Capacity Review of Scottish Civil Society on Human Rights

Author:
Mhairi Snowden, Human Rights Consortium Scotland, with Kate Nevens and Ellie Hutchinson, the collective

January 2022

Human Rights Consortium Scotland

the collective
WORKING TOGETHER FOR CHANGE

Contents

An Executive Summary of this report is available at
www.hrcscotland.org

Introduction

Across the world, civil society organisations are key human rights defenders and users of human rights law and approaches. This paper reports findings of a review into the capacity of Scottish civil society around human rights, exploring:

- In what ways do different types of Scottish civil society organisations use and interact with human rights law, standards and treaties in their work?
- What are the barriers or challenges that these organisations face in using human rights?
- What support, opportunities and resources would Scottish civil society organisations welcome as they seek to use human rights for change?

The paper also looks ahead to the development of a new human rights legal framework in Scotland to consider what would enable civil society to shape and make full use of that new framework to drive change for those they work with and for.

Background and purpose

The purpose of this capacity review was to inform development of the infrastructure support that Scottish civil society needs in order to engage with human rights at this critical time for human rights legal protections in Scotland and in the UK.

The findings will of course, directly inform the work of the Consortium and shape our strategic planning around how we can best facilitate and empower our members. The findings are however, also valuable for other Scottish civil society organisations to inform their work, funders to inform how and what they fund, and for government.

• About the Human Rights Consortium Scotland

The Human Rights Consortium Scotland is Scotland's civil society network to protect human rights. Set up in 2010, it has rapidly grown to become an established network of over 140 organisations and many individual supporters. Having been 'incubated' by Amnesty International, the Consortium became fully standalone in August 2020.

The Consortium's core purpose is to promote and protect human rights in Scotland, and it does that by facilitating a strong collective civil society voice on human rights, and by ensuring that civil society have all the resources and understanding that they need to protect human rights. The Consortium has developed thus far through feedback from member organisations, understanding and analysis of the context of current and pressing human rights issues, and through identifying gaps or added value that the Consortium could bring.

• The context for human rights in Scotland

During recent years, Scotland's human rights journey has been marked by increasing support and understanding of human rights[1], increased profile and commitments to human rights in Scottish Government policy such as in the National Performance Framework,

1. Scottish Human Rights Commission (2018) Building a Human Rights Culture in Scotland: insights from audience research

and steps to embed human rights within Scots law. For example, human rights is a key principle of the Social Security Act Scotland. After years of campaigning by the children's sector, and children and young people themselves, the UNCRC Incorporation Scotland Bill was unanimously passed by the Scottish Parliament in March 2021.

This children's rights Bill is just the beginning of plans to incorporate more of our international human rights treaties into Scots law. In response to recommendations by the National Taskforce on Human Rights Leadership[2], the Scottish Government has now committed by 2025, to introduce a Bill to incorporate: ICESCR on economic, social and cultural rights; CEDAW on women's rights; UNCRPD on disabled people's rights; and ICERD on race rights. The Bill will also include the right to a healthy environment as well as extra protections for LGBTI people and older people. There will be new duties on public bodies to comply with these treaties, and monitoring and reporting on these duties.

However, all of these positive developments around human rights come very much in the context of ongoing human rights infringements, where Consortium members consistently speak about the gap between what is in policy rhetoric and even in law around human rights, and people's experience in their daily lives. Experience of COVID-19 has particularly meant that many minority groups speak about their rights having gone backwards.

At a UK level, legal protections for rights are reducing. The one aspect of EU law that was not retained was the EU Charter of Fundamental Rights. There are Bills in

the UK Parliament that will significantly reduce protection of refugees' human rights and will reduce government accountability on rights through the courts. The UK Government's proposed reforms of the Human Rights Act, currently under consultation, are seen as 'unnecessary, regressive and divisive'. They risk 'watering down key elements of the legal protection the Act provides for us all' and 'will leave ordinary people with less access to justice and a weakened ability to hold the state to account.[3]'

Increasingly this divergence of human rights rhetoric, ambition and law within the UK brings added complexity but for civil society, also brings added challenge around influencing human rights developments effectively. It particularly brings a pressing need for the infrastructure and understanding around human rights within Scotland and on devolved areas to be sound and strong, as well as making sure that Scottish voices can be heard at a UK level.

Methodology

The design, data collection and initial analysis for this Review were carried out by Kate Nevens and Ellie Hutchinson of the collective[4], commissioned by the Human Rights Consortium Scotland.

In this Review, we asked participants to identify where they saw their organisation in this spectrum of human rights engagement:

1. The protection of human rights is core to all that we do and we use human rights as a tool for change

3. Joint statement between 5 Scottish human rights organisations on Human Rights Act Reform consultation, available at: https://hrcscotland.org/2021/12/14/leading-scottish-human-rights-organisations-unite-to-reject-plans-to-replace-human-rights-act/
4. Find about more about the collective here: https://www.thecollectivescotland.co.uk/

2. We have started to use human rights in our work but would like to explore more around how to apply/use human rights more
3. We are new to understanding how to use human rights in our work but keen to know more
4. Human rights are not a priority or focus for us, but we are supportive of human rights
5. Our organisation does not wish to engage with human rights

It should be noted that no responding organisation said that they had no wish to engage with human rights, possibly because any such organisation might not have given time to complete the survey.

