



Amnesty International believes that stable, fair, and prosperous societies are possible only when the human rights of all are protected. In particular the next Scottish government must ensure that human rights standards and protections across all areas of policy are maintained and strengthened, throughout and beyond the process of the UK leaving the EU.

Amnesty International urges all political parties to ensure manifestos being prepared ahead of the Scottish Parliamentary election prioritise human rights and makes the following recommendations:

Ensuring human rights protections are prioritised and enhanced through incorporation of UN treaties into law to the maximum extent possible within the powers of the Scottish Parliament.

- Commit to legislating domestically to incorporate all UN treaties to which the UK is a signatory, to the fullest extent possible within the competencies of the Scottish Parliament to protect the human rights of all people in Scotland.
- Ensure this statutory framework incorporates all economic, social, cultural, civil and political rights within the competence of the Scottish Parliament as well as environmental rights and includes access to legal remedies for rights holders.
- Use this opportunity to restore any rights or protections lost or at risk through the UK's departure from the European Union, to keep step with legal developments in international and regional human rights law and to be world-leading in human rights protection for groups in Scotland such as LGBTI people, older people, and those living in poverty.
- Restate Scotland's commitment to the Human Rights Act by building on it and enhancing what has already helped so many ordinary people access justice in Scotland.

Since the 2016 Scottish parliamentary election the debate in Scotland around strengthening accountability for the implementation of international human rights standards has significantly progressed. The National Taskforce for Human Rights was established in early 2019, in response to the recommendations made in December 2018 by the First Minister's Advisory Group on Human Rights, and to prioritise actions that address the human rights and equality impacts of Brexit in Scotland. The Taskforce's remit was to work to establish a statutory framework for human rights that can bring internationally recognised rights into domestic law.

The protection of human rights is a significant challenge facing the UK and Scotland after exit from the European Union. The loss of the Charter of Fundamental Rights and the General Principles of EU law created substantive gaps in rights protections, for example the free-standing right to non-discrimination, and the right to human dignity – and meant ordinary people lost a powerful remedy against abuse.

Meanwhile in Scotland, we are already on track to incorporate the UN Convention on the Rights of the Child. That legislation represents one potential model for how we can incorporate

all other human rights treaties, including the Convention on Elimination of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD), and recognise in law, the interrelation and interdependence of human rights. The next Scottish Government should continue to build upon the work done in partnership with civil society between 2018 and 2021, and bring a bill before parliament which will incorporate economic, social and cultural rights; the civil and political rights contained in the HRA; as well as specific rights for women, people of colour, asylum seekers, people with disabilities, children, older persons and LGBTI communities.

Extend support to refugees and asylum seekers living in Scotland.

- Fund accommodation options for refugees and asylum seekers in Scotland made destitute by the Home Office in Scotland.
- Guarantee economic and social rights of refugees and asylum seekers living in Scotland, including access to legal aid, healthcare and education.
- Actively lobby the UK Government to reform restrictive Home Office rules separating child refugees from their parents by allowing child refugees in the UK the right to sponsor their close family to join them, Expand who qualifies as family, so that young people who have turned 18 and elderly parents can join their family in the UK and reintroduce legal aid for refugee family reunion cases.

The global refugee situation remains dire. While thousands die on journeys fleeing conflict and persecution, the continued refusal of some countries to share responsibility in providing asylum has encouraged others to abandon their responsibilities. The UK is the only country in Europe not to afford child refugee family reunion rights.

For migrants in the UK, the complexity of immigration rules, the scale of immigration fees and the frequency and abruptness with which these are changed and increased produces profound uncertainty. This is exacerbated by inconsistency, error and bureaucracy at the Home Office. People's lives are turned upside down. They and their families are put at risk of indefinite detention, deportation and destitution. They are barred or deterred from healthcare, rented accommodation and education. Moreover, the fear, destitution and marginalisation this promotes exposes people to exploitation including from abusive partners, employers and landlords.

Immigration and Nationality remain reserved matters, however the Scottish Government has competence in social policy, welfare and justice which impacts on refugees and those seeking asylum. The New Scots Strategy, developed in consultation with asylum seekers and advocacy organisations was welcome in its rights-based approach. The next Scottish Government can continue to build on this work with further steps to address destitution.

