

Response ID ANON-6XVX-YB1D-C

Submitted to A Human Rights Bill for Scotland: Consultation
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Part 1: Scotland's Human Rights Journey

Part 4: Incorporating the Treaty Rights

1 What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Allow

Please give us your views:

The proposal to embed dignity in juridical considerations, and to consider dignity to be a fundamental value in the proposed framework, is to be welcomed. The dignity of each human person ought to be at the root of human rights and should be safeguarded and protected by states.

Recognising the unique dignity and infinite absolute worth of each and every person is a guiding principle for seeking the common good, which should be at the heart of the work of legislating and governing. A just society can become a reality only when it is based on the respect of the transcendent dignity of the human person, and that dignity is inherent and applies to all people, from the moment of conception until natural death and everything in-between.

It is critically important to be clear about what dignity means if it is to be embedded in the justice system. At its purest, dignity means the right of a person to be respected and valued for their own sake. Human dignity is not self-defined but there is something objective about it that presumes on each person a duty to his/her innate constitution and its proper flourishing. So, human rights are not just 'inviolable' (no one can take them from me) but also 'inalienable' (I should not abrogate them from myself, e.g. volunteer to become someone's slave). Thus far, one of the dramas emerging of human rights' culture is its oversight of the duties each person has as integral to the flourishing of their personal dignity.

It is the task of all people, and in a special way of those who hold various forms of political, judicial and professional responsibility with regard to others, to be the watchful conscience of society and the first to bear witness to civil social conditions that are worthy of human beings and to ensure that human dignity is respected and the common good maintained.

2 What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligation (MCOs)?

Allow

Please give us your views:

The proposal to include dignity as a key threshold for defining the content of MCOs is to be welcomed, for the reasons set out in our response to question 1. And if it is to be 'key' then it should be clearly defined given that so much will depend on it.

3 What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

If so, please identify these, explain why and how this could be achieved.:

4 What are your views on the proposed model of incorporation?

Please give us your views.:

5 Are there any rights in the equality treaties which you think should be treated differently?

Not Answered

If so, please identify these, explain why and how this could be achieved:

Part 5: Recognising the Right to a Healthy Environment

6 Do you agree or disagree with our proposed basis for defining the environment?

Disagree

7. If you disagree, please explain why:

The proposed basis for defining the environment is comprehensive, however, it remains light on detail. For example, what is meant by the term 'safe climate'? And how does the government intend to define, and measure, 'clean air' and 'safe and sufficient water'? For the framework to be effective there needs to be SMART objectives, clearly set out.

8 What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

Please give us your views:

We refer to our response to question 7, in particular, the need to better define the substantive and procedural aspects of the right to a healthy environment.

Moreover, these aspects should directly relate to and complement existing climate targets and be centred on just transition principles and values, including ensuring that those working in fossil fuel industries, for example, do not lose out economically and are not left behind.

Further, those who live on the margins, including the poor, the vulnerable and those living in rural areas must be protected under the right to a healthy environment and, crucially, they must not be left disadvantaged by the transition to net zero.

9 Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in International Covenant on Economic, Social and Cultural Rights (ICESCR), rather than inclusion as a substantive aspect of the right to a healthy environment?

Not Answered

Please provide your reasons why:

We do not have a particular position on whether the protection of healthy and sustainable food is incorporated via the ICESCR or included as a substantive aspect of the right to a healthy environment.

It is, however, important that the right to adequate food is respected and upheld.

It is a desperately sad indictment on Scotland, and the wider UK, that there are so many people living in poverty today. The ICESCR was ratified by the UK 47 years ago and yet so many of the promises remain unfulfilled.

It is particularly desperate that people in Scotland, in 2023, do not have access to adequate food and housing. Whilst the aspirations of the proposed approach outlined are to be welcomed, they must not become empty promises which fail to deliver for those most in need.

10 Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment?

Not Answered

Please give us your views:

11 Are there any other substantive or procedural elements you think should be understood as aspects of the right?

Yes

If yes, please specify what substantive or procedural elements and explain how this could be achieved :

The right to a healthy environment can encompass many elements and the consultation paper outlines many of the key rights, however, we would also point to other key rights of the ICESCR that are not given attention.

For example:

- the right to provide the “widest possible protection and assistance” to the family as the “natural and fundamental group unit of society”; and
- the right of parents to expect the State to ensure the religious and moral education of their children is carried out in conformity with the religious convictions of the parents.

Further, the prior rights of parents over the State in regard to their children and families ought to be protected.

The right to religious freedom and moral conscience must also be at the heart of all considerations around human rights and a healthy environment. All people ought to be free from every constraint in the area of religion and society and the state must not force a person to act against his or her conscience or prevent them from acting in conformity with it.

Part 6: Incorporating Further Rights and Embedding Equality

12 Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

Please give us your views:

13 How can we best embed participation in the framework of the Bill?

Please give us your views:

14 What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?

Please give us your views:

Similar to our response to question 11, the right to religious freedom ought to be included in any provisions related to equality, and the right of conscience protected in all areas of life.

15 How do you think we should define the groups to be protected by the equality provision?

Please give us your views :

16 Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people?

Not Answered

17. If you disagree, please provide comments to support your answer.:

18 Do you think the Bill Framework needs to do anything additionally for LGBTI or older people?

Not Answered

Please give us your views:

Part 7: The Duties

19 What is your view on who the duties in the Bill should apply to?

Please give us your views:

20 What is your view on the proposed initial procedural duty intended to embed rights in decision making?

Please give us your views:

21 What is your view on the proposed duty to comply?

Please give us your views:

22 Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Please give us your views:

23 How could the proposed duty to report best align with existing reporting obligations on public authorities?

Please give us your views:

24 What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via minimum core obligations (MCOs) and progressive realisation?

Please give us your views:

25 What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

Please give us your views:

26 What is your view on the proposed duty to publish a Human Rights Scheme?

Please give us your views:

Part 8: Ensuring Access to Justice for Rights-Holders

27 What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Please give us your views on advocacy:

Given the scope of the human rights covered in the Bill and the fact that they will apply to all people, it is clear there is not a 'one size fits all' approach to advice and advocacy as one person may need specialist advice or advocacy in relation to one human rights subject and another person may need the same in relation to something entirely different.

On page 38 of the consultation document, it states that the Taskforce '...noted that remedies become difficult to navigate without information and advice

on rights and independent advocacy'. Perhaps an effective way to provide information to support people seeking advocacy would be to have a directory-type resource providing an overview of selected advocacy organisations and the type of support they provide.

Another option could be the establishment of a 'human rights advocacy and advice' interface agency, following a similar model to that of Third Sector Interfaces as provided for by the Third Sector Agency of the Scottish Government, whereby advocacy and advice services can be supported through the interface while at the same time the interface is a single point of information and support to access advice and advocacy for rights-holders.

Please give us your views on legal aid:

28 What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

Please give us your views:

29 What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?

Please give us your views:

30 What are your views on our proposals in relation to scrutiny bodies?

Please give us your views:

31 What are your views on additional powers for the Scottish Human Rights Commission?

Please give us your views:

32 What are your views on potentially mirroring these powers for the Children and Young People's Commissioner Scotland where needed?

Please give us your views:

33 What are your views on our proposed approach to 'standing' under the Human Rights Bill?

Please give us your views:

34 What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

Please give us your views:

35 Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

Not Answered

36. If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rightsholders, what additional remedies would help to do this?:

37 What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Please let us know your views. :

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Bishops' Conference of Scotland

Please tell us which of the following categories best describe you (select all that apply):

Organisation - Private, Other

If other, please specify:

Charity

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent