

Submission: Consultation on Scotland's Third Land Use Strategy 2021-2026

January 2021

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

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Introduction

The Scottish Human Rights Commission (the Commission) welcomes the opportunity to provide comments on Scotland's Third Land Use Strategy 2021-26.

Scotland is moving forward in its efforts to: use land to respond to the climate emergency and biodiversity decline; undertake a Green Recovery from COVID-19; facilitate a just transition to a sustainable future; and realise the Sustainable Development Goals 2030. The Commission recommends that the Scottish Government explicitly integrate human rights into the heart of these processes.

The integration of human rights considerations into land use is central to achieving action that is beneficial for both people and the environment. A human rights based approach brings an additional perspective to the value of land, as an economic, social and cultural asset, providing guidance as to how to determine the public interest as regards land use. Land use plays a key role in fulfilling the right to a healthy environment and land reform is critical to meeting Scotland's climate change targets¹. Human rights also provides a transparent framework for striking a fair balance between the public interest served by land reform and the property rights of landowners.

This submission focuses first on outlining the key elements of a human rights based approach to land use and the relevant Sustainable Development Goals (SDGs) that should be explicitly incorporated into the narrative, vision and objectives of Scotland's Third Land Use Strategy, before addressing some of the questions posed in the consultation document.

Human Rights Based Approach to Land Use

Taking a human rights based approach is about making sure that people's rights are put at the very centre of policies and practices. Human rights based approaches call for the implementation of domestic

and international human rights obligations, both substantive and procedural.

Substantive rights enshrined in the [European Convention on Human Rights](#)² and the International Bill of Rights³ can be seen as the basic requirements for a person to live a life underpinned by dignity, such as: the right to an adequate standard of living, including the right to adequate food, water and sanitation; the right to health, and the right to life. The [Framework Principles on Human Rights and the Environment](#) set out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. The principles do not create new obligations, but reflect the application of existing human rights obligations in the environmental context⁴. The most recent report⁵ by the Special Rapporteur on Human Rights and the Environment, sets out good practices followed by States in delivering on the right to a healthy environment.

Procedural rights relate to the manner in which substantive rights are protected. Relevant procedural rights include those enshrined in the [Aarhus Convention](#)⁶: the right to access to information; the right to access to justice, and the right to public participation. These rights support the necessary processes to enable full participation and empowerment, robust scrutiny and accountability.

The Commission commonly adopts the acronym PANEL to define and explain the discrete elements of a human rights based approach:

Box 1 – PANEL Principles

Participation - People should be involved in decisions that affect their rights.

Accountability - There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong.

Non-discrimination - All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.

Empowerment - Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.

Law - Approaches should be grounded in the legal rights that are set out in domestic and international laws.

This set of broad principles is intended as a guide; the practical application of human rights based approaches may differ from one example to another, depending on the specific context and nature of the work. Their relevance in the context of land use is further explored below.

Participation and Empowerment

Participation and empowerment focus on access to information and the opportunity to participate in decision-making processes. These are central components of taking a human rights based approach. The concept of participation is not merely good practice but a legal obligation firmly rooted in international law. Indeed, numerous international conventions set out the right to participation and access to information, and accessible information (see Appendix 1), including for specific groups such as women, children, disabled people and minorities. Participation of individuals in decision-making helps to ensure that systems are responsive to the particular needs of disadvantaged groups. This in turns helps duty bearers comply with anti-discrimination and equalities duties.

Community engagement is an essential component of planning and development processes for land use and can have a range of purposes including: raising awareness of proposed developments, consulting communities for their views on proposals, and empowering communities to make important decisions regarding their local areas. In order to

ensure that all community members have the opportunity to participate fully, participation processes must accommodate the contribution of everyone and ensure that minorities or vulnerable groups are supported to participate (non-discrimination).

