

Scottish Women's Convention
response to the Scottish
Government's consultation on:

A Human Rights Bill for Scotland



October 2023

Premise

The Scottish Government aim to embed human rights across decision-making, through the creation of the proposed Human Rights Bill. This Bill hopes to include international human rights treaties, namely the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRPD). The Scottish Government have also included the 'Right to a Healthy Environment', in the hopes of engraining environmentally conscious decisions.

The following consultation asked respondents to assess whether the proposed implementation approaches taken, would bring about effective change. After the Scottish Government has received consultation responses, they shall consider alterations that are required and rectify their plan accordingly – incorporating suggestions made.



The Scottish Women's Convention (SWC)

The SWC is funded to engage with women across Scotland to ensure that their views are represented in policy and decision-making processes. The SWC uses the views of women to respond to a variety of parliamentary, governmental, and organisational consultation papers at Scottish, UK and international levels.

The SWC gathers information using different methods, including roadshows, thematic conferences, surveys, and both in-person and online roundtable events. This submission presents the views of a range of women, reflecting their opinions, ideas and lived experience. Working together with many other equalities organisations and community groups, we use our broad network to ensure that women from a range of backgrounds are heard and acknowledged. We are continually reviewing innovative ways of engaging with women and developing our trauma-informed and culturally sensitive practice to support vital contributions from as many women as possible.

Part 4: Incorporating the Treaty Rights

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

Allow

The concept of dignity is key in implementing a human rights-based approach across Scotland, with dignity providing a benchmark for development. Human rights campaigners have long argued that dignity is closely tied to human rights, and that one cannot exist without the other. Women we have spoken with have mirrored these thoughts, with the concept of dignity and respect underlying conversations surrounding public sector responsibilities. They have suggested that dignity allows for the realisation of human rights in practical terms, pushing organisations to focus on individuals. However, we recommend that during court proceedings, court officials must consider dignity when interpreting rights, rather than providing it as optional. This wording creates a loophole, through which continued disregard for human rights will be carried out.

What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligations?

Allow

It is vital that dignity is embedded in Minimum Core Obligation setting, as it ensures that dignity is a key consideration for public and private bodies from the outset. As Minimum Core Obligations are going to be the benchmark for organisations to evidence their commitment to human rights, it is important that dignity is considered throughout.

What are your views on the proposed model of incorporation?

Overall, we agree with many aspects of the Scottish Government's approach to incorporation, namely copying the text of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the inclusion of the right to a healthy environment and the establishment of a procedural duty which will then become a duty to comply after a period of time. We do hold some concern surrounding the enforcement of the special protections treaties of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of Persons with Disabilities (CRPD). The Scottish Government approach to not include a duty to comply surrounding these special protections treaties, opens vulnerable groups to further disadvantage, and as a result, we recommend increased consideration and transparency surrounding the special protection treaties.

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

Yes

We, at the SWC, are disappointed to note that despite the radical approach proposed by this Human Rights Bill, it will not go far enough for individuals covered by the 'equality treaties'. By not including a duty to comply within this framework, organisations will fundamentally have

sufficient means to continue ignoring the needs of protected groups, such as women and disabled people. It is clear that reserved powers add a level of complexity to this area, however unless the Scottish Government provide strong guidance surrounding how they will ensure compliance, the proposed bill will not drive sufficient change. It is also key to note that groups covered by CEDAW, CERD and UNCRPD, are those most likely to have their human rights breached due to a lack of power and continued discrimination experienced in wider society. Therefore, we believe that a duty to comply should be incorporated into the Human Rights Bill, as it will ensure all peoples of Scotland experience the same level of protections.

Part 5: Recognising the Right to a Healthy Environment

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

Agree

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, rather than inclusion as a substantive aspect of the right to a healthy environment?

Disagree

We welcome the creation of the substantive aspects of the right to a healthy environment, however, healthy and sustainable food must be a standalone element. This omission is a major oversight, with access to healthy and sustainable food being an integral element of an individual's right to a healthy environment. Food access is heavily linked with environmental factors, with the increasing impact of climate change impacting food chains globally. Women are particularly impacted by a lack of healthy and sustainable food, as they are more likely to experience poverty and therefore, food deprivation. Those struggling to access food, are also more likely to access poor quality food, worsening their physical health. This is a major concern for women who live rurally, where food options are more limited and prohibitively expensive. The culmination of these factors is a major reduction in women's basic human rights, with further protections needed. These protections could be offered through the inclusion of healthy and sustainable food as a substantive aspect.