There were four main aspects of the Review's data collection:

1. Online survey

In June-August 2021, an online survey with 17 questions (list of questions in Appendix A) was sent to all Consortium members, to many other civil society contacts, and publicised widely. The survey received 57 responses in total. 74% (42) of these were from Scotland national organisations, 23% (13) covered a particular geographical area, and 3.5% (2) cover a local area or geographical community. The sizes of organisations who responded were fairly evenly split – 10.5% said they had no staff (6 organisations), 23% between 1 and 5 staff (13 orgs), 30% between 5 and 15 staff (17), 12% between 15 and 30 staff, and 24.5% more than 30 (14). 29% (4) of the large organisations were social care focused. All of the organisations with no staff were national (6), and 93% (13) of the organisations with more than 30 staff were national. Both of the

community-based organisations said they had between 1 and 5 members of staff.

Most survey respondents said that they were members of various civil society networks, with 14 organisations mentioning health and/or social care networks, 7 organisations mentioning networks supporting children and young people, 6 organisations mentioning refugee or migrant networks, and 5 mentioning networks supporting Black or minority ethnic communities. A large number mentioned general civil society networks such as SCVO. Five organisations also mentioned international networks and 6 mentioned place-based/local networks.

Survey respondents came from organisations working across a very wide range of issues, with notably several from social care, advocacy and campaigning organisations. Interestingly, there were many respondents whose organisations simply did not fit into any suggested category, which itself emphasises the significant diversity across civil society.

2. Individual interviews

Drawing on findings from the survey, eight individual interviews were then held in September 2021 with people working across different issue bases and from different locations and types of organisation. These interviews were held online and were flexible in nature, with questions broadly around the barriers to organisations engaging with human rights more and what would be effective in overcoming these barriers.

3. Participatory workshop

In October 2021, a workshop with 18 participants was held to explore in more depth some of the issues raised through the survey. Participants were particularly invited who had said that they were new to using human rights or are keen to start using human rights in their work.

4. Literature review

A light-touch literature review was undertaken that considered first, what information is available about Scotland's third sector and their engagement with human rights more generally, and some of the assessment tools that might be applicable for mapping Scottish civil society capacity around human rights. The literature review then went on to review available analysis, evidence and guidance documents on the use of human rights in different ways: building a human rights culture; using human rights as legal and policy tools; using human rights to improve services; empowering rights-holders to understand and use their rights; and taking a Human Rights Based Approach across organisations or programmes. Finally, the Review pulls out useful recommendations or advice on what might help to expand civil society capacity around human rights for the future.

The findings from the literature review are drawn upon throughout the summary of findings below. It will also be published separately and will be available on the Consortium website[5]. Overall, we found very little literature that looks directly at how civil society organisations across Scotland engage with or use human rights. There are a handful of useful papers written from

a UK perspective that take a broader overview of human rights and the voluntary sector, and a number of toolkits, guidelines or best practice on specific uses of human rights. However, often in these UK-level resources, there was a lack of information and analysis on Scotland or Scots Law specifically.

Scottish civil society engagement with human rights

This Review found valuable insights into the ways in which Scottish civil society organisations currently use and apply human rights in their work, and their reasons for doing so. It explored where there are differences in engagement related to type, size and location of organisations, and in particular explored these questions with regards to level of human rights engagement.

• There is strong and growing interest to engage with human rights across the Scottish third sector

Evidence around the extent or nature of civil society engagement with human rights in Scotland is scant but a 2011 study by Durham University commissioned by the Scottish Human Rights Commission, found that 'whilst all organisations recognised that some aspect of their work might impact on human rights, only 7% declared that human rights work was a core mandate of their work. A further 11% organisations suggested that human rights was a secondary issue.'[6] A similar study

6. Craig, G., Whitfield, C., and Westmarland, N. (2011) Mapping Human Rights Organisations in Scotland

but only of organisations in England and Wales found that 30% of responding organisations were 'strongly engaged' with the international human rights framework, 20% somewhat engaged, and 50% not engaged at all[7].

Participants in this Review include many who are members of the Consortium and/or who are engaged enough in human rights that they were willing to take the time to respond. Therefore, they may be more engaged than many. Nonetheless, the results are interesting – it found that 41% (19) of survey respondents said 'the protection of human rights is core to all that we do and we use human rights as a tool for change', and a further 56% (26) responded that they were either new to, or had started to use human rights, and that they were keen to explore this more. The Review found that this interest extends across many different elements of human rights with a keenness to learn more about the different frameworks and international human rights treaties. This high level of interest reflects experience of the Consortium in recent years, with steady increase in number and engagement of civil society organisations, including many who are new to using human rights.

Interestingly, this Review found that, of the types of organisation who responded, community and civic organisations alongside campaigning organisations, were particularly highly engaged with human rights. It also found that the larger the organisation (in terms of number of staff), the less likely they are to be highly engaged with human rights.

Nearly 50% of the national organisations that responded were highly engaged with human rights

7. Wills, L. and Walter, A. (2020) Civil society organisations and international human rights. EHRC and University of Nottingham

whilst regional or local organisations were more likely to say they had started to use human rights and would like to explore more (80%). To note, Consortium members are 70% national (Scotland wide) organisations and 30% local.

• There is some engagement with international human rights frameworks and treaties, with significant interest in filling knowledge gaps

The most commonly used international human rights frameworks or treaties by participant organisations were:

- the European Convention on Human Rights,
- the Human Rights Act 1998,
- the UN Convention on the Rights of the Child (UNCRC)
- UN Convention on the Rights of Disabled People (UNCRPD).

There was general interest across all participants in knowing more about most of the rights treaties and frameworks. Overall, organisations were either unaware of, or less interested in, the following treaties:

- the Convention Against Torture,
- the International Covenant on Civil and Political Rights (ICCPR),
- the UN Convention to Eliminate Discrimination Against Women (CEDAW),
- the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

For organisations who are most engaged in human rights, they were most interested in knowing more about

ICCPR, followed by ICERD, CAT and ICESCR. It is notable that no organisation in this group wanted to know more about the UNCRC, suggesting that this may be the most well-known treaty amongst those who use human rights a lot. Interestingly, for each treaty or framework, one or more organisations in this most engaged group said that they did not know about or were not aware of the treaty, suggesting that there are gaps in knowledge of rights treaties even for those for whom the protection of human rights is core to their work.

