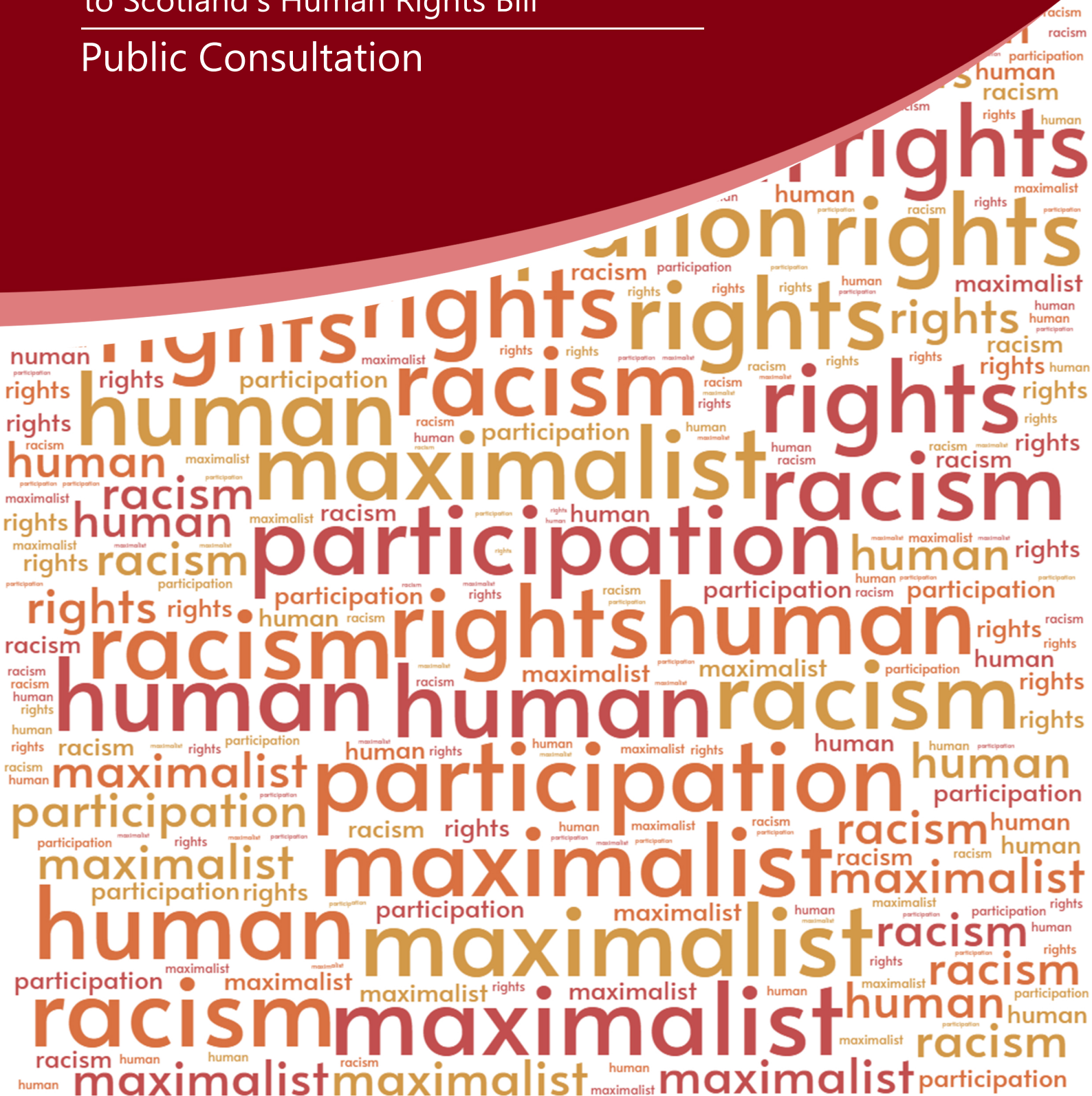


4th October 2023

Executive Summary of CEMVO Scotland's response to Scotland's Human Rights Bill

Public Consultation





CEMVO Scotland is a national intermediary organisation and strategic partner of the Scottish Government Equality Unit. Our aim is to build the capacity and sustainability of the ethnic minority (EM) voluntary sector and its communities. Since being established in 2003, we have developed a database network of over 600 ethnic minority voluntary sector organisations throughout Scotland to which we deliver a wide range of programmes that provide capacity building support to the sector.

