

**International Covenant on Civil and Political Rights: NGO written contribution  
for States parties under review**

**140th Session**

**A Report for the Human Rights Committee on behalf of the Human Rights  
Consortium Scotland (HRCS)**

**With contributions from: JustRight Scotland, CEMVO Scotland, Age Scotland,  
The Equality Network, Scottish Youth Parliament, Howard League Scotland,  
Humanist Society Scotland, Making Rights Real, Inclusion Scotland, Scottish  
Commission for People with Learning Disabilities (SCLD)**

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Scotland grapples with pressing human rights challenges, encompassing issues ranging from access to justice to gender recognition, each demanding immediate attention and systemic reform. This report calls for urgency for action to align Scotland's practices with the principles enshrined in the International Covenant on Civil and Political Rights (ICCPR). These challenges, spanning the criminal justice system, healthcare practices, legal aid, and protection of vulnerable populations, underscore the need for a holistic and concerted effort to ensure that Scotland meets its international human rights obligations.

We have structured this report to raise questions related to some of the issues within the Human Right Committee's List of Issues<sup>1</sup> as of May 2020, in the previous stage of this current Review Cycle, which have relevance to civil and political rights in Scotland. Additionally, we have presented issues that the List of Issues does not cover in full, particularly due to the delay between the List of Issues in 2020 and the UK review.

- 1. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee. Constitutional and legal framework within which the Covenant is implemented (art. 2)**

**Related to Paragraph 3: Human Rights Act 1998**

The European Convention on Human Rights is incorporated into UK law primarily through the Human Rights Act 1998. In 2022, after significant concern from human rights organisations, the UK Government shelved plans to repeal the Human Rights Act and replace it with a weaker UK Bill of Rights.

However, in recent months the UK Government has sought to remove human rights protections from immigration legislation<sup>2</sup>. The Illegal Migration Act 2023 disappled

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<sup>1</sup> United Nations (UN) Human Rights Committee (2020), [List of issues prior to submission of the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

<sup>2</sup> UK Parliament (2023), [Illegal Migration Bill completes passage through Parliament](#)

Section 3 of the Human Rights Act (HRA) which requires law to be applied in a way which respects our human rights, as far as it is possible to do so<sup>3</sup>.

Now, the UK Government has plans to remove most people seeking asylum to Rwanda, rather than process their asylum claim in the UK. The UK Supreme Court ruled that this Rwanda scheme is illegal<sup>4</sup> and in response, the UK Government published its Safety of Rwanda Bill<sup>5</sup>. Going even further than the Illegal Migration Act (IMA), this Rwanda Bill presents a wholesale exclusion of the Human Rights Act. It attempts to disapply various sections to the interpretation of this new Bill<sup>6</sup>:

- It is seeking to disapply the duty on public bodies or the Courts to make decisions which give effect to human rights when deciding if Rwanda is a safe country or not<sup>7</sup>:
- The Bill excludes Section 2 of the HRA, which states that courts in the UK must “take into account” any relevant cases decided by the European Court of Human Rights.
- The Bill excludes Section 6 of the HRA which places duties on public authorities, and as a result removes the duty for public authorities to respect, protect and fulfil people’s human rights.

Both the IMA and Rwanda Bill undermines the core principle of the universality of human rights. The IMA stops asylum-seekers, victims of trafficking and other migrants from making admissible asylum and human rights claims, and deprives protections for those who have been trafficked, and ousts the jurisdiction of the courts<sup>8</sup>. The Rwanda Bill will create a two-tiered system of human rights protection, where adults and children seeking safety who are threatened with removal to Rwanda will not have the full protections of the HRA to enforce their rights in domestic courts<sup>9</sup>.

The Bill puts the UK on a direct collision course with the European Court of Human Rights (ECtHR). In particular, the Bill expands Ministers’ powers to ignore interim measures of the ECtHR and that Act’s prohibition on UK courts having regard to an interim measure when considering any application/appeal relating to removal to Rwanda. Interim measures are a life-saving tool and are binding on the Government under international law. Giving a Minister legislative validation in ignoring them is deeply concerning. The UK Government itself admits in its ECHR memorandum that using the power would likely breach the ECHR<sup>10</sup>.

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<sup>3</sup> Public Law Project, Bonavero Institute of Human Rights, Amnesty International, Liberty, Immigration Law Practitioners’ Association (ILPA) (2023), [The Illegal Migration Bill: Constitutional Implications](#)

<sup>4</sup> BBC News (2023), [Supreme Court rules Rwanda asylum policy unlawful](#)

<sup>5</sup> UK Parliament (2023), [Safety of Rwanda \(Asylum and Immigration\) Bill](#)

<sup>6</sup> The British Institute of Human Rights (2023), [The UK Government's "Safety of Rwanda Bill" passes second reading](#)

<sup>7</sup> Ibid.

