



A Human Rights Bill for Scotland Consultation

October 2023

Introduction

The Scottish Women's Budget Group (SWBG) is an independent analysis and campaign group that aims to promote gender analysis in public policy and public finance decisions through budgetary processes. SWBG brings together a wide range of women from across Scotland who have an interest in women's equality and want to achieve better gender equality in our society. We have focused on encouraging active gender analysis in the Scottish Budget process since 2000.

Below is our response to questions in the 'A Human Rights Bill for Scotland Consultation'. The proposed Bill presents an opportunity to put existing human rights and gender budgeting approaches front and centre of a new culture of human rights in Scotland. Our response highlights considerations as to how the proposed Bill could better work to meet its aims. Particularly we draw attention to the role of public bodies in ensuring the maximisation of available resources to redress gender inequality, including intersecting inequalities.

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

The SWBG agrees with the Scottish Government's intention of integrating human dignity into the framework as a fundamental value, so this can be used in reading and interpreting the framework. However, our view is that it is not sufficient to allow Courts to consider dignity in interpreting the rights in the Bill. Instead, the Bill should include provisions to ensure that Courts are required to consider dignity as part of a new culture of human rights in Scotland and to ensure that the framework meets its aims.

2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of MCOs?

The SWBG welcomes the Scottish Government's proposal to allow for dignity to be a key threshold for defining Minimum Core Obligations.

Women and men continue to experience inequalities in pay, in employment and promotion opportunities, and in the harassment and abuse they receive, with women being more likely to experience poverty at all points in their life (WBG, 2022). In addition, women still have more responsibility for unpaid work including childcare, care for older or disabled people, and domestic work. For many women, this means a greater reliance on public services and can limit the time they have for paid work and other activities. Despite this, public authorities do not always consider how decisions or new policies could exacerbate pre-existing inequalities, or even whether these decisions could constitute an offence to women's human dignity. The 'family cap' and the 'rape clause' are on point examples of this. By limiting child benefit and child tax credits to the first two children in the household, the UK state discriminated against women from communities who traditionally have larger families. Particularly refugee women and women from some faiths (Engender, 2017). Furthermore, the rape exception included as part of the policy meant that women could claim benefits for a third and subsequent children if they were conceived as a result of rape. Forcing women to disclose experiences of rape at the price of risking state financial support is an offense against their human dignity. As Scotland's social security powers increase, placing dignity at the core of MCOs is a key step in ensuring that no one in Scotland falls below such a level that their inherent dignity is violated.

Furthermore, the SWBG would welcome a stronger focus in relation to how the Government intends to ensure the use of Maximum Available Resources (MAR) to meet MCOs. In other words, securing human dignity requires the maximisation of available resources to fund and deliver on the range and quality of public goods and public services which are essential to realise the ambition that the Scottish Government are articulating as their intention in the proposed Bill. SWBG would therefore welcome the inclusion of human rights and intersectional gender budgeting tools as part of the provisions in the proposed Bill, so these can enable the Scottish Government (and Local Authorities) to evidence how they are using MARs to meet MCOs.

Finally, we would also welcome stronger commitments for the MCOs to serve as a base from which to start building a stronger culture of human rights in Scotland, and not as a ceiling or finish line. Agreeing on MCOs is critical, however provisions in the Bill should consider the path to progress beyond that minimum core to secure the incorporation and progressive realisation of human rights in Scotland.

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

We endorse the same stance as the HRCS that the Bill should include a purpose clause that includes dignity, universality, participation and other key human rights principles, such as fairness, respect and equality. This would be key for a shared and consistent understanding and

interpretation of rights in the Bill. Furthermore, it will be helpful for public awareness and, most importantly, will help build a culture of human rights, guarding against narrow duty compliance.