In 2020 the OECD published a study⁷ drawing from the data of almost 300 case studies of citizen participative and other deliberative processes. The findings concluded that involving the participation of citizens in public decision making can deliver better policies and better policy outcomes; involve more inclusive processes which have greater integrity and legitimacy which act to counteract polarisation; and it helps to build and enhance trust between citizens and government. The study also concluded that participation of citizens was well suited to resolve values based dilemmas, complex problems which require trade-offs and long-term questions.

Meaningful participation will be essential in a process in which a changing society determines the relationship between land use and people. It will help determine the public interest when the law requires that human rights be balanced, whether between individuals or between an individual and the wider society. The strategy should include explicit reference to the above standards.

In addition, the Aarhus Convention empowers people to easily access information, participate effectively in decision-making in environmental matters and to seek justice if their rights are violated. This Strategy should include explicit reference to this Convention, which also acknowledges the role of private actors.

Engagement and participation on the broad question of how Scotland's land is used will depend in part on the quality and accessibility of information. The Commission notes that there is currently a dearth of information on key questions, such as who owns land. This is particularly so in relation to large areas of Scotland's rural landscape, but is also a feature of more urban areas, where it can be difficult to determine the extent of public spaces. The Commission notes that in 2014 the Scottish Government set in motion a project to map out who owns Scotland by

2024. This is vital work in terms of transparency, participation and empowerment.

In the meantime, research indicates that 432 owners own 50% of Scotland's private rural land⁸. The Scottish Land Commission has pointed out that Scotland has an unusually concentrated land ownership⁹, widely regarded as one of the most concentrated in the world.¹⁰

In order to comply with the rights referred to and to achieve the Scottish Government's aim of securing meaningful participation beyond those with vested interests in land, as much information as possible ought to be made publicly available in an accessible format.

Box 2 – Engagement and Participation

We recommend:

- urgent completion of the project to identify who owns the land of Scotland;
- mapping out the units of ownership already known;
- continually updating that map as the project progresses in order to maximise transparency and make available as much information as possible on a rolling basis;
- sharing accessible information regarding the history of land ownership in Scotland, and how it came to be so concentrated;
- making available accessible information about what Scotland's land is currently used for, and what the potential uses of each area are, based on an up to date assessment.

Accountability

Another key component of a human rights based approach is accountability. This means independent and effective mechanisms to

monitor the attainment of the objectives of the strategy are essential. Public accountability could include publishing annual and other thematic documents which link to other relevant commitments within the National Performance Framework, Sustainable Development Goals and human rights obligations. It should also include collecting, disaggregating and widely publishing data. Strategic documents without supporting effective and precise frameworks to hold duty bearers accountable will be of little practical use.

Emphasising the accountability of all actors, both state and non-state actors, is a central element of a human rights based approach. Transparency is also an essential human rights principle to create both empowerment and effective participation. Transparency must not be limited to reporting, but also in relation to decision-making and prioritisation.

Legality

A human rights based approach takes a starting point in international human rights commitments and instruments. Incorporating existing human rights obligations and commitments into Scotland's Third Land Use Strategy has the potential to inform and strengthen national frameworks in the area of land use by promoting policy coherence, legitimacy and sustainable outcomes.

The rights potentially engaged around the issue of land use are varied including the procedural rights noted above (and in Appendix 1) as well as a range of substantive rights, as noted below in Box 3.

Box 3 – Human rights in the context of land use

The **right to life**¹¹ - damage to ecosystems and declining biodiversity jeopardises the right to life; impacts of air, water and soil pollution.

The **right to food**¹² – including making agricultural systems more resilient, increasing sustainable food production and ensuring food is

safe for human consumption and free from contaminants including residues from pesticides.

The **right to water and sanitation**¹³ - Ecosystems are the source of all water relied on by people. Where water is polluted, contaminated or overexploited, the right to adequate quantities of clean water is jeopardised.