<sup>8</sup> Doughty Street Chambers (2023), [The Illegal Migration Bill is an Attack on Fundamental Human Rights and the Rule of Law](#)

<sup>9</sup> Public Law for Everyone (2023), [The Rwanda Bill and its constitutional implications](#)

<sup>10</sup> Amnesty International UK (2024), [Joint Civil Society Statement on the Rwanda Bill](#)

The Bill also reneges on other international commitments. It risks violating the principle of non-refoulement. The Rwanda scheme is an attempt by the UK Government to shirk its obligations to consider asylum claims and support those granted protection as part of the international refugee protection system. Even more alarmingly, the Bill states that the Government and courts should treat Rwanda as a safe country, regardless of "any interpretation of international law by the court or tribunal"<sup>11</sup>.

**Question:**

- Will the UK Government cease implementation of the Illegal Migration Act 2023 and cease progress of the Safety of Rwanda Bill and instead, reinstate and strengthen the UK asylum system to give sanctuary in the UK to all those who need it?

**Plans for enhanced human rights legal framework in Scotland**

Scotland is the first part of the UK to directly incorporate the UNCRC into domestic law through the UNCRC (Incorporation) (Scotland) Act 2023, and the Scottish Government has plans to introduce a new Bill by June 2024 to further enhance Scotland's human rights framework. It is expected that this new Bill will directly incorporate ICESCR and the right to a healthy environment, alongside UNCRPD, CEDAW and ICERD. This Bill has overwhelming support from across Scottish civil society as an important step towards making these rights real for all.

It is vital that this Bill includes all of these rights with accompanying strong and enforceable duties on government bodies. In particular, the Bill should make rights for disabled people enforceable to the greatest extent possible within the competency of the Scottish Parliament. This includes equal recognition before the law that ends substitute decision-making, non-discrimination, and participation in political life for disabled people.

This Bill must improve access to justice, including the right to remedy that is accessible, affordable, timely and effective as a substantive right, with a duty to comply. The Bill must also strengthen the powers of our National Human Rights Institution (NHRI) and include effective mechanisms for reporting and accountability. Implementation planning must start now, to drive the culture and practice change that realisation of all of our human rights need. Notably, this implementation should include increasing awareness and understanding of all of our human rights amongst rights-holders and public bodies, including civil and political rights.

**Question:**

- Will the Scottish Government commit to introducing a Human Rights Bill that includes enforceable duties on rights, improves access to justice and accountability mechanisms, and start plans for implementation immediately?

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<sup>11</sup> Ibid.

## **Right to Protest in Scotland**

In recent years, Scotland has witnessed numerous expressions of solidarity and activism, from the impromptu gatherings on Kenmure Street<sup>12</sup> in Glasgow to organised protests surrounding events like COP26<sup>13</sup> and Donald Trump's visit in 2018<sup>14</sup>. However, these acts of solidarity occur in the context of a complex legal landscape that is unique to Scotland, distinct from the laws in England and Wales<sup>15</sup>.

While private security cannot use force against protesters, public authorities, such as the police, may do so under specific and exceptional circumstances. However, any use of force must adhere to legal, necessary, and proportionate criteria, with a primary duty to facilitate peaceful protests. Special attention is to be given to the potential consequences for third parties, particularly vulnerable groups<sup>16</sup>.

Groups advocating for civil liberties in Scotland, however, have voiced concerns about various issues, including disproportionate policing during events like COP in Glasgow<sup>17</sup>, heavy-handed immigration raids, and restrictions on freedom of assembly during the COVID-19 pandemic<sup>18</sup>. Specific areas, such as the area around the Scottish Parliament at Holyrood, have seen restrictions on protests<sup>19</sup>. These concerns underscore the need for clear guidelines and protections for people in Scotland exercising their right to protest<sup>20</sup>.

Moreover, the recent passage of the Police, Crime, Sentencing and Courts Act (2022) in the UK Parliament has repercussions for Scotland<sup>21</sup>. This legislation alters sentencing for public order offences in Scotland and grants new powers to the police to impose conditions on protests and disband “unauthorised encampments”<sup>22</sup>.

### **Questions:**

- Will the UK and Scottish governments review and amend legislation, ensuring so that it aligns with international human rights standards and protects the right to protest?
- Will the UK and Scottish governments establish robust oversight mechanisms to monitor and evaluate police actions during protests, ensuring accountability and adherence to human rights principles?