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

SWBG agrees with the proposed model of incorporation (direct treaty text approach), which facilitates a tailored approach in relation to the equality treaties to ensure that the rights can be read and applied within the context of devolution. However, we argue that the framing of the provisions in the proposed Bill as ‘incorporating the equality treaties’ somewhat dilutes or undermines the importance of economic and social rights, and the linkages to economic policy and economic policymaking which are fundamental to generate the resources needed to realise the full range of human rights (Saiz, 2013). Furthermore, economic and social rights are equalities’ rights, and vice versa. From this perspective, the incorporation of CEDAW, CRDP, and CERD, need to ensure the realisation of economic and social rights of structurally marginalised groups, including women, disabled people or people from ethnic minority backgrounds. Furthermore, we would like to see a focus on ensuring that procedures are required to guarantee fully gender ‘competent’ analysis in the formulation of policy and resourcing decisions in order to ensure that the ICESCR provisions are wholly incorporated.

The Scottish Government has made a significant effort to embed human rights budgeting and gender budgeting approaches as part of their work on equalities. We see this Bill as a natural next step to put these approaches front and centre of a new culture of human rights in Scotland, which should see the Scottish Government and Local Authorities accounting for human rights standards and obligations when deciding where to prioritise resource allocation and/or how to generate resources to fund policy programmes and public services and to redress social inequalities. This is critical to meet MCOs, while working towards the progressive realisation of human rights in Scotland.

Part 5: Recognising the Right to a Healthy Environment

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

We agree that the environment should not be harmful to the health and wellbeing of people in Scotland. The proposed basis of this is informed by the incorporation of similar legislation in over 100 countries and the recognition as a human right by the UN General Assembly in 2022. Defining the environment by substantive and procedural aspects does generate more clarity and accessibility as to what constitutes the right to a healthy environment and how that will be enacted. We also agree on the alignment with the Aarhus Convention, especially with the inclusion of ecosystems and biosphere. However, it must be ensured that this is fully compliant with Aarhus Convention including “access to information, public participation in decision-making and access to justice in environmental matters” (ERCS 2023). Effective implementation will mean Scotland can become a global leader for environmental rights (ERCS 2023).

However, we would welcome the proposed Bill to acknowledge the link between the right to a healthy environment as indistinguishable from gender equality: “climate justice is a global feminist concern... gender inequality is a global climate concern” (SWBG 2023). In order to address these, a transformative approach is needed. A Feminist Just Transition understands that “gender equality is a global climate concern” with women often the most vulnerable to devastating effects of climate change across the globe (SWBG 2023). These are interconnected global problems that must be treated as such. Scotland can adopt a Feminist Just Transition to achieve net zero and gender equality through their role both domestically and globally towards human rights-based equity instead of leaning into systems of power that have fueled both injustices (SWBG 2023). Given that climate change affects the environment and gender inequality, it would be key for the Bill to recognise the interconnecting nature of these issues and to offer remedies so they can be tackled.

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 ICESCR, rather than inclusion as a substantive aspect of the right to a healthy environment? Please give reasons for your answer.

SWBG disagrees with the exclusion of the protection of healthy and sustainable food as a substantive aspect of the right to a healthy environment as this is central in ensuring the substantive right to a healthy environment.

It is inconsistent to include the right to water in the ICESR and the right to a healthy environment but not extend that to the right to food. The right to food as a substantive feature is crucial as it is interdependent to the other substantive features included, especially for the right to a healthy environment due to the importance of sustainably produced food for environmental health as well as the economic/social right to food for “nutrition, access/affordability, adequacy and culture” (Human Rights Consortium 2023).

We endorse the same stance as the ERCS (2023) using the Nourish Scotland’s definition of the right to sustainably produced food including:

- Everyone has reliable access to a sufficient quantity of affordable, nutritious food
- Food is grown, produced and distributed with care for the soil, climate and all living world. Furthermore, ERCS state that the “Scottish Government should draw on the UN Special Rapporteur’s thematic report on healthy and sustainable food and recommendations of the Scottish Environment LINK’s Farm for Scotland’s Future campaign”.

SWBG evidence from women’s experience of economic inequality clearly shows how that manifests in current levels of hunger, debt, food and fuel poverty, poor housing, and poor transport. Our surveys of women across Scotland, including disabled women and women in rural

areas, provide a robust evidence base on the need for action and legislative underpinning to secure the realisation of the fundamental rights proposed in the Bill (SWBG 2022; SWBG 2023).

