

Scottish Parliament Equalities and Human Rights Committee Draft Budget Scrutiny 2020-2021: Delivery of national equalities and human rights priorities in partnership with the third sector.

The Human Rights Consortium Scotland is Scotland's civil society network to promote and protect human rights. Our work enables a strong collective civil society voice on human rights and facilitates civil society organisations to have the information and understanding that they need to protect human rights.

We welcome the opportunity to respond to this inquiry. This submission is based on issues raised within discussion with Consortium members and from our work around the impact of Brexit upon rights.

What are the key public policy areas where individuals and protected groups are struggling to access their rights? Which groups are most likely to be affected and why?

The groups who most struggle to access their rights are those whose voice is least heard in decision-making. For example, we highlight here:

- People not born in Scotland, including refugees and those with insecure immigration status
- Children and young people
- Disabled people, particularly people with learning disabilities, people who have particular access or communication requirements, people with mental health difficulties, people whose independent living requires support
- Carers
- People living in poverty and homelessness
- People targeted by discrimination and racism, such as Scottish Gypsy Travellers, and black/ minority ethnic communities

Is the level of public sector funding provided enough to deliver national priorities and better outcomes for people and communities, please provide evidence?

➤ **Budgeting needs to match human rights ambition**

Consortium members describe a frequent gap between positive policy aims around realising, protecting and fulfilling human rights, and experience on the ground where many people are living in Scotland without access to their basic human rights. Policy objectives are agreed and welcomed but there is then a lack of connection with the resources allocated to make these objectives a reality. Pots of money are often set aside at the outset of a policy or strategy but these dwindle or bear little relation to need as the policy is implemented. This is particularly the case when local authorities are charged with implementing these national policies from increasingly stretched

budgets. **The Consortium therefore urges the Committee to call for a different way of budgeting – a human rights based budget** that begins with considering what is needed to progressively realise people’s basic human rights and then works backwards to establish priorities, allocations and amount needed. This approach empowers people to participate in funding decisions that affect them and their communities. We highlight the important work of the Scottish Human Rights Commission in this regard. This wholly different approach to budgeting should begin with the Scottish Government but it is vitally important that this approach is also adopted by local authorities and public bodies.

We strongly welcome the Scottish Government’s intention to incorporate UN treaty rights into Scots law. We recognise that this chimes with the [Scotland Declaration on Human Rights](#), supported by 200 organisations, calling on ‘law and policy makers to take all possible steps to protect our rights and to make Scotland a world leader in both rights protection and implementation’. **The Committee could therefore usefully ask the Scottish Government what it will do to ensure that this ambitious policy and law intention also shifts its approach to budgeting** – it is not enough to have rights in law without there being the resources allocated to make progressive realisation of these rights possible in everyday life. Without the budget process matching these policy and law intentions, basic economic and social rights will remain something that is outwith the grasp of Scotland’s poorest and most discriminated-against individuals and communities.

Scotland’s National Action Plan on Human Rights is widely supported and has received international acclaim for its collaborative nature. The Consortium is involved in the development of the second iteration of SNAP where a range of draft priorities are being developed with participation of rights holders. We are very concerned however, whether there has been any or enough resource allocated by the Scottish Government to enable

We highlight as examples, two particular policy areas where the disconnect between policy intention and the budget is clear:

- **Right to independent advocacy**

The right to advocacy is within several pieces of legislation such as Education (Additional Support for Learning) (Scotland) Act 2004 and mentioned in many policy areas such as the National Care Standards and Road to Recovery: the Scottish Government Drug Strategy. Advocacy support can be essential for empowering people to access and claim their rights. Advocacy organisations report a picture of increased demand but reduced funding and capacity. The Scottish Independent Advocacy Alliance survey showed an increase of 11.5% in the numbers of people advocacy services supported during 2015/16, but public sector funding decreased by 4%, with reductions in paid and volunteer advocates. Advocacy organisations are prioritising people who are in crisis and operating extensive waiting lists, and whilst there has been some new funding, much of this has been short-term work with very specific groups¹.

¹ The Scottish Independent Advocacy Alliance: A Map of Advocacy across Scotland 2015–2016 edition (updated version available soon, expected to show largely similar trends)

- **Right to highest attainable standard of health, and right to independent living & community inclusion**

The Keys to Life Scottish Government strategy to improve realisation of the rights of people with learning disabilities sets out clearly that people with learning disabilities should 'enjoy the highest attainable standard of living, health and family life'. This closely reflects the UN Convention on the Rights of People with Disabilities. However, the total expenditure on health and social care for adults with learning disabilities in 2016/17 compared to that of 2012/13, shows that the expenditure on these services was flat-lining despite rising living costs².