Those organisations who are 'new to human rights' were most interested in knowing more about the ECHR, CEDAW and ICERD.

Knowledge, use and interest in ICERD and CEDAW was mixed, with environmental and several advocacy organisations in particular saying that they did not see these as relevant to their work. ICERD is used most frequently by community/civic organisations. LGBTI, community and umbrella organisations expressed particular interest in knowing more about ICESCR.

• Organisations are keen to engage with human rights for the values they imbue, and as a mechanism to get people to think differently

Exploration of some of the reasons that organisations give for using human rights in their work is helpful. Participants spoke strongly about the values and principles associated with human rights, that they saw them as conveying a sense of shared humanity and respect for individuals and different cultures. They saw them as principles and ideals that are important to aspire to, and the value of universality and the inalienability of rights as powerful concepts.

Participants spoke about human rights as a useful mechanism to get people to think differently, by focusing on what people are entitled to rather than what people are being 'granted' or 'treated to'. They see them as a practical way to prevent and challenge discrimination, and as a tool to hold the government to account, especially on areas such as the care system. Participants also spoke about human rights as a useful 'political hook to hang things on', for example work around period poverty being focused on people's right to be treated with dignity and respect.

• Civil society organisations in Scotland use human rights in a huge variety of ways

Organisations are already using human rights frequently across all areas of work, and a huge variety of examples of using human rights were given by participants. These could be roughly grouped under:

- Helping individuals or groups to understand or access their rights
- Holding bodies accountable and ensuring rights based policy processes
- Getting involved in the legislative processes
- Referring to international framework and treaties
- Using a human rights framing for campaigns
- Using a human rights framing for collaborative work
- Taking a human rights based approach across their work

The most frequently referenced group was the first, of helping individuals to know and access their rights. All types of organisations saw empowering individuals to know and claim their rights as very important or quite important.

All survey respondents saw participation of people in decision-making as an important aspect of their work. Organisations who are 'new to human rights' were slightly less likely to respond that enabling participation was very important (60% of this group compared to 90% of the others). Many organisations spoke about right-holder participation in decision-making within their organisation and enabling rights-holder engagement in policy and external decision-making as key aspects of their work – they said that, whilst they did not always refer to this as part of a human rights-based approach, this was a core aspect of their work and one where they felt they had experience and expertise.

The more engaged an organisation is with human rights, the more likely they were to say that holding the government to account was a very important aspect of their work.

Participants spoke about the value of human rights frameworks and language as a connector between groups, enabling collaborative work across organisations and different issue silos. Some spoke about the value of connecting with international human rights defenders and learning from international examples of where human rights law and framing has been used particularly effectively. This idea of human rights connectivity also came up with regards to what the Consortium could do more of, see further discussion below.

Some spoke about their work to highlight or advance certain human rights, such as the right to cultural life, that are perceived as not being spoken about as much, both within communities and within the policy sphere. Others spoke about COVID-19 having spurred on greater

awareness and immediate concern for human rights, such as around the rights of carers and disabled people.

• **Civil society organisations want to use human rights more**

Many participants said that ideally, they would want to do more to empower the individuals and communities that they work with to know and access their rights. They spoke about, if resources were not concern, they would provide more accessible resources on rights, they would improve local authorities' understanding of a particular rights issues, and 'be prepared for the shake up that this would cause'. They would expand what they do to offer more rights awareness and empowerment to more people from a wider range of backgrounds and languages. Participants emphasised that they need more resource to make what they do around human rights awareness and support something that is genuinely accessible to all. One participant said: *'I'd want our members to know their rights because that creates independence, then you allow them to basically flourish in their life; if you're basically preventing them from knowing their rights, then they are not equal.'*

Other participants spoke about the desire to use human rights more in their strategic planning, and in media and communications work. There was mixed interest in using human rights for campaigns with some concern that this may not contribute to lasting, irreversible social change but rather something that is 'flavour of the month.' Sometimes that was related to concern that rights campaigns only 'preach to the converted'.

Organisations who said that human rights were already 'core to their work' were less interested in learning

across all areas, whereas organisations who are 'new to understanding how to use human rights in our work' were interested in using human rights across all areas, with slightly less interest in using human rights when talking with policy makers.

• There is less interest, and perhaps some cautiousness, around human rights and using the law

'Using the law and legal services to get change for individuals or groups', or on particular issues, was ranked as the least important aspect of their work related to human rights by survey respondents. The likelihood of them seeing this as important or quite important also decreased in line with their stated level of engagement with human rights. In the Review interviews and the workshop, participants discussed that where they had ventured into the area of lawyers and litigation, they had been hampered by a lack of access to expert lawyers and that they would only be motivated to use law tools if they saw clear benefits for the individuals/groups that they work with. This chimes with previous work by the Consortium with CLAN Childlaw and others which found that in general, few NGOs in Scotland use lawyers or litigation in their work, whether by taking cases or seeking a legal opinion etc[8]. Interestingly, advice, Black and Minority Ethnic, LGBTI and environmental organisations were those most likely to say that use of the law and legal services was a very important aspect of their work.