- "...we've spoken in the past about children going to bed hungry, in Scotland we have children going to no bed, hungry...Families without the absolute basics, it's food, utilities, and rent arrears that we're seeing a significant increase in. There's no let-up, it's huge."
- "The increase in prices of basic commodities affects me a lot, sometimes it's cheaper to buy frozen food instead of healthy, fresh foods."
- "...if you live rurally, and you don't have access to transport, you're using your village shop with majorly enhanced prices."

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?

Agree

We agree with the proposed approach to include safe and sufficient water as a substantive aspect of the right to a healthy environment, however, encourage the Government to consider whether sanitation could also be included as an addition to safe and sufficient water. Women have raised their concerns surrounding sewage dumping in Scotland's water, believing that this could negatively affect health, biodiversity and water-based infrastructure, such as fishing. It is also our belief that the justification used to include safe and sufficient water as a substantive aspect should be utilised in relation to healthy and sustainable food, with this also being integral for human consumption and for the health of the wider environment.

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

Yes

In order to ensure that the right to a healthy environment is enshrined in Scots Law, it is imperative that a clear and robust timeline is set out. Without a clear timeline, it is difficult to see how these reforms will be utilised by individuals and/or organisations across Scotland.

Part 6: Incorporating Further Rights and Embedding Equality

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

Embedding lived experience throughout the Human Rights Bill is a key commitment that must be made to ensure human dignity is carried throughout. This is of particular importance to groups who are seldom listened to, such as ethnic minority women and disabled women. Women from these groups have explained that they often give their views on a range of subjects, but this rarely translates into action from government bodies. They have stated that only through meaningful participation can they effectively influence policy, and as such it is vital that the proposed Human Rights Bill embeds participation throughout. This could be achieved through consultation with third sector organisations who actively work to promote lived experience, as well as the creation of a lived experience board, responsible for holding government officials to account.

- "...representation matters across the board, you know, in terms of our lived experience...we need to be visible, and it mustn't be token."
- "...so much data is out there...It's, for me, I find it very tiring really, to be saying the same things over and over again."

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

We support the inclusion of an equality provision within the Human Rights Bill, with this enabling groups with additional barriers access to their fundamental rights. It is key however that this addition is not a 'tick-box' exercise, with women regularly expressing their frustration at being

consulted on a range of topics, but their views being ignored. This is particularly true of women with additional characteristics, such as ethnic minority, disabled or LGBTQ+ women, with these groups being the focus of continued research and evaluation.

- “I’m tired of when I’m invited to a place, and even when you try and speak, it’s almost like people don’t see you.”
- “...we’ve been researched so much, our communities, African, Asian...have written so much, you’ve experimented on us, you’ve looked at us...so why do you need to reinvent the world.”

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

To ensure that the proposed Human Rights Bill sufficiently protects groups who face additional barriers to accessing their rights, it would be recommended that the Scottish Government utilise those set out in the Equality Act (2010). This Act proposed nine specific ‘protected characteristic’ groups, including, age, disability, gender reassignment, marriage, same-sex marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Through utilising the characteristics covered through the Equality Act (2010), alongside the additions made through Article 2 of International Covenant on Economic, Social and Cultural Rights (ICESCR) or Article 14 of the European Convention on Human Rights, an increased number of individuals in Scotland are protected - particularly older women and LGBTQ+ women.

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?

Disagree

LGBTQ+ and older people should be specifically named within the Human Rights Bill, as it is widely recognised that these groups face further challenges than other groups when accessing their rights. As an organisation we have heard from women from these groups who have struggled to access their human rights, with their characteristics directly contributing to their discrimination. For example, when talking with older women have expressed frustration at becoming “invisible”, creating an additional barrier when attempting to access services. This feeling was further enshrined during the most recent Cabinet reshuffle, due to the removal of the Minister for Equalities and Older People. Women have expressed concern that this would result in less focus on issues which affect older people, and a lack of accountability. It is therefore vital that any human rights legislation considers older women, including them in decision-making to ensure that their voices are heard.

- “Like it’s quite sad, because you don’t look the same, and therefore people stop seeing you”
- For older women, we become invisible. In some ways that’s good because we lose the attention of men, but we become invisible when it comes to things that we need”

With regards to LGBTQ+ women we have been told of struggling to access basic services, such as mental and physical health services. They have highlighted that due to an overburdened system, it can be incredibly difficult to access appointments with the correct medical

professional, at times worsening their mental wellbeing. This is in direct contradiction to Article 12 of ICESCR, which states that everyone should enjoy the highest attainable standard of physical and mental health. LGBTQ+ women have stated that they are aware that the mental health system in Scotland is under immense pressure, however, through their sexuality or gender identity they have experienced further discrimination. Therefore, further consideration must be given to just including LGBTQ+ people under the 'other status' section of the Bill, as they are more likely to experience barriers to accessing their human rights than other groups.

