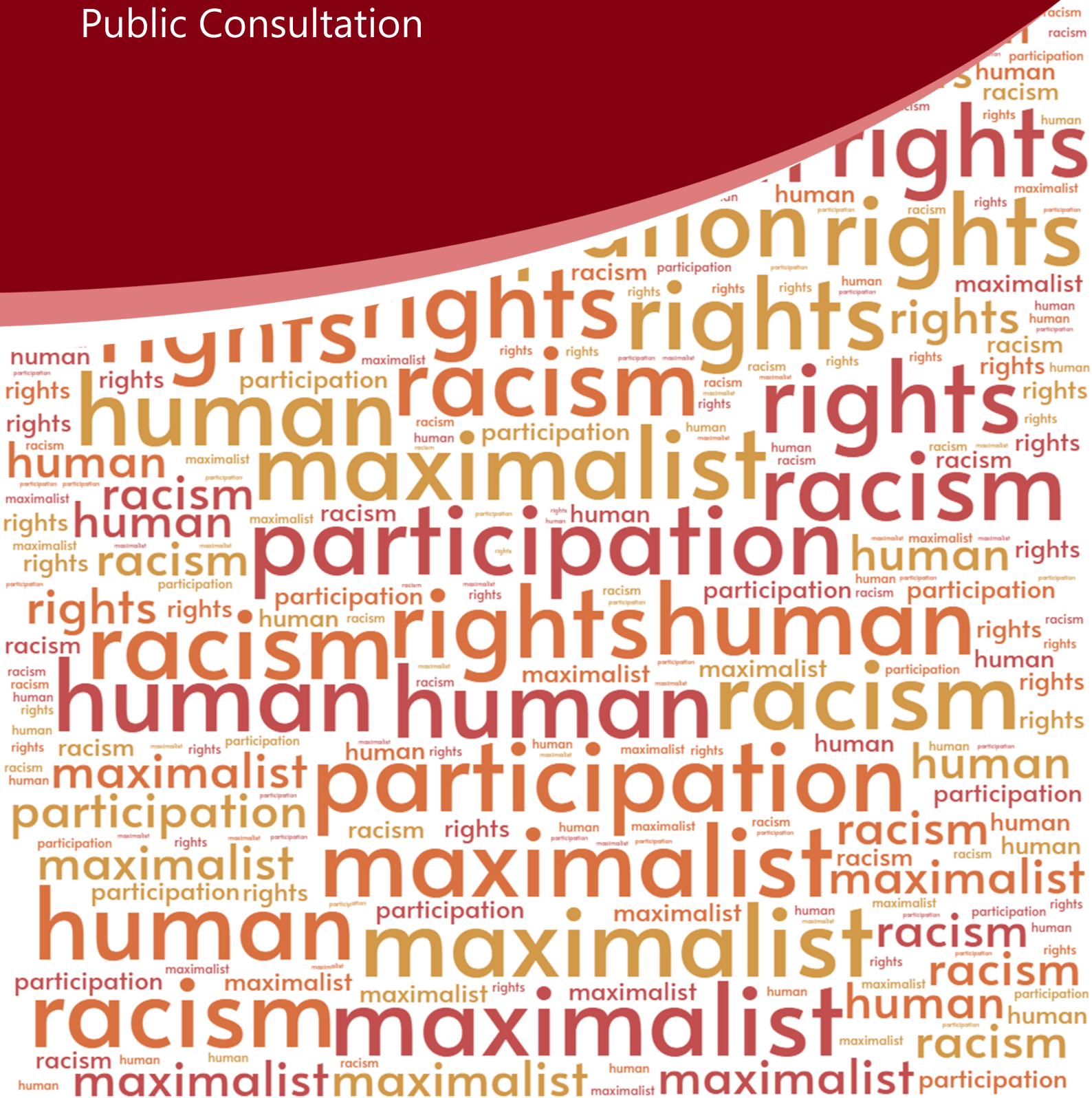


4th October 2023

CEMVO Scotland's response to Scotland's Human Rights Bill

Public Consultation



CEMVO Scotland, Human Rights Bill Consultation Response

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.

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.

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

CEMVO Scotland welcome the proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill. However we equally share concerns that ‘dignity’ lacks legal certainty and is a very subjective term. CEMVO Scotland would welcome further information on where dignity would sit within the legislation: as a purpose clause or a guiding principle in the Bill. Furthermore, CEMVO Scotland would strongly recommend that other guiding principles of interpretation also be reflected in the Bill to guide judicial decisions e.g. universality, intersectionality, indivisibility, interdependence. CEMVO Scotland support academic guidance that human dignity can be added to an interpretative clause of the Bill along with the aforementioned principles. We also agree with academic experts that human dignity as a guiding principle does not need to be limited to courts and tribunals and would recommend that it also apply to relevant duty-bearers reflecting that ‘the more effective their practice is the more likely it will be that there is improved enjoyment of rights in people’s everyday lives’¹.

CEMVO Scotland agrees with the Human Rights Consortium Scotland and academic experts calls to ensure dignity ,and other guiding interpretation principles suggested, can improve the realization of rights it must be accompanied by capacity building exercises for courts. CEMVO Scotland would welcome further exploration into this area from leading experts such as Elaine Webster at the Centre for Study of Human Rights Scotland.

2.What are your views on our proposal to allow for dignity to be a key threshold for designing the content of MCO’s?

CEMVO Scotland welcome the proposal to allow dignity to be a key threshold for designing the content of MCO’s. It is our understanding, from experts such as Elaine Webster, that dignity is a key tool when engaging with rights-holders about their rights and what they look like and feel like. Indeed, during our own human rights awareness training, participants felt that dignity is a term they could all relate to. In her research, Elaine Webster describes dignity as an ‘anchor’ to interpreting rights. CEMVO Scotland support this synopsis and reiterate that to ensure meaningful impact of designing the MCO’s that they should be co-designed and monitored with rights-holders, particularly those whose rights are most at risk. Allowing dignity to be a key threshold for designing the content of MCO’s would also align with the Bill’s intentions of incorporation of international human rights law, as dignity ‘has been used in this way in international human rights law and also in constitutional law in

¹ “‘Dignity’ in interpretation of rights and as a threshold for minimum core obligations”, Response to the consultation on a Human Rights Bill for Scotland, Centre of Study of Human Rights Law, University of Strathclyde

some countries². Furthermore, CEMVO Scotland are in agreement with academic experts that 'There will be a need for guidance (e.g. a working definition) for participants and ideally the use of creative forms of participation that can bring to life the relationship between human dignity and relevant spheres of life (food, housing, culture, and so on), and in ways that are accessible as well as feasible within realistic timeframes³.

Finally, CEMVO Scotland would like to take this opportunity to reaffirm that human rights are the floor and not the ceiling of our aspirations. We must acknowledge that there is a risk of MCO's being the 'ceiling' and not the floor. It is therefore vital that steps are taken to ensure that this does not happen, e.g. by providing continuous capacity building to those delivering and monitoring compliance with MCO's.

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

CEMVO Scotland welcomes the inclusion of international law materials and mechanisms within the interpretative provision of this Bill. It is important when incorporating international human rights law into domestic legislation that we are not starting from scratch in terms of what human rights look like and feel like in practice. The United Nations Committees publish reports known as 'general comments' every four years as well as short papers which can help guide realization and protection of certain rights and keep Scotland aligned with international standards. Simultaneously, it is important that those who will interpret rights must be informed and kept up to date with these international standards, this includes duty-bearers, courts and tribunals. While reading, applying and interpreting international human rights law standards, it is important to remember that some UN bodies can interpret issues slightly differently, CEMVO Scotland strongly recommends that the Scottish Government consult with experts in this area, for example within the UN, to determine how they may balance differing interpretations.

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

Question 4 is a very broad and in depth question. For this reason, we have broken down our response into subheadings.

In sum, the consultation 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

² "Dignity' in interpretation of rights and as a threshold for minimum core obligations', Response to the consultation on a Human Rights Bill for Scotland, Centre of Study of Human Rights Law, University of Strathclyde

³ "Dignity' in interpretation of rights and as a threshold for minimum core obligations', Response to the consultation on a Human Rights Bill for Scotland, Centre of Study of Human Rights Law, University of Strathclyde

an equality provision. This provision also will include an ‘equal access to everyone of ICESCR rights and right to a healthy environment’.

The consultation proposes that 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.

Finally the consultation proposes to include an interpretative provision in the Bill that ensures all the rights can be interpreted in light of international human rights standards and the concept of human dignity.

Benefit of incorporating CERD

As highlighted by Busby in her briefing paper to the National Taskforce, the provisions within CERD go further than current anti-discriminatory law, particularly since our removal from the EU ‘the Convention... imposes a set of clear principles and clear aims that cut across all areas of state....it differs from most... domestic levels which is narrowly focused on commercial activities’. While at first glance it may seem that this matter would be reserved as it references discrimination (Equality Act), there are remits within the Scottish Parliament to take steps to improve the lives of people who face such racial discrimination which do fall within the competence of devolution powers such as housing, education and training, civil and criminal justice. One of our network organisations provided anecdotal evidence:

“One of our recently arrived immigrant families...feel they have been paid different wages for equal work. The adult son discussed that he had to start his education again from zero, because his Bachelors degree from abroad was not recognised in the UK. He was told he needs to just study English for a few years before he can study other subjects. He was unable to pass a driving theory test because his written English was not good enough, even though his spoken English is good. This interruption to his education will delay his ability to work and to achieve his economic rights.”

