

# Scotland's National Action Plan for Human Rights

## Report of Participation Process

July 2013

Abuse access achievable **Actions** aging appeals approach appropriate assessments authorities  
Awareness **Care** carers challenge change **Children** Community Complaints  
Concerns consulting continuity costs councils courts crime culture curriculum decision  
Development Dignity **Disabilities** discussion Education effective engage equality  
Evidence fairness family focus Gaelic **Government** Gypsy/Travellers Health  
**Human** impact important improvement individuals informed inspections  
Internationally **Issues** justice laws learning legally legislative LGBT living local  
Minorities **Needs** opportunity outcomes parents participative **People** police  
Policy poverty powers practice prison problems procedures **process** progress protection  
**Rights** Schools **Scotland**  
Public questions respect  
Services society Victims **Welfare** Women work young people



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# Introduction

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Following a three year research project, the Scottish Human Rights Commission (the Commission) launched its report [\*Getting it Right? Human Rights in Scotland\*](#) on October 30<sup>th</sup> 2012. This report provided an evidence base to support the development of Scotland's first National Action Plan for Human Rights and its launch also marked the start of a five month participation period in which public, private and voluntary bodies, as well as members of the public were asked to reflect on the evidence presented within the report and what should feature in the Action Plan. The participation process ran from 30 October 2012 to 29 March 2013, although every effort has been made to include responses received after that date.

To inform the process of developing Scotland's National Action Plan for Human Rights responses were requested to the two following questions:

**1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights?**

**2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?**

This report presents the key findings from that participation process, beginning with a brief overview of the methods employed, followed by a synopsis of the key messages drawn from the responses. The remainder of the report then presents a summary of the analysis under the following four headings:

- **Laying the foundations for establishing a human rights culture**
- **Dignity, health and care**
- **Our social lives (which includes education and work, where we live, housing and private and family life)**
- **Justice and security**

## Methods of participation

Responses to the two questions outlined above were collected via two main methods. First, through a call for written responses (via email or post) and second, through a range of participation events. This began with a national interaction on 10 December 2012 which brought together over 80 individuals representing a wide range of public, private and third sector organisations. A number of other events were held including: an online webcast to enable people living in remote and rural areas to directly engage and contribute their views, a whole day event with Glasgow Caledonian University, three events at The Gathering 2013 (Scotland's biggest third sector event), a fringe meeting at the Scottish Trade Union Congress and a student-focused event at the University of Edinburgh.

Co-production groups were also established in partnership with a range of civil society organisations. These offer an opportunity for people themselves, particularly those whose rights appear to be often not fully realised, to take part in the development and implementation of Scotland's National Action Plan for Human Rights.<sup>1</sup> During the participation phase co-production groups have been developed in partnership with Article 12 and the Scottish Gypsy /Traveller Law Reform Coalition, the Coalition for Racial Equality and Rights, Glasgow Disability Alliance, Inclusion Scotland and Voices of Experience, the Poverty Truth Commission and the Scottish Consortium for Learning Disability.

## Who participated?

At the conclusion of the participation phase over 430 people had taken part in events which the Commission hosted or supported (including co-production groups) from which 20 response reports were collectively produced and analysed. A further 124 written contributions were received including 64 individual responses and 60 organisational responses.<sup>2</sup> The total number of responses analysed for this report was therefore 144.

A breakdown of which sectors are represented within the responses (where known) is shown in Figure 1 below. As can be seen, the responses collected and analysed represent input from an extensive variety of sectors, backgrounds and experience. The majority of participation events also brought together a wide range of thematic backgrounds with a particular interest in the areas of Dignity, Health and Care, Justice and Security and Our Social Lives.

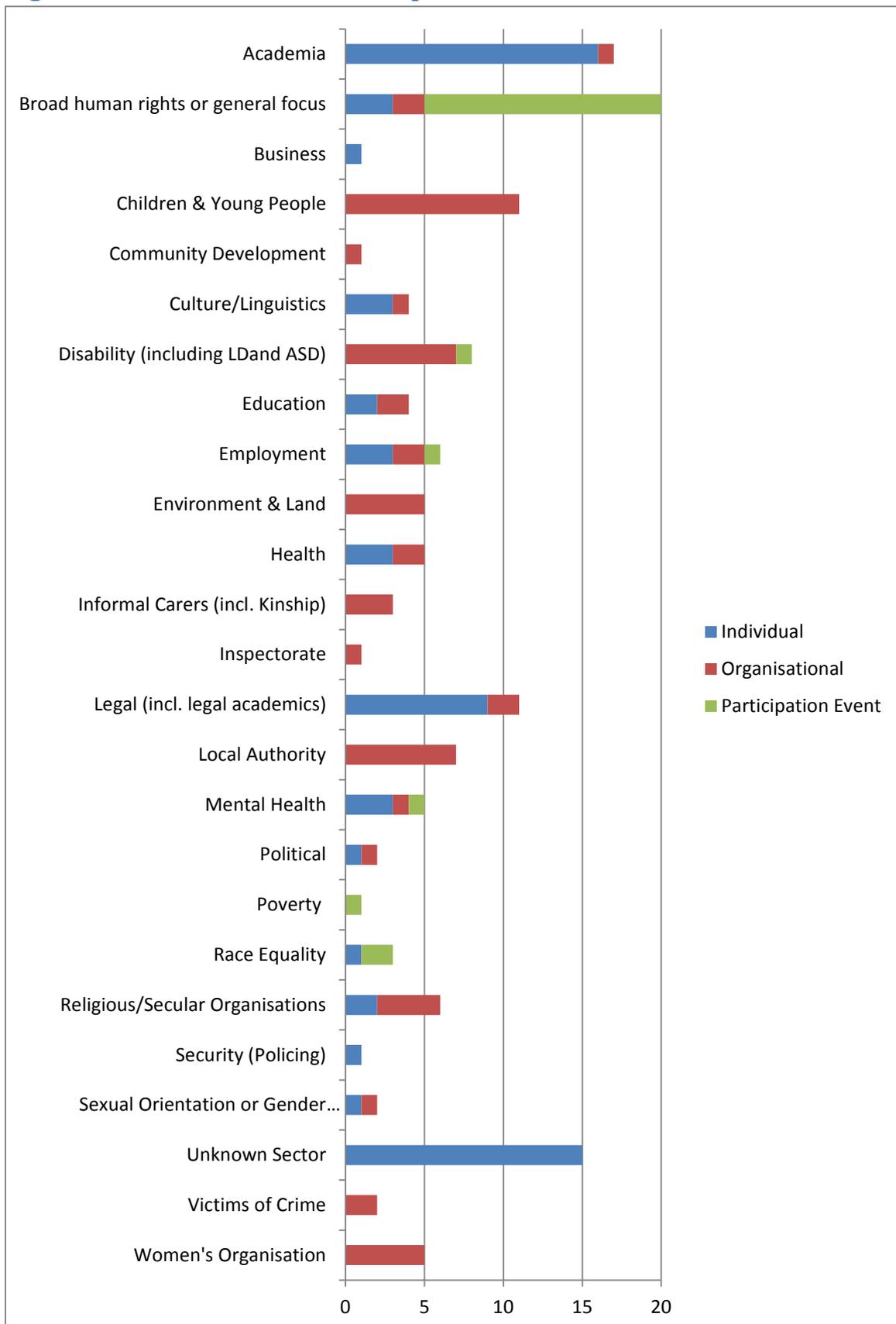
There was a significant level of organisational response from children and young people's organisations, including those concerned with looked after children, kinship children, LGBT young people, children with parent/s in prison as well as those organisations with an overall remit for the welfare and rights of children and young people. There were, however, some noted gaps, for example from policing, health boards, Education Scotland and responses were only received from six Local Authorities. The analysis of who did and did not engage at this stage of the development of Scotland's National Action Plan for Human Rights will inform further engagement.

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<sup>1</sup> These co-production groups will continue to work with the commission to monitor the progress of the various actions and commitments with Scotland's National Action Plan for Human Rights.

<sup>2</sup> Some of the responses from organisations drew on their own consultation and outreach experiences, for example the response from the Scottish Youth Parliament reflected the policy priorities identified in their own consultation that gathered the views of 42,804 young people.

**Figure 1: Breakdown of sector representation**



## Disclaimer

This report presents the views of those who took part in the participation process. These do not necessarily reflect the views of the Scottish Human Rights Commission or any other organisation. Neither the Commission nor any other party to the development of Scotland's National Action Plan for Human Rights takes responsibility for the accuracy of the views presented in this report. The Scottish Human Rights Commission has prepared this report as a faithful reflection of views expressed during the SNAP participation process. The names of all contributors providing consent can be found in Appendix i. All contributions which have provided consent to be published can be found on the Commission's website: <http://www.scottishhumanrights.com/actionplan>

## Key messages

The overwhelming response to the evidence presented in [Getting it Right?](#) was positive. Many of the responses provided a thorough consideration of both questions, highlighting areas of good practice as well as highlighting a range of perceived current gaps in human rights protection and promotion in Scotland. Many of the gaps identified within the submissions were those raised within [Getting it Right?](#) with a number of submissions providing very useful supplementary evidence for consideration. Women's rights organisations in particular did, however, raise issues which they felt should be reconsidered (particularly the gendered nature of violence and discrimination) and reinforced the importance of a gendered analysis of all human rights deficits.

A first round of analysis revealed that there were two levels of focus in the way that most responses approached the two questions. Where some responses focused predominantly on specific issues of a thematic nature, others focused predominantly on overarching issues related to the three pillars of a human rights based approach (HRBA): Empowerment, Ability and Accountability.<sup>3</sup> There was a general consensus that people were not currently empowered to know, promote and protect their own or other people's rights due a general lack of understanding throughout Scotland from the general public to politicians about what human rights actually are (and are not). Within all of the areas of focus expressed within the various responses, Empowerment – the need for people to better understand what rights are and how to exercise them – was raised the most frequently. There appeared to be quite a wide acknowledgement that in order to tackle the many thematic issues and areas of importance discussed both in this report and [Getting it Right?](#), Scotland first needs to 'lay the foundations' for a positive human rights culture. This is explored in more detail in the next section.

There was a further consensus from public authorities as well as the third sector that the best means to developing and nurturing a human rights culture was via the adoption of a HRBA. Examples of existing good practice such as [Care about Rights?](#) and [The State Hospital Human Rights Based Approach](#) were highlighted with a number of respondents suggesting that further examples should be developed and evaluated in order to expand the evidence base and sharing of transferrable lessons. Many public sector responses also expressed interest in exploring how best to translate human rights obligations into improved outcomes via integrated impact assessments.

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<sup>3</sup> The latter overarching focus drew on many of the contextual themes (Political, Economic, Social, Technological, Legal and Environmental) outlined within [Getting it Right?](#)

In relation to the thematic areas of focus within [Getting it Right?](#), there was a great deal of consistency between the evidence presented and the priorities expressed by respondents. Some responses, however, suggested that rather than viewing some of the issues of violence in [Getting it Right?](#) within the chapter of Private and family life and others within Justice and Security, instead, it may be more useful to examine issues related to security of the person within the overarching heading of Justice and Security. A key change, therefore, that this analysis proposes is that the action plan could draw together a range of issues under an overall heading of Violence and Abuse in Scotland. This would, therefore, allow for recognition to be given to the good practice that Scotland has developed in the field of violence against women, whilst at the same time placing a focus on a range of issues including: trafficking, domestic abuse, forced marriage, stalking, hate crime, sectarianism, protection of children, as well as historic abuse.

# Laying the foundations for establishing a human rights culture

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## Introduction

There was a strong consensus throughout the responses that before Scotland can begin to address many of thematic issues raised within [Getting it Right?](#) and this participation process, the foundations to developing a human rights culture must first be laid. These foundations are explored below under the headings of:

**Empowerment:** People must be empowered to understand and claim their rights

**Ability:** Public, private and third sector bodies need to have the ability to put human rights at the centre of their day-to-day practice

**Accountability:** Government and other public authorities must be held accountable to protect, respect and fulfil people's rights.

## Empowerment

### Information, advice and advocacy on equality and human rights

There was a strong consensus that the public as a whole (as well as particular groups such as looked after children, kinship children and care leavers, disabled people, victims of trafficking and mental health services users) require better access to information, advice and advocacy relating to equality and human rights, a need that has been heightened by the current economic crisis. A dramatic rise in those seeking help from the Citizen's Advice service was seen as a reflection of this need.<sup>4</sup>

In addition to access to information on equality and human rights, a large number of responses highlighted that there is a widespread lack of understanding throughout Scottish society as to what human rights are (and are not) and the breadth of areas of our lives within which human rights play a role and can impact on our lived experience. This was particularly noted for economic, social and cultural rights and the rights of children, disabled people, women, migrants and victims of trafficking.<sup>5</sup> A call was made for a range of activities to improve the general and more specific awareness of the full

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<sup>4</sup> Respondents included: CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; The Health and Social Care Alliance; Govan Law Centre; SCCYP; Scottish Woman's Aid; People First (Scotland); LGBT Youth Scotland; Lawyer for the Scottish Green Party; SAMH; Family Fund; Scottish Kinship Carers Alliance; Participation Events (PE): December 10<sup>th</sup> (D10): Big picture; Dignity, Care and Health; Social Lives and Justice and Security; PE: Poverty truth Commission; PE: The Gathering; PE: Glasgow Caledonian University.

<sup>5</sup> Respondents included: SAMH; ENABLE; Govan Law centre; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; The Health and Social Care Alliance; Together; LGBT Youth Scotland; SCCYP; Family Fund; Families Outside; Sense Scotland; Children 1<sup>st</sup>; Children in Scotland; Individual submissions x2; PE:D10 Big picture; Dignity, Care and Health; Social Lives and Justice and Security; PE: Poverty truth Commission; PE: The Gathering; PE: Glasgow Caledonian University.

range of human rights, ensuring that human rights are understood as indivisible, interrelated and interdependent.

There were three main suggestions as to how to facilitate this improvement in knowledge about human rights:

1. Embed education about human rights and equality within the national school curriculum. There was recognition that changing culture takes time and that tackling generational change must involve education provided within schools, with the Curriculum for Excellence seen as an appropriate vehicle for such change.
2. Embed training on human rights and equality within professional curricula and continued professional development. This was raised in particular with reference to comprehensive human rights training for all public sector workers, including amongst others: politicians, police, health care workers, teachers, inspectorate staff, social workers and care workers. Many felt that training needed to focus on the relation between equality and human rights and should be made relevant to everyday situations to have the largest impact.<sup>6</sup>
3. Public campaigns about human rights (connected to the issue of addressing stigma – see below).