- "I've been on a waiting list for years, and all they do is give me cognitive behavioural stuff, and I just don't think I'm being listened to as a gay woman."

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

Yes

As stated above, further consideration must be made to incorporate LGBTQ+ and older women into the Human Rights Bill. This could be through specific mention as groups which have grounds for protection.

Part 7: The Duties

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

For the proposed Human Rights Bill to have full effect, it is key that it is applicable to as many public bodies as possible within devolution terms, as well as all private bodies who operate in Scotland. Women feel that many statutory services do not consider their needs properly, and that current public sector equality duties are not always adhered to. It is hoped that through the increased usage of Human Rights in decision-making processes, this disconnect could be broached. This is particularly true of Scottish healthcare, with women feeling that professionals can be dismissive. We believe therefore that there is great opportunity to incorporate human rights throughout healthcare systems in Scotland, with a particular emphasis on accountability and communication.

However, due to devolution there is further complication to the Scottish Government's ability to incorporate human rights across Scottish society, as some UK organisations and UK public bodies will not be obliged to engage with the proposed Bill. We would therefore recommend an open dialogue with bodies which operate in Scotland, alongside continued encouragement towards the UK Government surrounding the continued inclusion of human rights on a UK level.

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

We support the creation of a procedural duty on public bodies and some private organisations, giving them time to prepare before the duty to comply is in effect. It is vital however, that a clear, strict timeline is laid out to ensure that this Bill is taken seriously by all relevant actors. The Human Rights Consortium Scotland have suggested that commencement should be no longer than six months from Royal Assent, and that the duty to comply should be put into effect two years later, with this clearly stated in the Bill. We support this timeframe and believe that only through clarity can this Bill have full impact for the people of Scotland.

What is your view on the proposed duty to comply?

We believe that all public bodies and the relevant private actors should have a duty to comply with this Bill. This duty to comply should include the Minimum Core Obligations (MCOs) as set out in the Human Rights Bill, with a focus on how they will be measured and held to account in cases where the MCOs have not been met. It is incredibly important that public bodies receive training and guidance on the duty to comply, as well as the proper resourcing to implement these proposed changes. Women working within public authorities have stated that they are experiencing increasingly tightening budgets, causing issues in service-delivery. Therefore, in order to ensure that the Human Rights Bill does not remain in the theoretical stage, and moves into practice, proper funding for public bodies is imperative.

- “The biggest barrier in terms of going forward is money, local authorities have no money”

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?

The SWC believe that public bodies 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. Accountability is vital in ensuring that the policies and procedures laid out in the Human Rights Bill are being adhered to, as well as providing an understanding of what needs to change. As an organisation which prioritises lived experience, we believe that ensuring lived experience is included in critiques is key, with this contributing to a more transparent process, making sure that those directly impacted have a say in decision-making.

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 and progressive realisation?

In order to properly integrate a human rights based approach into Scottish decision-making, the demonstration of compliance plays a large role. Without understanding what is working, and what isn’t, effective change will not be seen with regards to economic, social and cultural rights. It is key that the same level of compliance is given to the right to a health environment, with the MCOs and progressive realisation being effective tools in this endeavour.

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

A Human Rights Scheme will be a useful tool in establishing a human rights-based society, as it will clearly set out what Ministers have put in place to further the proposed Bill. This Scheme should provide a level of accountability and show how the Bill will be taken forward by the Scottish Government.

Part 8: Ensuring Access to Justice for Rights-Holders

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?

Advocacy and advice services are vital in ensuring that individuals across Scotland have access to their rights. However, as has been stated within the proposed Bill, people have struggled to continue fighting for their rights to be upheld, due to a complicated legal system. Women we have spoken with have also expressed frustration at Scottish judiciary services, with mistrust plaguing their views, alongside a general lack of knowledge. Those with additional barriers, such as women with learning disabilities or women who do not speak English as a first language, will most likely struggle to effectively access the aid that is rightfully theirs. It is at this point that advocacy can provide invaluable assistance, and as such a robust system is needed, which is properly financed. Advocacy services, alongside the third sector as a whole, have experienced a continued reduction in funding, and a complete absence of long-term funding. We would argue that in order to create a good foundation for a human rights-based society, the Scottish Government must commit to increased financial offerings for advocacy and aid services.

- “...I was expected to go through hours’ worth of interviews when mentally I was not able. There was no advocate, it was just me, and I was expected to be this big, brave woman, that, to be honest, at that time, I just didn’t feel like.”