CEMVO Scotland would like to reiterate that this is a complex area of law and is not an easy task however the Scottish Government must remain committed and explore more maximalist approaches than currently proposed. As highlighted in the experience provided above, there are improvements to the realization of rights that are within the remits of devolved matters (education) and the failure to protect this right inhibits the realization of other rights (work). While work is a reserved matter, the realization of this rights can be improved and better protected by the fulfilment of right to education.

Incorporation has the potential to improve accountability of both policy and legislation to address inequality. However, the proposed approach that maintains a ‘due regard’ to CERD/CEDAW and CRPD, which does not improve the current legal protection of rights in

Scotland just now. CEMVO Scotland would like to remind the Scottish Government of its commitment to a maximalist approach and calls for more consideration with legal experts to be given to this mode of incorporation of the specialised treaties.

Further benefits of incorporating CERD are a focus on pro-active measures to achieve racial equality and eliminate racism. This shift towards substantive equality, equity, has been recommended by advocates, third sector and experts in the field for many years and is welcome. This is enhanced by the positive obligations within CERD. Positive obligations are tools in human rights law that support realisation rights realisation and prevent regression. CEMVO Scotland would strongly encourage the Scottish Government to give due consideration of the value of positive obligations being incorporated into the new Human Rights Bill Framework.

CEMVO Scotland are also in agreement there is value of having specific concluding observations and recommendations from CERD within the new legislative framework.

It is of the opinion of CEMVO Scotland that all of the above benefits mentioned are at risk of not having meaningful impact if the rights and provisions within CERD remain to have only a procedural duty placed upon them. CEMVO Scotland would strongly advise the Scottish Government for CERD and its provisions, like ICESCR, to move towards a duty to comply after the initial procedural duty. Keeping procedural duty for CERD and CRPD creates a hierarchy of rights. If we think of interdependence of rights, one right will have less legal backing/support and *value* than the other. Some of the most common and grave violations of rights happen within devolved competence and CEMVO Scotland calls for the government to explore this area of complex law more - we can do more and we should be doing more.

Please read below for further explanation.

Enhanced legal structure

As stated above, CEMVO Scotland are calling for CERD, CRPD and CEDAW to move from a procedural duty to a duty comply, just like ICESCR. While recognising the complexity of the matter, CEMVO Scotland suggest exploring one of the many caveats written within the equal opportunities reservation:

Given that 'the Scottish Parliament can legislate to prevent, eliminate or regulate discrimination by certain public authorities in Scotland when exercising their Scottish Functions, or the Scottish Parliament can legislate to encourage equal opportunities as long as it is not prohibiting or regulating discrimination.'

CEMVO Scotland recommend 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.

For example, we have already seen progressive policy from the Scottish Government in terms of improving the lives of those whose rights are most at risk and their protection of rights e.g. the New Scots Strategy and the Child Payment. These are welcomed policies that significantly improve the realisation of rights while still respecting the devolution settlement (that being immigration and benefits are reserved). Incorporation of CERD with a duty to comply would strengthen accountability measures and would ensure that Scottish Government do all that they can within their powers to take positive steps ... [in]...policy to eliminate racial discrimination by public authorities' (Article 2 CERD). This would obligate other areas to ensure their policies on anti-discrimination are more thorough and the enhanced legal structure (duty to comply) would improve accountability for such policies and existing. For example, CEMVO Scotland welcome the Scottish Government's commitment to building more social housing, however we are concerned that these houses are not accessible for some marginalised communities such as EM communities as they are standard 2 bedroom houses which does not acknowledge the intergenerational family dynamic of some communities. This forces families into private tenancy which puts their rights further at risk. As provided in the Healing Divided Britain⁴, in Scotland ethnic minority households are four times more likely to experience overcrowding and there is a high percentage of EM families in the private rented sector due to inappropriate social housing stock and poor housing conditions (more open to private landlord exploitation)⁵⁶. When thinking about intersectionality and those whose rights are further at risk in terms of housing, one of our network organisations submitted anecdotal evidence on this matter:

"We have several service users who are in housing that does not support their needs. One family is on the 5th floor without a lift, while the mother has a leg injury that makes climbing stairs difficult. "The family felt their needs and wishes were not listened to or properly acknowledged, there was a lack of empathy/sympathy in how they were treated in regards to accommodation. The father described the restrictions of where they can live as 'like being in prison', comparing it to Bibby Stockholm."

"Another family that we know is in a ground floor flat to accommodate a wheelchair user, but he needs a separate room from his wife due to his pain levels, and the other two rooms are shared between the remaining 5 family members. As children grow into adolescents,

⁴ Healing a divided Britain: the need for a comprehensive race equality strategy.

⁵ Equality and Human Rights Commission, August 2016

⁶ Further statistics on housing and ethnicity available at [Ethnicity and Housing in Scotland \(squarespace.com\)](https://www.squarespace.com)

this arrangement is not appropriate for young people who have a need for privacy and their own space.”

Having a duty to comply on Article 2 would obligate Scottish Housing Regulator to review their policies, perhaps looking at how many EM families access social housing, how many are on the waiting list and provide them with the data to take positive steps to eliminate discrimination and provide the legal backing to hold the Scottish Housing Regulator accountable. Another example of existing policy is the Race Equality Framework 2030 (REF), having a duty to comply on Article 2 would strengthen REF Goal 30 and hold those accountable for not progressing this innovative and needed policy.

Article 3 of CERD imposes specific duties to prevent, prohibit and eradicate segregation and apartheid. Within the context of Scotland today and within the remit of devolved powers, this could improve the accountability of the segregation of some children from school e.g. Roma children. An area of education that needs stark reform. It is also of the opinion of Scotland that while the hopefully soon to be enacted UNCRC Bill contains the right to education for every child, that this simply does not go far enough for those who experience racial discrimination and a further strong duty to comply on Article 3 is need for the protection of this right and to hold Education Authorities accountable when things go wrong.

Article 4 of CERD condemns racist propaganda and to adopt positive measures to eradicate the promotion or incitement of racial hatred and discrimination. CEMVO Scotland acknowledges that this Article is more complex as the UK Government have reserved this Article with an interpretative clause. We would therefore call for further expert legal guidance to explore approaches to incorporating this Article as it is one of the fundamental contributors to racial discrimination in an age of misinformation. For example the UN’s Committee on the Elimination of Racial Discrimination were:

“seriously concerned at the sharp increase in the number of racist hate crimes” around the EU membership referendum in June 2016 which was peddled by “divisive, anti-immigrant and xenophobic rhetoric” by politicians in the UK , and concerned about “the negative portrayal of ethnic or ethno-religious minority communities, immigrants, asylum seekers and refugees by the media”⁷

This trend has repeated since the outbreak of COVID-19 and the mass misinformation circulating that Chinese people were to blame for the spread of the virus. Recent statistics on reported hate crime in Scotland has shown a stark increase in the year of and the years proceeding. This is only a snapshot of the problem as the reporting rate for hate crime remains alarmingly low.⁸

⁷ United Nations Committee on the Elimination of Racial Discrimination, CERD/C/GBR/CO/21-23, p.4 Available at: Microsoft Word - UK_COBs FINAL VERSION 26Aug16.doc (ohchr.org)

⁸ [Hate Crime in Scotland 2022-23 | COPFS](#)

Article 7 calls for promotion of tolerance through education, in the Scottish public policy context this is mainstreaming through education. We have seen and welcomed the commitment and implementation (phased approach since 2021) of LGBTQ+ education across the curriculum. While there is an Anti-racism and Education Working Group, having the legal backing for the mainstreaming of anti-racism in education would prioritise work and obligate the government to provide sufficient resources to do so through Education Authorities. One of our network organisations, the Multi-Cultural Family Base shared an experience of one of their service users, highlighting the need for anti-racism to be mainstreamed in education:

“One of our young people had an incident at school where her concerns around her hijab and dressing modestly were not taken seriously by one teacher, and even mocked by another. Young people often do not yet have the confidence to speak up for their rights, especially when put in uncomfortable situations of microaggressions or outright racism, and they should not have to do so in the first place. It is vital that educators and all service providers understand that the protection of rights is paramount, and that they receive anti-racist and anti-oppressive training in order to better uphold these rights.”

CEMVO Scotland would like to take this opportunity to acknowledge that we are not a legal service and this is merely an introductory opinion that we would strongly recommend the Scottish Government to have legal experts to explore further and in more detail if it has not already done so. If this work has been carried out we would welcome more transparency from the Scottish Government to share why this option cannot be explored.