8. HRCS, CLAN Childlaw et al (2018)Overcoming Barriers to Public Interest Litigation in Scotland

Barriers to engaging with human rights

Participants in this Review identified a number of barriers to using human rights in their work which are very insightful:

Human rights seen as too confrontational

Many participants spoke about the perception that talking about human rights, particularly in discussions at any level with policy makers and public sector decision-makers, can be seen as contentious, risky and dangerous. For example, one person said: *'There's a perception that human rights are more scary, that question of are we going to be taken to court?'*

Participants spoke about using human rights directly with public bodies can sometimes get their backs up, and only lead to confrontation rather than an effective solution. They said that human rights create a power response, particularly if rights requires a duty-bearer to implement or change something.

Some people directly linked this perception of human rights to wider media and politicians' discourse, talking about debates about people having too many rights and that human rights having gone too far, particularly in the midst of polarizing social media debate. Interestingly, the less engaged an organisation is with human rights, the less likely they are to be concerned about public debate or opinion on human rights.

Fear of repercussions

Linked to the above point, participants spoke about their fear that, if they do raise and advocate for human rights, it can be so challenging to the status quo and to those in power that they are scared of repercussions for them or their organisation. For example, one person said, *'It's seen as challenging by some people in power or some organisations, it is a challenge to the existing balance of power in the health and social care sector.'* They spoke about concern that sometimes it might be seen as 'too political' with one participant saying *'I feel that many people who are not in a campaigning charity don't want to appear too political and I know that I have to be very balanced in my approach.'*

Several participants spoke about potential negative impacts on their funding because they are funded through local authorities, Scottish Government or UK Government who may be challenged by human rights law and arguments. They were concerned that if they made too much of a fuss about a particular rights gap, then that would create tensions with their government funders. One person said, *'If you've funded by the state, there is a perception or lived reality that you will impact your funding if you shake the tree too much.'*

There was the sense from many participants that inherent to human rights is a challenge to existing power structures and to the way things are currently done and decided, and so engaging with human rights is not something they would do lightly or without consideration of the potential impacts.

Lack of understanding of human rights within public authorities

Sometimes participants had been put off using or raising human rights because they were not convinced that it would lead to significant positive change in public authority decision-making for individuals that they work with/for. *'Human rights don't move the needle like they should, it's not the language that local authorities seem to respond to.'* They said that people on the other side of the decision-making table simply often do not understand human rights or the language around human rights. Someone said *'why would you take on a toolkit that holds promises but can't deliver on my life chances?'* When people have raised human rights arguments but it has made no difference to their reality, they stopped raising them. *'For it to work, it has to actually benefit people who have got it worse, it has to be something that can make things better – if it doesn't, it's dead in the water.'*

Many people spoke about equality law and standards often being more effective for getting change. People said *'Human rights doesn't have the same sense of oversight, accountability, scrutiny. Equality feels a bit more substantial, there's a system around it and local authorities understand the language.'* Someone else said *'There's a different structure that exists which means that the equality angle tends to go better for councils or NHS boards, they have heads of Equality and Diversity, they have policies in place.'* Some organisations would use human rights language in policy and in submissions to Parliament but when they were advocating for individuals or at a local level, they tended to use equality law and language. This chimes with a recent FOI survey by the Human Rights Consortium Scotland and Amnesty International into public bodies' human rights considerations during

COVID-19, to which many public bodies chose to respond only with details around equality considerations, rather than human rights at all, suggesting they had embedded equality far more into their processes[9].

Gaps around human rights in practice

Whilst there is widespread use of human rights language at a policy level, many spoke about human rights seeming too far away and removed from everyday life, and there being a lack of connection between human rights law and standards and how that actually applies in people's lives. People felt that they could not effectively advocate for or use human rights because there was a lack of clarity and confidence about how human rights should be put into practice. One person said *'Most people understand that human rights are aspirations, the longer term view, the equality angle has got more to do with what's happening in daily life'.*

Complexity of human rights language and law

A significant number of survey respondents (58%) pointed to a lack of confidence in using human rights as the biggest barrier to their use, and this was directly linked to the complexity of human rights language, treaties and law. In fact, only two organisations, both who said that human rights is core to all that they do, said that complexity of human rights law and treaties is *not* a barrier to their use. People said that they found it difficult to be *'able to navigate and understand the legal language and the complexity of different legislation and policy documents and then using this to be able to articulate what rights we are engaged in upholding'.*

9. HRCS and Amnesty International UK (2021), Delivering Human Rights in Scotland During COVID-19: A 2020 Survey of Public Authorities

Linked to this, participants spoke about a lack of confidence to understand how different rights sit together within human rights law, and to navigate potential conflicts between different rights. This appeared to have a chilling effect on advocating strongly for human rights. Others, particularly those in the LGBTI organisations, had seen misuse of human rights against their cause, for example with misunderstanding of freedom of speech, of CEDAW and of freedom of religion and belief impacting debate.

Lack of civil society time and resources

67% of survey respondents cited a lack of capacity and time within organisations as the biggest barrier to using human rights more in their work. Participants spoke about the pressures on organisations who are delivering frontline services which mean that they cannot spare the time or resource to develop their understanding around how they use human rights for change. One person said, *'Lack of time and resources push human rights to the back of the priority list.'* This was particularly true around the use of litigation (see above).

People spoke about the lack of sustainable long-term funding leading to too many people in the sector spending more of their time on funding applications, than on delivering for those that they work with/for. The huge amount of energy that had to be spent on maintaining funding for existing work was seen as a barrier in giving organisations the space to shift what their organisation did or how they used human rights.