As an advocate for a Feminist Just Transition and supporter of a Feminist Green New Deal, we argue that in Scotland there is currently an unequal distribution of land. In the right to food, land reform must be considered in order for everyone to be able to “access to green space, nature and opportunities to grow food” (WBG 2022). This will see land as a public good instead.

There is an integral relationship between climate, gender and economic justice. Scotland must incorporate the right to food within the right to a healthy environment due to the range of interdependent rights across this Bill.

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? Please give reasons for your answer.

SWBG agrees to an extent with the proposed approach to include safe and sufficient water as a substantive aspect for the right to a healthy environment.

In alignment with our advocacy for a Feminist Just Transition and Feminist Green New Deal, water should not be seen as a commodity. Rather it should be safe and sufficient, contributing to a green and caring economy “that prioritises health and wellbeing by democratising our natural resources, such as water, which is essential to our needs” (WBG 2022).

However, this substantive aspect should also include sanitation as per the definition of the UN which includes “adequate sanitation – having access to facilities permitting the safe disposal of human waste and maintaining hygienic conditions” to ensure that a fully healthy and sustainable environment is realised (ERCS 2023). Scotland’s ability to implement the transformative approach of a Feminist Just Transition does not just exist domestically. It also has a large role globally and can in turn, emphasise the right to safe and sufficient water. Nearly 40% of the world’s population do not have access to sanitation leading to water-borne illnesses with devastating effects (The Water Project). Women and girls are relied on in many societies to maintain household sanitation. Implementing the right to adequate sanitation not only improves the lives of those living in Scotland but can act as a marker for the rest of the world, with implications for greater gender equality outcomes.

Part 6: Incorporating Further Rights and Embedding Equality

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?

We agree that there should be an equality provision that gives practical effect to the treaties. We would also like the proposed Bill to consider and embed equalities analysis as part of the equality provision to ensure that the implementation of the Bill effectively addresses issues of marginalisation and racial discrimination.

Part 7: The Duties

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

The duties should apply to as many public bodies as possible within devolution, including but not limited to community partnerships, integrated joint boards, Scottish Government, Local Authorities, listed public bodies, etc.

In addition, the duties should apply to private bodies carrying out public functions and/or using public money. Finally, the duties should apply to all use of public money through procurement and commission services.

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

SWBG is supportive of the proposed duty to comply for public bodies and relevant private actors (see answer to question 19). SWBG also agrees that this duty to comply should include delivering Minimum Core Obligations and demonstrating progressively realising rights. We agree with HRCS that this duty should apply after a specified time of no more than two years. Furthermore, this duty to comply should also accompany the duty to have due regard, rather than replace it. We would however like to see a stronger focus on MARs as this is key for the progressive realisation of rights.

Governments need to increase investment in the progressive realisation of rights by aligning budget and public revenue generation strategies with human rights obligations (OHCHR, 2023). Putting human rights at the center of budgetary decisions connects finance with everyone's right to live a life of dignity (Hosie, 2021). There is a foundational relationship between government budgets and human rights obligations that enables a trajectory towards progressive realisation of rights (Hosie, 2021).

In addition to this, gender equality cannot be achieved without explicit attention and dedicated resources. There is a need for strengthened gender analysis in public financial management to enable governments to cost, allocate, and spend for gender equality (UN Women, 2023). Resource allocation can have a huge impact on equalities, it can either address them or exacerbate them further. Gender analysis of policy and resource allocation processes in the budget means examining how budgetary allocations affect the economic and social opportunities of women and men, and restructuring revenue and spending decisions to eliminate unequal gendered outcomes (SWBG, 2021).

SWBG data from the Women's Survey 2023 found that 70% of women have not been putting heating on to reduce costs; almost 20% of respondents are skipping meals entirely, which increases to almost 34% for disabled women and 46% for single parents. Furthermore, 19% of women are concerned they will lose their property/tenancy in the next year, rising to 26% of disabled women and 28% of single parents (SWBG 2023). Data from the Glasgow Disability Alliance's survey found that 37% of respondents have cut back on costs associated with meeting their care needs (GDA, 2023). These findings are a stark reminder of women's experience of economic inequality and provide further evidence on the need for action and legislative underpinning to secure the realisation of the fundamental rights proposed in the Bill.