Many concrete examples were given of the impact of the lack of awareness of rights. One example was the belief among people with learning disabilities that they were at an increased risk of their children being taken into care as a result of social workers not appreciating how to support parents with a learning disability. Providing stronger good practice guidance and training to support parents with learning disabilities was suggested for midwives and health visitors as a means by which the rights of parents with learning disability could be better respected and promoted.

Improvement of condition specific professional training that could indirectly impact was also raised in relation to those working with people with Autistic Spectrum Disorders (especially teachers, psychiatrists and legal professionals), trafficked children (police, social work, emergency care workers), people with learning disabilities (health workers, police, inspectorate staff, teachers, legal professionals), delayed impact of drug-use on babies (educational and health professionals), children whose parent/s are imprisoned (teachers), people facing eviction (police).<sup>7</sup>

Finally in relation to accessing information about human rights, the issue of accessibility of information was raised by a number of respondents.<sup>8</sup> There was a general agreement with [Getting it Right?](#) that whilst technological development has enabled improved access to information for many, this

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<sup>6</sup> Respondents relating to education in schools and professional education included: SAMH; STUC; ENABLE; Sense Scotland; Govan Law Centre; Together; LGBT Youth Scotland; Autism Rights; SCCYP; Family Fund; People First (Scotland); CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Children 1<sup>st</sup>; Children in Scotland; Individuals x 2; PE:D10 Dignity, Care and Health; PE: Poverty truth Commission; PE: The Gathering; PE: Glasgow Caledonian University.

<sup>7</sup> Respondents included: Autism Rights; SCCYP; Family Fund; People First (Scotland); Govan Law Centre; ENABLE; Children 1<sup>st</sup>; Scottish Kinship Carers Alliance; PE: Poverty Truth Commission.

<sup>8</sup> Respondents included: LGBT Youth Scotland; SCCYP; Scottish Parliament's cross party group on chronic pain; Family Fund; Scottish Council on Deafness; Scottish Women's Aid; People First (Scotland); Victim Support Scotland; Glasgow Caledonian MSc Students; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Scottish Kinship Carer' Alliance; Humanist Society Scotland; The Health and Social Care Alliance; Scottish youth Parliament; Sense Scotland; Autism Rights; Aberdeen City Council; ENABLE; Lawyer for Scottish green Party; Individuals x 4; Organisation name redacted X 1; PE:D10 Social Lives; Big Picture; PE: The Gathering; PE: Glasgow Caledonian University.

advancement had also created a digital divide. Some respondents felt that an overreliance on internet access (especially for access to jobs and benefits) and a reduction in information and resources available in print had in fact resulted in a rollback of accessibility of information at central and local government level particularly in rural areas, where the speed at which broadband access is available falls significantly short of that in urban areas.

There was a strong feeling that access to information (in plain English and in a variety of accessible formats) was an important right:

*Scotland leads the world in some of its innovative practice in accessible formats and yet the implementation is at best fragmented. In our view, the public sector reform agenda must incorporate statutory and contractual expectations that drive up the delivery of information in accessible formats. This should be reported on within the Public Sector Duties both general and specific.<sup>9</sup>*

## Addressing stigma and social attitudes

In relation to stigma, discrimination and social attitudes, two distinct but related issues were raised, namely, the impact of negative attitudes relating to human rights and the negative attitudes towards specific people based on aspects of their identity or status and how that impacts on their human rights. Tackling first the issue of stigma and negative attitudes towards human rights, whilst participants felt there was generally a more mature discussion about and approach to human rights in Scotland compared to the very 'toxic' portrayal of human rights in England, respondents felt that there is nevertheless a great deal of work to be done to improve the public image of human rights in Scotland. This in part, it is believed, will come through the education routes described above, however, there was a consensus that negative media coverage needed to be challenged effectively. Essentially human rights was seen to need better 'branding' with more positive media stories to illustrate the meaning of human rights and how they can impact positively on people's lives. This, respondents suggested, could help to make human rights 'real' to the public whilst encouraging public perceptions to move from a blame culture and a culture of 'othering' to one that takes responsibility for creating positive change.<sup>10</sup> People First (Scotland) also suggest using high profile anti-stigma campaigns to tackle social attitudes (in their submission with reference to people with learning disabilities) and they suggest looking to the experiences of successful anti-stigma campaigns such as the mental health *See Me* campaign.

A large number of responses agreed with the reality described in [Getting it Right?](#) of the existence of many negative and discriminatory social attitudes in Scotland society towards a large number of marginalised groups, which could directly and indirectly impact on their human rights, including: children of prisoners, ethnic minorities, migrants, immigrants, refugees, asylum seekers, kinship children, LGBTI<sup>11</sup> people, looked after children and young people, disabled people including those with learning disabilities, people with mental health problems and psychiatric patients,<sup>12</sup> Scottish and Roma

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<sup>9</sup> Sense Scotland.

<sup>10</sup> Respondents included: The Health and Social Care Alliance; Individuals x 2; Organisation name redacted x 1; PE: D10 Big Picture, Justice and Security, Social Lives; PE: Inclusion Scotland, Voices of Experience and Glasgow Disability Alliance; PE: Glasgow Caledonian University; PE: CRER; PE: Webcast; PE: the Gathering; PE: D10 Social Lives.

<sup>11</sup> Lesbian, Gay, Bisexual, Transgender and Intersex.

<sup>12</sup> Three individual submissions also presented passionate cases about the impact that mental health stigma has and the resulting discrimination across a range of areas of life that this impacts upon. The impact of mental health

Gypsy/Travellers, speakers of Gaelic and Scots language, recipients of welfare benefits, as well as negative attitudes, harassment and bullying derived from discrimination on the basis of age, gender, religion, socio-economic status, sexual orientation and gender identity.<sup>13</sup> The issue of intersectionality was also raised – whereby many of those suffering from discrimination and harassment did so from a number of perspectives, i.e. because they were female, from a minority ethnic group and disabled. This raised a question as to whether exploring these social attitudes through a lens of human rights could be a better way of addressing negative social attitudes, rather than exploring them in silos.

As was found within [Getting it Right?](#), many felt that the media, politicians and public officials needed to take the lead in tackling social attitudes, especially when those discriminatory attitudes were perceived to emanate from and be perpetuated by those in positions of responsibility.

## Participation rights

Effective and meaningful participation was perceived by a wide range of respondents as critical to securing and advancing people’s human rights.<sup>14</sup>

*‘more could be done to involve people in decision-making processes and directly involve them in the design and implementation of human rights based policies, plans, laws and services’.*<sup>15</sup>

*‘meaningful community engagement, to provide the most vulnerable members of society with the opportunity to shape policies that affect them’.*<sup>16</sup>

There was a general consensus that public authorities and government do not yet deliver what is desired or needed by way of inclusive participative processes. Many described experiences of ‘reference groups’ which were ‘hand-picked’ by service providers effectively excluding those perceived to be ‘difficult’ because they challenged the status quo. Others described how their client groups were excluded from decisions affecting their lives as there were seen to be no resources to offer choices:

*‘The ‘Where we live’ theme is clearly illustrated by the difficulties local authorities are having in implementing commissioning decisions based on inclusion and involvement. We have experience in a number of areas of people being placed with others in permanent accommodation without any possibility of refusing. They are faced with Hobson’s choice of ‘this or nothing’. We believe*

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stigma was raised within [Getting it Right?](#), however, these submissions add that the impact of psychiatric labels can have a very long term impact.

<sup>13</sup> Respondents included: Individual responses x 11; Organisation name redacted x 2; The Health and Social Care Alliance; Glasgow Caledonian University MSc students: LGBT youth Scotland; Scottish Women’s Aid; People First (Scotland); CLEICIS; NSPCC; Humanist Society Scotland; Families Outside; YWCA Scotland; Scottish youth Parliament; Aberdeen City Council; SCCYP; PE: Inclusion Scotland, Voices of Experience and Glasgow Disability Alliance; PE: CRER; PE: Webcast; PE: the Gathering.

<sup>14</sup> Respondents included: Inverclyde Council; SCCYP; Together; SAMH; Family Fund; Scottish Council on Deafness; West Dunbartonshire Council; People First (Scotland); CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Families Outside; YWCA Scotland; The Health and Social care Alliance; Scottish Young Parliament; Sense Scotland; Autism Rights; Aberdeen City Council; ENABLE; STUC; Action Scotland Against Stalking; Glasgow Caledonian MSC Students; LGBT Youth Scotland; Scottish Parliament’s cross party group on chronic pain; Intlife; Scottish Women’s Aid Friends of the Earth Scotland and the Environmental Law Centre Scotland; Children 1<sup>st</sup>; Children in Scotland; PE:D10 Big Picture; Dignity, Care and health; Justice and Security; PE: The Gathering; PE: Glasgow Caledonian University; PE: Poverty truth Commission; Individuals x 7.

<sup>15</sup> SAMH Submission.

<sup>16</sup> Aberdeen City Council Submission.

*that this practice would not be considered acceptable for non-disabled people, although we recognise there is some shifting towards this for young single people as a result of Welfare Reform measures. A comparison would be turning up to a holiday house, to find someone else you don't know will also be staying there, because the owner 'thinks you'll get on well together'. Only the consequences are far worse – disabled people will potentially be placed with people they don't know, and have had no chance to get to know, for 24 hours a day - possibly for the rest of their lives. Scotland can take the opportunity of this action plan, the SDS and Procurement Reform Bills to show the way to agencies which are making decisions such as this'.<sup>17</sup>*

LGBT Youth Scotland and Sense Scotland both provided examples of current practice which they believe may act as useful models for improving inclusive participation (e.g. LGBT Charter of Rights and SenseScotland Partners in Communication Programme).

### **Democratic participation**

*Scotland's National Action Plan for human rights must recognise that human rights cannot be achieved without a representative government and an active and empowered civic society.<sup>18</sup>*

A number of submissions discussed issues related to democratic participation with a particular focus on the right to vote for young people and prisoners as well as how to decrease and reverse the lack of engagement of voters in all electoral processes.<sup>19</sup> For example in the last local election in Glasgow 2012, the turn out rate was 31.6 per cent with areas including Drumchapel and Possil registering less than 20 per cent participation. The many barriers to participation that exist in public life from an equalities (especially highlighted was gender) perspective were also raised.<sup>20</sup>

### **Linguistic rights**

A final issue raised in relation to empowerment was that of linguistic rights. As was raised by [Getting it Right?](#), a number of responses agreed that the lack of access to English language courses for migrants was impacting on their ability to fulfil their rights such as the rights to education and work.<sup>21</sup> Some responses called for more resources, services and support to build capacity in the skill to teach English as a foreign language.

A small number of submissions also highlighted a gap in [Getting it Right?](#) which related to discussing the lack of adequate protection for linguistic minorities in Scotland, including the rights of Gaelic and Scots speakers.<sup>22</sup>

Whilst acknowledging efforts that have been made (for example by BBC Alba and Glasgow City Council's progressive policies in relation to Gaelic-Medium education), concerns were raised about the future of minority languages in Scotland. For example, responses cited a reduction in active Gaelic speakers from 250,000 in 1871 (5 per cent of population) to fewer than 60,000 at the 2001 census (1.15 per cent of the

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<sup>17</sup> Sense Scotland submission.

<sup>18</sup> Scottish Community Development Network Submission.

<sup>19</sup> Respondents included: Individual x 2; SCCYP; Together; Children 1<sup>st</sup>, Children in Scotland; Scottish Youth Parliament; Scottish Community Development Network; Glasgow University school liaison Group.

<sup>20</sup> Respondents included: STUC; Engender; PE: Glasgow Caledonian University.

<sup>21</sup> Respondents included: Individual responses x 2; PE: CRER; PE: Glasgow Caledonian University; Glasgow Caledonian University MSC students.

<sup>22</sup> Respondents included: Individual responses x 3; Organisation name redacted x 1; PE: Webcast.

population). Language was considered to be inextricably linked to cultural self-esteem and economic development and it was noted that Scots and Gaelic:

*are languages that are native to Scotland [and] we have an additional moral obligation to protect and preserve the languages and the rights of those who speak them.*<sup>23</sup>

## Ability

### Human rights based approach, impact assessments and public sector reform

Responses from Local Authorities and Inspectorates and a number of individuals working within housing, health and social care settings were keen to explore how best to translate human rights obligations into improved outcomes in the everyday lives of people living in Scotland. There was a keen interest to explore how this could be done by adopting a HRBA in a number of settings using existing examples of good practice such as [Care about Rights?](#), [The State Hospital Human Rights Based Approach](#) and the [Seven Towers Residents Group in Northern Ireland](#), with a wide appreciation amongst organisations for the positive impact that could be brought about by taking a such an approach.<sup>24</sup>

*Human rights based approaches to policy measures are crucial. Effective assessment of policy measures for their human rights impact, as well as budget reviews from a human rights perspective, seem to be important tools in order to achieve better human rights implementation in Scotland. We want to establish structures where human rights are taken into account right from the beginning and are the top priority for all policy makers. It will be helpful if such approaches are promoted as the preferable option for policy makers in the Action Plan for Scotland.*<sup>25</sup>

There was some acknowledgement that a new approach was required which recognised the synergy between the values and goals of the Christie Commission's report on Public Service reform and a HRBA. Many wished to see public service reform emphasise greater transparency and accountability of public organisations with a focus on prevention (of human rights abuses) rather than a cure.<sup>26</sup>

There was also a keen interest to explore how: the procurement system could be used to raise standards,<sup>27</sup> human rights budgeting could improve the best available use and fairest distribution of

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<sup>23</sup> Michael Dempster - INV-054.

<sup>24</sup> Respondents included: STUC; SAMH; Inverclyde Council; Glasgow Caledonian University MSC students; Scottish Vulnerable Workers forum; Together; Children in Scotland; Children 1<sup>st</sup>; LGBT Youth Scotland; SCCYP; CLEICIS; Scottish Council on Deafness; Scottish Lands and Estates; Scottish Women's Aid; West Dunbartonshire council; People First (Scotland); Victim Support Scotland; NSPCC; the Care Inspectorate; Save the Children UK; Families Outside; The Health and Social Care Alliance; Scottish Youth Parliament; Govan Law centre; Scottish Community Development Network; ENABLE; Individual responses x 10; Organisation name redacted x 1; PE: D10 Big Picture; Dignity, Care and Health; Justice and Security, Social Lives; PE: Inclusion Scotland, Voices of Experience and Glasgow Disability Alliance; PE: CRER; PE: Webcast; PE: the Gathering.