Lessons Learned

One of the main reasons CEMVO Scotland is calling for CERD to be incorporated with a duty to comply is that we believe it is crucial when designing such transformative and world leading legislation, we must learn from previous legislation that misses the mark or through implementation identified gaps in current protection. Through our extensive work with supporting the implementation and compliance of the PSED and FSD with the Fair Work and Labour Market Strategy Division (FWLMSD) and Equality, Human Rights and Inclusion Directorate and with thorough research published by our colleagues at CRER, it is clear that one of the shortfalls of the PSED and FSD is the lack of accountability both legally and lack of implementation. Currently public bodies and the relevant private actors must pay ‘due regard’ to Public Sector Equality Duties (PSED) and Fairer Scotland Duty (FSD). Although these duties have been in place for over a decade now, we have seen very little improvement in terms of compliance, monitoring and achieving race equality. One criticism of the PSED and FSD is the legal obligation of paying ‘due regard’ is not strong enough. Although there is a large scope of defining what ‘due regard’ means, it allows more space for infringement. Additionally, even if a duty-bearer was to be found not paying due-regard, it is unclear what the consequences would be, if any e.g. collection of data ‘we were unable to collect data for ethnicity’, ‘unable to ascertain the info on who received support’. We have also identified that in terms of implementing PSED and FSD, senior leadership ‘buy

in'/commitment is vital. This is currently lacking. The impact of this is that there is not a strategic approach to mainstreaming equality work and quite often, particularly in large public bodies with the most legal responsibility, it is not systemic change that is achieved, rather small piecemeal work.

Furthermore, within current equality law, when a report of discrimination is lodged, judicial and non-judicial remedies fail to recognise intersectionality. Recognising that the calling for the implementation of Section 14 of the Equality (intersectionality clause) does not fall within the competence of Scottish Government, CEMVO Scotland would welcome intersectionality being a guiding principle within an interpretative clause.

Minimum Core Obligations (MCO's)

CEMVO Scotland supports the Human Rights Consortium's recommendation that duty to comply should include a requirement to deliver MCO's and demonstrate progressive realisation.

Additionally, it has been noted by directorates that to improve monitoring and implementation of PSED and FSD, qualitative data must be captured, as quantitative data alone doesn't tell the whole story. There are current discussions within these directorates, that as part of the monitoring of PSED/FSD that public bodies may be required to demonstrate what they are doing with evidence, information and or data they have gathered. With the enactment of this Bill, this could also include how public bodies/authorities demonstrate how they are progressively realising the rights within the new Framework. CEMVO Scotland strongly recommends that the Human Rights Bill team explore these proposals with the FairWork and Equality, Human Rights and Inclusion Directorate to ensure that the new Human Rights Bill Framework is not retrospective, learns from the experience of other directorates on how best to monitor, evaluate and implement public duties and works together with other directorates to ensure that there is a streamlined approach.

Additional views

In recognition that there is no convention specifically relating to the rights of LGBTQ+ or older persons, CEMVO Scotland would welcome the addition of these groups to be explicitly referenced in the equality provision while also maintaining the 'other status' category to ensure the Bill is a living instrument and to reflect that socio-economic background also have an impact on how your rights are realised and protected.

CEMVO Scotland are disappointed that the consultation bill does not explore or demonstrate how these duties will be monitored and what accountability will look like.

CEMVO Scotland also supports the calls for timescales to be introduced within the Bill. In order to improve the realisation of rights in Scotland, we firmly support the calls for 'duty to comply' to be enforced within two years of the Bill being enacted/receiving Royal Assent. These timescales should be included in the legislation.

CEMVO Scotland are particularly concerned that the substantive rights within CRPD will be lost if the current proposal goes ahead, meaning that the rights of persons with disabilities will remain at risk and some of the most grievous human rights abuses will not be addressed. It is of particular concern given that those who are from an ethnic minority background are disproportionately represented in the number of people held in institutions, denying their access to independent life. For example,

“**Government statistics** published in March 2019 showed that Black people were more than four times as likely as white people to be detained under the Mental Health Act. Black Caribbean people had the highest rate of detention out of all ethnic groups. A January 2018 Care Quality Commission (CQC) **report** also showed that people from the ‘any other Black’ background are detained at over 10 times the rate of the white population group.”⁹

This proposed approach is also not reflective of a maximalist approach which the Scottish Government have continued to state their commitment to.

We are also concerned that by not placing a duty to comply on specialised treaties, it will also mean that legislation that is not compliant with CRPD, CERD or CEDAW will not be challenged for example the Mental Health Act 2003 that still deems people with learning disabilities to have a ‘mental disorder’.

5.Are there any rights in the equality treaties which you think should be treated differently? If so, please identify these explain why and how this could be achieved.

CEMVO Scotland are disappointed in the different approach to incorporating different treaties. As stated above, while we are aware of the complexities of navigating round the ‘equal opportunities’ reservation, it is not clear from this consultation paper that the Scottish Government are adopting a maximalist approach to incorporation: there is no transparency of workings or explanation as to why other approaches do not work within the confines of devolution. CEMVO Scotland are disappointed that only a ‘procedural duty’, of which isn’t clear what this is, is proposed for ‘equalities treaties’. As stated above, this reinforces the accountability gap on current equalities legislation, it is unlikely that it will reduce or close it. CEMVO Scotland also agrees with fellow stakeholders such as SCLD and Human Rights Consortium that referring to CERD, CEDAW and CRPD as ‘equalities treaties’, negates the fact that there are substantive rights within them. CEMVO Scotland firmly believes that Scotland’s New Human Rights Bill could improve the lives of some of the most marginalised communities in our country. However, this will not be achieved if the proposed

⁹ [Health and mental health statistics - Institute of Race Relations \(irr.org.uk\)](https://www.instituteofracerelations.org.uk/health-and-mental-health-statistics)

approach negating to give the same weight to the substantive rights within CRPD, Article 13 and 19¹⁰, and the Articles in CERD outlined in our response to Q4, as ICESCR.

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

CEMVO Scotland agree with the Scottish Government’s proposal to use the Aarhus Convention’s definition of the environment which makes specific reference to ecosystems and the biosphere. CEMVO Scotland support ERCS’s call highlighting the relevance of the Aarhus Convention’s Preamble, and Article 1 and 2 and the need for it to be reflected in the Bill¹¹.

7.If you disagree, please explain why

Not applicable

8.What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

CEMVO Scotland welcome the proposal formulation of the substantive aspects of the right to healthy environment to include clean air, safe climate, safe and sufficient water, non-toxic environments, and healthy biodiversity and ecosystems.

CEMVO Scotland are in agreement with relevant stakeholders that we question the exclusion of adequate sanitation under safe & sufficient water, given the systemic problems of sewage pollution and wastewater treatment in Scotland. Additionally, we disagree with the exclusion of the right to healthy and sustainably sourced food, as ERCS highlights, ‘it is a core feature of the substantive right to a healthy environment’¹².

Once again CEMVO Scotland supports ERCS’s calls for the procedural element of this right to meet the Aarhus requirements, including ‘access to environmental information, public participation in environmental decision-making, access to justice and effective remedies’¹³. We also welcome the acknowledgement that currently Scotland is in breach of Article 9(4) of the Convention and there is a requirement for Scotland to have a ‘clear, transparent and

¹⁰ Article 5 Equality and non-discrimination including the requirement to make “reasonable accommodation”; Article 9 The right to accessibility of the physical environment, transportation, information and communication, and services open to the public; Article 19 The right to live independently and be included in the community; Article 17 The right to respect for physical and mental integrity; Article 11 Situations of risk; Article 12 Equal recognition before the law; Article 26 Habilitation and Rehabilitation; Article 20 Personal mobility; Article 13 Access to justice.; Article 14 Liberty and security of the person; Article 16 Freedom from exploitation; Article 7(3) Participation of disabled children; Article 24 Inclusive education.

¹¹ https://www.ercs.scot/wp/wp-content/uploads/2023/08/230814_HR-Bill-consultation-Pt5_ERCS-response_V3.pdf

¹² https://www.ercs.scot/wp/wp-content/uploads/2023/08/230814_HR-Bill-consultation-Pt5_ERCS-response_V3.pdf

¹³ https://www.ercs.scot/wp/wp-content/uploads/2023/08/230814_HR-Bill-consultation-Pt5_ERCS-response_V3.pdf

consistent framework to meet recommendations of the Aarhus Convention Compliance Committee by the deadline of 1st October 2024¹⁴.

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.

Like other relevant stakeholders, CEMVO Scotland disagrees with the Scottish Government's proposed approach that ICESCR's definition of adequate food does not go far enough to capture the substantive right of healthy and sustainable food. We are in agreement with key reflections of this approach highlighted in ERCS's response.

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.

CEMVO Scotland agree with the proposed approach of recognising 'safe and sufficient water' as a substantive feature of the right to a healthy environment, in addition to incorporating the human right to water through ICESCR. We also support ERCS's calls to extend this feature to refer to right to adequate sanitation 'given the widespread and persistent issues of sewage pollution in Scotland'.

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

CEMVO Scotland are in agreement with the calls highlighted in ERCS's response.