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?

We endorse the same stance as the HRCS and agree that there should be a public bodies' reporting requirement which should largely mirror the UNCRC reporting requirements. All public bodies should have to consult with people whose rights are most at risk when developing these reports, including to ensure that the content is accessible. We also agree that public bodies should also be required to submit their reports to the Scottish Human Rights Commission for monitoring.

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

SWBG agrees that any new reporting obligations must complement and align with current reporting duties (esp UNCRC). In acknowledging the burdensome nature of this requirement and the already high level of reporting duties placed on Public Bodies, the implementation of the Bill should open an opportunity to streamline reporting mechanisms and the actual processes used to reach the endpoint required by the different legislation.

In addition to this, it is worth noting that reporting requirements should all be part of the same process and shouldn't be seen in opposition to one another. This is also a key point consistently made by EHRBAG through the Human Rights Budgeting Working Group. A robust equalities analysis must inform a range of policy options while in parallel human rights and gender budgeting approaches should help authorities evidence any decisions taken to maximise available resources to protect, respect and fulfil the progressive realisation of human rights. Therefore, reporting must include how organisations and their processes ensure that an equalities analysis has informed and made possible the fulfilment of rights, including evidence on decisions pertaining to MARs with a particular focus on implementation and monitoring of outcomes.

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 see answer to question 21

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

We agree as these rights are interrelated.

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

SWBG would like to see the proposed Human Rights Scheme strengthened in relation to the scrutiny and formulation of revenue raising, allocation and spending.

The lack of commitment to using gender and human rights budgeting tools, or for Ministers to even consider these approaches as part of the Scheme is currently a cause of concern, particularly when the UNCRC Scheme states that Ministers must consider the rights of children in the Scottish government's budget process. From this perspective, SWBG would welcome better alignment with the UNCRC incorporation Bill.

SWBG's stance, however, is that the proposed Human Rights Scheme should be more ambitious and go further than reporting on activities to further embed human rights principles in the budget process, with a particular focus on MARs.

In addition, we would like to draw attention to previous lessons of poor implementation and limited effect of existing PSED schemes (EHRC, 2018; Engender, 2022). The SWBG alongside other women 25 equality organisations raised this issue in an official letter sent to the Scottish Government in April 2022 ([1649685255_PSED-review-equality-stakeholders-common-concerns-April-2022.pdf](#) (engender.org.uk)). We are still awaiting a review of PSED from Scottish Government which appears to be delayed. However, it is unclear how the new duties under this bill will interact with and impact on PSED and the scheduled review. Learning from past experiences of poor policy implementation and including firm commitments to using gender and human rights budgeting tools would secure a robust Human Rights Scheme that supports the transformation of public service design and delivery into a human rights-based approach that the incorporation requires.

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?

SWBG, alongside other women organisations, would welcome further detail on how the Bill would work in practice for women, particularly about how women would access to justice, and other detail about compliance and accountability. The Human Rights Consortium Scotland (HRCS)

and JustRight Scotland have advocated for further consultation and detail to be provided on how any new rights will be enforced through the courts, and how right holders and duty bearers will interact as part of that process. The SWBG would be supportive of these calls.

Furthermore, we agree with Engender on that it is unclear how access to justice will be ensured by the Bill, making it difficult to assess whether rights will be accessible in practice. Further thought will be needed on resourcing and the support that will be needed to ensure the most marginalised women see the benefit of/ can access new human rights protections. From this perspective, SWBG would like to see the Bill include obligations and/or a stronger focus on MARs to ensure effective access to justice, including legal aid, tribunal costs, etc.

Part 9: Implementing the New Scottish Human Rights Act

39. What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?

SWBG agrees that establishing minimum core obligations (MCOs) should be developed through a participatory process. This is particularly important for groups in our society whose rights are most at risk. When considering what changes are needed to increase meaningful participation, particularly for marginalised groups, the first step is clarity on what represents meaningful participation and what commitments have been made to use information gained from such participation.