The **right of everyone to the enjoyment of the highest attainable standard of physical and mental health**¹⁴ - healthy ecosystems provide a buffer against emerging infectious diseases. Ecosystems are also a source of medicine. The European Committee of Social Rights interpreted the right to health under article 11 of the European Social Charter to include an implicit right to a healthy environment¹⁵.

The **right to enjoy the benefits of scientific progress and its applications**¹⁶ - everyone has the right to benefit from the increased use of science and technology for solutions to persistent socio-economic and development problems, including those related to land use. This includes state interference where science is dangerous to people(s), society or the environment, and protection from harmful applications of science including by 3rd parties.

The right to non-discrimination¹⁷ – the enjoyment of the rights and freedoms contained with the various treaties shall be secured without discrimination on any ground.

The right to a healthy environment – although this right has yet to be incorporated into a human rights law as a standalone right it has clear relevance to a range of other rights, including civil, political, economic, social and cultural rights, such as the rights to: an adequate standard of living, housing, health, private and family life, information, free expression, peaceful assembly, democratic participation and the right to work and to just and favourable conditions of work.

In developing the content of the right to a healthy environment for the forthcoming Scottish legislation, the National Task Force is drawing

particularly on the **Framework principles on human rights and the environment**¹⁸ developed by John Knox, Special Rapporteur on Human Rights and the Environment. These principles set out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.

Rights of the child - The Convention on the Rights of the Child explicitly requires states to take steps to protect the environment¹⁹ (under articles 24 (2) and 29 (1)). A failure to prevent degradation of the ecosystem could violate children's rights to life, health, culture and healthy environment.

Rights of Vulnerable Populations - The impacts of environmental degradation are not experienced equally and disproportionately impact on some of the world's most vulnerable populations²⁰.

Implementation of Convention rights – three treaties²¹ make explicit reference to the use of **resources** (which can include land) in order to achieve the progressive realisation of rights – e.g. Article 2(1) of International Covenant on Economic, Social and Cultural Rights mandates signatories of the Covenant to:

“take steps... to **the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

The [UN Guiding Principles on Business and Human Rights](#) also provide a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. These principles apply in environmental protection matters²². The principles refer to and derive from states' existing obligations under international law²³.

The **right to property**²⁴ - protects individuals or legal persons from arbitrary interference by the State with their possessions (including land). The right expressly recognises the right of the State to act in the

general interest, to control the use of property or to secure taxes or other contributions or penalties. The State may even deprive individuals or legal persons of property belonging to them provided it is in the public interest to do so, and subject to the conditions provided for by law and by the general principles of international law. This generally requires the payment of fair compensation as well as safeguards against arbitrary decisions.

The right to property does not therefore preclude radical reform of land use in Scotland through, for example: taxation such as land value tax; designating areas for particular uses through planning law; requiring transparency of identity of ultimate owners; awarding contingent subsidies or requiring licencing for specific activities. The limitations on the right to property have been recognised by The Scottish Land Commission²⁵.

Sustainable Development Goals

The 2030 Agenda for Sustainable Development²⁶, to which the Scottish Government made a commitment in 2015, is intended to be a transformational agenda which provides a plan of action for people, planet and prosperity which is grounded in human rights. The 17 Sustainable Development Goals (SDGs) and its 169 targets are an urgent call for action by all countries. They provide a cohesive and indivisible combination of the three dimensions of sustainable development: the economic, social and environmental. At their heart, they seek to realise everyone's human rights, stimulating action to eradicate poverty in all its forms and in doing so heal and secure the planet for future generations, leaving no one behind.

The UN Secretary-General has now expressed grave concern that COVID-19 is undermining sustainable development, just at the time when efforts were already in need of acceleration in order to be realised. The UN Secretary-General has also noted that: "the 2030 Agenda, underpinned by human rights, provides a comprehensive blueprint for sustainable recovery from the pandemic"²⁷.