Advocating for human rights can be tough

It was notable how many participants spoke about their work around human rights and advocating for change as

tiring or exhausting. They said that burnout is a real concern amongst those in civil society who were advocating for people's rights. This exhaustion was worsened by frustration that sometimes little seemed to change. Several participants felt a great deal of cynicism about efforts to challenge structural injustices. One person said *'I feel like these days, I could scream at the top of my voice and someone just goes, well that was sweet. You know that was lovely but you're not very realistic.'*

Lack of government accountability

People spoke about there being a considerable difference between what is in human rights-related law and policy, and what is experienced by people. They spoke about laudable and positive policy which is widely applauded, simply not being put into practice, and that this is then very difficult to challenge. They said that there are few consequences for government if they do not do what they have said that they will, or if they do not implement policy as it was intended. Even where there are clear infringements of rights or policy, public authorities often 'pass the buck'. The impact of this lack of accountability often leads to a sense of powerlessness and scepticism, particularly when combined with a lack of confidence around how human rights should apply in practice to be able to advocate effectively for this.

Supporting greater Scottish civil society engagement around human rights

Alongside a keenness to learn more about human rights and engage further as discussed above, participants were clear that civil society has a key role to play around human rights protection.

In general, participants spoke the considerable need for greater capacity for human rights support for civil society organisations. One person said *'The Consortium exists, it's really needed, but we need a lot more capacity if we want to do things.'* People spoke about human rights only becoming more important in law and policy, and that organisations were not yet fully embracing human rights as a tool, for all of the reasons outlined above. **Resources for civil society to build their understanding and confidence around human rights**

Most participants wanted to understand more about the human rights framework and law so that they can confidently apply its principles, treaties and details to the issue or cause that they work on. They want to feel 'well-versed' in human rights so that they are ready to defend an individual or group's human rights, even when there is challenge or repercussions from those in power. This included an interest in knowing more about several treaties, particularly ICESCR, CEDAW and ICERD.

Many participants said that in order to engage more with human rights, they would greatly value **training**

around what human rights are, what a human rights-based approach is, and how they can use this in practice. Some people spoke about the benefits of developing a suite of training and tools, perhaps that people could use themselves within their organisation. The significant current dearth of the availability of such training, or human rights trainers, in Scotland was highlighted, particularly as a gap that the Consortium as well as others could help to fill.

A majority of survey respondents said that 'an online toolkit around taking a human rights-based approach' and 'accessible online resources around human rights law and standards' would be 'very useful' for their organisation. **Online resources** were particularly valued by larger organisations. There was a significant emphasis on these being resources around the practical application of human rights law and standardss. The resources need to be in plain English, and be provided in a variety of formats including Easy Read. These resources need to be completely accessible by all, without overly complex or confusing or excluding language, jargon or concepts.

Opportunities for collaborations around human rights

Participants spoke about human rights as being a framework that brings people together, crossing usual issue lines and silos to provide an agreed way of discussing or talking about shared concerns. For example, people spoke about the importance of the right to food for many different organisations and causes, whether environmental, anti-poverty, children's rights and so on. The right to health and to housing were also highlighted as valuable cross-cutting issues. Many organisations, particularly those medium-sized

organisations with 5-15 members of staff, wanted to see more opportunities to do joint work with other organisations around human rights, and online meetings to share experiences.

Sharing of stories and examples of human rights in practice

Organisations wanted more opportunities to share stories, examples and experiences around advocating for human rights and how human rights apply in practice. They want space to hear about what has worked or not worked so that they can draw on the expertise of many civil society organisations to inform how they shape their work.

Supportive network around human rights

This sharing of experiences was seen as one part of what is needed from a supportive network around human rights. Participants wanted space for 'cross-fertilisation' of ideas, insights and information so they could see how to practically apply a rights-based approach to all aspects of their work. They also saw this network as providing invaluable emotional and infrastructure support, particularly for smaller organisations. Some participants recognised the value of the Consortium beginning to build this network – one participant said *'The value of the Consortium is the connectivity. Growing the network would be fantastic – almost as a connector of a collective resource.'*

Platforms to raise human rights concerns

The Review found considerable interest around 'opportunities in Scotland for your organisation or your

members/service users to raise human rights concerns with policy makers'. This ties into a key concern of participants being to find ways to get the voices of people with lived experience of rights infringements to be heard by policy makers more often and more effectively. Interestingly, there was slightly less interest in this from organisations who are new to human rights, who appeared to place more emphasis on the usefulness of being kept up-to-date with human rights developments rather than this active engagement. It is perhaps to be inferred that, the more engaged an organisation is with a rights-based approach and the centrality of participation to this, the more invested they are in finding opportunities to raise their voice with policy makers.

The survey also asked organisations how useful it would be to have opportunities to raise human rights concerns at a UK level. Overall, there was a more mixed interest in this, with several organisations saying that this would not be useful to their work and with the least interest in this from those new to human rights and those with no staff. This lesser interest amongst some organisations in UK level developments could be for several reasons, not least being that the issues an organisation works on may be entirely within devolved competence.

News updates on human rights law and developments

There was considerable interest in receiving updates on Scottish human rights law and developments across all organisations regardless of type, size and level of human rights engagement. However, similar to above, there was much less interest in news updates about human rights at a UK level, with the exception of medium-sized organisations of 5-15 staff of whom 77% said UK updates would be useful.

Some groups would value access to legal advice and expertise

There was mixed interest in access to legal advice on human rights, with many organisations saying that this would not be useful for them. Notably however, organisations with no staff were most likely to rate legal advice as 'very useful'. In general too, only a few organisations said that 'advice and support on using the law, lawyers and litigation to get change' would be useful, and those organisations who are new to human rights were the least likely to value this law support.