<sup>25</sup> Lawyer for the Scottish green Party submission.

<sup>26</sup> Respondents included: West Dunbartonshire Council; Aberdeen City Council; People First (Scotland); CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; NSPCC; the Care Inspectorate; The Health and Social Care Alliance; Govan Law Centre; Sense Scotland; Scottish Community Development Network; STUC; SAMH; Individual responses x 2; PE: D10 Dignity, Care and health.

<sup>27</sup> Respondents included: Sense Scotland; North Lanarkshire Council; Scottish vulnerable Workers Forum; Scottish youth Parliament; STUC; SAMH; Individual response x 1; PE: D10 Big Picture

resources<sup>28</sup> and the role that human rights based service standards for Inspectorates could play in raising standards in public services.<sup>29</sup> The Care Inspectorate for example, believes that care services in Scotland would benefit from the development and publication of a full set of human rights based National Care Standards.

There was also considerable interest expressed in developing human rights based impact assessments. It was felt that these should be integrated with existing assessments rather than duplicating efforts (such as impact assessments for equality, children's rights, environmental, health inequalities etc.) It was further noted that this alone was not enough and that outcomes should be open to being effectively challenged. Many wished to see impact assessments undertaken during policy and law formation (ex ante) as well as post-implementation (ex post) to help ensure decision makers take human rights into account in making decisions and monitor the actual human rights impact in practice.<sup>30</sup>

### Local and national strategies

Finally, there was some interest expressed in developing a range of local and national strategies to facilitate the ability of organisations to put human rights at the centre of their day-to-day practice.

Concerns were expressed about how Scottish businesses respect human rights when they operate both at home and abroad. There was some support for businesses to be encouraged to design and implement human rights cultures within their policy and practice. Specific concern was noted about banking practices in the UK, especially given that a number are currently publicly owned and the question was asked as to whether they should, therefore, be required to undergo equality and human rights impact assessments? The issue of who makes the decisions in private business (as well as public bodies) was also raised with particular concern regarding the lack of women in decision making roles.<sup>31</sup>

The issue of poverty and human rights is explored in more depth in relation to the thematic section on Social Lives, however, poverty is recognised within a number of submissions to be both a cause and a consequence of human rights violations. The impact on health, standard of living, education and so on is great and as SYTCP notes in their submission:

*Child poverty is described as a particularly pernicious infringement of children's human rights as it is capable of undermining the realisation of every other right they hold.*

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<sup>28</sup> Respondents included: Glasgow Caledonian University MSc students; West Dunbartonshire Council; Sense Scotland; the Care Inspectorate; STUC; Lawyer for the Scottish green Party; Individual responses x 2; PE: D10 Big Picture, Dignity, Care and health; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: Webcast; PE: CRER; PE: Glasgow Caledonian University.

<sup>29</sup> Respondents included: The Care Inspectorate; People First (Scotland); CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Autism Rights; SAMH; PE: Glasgow Caledonian University.

<sup>30</sup> Respondents included: Scottish Borders Council; Inverclyde Council; Glasgow Caledonian University MSc students; Together; LGBT Youth Scotland; SCCYP; West Dunbartonshire Council; the Care Inspectorate; People First (Scotland); NSPCC; Humanist Society Scotland; The Health and Social Care Alliance; Sense Scotland; Aberdeen City Council; Children 1<sup>st</sup>; Children in Scotland; Organisation name redacted x 1; Individual Responses x 5; PE: CRER; PE: Glasgow Caledonian University; PE: D10 Big Picture, Dignity, Care and Health, Justice and Security, Social Lives; PE: Webcast

<sup>31</sup> Respondents included: Glasgow Caledonian University MSc students; Individual Submissions x 5; PE: D10 Big Picture.

Engender also pointed to a clear link between child poverty and women's poverty.<sup>32</sup>

As such, there is some appetite to explore what a HRBA to poverty prevention may look like. Some participants who attended the event on 10 December 2012 noted that Glasgow City Council are in the process of developing a HRBA to its anti-poverty strategy and therefore, this may offer a learning opportunity for other local authorities if it were to be evaluated with a view to broader application.<sup>33</sup>

The issue of climate justice and human rights is also raised later in this report, in relation to the thematic areas of Social Lives and Justice and Security, however, as with the example of poverty, there was an appetite to capitalise on the current commitments that have been made by the Scottish Government in relation to climate change and encourage the Scottish Government to pursue a HRBA to climate justice. Although the Scottish Government is making a variety of internationally recognised and welcomed commitments to both mitigation and adaptation strategies, concern was raised in some submissions about the development of practices such as "fracking" that are seen to have short financial gain but long term negative environmental impact. There was also concern expressed that affected communities are not currently 'at the table' in relation to meaningful participation, or adequately compensated. The need for further financial incentives for alternative renewables was also raised.<sup>34</sup>

## Accountability

Accountability of those responsible for the fulfilment of human rights is the final necessary foundation to help create and develop a human rights culture in Scotland. The following section outlines the key ways in which respondents felt that the government and public authorities could be held accountable in relation to the promotion, protection and fulfilment of human rights in Scotland.

## Ratification and incorporation

Ratification without reservations and incorporation of international treaties into domestic law, as the Commission previously raised in [Getting it Right?](#) and at many of the SNAP participation events, is a key step in holding government and public bodies to account with regard to human rights. Concern was raised by some respondents with regard to the negative comments and reporting on the Human Rights Act and the European Convention for Human Rights including from leading members of the UK Government.<sup>35</sup>

There was general consensus at many of the participation events of a need for Scotland's National Action Plan for Human Rights to encourage the UK and Scottish Governments to recommit to the Human Rights Act and that the UK government ratify individual complaints mechanisms, the lack of which are highlighted as a deficit to accessing justice:

*If these steps are not taken the ratification of the treaties appears to be mere symbolism without any deeper commitment. To properly bring the rights into effect, incorporation and remedial*

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<sup>32</sup> Engender submission.

<sup>33</sup> Respondents included: PE: D10 Big Picture.

<sup>34</sup> Respondents included: Aid Friends of the Earth Scotland and the Environmental Law Centre Scotland; PE: D10 Big Picture, Social Lives; PE: Webcast; PE: Glasgow Caledonian University; Individual responses x 2.

<sup>35</sup> Respondents included: Together; SCCYP; NSPCC; Save the Children UK; Children 1<sup>st</sup>, Children in Scotland; Lawyer for the Scottish Green Party; Humanist Society Scotland; PE: D10 Big Picture, PE: Webcast; PE: CRER; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; Individual responses x 2.

*structures are necessary. The Individual Complaints mechanisms have to be regarded as an additional opportunity for access to justice and empowerment of the people affected by human rights violations. Within a democratic society such structures are crucial to stimulate long-term awareness and possibilities for change.*<sup>36</sup>

There was also a call to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and for the further incorporation of all international treaties into domestic law. This was raised particularly by children's rights groups in relation to UNCRC,<sup>37</sup> and also in relation to economic, social and cultural rights which many expressed as especially important during these times of austerity. Disabled people's organisations raised the need to incorporate the UN Convention on Rights of Persons with Disabilities. Some responses noted that economic, social and cultural rights should be given legal status in order that they are prioritised when decisions are being made in relation to public spending. A number of responses sought for all international human rights treaties to be incorporated into the post-referendum constitutional framework of Scotland (irrespective of the outcome of the referendum).<sup>38</sup>

### **Legislative review for human rights compliance**

A number of individual and organisational responses raised the desire for a process of legislative review (many on specific targeted areas of legislation) to ensure that current legislation was indeed compliant with human rights obligations including the Human Rights Act.<sup>39</sup> The areas that were raised included corporal punishment of children, equality and protection for intersex people, various aspects of mental health legislation, criminal law and procedure, fair pay, refugee rights, stop and search, planning, autonomy and legal capacity, victims' rights and looked after children.

### **Improving Scottish parliamentary processes**

[Getting it Right?](#) raised some options for further strengthening how the parliament takes human rights into account in its processes. A number of respondents noted a desire to see a deeper scrutiny of human rights compliance during the stage of policy and laws formation as well as post-legislative

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<sup>36</sup> Submission from a Scottish Green Party Lawyer.

<sup>37</sup> Respondents included: Together; SCCYP; NSPCC; Save the Children UK; Children 1<sup>st</sup>, Children in Scotland; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering, LGBT Youth Scotland; YWCA Scotland.

<sup>38</sup> Respondents included: Together; SCCYP; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; NSPCC Scotland; STUC; SAMH; YWCA Scotland; LGBT Youth Scotland; Children in Scotland; Children 1<sup>st</sup>; Lawyer for the Scottish Green Party; The Health and Social Care Alliance; Sense Scotland; ENABLE; Individual Responses x6; PE: D10 Big Picture, PE: Webcast; PE: CRER; PE: Glasgow Caledonian University.

<sup>39</sup> It is important to acknowledge that where submissions expressed dissatisfaction with aspects of certain laws, especially in relation to compliance with human rights legislation, these are the opinions of the authors of the submissions. Issues raised by respondents included: Individuals x 13; Together; SCCYP; Scottish Lands and Estates; People First (Scotland); Victim Support Scotland; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Scottish Kinship Care Alliance; NSPCC Scotland; Humanist Society Scotland; The Health and Social Care Alliance; Scottish Youth Parliament; Govan Law Centre; Sense Scotland; Autism Rights; COPFS; STUC; Children 1<sup>st</sup>; Children in Scotland; PE: Glasgow Caledonian University; PE: Dec10 Dignity, Care and Health, Big Picture.

scrutiny. Having a specialist parliamentary committee with a specific remit to discuss human rights and ensure compliance was also suggested.<sup>40</sup>

## **Integrate equality and human rights consistently into SOAs**

There was both recognition and support for the proposal raised in [Getting it Right?](#) regarding Single Outcome Agreements as is noted below:

*Local authorities play a key role in ensuring that human rights legislation influences people in their communities in their daily lives, particularly in the context of housing, education and social care. Aberdeenshire Council agrees with the recommendation in the [Getting it Right?](#) Report that all Single Outcome Agreements should be linked to human rights.<sup>41</sup>*

## **Measuring outcomes**

Ensuring effective accountability of the realisation of human rights requires the development of a range of outcome indicators against which to measure progress. Currently in Scotland there are a number of outcome indicators that have been developed such as those aimed at measuring progress within the National Performance Framework and Equality outcomes. A number of responses focused on the value of exploring existing frameworks and monitoring mechanisms for synergy and for Scotland's National Action Plan for Human Rights to pursue a strategy of integration of equality and human rights indicators.<sup>42</sup> Others felt that there was a need for the development of new and improved standards against which to measure progress – for example, one response suggested that there was a lack of service standards specific to people with Autistic Spectrum Disorders.<sup>43</sup>

The effective monitoring of human rights outcomes requires access to a range of disaggregated data. A number of respondents highlighted that in Scotland, access to a range of data is often difficult before considering the existence of disaggregated data (which is made more difficult in part due to the often small sample sizes). Many organisations called for better data and the availability of more data in order to monitor compliance and progress.

For example it was reported that prior to the merger of Scotland's Police Forces - stop and search data had only been accessible through requests to each individual force. It was felt that this data should be routinely collected, analysed and published centrally by for example the Scottish Analytical Services (something that the new Scottish Police Authority could consider).

Other areas where respondents reported a deficit of data included:

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<sup>40</sup> Respondents included: Scottish Parliament's cross party group on chronic pain; West Dunbartonshire Council; Aberdeen City Council; SAMH; Inverclyde Council; Lawyer for the Scottish green Party; Individual responses x 2; PE: D10 Big Picture, Dignity Care and Health; PE: Glasgow Caledonian University.

<sup>41</sup> Aberdeen City Council Submission. Also supported by West Dunbartonshire Council; SAMH; PE: D10 Big Picture; PE: Glasgow Caledonian University.

<sup>42</sup> Respondents included: Together; LGBT Youth Scotland; Scottish Council on Deafness; People First (Scotland); CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Scottish Women's Aid; SAMH; Children in Scotland; Children 1<sup>st</sup>; Individual response x 1; PE: Glasgow

<sup>43</sup> Autism Rights Submission.

1. Looked after children and those leaving care, for example, a lack of data on the number of deaths amongst looked after children on leaving care, and about the experience of pregnancy amongst looked after children and young people or care leavers in Scotland.<sup>44</sup>
2. The number of people with ASD within the mental health system, the proportion who are prescribed psychotropic drugs and the number who die whilst receiving compulsory treatment within the mental health system.<sup>45</sup>

### **Whistle-blowing and effective complaints mechanisms**

The issue of the need for improved mechanisms by which complaints can be made about public services, both by service users and staff was raised within [Getting it Right?](#) A small number of organisations further highlighted that there is a need for more robust and independent complaints procedures than exist at present. Criticism arises from the fact that many complaints are handled by the very bodies against which the complaints are being made.<sup>46</sup>

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<sup>44</sup> CELCIS, CI@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering Submission.

<sup>45</sup> Autism Rights Submission.

<sup>46</sup> Respondents included: People First (Scotland); Autism Rights; Scottish Parliament's cross party group on chronic pain; PE: Scottish Gypsy/Travellers.

# Thematic Areas

## Introduction

This section of the report focuses on three thematic areas, namely: Dignity, Health and Care, Social Lives and Justice and Security. These three groupings (covering the eight themes in [Getting it Right?](#)) were utilised at the various participation events run or supported by the Commission between December 10<sup>th</sup> and early April 2013. As a result of this participative consultation, where the various topics have been housed has been slightly reorganised (as noted earlier in the report), in particular in relation to violence and abuse. Under each thematic priority, three subheadings are used to explore: existing good practice, current opportunities to capitalise on, and where respondents felt that there were problems with or deficits within existing practice that negatively impact on the lives of people living in Scotland.

## Dignity, health and care

### Spreading good practice

Many responses recognised the positive evaluations of both [Care about Rights?](#) and [The State Hospital Human Rights Based Approach](#), leading to the conclusion that these two examples of good practice should be used as a basis for further development and evaluation of HRBAs in other settings. The participation event on Dignity, Health and Care on December 10<sup>th</sup> 2012 identified a number of synergies between a HRBA and the principles of the Christie Commission, “asset-based approach” promoted by the Chief Medical Officer and the “recovery model” in mental health. Many at this event supported the idea of a whole-system approach to embed human rights within policy and practice throughout health and social care. This was further supported by the submission from the Health and Social Care Alliance. Together (formerly known as the Scottish Alliance for Children’s Rights), also supported extending [Care about Rights?](#) to include a focus on children and young people within the care system.

