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**Response from Campaign for Freedom of Information in Scotland**

**On UK’s 7th Periodic Report on**

**International Covenant on Economic, Social and Cultural Rights (ICESCR)**

**Introduction**

CFoIS was established in 1984 and promotes enforceable, access to information rights. CFoIS offers comment and scrutiny on law and policy as well as encouraging people to be ‘rights aware’. CFoIS organises meetings of the Scottish Public Information Forum to increase engagement with rights holders and duty bearers. CFoIS is a Scottish Charitable Incorporated Organisation (SCIO) no SC051263.

The UN General Assembly proclaimed 28th September as the annual International Day for Universal Access to Information (IDUAI). The unequal impact of the pandemic inspired UNESCO’s theme for 2021 which was to highlight the role of access to information laws and their implementation to ‘build back strong institutions for the public good and sustainable development, as well as to strengthen the right to information and international cooperation in the field of implementing this human right.’[[1]](#footnote-1)

In respect of the UN’s periodic review of UK compliance with ICESCR and to the Concluding Observations published on 14th July 2016[[2]](#footnote-2), we offer the following comments:

1. The UK’s explicit action on the UN’s ‘Respect, Protect and Remedy Framework on Business and Human Rights’ requires transparency and accountability to enable scrutiny of performance and impact. COVID19 has prompted and exposed greater reliance on the private sector to deliver contracts and services paid for by public money and its is critical that the UNGPs define that financial relationship.
2. All of ICESCR rights necessitate a robust freedom of information regime to underpin delivery and scrutinise whether the chosen routes of compliance in the UK, achieve equal outcomes. Access to information rights demonstrate that human rights are indivisible and interconnected.
3. CFoIS is pleased to have the opportunity to contribute to this consultation and to collaborate on ensuring the UNGPS, SDGs and FoI law provide a rights respecting framework.

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**UNGPs**

In 2011, the UN approved 31 ‘Guiding Principles on Business and Human Rights’ (UNGPs) setting out the States duty to protect human rights and the corporate responsibility to respect human rights[[3]](#footnote-3). Remedies must also be available to prevent and address human rights abuses. The UK was the first country to adopt a

‘National Action Plan on Business and Human Rights’, in 2013, based on the UNGPs and has periodically reviewed and updated commitments such as in May 2020[[4]](#footnote-4).

There is no separate Scottish document despite a published baseline assessment[[5]](#footnote-5). However the Scottish Government is already committed to delivering the UNGPs.[[6]](#footnote-6) To put the global agenda in a domestic context, the Scottish Parliament hosted a global conference, in October 2010, to discuss the issues which was attended by over 80 countries as well as by UN staff.

The UNGPs apply to public procurement, such as numbers 4, 5 and 6, which has implications for current service design and delivery as well as planned reforms such as the development of a national care service for Scotland[[7]](#footnote-7). It also links with current Government action on Fair Work, Just Transition, SDGs, the Scottish Business Pledge and City Region Deals. Transparency and accountability are key to the delivery of the UNGPs such as numbers 8, 15(b) and 31(e). The UNGPS provide an integrated framework for making the UK, and Scotland, fairer and more accountable.

**Human Rights**

The Human Rights Act 1998 gives domestic effect to the European Convention on Human Rights (ECHR). The Scotland Act 1998 requires compliance with the ECHR and places a duty on Ministers to comply with internationally ratified Treaties such as the UN Convention on the Rights of the Child (UNCRC). The duties apply to organisations delivering public services and services of a public nature. In March 2021, the FM’s Advisory Group on Human Rights leadership recommended a new human rights law which would incorporate UN Treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).

**Conclusion**

Focussing on transparency and accountability to evaluate compliance with the 31 UNGPs is essential across the UK. The potential to use the UNGPS to make a significant difference is clear. For example the total value of all contracts awarded by the Scottish Government during the 2016-2021 parliamentary session was £3,209,786,818[[8]](#footnote-8). Government and the public sector have leverage and can

influence private business to improve compliance with international human rights law.

1. **Since the last periodic report, what are the areas you consider to have improved in the UK?**

(please provide specific examples, including jurisdictional region)

Having attended UN sessions on UK compliance with ratified UN Treaties, CFoIS understands that the UN Committee on Economic, Social and Cultural Rights expects compliance with ICESCR. The sole purpose of the periodic review process is to focus on identifying where the UK Government’s compliance can improve. Therefore no answer is offered to this question.