Support to engage around the new Scottish Human Rights Bill

Survey respondents were interested in all areas of potential support around the new human rights bill, with the strongest support for:

- Regular updates on what is happening with the Bill and ways to participate (27 definitely helpful)
- Working with other organisations on shared influencing around the Bill (26 definitely helpful)
- Deep dive training around potential key features of the human rights Bill(24 definitely helpful)
- Online resources on different aspects of the Bill (23 definitely helpful)
- Increased staffing capacity to be able to engage with these human rights developments (23 definitely helpful)
- Training on incorporation of specific international human rights treaties (17 definitely helpful)

Overall, increased staffing was seen as the least helpful option with 6 organisations saying that this would 'not

be very helpful' at all. Interestingly, organisations who have started to use human rights did not see increased staffing as useful, but 75% of organisations who are new to human rights said that they would find this useful. These 'new to human rights' organisations valued learning more about the Bill, whilst organisations who highly engage with human rights valued more support across the Board but particularly 'working with other organisations on shared influencing'. In general, smaller organisations appear to have the greatest interest across all areas of support around the Bill, particularly regular updates on Bill development, working with others to influence and online resources.

Conclusions

There was considerable interest, across all organisation types, sizes and levels of prior engagement with human rights, to understand and use human rights more. Even organisations for whom the protection of human rights is already core to all they do, were still very interested in more human rights resources, training and opportunities. It is very likely then that any expansion or development of support for civil society around human rights such as **new resources, training or collaborative working would be very well-received** and taken up by a wide range of organisations. In particular, there is widespread interest in all different resources and supports around engagement with the new Human Rights Bill, and significant need for greater understanding of the different international human rights treaties that will be incorporated into Scots law.

This Review included organisations that both saw human rights as core to all they do, as well as those who

were new to human rights engagement. It is perhaps notable then that no organisation taking part in this Review considered that human rights law had gone too far or was problematic – instead they valued the inherent ability of human rights law and levers to challenge those in power and give voice to marginalised people or groups. **There was an entire absence of calls to abandon international human rights law and frameworks.** If anything, organisations' reluctance to sometimes use human rights was because they considered that human rights in Scotland currently does not hold *enough* persuasion or accountability power to drive change for individuals or communities. There was the sense that human rights was a tool that held great potential that was yet to be put to full use.

It should be noted that this Review did not attempt to explore the impact of different sizes or geographical focus of organisations on the protection of human rights. However, it is clear that the size, geographical make-up, and diversity of the sector are important considerations for how to best shape overall human rights civil society support. Scottish voluntary organisations are overwhelmingly small, and the majority are local, with many to be found in remote or deprived areas. This Review found that national organisations tend to currently be more highly engaged with human rights, whilst larger organisations appear to be less engaged than smaller organisations – this requires further exploration. Significantly, the Review also found that there was no one type of potential support around human rights such as training, resources, collaborative space etc, that was especially highly favoured, or indeed especially not favoured, by any one size, geographical focus or issue-base of organisation – rather, it seems that **many of the same barriers, and the same potential**

enablers, to human rights engagement can equally apply to all sorts of organisations.

However, **there are some differences in the types of support most valued by organisations who are currently at different levels of engagement with human rights.** For example, for organisations who are new to engaging with human rights, provision of resources aimed at increasing knowledge and understanding of human rights and the new Bill, (rather than influencing or using human rights as such) would be most useful. These organisations need to understand the basics about human rights before they can start to want to use them for change. However, organisations who are highly engaged with human rights already most value opportunities to work with others on human rights concerns. Therefore, **human rights infrastructure in Scotland needs to include both aspects focused on increasing knowledge, understanding and information around human rights, as well as aspects that enable shared action on human rights concerns.** Three aspects of the human rights infrastructure needed are particularly of note – firstly, that **opportunities for organisations to work together,** by sharing stories, support and influencing efforts, are highly valued. Across the Review, there was the sense that engaging with human rights is best done not by organisations on their own but in close collaboration and in networks with each other, drawing on the strengths and diverse expertise that resides across Scottish civil society. In particular, shoring up the work of any one organisation to 'shake the tree' on human rights and risk repercussions for their funding and reputation, by networks and relationships of support with other Scottish organisations, was seen as very important and valued.

Second, many Scottish civil society organisations have **limited interest in knowing about, and influencing, at a UK level on human rights.** This could be for a whole range of reasons, which is beyond the scope of this Review to draw conclusions on. However, this finding also chimes with Consortium findings in a project around Brexit impacts where we found that Scottish organisations – possibly because the organisations' key concerns lie within devolved competence, the twenty+ years of devolution, the limited capacity of organisations, and their preference to work within UK wide networks/with London-based partner organisations – often had little knowledge and understanding of how to influence law and policy at a UK level[10]. Given that some of the core human rights legal protections for people living in Scotland lie at a UK level, this finding should be of some concern to those of us who care about the strengthening of human rights protections.

Third, there is also **least interest in the use of law, lawyers and litigation around human rights.** Whilst this confirms what has been known to be true for some time[11], nonetheless it raises interesting questions in light of strengthened human rights incorporation law in Scotland. The UNCRC Incorporation Bill, and commitments from the Scottish Government on the wider human rights Bill, open the way for NGOs with 'sufficient interest' to use strategic litigation to get change on systemic issues. As it stands, many civil society organisations will need particular support to make full use of this tool for change.

This Review has highlighted two key challenges that must be addressed for future development of human rights training and resources in Scotland, particularly by the Consortium:

10. Project information available at www.civilsocietybrexit.scot
11. HRCS, CLAN Childlaw et al (2018) Overcoming Barriers to Public Interest Litigation in Scotland

- **Accessibility of language and law** is crucial to enabling civil society engagement with human rights. We need far greater emphasis on plain English and finding ways to communicate human rights effectively and in ways that build organisations' confidence to use human rights for advocacy, if we are to bring in new civil society voices on human rights.
- The focus of all resources and training needs to be on the **practical application of human rights** law and treaties in people's lives. What do these actually mean in practice? Once organisations understand and have confidence about how they apply in practice, they can then use them more effectively to advocate for human rights realisation.