- **Legal aid for groups**

We note that the Scottish Government is currently consulting on changes to the legal aid system³. The proposals include new models to embed more legal aid-funded lawyers within the third sector which is very welcome and we anticipate that this will be very effective for access to justice.

The proposals also include a suggestion that legal aid for Fatal Accident Inquiries (FAIs) could be available to groups, rather than only to individuals. We are pleased to see this suggestion but urge the Scottish Government to recognise the benefits of group or NGO-led judicial cases beyond the narrow scope of FAIs. NGO or group litigation raising human rights issues or environmental issues are of considerable benefit to clarifying and progressing human rights in Scotland⁴. Making legal aid available to all group cases that are in the public interest would also help to prepare for the proposed law to incorporate UN treaty rights directly. To extend legal aid to all group cases would be a significant, world-leading step to develop a robust human rights system.

Are there public funding challenges for the third sector; if so what would be the implications for delivering equalities and human rights outcomes?

The Consortium coordinates the Civil Society Brexit Project in partnership with the Scottish Universities Legal Network on Europe (SULNE), funded by The Legal Education Foundation. The purpose of the Project is two-fold: to provide the information and advice that the sector needs to be informed about and influence around Brexit, and to facilitate the sector working together around the impacts of Brexit on rights.

We highlight two particular impacts of leaving the European Union on public sector funding for equalities and human rights:

1. Expected holes in funding due to end of EU funding

² Scottish Learning Disabilities Observatory, Summary Information, see:

<https://www.sldo.ac.uk/projects/health-care-services/spending-on-services/expenditure-on-adult-learning-disabilities-services/>

³ Scottish Government: Legal Aid Reform in Scotland, at <https://consult.gov.scot/justice/legal-aid-reform-in-scotland/>

⁴ Clan Childlaw, Human Rights Consortium Scotland et al: Overcoming barriers to public interest litigation, August 2019

As part of our project, we have held training sessions and discussions around Brexit with organisations of all shapes and sizes across Scotland. We have consistently heard about the considerable concern about services that will struggle or shut if there is no adequate replacement for EU funding. Their concern is well-founded: the Scottish third sector receive over £50m in direct EU funding each year⁵. European funding directed towards equality and human rights in Scotland is worth around 1.1 billion Euros in the period 2014-2020, with around half of all funding aimed at supporting employment. The Highlands receive a greater share, reflecting their development needs with 200 million Euros allocation in 2014-2020⁶. More than half of all EU funding to the UK is linked to objectives that focus on equality issues⁷.

We welcome the recent Finance and Constitution Committee inquiry into the future of European Structural Funds. However, we highlight that there should also be an inquiry into gaps in other types of funding such as Rights Equality and Citizenship funding, as well as exploration specifically into the impacts on the third sector, on social inclusion and on equality and human rights.

We highlight the following around replacement EU funding:

More certainty on funding is urgently needed

The UK Government intends to create a UK Shared Prosperity Fund that will replace EU structural funds. The consultation on this fund was due in end 2018 but has *still* not been published. This leaves organisations incredibly unsure about what funding will be available in the future, and this obviously impacts on the ability to recruit and retain staff, and to plan services. We also highlight that the EU provides Rights, Equality and Citizenship funding, and there has been no mention from the UK Government or the Scottish Government about its replacement.

Funding must retain objectives around on equality and human rights

EU structural funds have strong equality objectives and indicators, resulting in the funds being valuable in driving social inclusion. It is also important to note that many Scottish Government funds such as Fairer Scotland Action Plan to tackle poverty is made up of half EU funding. It is important that any future Shared Prosperity Fund or other is not shaped solely by narrowly defined economic objectives.

Funding should be distributed via the Scottish Government

Post EU funding must address people, not just particular places. And it would have the greatest impact if it was distributed by the Scottish Government to dovetail with their human rights, social inclusion and anti-poverty policy objectives. Enterprise agencies should not decide priorities or distribute this funding.

Brexit should not lead to less resources for our worst-off communities

Post EU funding should provide at least the same level of investment in education, training and support to disadvantaged and discriminated against individuals and groups as current EU funding. The Highlands, and the rest of Scotland, should not receive any less money than it does currently.