One individual respondent however expressed disappointment with the successive administrations in Scotland which have not explicitly framed health strategies in the terms of human rights, giving the example of HIV and sexual health strategies.<sup>47</sup>

People First (Scotland)<sup>48</sup> and SenseScotland<sup>49</sup> present examples of good practice in relation to accessible information, highlighting the importance of developing this work in relation to the provision of health services.

The Dementia Charter of Rights was raised as an example of good practice of human rights promotion within the field of health and social care in [Getting it Right?](#) The Health and Social Care Alliance and those who attended the participation event on Dignity, Health and Care on December 10<sup>th</sup> 2012 felt that this was an example of good practice that others could take forward.

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<sup>47</sup> Individual submission: Roy Kilpatrick INV-025.

<sup>48</sup> Easy-read accessible information development.

<sup>49</sup> Partners in Communication Programme.

## Capitalising on opportunities

A number of responses highlighted that current developments within the health and social care field afforded some unique opportunities to embed human rights within the working culture of this field. Participants at the event on Dignity, Health and Care on December 10<sup>th</sup> 2012 felt that a number of opportunities currently existed to advance human rights in practice including: the review of National Care Standards which could explicitly reference human rights, the opportunity to take a HRBA to the legislation and implementation of the health and social care integration, and the opportunity to take a HRBA to patient-centred care.

## Priority areas of concern

### Portability of care

A number of respondents expressed agreement with the concern raised within [Getting it Right?](#) about the problems faced by many people in porting their care package between local authorities. Being unable to port a care package can have a negative impact on one's freedom of movement and ability to access a number of economic, social and cultural rights including the right to work or education. People want to see a simple process for transferring care packages without costs incurred. It was noted by some that some local authorities charge for certain care services whilst others do not and therefore a move could incur additional costs which may prohibit a move.<sup>50</sup>

### Health inequalities

A number of responses and participants on 10 December 2012 agreed with the evidence in [Getting it Right?](#) that there is a priority need to address the issue of disparities in health outcomes between different sections of the population as this impacts on (and is impacted by) many other rights including the right to life, work, education and so on. Health inequalities linked to gender, rural living, socio-economic status, ethnicity, disability and living in care (especially looked after children and young people) were all highlighted by respondents and there was further recognition that inequalities in health can start at an early age and have a life-long cumulative impact. As such the importance of focusing on early years as a cycle breaking point was seen as critical.<sup>51</sup> With regard to health outcomes of looked after children, CELCIS<sup>52</sup> also note the collective responsibility to monitor and evaluate effective corporate parenting strategies.

The role that discrimination plays in health inequalities was also raised as a dynamic that needs to be better understood and recognised. For example, the impact of racism plays in preventing members from minority ethnic groups (including Scottish Gypsy/Travellers ) accessing health care services, including a lack of understanding as to what may or may not be culturally appropriate services.

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<sup>50</sup> Respondents included: People First (Scotland); The Health and Social Care Alliance; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: D10 Dignity, Care and Health.

<sup>51</sup> Respondents included: Aberdeen City Council; YWCA Scotland; Name redacted Local Council; Sense Scotland; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; NSPCC; Lawyer for the Scottish Green Party; PE: CRER; PE: Scottish Gypsy/Travellers; PE: D10 Dignity, Care and Health; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>52</sup> The submission from CELCIS followed a roundtable and also includes the views of Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum; Includem; The fostering network; British Adoption and Fostering.

Discriminatory attitudes of health workers towards LGBTI people was also raised as a barrier to health services which also impacted on mental well-being.<sup>53</sup>

Respondents representing people with learning disabilities further highlighted the need for better staff training to include people with learning disabilities in consultations and to support them to make decisions about their health. Moreover, participation in health decisions was seen as a key method to reduce health inequalities.<sup>54</sup>

### Mental health

A number of concerns were raised about mental health care and treatment, including:

- The use, nature and extent of compulsory treatment.
- The process of tribunal, appeal, review and the existence of appropriate safeguards to unlawful detention.
- The continued use of Electroconvulsive Therapy (given WHO (2005) recommendations regarding non-use and Article 3 of the Human Rights Act).
- The definition of people with a learning disability or Autistic Spectrum Disorder as having a ‘Mental Disorder’<sup>55</sup>, including that people with a learning disability and ASD are currently diagnosed as having a ‘mental disorder’ irrespective of whether they have a mental health problem.
- The lack of statistics currently collected on people with ASD within the mental health system.
- The need for formal investigations in the event of deaths of mental health patients: where prisoners die in custody this will automatically trigger a Fatal Accident Inquiry—this is not the case for mental health patients – this has implications given the often life-limiting impact of psychiatric drugs on patients with ASD.

In addition, concern was raised by Autism Rights about the disproportionate number of people with learning disabilities in mental health institutions and their longer than average stay. It was felt that more could be done to monitor the situation of people with ASD who are currently being treated under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Concern regarding forced treatment (of psychiatric patients) was raised in a small number of responses. The concept of treatment as a dignified choice is one that some felt was frequently violated.<sup>56</sup> Autism Rights further note that drugs used in psychiatric care can be “toxic” to people with ASD, and cited the importance of upholding international diagnostic guidelines for people with ASD.

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<sup>53</sup> Respondents included: LGBT Youth Scotland; People First (Scotland); PE: CRER; PE: Scottish Gypsy/Travellers; PE: D10 Social Lives.

<sup>54</sup> Respondents included: LGBT Youth Scotland; People First (Scotland).

<sup>55</sup> Restrictions and detention applied to people with a ‘mental disorder’ until the person ‘recovers’ or treatment has been deemed effective. There is no ‘recovery’ from a learning disability or Autistic Spectrum Disorder and therefore detention on grounds of a learning disability or ASD is effectively a lifelong sentence.

<sup>56</sup> Respondents included: Autism Rights; Individual Submissions x 3; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: Glasgow Caledonian University.

## **Mental health needs of children and young people**

The mental health of children and young people was raised as an area of concern within [Getting it Right?](#), however, a range of additional issues were raised in relation to looked after children and very young children. CELCIS highlighted that currently the mental health needs of looked after children and young people and care leavers is inadequate with an urgent need for national guidelines and monitoring of provision across different health boards. They consider that previous commitments regarding looked after children have not been fulfilled.<sup>57</sup> They highlight that looked after children are four times more likely to need specialist intervention than the general population (e.g. psychotherapy) and many face similar problems in relation to the portability of their mental health care if they move health boards as a result of a change in placement.

NSPCC Scotland highlight in their submission that whilst there is good promotion of infant mental health embedded within Scottish policy – for example, within the Early Years Framework, pre-birth to 3, pathway for care for vulnerable families –there are in fact very few services which deal with infant mental health. NSPCC expressed particular concern with the long-term mental health impact on an abused child who has been subjected to early maltreatment.<sup>58</sup> Infants have no voice and therefore, are in need of extra protection.

## **Guardianships**

People First (Scotland) raise a concern within their submission that whilst there is recognition of the positive intent of the Adults with Incapacity Act, that in practice its protective principles are not working as they were intend, and welcome the raising of this issue in [Getting it Right?](#) They call for an urgent review of guardianships, powers of attorney and the legal framework which impacts on the autonomy of people with learning disabilities with a further recommendation that new legislation should be drafted through co-production with people with learning disabilities. The overall goal is clearly to get to ‘supported’ decision making rather than ‘substitute’ decision making. People First (Scotland) further highlight that there appear to be too many restrictions on people with a learning disability to make decisions and manage their own affairs in general and they suggest that the following legislation be reviewed in this regards (with some contradicting each other and deemed incompatible with UN CRPD): Adults with Incapacity Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003, Adult Support and Protection Act 2007, Sexual Offences (Scotland) Act 2009, Criminal Procedure (Scotland) Act 1995 and the Management of Offenders etc. (Scotland) Act 2005.

Participants at an event co-hosted by the Scottish Consortium for Learning Disability also highlighted that whilst anecdotal in nature, there appeared to be growing evidence that families were seeking guardianships in response to the introduction of Self-Directed Support. Whilst acknowledging that most requests were well-intentioned, guardianships do present a severe restriction upon autonomy and an often disproportionate interference with an individual’s freedom. Participants wanted to see some exploration of alternatives which would enable supported decision making.

## **Looked after children and young people (including kinship children)**

In addition to issues related to mental health services for looked after children noted above, a number of submissions focused on the need to improve a range of outcomes for looked after children and young

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<sup>57</sup> For example, CAMHS targets of access within 26 weeks by 2013 and 18 weeks by 2014.

<sup>58</sup> Between 33 per cent and 90 per cent of children who offend have experienced past or current maltreatment and more than 50 per cent of violent offenders experienced maltreatment as a child.

people, with a recommendation that a HRBA is adopted within the care system for children and young people, including children in kinship care.<sup>59</sup>

Where data is available, looked after children and young people have poorer outcomes compared to other children in relation to their education, income and employment rates after leaving care, health, including mental health (and rates of suicide). Concerns also exist about the disproportionate rate of early pregnancy and risk of sexual assault, abuse and exploitation. As noted above, better monitoring data is needed in many of these areas. Data collection for looked after children and young people on leaving care is also deemed to be insufficient.<sup>60</sup> In relation to early parenting, there is a call for more flexible education arrangements for teenage mums and dads and better support for young parents in relation to parenting.<sup>61</sup>

A number of issues specific to children in kinship care were also raised which primarily stem from the fact that there is a lack of parity of life chances between kinship children when compared with those in foster care or who are classed as looked after children. Only a small proportion of children in kinship care are considered to be 'looked after children' which results in many living in poverty with a lack of support to cover the cost of basic essentials (for example: cots, car seats, prams, nappies, as well as food, housing and heating) as their care is seen as a 'family matter'. Kinship carers told the Commission they feel that children who are not classed as looked after are therefore discriminated against and they call for: a review of the distinction between 'formal' and 'informal' kinship care placements, with a reclassification of all children in kinship care (S11 or S70) as looked after children and for all kinship children of comparable need to be able to access needed support services. Current practice of supporting children in kinship care is dependent on whether or not the child is classed as looked after or not and there is reportedly no consistency of support across local authorities.<sup>62</sup>

### Quality and provision of health and social care services

*'The equality framework which seems to be still dominating state decisions can treat people equally badly. So this is why we need to turn our face towards human rights because it means that we have a threshold of care and services beneath which we cannot fall. That must ensure dignity and support for everybody that needs it and this is the exciting opportunity we have now.'*<sup>63</sup>

[Getting it Right?](#) focused on a range of areas where the quality of care provided within health and social care settings failed to meet good practice in human rights. The Care Inspectorate highlighted in their submission that care often fails to meet standards that are compliant with human rights, based on its experience of considering 2,801 complaints in 2011-2012, 70 per cent of which were fully or partially upheld.

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<sup>59</sup> Responses included: Together; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering.

<sup>60</sup> For example, one fifth of significant case reviews which are conducted for children who die or are seriously injured are were children who were living in or formerly lived in care. There is no collection of data and analysis of Looked After Children and Young People or care leavers.

<sup>61</sup> Responses included: Together; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Scottish Kinship Carers Alliance; NSPCC; YWCA Scotland; Glasgow University Schools Liaison Group; Scottish Youth Parliament; PE: D10 Dignity, Care and Health; Social Lives; PE: Poverty Truth Commission.

<sup>62</sup> Responses include: Scottish Kinship Carers Alliance; PE: Poverty Truth Commission.

<sup>63</sup> PE: D10 Dignity, Care and Health.

Within this participation process a number of respondents focused on the quality of care of people with learning disabilities and ASD, the impact of welfare reform and budget cuts on the provision of care services, self-directed care, discrimination within health care services and inconsistencies around the country in the quality of service provision.

### Care of people with learning disabilities and ASD

*Care settings are not always safe places for people with learning disabilities. There is much evidence of bullying and of physical and sexual abuse of people with learning disabilities within these settings. In care settings where people are grouped together it is easy to lose sight of the fact that people are individuals with individual needs. Abuse and mistreatment in care settings is a reflection of wider social attitudes towards people with learning disabilities.*<sup>64</sup>

People First (Scotland) highlight that the *Same As You* (2000) report stated that institutional care for people with learning disabilities should cease by 2005, eight years on many people with learning disabilities are still living in settings deemed inappropriate such as long stay-hospitals. Many people with learning disabilities want to have the choice to live independently.

### Impact of welfare reform and budget cuts

A number of submissions questioned whether the policy objectives of self-directed support are threatened when social care budgets are being cut significantly. Concern was raised that insufficient funding is putting many people's right to independent living at risk on a daily basis<sup>65</sup> and that care packages are now only for those 'at death's door'.<sup>66</sup> The Care Inspectorate also noted that monitoring is needed to ensure that the objectives of self-directed support and independent living are not threatened in the current economic climate:

*There is a need to ensure effective regulation of home care and support services from a human rights perspective to ensure choice, safety and dignity for older people and adults with disabilities.*<sup>67</sup>

### Adequacy of services

A range of submissions highlighted that people in Scotland should be able to access services of equal standard within reasonable time scales irrespective of where in Scotland they live, but recognised that for many people this was not their experience.<sup>68</sup> Concern was raised in particular about:

- A lack of access to out of hours services in rural areas (especially health services).
- Varied quality of mental health services throughout Scotland.
- The introduction of charges for some care services in some local authorities preventing freedom of movement when porting care that may incur costs.
- Denial of some care services resulting from budget cuts in certain local authorities, with social workers having to deny services they know are needed to support independent living.

<sup>64</sup> People First (Scotland) submission.

<sup>65</sup> Respondents included: Glasgow Caledonian University MSc students; KEY; People First (Scotland); the Care Inspectorate; Scottish Consortium for Learning Disability; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>66</sup> Participant at PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>67</sup> Care Inspectorate submission

<sup>68</sup> Respondents included: Action Scotland Against Stalking; Individual response x 1; PE: CRER; PE: Glasgow Caledonian University.