However, it should also be noted that a key finding of this Review is that, no matter how much civil society understands and raises human rights law and principles in their individual advocacy, unless human rights are taken seriously and understood by public authorities, this will be in no way effective. Civil society organisations will be hesitant, or even reluctant, around talking about human rights law in advocacy discussions with public bodies unless the individuals that they speak with respond positively with the understanding and the resource necessary for rights-based decisions. This is an important message for the Scottish and UK Governments – there must be sufficient resource put into driving a shift towards a **human rights-based culture across duty-bearers.**

There is also a chilling effect on civil society human rights advocacy where there is concern about the impact of this on their future funding, and thereby on the sustainability of their organisation. **Civil society need to know that their funding will not be negatively affected**

by the strength of their voice on human rights – this could be for example, through increased funding from independent sources, or through consistent and embedded reassurance of this from both government and independent funders. Many organisations are looking for explicit recognition from funders that their work on human rights will, and should, in some way challenge decision-makers and decision-making, and that their role in doing so will be valued.

It should be noted too that, whilst action to address equality duties may still require increased attention, it seems that equality is far better understood and taken seriously by public authorities. It may be that this is due to the explicit duties on public authorities to monitor and report on equality duties compared to their current duties under the Human Rights Act 1998 which do not include these elements. This is worthy of further exploration.

A final key finding of this Review is that civil society's confidence and use of human rights for change will increase if the human rights infrastructure in Scotland deliberately addresses the **why** and **what** of human rights – that is, the values and improvements that human rights can bring to people's lives, and what they mean in everyday practice and lives. This reflects the growing body of research around communicating human rights where the more someone sees the connection between human rights and what they care about, the greater their support for human rights as an idea and in law[12]. We can harness shared values and understanding such as human dignity[13] and non-discrimination, to draw in more civil society organisations to engagement with human rights. Alongside this, perhaps even more so, if we spell out and help organisations have confidence

12. For example, work by Equally Ours, details at https://www.equally-ours.org.uk/
13. Webster, E. (2021) The Underpinning Concept of Dignity

around the application of human rights in people's everyday lives, then this will be a key step in them increasingly using human rights for change. We are mindful that key elements of the upcoming human rights Bill[14] of defined minimum core obligations, clear duties on public bodies, improved access to justice and an emphasis on participative decision-making, will be important for bringing increased clarity and confidence around human rights in Scotland.

Recommendations

The findings of this Review will lead to different conclusions and implications for different readers and stakeholders. We note that they may be particularly valuable for the development of the next stage of Scotland's National Action Plan on Human Rights (SNAP). However, we suggest some tentative recommendations here, both to inform the Consortium's work and for further discussion:

- Human rights training and **training resources** for Scottish civil society should be developed and made widely available. This training should be both online and face-to-face, and designed to work for both bigger or national organisations, but also significantly for smaller or local organisations. The training should be tried and tested to make sure it is **accessible to all** with clear language and results in greater confidence around human rights. The content of the training should have an emphasis on how human rights law and standards apply in everyday life and how they can be used to bring improvements in people's lives.

14. That is, as set out in the National Taskforce on Human Rights Leadership recommendations, accepted by the Scottish Government, details at: https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/

- The Consortium, and other stakeholders, should particularly consider how to develop resources, training and events for **organisations who are new to, or yet to engage, with human rights**. These could emphasise for example, the positive benefits of human rights language and law for their organisation and those that they work with/for, drawing on learning on reasons for engagement from participants in this Review.

- Human rights resources and training for Scottish civil society should include **understanding of the full range of international human rights treaties and conventions**, as well as the ECHR and Human Rights Act 1998. In advance of the upcoming new Human Rights Bill, there should be a focus on increasing resources and training available on ICERD, CEDAW, ICESCR and UNCRPD, including demonstrating their relevance to those who have previously not engaged with them, as well as on the ECHR which is already incorporated into UK law.

- Those concerned with a strong civil society voice on human rights protection at a UK level, including the Consortium, should **communicate clearly about the importance of the Human Rights Act 1998 and other UK-level rights protections** for the everyday lives of the people that civil society organisations in Scotland work with and for. Support, resources and influencing platforms should be developed that recognise the limited capacity and interest of many Scotland-based organisations to influence in two policy arenas – Holyrood and Westminster – that have vastly divergent human rights rhetoric, and significantly different ways of influencing.

- The Consortium should further explore the most effective and valued ways to facilitate the **growth of a supportive community** around civil society and human

rights in Scotland. This should include space for individuals and organisations to share stories of their experiences, to provide emotional support, and to **share reputational risk** when challenging around rights infringements. Emphasis should be placed upon enabling supportive relationships and connections between individuals and organisations working in all different places and on different issues, but with a shared concern for human rights realisation.

- Those concerned with Scottish civil society engagement on human rights should particularly consider the training and **resource needs of local and remote organisations, and smaller organisations without staff**. This will affect for example, timing of meetings such as during a workday or evening, location of meetings, content, covering travel expenses, and whether meetings are online or face-to-face. They should also give attention to what resources might help more larger organisations to engage with human rights across their work.

- The Consortium should continue to provide **updates around human rights developments** in Scotland, and should continue to provide platforms and means of organisations working together to influence on shared concerns around human rights. These should continue to specifically include developments around the upcoming human rights Bill.

- Funders of civil society human rights work in Scotland should consider how to increase funding from independent sources, how to demonstrate their recognition of the value of human rights challenge, and how to provide reassurance, so that organisations feel able to challenge those in power without fear of repercussions or any negative impact on future funding.