CFoIS is disappointed that the UK failed to submit its seventh periodic report by 30th June 2021, in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2). We realise that the business of government has been under huge pressure because of the impact of COVID 19 but ensuring human rights are respected, protected and fulfilled must happen in tandem. For example we note the obligations set out in Article 12 (c ) and (d) of ICECSR:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health … The prevention, treatment and control of epidemic, endemic, occupational and other diseases … The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

CFoIS urges the UK Government to ensure that the timeframe for scrutiny by the UN Committee is adhered to, which necessitates a prompt submission of its seventh periodic report.

1. What are the areas the UK Government should be focusing on in its 7th periodic report?[[9]](#footnote-9)

How access to information should be strengthened in the UK and Scotland to deliver adequate transparency, scrutiny and accountability in the delivery of all rights in ICESCR [OHCHR | International Covenant on Economic, Social and Cultural Rights](https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx) and evaluate compliance with the 2016 Concluding Observations from the UN Committee on Economic, Social and Cultural Rights.

How access to information should be strengthened in the UK and Scotland to deliver adequate transparency, scrutiny and accountability in private sector delivery of services which are funded by public money. The services may be public or of a public nature.

1. Any views on the recommendations made by the Committee on Economic, Social and Cultural Rights. (please specify the recommendation(s) you are referring to)
2. The UK is required to ‘Establish a clear regulatory framework for companies operating in the State party to ensure that their activities do not negatively affect the enjoyment of economic, social and cultural human rights…’ . (Para. 12)

* What impact did the UNGPS have on COVID19 planning, service delivery and procurement?
* How has Article 2, the progressive realisation of rights to the maximum extent of available resources, impacted on developing and implementing a UNGP framework?

1. The Committee recommended that the UK ‘conducts a human rights impact assessment, with broad publicparticipation, of the recent changes introduced to its fiscal policy, including an analysis of the distributional consequences and the tax burden of different income sectors and marginalized and disadvantaged groups; (para 17).

* How has this assessment been delivered? For example in complying with recommendations 32 and 33 on the delivery of a framework to enable ‘just and favourable conditions of work’?
* Does the UK Government have a model ‘human rights impact assessment’ and is it published?

1. The Committee recommended publishing ‘disaggregated data on the impact of the reforms to social security on women, children, persons with disabilities, low-income families and families with two or more children’ (para 41(d) ).

* Has this been done and is it published? It will enable more informed scrutiny of the 7th Periodic Report?
* What other decisions have been made on social security since 2016 that were underpinned by disaggregated data, and has that data been published?

1. At [International Day for Universal Access to Information (unesco.org)](https://en.unesco.org/commemorations/accesstoinformationday) [↑](#footnote-ref-1)
2. Committee on Economic, Social and Cultural Rights ‘ Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland [↑](#footnote-ref-2)
3. At [GuidingPrinciplesBusinessHR\_EN.pdf (ohchr.org)](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) [↑](#footnote-ref-3)
4. At [UK National Action Plan on implementing the UN Guiding Principles on Business and Human Rights: progress update, May 2020 - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/implementing-the-un-guiding-principles-on-business-and-human-rights-may-2020-update/uk-national-action-plan-on-implementing-the-un-guiding-principles-on-business-and-human-rights-progress-update-may-2020) [↑](#footnote-ref-4)
5. Advertised in May 2015 at [National Baseline Assessment on Business and Human Rights (government-online.net)](https://www.government-online.net/national-baseline-assessment-on-business-and-human-rights-for-scottish-government/) and progress at [Business and Human Rights – Scotland's National Action Plan for Human Rights (snaprights.info)](http://www.snaprights.info/action-areas/better-world/business-and-human-rights) [↑](#footnote-ref-5)
6. [Human rights - gov.scot (www.gov.scot)](https://www.gov.scot/policies/human-rights/) [↑](#footnote-ref-6)
7. [A National Care Service for Scotland - Scottish Government - Citizen Space (consult.gov.scot)](https://consult.gov.scot/health-and-social-care/a-national-care-service-for-scotland/) [↑](#footnote-ref-7)
8. [Contracts during 2016-2021 parliamentary sessions: FOI release - gov.scot (www.gov.scot)](https://www.gov.scot/publications/foi-202100176786/) 5 [↑](#footnote-ref-8)
9. Para 12, United Nations, Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, 14 July 2016 [http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW3XRinAE8KCBFoqOHNz%2Fvu CC%2BTxEKAI18bzE0UtfQhJkxxOSGuoMUxHGypYLjNFkwxnMR6GmqogLJF8BzscMe9zpGfTXBkZ4pEaigi44xqiL](http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW3XRinAE8KCBFoqOHNz%2Fvu%20CC%2BTxEKAI18bzE0UtfQhJkxxOSGuoMUxHGypYLjNFkwxnMR6GmqogLJF8BzscMe9zpGfTXBkZ4pEaigi44xqiL%20) [↑](#footnote-ref-9)