12. Given the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland.

CEMVO Scotland recognise that modifications to the Human Rights Act are not within the competence of the Scottish Parliament, nor is it within the scope of this proposed new Bill. However, restating the rights of the Human Rights Act, as they exist now, within this new Bill is vital to ensure that it will stand the test of time. As the Scottish Parliament and Government will be aware, the Human Rights Act is currently at risk and has been at constant risk of regression over the last decade, specifically in most recent years¹⁵. While CEMVO Scotland would welcome the input of legal experts in this area, we would encourage the Scottish Government to explore if re-stating rights in the Bill in a way that acknowledges that they cannot be modified, would be within devolved competence. E.g 'Recognising that the Human Rights Act 1998 falls within reserved competence, to respect the universality of

¹⁴ https://www.ercs.scot/wp/wp-content/uploads/2023/08/230814_HR-Bill-consultation-Pt5_ERCS-response_V3.pdf

¹⁵ Bill of Rights Bill, Commitment to 'reform' in Conservative Party Manifesto, Bill of Rights Bill shelved

human rights they are stated here, as they are found within the HRA, to reaffirm Scotland's commitment to them'. This restatement of rights of the HRA could be placed in the preamble or Section 1 or 2 of the Bill. This would be similar to the Scottish Government's approach to their interim constitution proposed in 2014 which state 'the Scottish Government and other public authorities must respect and follow ECHR standards when conducting their activities.... [they will] follow the Human Rights Act 1998 in covering the following human rights and fundamental freedoms[lists Articles and protocols of HRA]'¹⁶.

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

CEMVO Scotland firmly believe in active participation. It is also imperative that participation should be embedded throughout the Bill: 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 Engagement¹⁷. 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.

CEMVO Scotland hosted a targeted engagement event for EM communities to discuss some of the key points of the Bill consultation and to gather their thoughts, views, and feelings. There were clear trends in responses across all three groups. Firstly, there were calls on engaging with the elders of the community to ensure their voices and needs are heard but also recognising their intergenerational influence. This however should not be an exhaustive approach; it still must be recognised that those elders don't reflect the views of the whole community. Another key theme was requests for a blended approach to engagement that includes being flexible in terms of hosting events online and in person, geographical areas and how the event is advertised e.g. including mosques community centres. Participants also stated that incorporation of international human rights law could improve inequalities however they will persist if they are not recognised, and minority communities are not actively consulted. Additionally, it was noted that it is vital that the younger generation are involved in the process and that people need to be made aware of what their rights are e.g.

¹⁶ [The Scottish Independence Bill: A Consultation on an Interim Constitution for Scotland](#) p.41

¹⁷ [HRBA Community engagement template.docx](#)

right to access translated documents. The Multi-Cultural Family Base Group also submitted evidence to our consultation stating that:

“many of our service users are migrants, we recognise that language barriers can inhibit access to all types of services. A service user family recently spoke about waiting longer to get a GP appointment due to misunderstandings because of language barriers”

CEMVO Scotland also support Amnesty International’s call for an audit of participation work, looking for evidence of when this work actually leads to change. We believe that this will be vital when trying to address barriers such as participation apathy.

Finally in order to mainstream participation, CEMVO Scotland supports the calls for the Scottish Human Rights Commission to have a duty to embed participation in their work and for Courts consider complainant’s views on determining remedies.

While CEMVO Scotland were not directly involved in the Lived Experience Groups, referred to above, we would like to express our solidarity with those organisations hosting the groups that much of the information/advice and actions that were highlighted in these groups were not reflected within this consultation paper.

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?

CEMVO Scotland support and equality provision to ensure that everyone is able to access their rights. However, we again would like to express our concern that failure to place a duty to comply on all substantive rights and not exploring other possible approaches of incorporating ‘equality treaties’ within devolved competence, will not achieve the impact that this Bill intended to, and the most marginalised communities in our country will continue to have their basic human rights violated every day. For example, CEMVO Scotland firmly believe that one of the advantages of incorporating CERD with ‘teeth’ is that CERD provides stronger recognition of discrimination based on citizenship and immigration status than the Equality Act currently provides. Incorporation of CERD strengthens protection against discrimination rights holders in relation to immigration and citizenship. While we recognise the limitations of Equality Act 2010 and that immigration is reserved, once again the exemption of ‘allowing Scottish Parliament to legislate to prevent, eliminate or regular discrimination by certain public authorities when exercising their Scottish functions’ can be utilised here to further the realisation of rights within the powers of this Bill. Therefore, CEMVO Scotland again recommends 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.

Like other stakeholders, CEMVO Scotland accept that the Scottish Government have to navigate the equal opportunities reservation and the exemptions, neither of which are well tested or understood and that there is some hesitation in light of the UNCRC Supreme Court ruling and the use of S35 order for the first time. It would be useful for stakeholders and rights-holders to understand why this approach to the equality provision was picked and why were other approaches not fit for purpose. Furthermore, it would be useful to know if the equalities provision would apply only to ICESCR and the rights to healthy environment or will it include civil and political rights too, if re-stated in the preamble of the Bill.

Finally, CEMVO Scotland are disappointed that there is no mention of positive obligations duties within this consultation paper. These obligations are essential to achieve substantive equality e.g. Article 4 of CEDAW and Article 2 of CERD, requires special measures such as positive action to be taken to address inequality. The inclusion of these positive obligations could encourage the use of positive action measures under the Equality Act 2010 of which they have scarcely been used to address racial inequality.

CEMVO Scotland would like to encourage the Scottish Government to describe what they mean by discrimination in the primary legislation of the new Human Rights Bill e.g. indirect, direct and or reasonable accommodation.

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

It is important to align the equality provision with the protected characteristics with the Equality Act 2010 to ensure the equal opportunities reservation is respected. CEMVO Scotland agree that LGBTIQ+ and older persons should be explicitly referenced. It is of the opinion of CEMVO Scotland that to ensure that this new Bill is a living instrument and will continue to protect those whose rights are most at risk in Scotland, Scottish Ministers should publish guidance on interpreting the 'other status' group included in the equality provision. This guidance should outline criteria required when considering if other marginalised groups of society fall under the scope of 'other status' e.g. people who struggle with substance misuse.

16. Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people?

CEMVO Scotland disagrees that the use of 'other status' is sufficient to protect the rights of LGBTI+ and older people. We support the inclusion of the inclusion of LGBTI+ and older persons to be explicitly referenced in the equality provision. CEMVO Scotland also support

the calls for Care Experience people to be explicitly referenced within this provision, given that impact of being care experienced continues throughout your life¹⁸. Once again, this is an example utilising one of the exemptions of the Equality Act, referenced in Q4¹⁹, that allow the Scottish Government to legislate, in this case in order for them to Keep The Promise.

CEMVO Scotland is also aware that fellow stakeholder, the Equality Network carried out a thorough survey engaging with the LGBTQ+ community and supports the recommendations from this report.

17. Comments provided in question 15.

18. Do you think the Bil framework needs to do anything additionally for LGBTI or older people?

CEMVO Scotland believes that it is important that this Bill defines these categories, as this will support duty-bearers in their implementation and ensure that different definitions of older people or LGBTI is imposed in different localities/duty-bearers. This will protect rights-holders being subjected to a postcode lottery of rights protection.

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

Once enacted, this Bill will place new duties on public bodies. The Scottish Government is proposing to follow the approach laid out in the UNCRC Bill to determine who is responsible for implementing and protecting our human rights. The UNCRC Bill states that it applies to public authorities and ‘any person whose functions are that of public nature’. However, this was one of the three areas of the UNCRC Bill that the Supreme Court stated must be amended to ensure that it did not appear that this Scottish Parliament Bill was placing duties on UK public bodies, which it cannot do due to the devolution settlement.

CEMVO Scotland are concerned that, like other parts of this Consultation, the mode of incorporation relies heavily on the approach adopted by UNCRC Bill. While we recognise it is important to learn from good approaches to incorporation of international human rights law, as the UNCRC Bill has not progressed in nearly 2 years, it is difficult for stakeholders to provide meaningful responses when the approach of the UNCRC remains unclear.

CEMVO Scotland are in agreement that duties should be applied to all public bodies and private actors who carry out functions of a public nature. However, it is vital that the Scottish Government go one step further and research of what the proposed ‘function of public nature’ means. This is to address one of the biggest loopholes in the Human Rights

¹⁸ [Layout 1 \(hrcscotland.org\)](http://hrcscotland.org)

¹⁹ ‘the Scottish Parliament can legislate to prevent, eliminate or regulate discrimination by certain public authorities in Scotland when exercising their Scottish Functions, or the Scottish Parliament can legislate to encourage equal opportunities as long as it is not prohibiting or regulating discrimination’

Act 1998 (Section 6), that ultimately does not protect or respect the rights of many people in the UK due to its narrow scope in interpretation.