Commit to a human rights based external affairs policy which champions human rights and human rights defenders

- Prioritise support and protection for human rights defenders (HRDs) across all external affairs work.
- Publish guidelines on support for HRDs available from the Scottish Government; ensuring all desk officers and civil servants working in human rights, international development and external affairs in Scotland and overseas are familiar with the guidelines.
- Develop country specific strategies detailing how the government will support HRDs in partner countries.
- Publicly champion human rights standards on bilateral and trade visits and report to parliament annually on measures taken to raise human rights abuses and specific cases during these visits.

The unprecedented surge in attacks and repression of HRDs and restriction of civil society worldwide must be recognised and responded to adequately, and Scotland can play its part. HRDs must be recognised as central partners and legitimate agents of change without whom stability, human rights, and development will be unsustainable. Attacks on them, frequently with impunity, constitute direct attacks on the rule of law and must be challenged vocally, and consistently.

Under the current devolution settlement the Scottish Government has an important role to play in supporting human rights defenders and championing human rights in its international work through international development as well as international relations supporting culture, trade and educational links.

Currently the Scottish Government funds the Scottish Human Rights Defenders Fellowship, delivered annually by the University of Dundee and supported by Amnesty and Front Line Defenders. The fellowship is a welcome initiative that can provide respite and development opportunities for a few individuals. However, more can be done.

In 2019, the now Foreign, Commonwealth and Development Office (FCDO) published UK Support for Human Rights Defenders, a set of guidelines outlining support the FCDO and its embassies can provide. While Amnesty pushes the UK government to do more by developing an overarching strategy within which these guidelines can sit, we would advocate for the next Scottish Government to adapt these guidelines, publish and embed them across its own civil service, particularly those working in its international offices, as a starting point.

The International development work the Scottish Government undertakes in its identified partner countries is also an opportunity to extend increased support to HRDs in Zambia, Malawi, Rwanda and Pakistan. All of these countries are places where HRDs and civil society experience repression and work under increasingly difficult and dangerous circumstances. Individual strategies should be written for each partner country taking account of the human rights environment, the Scottish Government's channels of influence, and what can be done to support HRDs and civil society in their work.

The next Scottish Government's External Affairs work should take a human rights approach as its basis. Prior to Covid, Amnesty is regularly invited to brief ministers on the human rights environment in countries ahead of international visits. While we hope these briefings are useful to ministers we would like to see the introduction of mechanisms compelling Ministers to report what representations were made during these visits and to whom, and believe this

will increase accountability with regards to the approach to human rights in Scotland's international engagement.

Strengthen the rights of all women and girls.

- Ensure all survivors of domestic abuse are able to access safety, regardless of immigration status and conditions of status relating to access to public funds.
- Incorporate the Convention on the Elimination of all forms of Violence Against Women (CEDAW).
- Incorporate the Istanbul Convention

The Domestic Abuse (Scotland) Act 2018 was an important step towards tackling domestic abuse. The next Scottish Government should seek to build on this work by ensuring all domestic abuse survivors can access support and safety. Particular attention must be given to women who have no recourse to public funds (NRPF), many of whom are currently unable to access refuges. The next Scottish Government should commit funding for service providers who work directly with women under immigration control, including but not limited to Scottish Women's Aid, Shakti Women's Aid and Hemat Gryffe, to ensure women with NRPF can access refuges and further support.

Amnesty welcomed the commitment to incorporate the Convention on Elimination of Discrimination Against Women (CEDAW) in the 2020-21 programme for government just as incorporation of the Convention on the Rights of the Child (CRC) will bring in protections for girls and boys through the UNCRC Incorporation (Scotland) Bill. The UK ratified CEDAW in 1986, and while it is obliged to observe and protect the rights in the convention under international law, CEDAW is not currently incorporated into either domestic English or Scots law, which means women cannot take a case to the UK or Scottish courts on the basis of a breach of their rights under CEDAW. Incorporation of CEDAW would give the treaty direct effect in domestic law.

The Istanbul Convention builds on CEDAW by defining a series of targeted purposes, and defining gender-based violence in addition to CEDAW's definition of discrimination against women. It is widely considered to be one of the best anti-violence against women (VAW) policies ever written. Incorporation of the convention into Scots Law would build significantly on Scotland's work to date to advance gender equality and eradicate VAW. The next Scottish government should seek to incorporate the convention.