It is clear from Scotland's Third Land Use Strategy that many of the policy actions described in this document have relevance to a greater or lesser degree across the full spectrum of the 17 SDGs. This includes a focus on tackling climate change, poverty and food security; as well as a focus on the sustainability of: agriculture, water & sanitation, energy sources, infrastructure for both industry and human settlements, decent employment, patterns of consumption and production, ocean life & marine resources; terrestrial ecosystems, forests; biodiversity. The Goals also include a focus on access to information and education about sustainability, the promotion of healthy lives and the achievement of gender equality and the reduction of societal inequality as a whole.

It is therefore concerning, that there is no mention of the SDGs and the corresponding government commitments to them within the strategy document. The strategy would benefit from making those connections explicit.

Consultation questions

The following answers are provided with reference to the information provided in the previous sections.

Section 1- Does a changing context need a changing vision?

Vision – Q1&2

Given the importance of human rights and sustainable development to the wellbeing of Scotland and the direction of travel connecting human rights with the environment and climate justice, the Commission would welcome a reflection of their importance in the Vision.

Strategy Vision: "A Scotland where we fully recognise, understand and value the importance of our land resources, and where our plans and decisions about **sustainable** land use will deliver improved and enduring benefits, enhancing the wellbeing of our nation **and the progressive realisation of our rights.**"

Objectives – Q3&4

In line with the recent recommendation from the Environment, Climate Change and Land Reform Committee²⁸ that the Scottish Government embeds a human rights based approach to a Green Recovery, the Commission would recommend that this strategy also adopts an objective regarding taking a HRBA, for example:

Scotland takes a human rights based approach to land use, or
Scotland takes a human rights based approach to land use, underpinned by the key principles of participation, accountability, non-discrimination, empowerment and law.

Section 2 - Achieving the objectives: getting the best from our land

A point of note for Section 2. The strategy acknowledges that making the major changes in the way we use and manage land, that are required to provide solutions to both the climate and biodiversity crises, will not be easy. One of the key benefits of taking a human rights based approach is that it supports a process of making and taking challenging decisions that require the balancing of competing interests and priorities. This approach allows those decisions to be taken in transparent, accountable and participative ways.

Section 3 – Using landscapes to talk about land use

The Commission very much welcomes the aim to improve the accessibility and relevance of the Third Land Use Strategy.

Presenting the landscapes does provide an effective way of communicating the interconnected range of Scottish Government policy (Q7) and the three sub headings: Climate Change, Biodiversity and Communities do facilitate the presentation of crosscutting themes that are important to all of Scotland in a coherent way (Q8).

With regard to Question 9, which is focused on the adequacy of the content of the Land Use Strategy and whether the manner in which it has been presented, demonstrates that the Scottish Government is taking steps to help deliver sustainable land use, the Commission offers the following advice.

Accessibility, engagement and participation

One of the stated aims of this strategy has been to redesign the layout and language to make it more accessible to everyone, in particular to those who would not ordinarily have an interest in land use. As noted above, access to information is a right which facilitates empowerment and public participation - both key elements of a human rights based approach. However, making a document more accessible is, in itself, not enough to foster or support engagement. There needs to be defined processes in place to support people to make use of this information in a meaningful way and to enable participation in decisions about land use. There are a couple of references to local engagement in the sections on Peri-urban and Islands, but not for any of the other landscapes.

The Community Empowerment (Scotland) Act 2015, is also mentioned in brief under the Island landscape. An innovative feature of the Community Empowerment Act is the power given to communities²⁹ to make participation requests to public authorities. However, there is relatively little clarity as to how these powers work in practice, and questions remain about:

- the tension between the duty on the public body to provide support to enable the request and the power to deny the request
- the responsibilities of arms' length organisations within this context.

This strategy would benefit from setting out an overarching commitment to participative processes to support engagement with this strategy as well as more detail on how each of the landscapes is supporting participative local engagement.

