless, it is submitted that the Committee's views in respect of that communication – which concerned the eviction of an individual and her children from their home – provide helpful guidance on the parameters of the Article 11 ICESCR right to an adequate standard of living, including housing, which in turn informs upon the interpretation of Article 27 of the UNCRC.

57. The SHRC would direct the court's attention to paragraphs 8.1 and 9.1 to 9.4 of the Committee's views in particular, which address appropriate alternative housing in the context of eviction and a State's available resources:

"8.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights. The right to housing should be ensured to all persons irrespective of income or access to economic resources and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.

...

9.1 Evictions should not result in individuals becoming homeless or vulnerable to further human rights violations. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. The State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities such as the owner of the property. In the event that a person is evicted from his or her home without the State party granting or guaranteeing alternative

accommodation, the State party must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned ...

...

9.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of cultural identity and diversity may be respected. It must also take account of the right of members of a family not to be separated.

9.4 In certain circumstances, States parties may be able to demonstrate that, despite having made every effort, to the maximum of available resources, it has been impossible to offer a permanent, alternative residence to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate alternative dwelling may be used. However, States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements and does not become a permanent solution, but is a step towards obtaining adequate housing."

Available resources

58. The Respondent avers that prior to settling at the land in question, he and his family had experienced a decreasing number of permanent and safe sites for them to live on. The Respondent asserts that he and his family would be content to move from the land in question if an offer of an alternative, culturally appropriate site were made available. The Respondent further asserts that the Petitioner has not made any such offer and that no alternative sites are available. The Petitioner and Respondent appear to agree that there is one Gypsy/Traveller site at North Cairntow, with 20 bays, which is currently full.

Article 4 UNCRC

59. Article 4 of the UNCRC requirements provides that States shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the UNCRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and where needed, within the framework of international cooperation.

General Comment 5 (2003) – General measures of implementation

60. In relation to Article 4, the Committee on the Rights of the Child General Comment 5 (2003) states at paragraph 7:

“The second sentence of article 4 reflects a realistic acceptance that lack of resources - financial and other resources - can hamper the full implementation of economic, social and cultural rights in some States; this introduces the concept of “progressive realization” of such rights: States need to be able to demonstrate that they have implemented “to the maximum extent of their available resources”.

Recommendations followings days of general discussion

61. Section 4(2)(f) of the 2024 Act enables the court to take into account recommendations following days of general discussion, so far as relevant to the interpretation of the UNCRC requirements in those proceedings.

62. The SHRC considers the recommendations following the day of general discussion on *“Resources for the Rights of the Child – Responsibility of States”* (2007) to be of assistance in understanding and applying Article 4 of the UNCRC requirements. Paragraphs 46 to 49 of those recommendations provide as follows:

“Progressive realization

46. With respect to the issue of “progressive realization” of economic, social and cultural rights, the Committee notes that the principle of progressive realization is often misunderstood and interpreted to mean that those rights are not immediately applicable and are merely of aspirational character.

47. The Committee recommends that progressive realization be understood as imposing an immediate obligation for States parties to the Convention to

undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights of children. In particular, it underlines that there are obligations requiring immediate implementation, irrespective of the level of available resources: i.e. the obligation to guarantee non-discrimination in the enjoyment of these rights and the obligation to take immediate steps towards their realization. Also, the obligation not to take any retrogressive steps that could hamper the enjoyment of economic, social and cultural rights is considered to be inherent in the obligation towards progressive realization of those rights.

48. Standing parallel to the concept of progressive realization is the idea of “minimum core obligations” of States. Core obligations are intended to ensure, at the very least, the minimum conditions under which one can live in dignity. The Committee on Economic, Social and Cultural Rights (CESCR) has systematically underlined this obligation of States, to guarantee at all times, the minimum level of protection (the minimum core content) in the provision of: essential foodstuffs, equal access to primary health care, basic shelter and housing, social security or social assistance coverage, family protection, and basic education. All States, regardless of their level of development, are required to take immediate action to implement these obligations, as a matter of priority. Where the available resources are demonstrably inadequate, the State concerned is still required to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Thus, complying with obligations relating to the core of a right should not be dependent on the availability of resources.

49. The Committee considers that State parties are under the obligations to satisfy at least the core minimum content of economic, social and cultural rights and recommends that in its own assessment of the “adequacy” of the measures taken to protect, respect and fulfil economic social and cultural rights of children, States parties closely examine the criteria set out by the Committee on Economic, Social and Cultural Rights in its statement on the “Maximum of Available Resources” (E/C.12.2007/1, of 10 May 2007) and apply them in relation to children” (underlining added).

63. Accordingly, the SHRC submits that these recommendations provide useful clarity both: (i) on the meaning of “*progressive realisation*” (paragraph 47); and (ii) in confirming that a State’s compliance with the minimum core of obligations, such as basic shelter and housing, should not be dependent on the availability of resources (paragraph 48).

CONCLUSION

64. That the court should take into account those things mentioned in section 4(2) of the 2024 Act, as relevant and outlined in this written submission, when interpreting the UNCRC requirements in these proceedings.

IN RESPECT WHEREOF

[REDACTED]

COS-P1335-25

In the Court of Session

**WRITTEN SUBMISSION IN TERMS
OF RCS 25A.7
ON BEHALF OF**

**THE SCOTTISH HUMAN RIGHTS
COMMISSION**

in causa

The Scottish Ministers

Petitioner

v

Jim Mongan

Respondent

June 2026

Scottish Human Rights Commission

Bridgeside House, 99 McDonald
Road

Edinburgh EH7 4NS