Section 6 of the HRA and the lack of definition of what a public function has been subject to much academic debate since the enactment of HRA. There are currently differing interpretations of public function (UK Courts, House of Lords(HoL)). The different findings of the UK Courts and the HoL creates confusion and a gap in protection as it lacks clarity and guidance for future cases. For example, referring to the judicial decisions in *Poplar Housing, Callin, Heather and Ward and Aston Cantlow*, the Joint Committee on Human rights expressed “dismay” at the institutional approach of the Courts especially regarding housing and social care. They highlighted a central provision of the HRA has been compromised in a way which ‘reduces the protection it was intended to give people at some of the most vulnerable moments of their life’ and it was not the wording of the HRA that led to these protection gaps but the failure of the courts to ‘adapt to the reality of’ privatisation. The Joint Committee also raised concerns that the narrow interpretation of hybrid public authorities in section 6(3)(b) might leave the UK in ‘breach of its international law obligations pursuant to the Convention’ that obligates the state to provide an effective remedy for their breach and to secure effective protection of rights guaranteed by the Convention.

The parliamentary papers during the time of enactment indicate a clear reasoning for not listing which bodies or function fall within the scope of S.6 and are bound by HRA; a list would be too restrictive. There have been numerous high-profile cases relating to s.6 HRA such as *YL v Birmingham City Council*²⁰ and *Ali v Serco*²¹. Both of these cases pose the question of whether the UK Government can ‘outsource’ their human rights obligations. After *YL* decision, there was reform in other areas of social care legislation²² in order to ensure that vulnerable persons who are placed in private care homes by statutory services still have their human rights protected. Lady Hale offered her dissenting opinion on what a public function should be defined as in *YL* however CEMVO Scotland would again reiterate that any form of list would be limiting and not reflect the ever-changing nature of society and that human rights law should always reflect being a living instrument. Current protection offered does not recognise the impact of privatisation of public and statutory services. These gaps in protection allow for the most vulnerable in our society at risk of human rights violations.

UK definitions of *functions of public nature* also differ and European Court of Human Right(ECtHR) definition; they adopt a regulatory approach pursuant of a state’s positive obligations. This approach takes the route of holding a state responsible for the actions of all bodies that carry out functions in a field the State has chosen to regulate and ‘can

²⁰ *YL v Birmingham City Council* [2007] UKHL 27

²¹ *Ali v Serco* [2019] CSIH A199/2018

²² Care Act 2014

therefore be held responsible under the Convention system for its permitting actions that breach Convention rights'²³. It is underpinned by Giddens's theory of an ensuring state and modern governance 'the ensuring state takes on a regulatory role through creating incentives and setting overall standards for service provision, at times in collaboration with non-state bodies'²⁴. The way in which this approach is implemented is through the state's positive obligations under the ECHR to provide 'legislative and administrative measures, to prevent third parties from interfering with rights'²⁵. The main difference in this approach is it takes away the complexity of determining what a 'public function' is and focuses on determining whether the non-state actor is within a field in which the state regulates. CEMVO Scotland believes this approach could be explored further as it would align with the Scottish Government's intentions of aligning human rights and their interpretations to international mechanisms. While one of the critiques of this approach is that it could limit the protection for civil and political rights due to it focusing on positive obligations, this could work with the proposed Bill as it focuses on incorporation of economic, social, cultural and environmental rights.

Our stance is clear that the state cannot outsource their human rights obligations. While we recognise that we cannot alter the HRA 1998, as stated in our response to Q4, there are ways in which to close this gap in protection. One way to do this is to ensure thorough procurement policies are used with Equality and Human Rights Impact Assessments when putting public services out to tender of private companies or charities. These procurement policies that respect, protect and fulfil the state's human rights obligations within this Bill must be mandatory and monitored regularly to ensure they are fit for purpose. As human rights legal experts Mawhinney and Griffiths state; human rights protection should not be compromised by the state's choice of service delivery:

'international human rights law is neither for nor against the non-state provision of services: it is interested in the destination- the full realisation of all human rights – and is less interested in the road by which that destination is reached'

This should be at the forefront of the Scottish Government when proposing who the duties within it will apply to.

It is of the view of CEMVO Scotland that failure to do so can result in catastrophic events and incidents as we have seen all too often. For example, according to *Ali v Serco*²⁶, housing

²³ A Mawhinney, I Griffiths 'Ensuring that Others Behave Responsibly: Giddens, Governance and Human Rights Law' [2011] 20(4) Social and Legal Studies 481, 490

²⁴ A Mawhinney, I Griffiths 'Ensuring that Others Behave Responsibly: Giddens, Governance and Human Rights Law' [2011] 20(4) Social and Legal Studies 481, 490

²⁵ A Mawhinney, I Griffiths 'Ensuring that Others Behave Responsibly: Giddens, Governance and Human Rights Law' [2011] 20(4) Social and Legal Studies 481, 490

²⁶ *Ali v Serco* [2019] CSIH A199/2018

providers, outsourced by public bodies, are not bound to respect the HRA. This is an example of the state outsourcing its human rights obligations. We have continued to witness the impact of this, especially during the COVID-19 pandemic when asylum seekers were forcibly removed to 'inhumane'²⁷ conditions and contributed to the deaths of vulnerable individuals²⁸. While immigration is a reserved matter, the accommodation of asylum seekers falls within the remit of Scottish Public Policy. Therefore, by having mandatory and updated procurement policy that respects, protects and fulfils human rights²⁹ and guidance on the defining a *function of public nature* the Scottish Government can take positive steps to ensure that when outsourcing statutory services, they are ensuring that the realisation and protection of rights continue.

CEMVO Scotland would welcome the commitment from the Scottish Government to exploring this more thoroughly by using academic research, case law, relevant stakeholders and engaging with rights-holders.

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

CEMVO Scotland welcome the proposal of embedding rights into decision making and would call for this to also include service design and delivery, policy development and budget processes. We would also welcome further explanation from the government about how this would be done and how it would be monitored e.g. would it be the continued use of Equality Impact Assessments? As stated previously, CEMVO Scotland is concerned that current modes of monitoring and accountability employed by the provisions of the Equality Act 2010 do not go far enough to improve the lives of rights-holders and ultimately do not protect, respect and fulfil our human rights. Please see our response to Q42 for proposed reforms.

CEMVO Scotland support the Human Rights Consortium's calls that the procedural duty should be placed on duty-bearers as soon as the Bill is commenced and this duty should be due regard. We also agree that commencement should be no longer than 6 months of the Bill receiving Royal Assent. Then the duty should change to duty to comply no later than 2 years after commencement and the date should be specified within the Bill to ensure the realisation of rights for the people of Scotland.

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

²⁷ Submission of evidence to the Independent Chief Inspector of Borders & Immigration (25th February 2021) < https://paih.org/wp-content/uploads/2021/02/13h.-paih-evidence-icibi-2021-final-combined_1-1.pdf>

²⁸ For example, on the 5th of May 2020, Adnan Obleh was found dead in Maclays Guest House. On the 26th June 2020, Badreddin Abdalla Adam left his hotel room at The Park Inn, stabbed six people and was subsequently shot dead by police.

²⁹Through Equality and Human Rights Impact Assessments

CEMVO Scotland believes that duty to comply is most appropriate approach to the realisation of rights. This is a pivotal statement Scotland is committing too. Too often human rights are seen as ‘nice things’ to have and rights-holders can only have their rights respected or realised if there is a ‘budget’ for it e.g. having a home with heating, water, no dampness or the ability to live independently. If implemented fully, it will support people to name and claim their rights and make the minimum core of each right a non-negotiable which unfortunately is not the case for many in Scotland. CEMVO Scotland welcome the proposal of having duty-bearers demonstrating they are using maximum available resources and ensuring non-retrogression of rights. As stated in Q4, CEMVO Scotland are disappointed and gravely concerned that not all conventions will move to a duty to comply. While there is no explanation offered of what the ‘procedural duty’ means, it can be assumed that it will follow the ‘due regard’ duty which courts are most familiar with. Although they differ only by one word, their implementation and impact are stark. CEMVO Scotland are concerned that this proposed approach creates a hierarchy of rights, not reflecting the universality of rights or that all rights are indivisible, interdependent and interrelated. It also may create confusion when accessing justice about the violation of a right, some rights duty-bearers must only pay ‘due regard’ while other rights demand ‘duty to comply’. It is important when drafting new legislation that we learn, acknowledge and take steps to ensure that we do not repeat the short falling of previous legislation. For example, one of the pitfalls of the Equality Act 2010 is that when a report of discrimination is lodged, judicial and non-judicial remedies fail to recognise intersectionality. While intersectionality describes the crossover of protected characteristics, rights are similar due to their interdependence.

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?

CEMVO Scotland believe that all public authorities and non-state actors who are delivering public functions (see Q19 for proposed definition) should be required to report on what actions they are taking and have taken to meet the duties within this Bill. CEMVO Scotland believes that to ensure that this Bill leads to implementation of human rights-based approach to policy, design, delivery and decision making that the Bill should explicitly outline the requirement of having rights-holders involved in the report. These reports should be produced using the principles of inclusive communication so that they are accessible to all and that rights-holders can read and utilise them to name and claim their rights. CEMVO Scotland would also welcome exploring having independent bodies to review and scrutinise these reports i.e. you should not be able to mark your own homework. This could fall within the scope of the SHRC’s new powers or an independent regulatory body, whose sole focus is on human rights.