- Stakeholders, including the Consortium, should consider what new or additional resources or support is needed for Scottish civil society, or at least some organisations within it, to make full use of **strategic litigation powers** under the UNCRC Incorporation Bill (soon to be Act) and the upcoming human rights incorporation Bill, as a tool for driving better human rights protection.

- The Scottish Government should prioritise exploration of what needs to be put in place for public authorities to **fully embrace a human rights-based approach** to all that they do. This must include those on the frontline of public authority decision-making understanding human rights and having the ability and commitment to making rights-based decisions.

- Development and implementation of the upcoming new human rights framework should draw on experience, understanding and processes around equality and equality law, and ensure that all stakeholders have clarity around how equality and human rights work together.

- There is **little, if no, demand for any lessening of human rights protections** from civil society in Scotland. The UK Government should bear this in mind in discussions around reform of the Human Rights Act 1998.

- The new Scottish human rights framework should be developed in such a way as to **make incorporation of international human rights treaties very clear and practical**. Rights holders, the civil society organisations that represent and empower them, and duty bearers, need to all understand legal requirements, the minimum levels of protection of human rights, what can and should be taken into account in rights-based decision-making, and how individuals and groups can participate in decision-

making and access remedy when things go wrong. This has implications for content of the Bill, content of the accompanying guidance and for its implementation.

January 2022

Thank you

A huge thank you to all those who took part in this Review – your insights and experience are invaluable.

Appendix A

List of online survey questions:

1. **What is the name of your organisation?**
2. **What is your organisation's main area of work?**
3. **Does your organisation work with/for a particular group of people or on a specific issue?**
4. **Is your organisation:**
- National – we cover all of Scotland
- Regional/local – we cover one particular area or local authority
- Community based – we cover one local geographical area or people group within that
5. **How many staff does your organisation have? (Full-time or part-time)**
6. **Is your organisation an active member of any civil society or voluntary sector networks?**
7. **Tell us about your organisation and human rights – please tick the one that feels closest?**
- The protection of human rights is core to all that we do and we use human rights as a tool for change
- We have started to use human rights in our work but would like to explore more around how to apply/use human rights more
- We are new to understanding how to use human rights in our work but keen to know more
- Human rights are not a priority or focus for us, but we are supportive of human rights
- Our organisation does not wish to engage with human rights
8. **How often do you talk about or reference human rights in the following aspects of your work?**
- In your organisation's strategic planning
- When providing direct support or advice for individuals or groups

- In policy work e.g. in consultations or parliamentary evidence
- In media or communications work e.g. Twitter content
- In public campaigns
- When planning a new project or service
- In discussions with Scottish Government
- In discussions with local policy makers such as local authorities or NHS Boards
- In funding applications

9. **Can you give us an example of a time when you've used human rights in your work and felt it was particularly effective?**

10. **Which of the following do you feel are important aspects of your work as an organisation?**

- Participation of those you work with/for in shaping your organisation's activities
- Enabling people's participation in government policy and law making
- Holding government to account on their actions or lack of action
- Embedding non-discrimination and equality across your organisation's work
- Empowering individuals or groups to know and claim their rights
- Using the law and legal services to get change for individuals or groups
- Using the law and legal services to get change on particular issues

11. **Does your organisation use or refer to any of the following human rights treaties or frameworks in your work?**

- UK Human Rights Act 1998
- European Convention on Human Rights (ECHR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

- International Covenant on Civil and Political Rights (ICCPR)
- Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- UN Convention to Eliminate Discrimination Against Women (CEDAW)
- UN Convention on the Rights of the Child (UNCRC)
- UN Convention on Rights of Disabled People (UNCRPD)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

12. **Which of the following do you think are barriers to organisations in your sector using human rights?**
- Inaccessible language around human rights
- Complexity of human rights law and treaties
- Lack of accessible, straightforward online resources and advice on human rights law
- Lack of confidence among staff and volunteers in using human rights arguments
- Lack of capacity and time within organisations • Lack of legal advice on human rights law
- Lack of training around human rights law and use
- Concern about public debate or opinion related to human rights
- They don't see human rights as adding much value to their work – they can get change more effectively using other means or language

13. **What do you think is the biggest barrier to using human rights for organisations in your sector?**

14. **Which of the following activities or supports would your organisation find most useful?**
- Accessible online resources around human rights law and standards
- Human rights training for staff and volunteers from different organisations

- Human rights training specifically tailored to your organisation
- An online toolkit around taking a human rights-based approach
- On-tap advice from experts on human rights
- Access to legal advice on human rights law
- Advice and support on using the law, lawyers and litigation to get change
- Training and resources for your service users/members to know and use their rights
- Opportunities to do joint work with other organisations around human rights
- Online meetings/events where can share experiences of how organisations are using human rights for change
- News updates on Scottish human rights law and policy developments
- News updates on UK-wide human rights law and policy developments
- Opportunities at a UK level for your organisation or your members/service users to raise human rights concerns with policy makers
- Opportunities in Scotland for your organisation or your members/service users to raise human rights concerns with policy makers

15. **Is your organisation interested in any of the following...?**
- Learning about the new Human Rights Bill and following its progression
- Understanding how the new law may affect or help your work
- Shaping or influencing the content of the Bill
- Helping to engage service users, communities or the public with the Bill
- Helping to implement the Bill once it is passed

16. **Which of these would you find most helpful in enabling you to engage with development of this new human rights law?**

- Deep dive training around potential key features of the human rights Bill
- Training on incorporation of specific international human rights treaties
- Online resources on different aspects of the Bill
- Working with other organisations on shared influencing around the Bill
- Increased staffing capacity to be able to engage in these human rights developments
- Regular updates on what is happening with development of the Bill & ways to participate

17. **Any other comments on the Bill?**
18. **Anything else you'd like to tell us?**