As a national organisation, we continually engage with the EM voluntary sector and its communities, which enable us to gather intelligence about the needs and issues affecting the sector. This helps our organisation to deliver tailored support to the sector, and to work strategically with public, statutory, and government agencies to tackle a range of prevalent issues such as race equality, social inclusion, capacity building and civic participation.

One of our core programmes at CEMVO Scotland is Race for Human Rights. The aim of this programme is to help public service providers increasingly embed race equality and human rights in their strategic planning and day-to-day functions. This will be achieved by adopting an anti-racist and human rights-based approach.

This is a response to the public consultation 'A Human Rights Bill for Scotland' launched by the Scottish Government on 15th June 2023. This response includes legal observations, provides Scottish Public Policy context and reflections, anecdotal evidence submitted by one of our network organisations and evidence gathered at our community engagement event to discuss the consultation. On the 11th July 2023, our Human Rights Officer delivered a targeted community engagement event to collect qualitative data to inform CEMVO Scotland's public response to Scotland's New Human Rights Bill. Our event was exclusive to people from EM backgrounds and EM led-organisations.

To help promote trust within communities, we were delighted to have representatives from the Scottish Government's Human Rights Bill Team and the Race Equality team from the Equality and Human Rights Directorate.

Executive summary

CEMVO Scotland welcome the long-awaited public consultation on Scotland's Human Rights Bill and are grateful for the opportunity to provide views and evidence. Our response to the proposed Human Rights Bill consultation paper is in depth, thorough and long with reflections on previous policy and legislative efforts, legal observations and sound human rights incorporation knowledge. Before offering an overview of some key points in our response, there are some general observations about the consultation process. CEMVO Scotland welcome the Scottish Government's Human Rights Bill Team's efforts to engage with the public through this consultation process and initial steps in inclusive communication however it is disappointing that this Consultation was only published in English and Scot Gaelic, forgetting about the 2nd/3rd most spoken languages in Scotland being Polish and Urdu; thus limiting responses to those who are proficient and fluent in English or Scot Gaelic. We are additionally disappointed at the timeframe to provide a response to such a detailed and lengthy consultation paper. While we acknowledge the longer time period offered to respond, this did not account for the two months of summer break in between, limiting public engagement and staff availability and resources. CEMVO Scotland would also like to express our solidarity with those organisations hosting the Lived Experience/Experts by Experience groups that much of the information/advice and actions that were highlighted in these groups were not reflected within this consultation paper.

Within the proposals in the consultation paper there were two clear themes; timeframes and transparency. These were both lacking in the proposals offered by the Scottish Government. It is of the opinion of CEMVO Scotland that we need clear timescales: from the Bill being enacted to compliance of duty-bearers. Secondly, this consultation paper continuously states that certain things are untouchable due to the devolution settlement, particularly the equal opportunity reservation. While we accept that this is a complex area of law, we are disappointed that the consultation offers no transparency as to why certain areas cannot be explored more thoroughly within the confines of devolution. We encourage the Scottish Government to remain committed to their maximalist approach to this Bill.

CEMVO Scotland's recommendations and positions are built upon key reflections of previous innovative policy or legislative changes that aims to improve the lives of those whose rights are most at risk in Scotland. These include identified gaps in protection to weak accountability and monitoring measures. This consultation paper proposes to incorporate ICESCR directly, a 'copy and paste' mode of incorporation, omitting areas that are reserved and include the right to a healthy environment. The consultation proposes that duty-bearers must then interpret ICESCR rights and the right to a healthy environment with CERD, CEDAW and CRPD in mind through an equality provision. To allow duty-bearers time to prepare for legal changes: once the Bill is enacted/receives royal ascent, a 'procedural duty' will be put upon these duty-bearers. Then, after time, duty-bearers will have a 'duty to comply' with ICESCR rights and right to healthy environment, while a the procedural duty will remain for CERD, CEDAW and CRPD. We do not believe that maintaining a 'procedural duty' on CERD, CEDAW and CRPD is sufficient to truly improve of the realization and protection of rights. Recognising the constraints of devolution, we believe more could be

done to ensure a *maximalist approach* and would encourage the Scottish Government to be more transparent if this is not possible and what other avenues they have explored that led them to this proposal.