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<sup>12</sup> BBC News (2023), [Man acquitted of Glasgow immigration raid protest charges](#)

<sup>13</sup> BCC News (2021), [COP26: Thousands march for Glasgow's biggest protest](#)

<sup>14</sup> The Guardian (2018), [Thousands protest across Scotland as Trump plays golf](#)

<sup>15</sup> Amnesty International UK (2023), [Briefing: The Public Order Act 1986 \(Serious Disruption to the Life of the Community\) Regulations 2023](#)

<sup>16</sup> JustRight Scotland (2024), [Your right to protest in Scotland](#)

<sup>17</sup> The Network for Police Monitoring (2021), [Respect or Repression? An independent report of the COP26 Conference in Glasgow](#)

<sup>18</sup> Amnesty International UK (2022), [The Policing of Cop26 and the Right to Protest in Scotland](#)

<sup>19</sup> The Scottish Parliament (2024), [Protests and demonstrations at the Parliament: Protest Policy](#)

<sup>20</sup> Ameer Anwar & Co, [Right to Protest, Breach of the Peace Scotland](#)

<sup>21</sup> Equality and Human Rights Commission (2022), [Police Crime, Sentencing and Courts Bill](#)

<sup>22</sup> UK Parliament (2022), [Police, Crime, Sentencing and Courts Bill](#)

- Will the UK and Scottish governments have open dialogue between authorities and activist groups to address concerns, ensuring that legislative changes do not unduly restrict the right to peaceful assembly?

## 2. Non-discrimination (arts. 2, 3 and 26)

### Related to paragraph 9: Hate crime

There has been significant policy and legislative steps taken in Scotland to reduce hate crime and increase reporting of hate crime. For example, The Hate Crime and Public Order (Scotland) Act 2021<sup>23</sup> has been passed and is due to come into force from 1 April 2024. The new law maintains current legislative protections against offences aggravated by prejudice against disability, race, religion, sexual orientation, transgender identity and variations in sex characteristics, and introduces new protections against offences aggravated by prejudice towards a person's age. It will also provide new 'stirring up of hatred' offences covering all characteristics. Importantly the new law will also require the Scottish Government to publish disaggregated data on hate crime. In addition, in 2023 a new Hate Crime Strategy<sup>24</sup> was developed.

However, there continues to be very concerning levels of hate crime against particular groups in Scotland. The number of recorded crimes with a sexual orientation aggravator increased by 67% from 1,110 in 2014-15 to 1,855 in 2021-22. The number of transgender identity aggravated hate crimes has more than tripled, from 53 in 2014-15 to 185 in 2021-22<sup>25</sup>.

During the development of the Hate Crime and Public Order (Scotland) Act 2021, there were requests to include sex-based protections, and the law allows for future additions. However, the Misogyny and Criminal Justice Scotland Working Group, headed by Baroness Kennedy, suggested a separate law specifically for addressing misogyny<sup>26</sup>. A consultation initiated on March 8, 2023, sought opinions on proposed legislation for tackling misogyny. Currently, we await the Scottish Government's analysis of the consultation and the introduction of a corresponding bill<sup>27</sup>.

Hate crimes against disabled people are increasing: 592 disability hate crimes were reported between April 2022 and March 2023, a rise of 7.6% on the previous year<sup>28</sup>. Recent data also reveals a concerning increase in reported disability-aggravated hate crimes targeting individuals with learning disabilities—from 59% in 2018–2019 to a staggering 73% in 2020–21<sup>29</sup>.

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<sup>23</sup> UK Government Legislation (2021), [Hate Crime and Public Order \(Scotland\) Act 2021](#)

<sup>24</sup> The Scottish Government (2023), [Hate crime strategy](#)

<sup>25</sup> The Scottish Government (2023), [Police recorded hate crime - characteristics: updated study](#)

<sup>26</sup> The Scottish Government (2022), [Misogyny – A Human Rights Issue](#)

<sup>27</sup> The Scottish Government (2023), [Misogyny law consultation](#)

<sup>28</sup> Leonard Cheshire (2023), [Disability Hate Crime rises in Scotland](#)

<sup>29</sup> The Scottish Government (2023), [Police recorded hate crime - characteristics: updated study](#)

In 2021-22, around three-fifths (62%) of hate crimes included a race aggravator. Where information was available on the ethnicity of victims, almost two-thirds (or 64%) of race aggravated hate crimes had a victim from a visible minority ethnic (non-white) group. This compares to 4% of Scotland's population at the time of the last census in 2011<sup>30</sup>. There were 576 charges with a religious aggravation reported in 2022-23, 8% more than in 2021-22<sup>31</sup>.

There is significant under-reporting of hate crime across all characteristics. People with learning disabilities often report facing disbelief when reporting crimes<sup>32</sup>. Engagement with Black and ethnic minority communities to inform development of the Hate Crime Strategy in Scotland found that barriers to reporting include a lack of trust in the police and scepticism about the seriousness of their experiences being acknowledged, and language barriers with no provision of translators during reporting<sup>33</sup>.