In terms of the requirement of reporting and what that looks like, a lot of the proposals rely on what the UNCRC has proposed. CEMVO Scotland are disappointed that there is no

explanation given on what the UNCRC has proposed in this area, it merely states ‘whether to follow the approach taken in section 15 of the UNCRC’. In terms of being inclusive and acknowledging that not everybody has read the UNCRC Bill or has the capacity to disseminate legal documents, CEMVO Scotland are disappointed that the consultation did not offer an explanation of this approach since it is highly dependent on the question proposed.

The UNCRC Bill proposes that the following bodies will have reporting duties:

a local authority, 15 (b) Children’s Hearings Scotland, (c) the Scottish Children’s Reporter Administration, (d) a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978, (e) a special health board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978, (f) Healthcare Improvement Scotland, (g) the Scottish Qualifications Authority, (h) the Skills Development Scotland Co. Limited (registered number SC202659), (i) Social Care and Social Work Improvement Scotland, 25 (j) the Scottish Social Services Council, (k) the Scottish Sports Council, (l) the chief constable of the Police Service of Scotland, (m) the Scottish Police Authority, (n) the Scottish Fire and Rescue Service, 30 (o) the Scottish Legal Aid Board, (oa) the Scottish Courts and Tribunals Service, (p) the Mental Welfare Commission for Scotland, (q) the Scottish Housing Regulator, (r) Bòrd na Gàidhlig, 35 (s) Creative Scotland

CEMVO Scotland would encourage the Scottish Government to consider including Education Authorities and other Commissioners such as Children and Young People’s Commissioner Scotland to be included in publishing reports.

Finally, it is of the opinion of CEMVO Scotland that a reporting period of 2 years is sufficient to gather relevant data to demonstrate steps to respect, protect and fulfil rights. This will align with PSED and SSD mainstreaming reports which should be published every 2 years.

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

It is of the opinion of CEMVO Scotland that in order to recognise the capacity of the public sector, the proposed duty to report should align with mainstreaming reports, in fact they could be included within them. One report should be able to display your PSED, FSD and how you meet your MCOs; they are all connected. Interestingly after the review of the Scottish specific duties which is the reporting of PSED, the FWLMSD unit are exploring introducing ‘show your working’ like the proposal in this consultation of ‘demonstrate how you are using maximum available resource’. CEMVO Scotland would encourage the Human Rights Bill team to engage with this directorate to explore how these approaches could align together.

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 MCO's and cultural rights?

CEMVO Scotland are in agreement that to report compliance on ESCR and environment rights should be done via the co-designed MCOs. CEMVO Scotland would like to highlight that a crucial element in the reporting is the evaluation process, again building on lessons learned from previous legislation that requires reporting. The Bill needs to explain what happens if MCO's are not met or if the duty-bearer doesn't demonstrate they are using maximum available resources. This will improve accountability measures. For example, what happens if a public body, for instance a care home provided by a local authority, isn't meeting their MCO's? Will support be offered to improve the service delivery, what will that look like? While CEMVO Scotland values and supports the requirement of improvement plans as an integral tool of service and business development, the Bill must clearly outline that regulatory bodies must have a clear and defined line of when a service is putting people's rights at risk and is not fit to deliver a service anymore. For example, if a care home scores a 2 on their inspection and commits to improving, an equality and human rights impact assessment must be carried out. Commitment to improving is always welcomed but in the meantime, this cannot be balanced with the interference of an individual's human rights such as right to inhuman and degrading treatment, right to cultural life etc. CEMVO Scotland would also advise that when poor race equality performances / practices are identified within bodies that are delivering a *public function*, they must be taken seriously and addressed fully with an improvement plan and possibly referred to equality organisations for support. From our work providing such support, this support should be mandatory to ensure that incidents and failure to meet MCOs are taken seriously.

It is also important to recognise the role and value of the Third Sector. Many organisations are providing human rights support to the public sector through Scottish Government funds such as the Equality and Human Rights Fund. When designing the capacity building programme and guidance documents, it is important to value these organisations that have already carrying out the work, who have trust within the sector and communities. It is important to utilise the sector and fund it appropriately and more consistently.

Finally, the above issues all need to be clarified before we can move forward and provide a more thorough and informed response.

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

CEMVO Scotland support the proposal of the right to a healthy environment falling under the same duties as economic, social and cultural rights as well as the other substantive rights within the special protection treaties.

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

CEMVO Scotland strongly welcomes the duty to publish a Human Rights Scheme. CEMVO Scotland believes this is a vital tool to ensure accountability for Scottish Ministers. For more views on the proposed scheme please see Q40.

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?

CEMVO Scotland support the calls from the Human Rights Consortium to ensure that everyone has access to advocacy and access to the services should be included in the Human Rights Scheme. CEMVO Scotland support fellow stakeholders views, such as the Alliance and SIAA on the right to independent Advocacy, respecting their expertise in this area.

We also support the calls for creating a co-produced and resourced National Hub for Human Rights to provide human rights education, advice and information. CEMVO Scotland believe that a creation of this Hub will support rights holders seek remedy and redress. Quite often, it is difficult to navigate a system, particularly if you are unclear if your issue is a human rights issue. This will also empower rights-holders to name and claim their rights.

CEMVO Scotland are disappointed in the narrow scope of this part of the consultation of the Bill. The consultation negates to place a requirement of accessible, affordable, timely and effective access to justice and declare that everyone has this right. One of our network organisations, the Multi-Cultural Family Base also stated that 'we have also noted what one member of the Lived Experience Board said that there are times when seeking justice for infringement on rights can feel overwhelming and too much to go through for too little payoff. We agree that remedies to infringements need to be accessible, affordable, timely, and effective. Part of this point includes the need for translation for those who speak different languages'.

CEMVO Scotland strongly requests that timescales for how long you have to raise a claim must be reflected in the Bill e.g. in UNCRC is 1 year. It is also disappointing that there is no mention of scrapping the three month limit for judicial review proceedings, a fundamental barrier to access justice. CEMVO Scotland are also concerned that there is an assumption that administrative and non-judicial avenues will be enough to access justice and the consultation lacks focus on appeals and judicial systems. CEMVO Scotland also agree with JustRight Scotland's recommendation of including protection from expenses orders for rights-holders if cases are unsuccessful.

Finally, CEMVO Scotland would like to take this opportunity to highlight that for advocacy and advice services to meaningfully improve and have an impact there must be more recognition of the value of the Third sector. To achieve this, CEMVO Scotland would recommend reviewing the continuous budget cuts to the sector and ensure that that there

is constant resources and finance for the sector for organisations to continue to support communities and rights-holders for longer term, reducing short term funding contracts.

CEMVO Scotland supports fellow stakeholder Just Rights Scotland in their views and recommendations for this part of the consultation.

CEMVO Scotland share the same views as the Human Rights Consortium, regarding legal aid.

This Bill must include measures to make justice affordable (removing court fees for equality and human rights cases) and introduce Qualifies One-Way Cost Shifting.

CEMVO Scotland would also like to highlight that in the 2016 Universal Periodic Review, CERD committee raised concerns to access to legal aid that falls within areas of devolved competence:

“The Committee is concerned that the reforms to the legal aid system and the introduction of employment tribunal fees have restricted access to justice for individuals belonging to ethnic minorities in areas such as employment, housing, education and social welfare benefits”

We strongly support the Human Rights Consortium’s calls for the Scottish Government to commit to consult on legislative change to radically reform of the legal aid system, including an immediate consideration of the continuous cuts to legal aid.

28. What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

CEMVO Scotland agree that there is a desperate need for change in front-line complaints handling mechanisms and that these changes by public bodies or the SPSO must be co-produced with people whose rights are most at risk.

CEMVO Scotland would also like to take this opportunity to highlight that public bodies and those providing public services and bound by this Bill must also collect and analyse informal complaints as well as formal. One of the key components of mainstreaming anti-racism into organisations is ensuring that its principles are reflected in the complaints process. An effective complaints process must be able to capture microaggressions, one singular microaggression may only be logged as informal or perceived as not severe enough for a formal complaint but if it’s repeated time and time again then this builds up and has a detrimental impact on a person. If informal complaints are not collected and analysed, it will not be possible to see ‘the bigger picture’, build a narrative around the complaint to understand what is truly going and will not highlight potential systemic issues. An example of this may be how racist incidents are logged and dealt with in the care and support service sector and equally in the inspection/regulation process. Public regulators and inspecting bodies should be transparent in their findings and access and this information should be publicly available in an accessible format. This will promote trust within communities who historically do not engage with care or support services.

At our community engagement event, when discussing front-line complaint handling, key words emerged from the groups: anonymity, transparency, less victimisation, mistrust and lack of diversity. In each group there were clear patterns of mistrust amongst complaints systems, e.g. going round in circles in the complaints system and ending back at the beginning with no progress and where do you go when it's the institution you are complaining about such as the Police. Again, participants highlighted the impact of lack of diverse workforce of public institutions has on complaints handling process and trust within institutions. Although one participant highlighted that there can sometimes be 'diversity delusion' in that the responsibility is solely on the one 'diverse' individual from both the community and the institution meaning that they can become isolated from their own racial community. Participants suggested that there should be particular trained staff on anti-discrimination and human rights complaints.