The recent OECD study of citizen participative and other deliberative processes referenced above³⁰, concluded that in order for such processes to work, the following good practice principles were necessary ingredients:

- purpose,
- accountability,
- transparency,
- representativeness,
- inclusion,
- information,
- group deliberation,
- sufficient time,
- integrity

The study further highlights that institutionalising deliberative processes enables governments to be able to take harder decisions and at a lower cost. It concludes that there is no “one-size-fits-all” method, rather the method is dependent on the context, purpose and process; and requires sufficient capacity in the civil service and civil society, as well as sufficient funding. However, it does suggest: including permanent structures; requirements for organising deliberative processes under certain conditions; and that governments should consider drafting legislation or regulation to support such processes.

Whilst a more accessible strategy is the first step to empowering people to engage and participate in decisions that affect land use, this must be matched with a resourced process that facilitates the genuine participation of stakeholders in decisions across the various landscapes, in particular to hear the marginalised voices of those often missing from such discussions.

Accountability for progress

The strategy also has an expressed aim to demonstrate that the Scottish Government is taking steps to help deliver sustainable land use. In order

for the strategy to do this, it needs to go beyond simply stating policy plans and intentions.

Demonstrating progress requires the establishment of effective mechanisms to monitor the attainment of the objectives of the strategy. Such monitoring processes should also engage the participation of citizens impacted by land use decisions. As such, the Commission suggests that an explicit reference to monitoring should be included within the strategy.

The Commission believes that promoting a human rights based approach within this strategy would support all duty bearers to fulfil their obligations with regard to human rights and community engagement, thereby facilitating a transparent, inclusive and accountable strategy on land use.

Section 4 – Equality: Call for Evidence

In response to Question 11, we would draw attention to the Commission’s previous consultation submission on the [National Islands Plan](#).

Question 12 requests any available information on whether there any particular current or future impacts on young people, of land use, land use change, or any other aspect of the Land Use Strategy, positively or negatively. Below is a series of rights related issues and evidence that would be useful for consideration in relation to land use in Scotland.

As noted above, the Convention on the Rights of the Child explicitly requires states to take steps to protect the environment³¹ (under articles 24 (2) and 29 (1)). The right to a healthy environment is engaged under a number of different articles of the CRC, namely:

- The right to life, survival and development (Article 6)
- The right to enjoyment of highest attainable standard of health (Article 24)
- The right to an adequate standard of living (Article 27)

- Rights to food, water, sanitation and housing (Articles 24 and 27)
- Article 29 (1) on right to education- education directed towards the development of respect for nature
- Obligation to respect and ensure rights of children and to eliminate discrimination against children (Article 2)
- Principle of the best interests of the child (Article 3)
- Freedom of expression (Article 13)
- Right to rest, leisure and play (Article 31)

General Comments

General Comments (GC) are produced by the various UN treaty Body Committees, to support a growing understanding of how best to interpret the UN Conventions. The following GCs are relevant to children's rights and the environment and should be considered in relation to land use.

[General Comment number 15](#): The Right of the Child to enjoyment of the Highest attainable standard of health (Article 24) urges governments to place children's best interests at the centre of all decisions affecting their health and development, including to 'Influence the development of policies to regulate actions that impede the physical and social environments in which children live, grow and develop' (para 13).

It advocates for the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.³²

[General Comment No. 16](#) on the impact of the Business Sector on Children's Rights (2013) recognises that exposure to unsafe products and environmental hazards may have 'lifelong, irreversible and trans-generational consequences' on children (para 4.). Paragraphs 18-20 deal with the right to life, survival and development and the ways in which business enterprises can impact on the realisation of Article 6, for example 'environmental degradation and contamination arising from business actions can compromise children's rights to health, food security and access to safe drinking water and sanitation' (para 19).