Many people report instances of ongoing racism and bullying in schools that have resulted in severe consequences for victims, affecting mental health, educational participation, and overall well-being. There were 2,251 racist incidents recorded in Scotland's schools from 2017/18 to 2019/20 (though it is likely that incidents are underreported)<sup>34</sup>. However, people from ethnic minority communities report that school responses to these incidents has very often been inadequate and highlights a systemic failure to address the issue seriously<sup>35</sup>.

There are significant concerns from Gypsy Traveller communities in Perth and Kinross, that the police are failing to record hate crime against them and that the Crown Office are not following the law correctly. One Traveller ("SY") has shared her lived experience<sup>36</sup>:

SY was subject to racist verbal abuse, but when she reported the incident to the police, they advised her that a crime had not been committed. SY challenged this decision, and two months later, the incident was recorded and investigated as a crime. However, due to the time elapsed, CCTV was no longer available. SY submitted a complaint to the police and the majority of her complaint was upheld. She received an apology, but this apology cannot cure the defects in the investigation and the incident has had a big effect on SY. She says: "They did nothing, instead they just let him away with it. It sends a message that no Gypsy Travellers are safe. It took a lot of courage for me to report this. When Travellers go to the police they get ignored, they do nothing - it is not fair, and it leaves people so alone and isolated."

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<sup>30</sup> Ibid.

<sup>31</sup> Crown Office and Procurator Fiscal Service (2023), [Hate Crime in Scotland, 2022-23](#)

<sup>32</sup> The Scottish Commission for People with Learning Disabilities (SCLD) (2023), [The State of Our Rights](#)

<sup>33</sup> [CEMVO Scotland](#) (2023), in engagement with ethnic minority communities to inform delivery of the Hate Crime Strategy

<sup>34</sup> The Scotsman (2021), [Thousands of racist incidents in Scottish schools](#)

<sup>35</sup> [CEMVO Scotland](#) (2023), in engagement with ethnic minority communities to inform delivery of the Hate Crime Strategy

<sup>36</sup> Making Rights Real (2023), [Travellers' Rights](#)

Police Scotland have advised that the perception of the victim is one of considerations in deciding whether to prosecute an incident as a hate crime<sup>37</sup>. However despite SY perceiving the incident to be racist, in response to her request for a review of their decision not to pursue a prosecution, the COPFS stated:

“I note that the accused is unknown to you and therefore there is no evidence to support that he would have known that you are from the travelling community, or that such a word would be considered by those in travelling community as racial slur”.

In a 2023 survey, Double Dykes site residents in Perth and Kinross uncovered widespread discrimination in the Traveller community. Findings reveal that 87.5% of residents witnessed or faced racism, hate speech, or discrimination based on various traits. Additionally, 87.5% experienced direct verbal abuse, and 37.5% reported ongoing bullying. The following is resident testimonials highlight the distressing consequences of such discrimination:

“Have had racism all my life - it is not as bad now.”

“I am always getting verbally abused, at times getting looks from the settled community making you feel (terrible). I feel anxious”.

“I have been to a tenants’ meeting where a tenant from a local area has turned and said we are here because of “the dirty Travellers”. When asked why he said that, he said one of the council workers who was involved in housing has said that to him and other tenants.”

### Questions:

- What will the Scottish Government do to publicise reporting mechanisms more effectively to encourage victims to come forward, and to enhance awareness of what constitutes hate crimes among educational establishments, law enforcement, and support organisations?
- What will the Scottish Government do to prioritise cultural education in schools to foster understanding and appreciation of diverse cultures?
- What action is the Scottish Government taking to ensure that hate crimes against Gypsy Travellers are properly recorded, investigated and prosecuted?
- What action is the Scottish Government taking to tackle misogyny as a hate crime issue?

### **Discrimination against older and disabled people during COVID-19**

During the COVID-19 pandemic, there were notable concerns surrounding the inappropriate application of Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) decisions, particularly affecting older people and disabled people, including those with learning disabilities.

<sup>37</sup> Police Scotland (2021), [Hate Crime National Guidance](#)

Advocacy groups in Scotland highlighted significant issues arising from the implementation of DNACPR orders during this period<sup>383940</sup>. Instances of improper practices included the insertion of DNACPR forms into hospital discharge notes without patient awareness, exclusion of Power of Attorney in calls to individuals with dementia, and the unilateral application of DNACPR orders in some care homes without proper consultation. Additionally, there were cases where General Practitioners (GPs) initiated discussions with inappropriate questions, contributing to a sense of devaluation among older individuals<sup>41</sup>.

### Questions:

- Will the Scottish Government update guidance on DNACPR in Scotland to enhance public awareness and confidence in both DNACPR and Anticipatory Care Planning processes?
- Will the Scottish Government implement any recommendations from the ongoing Scottish COVID-19 Inquiry related to DNACPRs?