- Lack of access to specialised services including chronic pain management and services for intersex and transgender people, all of which people reportedly have to travel to England for at present.
- Lack of adequate services for victims of crime, including infant mental health services.
- Lack of adequate specialist services for people with ASD.<sup>69</sup>

## Carers

A number of submissions welcomed the references to carers' rights within [Getting it Right?](#) and called for improvements in this area to be included in Scotland's National Action Plan for Human Rights.<sup>70</sup>

Additional areas of concern with regards to carers rights were raised in this participation process. This included a concern that families of those who are cared for within secure mental health facilities feel disempowered and excluded from their caring role, and a call for care plans to explicitly support carers' rights.<sup>71</sup>

[Getting it Right?](#) highlighted the degree to which the lives of carers are frequently negatively impacted upon as a result of their caring duties and some submissions wanted Scotland's National Action Plan to ensure that the gendered nature of unpaid (and frequently undervalued) care was reflected. Women are disproportionately the providers of unpaid care (62 per cent of carers are women).<sup>72</sup>

[Getting it Right?](#) also raised a number of issues relating to the carer experience of Scottish Gypsy/Travellers, however, further reflection from members of the Scottish Gypsy/Travellers community highlighted that often those who support carers make many assumptions about what their specific needs are rather than exploring them. For example, historically/ culturally women did not learn to drive and yet for some women, who now find themselves needing to take on the role of carer (including transporting of those they care for to medical appointments for example), the ability to drive is critical to their ability to provide care.

Whilst [Getting it Right?](#) raised a range of issues to do with informal carers, respondents considered that it did not adequately address the needs of kinship carers and the additional issues they face. Many children end up in kinship care when a family member (usually a grandparent) takes care of a child from an unsafe situation with its parents. This is often as a result of drug or alcohol addiction, abuse, or bereavement. As noted above, depending on how a child is placed in kinship care<sup>73</sup> can impact on how

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<sup>69</sup> Respondents included: Individual responses x 3; The Health and Social Care Alliance; Intlife; Victim Support Scotland; NSPCC; Scottish Parliament's cross party group on chronic pain; Autism rights; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: D10 Dignity, Health and Care; PE: Glasgow Caledonian University; PE: Webcast.

<sup>70</sup> Respondents included: The Care Inspectorate; Scottish Kinship Carers Alliance; PE: Webcast; PE: Poverty Truth Commission.

<sup>71</sup> Autism Rights submission and co-production groups with Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>72</sup> Respondents included: YCWA Scotland; Glasgow Caledonian University MSc Students.

<sup>73</sup> There are several ways this can occur: a) Grandparent (or other family member) removes child for its safety, then contacts Social Work to make the aware. b) Grandparent (or other family member) removes child for its safety and does not contact social work. Social Work or the Police place a child with a Grandparent (or other family member) – this can happen suddenly in the middle of the night: Scottish Kinship Carers Alliance.

they are treated by social services and in turn the services they are or are not entitled to. The Scottish Kinship Carers Alliance states that:

*The current system of legally defining Kinship Carers is unfair and discriminatory and is leaving Kinship children without the very basic levels of support they require.*

Kinship carers who participated in this participative process considered that kinship carers are often congratulated (by social workers) for the job that they do, supporting the successful development of children (often with better outcomes than many foster/looked after children), but that this is not recognised by other services. Many kinship carers struggle with an often very sudden, life-changing situation, with very little support or wider recognition of the role kinship they play (for example, kinship carers are not included in the Carers' Strategy and informal kinship carers were not invited to the Carer's Parliament in 2012).

As with all carers, kinship carers need support for themselves as carers, especially in relation to their health and experience of poverty, which often takes a backseat whilst they try and do their best to care for the child involved. Their focus is on the child but someone also needs to look out for their wellbeing:

*'it's about the carers but always bear in mind, our fight's not about carers, our fight's about the children, about poverty, about injustice, about discrimination, about human rights, that's what our fight's about'.*

By not providing adequate support for kinship children and their carers, kinship carers fear that the children's future is imperilled potentially costing the state considerably more in the long run than providing adequate support today.<sup>74</sup>

## Our social lives

### Spreading good practice

Within the thematic area of social lives one good practice was highlighted, although it was not a Scottish example. The [\*Seven Towers Residents Group in Northern Ireland\*](#), cited by the United Nations High Commissioners Office in 2012 as a global best practice 'example of how people can effectively use indicators to claim their rights'. Taking a HRBA, residents of a deprived housing estate located in North Belfast, were supported to claim their right to adequate housing. They developed a set of key indicators based on their rights and their priorities. These were presented to the relevant minister in the Northern Ireland Office and resulted in a redirection of funding from external cladding towards habitability, cleanliness and sanitation. This project continues spreading to other areas in North Belfast and some participants at the 10 December 2012 participation event on Social Lives, believed that it offered an excellent model of a HRBA to housing which could be replicated in Scotland.

### Capitalising on opportunities

A number of submissions presented the creation and roll-out of a Living Wage that is currently being pursued by the Scottish Government as a good opportunity to tackle low pay and the experience of poverty in Scotland.<sup>75</sup> As one individual submission noted:

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<sup>74</sup> Responses included: Scottish Kinship Carers' Alliance; PE: Poverty Truth Commission.

*The concept of a living wage should replace that of the minimum wage. There remains no justification for applying distinctions based on age between the different bands of minimum wage – if it were to be applied at the other end of the age spectrum, it would be automatically rejected on the grounds of unjustified discrimination – and requiring employers to pay a living wage instead would eradicate this issue. Creating a right to a living wage, and enshrining that wage in law, would assist those on lower incomes in meeting their living costs.<sup>76</sup>*

Whilst welcoming the pursuit of the Living Wage, Engender warn against an exclusive focus on the formal labour market with regard to the alleviation of poverty as it misses the critical problem of women’s engagement in informal labour which is often low or unpaid. This labour, Engender notes, is estimated to be worth 30 per cent of the current GDP at minimum wage levels.

## Priority areas of concern

### Adequate housing

An adequate standard of living should include: *a warm home, be safe, have enough to eat, access to education, to opportunities.*<sup>77</sup>

In respect of adequate housing respondents raised the following as amongst priorities:

- Homelessness
- Culturally appropriate housing
- ‘Bedroom tax’
- Evictions
- Fuel poverty
- Quality of housing

Homelessness (especially for children) was considered to be unacceptable in modern Scotland.<sup>78</sup>

In addition to the issues raised within [Getting it Right?](#) some responses felt that there was need for a more nuanced understanding of the role that discrimination within the home/family and sometimes neighbourhood resulted in homelessness (in particular from young people who are LGBT).<sup>79</sup>

In relation to Dignity, Care and Health, few choices were reported to exist for people with learning disabilities about where they live. Some described how people with learning disabilities need to fit into existing public service structures that are ill-suited to their needs and the importance of location near to family is often not catered for.<sup>80</sup>

CELCIS also noted that young people leaving care have an acute need for safe and affordable housing that meets their needs and highlighted the need for improved transitional planning for looked after children and young people.

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<sup>75</sup> Responses included: Scottish Youth Parliament; Individual Response x 1; Engender; STUC; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: CRER.

<sup>76</sup> Individual response: name redacted.

<sup>77</sup> PE: Glasgow Caledonian University

<sup>78</sup> Responses included; Scottish Youth Parliament; Individual responses x 4; PE: Glasgow Caledonian University.

<sup>79</sup> LGBT youth Scotland submission.

<sup>80</sup> Responses included: People First (Scotland); KEY; Scottish Consortium for Learning Disability.

Access to support with housing was a further issue of concern raised by kinship carers, who by the nature of the care they provide can suddenly find themselves with housing that is too small to accommodate the child/children they care for.<sup>81</sup>

The failure across Scotland to appropriately accommodate Scottish Gypsy/ Travellers, with a lack of available pitches and culturally acceptable housing was also raised in a number of submissions.<sup>82</sup> Scottish Gypsy/Travellers further highlighted that simply providing a pitch in a certain area will not necessarily tackle the issue of available pitches as it doesn't deal with the issue of choice.

*'There is no one Scottish Gypsy/Traveller way of life... You can't have uniform, blanket policies across local authorities and sites. Every site is different'.<sup>83</sup>*

The choice of where to live and what accommodation to live in, rather than the one choice a council provides should not be perceived as good practice. Scottish Gypsy/Travellers ask that planning conditions and permissions need to be further examined to make it easier for the development of private (particularly family run) sites. This needs to involve all parties from the Scottish Gypsy/Travellers and settled communities, councils and planning departments.

Scottish Gypsy/Travellers noted that where they are able to develop a site which they share with family, they are more likely to remain. The impact of available, acceptable accommodation it is argued will also play a role in improving attendance at school and the accessing of services such as health service.<sup>84</sup>

Freedom of movement is considered to be threatened by 'boundary blocking', moving people on to areas with no ability to stop, where local authorities say that there are stop places but in reality there are not.

Concern about the impact of the so called 'bedroom tax' was reflected in a number of submissions and within discussions during participation events. Many participants in this process felt that this 'tax' was particularly unfair as there were so few smaller properties available for people to move to. A number of participants in receipt of care packages also raised concerns that if they had to move local authority as a result of moving to a smaller property, their care package would need to be renegotiated, which may negatively impact of the provision of care that they receive (see also section on Portability of Care above).<sup>85</sup>

Heightened by the discussions around the 'bedroom tax', fear over an increase in evictions was also raised. Calls were also made in some submissions to provide access to independent legal services and money advice to people facing eviction or repossession. It is suggested that this may provide a proactive early intervention to prevent homelessness.<sup>86</sup> Govan Law Centre also wish to see a campaign to provide the public with better awareness of their rights with regard to evictions.

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<sup>81</sup> Responses included: Scottish Kinship Carers Alliance; PE: Poverty Truth Commission.

<sup>82</sup> Responses included: Aberdeen City Council x 2 submissions; West Dunbartonshire Council; Individual Submission x 1; PE: Glasgow Caledonian University; PE: Webcast; PE: Scottish Gypsy/Travellers.

<sup>83</sup> PE: Scottish Gypsy/Travellers

<sup>84</sup> PE: Scottish Gypsy/Travellers

<sup>85</sup> Responses include: STUC; PE: Glasgow Caledonian University; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>86</sup> Responses include Govan Law Centre; Individual response x1 ; PE: Glasgow Caledonian University .

Fuel poverty was another issue raised within [Getting it Right?](#) which has been reinforced as an issue of growing concern by a number of responses. Concern centred around an aging social housing stock and a lack of 'quality' housing resulting in inefficient homes coupled with the increasing cost of fuel.<sup>87</sup> The lack of suitable 'quality' housing stock was also related to concerns about the safety of where many of these properties are located.<sup>88</sup>

### Poverty and social security

*'The most important human rights issue at present in Scotland, which ought to be addressed directly by the National Action Plan for Human Rights... [is]poverty. The report highlights that a number of individuals, particularly those from minority or marginalised groups, suffer as a direct result of problems which result from disadvantages. However, these problems are exacerbated when set against a backdrop of economic deprivation.'*<sup>89</sup>

[Getting it Right?](#) highlighted a range of issues relating to the experience of poverty which was received positively in this process. Engender highlighted, however, that the presentation of information on poverty would: *have benefited from an analytic approach that recognised that women and men experience poverty differently and that women are disproportionately affected.* As noted earlier in the report, there is an appetite for exploring a HRBA to anti-poverty strategies, and incorporating a gender analysis would be an important part of this process.

A wide range of submissions raised a general concern that the variety of cuts to welfare (including the 'bedroom tax' and cuts to disability allowance in particular) will lead to greater experience of poverty, increased deprivation, homelessness and in some worst cases destitution. The reforms are described as:

*...pushing the boundaries of proportionate responses under human rights law...[and] are reducing the income of the poorest families in our society and are undoing the work that has gone into reducing child poverty across the UK.'*<sup>90</sup>

There was recognition that the Scottish Government and local authorities would be in a challenging position to mitigate the cuts, but that service cuts would likely be quickly exposed as their impacts were felt by particularly vulnerable groups such as disabled people and parents of children with disabilities.<sup>91</sup> There was also concern expressed that a deeper examination in the near future of the impact of these reforms will show a disproportionate impact on women, children, ethnic minorities and disabled people.<sup>92</sup>

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<sup>87</sup> Responses include: LGBT Youth Scotland; CLECIS; Lawyer for the Scottish Green Party.

<sup>88</sup> Responses include: LGBT Youth Scotland; CLECIS; Lawyer for the Scottish Green Party; STUC; PE: Glasgow Caledonian University.

<sup>89</sup> Individual submission: name redacted: INV-060.

<sup>90</sup> STUC Submission.

<sup>91</sup> Responses include: Individual responses x 4; STUC; Together; SCCYP; Save the Children; Inverclyde Council; West Dunbartonshire Council; North Lanarkshire Council; KEY; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: Glasgow Caledonian University; PE: D10 Dignity, Care and Health; Justice and Security.

<sup>92</sup> Responses include; KEY; Engender; STUC; PE: CRER; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience; PE: Glasgow Caledonian University; PE: D10 Dignity, Care and Health; Justice and Security.

A further sign that the cuts to welfare are having a substantial impact on some people in Scotland has been the recent increase in the number of and frequency with which people are relying on food banks.<sup>93</sup> The STUC further note that this increased reliance on food banks has also been amongst those who are in paid employment.

A number of submissions highlight the destitution faced by many asylum seekers. There was concern expressed that the way the current asylum system works effectively mistreats people, handles cases badly and ultimately leads to destitution.<sup>94</sup> The STUC also note that when asylum seekers have been given humanitarian leave to remain they are still not entitled to have recourse to public funds. The “Still Human, Still Here” Campaign highlights the severity of destitution faced by many. The STUC argue for the law to be changed enabling asylum seekers to work to enable them to support themselves as they await a decision about their case.

## Work

In addition to issues related to access to and fair treatment at work which was covered within [Getting it Right?](#), a large number of responses supplemented the issues of concern around access to work, which are summarised below.

One individual respondent highlighted the changing nature of employment in Scotland and felt that more people could be supported into the labour market by developing a better concept of self-employment.<sup>95</sup> However, concern was also raised that the current rise in self-employment rates were acting to mask rates of underemployment and the situation where many ‘self-employed’ were in fact working with no genuine autonomy and without the basic protections afforded to other workers.<sup>96</sup>

Concerns were expressed about the current rate of youth unemployment where Scotland risks a ‘lost generation’. As noted earlier in relation to the Living Wage, young people currently receive lower rates of pay via the minimum wage and apprenticeships. One individual respondent also noted that trainees and interns should receive a fair pay for the work they undertake.<sup>97</sup>

In addition to barriers faced by asylum seekers some organisations also raised concern that migrants who do work are often employed on terms and conditions that breach human rights.<sup>98</sup>

Barriers to accessing work on the grounds of discrimination were raised in relation to gender, age, ethnicity (including Scottish Gypsy/Travellers) and disability (including people with learning disabilities and ASD).<sup>99</sup> In particular some organisations felt that schools and colleges need to better understand the importance of work for disabled people including those with learning disabilities. Education is needed to better support disabled people to find jobs and stay in employment rather than assuming an

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<sup>93</sup> Responses include: STUC; PE: Glasgow Caledonian University; PE: the Gathering.