⁵ SCVO: Third Sector Funding and Spending 2014, available at: <https://scvo.org.uk/policy-research/evidence-library/2014-third-sector-funding-and-spending-2014>

⁶ Equality and Human Rights Commission: The future of funding for equality and human rights, May 2019

⁷ Equality and Diversity Forum, Creating Inclusive Growth, October 2018

2. Brexit will lead to increased demand for third sector support

We know that Brexit is highly likely to lead to an economic downturn, whether in the short or long-term. We know too that this downturn is most likely to affect the most disadvantaged⁸ and that EU citizens being brought into the immigration system increases their need for advice and support. If we leave the EU without a deal, the impacts on basic human rights will be more severe, with food shortages and price rises very likely⁹. The impact on demand for third sector crises services is therefore likely to increase and will require crises funding. In particular we highlight that, whilst there is a Scottish Government fund to help small and medium businesses to prepare for Brexit, there is no equivalent for the voluntary sector - this is a gap that should be addressed urgently.

➤ Funding process

The process of applying for public sector funding, particularly for small or community-based organisations, is overly difficult and bureaucratic. It should not be necessary for third sector organisations to employ or get hold of expert help in funding bids simply in order to provide services that are essential for enabling people to claim and protect their rights. To progress human rights in practice, we need to increasingly fund support that is designed directly by those who need it. Therefore, government at all levels and public bodies could usefully examine their grant application and tendering processes to make them as simple and straightforward as possible.

➤ Local authority approach to funding

Anecdotal evidence suggests that local authorities are increasingly taking services 'in-house' or speaking of plans to do so. Where this lowers the participation of rights holders in decision-making, this is highly regrettable. The Committee could usefully ask COSLA or local authorities about these decisions and what assessment of the impact on human rights is carried out in the decision-making.

➤ Independent voice of third sector

We highlight that a crucial role of the third sector is to scrutinise and challenge government decision-making, such as through action research, media, public interest litigation or speeches etc. However, some third sector organisations who receive public sector funding, particularly smaller or local organisations, can feel very constrained in what they can say due to concerns about having a negative impact on their funding or longer-term relationship with their public sector funder. Campaigning on behalf of service users carries a risk that non-agreement with government policy is 'potentially a signal of untrustworthiness to government, threatening reputation and funding'. Threats to independence of voice can come from: unsupportive funding agreements, including gagging clauses; political pressure; and a lack of funds for policy and advocacy work¹⁰.

- **What changes could be made to improve accountability for national priorities being delivered by the public sector in partnership with the third sector?**

⁸ Joseph Rowntree Foundation: How could Brexit affect poverty in the UK?

<https://www.jrf.org.uk/report/how-could-brexit-affect-poverty-uk>

⁹ Human Rights Consortium Scotland, A no deal Brexit and Human Rights:

<https://hrcscotland.org/2019/08/01/a-no-deal-brexit-and-human-rights/>

¹⁰ Edinburgh Napier University: Third Sector Independence: Relations with the state in an age of austerity,

We highlight that the budget system in Scotland is very opaque and difficult to scrutinise. Lack of information about longer-term trends, lack of detail on smaller amounts, changing terms and a lack of time mean that it is very difficult for civil society to engage in discussion around budget decisions. Terms and indicators used can hide discrimination – for example, the National Indicator ‘Percentage of young adults (16-19 year olds) participating in education, training or employment’ can hide the lack of opportunities that are accessible to disabled young people, leading to discrimination where they are being forced into particular routes simply because of their impairment rather than their ambitions and skills. We recognise the Scottish Government’s intention to increase transparency around the budget process - this is vital for progress on human rights.

We also refer to the Committee’s Human Rights Inquiry recommendations to the Scottish Government and public authorities to ensure that the third sector has the resources that it needs to engage with international human rights treaty monitoring. We welcome the Scottish Government’s commitment to publish separate Scotland position statements for each UN rights review¹¹ and note that these statements can be very valuable for civil society engagement and scrutiny. However, it would be helpful for the Committee to follow-up these recommendations around third party resourcing to engage in these processes to assess action taken to address them.

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¹¹ Scottish Government, supplementary response to the Committee, https://www.parliament.scot/S5_Equal_Opps/EHRiC_Human_Rights_Inquiry_supplementary_informationon.pdf