### **Preventable deaths of people with learning disabilities**

The 23% increase in deaths from all causes in adults with learning/intellectual disabilities, compared to a 21% increase in those without such disabilities, points to broader systemic challenges<sup>42</sup>. This data suggests that the pandemic has not only heightened the vulnerability of individuals with learning disabilities to COVID-19 but has also exposed pre-existing disparities in overall health outcomes. The comparison with studies in England, where people with learning disabilities experienced up to a 3.6 times higher COVID-19 mortality rate, further reinforces the point that people with learning disabilities were failed on their right to life during COVID-19<sup>43</sup>.

There are alarming disparities in the mortality rates of children with learning disabilities in Scotland, with 34% of these deaths deemed preventable. Adults with learning disabilities were found to be twice as likely to succumb to preventable illnesses<sup>44</sup>. Such occurrences, often resulting from treatable causes like epilepsy or respiratory issues, raise serious human rights concerns, particularly regarding the right to life and health. People with learning disabilities face challenges in accessing

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<sup>38</sup> Age Scotland (2022), [Older people need answers on inappropriate use of DNACPR](#)

<sup>39</sup> Inclusion Scotland (2020), [Rights at Risk- Covid-19, disabled people and emergency planning in Scotland - Summary Report](#)

<sup>40</sup> The Scottish Commission for People with Learning Disabilities (SCLD) (2023), [The State of Our Rights](#)

<sup>41</sup> Age Scotland (2022), [Older people need answers on inappropriate use of DNACPR](#)

<sup>42</sup> The Scottish Government (2021), [Coronavirus \(COVID-19\) - disabled people: health, social and economic harms - research report](#)

<sup>43</sup> Ibid.

<sup>44</sup> Children's Health Scotland (2022), [Children with a learning disability in Scotland are more likely to die prematurely](#)



high-quality healthcare, communication barriers during appointments, and insufficient awareness of the healthcare needs of young people with learning disabilities<sup>45</sup>.

**Question:**

- Will the Scottish Government take immediate action to address preventable deaths for people with learning disabilities?

**Gender Recognition Reform in Scotland**

The Scottish Government initiated discussions on reforming the legal gender recognition process in 2016, recognising the shortcomings of the UK-wide Gender Recognition Act (2004)<sup>46</sup>. The Gender Recognition Act (2004) was the result of a successful court challenge at the European Court of Human Rights in 2002 by Christine Goodwin, a trans woman who challenged the UK's refusal to allow her to change the sex recorded on her birth certificate on the grounds that it violated her ECHR Article 8 right to privacy, as using it as an identity document required her to "out" herself as a trans person.

However, while the 2004 Act was pivotal in allowing trans people to amend their birth certificate, its intricate application process, coupled with stringent evidence requirements, excluded numerous individuals who could benefit from gender recognition certificates. Despite the existing legal framework providing legal gender recognition for some trans individuals, many are still excluded, including non-binary people, those under 18, and those unable to provide two years of evidence due to various circumstances.

To address some of the barriers to using the existing process, and following public consultations, the Scottish Government introduced the Gender Recognition Reform (Scotland) Bill<sup>47</sup> to Parliament in 2022. This Bill proposed a "self-declaration" model that aimed to address issues in the current system including removing the pathologising requirement for medical evidence and diagnosis, aligning with practices in over 30 countries or territories and supported by international human rights and health bodies. While not comprehensive, the Bill promised significant improvements.

The Bill underwent extensive parliamentary scrutiny, with inputs from both supporters and opponents, evidence from comparable legal systems globally, and amendments. It garnered majority support with cross-party backing and was passed by the Scottish Parliament in December 2022.

However, the UK Government prevented its enactment through a section 35 order<sup>48</sup> under the Scotland Act, on the basis that its provisions would have an adverse effect

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<sup>45</sup> BBC News (2022), [Warning over early deaths of learning disabled](#)

<sup>46</sup> Scottish Trans (2024), [What is "the Gender Recognition Act"?](#)

<sup>47</sup> Scottish Trans (2024), [What Changes Are Being Proposed?](#)

<sup>48</sup> Scottish Trans (2024), [Gender Recognition Reform \(Scotland\) Bill and the Section 35 order - Blocking of the GRR Bill by the UK Government](#)

on the operation of the law as it applies to reserved matters. This order halted the Bill from receiving royal assent. A Section 35 order had never been used by a UK Government previously, with a different mechanism of the Scotland Act 1998, a Section 104 order, used throughout the period of devolution to address any cross-border impacts of legislation within the devolved competence of the Scottish Parliament. The Scottish Government challenged this block, but in December 2023, the Courts then ruled that the UK Government's use of the section 35 order was lawful, which means that this important Bill for trans rights will, for the foreseeable future, not become law<sup>49</sup>.

The disappointment is palpable for many trans people who anticipated improved access to legal gender recognition, and it raises concerns about potential precedents for the UK government blocking legislation aimed at improving access to human rights.