<sup>94</sup> Responses include: Individuals x 4; STUC; PE: D10 Big Picture; PE: Webcast.

<sup>95</sup> Individual response: Kelsey Tanish-INV-001.

<sup>96</sup> Responses include: STUC; PE: Glasgow Caledonian University.

<sup>97</sup> Individual response: Joanne Irvine INV-019.

<sup>98</sup> Responses include: Human Society Scotland; Aberdeen City Council; STUC; Individual response x 1.

<sup>99</sup> Responses include: Individual responses x 4; Glasgow Caledonian University MSc students; STUC; Aberdeen City Council; Scottish Borders Council; name redacted Local Council; People First (Scotland); KEY; Scottish Youth Parliament; Autism Rights; PE: :Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

inability. People with learning disabilities are underemployed in Scotland with almost 90 per cent unemployed compared to 10 per cent of the general population.<sup>100</sup>

Respondents noted that women are: still overrepresented in part-time and low paid jobs, they have been disproportionately affected by cut backs within public sector jobs, they perform a disproportionate amount of unpaid work (including caring roles) which prevents many from being able to access paid employment and are penalised for career breaks that they take. Rates of employment amongst women are now at their lowest rate since 2002 (66 per cent) and women's unemployment has doubled from 4 to 8.3 per cent since the start of the recession. The impact of the cost of childcare also makes entering the paid labour market difficult for parents, which more commonly impacts on women.<sup>101</sup> The STUC noted that there needs to be a better supply of childcare that is high quality, flexible, affordable and meets the needs of parents.

[Getting it Right?](#) raised a number of issues relating to the barriers to employment faced by Scottish Gypsy/Travellers, this was supplemented by further evidence during this consultation. It was noted that very little is actually known about the extent of discrimination face by Scottish Gypsy/Travellers and employment – where studies have been conducted for example into the experiences of minority ethnic women in Scotland, Scottish Gypsy/Traveller communities have not been included.

Given the level of negative (42-46 per cent) social attitudes in Scotland towards Scottish Gypsy/Travellers as was noted in [Getting it Right?](#), one participant noted that some of those people with those attitudes work within Scotland's public institutions and private businesses and hence institutional racism is their lived experience.

Concern was voiced regarding anecdotal evidence of discrimination at job interviews, whereby on attending seemingly positive interviews, follow-up feedback contradicted the positive feedback given on the day.

Unemployment rates amongst Scottish Gypsy/Travellers was estimated to be approximately 90 per cent. Scottish Gypsy/Traveller respondents noticed a change in their traditional employment opportunities (labouring and berry, daffodil and potato picking) as a result of negative attitudes. This it is felt is having a negative impact on marriage rates as there are now less social opportunities presented to the next generation through work.<sup>102</sup>

Cultural traditional patterns and family principles which have historically seen men working and women at home raising families has resulted in a lack of national insurance contributions for many Scottish Gypsy/Travellers women, which will impact on their ability to have a pension in later life.

A further area of concern that was raised by some submissions related to changes to workers employment rights including: fixed term contracts no longer being eligible for redundancy, extension of the qualifying period for unfair dismissal being increased from one to two years and the halving of the amount of time that companies must consult regarding redundancy when 100+ jobs are at risk.<sup>103</sup> This,

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<sup>100</sup> Responses include: People First (Scotland); KEY; Scottish Youth Parliament; Autism Rights; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>101</sup> Responses include: STUC; Engender; Care Inspectorate; Scottish Kinship Carers Alliance; People First (Scotland);

<sup>102</sup> Submission: PE: Scottish Gypsy/Travellers

<sup>103</sup> Responses include: STUC; Humanist Society Scotland; Individual response x 1.

it was reported, has also coincided with a reduction in access to legal aid for workers to fight cases of discrimination at work. The STUC also noted that from the summer of 2013 individuals will have to pay for tribunals which will undoubtedly have an impact on the most vulnerable workers and effectively remove access to justice for harassment at work.

Further to discussion above regarding the living wage, the STUC would like to see this brought into the private labour market, possibly using procurement as a key vehicle. They note that there will be a need to influence the European Commission to remove perceived barriers in EU Directives that prevent the inclusion of the living wage in procurement. They also suggest the creation of a living wage unit to support and monitor this along with a code of practice that businesses could sign up to.

Concern was also raised regarding the practice of blacklisting with STUC noting that existing anti-blacklisting regulations are not fit for purpose<sup>104</sup> and that blacklisting should be made a criminal offence. They further argue that it shows an attack on the right of workers to self-organise and join a trade union which is a fundamental human rights which should be protected as such in law.

Finally, the STUC raised a concern with regard to domestic workers. They noted that the change in the UK government rules on 6 April 2012 with regard to new domestic workers in private households which restricts such workers to six months employment with no change in employer allowed. They argue that the right to permanent settlement and to change employer were introduced to tackle trafficking and therefore this change could have a serious impact. The STUC further argues that not enough is being done by with the UK or Scottish Governments to monitor the impact of this change.

## Transport

Problems associated with transport, particularly for disabled people, those with small children and for those living in rural areas was raised within [Getting it Right?](#) A number of submissions reiterated the importance of these points, highlighting the critical importance of access to transport in rural areas to access employment, services and prevent social exclusion, particularly of the elderly and disabled people.<sup>105</sup> Age Scotland also noted that whilst bus passes for older people were a useful tool to prevent social exclusion, they were of no use if there were no appropriate bus services.

## Education

A number of issues related to access and inclusion within education were raised within [Getting it Right?](#) many of which have been reinforced through this process. In addition a number of submissions raised a further range of issues which are summarised below.

Concerns were raised about bullying within school settings. A number of organisations stated the need for young people to have the right to a safe school environment which fosters and promotes equality via educational opportunity and challenges prejudicial attitudes was seen as a fundamental right for all children.<sup>106</sup>

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<sup>104</sup> This point was also raised by an individual submission.

<sup>105</sup> Responses include: West Dunbartonshire Council; Scottish Youth Parliament; Age Scotland; Individual response x 1; PE: D10 Dignity, Care and Health, Social Lives; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>106</sup> Responses include: LGBT Youth Scotland; Humanist Society Scotland; Glasgow Caledonian MSc students; West Dunbartonshire Council; People First (Scotland); Scottish Youth Parliament; PE: Glasgow Caledonian University; Individual responses: 4.

In relation to access to schools in rural areas, a few submissions raised the negative impact that travelling long distances or enforced boarding could have on children's lives, especially in relation to their right to family life, enjoyment of home and cultural life.<sup>107</sup>

Children's rights to leisure, play and culture were also raised in relation to children with disabilities and the need to better facilitate children with disabilities on school trips, afterschool care, holiday club, and in community-based activity clubs.<sup>108</sup>

In relation to further and higher education, the issue of university fees was raised as a potential human rights issue in one individual submission.<sup>109</sup> Other issues were raised in relation to the costs of going to university, and an overcomplicated loans system making it impossible for some to attend university. Some raised the need to focus on universities and further education courses that could benefit the Scottish economy and develop skills and abilities that are needed in the current job market.

Respondents noted that access to Gaelic-medium education is limited and also that there are no Scots language-medium schools. Where some local authorities (such as Glasgow City Council) were acknowledged for a progressive approach to Gaelic-medium education, the practice across local authorities is inconsistent. It is at the discretion of each local authority to develop this form of education or not and some individual responses reported facing resistance when trying to pursue Gaelic-medium education.<sup>110</sup>

In addition to those issues relating to inclusion and support needs that were raised within [Getting it Right?](#) a number of organisations supporting children's rights called for a better long-term plan to support the implementation of the Additional Support for Learning legislation including, adequate support for teachers, learning support teachers, classroom assistants and links to other professions.

A number of organisations reported that a lack of understanding about specific conditions, disabilities or needs of certain children, was having an indirect impact on the ability of many children to realise their rights. For example, knowledge of learning disabilities, ASD and the delayed medical impact of babies born of drug dependent parents. These children, along with looked after children tend to be disproportionately represented amongst those who are excluded formally and informally from school.<sup>111</sup>

Discrepancies in educational outcomes was raised as a problem for a wide range of children, including: minority ethnic groups eg. Bangladeshi and Scottish Gypsy/Travellers, children from poorer socio-economic backgrounds and those living in poverty, looked after children and young people, children in kinship care, children with ASD and children with additional support needs/disabilities.<sup>112</sup>

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<sup>107</sup> Responses include: Individual x 1; Name redacted Organisation x 1.

<sup>108</sup> Responses include: Together; Enable.

<sup>109</sup> Individual response: Roger Hart – INV-015. This issue was also raised within [Getting it Right?](#)

<sup>110</sup> Responses include: Individuals x 2; PE: Webcast; name redacted Organisation x 1.

<sup>111</sup> Responses include: Autism Rights; Family Fund; People First (Scotland); Scottish Kinship Carers Alliance; Families Outside; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; PE: Poverty Truth Commission.

<sup>112</sup> Responses include: Glasgow Caledonian University MSc Students; West Dunbartonshire Council; Save the Children UK; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Autism Rights; Together; Name Redacted Local Council; PE: CRER; PE: Scottish Gypsy/Travellers; Enable, Scottish Borders Council.

Together also raised the importance of supporting a more extensive early years support and childcare provisions for all children who are living in poverty. Childcare was recognised as important to allow parents to work, and good Early Years support critical for the *child's* future.

Finally, one further submission highlighted the absence of an independent adjudication appeal in relation to complaints of substantive content of HMIE reports.<sup>113</sup>

### Right to family life

A number of issues related the right to family life including: equal marriage rights, the rights of people with learning disabilities to form relationship and have children and the rights of children to family life when they have a parent/s in prison, raised within [Getting it Right?](#),<sup>114</sup> were also raised during this process.

In addition the issue of Equal Marriage Rights was also raised in relation to the rights of intersex people to marry or enter civil partnerships in a manner which accords with their gender identity and the right of heterosexual couple to enter civil partnerships.<sup>115</sup>

The submission from CELCIS, (including Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network, British Adoption and Fostering) raised a concern that looked after children and Young People are not provided with sufficient support in relation to contact with Birth families. They also noted that many looked after children and young people and care leavers fear being viewed as unsuitable parents who are unable to cope and as such risk the removal of their children. They believe that it is important to safeguard the rights of those who become parents and provide adequate and appropriate support.

The right to have children, including via adoption and assisted reproductive technologies was raised as an issue for LGBT and intersex people,<sup>116</sup> as was the right for everyone to benefit from reproductive technologies and the rights of all women to be able to access genetic testing.<sup>117</sup>

The right to a nurturing environment for children was raised by kinship carers as something that was effectively denied of many children in kinship care through a lack of support provided to kinship Carers.<sup>118</sup> Sense Scotland also highlighted the fact that the right to enjoy family life was not effectively enjoyed by many carers and those they cared for as a result of reducing services and welfare cuts placing pressures on families, bringing many to a breaking point where they cannot cope.

Finally, the STUC raised the issue of the right to choose your partner freely. They note that the minimum income threshold for sponsoring the settlement of a UK partner from outside the European Economic Area has risen from £18,600 to £22,400 with one child plus £2400 for each subsequent child.

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<sup>113</sup> Submission from name redacted Individual- INV-023.

<sup>114</sup> Responses include: Equal marriage rights: LGBT Youth Scotland; Humanist Society Scotland; Scottish Youth Parliament; COPFS; Individual responses x 3; PE: D10 Social Lives. Children with parent/s in prison: NSPCC; Families Outside; SCCYP. Rights of people with learning disabilities to relationships and family life: People First (Scotland); LGBT Youth Scotland; KEY.

<sup>115</sup> Responses include: LGBT Youth Scotland; Humanist Society Scotland; Scottish Youth Parliament.

<sup>116</sup> Responses included: individual responses x 3.

<sup>117</sup> Responses included: Humanist Society Scotland; Individual response x 1.

<sup>118</sup> Responses included: Scottish Kinship Carers Alliance; PE: Poverty Truth Commission.

As 47 per cent of the working population do not earn this level of income, the STUC argue that many no longer have the freedom to choose their partner.

### Environmental issues

[Getting it Right?](#) explored a range of issues relating to climate change, environmental justice and protection of the environment including problems related to access to environmental justice which were further supported by submissions in the participation process.<sup>119</sup>

The participation process raised concern about noise pollution and vibration at night linked to the transport of fossil fuels.<sup>120</sup> Finally, submissions also focused on rights issues connected with land reform, in respect of both the property rights of individual land owners, as well as the broader public and human rights benefit from a more equitable distribution of land as an essential resource for the realisation of a range of rights.<sup>121</sup>

## Justice and security

### Spreading good practice

A number of areas of good practice were raised within the theme of Justice and Security relating to violence against women, violence prevention, trafficking, prevention and reduction of offending behaviour.

A number of women's organisations highlighted the internationally respected work that has been undertaken by the Scottish Government and public bodies in relation to violence against women and urged Scotland's National Action Plan to take account of this work.<sup>122</sup> Reference is also made to the value of Scotland's domestic abuse courts and recommend the development of more specialist courts, although, concern is also expressed regarding the increasing size of the waiting lists for such courts.<sup>123</sup>

The Zero Tolerance (annual domestic abuse) Campaign has run in much of Scotland for a number of years and this was raised as a good example of practice to learn from to take forwards a rigorous anti-violence campaign on various levels in Scotland.<sup>124</sup>

The Time for Change project which supports highly vulnerable young women in the West of Scotland is suggested as a good example of a project which helps divert young women from a pathway towards prison. It offers an alternative to secure accommodation for young women.<sup>125</sup>

With regard to trafficking, a number of recommendations to improve practice were outlined in [Getting it Right?](#) including developing further the work undertaken by TARA. Together recommends that

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<sup>119</sup> Responses include: Humanist Society Scotland; Noise Vibration Action Group; Friends of the Earth Scotland and the Environmental Law Centre Scotland.

<sup>120</sup> Responses include: Noise Vibration Action Group; Friends of the Earth Scotland and the Environmental Law Centre Scotland; PE: Glasgow Caledonian University.

<sup>121</sup> Responses include: Community Land Scotland; Scottish Lands and Estates; Individual response x 1; PE: Glasgow Caledonian University.

<sup>122</sup> Responses include: Engender; Name Redacted Organisation x 1; Scottish Women's Aid; YWCA Scotland; PE: Glasgow Caledonian University; PE: D10 Social Lives.

<sup>123</sup> Responses include: Victim Support Scotland; Name Redacted Organisation x 1; COPFS.