One of our network organisations shared an experience of one of their women service users' experiences in reporting violence 'they do not feel comfortable within the system in order to advocate for themselves. They are belittled, re-traumatised, and treated like they are at fault for what someone else does to them. More needs to be done to ensure that the justice system is indeed just, and that the rights of women to basic safety is upheld'. They also noted that:

"Working against discrimination goes further than just working against violence however. Cultural differences mean that some women might feel more comfortable staying in situations as a result of societal, familial, and religious pressures. Those who work with victims of abuse need to both recognise their rights to be safe from discrimination, but also recognise that there are nuances of situations that require cultural competencies to work through alongside service users"

Q29. What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?

This consultation paper is only proposing to change the remit not the powers of the of the SPSO meaning that the recommendations will remain only that-non-binding declarations. It is of the opinion of CEMVO Scotland that binding declarations should be considered and the reasoning for not being considered should be demonstrated. CEMVO Scotland would encourage the Scottish Government to ascertain how effective the SPSO is in relation to their current remit. We understand that SPSO reviewed themselves and found that recommendations are almost all accepted but what does that mean in practice, how effective are the recommendations, what is their impact? Has their impact achieved change? This important as this is a key component of one of the objectives of the Bill, to achieve change. CEMVO Scotland would encourage an independent assessment of the recommendations if this has not already been done and encourage the findings to be shared.

CEMVO Scotland would like to echo the Human Rights Consortium's calls to ensure that making a complaint to the SPSO is timely and there should be more consideration given to the SPSO's role in raising systemic issues with SHRC. Finally, we agree with the Human Rights Consortium that people should not have to lodge a complaint with the SPSO before taking their human rights case to court.

CEMVO Scotland would also like to call for further commitment to mainstreaming anti-racism into public bodies. If SPSO are handling complaints of public bodies, the workforce must be upskilled in their understanding of anti-racism, its principles and build their racial literacy. If not, racist incidents can be overlooked and the proposed changes to SPSO will reinforce systemic racism.

30. What are your views on our proposals in relation to scrutiny bodies?

CEMVO Scotland cautiously accepts the proposal of including human rights into the remit of existing scrutiny/regulatory bodies to ensure that human rights are mainstreamed across all sectors. However, to ensure that this is meaningful and has impact there must be robust capacity building in the sector, recognising and acknowledging that many of these scrutiny bodies still fall short of their existing legal requirements relating to the Equality Act 2010. CEMVO Scotland has been providing anti-racism and race equality mainstreaming support to the public sector, including regulatory bodies, for several years and most recently through our Race for Human Rights programme. From these consultancy sessions, we have identified that there is a real lack of capacity around human rights in the sector.

Additionally, while people may know the term anti-racism, they often do not know what it looks like in practice. Furthermore, there must be more commitment from senior leadership within these organisations to support and promote anti-racism and human rights, without their commitment, changes will not be seen on the front line. CEMVO Scotland would welcome exploratory discussions with the stakeholders and the public sector to identify ways of ensuring senior leadership buy, whether it be legally binding or not.

Once again CEMVO Scotland would recommend that for these proposals to have impact, a serious consideration should be given to having a more maximalist approach to incorporation, extending the duty to comply to CERD, CEDAW and CRPD within the remits of the devolution settlement.

While we support for creation of a new National Human Rights Hub and new advocacy centres, for these resources to have impact and support those whose rights are most at risk, CEMVO Scotland requests that the development of these resources (recruitment of staff, funding streams, policies and procedures) all must follow good practices for these e.g. ensuring workforce diversity, procurement processes move from ethical commissioning to follow United Nations Guiding Principles of Business and Human Rights and funding processes are more inclusive). This would demonstrate Scottish Government's commitment to take steps to overcome institutional racism.

CEMVO Scotland argues that human rights budgeting should be a legal requirement to ensure funding is allocated to public bodies in an equitable way that allows human rights obligations to be met. Taking a human rights based-approach to budgeting asks questions like: is allocation prioritising achieving adequate rights for all?; does it close the gaps between rights realisation of different groups?; are reductions causing human rights violations that are grounded in law? There are several examples of public bodies not being able to meet their human rights obligations. According to the government's own statistics, 1 in 4 children live in poverty in Scotland³⁰, 1 in 5 of Scots are living in relative poverty after housing costs³¹ and 'Children from Black and minority ethnic groups are more likely to be in poverty: 46 per cent are now in poverty, compared with 26 per cent of children in white British families'³². By not taking account of human rights budgeting, the government may push those living in poverty into further deprivation. Other examples include the death of Sheku Bayoh who died after being restrained by police raising concerns around institutional racism within the police force (interference with a persons right to non-discrimination) and cuts to legal aid hindering access to justice. If the government has not allocated a budget correctly in accordance with human rights, this raises questions about accountability. Politically, government could be voted out at the next election however government budgets are a distant and inaccessible concept for many, particularly those from marginalised groups. Thus, the stronger argument is to make human rights budgeting a legal requirement where individuals can hold the government to account if it does not direct funding to the right areas in the public sector in order for it to meet its human rights obligations.

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

CEMVO Scotland welcomes the Scottish Government's proposal to give more powers to the SHRC. CEMVO Scotland believes that the findings of the SHRC should be binding, unlike the EHRC, improving accountability for the protection of rights. CEMVO Scotland support fellow stakeholders calls for SHRC to be given a range of new powers and these powers must be matched with sufficient resources in order to use the powers fully.

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

CEMVO Scotland agree that the powers given to SHRC should be mirrored to the Children and Young People's Commissioner Scotland.

33. What are your views on our proposed approach to 'standing' under the Human Rights Bill?

³⁰ https://data.gov.scot/poverty/2021/#Child_poverty

³¹ <https://data.gov.scot/poverty/2021/#Poverty>

³² <https://cpag.org.uk/child-poverty/child-poverty-facts-and-figures>

CEMVO Scotland agree with the Scottish Government's proposed approach to 'standing' and would strongly recommend that the Scottish Government need to clearly define the courts rules on 'sufficient interest'. It is also important for the Scottish Government to consider the need to have remedies for actions of Scottish businesses abroad/overseas accountability to ensure the government are respecting their international human rights law obligation to 'do no harm'.

34. What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

CEMVO Scotland welcome the proposals for adopting a 'lower bar' for assessing 'reasonableness' in courts. This would be instead of the very high threshold Wednesbury test that states that decisions have to be 'so unreasonable that no reasonable decision maker could have reached it' which is a significant barrier to access justice. CEMVO Scotland would welcome following the approach applied under the HRA, proportionality test, but would welcome further exploration of other tests. CEMVO Scotland would also support the exploration of other routes to remedy, not just Judicial review which can only be raised in a court of session e.g. an example of best practice is India where a case of public position can be petitioned by anyone and be raised directly to the Supreme Court. These explorations will ensure that the Scottish Government is taking steps to ensure that the route to remedy must be timely, affective and affordable and that people who experience violations of rights in the Bill must be able to access justice and accountability through the courts.

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

CEMVO Scotland do not believe that existing judicial remedies are sufficient in delivering effective remedy for rights-holders. Currently we only have one example of structural remedy because the Scottish Parliament legislation is treated as subsidiary, therefore it can be struck down. CEMVO Scotland also share concerns with fellow stakeholders that it is difficult to understand whether and to what extent CEDAW, CRPD and CERD will be justiciable at all for individuals under the current proposals which is very worrying.

CEMVO Scotland support JustRight Scotland's call for there to be an explicit right to effective remedy as a standalone right within the Bill.

36. If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders, what additional remedies would help to do this?

CEMVO Scotland welcome the inclusion of structural indirect remedies to bring justice for different people on different rights. This will allow systemic issues to be brought to court without relying on one individual, recognising the trauma that this may cause. We also echo calls for courts to be required to give the person taking the rights case an opportunity to have a say in what remedies are granted, as proposed in the UNCRC Bill and in line with UN guidance on access to justice.

37. What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

It is of the opinion of CEMVO Scotland courts should be able to strike down laws or issue declarators of incompatibility for any part of Scottish Parliament law that is not compatible with the rights within the Bill.

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

CEMVO Scotland recognise that public bodies need time to put in place the infrastructure they require for compliance with the new legislation but would remind the Scottish Government that everyday people in Scotland suffer from grave violations of their human rights and this legislation is needed sooner rather than later. We therefore support the Human Rights Consortium's call for commencement to begin no more than 6 months after Royal Assent and the additional duty to comply no more than two years later. These timescales must be specified within the Bill.

It is also important when bringing legislation into force that it is accompanied by guidance, capacity building, MCO's and sufficient funding.

However, CEMVO Scotland remain concerned about how much change the Bill will achieve with the treaties that protect the rights of those most at risk, CEDAW, CRPD and CERD, having no duty to comply. We again encourage the Scottish Government to explore more maximalist approaches to the incorporation of these treaties.