### Questions:

- Will the Scottish Government do all that it can to pass gender recognition reform and to protect trans rights?
- Will the UK Government pass legal gender recognition reform to ensure that trans people have the right to reflect their identity on official documents with the same ease as everyone else?

### 3. Right to life and conditions of detention (arts. 6, 9, 10 and 14)

#### **Related to Paragraph 15: Prison reform**

**Deaths in custody:** Scotland faces significant human rights challenges in its prison system, as highlighted by issues that contravene principles outlined in the ICCPR. The high rate of deaths in Scottish prisons, a situation not fully addressed despite recommendations, raises serious concerns regarding the right to life (Article 6 ICCPR). There are too many people dying in custody and that number is increasing. Between 2012 and 2022, 350 people died whilst in prison custody in Scotland. This is an average of 31.8 deaths per year. Just under half of the 350 deaths were attributed to suicide or were drug-related deaths<sup>50</sup>. Fatal Accident Inquiries into deaths in custody face long delays<sup>51</sup> and have been criticised for not leading to learning and improvement<sup>52</sup>.

**Prison conditions:** Scottish prisons face persistent overcrowding issues, with 10 out of 17 prisons operating beyond their intended capacity<sup>53</sup>. HMP Barlinnie, at 135% occupancy, exemplifies the severity. The HMIPS Annual Report 2022-23 stresses the

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<sup>49</sup> Scottish Trans (2024), [Scottish Gov. Will Not Appeal GRR Court Ruling](#)

<sup>50</sup> Howard League Scotland (2023), [Deaths in Custody](#)

<sup>51</sup> BBC News (2023), [Inquiry into deaths of Polmont prisoners Katie Allan and William Lindsay](#)

<sup>52</sup> MSN 2024: [Mother of suicide inmate 'hopeful' for FAI outcome \(msn.com\)](#)

<sup>53</sup> STV News (2023), [More than half of Scottish prisons 'operating above capacity'](#)

need for emphasis placed on rehabilitative services to reduce numbers in prison, citing smaller-than-recommended cell sizes<sup>54</sup>. Much of the prison infrastructure is considered unfit for purpose, notably HMP Barlinnie, labelled a "national disgrace" as long ago as 1997<sup>55</sup>. Plans for its replacement are still pending, with warnings of potential catastrophic infrastructure failure. Projected prison population estimates exceed 8,500, raising serious human rights concerns<sup>56</sup>.

**Overuse of remand:** There is a high number of individuals on remand, comprising more than a quarter of the Scottish prison population. Alarming statistics reveal that at April 2021, almost 1 in 4 prisoners in Scotland were on remand, and 42.6% of young people aged 16-20 in prison fell into this category<sup>57</sup>. Of the remand population, a significant portion (57%) do not ultimately receive a prison sentence, but still experience the significant impacts of imprisonment on their physical and mental health; family relationships; employment and housing; and financial situation.<sup>58</sup> They are not routinely provided with structured activities or appropriate health and welfare support. New legislation (Bail and Release from Custody (Scotland) Act 2023) seeks to underline that remand should be reserved for offences which are likely to attract a prison sentence on conviction. However, the Head of the Scottish Judiciary (Lord President) publicly expressed a lack of support for the legislation which he believed would have no material effects on court decisions<sup>59</sup>.

#### Questions:

- What action is the Scottish Government taking to reduce deaths in custody and to speed up Fatal Accident Inquiries into deaths in custody?
- What is the Scottish Government doing to tackle prison overcrowding and poor prison conditions, including replacing facilities like HMP Barlinnie and adopting a more rehabilitative approach?
- What is the Scottish Government doing to reduce the use of remand and to improve conditions and support for those on remand?

#### 4. Treatment of aliens, including migrants, refugees and asylum seekers (arts. 2, 9, 10, 13, 14 and 26)

#### Related to Paragraph 21: information on the maximum time limit on immigration detention, on the average period immigrants stay in detention facilities

The Illegal Migration Act 2023 (not fully in force yet) allows for the indefinite detention of anyone arriving in the UK by irregular means and, unlike most other European countries, there continues to be no time limit on immigration detention in the UK. Of the 16,674 people who left detention in the year to the end of September 2023, 35%

<sup>54</sup> HMIPS (2023), [HM Chief Inspector's Annual Report 2022-23](#)

<sup>55</sup> Howard League Scotland (2024), ICCPR submission to the UNHRC

<sup>56</sup> BBC News (2023), [Scotland's prison population projected to hit record high](#)

<sup>57</sup> Ibid.

<sup>58</sup> Insidetime (2021), [Campaign launched to demand less remand](#)

<sup>59</sup> Taken directly from: Howard League Scotland (2024), ICCPR submission to the UNHRC

(5,868) had been detained for more than 28 days. 159 people left detention after being detained for over a year and 11 people left detention after being detained for more than four years. It is very concerning that at no time during those four years did they know how long their detention would last<sup>60</sup>. Scottish Detainee Visitors report that 10% of those they visited in Dungavel (the immigration detention centre based in Scotland), had been in Dungavel for three months or more, and some for over a year<sup>61</sup>.