<sup>124</sup> Submission from Scottish Green Party Lawyer.

<sup>125</sup> Submission by Glasgow Caledonian University MSc students.

Scotland's National Action Plan should take forward these existing recommendations. COPFS is also planning a Human Trafficking Conference in September 2013 and this could provide an opportunity for further exploration of good practice in this area.

### Capitalising on opportunities

COPFS highlight a number of initiatives which they run and which they believe assist in raising public awareness of the issues surrounding hate crime (aiming especially to raise awareness amongst young people). Exploring and evaluating these activities could provide an opportunity to learn good practice lessons in this area.

Victim Support Scotland note that the Victim Notification Scheme (currently only available to 'vulnerable' victims) could be made available to *all* victims via the Victims and Witness Bill. They believe that opportunity is not being fully taken as the Bill currently stands. Victim Support Scotland also wish to see the development of Police Scotland as an opportunity to enhance support for victims and roll out best practice, rather than the previous arrangements which varied between police forces. The development of the new single police force also offers a unique opportunity to better integrate human rights into the culture and accountability of policing in Scotland.

COPFS is currently developing a policy on the prosecution of offences committed against older people both within and outwith care settings. This could present an opportunity for ensuring the rights of older people are better protected.

### Priority areas of concern

#### Access to legal advice, representation and legal aid

Considerable concern was raised by a number of submissions about the difficulty that many people have in accessing legal redress, a problem that is being made more acute by recent and current changes to the provision of legal aid and reduced access to legal advice services.<sup>126</sup>

*Advice and information is not going to stop human rights abuses - only legal or political action will do so, and people in Scotland have less access to legal redress because of the lack of choice of legal representation, the absence of class action lawsuits, the very narrow focus of Judicial Review and the reduced availability of legal aid or assistance.*<sup>127</sup>

*The right to liberty and security and the right to a fair trial under Articles 5 and 6 of the European Convention on Human Rights (ECHR) are enshrined in our law (the Human Rights Act 1998, the Scotland Act 1998). As such, I believe that one of the most urgent human rights issues which should be addressed in Scotland's National Action Plan for Human Rights is to ensure that Articles 5 and 6 ECHR are not compromised because of austerity measures.*<sup>128</sup>

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<sup>126</sup> Responses include: STUC; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; PE: Scottish Gypsy/Travellers; PE: D10 Justice and Security; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>127</sup> Submission from Autism Rights.

<sup>128</sup> Submission from name redacted Individual response – INV-005.

It was also noted that the impact of austerity on access to justice was not felt simply through a reduction in legal aid budgets and advice services per se, but that the changes to welfare provisions were resulting in more people than before requiring legal aid and advice to challenge decisions.<sup>129</sup>

A number of submissions focused on the need for better access to legal and quasi legal remedies, noting that at present we are seeing the creation of legal 'advice deserts'. The STUC note that the combination of the closure of the EHRC legal grants programme<sup>130</sup> and cuts to legal aid will impact upon the availability of specialist discrimination advice and casework. They fear that the already pressurised legal aid budget will be unable to absorb the extra responsibility of supporting discrimination cases.

Particular concerns were also raised regarding access to legal services for children and young people in general, younger children, children with disabilities, looked after children and young people and children in kinship care. Concern arose primarily from the change in assessment qualification for children. Previously a child was assessed on the basis of their parental income. Now, the finances of anyone who has a duty of alimony<sup>131</sup> must be taken into account, which can include step-parents and in some cases grandparents, aunts, uncles etc.<sup>132</sup>

The Education (Additional Support for Learning) (Scotland) Act 2009 gives legal force to the entitlement of looked after children and young people through the assessment of additional support needs. CELCIS note, however, that there is a need for advocates who are independent of the local authority in relation to the appeals process. They state concern that looked after children and young people's rights are limited in accessing the Additional Support for Learning Tribunal process. Without parents, who are often the key advocate in instigating the process, they raise a concern that the conflict of interest arising for looked after children may severely limit their equal right to a fair hearing.

Concern was also raised that due to the costs associated with legal aid contributions, this may result in individuals pleading guilty rather than paying a contribution, something which requires impact assessing and monitoring.<sup>133</sup>

Suggestions were made at the 10 December 2012 participation event on Justice and Security that it could be beneficial for a mapping exercise to be carried out for both criminal and civil cases to assess the impact of the cuts to the legal aid budget, especially as the Legal Aid Board hold this information.

Concern was also raised by a number of women's organisations about the lack of access to civil legal remedies for victims of domestic abuse, highlighting that the lowering of eligibility for legal aid will create a new barrier to justice for such victims.<sup>134</sup>

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<sup>129</sup> Responses include: STUC; PE: D10 Justice and Security; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>130</sup> Which has provided £14 million in grant funding to 285 front line services including CAB, Law Centres; Race Equality Councils and Disability Law Service since 2009.

<sup>131</sup> See <http://clanchildlaw.org/wp/wp-content/uploads/2013/05/clan-childlaw-FOI-Analysis.pdf> for further information on the duty of alimony.

<sup>132</sup> Response includes: CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering

<sup>133</sup><sup>133</sup> Responses include: PE: D10 Justice and Security; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

<sup>134</sup> Responses include: Name Redacted Organisation x 1.

Finally, the STUC also raised a concern regarding the limited remit of Fatal Accident Inquiries in relation to the work place. They argue that any inquiries should investigate the health and safety culture including management practices in addition to failures that lead to a death. They suggest that inconsistencies exist in the way that Sheriffs approach FAIs including the evidence that is deemed admissible and further argue that such cases should be heard at the Court of Session. STUC further recommends that legal expenses be provided for families and a legal duty be created for employers to act on recommendations.

### **Court reform**

*The right to access a court is one of the most basic prerequisites of an effective system of justice.*<sup>135</sup>

A great deal of concern was raised in relation to the court closures being proposed by the Scottish Government at the time of this participation process, with many believing that this would seriously impact on people's ability to access justice, especially when coupled with the changes to Legal Aid. Participants at the 10 December 2012 event on Justice and Security suggested that there was need for a mapping too assess to impact of court closures, in particular exploring how far people will now have to travel to access local justice. They highlight that this will present additional barriers for disabled people, as many courts remain inaccessible and court closures will heighten this issue.

A further concern raised at this event was the impact of clustered legal advice around courts. Many practitioners are located close to where courts are and as such court closures may result in that expertise migrating to where courts remain open, which poses a serious threat to the provision of legal practice in certain areas. Further concerns at court closures were raised in relation to safety. This was raised in particular in relation to women seeking protection as a result of domestic abuse and for those living in rural areas, where travel arrangements to courts may result in witnesses, the accused and victims meeting and increases the risk of intimidation.

Arguments were also made for court closure decisions to be human rights impact assessed *before* and not after the final decision is made, with a call for transparency of impact assessing at the right time.

Finally, participants at the 10 December 2012 event on Justice and Security also highlighted, especially in light of these changes to accessing justice, that every victim of crime should have a needs assessment to assess what support they need.

### **Additional barriers to justice**

[Getting it Right?](#) explored additional barriers to justice for some, in particular relating to disabled people. A number of further issues were raised during this participation process such as:

- The cost of accessing civil legal remedies for victims of domestic abuse.
- Children's reduced access to legal aid.
- Lack of independent legal services and advice for people facing eviction or repossession .
- Reduction in legal advice and services for specialist equality, human rights and discrimination cases including via employment tribunals.
- Court costs associated with environmental justice.

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<sup>135</sup> Submission from name redacted Individual response – INV-005.

- Diversion of people with ASD or learning disabilities under the Criminal Procedures (Scotland) act 1995 on an assessment order as ‘mental’ disorders. If it is found that they have a ‘mental disorder’ (which they are classed as by definition in the Mental Health (Care and Treatment) (Scotland) Act 2003), then the function of the court hearing changes, it only establishes whether the individual carried out the offence, which People First (Scotland) excludes a very significant part of any fair trial: the establishment of any reasons for the offence and any mitigating factors.<sup>136</sup>

## Victims’ rights

A number of areas of concern were raised in relation to rights of victims of crime, and in some cases more broadly victims of human rights abuses, with the current development of the Victims and Witness Bill perceived as an opportunity to substantially improve outcomes.

Victim Support Scotland state that:

*While it is not the state that deprives [victims of crime of their rights] the state has a responsibility to protect individuals from infringements of their human rights. The state should, as a matter of utmost priority, seek to restore victims to their original position, before the crime was committed. Where the state has an opportunity to do this and fails to do so, it is not only failing to uphold the human rights of victims, it is constructively contributing to the further degradation of these rights.*

Victim Support Scotland argue that restoration, be that via financial, medical or practical support, should not cost the victims and that all victims should be entitled to an assessment of need. They perceive the current label of ‘vulnerable’ as artificial arguing that all victims are potentially vulnerable as a direct result of their personal experience of a crime committed against them and as such individual assessment of need should be the right of every victim.

They further note that too many cases do not proceed to trial due to the extreme vulnerability of some victims, but argue that it is the responsibility of the trial process to be modified to meet the needs of such victims rather than an expectation on such victims to meet the needs of the trial process.

As was raised within [Getting it Right?](#) there are various ways in which a victim can be affected by crime, especially a violent crime. Victim Support Scotland note that where the impact is physical, subsequent need and solutions to meeting that need can be more obvious. The psychological impacts of violent crime, however, are not always obvious or immediate. One of the most common reasons for the experience of PTSD is violent crime with victims feeling the impact on their mental health often for a number of years which can impact on their ability to work, their health and their need for welfare benefit.

Victim Support Scotland argue that all victims should be offered independent support as a matter of right, noting that current arrangements vary from area to area. This is something they suggest could be addressed by creating a new duty for police and a new right for victims. The importance of this support

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<sup>136</sup> Responses include: Scottish Green Party Lawyer; Friends of the Earth Scotland and the Environmental Law Centre Scotland; Scottish Women’s Aid; YWCA Scotland; Govan Law centre; Sense Scotland; Autism Rights; North Lanarkshire Council; People First (Scotland); Individual responses x 2; PE: Webcast; PE: Dec 10 Justice and Security, Dignity, Care and Health; PE: Inclusion Scotland, Glasgow Disability Alliance and Voices of Experience.

is key to longer-term crime prevention as victims who receive insufficient support (especially for violent crimes) can lead to subsequent criminality. Victim Support Scotland note that a striking number of women currently incarcerated in Scotland were victims themselves of domestic abuse and/or child abuse. Many, as a result of their alcohol or drug abuse used to cope with the trauma, go on to offend. Victim Support Scotland argue that this cycle must be broken by helping victims to recover by providing appropriate, sufficient and timely support. As noted within the thematic area of Dignity, Health and Care, the NSPCC has also called for better support for infant and child victims of abuse as lack of such support will bring about a heavy social cost in the long run.

A further issue raised by Victim Support Scotland relates to the provision of timely and accurate information to victims regarding their case, e.g. regarding the release of an accused on bail, how the case is progressing, whether a crime has been solved or not. They acknowledge that it is viewed as good practice by many police and COPFS, but there is no agreed mechanism for this process for all victims. The Victim Notification Scheme is currently only available to certain victims and although the current Victims and Witness Bill is extending who this is available to it will not be universal. The Scottish Government has proposed the development of an online Hub to provide access to case specific data for all victims and witnesses, support for which is noted by COPFS.

One final issue raised by Victim Support Scotland in relation to victims of crime is the need for an appropriate balance between a free press and media intrusion. They believe serious questions need to be asked and answered on how to better protect the victims of crime in this regard.

### **Impact of Cadder and the Carloway review**

As was highlighted in [Getting it Right?](#) a number of impacts have been felt as a result of the case of *Cadder* and the subsequent review by Lord Carloway, in particular in relation to access to a lawyer, periods of detention and corroboration. Submissions in this participation process focused in particular on the issue of corroboration, with much support for the Carloway proposal to abolish corroboration. This was particularly supported by those who felt it would facilitate prosecution of domestic abuse and sexual assault (discussed further later in this section).<sup>137</sup>

### **Children and the criminal justice system**

A number of responses from children's organisations focused on issues related to children within the criminal justice system with a request that all actors in the criminal justice system recognise their responsibilities in respect of children and young people and their rights under UNCRC.<sup>138</sup> A key part of the Justice Strategy is to improve early intervention mechanisms for children and young people who offend, however, this is not seen to be moving fast enough. A number of responses noted the need for alternatives to secure accommodation with better care in the community to address young people's need, more effective prevention work and a statement that no one under 18 should be in prison.<sup>139</sup> Participants at the 10 December 2012 event on Justice and Security suggest the use of more holistic budgetary analysis to explore the impact of intensive early support versus long-term prison costs.

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<sup>137</sup> Responses include: COPFS; Name redacted organisational response x 1; Victim Support Scotland; YWCA Scotland; Rape Crisis Scotland; PE: Dec10 Justice and Security.

<sup>138</sup> Responses include: Together; SCYYP; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Children 1<sup>st</sup>; Children in Scotland.

<sup>139</sup> Responses include: Glasgow Caledonian MSc Students; COPFS; PE: Dec10 Justice and Security.

Whilst there has been a general downward trend in the number of under-16s prosecuted on indictment, with 85 indicted in 2005/06, and 38 indicted in 2011/12, and a Joint Agreement established in 2010 between COPFS and the Scottish Children's Reporter Administration (SCRA), which states that in relation to a child under 16, the presumption is that they should be dealt with by the Children's Reporter unless it is in the public interest that the child is prosecuted. Concerns were once again raised about the age of criminal responsibility in Scotland. Together and SCCYP in particular wish to see a timetable outlined for the Scottish Government to agree to raise the age from 8 to 12 in line with the UN Committee's General Comment no. 10.<sup>140</sup>

## Living in Detention

*Getting it Right?* raised a wide range of issues related to living in detention with a particular focus on: conditions in detention, issues related to women in prison, the mental health of incarcerated persons, the cruelty of severance via the impact of parental imprisonment on the right to family life of children and the need for better transition planning and educational opportunities whilst in detention. All of these issues were further discussed during this participation process.<sup>141</sup>

In relation to better transition planning and education opportunities, the experience of young prisoners was raised with a question of whether YOIs could be twinned with FE colleges to facilitate a process of more meaningful educational engagement. The need for a specific strategy for older prisoners was also raised in relation to preparation for release, especially in relation to IT and computer training, given the increased reliance on IT in applying for jobs and welfare benefits.<sup>142</sup>

The often negative experiences of people with learning disabilities in detention (prison and mental health) was a further area of concern raised by People First (Scotland). They report that many face bullying and harassment, are frequently denied access to educational course due to perceived lack of ability and are ill-prepared for release from detention. They further suggest that there is a lack of standards for people with learning disabilities in prisons for the purpose of inspections and there is a lack of staff training on learning disabilities.