Ensuring companies are held to account for human rights abuses

- Ensure public procurement addresses human rights.

If the next Scottish government expects businesses to take human rights issues in their supply chains seriously, it must demonstrate at least the same level of commitment in its own procurement supply chains. Public bodies should exclude companies that have not undertaken appropriate and effective human rights due diligence from all public contracts. Companies that have been found responsible for abuses should be excluded from public contracts for a defined period.

- Ensure public money and development support is withheld from companies directly or indirectly involved in human rights abuses.

The Scottish Government and its Enterprise agencies should undertake human right assessments of businesses before providing support in any form.

- Exclude tenderers who buy from illegal Israeli Settlements from public procurement

For more than 50 years Israel has occupied Palestinian lands, forcing Palestinians from their homes. This land has been used illegally, to house Israeli settlers and produce millions of pounds worth of products that are sold around the world, including in UK markets. The money made in this way allows the settlements to profit and thrive.

In 2014 the then Scottish government issued strong guidance to public bodies in Scotland, advising against procuring from companies that conduct business with Israeli settlements on the grounds that *“Exploitation of assets in illegal settlements is likely to be regarded as constituting ‘grave professional misconduct’ for the purposes of procurement law”*¹. This policy note should be resurrected so that it unequivocally represents the advice of the next Scottish government.

- Human rights business assessments should be laid before the Equalities and Human Rights Committee for scrutiny.
- Human rights organisations should be consulted about the content and standards of assessment used.

Amnesty welcomed the Scottish Government’s commitment to conducting due diligence on all its inward and outward business relations and we would want to see clear and transparent information on the due diligence process.

The government and public agencies should be transparent about human rights due diligence processes, and standards for businesses awarded support or contracts. Amnesty suggests that one mechanism for this would be to lay reports including detail of human rights

assessments carried out before the parliament's Equalities and Human Rights Committee for scrutiny at mutually agreed intervals.

Assessments themselves should set a high human rights threshold for the award of public funds. Amnesty recommends that the next Scottish Government consult with human rights organisations and about the standard of these assessments.

Reform the Gender Recognition Act to remove human rights breaches.

- Commit to swift reform of the GRA to allow self-identification.
- Ensure self-ID process is open to 16 and 17 year olds, and is accessible to young people in line with the human rights principle of their evolving capacities.
- Individuals who identify as a gender other than male or female should be able to obtain documents that reflect their gender identity in the same manner as those who use the binary male or female.

The next Scottish Government must commit to reforming the Gender Recognition Act swiftly. Official documents reflecting gender identity are vitally important for the enjoyment of transgender people's human rights. The current system violates the human rights of trans people's rights to privacy and further stigmatises trans identities.

Amnesty considers that the current requirement on applicants to provide evidence of living in their acquired gender is not in keeping with the Council of Europe Resolution 2048 which calls on all Member States to "develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards...and other similar documents."

Amnesty recommends that the self-identification process is open to those aged 16 and above and that legal gender recognition should be accessible to minors, taking into account the child's freely expressed views regarding their own best interests, and in light of their evolving capacities. Amnesty supports the option of parental application for children under the age of 16 but there should be an alternative made available for under 16s who wish to change their legal gender status and do not have parental support.

Protect and fulfil the right to adequate housing for all

- Act to limit time spent in emergency accommodation by those experiencing homelessness before moving to long term settled housing, and phase out the use of unsuitable accommodation entirely.
- Commit to tackling obstacles to secure long-term housing faced by private renters, including short term lets, unjust rent increases, discrimination and eviction.
- The right to housing should be recognized within housing strategies as a legal right, subject to effective remedies. It should be fully incorporated into Scots Law.

At the time of writing, it is impossible to quantify how the Coronavirus pandemic will impact those already experiencing homelessness, and how many more it will push into homelessness; however Amnesty, and other campaigning organisations have warned of a “human rights catastrophe.”

What the Coronavirus pandemic did show us, was that if there was a concerted effort, rough sleeping could almost be ended overnight. As we “build back better” we need to transition people from emergency accommodation into long-term, suitable, settled housing. Progress has been made with the extension of the Unsuitable Accommodation Order and some help for those facing eviction due to rent arrears, but more must be done as more people are pushed into housing crisis due to the downturn in the economy.