The SWBG understands meaningful participation as the process by which views are heard and listened to particularly in relation to the Budget setting process. However, participation is currently a weak element of the budget process as evidenced by the SHRC surveys using the Open Budget Initiative framework (International Budget Partnership 2020). Furthermore, participatory budgeting implemented at local authority level, as evidenced by O'Hagan et al 2019, lacks a strong human rights and equalities approach. The extension of this to the national budget process is vital and an area of action recommended by EHRBAG (2023).

Effective participation could be achieved through funding to particular organisations to reach out to key stakeholders on the budget process, examples such as the work of the Inclusion Scotland People led policy panel supporting consideration of the National Care Service is just one option that could be considered. Within this process ensuring particular efforts are made to hear from those who are marginalised and often excluded from such processes is vital. For example, ensuring that disabled women, women from ethnic minority communities, women on low incomes and carers are heard in the public conversation is particularly important from a gendered point of view. Organisations such as the Glasgow Disability Alliance have highlighted the importance of disabled women's voices and the role of disabled people's organisations in the formation of policy. Working with intermediary organisations may be an important step as part of building this participation to ensure human dignity is built into this approach. The time and capacity of organisations to support this needs to be recognised and supported.

Finally, it has been advised that the “Scottish Government should provide details of UN guidance on MCOs and examples of MCOs in Scotland, before the Bill is introduced to Parliament” (Human Rights Consortium 2023). Once essential levels have been defined with a participatory process, these should be defined in secondary legislation that considers the views of those with lived experience, technical expertise and policy makers. As well as this, it is recommended that MCOs should use a participatory process for review every 10 years in order for essential levels to accurately reflect the technological, societal, financial and environmental realities of Scotland (Human Rights Consortium 2023) It should also be ensured that those with lived experience, technical expertise and policy makers create such changes. This Bill and the implementation of quality MCOs are an opportunity to drive for change and create a paradigm shift in Scotland in regard to human rights.

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

Please see response to question 26.

41. 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?

The incorporation of the proposed Bill is an opportunity to strengthen existing scrutiny requirements under the Scottish Human Rights Act 1998. Most importantly, this could apply to the Budget Bill, ensuring that the Scottish Budget is assessed and formulated in a way that reflects how the processes of revenue raising, allocation, and spend respects, protects, and fulfils the obligations across the incorporated treaties.

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

In order for the Scottish Government and partners to effectively build capacity across the public sector, it is crucial that statutory and non-statutory guidance is issued (Human Rights Consortium 2023). Similar to the question regarding participation, any form of guidance should be developed with marginalised groups and published in an accessible format, for professionals and service users. Other suggestions include investment in education about human rights, the Bill and how people are able to seek justice. There is currently a lack of understanding as to how this Bill will aid individuals seeking justice. The Scottish population must understand their rights and be able to know how to access justice, especially for vulnerable groups such as women. The incorporation of CEDAW needs to ensure the realisation of economic and social rights of structurally marginalised groups such as women. Yet, this feels futile if women are unsure how to access justice if these rights breached. It is also integral that capacity built across the sector takes an intersectional approach to ensure rights are delivered due to the diverse lived realities of women across Scotland and the reality of discrimination different women may face.

44. What are your views on monitoring and reporting?

As stated, the implementation of the Bill should open an opportunity to streamline reporting mechanisms and the actual processes used to reach the endpoint required by the different legislation. Tracking, monitoring, and reporting can align with the NPF and outcomes that have been identified as a measure of what Scotland values. A part of developing more appropriate monitoring and reporting is the embedding of equalities analysis. A robust equalities analysis must inform a range of policy options while in parallel human rights and gender budgeting approaches should help authorities evidence any decisions taken to maximise available resources to protect, respect and fulfil the progressive realisation of human rights. For example, we argue that currently in Scotland tracking budget spending and evaluating the impact of this on National Outcomes and other policy objectives is difficult due to a serious lack of available public information (SWBG 2022).

Therefore, reporting must include how organisations and their processes ensure that an equalities analysis has informed policy objectives and policy design, and how this makes possible the fulfilment of rights. Reporting must also include evidence on decisions pertaining to MARs with a particular focus on implementation and monitoring of outcomes.

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