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

At present Scottish human rights organisations do not hold sufficient power to effectively manage the proposed Human Rights Bill. Therefore, the Scottish Human Rights Commission (SHRC) must be given additional powers to hold the relevant authorities accountable. For these new powers to be properly effective, increased resourcing should also be included, ensuring that all staff engage with good quality training surrounding their new powers.

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

We support increasing the powers of the Children and Young People’s Commissioner Scotland where needed, for the reasons given in Question 31.

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

Agree

Part 9: Implementing the New Scottish Human Rights Act

What are your views on our proposals for bringing the legislation into force?

As suggested, a period of time between Royal Assent and commencement of duties would allow for guidance to be developed for public authorities, giving them time to prepare and for court rules to change. However, as stated in our answer to Question 20 a clear timeline (two years

from Royal Assent) must be laid out in order to effectively put these changes into practice. This timeline should be specified within the Bill, providing proper clarity.

What are your views on our proposals to establish minimum core obligations through a participatory process?

At the SWC we work purely with lived experience data, believing that it provides a unique insight into the lives of the women in Scotland. As a result, we believe that including a wide range of people in the establishing of MCOs is highly beneficial, through lived experience panels. This is of particular value to groups who are seldom listened to, such as ethnic minority women, who have expressed continued frustration that their needs are not being met by public bodies. It is also important that the feedback given across the participatory process is adhered to, with measures put in place to ensure that participation does not become tokenistic, a common pitfall of participatory practice. To avoid this outcome review is essential, and as such should be carried out at regular intervals.

What are your views on our proposals for a Human Rights Scheme?

The creation of a Human Rights Scheme will work to integrate the Human Rights Bill into Scottish society, enabling a higher level of accountability. We therefore support the proposed Human Rights Scheme, with there being a particular focus on participation from protected groups, to include as many viewpoints as possible in the development of such a Scheme.

What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

By including a statement of compatibility alongside all Public Bills, the Scottish Government will show a real political will to implement change. However, when evidencing how a policy will work alongside the European Convention on Human Rights, Ministers should have to show an Impact Assessment, considering how certain groups have been affected.

How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

To effectively build capacity across the public sector, clear guidance is essential in ensuring that the Human Rights Bill is successful. Without these materials being provided to public and the relevant private bodies, it is highly unlikely that this Bill will have the desired effect. These guidance materials should be regularly reviewed to ensure that they are up-to-date and relevant. The development of guidance should also be carried out alongside lived experience panels, with a focus on those who have their rights breached most often. A lack of inclusion has caused issues in decision-making processes previously, for example, during the recent Covid-19 pandemic key groups, such as disabled women, were lacking in pandemic emergency planning. This omission caused incredible hardship throughout the disabled community, with many disabled women feeling forgotten and unheard. In some cases, individuals were prevented from accessing outdoor spaces, despite Government guidance suggesting regular walks and/or time outside to improve mental health. Also, many cafes and restaurants chose to place seating

outside to maintain business throughout lockdowns. This created additional physical barriers for those with mobility needs, preventing them from accessing necessary services.

- “I’ve got friends who are disabled, and they, over the past two years, have really felt completely forgotten...They are desperate, they’re really feeling depressed.”

How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

If the Scottish Government aim to successfully integrate human rights across Scottish society, it is incredibly important that all Scottish citizens understand their human rights, and how they can effectively advocate for them. Therefore, a large-scale awareness campaign would be recommended, so that every individual in Scotland has increased knowledge surrounding these significant changes to Scots law. This awareness campaign should be done in conjunction with the creation of easy-read toolkits, which avoid jargon and are freely available for all Scottish citizens to, again, increase knowledge and empower individuals to self-advocate. A campaign should also be created alongside advocacy organisations, who can then assist in disseminating information, ensuring that citizens are aware of advocacy options available to them.

What are your views on monitoring and reporting?

Monitoring and reporting is the most important element of this Bill. Without proper monitoring, the Human Rights Bill will not be realised, as monitoring will bring accountability and transparency across public and private sectors. Through effective reporting, Scottish Ministers and decision-makers will be able to evidence how they are working towards creating a more human-rights based society.

Conclusion

Having listened to women, our three key recommendations on this topic are:

- The Scottish Government must include a 'duty to comply' with regards to the equality treaties, to effectively protect these groups.
- Healthy and sustainable food should be included as a substantive aspect of the right to a healthy environment.
- LGBTQ+ and older people should be specifically named within the Bill, rather than only being included as aspects of the 'other status' group.

The SWC is grateful for the opportunity to respond to the Scottish Government's consultation on **A Human Rights Bill for Scotland**. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to this topic and its effects on women's equality.

For further information or to share your views, please contact:

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