The UK Government insists that detention is necessary to remove people who have no right to be in the UK from the country, but it overwhelmingly only results in trauma to those detained and huge costs. Yet for the last eight years, the proportion of people leaving detention who have then been removed from the UK has been under 50%. In 2022-23, the majority of people leaving detention were released into the community on leaving detention and just 27% were removed from the UK<sup>62</sup>.

#### Questions:

- Will the UK Government introduce a time limit on immigration detention?
- Will the UK Government prioritise the implementation of alternatives to immigration detention?

#### 5. Access to justice, independence of the judiciary, and fair trials (arts. 2 and 14)

#### **Related to Paragraph 22: Legal aid and access to justice and effective remedy from human rights violations**

It is very difficult to access effective remedy for breaches of human rights in Scotland. The significant obstacles to justice are well-documented in reports of people's lived experience justice<sup>63</sup>, through casework of law centres<sup>64</sup> and dialogue with human rights organisations. The barriers include a lack of accessible information about human rights and available remedies, a lack of availability of in-depth advice and legal advice, limited independent advocacy, the complexity of the justice system, a lack of non-court routes to justice, limited powers of Scotland's National Human Rights Institution, and financial barriers<sup>65</sup>.

There are significant problems in accessing advice or services from a legal aid solicitor in Scotland. Scotland has a system of legal aid to cover the costs of legal advice and services for those on a low income. However, the legal aid system in Scotland is crumbling and is in dire need of reform, and people who are living with

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<sup>60</sup> Scottish Detainee Visitors (2023), [A sense of deja vu](#)

<sup>61</sup> Ibid.

<sup>62</sup> The UK Government Home Office (2023), [How many people are detained or returned?](#)

<sup>63</sup> Human Rights Consortium Scotland (HRCS) et al (2023), [Lived Expertise in Access to Justice](#)

<sup>64</sup> JustRight Scotland (2024), [Making Human Rights Justice a Reality Report shines a light on systemic barriers to justice and how to break them](#)

<sup>65</sup> Human Rights Consortium Scotland (HRCS) et al (2023), [Lived Expertise in Access to Justice](#)

serious violations of human rights are bearing the brunt of this. In 2022, the Law Society of Scotland found that<sup>66</sup>:

- Out of the 139 communities most deprived communities in Scotland (housing around 100,000 people between them), 122 have no civil legal aid firms at all.
- These 139 communities share just 29 civil legal aid firms between them.
- Nearly 90,000 (87,064) people across these 139 communities are left without any local access to civil legal aid.
- Legal aid fees agreed in 1999 have only increased by 10%, while inflation has increased by 55%.

The number of lawyers willing to take legal aid cases has significantly reduced in recent years<sup>67</sup>. This is intensified by a lack of lawyers able to take specialist cases in areas such as, but not limited to, immigration and asylum law, environmental law, and human rights law. There are particular shortages outside of the largest cities in Scotland, with people often having to travel far to access the legal services that they need. Despite multiple Scottish Government reviews and consultations, and despite promises of legal aid reform, there has been no Scottish Government consultation on a draft bill and no commitment to a timescale for the reform that is so desperately needed.

The upcoming enhanced Scottish human rights law should include measures to significantly improve access to justice. These should include the right to effective remedy, giving the National Human Rights Institution and the Children's Commissioner the power to take litigation in their own name, and establish robust non-court routes to remedy.

### **Questions:**

- Will the Scottish Government significantly improve access to justice in their upcoming human rights law reform, and regularly report on their progress in improving access to justice?
- Will the Scottish Government prioritise reform of Legal Aid, with a consultation published on necessary legislative change in 2024?

### **Fatal Accident Inquiries**

Fatal Accident Inquiries are a crucial part of investigating, and learning lessons, from sudden, unexpected, unexplained or accidental deaths in Scotland, or deaths abroad. However, since new legislation was introduced on FAIs in 2016, the system has faced ongoing delays, with a glaring example being the nine-year delay in the FAI into the M9 crash, resulting in the tragic deaths of Lamara Bell and John Yuill<sup>68</sup>. Parents of two young people who died whilst in custody had to wait five years before an FAI was held<sup>69</sup>. The delays in holding FAIs have been exacerbated by factors

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<sup>66</sup> Law Society of Scotland (2022), [Legal aid crisis hitting Scotland's most deprived families](#)

<sup>67</sup> Ibid.