Under Article 11 of the ICESCR authorities are obliged to ensure that everybody enjoys the right to adequate housing without discrimination. This right includes access to affordable housing for all, including low income groups. More must be done to protect the rights to adequate housing in Scotland, making people homeless is a human rights violation and alternatives must always be found from eviction into homelessness. The housing provided must be of adequate standard as described in General Comment 4 from the Committee on Economic, Social and Cultural Rights. Among other things, it must be affordable, habitable, accessible and in a location that allows access to employment options, healthcare services, schools, etc².

² **General Comment n°4:** The right to adequate housing (art.11 (1)), Committee on Economic, Social and Cultural Rights:
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CESCR/GEC/4759&Lang=en

Commit to reviewing the collection, disaggregation, and publication of data by Police Scotland

- Commit to a review of the systematic collection and disaggregation of data along protected characteristics and human rights categories.
- Institute monitoring and evaluation processes for this data which includes external expertise and stakeholders.

Amnesty has long standing concerns about the apparent lack of data Police Scotland collects, analyses and regularly publishes. In recent years Amnesty has requested data on various issues relating to the use of force under freedom of information laws to be told that statistics are subject to a Section 12 excessive cost exemption.

We have also been denied disaggregated data on age, gender and ethnicity due to the “disparate sources or systems” used to record this data. It became apparent during the Covid-19 pandemic and the extraordinary policing powers granted during that time, that infrastructural problems with data collection persist but some were addressed to an extent during that time. Now is the time for a more thorough review of Police Scotland’s data systems so that recommendations can be enacted.

Accountability and transparency withing police forces is vital to ensuring human rights are upheld and guarding against discrimination. It also leads to better and more effective policing that maintains public trust in policing and Police Scotland’s stated aim to police by consent. Therefore the next Scottish Government must commit to reviewing Police Scotland’s collection and analysis of data along protected characteristics and human rights categories, producing a publication schedule for these data and ensuring monitoring and evaluation processes that involves stakeholders and experts.

Legislate to ban the use of Facial Recognition Technology

In February 2020, the Scottish Parliament's Justice Sub-Committee on Policing concluded there is no justification for Police Scotland using live facial recognition technology, stating that the software would be a "radical departure" from the current practice of policing by consent.³ The technology enables real-time flagging of suspects by cross-referencing their 'live' pictures captured by CCTV cameras against police databases.

The use of live FRT by police violates human rights in a number of different ways. In the context of racially discriminatory policing and racial profiling of Black people, the use of FRT could exacerbate human rights violations by police in their targeting of Black communities. Research has consistently found that FRT systems process some faces more accurately than others, depending on key characteristics including skin colour, ethnicity and gender. For instance, the National Institute of Standards and Technology (NIST) measured the effects of race, age and sex on leading FRT systems used in the US – according to Dr Charles H. Romine, the Director of NIST, "the study measured higher false positives rates in women, African Americans, and particularly in African American women"⁴.

In the UK, the South Wales Police ("SWP") and the Metropolitan Police Service ("MET") have both faced legal challenges as a result of implementing live FRT. In August 2020 the Court of Appeals ruled that the SWP had not complied with the Public Sector Equality Duty (PSED) by deploying live FRT due to the potential for discriminatory impact.⁵

Police Scotland had outlined its intention to introduce live FRT in its Policing 2026 strategy however In February 2020, Police Scotland confirmed it was scrapping plans to introduce it at this time and conceded that any future roll-out would have to follow a robust consultation process.

Amnesty welcomes the effective moratorium on the use of the technology in Scotland, but believe the only way to ensure full and unequivocal compliance with human rights legislation and international treaties will be to rule out the use of live FRT entirely through legislation.

³ Justice Sub-Committee on Policing, Facial Recognition, how Policing in Scotland makes use of this technology: <https://digitalpublications.parliament.scot/Committees/Report/JSP/2020/2/11/Facial-recognition--how-policing-in-Scotland-makes-use-of-this-technology>

⁴ <https://www.nist.gov/speech-testimony/facial-recognition-technology-part-iii-ensuring-commercial-transparency-accuracy>

⁵ R Bridges v CC South Wales: <https://www.judiciary.uk/judgments/r-bridges-v-cc-south-wales/>

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