[General Comment No. 17](#) on the right to play (2013) recognises the right to a healthy environment for realisation of Article 31. In paragraph 16, it highlights that particular attention should be given to children living in poor or hazardous environments. It looks at other related rights, including the right to an adequate standard of living, stating ‘insecure or overcrowded conditions, unsafe and unsanitary environments, inadequate food, enforced harmful or exploitative work can serve to limit or deny children’s rights under Article 31 (para 26).

On the section describing factors for an optimum environment, it lists ‘an environments sufficiently free from waste, pollution, traffic or other physical hazards to allow them to circulate freely and safely within their local neighbourhood’, as well as opportunities to interact and play with the natural environment.

[General Comment No. 9](#) on the Rights of Indigenous Children (2009) suggests that ‘state parties should closely consider the cultural significance of traditional land and quality of the natural environment while ensuring children’s rights to life, survival and development’. Paragraphs 49-59 deal with the highest attainable standard of health, with paragraph 55 highlighting the necessity of measures to ensure indigenous children and their families receive information and education on issues relating to health, including environmental sanitation and the dangers of pesticides and herbicides.

Concluding Observations and Recommendations

Every State is reviewed regularly by UN Committees of special experts for its compliance with treaties that it has ratified. The Committees’ Concluding Observations and Recommendations provide guidance to States as to the progress required. The right to a healthy environment has been addressed by the Committee for the Rights of the Child in some of its concluding observations. Specific examples from the UK include:

Place children’s rights at centre of national and international climate change adaption and mitigation strategies (UK2016)

Concerns about high level of air pollution affecting the health of the child and contributing to negative impact of climate change (UK 2016).

Jurisprudence

Fifteen Children, aged 9 to 17 from 12 different countries submitted a [communication](#) before the Committee in September 2020 against Argentina, Brazil, France, Germany and Turkey for violating their rights to life, health and culture. The communication alleges the countries are 'recklessly causing and perpetuating life-threatening climate change [and] have failed to take necessary preventative and precautionary measures to respect, protect and fulfil the petitioners rights'³³. The communication has yet to be considered by the Committee.

Similarly, six young people from Portugal have raised a claim at the European Court of Human Rights (ECtHR) against 33 European states, asserting that they have failed to adequate measures to prevent or mitigate climate change, the effects of which will expose them to harm, risk their lives, their family lives and their privacy, now and in the future.³⁴ The case has been fast tracked and the ECtHR has requested that responding States address the right to be free from torture, inhuman or degrading treatment, as well as the rights to life and family life.

Appendix 1: Human Rights and Participation

Universal Declaration on Human Rights (UDHR)

The UDHR provides the foundation of international human rights law. The rights in the Universal Declaration were developed into the following treaties, which include explicit rights to participation (Article 21 & 27), freedom of assembly (Articles 20) and freedom of expression including access to information (Article 19).

International Covenant on Civil and Political Rights

The right to self-determination means that peoples “freely determine their political status and freely pursue their economic, social and cultural development” (Article 1).

Everyone shall have “the right and the opportunity... to take part in the conduct of public affairs, directly or through freely chosen representatives” (Article 25).

Everyone has the right to freedom of expression, including the right “to seek, receive and impart information and ideas of all kinds” (Article 19).

People have the right to freedom of assembly and association (Article 21).

International Covenant on Economic, Social and Cultural Rights

The right to self-determination means that peoples “freely determine their political status and freely pursue their economic, social and cultural development” (Article 1).

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (Article 2.1)

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2,2)

People have the right to participate in cultural life (Article 15).

Participation is key to the effective provision of health services (General Comment 14: Right to the Highest Attainable Standard of Health).

Convention on the Elimination of Discrimination Against Women (CEDAW)

Seeks the “maximum participation of women on equal terms with men in all fields” (preamble), specifically mandating the elimination of discrimination in political and public life (Article 7) and the participation of women “in the elaboration and implementation of development planning at all levels” (Article 14).