The use of restraint, especially in relation to young people in detention was also raised.<sup>143</sup> CELCIS suggest that reconsideration is given to Regulation 4 of the Regulation of Care (Requirements of Care) (Scotland) Standards on physical restraint and having regard to article 37 of the UNCRC (also in relation to children and young people living in care).

## Violence and Abuse

*Violence in all its forms and shades affects a number of human rights like the right to life, safety, security, and private and family life. Violence as a problem is for example reflected in the occurrence of hate crime, domestic abuse and sectarianism but the report does not seem to*

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<sup>140</sup> UN Committee's General Comment no. 10. CRC/C/GC/10 25 April 2007: Children's rights in juvenile justice. <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

<sup>141</sup> Responses include: CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Together; People First (Scotland); Families Outside; NSPCC; Scottish Youth Parliament; Glasgow University School Liaison Group; Glasgow Caledonian University MSc Students; PE: Dec10 Justice and Security; Dignity care and Health

<sup>142</sup> Responses Include: CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Scottish Youth Parliament; Individual response x 1.

<sup>143</sup> Responses Include: CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; Together.

*perceive it as a cultural phenomenon. The bigger picture seems to be lacking. Violence seems to be very much part of everyday life. And indeed, violence and prejudices are entangled...An observable general "culture of violence" in Scotland urgently needs to be addressed beyond the specific categories of domestic abuse, hate crime or sectarianism. has a major role to play in this.*<sup>144</sup>

### **Violence against Women**

*"Violence against women is perhaps the most shameful human right violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace."*

Kofi Annan speaking as UN Secretary General when launching "In Depth Study on all forms of Violence Against Women" in 2006

A significant number of women's rights organisations felt that the presentation of issues relating to the impact of gender on the rights of women was not appropriately represented in [Getting it Right?](#) It was felt that there ought to be recognition of the internationally renowned work that Scotland has done on violence against women. There was a request that a better gender analysis, including in relation to aspects of violence against women is more thoroughly integrated into the development of Scotland's National Action Plan.<sup>145</sup>

### **Trafficking**

The issue of trafficking was raised within [Getting it Right?](#) and a number of responses reiterated the need for the recommendations (raised by a number of other organisations) highlighted in [Getting it Right?](#) to be incorporated into Scotland's National Action Plan. Some responses further highlighted that trafficking is not a gender-neutral issue, impacting most heavily on women and children. Some stated that they felt that a wider context of tolerance of sexual exploitation in Scotland provided an ideal climate for traffickers. It was also noted that Scotland is not included as part of the UK's anti-trafficking strategy and thus far the Scottish Government has not responded to calls to do so risking gaps in practice with regard to the implementation of the UK's obligations.<sup>146</sup>

COPFS supported the Scottish Government's proposals to create a human trafficking aggravation<sup>147</sup> to make it easier to prosecute the perpetrators of human trafficking and plans to host a conference on Human Trafficking in September 2013 to explore how this issue could be better tackled in Scotland.

The low awareness of child trafficking was also highlighted as was the low capacity of key services to identify victims, leading to a recommendation that better training is needed across a wide range of public services and greater resources provided to support victims.<sup>148</sup>

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<sup>144</sup> Submission from Scottish Green Party Lawyer.

<sup>145</sup> Responses include: Engender; Scottish Women's Aid; Shakti Women's Aid; YWCA Scotland; LGBT Youth Scotland; Rape Crisis Scotland; name redacted organisation x 1; PE: Glasgow Caledonian University.

<sup>146</sup> Responses include: YWCA Scotland; name redacted organisation x 1; Together; SCCYP.

<sup>147</sup> See <http://www.scotland.gov.uk/News/Releases/2012/10/humantrafficking18102012> for further information.

<sup>148</sup> Responses include: Together; SCCYP; YWCA Scotland.

## **Domestic abuse**

A number of responses called for a better recognition of the gendered nature of domestic abuse, and a need to take account of the impact of domestic abuse on children and young people. Together recommended that the national domestic abuse plan for children and young people should be embedded into the Scottish Government core work on domestic abuse.

The need to better recognise homophobic, transphobic and intersex phobic domestic abuse was also raised.<sup>149</sup>

As noted in previous sections, the impact of economic cuts on access to civil legal remedies and the lowered eligibility for legal aid will present new barriers to justice, which predominantly impact on women.<sup>150</sup>

As was also noted previously, a number of organisations highlighted the value of specific domestic abuse courts and felt that this type of initiative should be further developed.<sup>151</sup>

COPFS has noted that included with the current Victims and Witness Bill is the automatic right of victims of domestic abuse to be deemed 'vulnerable' and as such entitled to the use of special measures when giving evidence in court. This represents a change from current practice which COPFS supports.

## **Prosecution of sexual offences**

The proposal to remove corroboration was welcomed by a number of organisations, with particular reference to the impact which it was felt that this may have on the prosecution of sexual offences.<sup>152</sup> It was also felt that Scotland's National Action Plan could challenge the use of sexual history and character evidence and access to complainers' medical records to seek out reasons to undermine credibility as a witness.<sup>153</sup>

## **Children and equal protection from violence in law**

A clear message from a number of children's rights organisations was that children need equal protection from violence in law. They highlight the increasing international criticism for failure to give children equal protection and that the UK remains one of only four countries in Europe which has not introduced a ban on corporal punishment.<sup>154</sup> As Children 1<sup>st</sup> state:

*A zero tolerance approach to violence is consistent with Scotland's drive to reduce violence across our society including in the home, in the street and in communities in urban and rural Scotland...the Scottish Government's ambition is for 'Scotland to be the best place in the world for children to grow up'. That ambition is unrealistic as long as the law justifies the assault of children and they are treated differently in law and in practice from adults. Simple legal reform will send a clear message that hitting children is as unacceptable and unlawful as hitting anyone else.*

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<sup>149</sup> Individual response: name redacted.

<sup>150</sup> Responses include: Scottish Women's Aid; YWCA Scotland; Rape Crisis Scotland; name redacted organisation x 1; PE: D10 Justice and Security.

<sup>151</sup> Responses include: Victim Support Scotland; Name Redacted Organisation x 1; COPFS.

<sup>152</sup> Responses include: COPFS; Victim Support Scotland; YWCA Scotland; Rape crisis Scotland; Name Redacted Organisation x 1.

<sup>153</sup> Responses include: COPFS; Victim Support Scotland; YWCA Scotland; Rape crisis Scotland; Name Redacted Organisation x 1.

<sup>154</sup> Responses include: Together, SCCYP; NSPCC; Children 1<sup>st</sup>.

The NSPCC also raised concern over the absence of discussion around infants and very young children and their needs regarding protection from maltreatment and abuse.

### *Abuse in care (including historic abuse)*

Placing attention on the issue of abuse of children within care settings, including historic abuse, in [Getting it Right?](#) was welcomed in this process.<sup>155</sup> CELCIS highlighted that the continued protection of children and young people living in care requires regular checks by adequately resourced children and family social work teams.

As noted in previous sections, the issue of more open access to certain care settings for family/ carers (raised in particular in relation to people with ASD and Learning disabilities) is seen as a necessary requirement to prevent the existence of systemic abuse.<sup>156</sup>

COPFS also note that they have established a Cold Case Review Unit to review cases where criminal proceedings could not previously proceed, or were unsuccessful but where it may now be possible to raise criminal proceedings either due to advances in technology (such as DNA etc) or due to the recent provisions of the Double Jeopardy (Scotland) Act 2011.

### *Hate crime, harassment and bullying*

Reference to hate crime in [Getting it Right?](#) was welcomed within this participation process. Many felt that there was indeed an urgent need for much better education in school and in the public domain with regards to tackling discrimination and prejudice which can lead to harassment, bullying and hate crime. Many agreed that hate crime remained ill-defined with conflicting advice from the police and COPFS.<sup>157</sup> People First (Scotland) note that a single definition of hate crime is required for disabled people and that people with learning disabilities need be provided with this information in accessible formats, as a group who are particularly vulnerable to this type of abuse.<sup>158</sup>

It was also raised within some submissions that definitions of who can be affected by hate crime was limited, with the desire to see age, gender (including intersex) and linguistic minorities included within a definition of who can be a victim of hate crime.

### *Asylum*

Responses to the participation process reinforced that issues such as asylum cannot be excluded from Scotland's National Action Plan on the basis that the majority of responsibility in this area is reserved.<sup>159</sup> Included in the submissions on this issue, there was a call for a review of the current process of asylum and development of a fairer system. This should be a process where asylum seekers are able to seek paid employment in order to support themselves (and family members) and prevent the destitution currently faced by many asylum seekers in Scotland. There was also a call to improve the experience of asylum seeking children and children of asylum seekers with better guidance on age-assessment. It was also felt that no child should be made to report regularly at reporting centres or police stations.

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<sup>155</sup> Responses include: COPFS; CELCIS, Cl@n ChildLaw, Scottish Throughcare and Aftercare Forum, Includem, The fostering network; British Adoption and Fostering; YWCA Scotland.

<sup>156</sup> Responses include: Autism Rights; People First (Scotland).

<sup>157</sup> Responses include: Individual responses x 4; KEY; Aberdeen City council; West Dunbartonshire Council; People First (Scotland).

<sup>158</sup> Responses include: People First (Scotland); KEY.

<sup>159</sup> Responses include: STUC; Glasgow University School Liaison group; Glasgow Caledonian University MSc Students; Together; Scottish Youth Parliament; Individual responses x 2; PE: D10 Justice and Security; PE: Webcast.

The STUC also raised concerns about the treatment of LGBT asylum seekers and the difficulties they have in getting the (former) UK Border Agency to acknowledge their LGBT status and acknowledge the documented persecution of LGBT people in certain countries as grounds for an asylum claim.

### **Stop and search**

Stop and search procedures were raised within [Getting it Right?](#) Further evidence on this issue notes that until now there has been little academic or policy attention to this issue in Scotland, however, on-going research, it was reported, highlights that the volume of stop and search in Scotland seems disproportionate to the risk of offending and appears out of kilter with offending trends. Search rates have risen significantly in recent years against a backdrop of stable or falling offending trends. In 2010 stop and search per capita was three times higher in Scotland than in England and Wales. Searches also appear to be disproportionately targeted at young people in some parts of Scotland, over and above the risk of offending.<sup>160</sup>

Particular concern is raised about the implication for rights and consent during the use of non-statutory stop and search procedures.<sup>161</sup>

With regard to police accountability (as was noted earlier in the report), there is a lack of readily and centrally available statistical data on stop and search procedures and there is no separate detailing of non-statutory stop and search within the available data. This is necessary if proportionality of use is to be monitored.<sup>162</sup>

### **Policing the right to protest**

The issue of the right to freedom of peaceful assembly was raised by a number of responses in particular how human rights are considered within the policing of protests, practical restrictions to protest and the increasing difficulty in accessing public spaces for this purpose. The point is raised that the right to protest must not be inhibited by bureaucratic means and that this issue would benefit from taking a HRBA.<sup>163</sup>

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<sup>160</sup> Response from name redacted Individual: INV-021.

<sup>161</sup> Idib.

<sup>162</sup> Ibid.

<sup>163</sup> Responses include: STUC; individual response x 1; name redacted organisation x 1; PE: D10 Justice and Security.

# Appendix i: Respondents

Below are the names of those individuals and organisations who responded to the participation process, where consent has been provided.

Organisations/groups	Individual responses
Aberdeen City Council	Alan Hind
Aberdeen City Council, (responsibility for age, gender, Gypsies/ Travellers and Sexual Orientation)	Alonso Ruiz Blanco
Action Scotland Against Stalking	Andrew Muir
Autism Rights	Ann Theresa Garcia
British Adoption & Fostering	Anthony Jaeger
Care Inspectorate	Arthur McFarlane
CELCIS	C G Lewin
Chair of the Scottish Parliament's cross party group on chronic pain	Carolyn Ladda
Children 1st	Cat Moody
Children in Scotland	Chloe Sperandio
Church of Scientology Scotland	Chris Atha
Cl@n ChildLaw	Chrys Muirhead
Community Land Scotland	David Gray
Council for Racial Equality & Rights	G Hillyard
Crown Office and Procurator Fiscal Service (COPFS)	Gordon Nelson
ENABLE Scotland	Gregory Steckelmacher
Engender	Hunter Watson
Families Outside	Irena Patterson
Family Fund	Jennie Kermode

Friends of the Earth Scotland		Jimena Villar de Onis
Glasgow Caledonian University		Joanne Irvine
Glasgow Caledonian University MSc Students		John Kissane
Glasgow Disability Alliance		Jonathan Ainslie
Glasgow University School Liaison Group		Kate Dunn
Govan Law Centre		Kelsey Tanish
Humanist Society Scotland		Lesley Boyd
Includem		Lesley Diane McDaid
Inclusion Scotland		Lian Kim Selby
Intlife		Luke Evens
Inverclyde Council		Maxime DE Luca
KEY Community Supports Politics Group		Michael Dempster
LGBT Youth Scotland		Nannie Skold
Noise Vibration Action Group		Neil Dowers
North Lanarkshire Council		Paolo Sandro
NSPCC Scotland		Pauline Bocquet
People First (Scotland)		Rebecca Devaney
Poverty Truth Commission		Roger Hart
Rape Crisis Scotland		Roy Kilpatrick
Redacted		Saachi Singh
Rights of the Child UK (ROCK)		Stefano Bonino
Scottish Association for Mental Health		Thursa Sanderson
Save the Children UK		Undine Schmidt
Scotland's Commissioner for Children and Young People		Victoria Perez Saez
Scottish Borders Council		
Scottish Community Development Network		

Scottish Consortium for Learning Disability		
Scottish Council on Deafness		
Scottish Green Party Human Rights Lawyer		
Scottish Gypsy Traveller Law Reform Coalition		
Scottish Kinship Carers Alliance		
Scottish Lands and Estates		
Scottish Throughcare & Aftercare Forum		
Scottish Vulnerable Workers Forum		
Scottish Women's Aid		
Scottish Youth Parliament		
Sense Scotland		
Shakti Women's Aid		
Scottish Trade Union Congress		
The Environmental Law Centre Scotland		
The Fostering Network		
The Health & Social Care Alliance		
Together		
Victim Support Scotland		
Voices of Experience		
West Dunbartonshire Council		
YWCA Scotland		