39. What are your views on our proposals to establish Minimum Core Obligations through participatory process?

CEMVO Scotland welcome the proposals to establish Minimum Core Obligations through participatory process. It is important to acknowledge and uphold the international standards of MCO's for ESCR rights, these should frame discussions on Scotland specific MCO's. CEMVO Scotland urge the Scottish Government to ensure there is meaningful participation with rights-holders. To ensure the participation of marginalised groups, there must be a greater recognition of lived experiences of different communities and a recognition of the barriers that exist in Scotland to participation. For example, given that the proposals of this consultation as they currently stand will not have meaningful impact in combatting racism in Scotland, when defining MCO's the Scottish Government will need to acknowledge that there will be participation apathy with some EM communities as they may feel that what will this change for them. This will then require more engagement and discussions, not less. Existence of institutional racism has also created a lack of trust in public institutions amongst some ethnic minority people who may feel like they are already a burden on the state and thus are not worthy of a say in how MCO's should be defined. At our engagement event 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'. In each group, participants spoke about the need for change for the new Human Rights Bill to have impact. To ensure that participation is meaningful, there needs to be a genuine effort to public engagement. Information about the process should be readily available and transparent in a variety of accessible formats, for example translations into the most commonly spoken languages in Scotland and easy read/large text versions. This should be in neutral, everyday language avoiding economics jargon with an adequate time period to take part in the process. 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. Reaching out to leaders in ethnic minority communities, to relay the importance of having a say in the process may also increase participation, however this should not be tokenistic, and transparency should be at the heart of this: it should be clear exactly what responses will be used for and what influence they will have. Furthermore, intersectionality should be recognised in the process and should feature when engaging with the public to acknowledge that different people have multiple different identities which interact with each other and cause unique forms of discrimination. This recognises that people do not fit into one 'box' and that there is no right or wrong way to be part of a protected characteristic or marginalised group. Using intersectionality in the MCO process will allow more people to feel seen and have their voices heard which is a tool to increase meaningful participation.

As stated previously in the response, CEMVO Scotland would welcome an audit of the current Lived Experience/Experts by Experience panels who have been involved in the human rights bill process, to identify what groups of society are missing or where is representation lacking. This equality data will then allow for the Scottish Government to take a targeted approach to participation, aiming for those who are not represented and ensuring the most marginalised community has a seat at the table.

As a member of the SNAP Leadership Panel, CEMVO Scotland also would encourage the Human Rights Bill team to work closely with SNAP as there are actions within the plan that crossover this work.

Finally, CEMVO Scotland support the Human Rights Consortium's calls for major decisions and planning of this Bill should not be left to be resolved through the MCO process after the Bill has passed and that UN Guidance and examples of Scottish MCOs should be provided before the Bill is passed. We also support the calls for MCOs to be reviewed through a participatory process every 10 years to reflect the fact that society is ever changing, ensure they are fit for purpose and that the new Human Rights Bill is a living instrument.

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

CEMVO Scotland agree with the proposals for a Human Rights Scheme and that those whose rights are most at risk should be consulted when developing and reporting against it. This will support the implementation and monitoring of human rights in Scotland. It will also allow Scottish Ministers to consider new General Comments or recommendations from UN

Committees on the implementation or interpretation of rights. The human rights scheme will also obligate Scottish Ministers to report against its requirements, outlined in the Scheme, periodically. The consultation contains a list of things that could be included in the Scheme:

- An update on Scotland's National Action Plan on Human Rights (SNAP2)
- Plans to introduce further legislation on human rights
- Plans or proposals around improving access to justice through complaints mechanisms, and access to information, advocacy and representation
- Activities to embed human rights in the budget process
- The extent to which public participation is informing implementation of the Bill • Information and awareness raising around the Bill
- Guidance published and planned
- Reporting to the Scottish Parliament on compliance with human rights treaties
- Reporting to international bodies on compliance with human rights treaties
- Responses to recommendations from international rights bodies • Implementation of judgments of the European Court of Human Rights
- Human rights monitoring and evaluation that has been carried out or planned
- Human rights impact assessments

CEMVO Scotland again are in accordance with the Human Rights Consortium that the Scheme should also include the following:

- requirements around improvements to data collection and publication
- access for all to appropriate individual and collective independent advocacy (not only with regards to access to justice)
- provision of rights advice; inclusive communications
- Scottish Minister's engagement with UK Ministers around human rights
- provision of services aimed at rehabilitation from torture
- the extent to which participation of people whose rights are most at risk is informing implementation of the Bill
- emerging case law and interpretation of rights
- timescale and plans to develop/review MCOs
- plans or proposals to ensure access to justice is accessible, effective, timely, affordable and supportive
- Human Rights Impact Assessments

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?

CEMVO Scotland agree with the consultation proposals but in order for this process to be meaningful, we recommend that statements of compatibility should include a requirement to demonstrate that people whose rights are most at risk have been consulted with to assess if compatible. And we also support the approach of the UNCRC, that Scottish Ministers should be required to undertake a Human Rights Impact Assessment on their proposed legislation.

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

At our community engagement event, targeting EM communities, it was clear that capacity building should also be mandatory for Scottish Government representatives and facilitators on how to engage effectively with EM communities.

One of our network organisations, the Multi-Cultural Family Base also shared their views on this area:

“we would also like to address that if these rights are being enshrined in law, it needs to be made clear to people, specifically immigrant families, what their individual rights are. We note that many of our families do not know or are unclear on what their rights entail, and they do not know who to go to when their rights have been violated. When they do know who to go to, they often feel that their concerns are not taken seriously. Incorporation is important, but we do need to be clear that both those who enforce the rights and those who are due them understand what their rights entail.”

They continued by calling for “a large-scale public awareness campaign about the new framework, ...recommend ensuring that awareness is extended through translations as well as ensuring campaigns geared towards children and youth so they know their rights from a young age”.

CEMVO Scotland believe that the Scottish Government and partners must review what has worked and what hasn't in terms of capacity building and guidance within the public sector. As stated previously, CEMVO Scotland has been providing support to the public sector on compliance with their PSED and FSD for many years, and in last few years has incorporated human rights capacity building within its remit. From our extensive experience of delivering this support there are a few key reflections that should be taken into account when designing guidance and capacity building across the public sector to ensure the rights in the Bill are delivered.

Firstly, when providing capacity building, you must always acknowledge their barriers and offer ways to overcome it. Currently within the public sector it is budget cuts, resourcing

and cost of living crisis. Additionally, there is apathy in the sector- another new policy/more work or reports for them to do. Human Rights capacity building is important, it should be prioritised, it frames all the other work that they are doing. Therefore, it is vital to reassure the sector that this is not just another tick box exercise and adding to their workload, it's changing the way you work to ensure that human rights and equalities are no longer an after thought e.g. providing tools to make rights real such as human rights budgeting, active participation.

As will be known to the Scottish Government, there is an array of mainstreaming support being carried out to the public sector, lessons learned from this is that there is a need for what good practice examples look like e.g for the Human Rights Bill Capacity building/guidance docs, what does good human rights budgeting look like or active participation. Providing staff with tangible tools that they can take away with them, empowers them to implement practices to support realisation and protection of rights. As noted previously, CEMVO Scotland have continued to work with the FWLMSD to explore good approaches to tools for change e.g. improving ethnicity data collection, good examples of positive action measures. Learning from PSED and FSD, the sector requires good examples of EQHRIA or data collection. This is key when meaningfully building capacity of the sector. Too many mainstreaming reports simply say 'we were unable to collect ethnicity data' or EQIA's identify the disproportionate impact but don't say what they are going to do to overcome 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.

Taking our learning from PSED and FSD, so. EQIA's identify the disproportionate impact but don't say what they are going to do to overcome it or additional measures to ensure it doesn't have disproportionate impact. We need good examples of this- and when it leads to positive change. It's out there, but somebody needs to gather it!

As discussed previously in our response, it is important to recognise the role and value of the Third Sector. Many organisations are providing human rights support to the public sector through Scottish Government funds such as the Equality and Human Rights Fund. When designing the capacity building programme and guidance documents, it is important to value these organisations that have are already carrying out the work, who have trust within the sector and communities. It is important to utilise the sector and fund it appropriately and more consistently. CEMVO Scotland would urge the Scottish Government to seriously consider the value of the third and ethnic minority voluntary sector when establishing and resourcing the National Human Rights Hub and ensure that the expertise of the sector is not overlooked as many have felt it has been in the creation of the Anti-Racism Observatory for Scotland.

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

CEMVO Scotland is disappointed at the lack of development in this area within the consultation- this is vital component for people to be able to name and claim their rights. CEMVO Scotland support the Human Rights Consortium and fellow stakeholders call's to co-produce and fund a National Network for Human Rights Information, education, legal services and advice.

CEMVO Scotland believe that the Scottish Government and their partners must provide targeted engagement to ensure that those whose rights are most at risk know what their rights are and what to do/where to go if they are at risk or have been violated. It is essential to go to community spaces, target community leaders, have the information available in different languages etc to ensure that the most marginalised groups in society are prioritised.

44. What are your views on monitoring and reporting?

Please see questions 13,22 and 40.

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