<sup>68</sup> BBC News (2023), [M9 police officer 'tortured' by failure to log fatal crash call](#)

<sup>69</sup> BBC News (2023), [Inquiry into deaths of Polmont prisoners Katie Allan and William Lindsay](#)

such as the increasing number of death reports, the technical complexity of cases, and the lingering effects of the COVID-19 pandemic on the justice system<sup>70</sup>. With an increasing number of deaths of prisoners<sup>71</sup>, and 51 FAls conducted annually<sup>72</sup>, addressing delays is paramount, and is crucial if learning from the circumstances of such deaths is to be timely.

### Question:

- Will the Scottish Government take urgent action to review the system of FAls so that it as effective as possible and speed up the process of Fatal Accident Inquiries?

## 6. Rights of the child (arts. 7, 24 and 26)

### Related to Paragraph 25: Age of Criminal Responsibility for Children

In 2019, the Scottish Parliament took a significant step in juvenile justice reform by raising the minimum age of criminal responsibility (MACR) from 8 to 12, aligning with global efforts to protect the rights of children<sup>73</sup>. We emphasise the need for a continued shift towards a more progressive and rights-based framework, and to raise the MACR to at least 14 years old<sup>74</sup>. The evidence and global trends suggest that a MACR of 12 still falls short of international standards<sup>75</sup>. Considering the UN Committee on the Rights of the Child's recommendation of a minimum age of 14<sup>76</sup>, the Scottish Government should further raise the MACR. Children involved in serious and persistent offending often face victimisation and trauma. A higher MACR would reinforce Scotland's commitment to the rights and well-being of its young population<sup>77</sup>.

### Religious observance in schools

Schools are under a statutory duty to provide 'religious observance' to pupils with a focus on Christianity. Parents/carers have a right to withdraw their child, but no progress has been made towards the UN Committee on the Rights of the Child 2016 recommendation to ensure pupils have an equivalent right. Scottish Government states that "religious observance is not compulsory" in light of the parental right to withdraw. This fails to see the situation from the child's viewpoint, whereby religious observance becomes de facto compulsory if they take a different view from their

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<sup>70</sup> Law Society of Scotland (2023), [Bringing FAls under review](#)

<sup>71</sup> Howard League Scotland (2023), [Deaths in Custody](#)

<sup>72</sup> Law Society of Scotland (2023), [Bringing FAls under review](#)

<sup>73</sup> The Scottish Government (2023), [Age of Criminal Responsibility \(Scotland\) Act 2019: learning event 26 January 2023 - key findings](#)

<sup>74</sup> Together (2023), [State of Children's Rights in Scotland](#)

<sup>75</sup> McAra and McVie, The University of Edinburgh (2023), [Raising the minimum age of criminal responsibility: lessons from the Scottish experience](#)

<sup>76</sup> UK Parliament (2020), [Children and Young People in Custody \(Part 1\): Entry into the youth justice system](#)

<sup>77</sup> McAra and McVie, The University of Edinburgh (2022), [Causes and Impact of Offending and Criminal Justice Pathways: Follow-up of the Edinburgh Study Cohort at Age 35](#)

parent/carer. Likewise, a child has no recourse if they wish to engage in religious observance, but their parent/carer has withdrawn them. While the State Report notes Scottish Government is currently examining whether to review the policy, progress has been slow and engagement limited to private meetings with organisations, not children and young people.

**Questions:**

- Will the Scottish Government raise the MACR to at least 14 years old?
- Will the Scottish Government commit to legislative change to ensure children can independently exercise the right to withdraw from, or take part in, religious observance in schools?

**7. Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and counter-terrorism measures (arts. 2, 4, 7, 9, 10, 14 and 19)**

**Deprivation of Liberty for People with Learning Disabilities**

Many people with learning disabilities live in hospitals without clinical necessity in Scotland, leading to mental distress, compromised health, and violations of their right to family life and to liberty, and freedom from inhuman and degrading treatment<sup>78</sup>.

A 2022 investigation revealed a deeply concerning situation for people with learning disabilities and autism in Scotland, who have been confined to secure hospitals and psychiatric wards for prolonged periods, contrary to the government's commitment to community living made 22 years ago<sup>79</sup>. The Freedom of Information requests revealed that 15 people with learning disabilities and autism had been in hospitals for over 20 years, and at least 40 individuals for more than a decade. Additionally, nine people with these conditions are currently held in Carstairs, a high-security psychiatric hospital, despite having no criminal convictions<sup>80</sup>.

**Question:**

- Will the Scottish Government ensure that no person is living in hospital without clinical need?

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<sup>78</sup> NHS Education for Scotland (2016), [Equal Health: An Educational Framework on Health Equalities for People with Learning Disabilities for all practitioners working with people with learning disabilities: a human rights-based approach](#)

<sup>79</sup> BBC News (2022), [The patients locked in secure hospitals for decades](#)

<sup>80</sup> The Scotsman (2022), [15 Scots with learning disabilities and autism in hospital for more than 20 years](#)