CEMVO Scotland's recommendation is to utilize one of the exemptions within the Equality Act 2010 that 'allows Scottish Parliament to legislate to prevent, eliminate or regular discrimination by certain public authorities when exercising their Scottish functions'. We recommend that certain public authorities, that fall within the scope of this exemption, should be explicitly listed within the Bill e.g NHS Boards, Police Scotland, Scottish Housing Regulators. Of these authorities, all their Scottish functions should then be explicitly listed. This can be achieved by a commissioned Audit by the Scottish Government and should be completed prior to the enactment of this Bill. The Bill will also have to recognise that this approach in no way alters the Equality Act 2010 or the equal opportunities reservation. The impact of this is that CERD will apply to certain public authorities while carrying out Scottish functions, which can drastically increase the realisation of rights for some of the most marginalised groups in society and protect them from discrimination. This will also allow the articles within CERD to provide the legal backing and fill the gaps in accountability that currently exist in policy and legislation in Scotland.

Failing to explore such options and maintaining a procedural duty on CERD, CEDAW and CRPD runs the risk of creating a hierarchy of rights. Furthermore to avoid creating a hierarchy of rights, CEMVO Scotland are also calling for the Human Rights Act 1998 (HRA) to be re-stated within the preamble or section 1 or 2 of the new Bill. This also recognises the current threats to our civil and political rights, protected by the HRA that we have witnessed over the last decade.

Two other core recommendations from our response relate to participation and capacity building. CEMVO Scotland would like to see active participation mainstreamed throughout the: design, delivery, reporting/monitoring on implementation, accountability, defining MCO's and developing the Human Rights Scheme. To ensure meaningful participation, CEMVO Scotland advocate for active and equitable participation; two key principles in our guide to a Human Rights Based Approach to Community Engagement¹. CEMVO Scotland recognises the extensive participation work carried out prior to the publication of the consultation of the Bill: Lived Experience Board (Human Rights Consortium), Experts by Experience (Scottish Commission for People with Learning Disabilities) and children and young people (Together Scotland). To ensure that those whose rights are most at risk are prioritised, following a human rights-based approach, it is vital that the Scottish Government request monitoring and audits on equalities data from these groups. This data will be able to highlight any groups of society who are not represented, and allow Scottish Government to take equitable steps to ensure that their voices and experiences are heard. CEMVO Scotland would also like to take this opportunity to remind the Scottish Government that providing safe spaces and recognising the power imbalance when conducting participation work is imperative, that includes when discussing racism.

¹ [HRBA Community engagement template.docx](#)

In terms of capacity building, CEMVO Scotland recognises that there needs to be thorough and mass capacity building of human rights for duty-bearers and rights-holders. In particular, when discussing the Bill with EM communities, participants were clear that there is a 'fundamental link' between racism and human rights as it is an 'infringement of dignity'. However there were clear messages that in reality human rights were seen as a privilege and not for 'us'. This highlights that not only is there a need for human rights awareness but also that human rights are for all and that racism is a human rights issue. CEMVO Scotland have also reflected on lessons learned from the implementation of the Public Sector Equality Duty and Fair Scotland Duty, calling for improvements of senior leadership buy in within public sector and examples of good approaches to tools for change e.g. using a human rights-based approach to data collection, human rights budgeting, human rights in decision-making etc. This is key when meaningfully building capacity of the sector. Too many mainstreaming reports simply say 'we were unable to collect ethnicity data', EQIA's identify the disproportionate impact but don't say what they are going to do to over come it or additional measures to ensure it doesn't have disproportionate impact. CEMVO Scotland would welcome exploration of the National Human Rights Hub gathering this information and sharing it with public authorities to support them in the protection and realization of rights.

For a more detailed response, [please read our full response here](#)

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