Convention on the Rights of the Child (CRC)

Children have rights to freedom of expression (Article 13), freedom of association and assembly (Article 15) and participation in cultural life (Article 31).

Convention on the Rights of Persons with Disabilities (CRPD)

Recognizes that disability itself “results from the interaction between persons with 17 impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others” (preamble).

“Full and effective participation and inclusion in society” is one of the “General Principles” (Article 3) of the Treaty.

This is emphasised in terms of:

- accessibility (Article 9),

- living independently and being included in the community (Article 19),
- access to accessible information; alternate means, modes and formats of communications; accessible information through the internet (Article 21),
- education to ensure participation (Article 24),
- habilitation and rehabilitation (Article 26),
- “political rights and the opportunity to enjoy them on an equal basis with others” (Article 29)
- participation in cultural life (Article 30).

European Convention on Human Rights/ Human Rights Act

Freedom of Expression (Article 10.1) - Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to *receive and impart information* and ideas without interference by public authority and regardless of frontiers.

World Charter for Nature

All people “shall have the opportunity to participate...in the formulation of decisions of direct concern to their environment” (UN General Assembly, 1982).

Rio Declaration on Environment and Development

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.”

This includes “appropriate access” to information made widely available to the public (UN General Assembly, 1992).

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his

or her health and wellbeing, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention (Article 1).

1 The Right to a Healthy Environment is proposed for inclusion within Scotland's new human rights legislation on economic, social, cultural and environmental rights. The UK Committee on Climate Change has noted the important role of land reform in meeting emissions targets. See [Land use: Policies for a Net Zero UK - Climate Change Committee \(theccc.org.uk\)](#) and [Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf](#).

2 ECHR - https://www.echr.coe.int/documents/convention_eng.pdf

3 The international Bill of Rights is made up of three key Conventions and Treaties: The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. See: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf ; <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> ; <https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>

4 'Human Rights obligations to the enjoyment of a safe, clean, healthy and sustainable environment: Report of the Special Rapporteur' John Knox (July 2018) <https://undocs.org/A/73/188>

⁵ 'Right to a healthy environment: good practices ': Report of the Special Rapporteur David R. Boyd (March 2020) <https://undocs.org/en/A/HRC/43/53>

6 The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted on 25 June 1998 as part of the "Environment for Europe" process and entered into force on 30 October 2001.

7 See OECD, 2020, Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions | READ online (oecd-ilibrary.org)

8 See: [5dd6c6f024659_Land-Lines-Land-Ownership-Peter-Peacock-March-2018.pdf](#) (landcommission.gov.scot)

9 See: Scale and Concentration of Land Ownership - Ownership - Our work - Scottish Land Commission

10 See: [5dd6c6f024659_Land-Lines-Land-Ownership-Peter-Peacock-March-2018.pdf](#) (landcommission.gov.scot)

11 Right to Life: Universal Declaration of Human Rights Article 3; International Covenant on Civil and Political Rights Article 6.1; Convention on the Rights of Persons with Disabilities Article 10; European Convention on Human Rights/Human Rights Act Article 2.

12 Right to Food - Universal Declaration of Human Rights Article 25; International Covenant on Economic, Social and Cultural Rights Article 11; Convention on the Rights of the Child Article 24; Convention on the Elimination of Discrimination Against Women Article 14; Convention on the Rights of Persons with Disabilities Article 28.

13 Right to Water and Sanitation - Universal Declaration of Human Rights Article 25; International Covenant on Economic, Social and Cultural Rights Article 11; Convention on the Rights of the Child Article 24; Convention on the Elimination of Discrimination Against Women Article 14; Convention on the Rights of Persons with Disabilities Article 28.

14 Right to Health - Universal Declaration of Human Rights Article 25; International Covenant on Economic, Social and Cultural Rights Article 12; Convention on the Rights of the Child Article 24; Convention on the Elimination of Discrimination Against Women Article 14; Convention on the Rights of Persons with Disabilities Article 25; European Social Charter Article 11.

15 See: 'Manual on Human Rights and the Environment (2006) Council of Europe, available at: https://www.echr.coe.int/LibraryDocs/DH_DEV_Manual_Environment_Eng.pdf.

16 The right to enjoy the benefits of scientific progress and its applications - Universal Declaration of Human Rights Article 27; International Covenant on Economic, Social and Cultural Rights Article 15.

17 The right to non-discrimination: Universal Declaration of Human Rights Article 2; International Covenant on Civil and Political Rights Article 2(1), 3, 4, 26; International Covenant on Economic, Social and Cultural Rights A 2(2); Convention on the Rights of the Child Article 2; Convention on the Elimination of Discrimination Against Women Article 2; Convention on the Rights of Persons with Disabilities Article 5; Convention on the Elimination of Racial Discrimination Article 1, 2(2); Framework Convention for the Protection of National Minorities Article 4.

18 See:

<https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

19 ' Children's Rights and the Environment: Report of the 2016 day of General Discussion (2016), Committee on the Rights of the Child, available at: <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/DGDoutcomereport-May2017.pdf>

20 See: Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment - <https://undocs.org/A/75/161>

21 These are the International Covenant on Economic, Social and Cultural Rights Article 2.1; Convention on the Rights of the Child Article 4; and Convention on the Rights of Persons with Disabilities Article 2.

22 'Frequently Asked Questions about the Guiding Principles on Business and Human Rights (2014) OHCHR, available at: https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf

23 See: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

24 Right to Property: European Convention on Human Rights/Human Rights Act Article 1 of its Protocol No. 1.

25 See: [5dd6a5d2e58f3_Land-Lines-Human-Rights-Kirsten-Shields-May-20182.pdf](https://www.landcommission.gov.scot/5dd6a5d2e58f3_Land-Lines-Human-Rights-Kirsten-Shields-May-20182.pdf) (landcommission.gov.scot)

26 See: <https://sustainabledevelopment.un.org/post2015/transformingourworld>

27 See: xvi See: <https://sustainabledevelopment.un.org/post2015/transformingourworld> xvii See: https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf

28 Environment, Climate Change and Land Reform Committee Green Recovery Inquiry - Report, 12th Report (Session 5) - https://www.parliament.scot/S5_Environment/Reports/ECCLRS0520R12.pdf

29 Communities are defined as communities of place, communities of interest or communities of identity.

30 See: OECD, 2020, Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave: Innovative Citizen Participation and New Democratic Institutions | READ online (oecd-ilibrary.org)

31 ' Children's Rights and the Environment: Report of the 2016 day of General Discussion (2016), Committee on the Rights of the Child, available at: <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/DGDoutcomereport-May2017.pdf>

32 Environmental pollution is dealt with under paragraphs 49-50.

49 States should take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings. Adequate housing that includes non-dangerous cooking facilities, a smoke-free environment, appropriate ventilation, effective management of waste and the disposal of litter from living quarters and the immediate surroundings, the absence of mould and other toxic substances, and family hygiene are core requirements to a healthy upbringing and development. States should regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation.

50 The Committee draws attention to the relevance of the environment, beyond environmental pollution, to children's health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children's health and exacerbates health disparities. States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies.

Providing an adequate response to the underlying determinants of children's health; and Developing, implementing, monitoring and evaluating policies and budgeted plans of actions that constitute a human rights based approach to fulfilling children's right to health are considered core obligations under the right to health.

33 'With 15 other children, Greta Thunberg files UN Complaint against 5 countries: Here's what it will achieve (Sept 2019) The Conversation, available at: <https://theconversation.com/with-15-other-children-greta-thunberg-has-filed-a-un-complaint-against-5-countries-heres-what-itll-achieve-124090>

34 Duarte Agostinho and Others v. Portugal and Others (communicated case) (coe.int)