

The relationship between the human right to a healthy environment and the right to food

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The relationship between the human right to a healthy environment and the right to food

1. Summary

This briefing explores the relationship between the human right to a healthy environment and the right to food. One of the defining features of the right to a healthy environment is healthy and sustainably produced food. The right to food, as well as being an equalities and health issue, is also an environmental issue. Incorporation of both rights has the potential to transform policy choices towards a fairer, healthier, and more sustainable food system for everyone.

2. Context and definitions

2.1 Policy context

In March 2021, the Scottish Government welcomed recommendations from its National Taskforce for Human Rights Leadership ('the Taskforce') to introduce a new legal framework which will see new categories of human rights brought into Scots law.¹ These rights will be added to the existing human rights that are already protected in Scotland under the Human Rights Act 1998 and the new United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill. Included in its recommendations for incorporation are the right to a healthy environment and the United Nations International Covenant on Economic, Social, and Cultural Rights ('ICESCR') - which enshrines the right to food at Article 11.² In September 2021, the Scottish Government announced it would consult on a new Human Rights Bill 'in the coming year.'³

Alongside this, the Scottish Government has committed to action on Scotland's food system by introducing a Good Food Nation Bill.⁴ The Scottish Food Coalition (SFC) is leading the campaign for a Good Food Nation Bill and incorporation of the right to food. The SFC is a diverse alliance of civil society organisations working towards a fair,



healthy and sustainable food system.⁵ Its vision for a Good Food Nation Bill is that it will be a 'coherent framework that ensures the food system contributes to everyone's health and wellbeing, values the work to put food on our plates, supports high animal welfare, sustains our wildlife, natural resources and environment for generations to come.'⁶

2.2 Definitions

The right to food means that food must be:

- available, both now and for future generations;
- accessible, which means both affordable, and geographically and physically accessible regardless of where you live or who you are;
- adequate, that is, it should be healthy, safe and culturally acceptable.⁷

Worldwide, thirty-one countries provide constitutional recognition of the right to food.⁸

The Taskforce's Report recommends that the right to a healthy environment be incorporated 'with substantive and procedural elements.'⁹ The substantive right to a healthy environment would, for the first time, give the public a legal basis to have a healthy environment as a standalone human right. The Taskforce's Report defines the substantive right to a healthy environment as including inter-dependent environmental features of 'clean air, a safe climate, access to safe water and adequate sanitation, *healthy and sustainably produced food*, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.'¹⁰ This aligns with the definition given by the UN Special Rapporteur on human rights and the environment.¹¹ 156 out of 193 United Nations Member States have already recognised the human right to a healthy environment,¹² and there is evidence that



the incorporation of the human right to a healthy environment is associated with improved environmental outcomes.¹³

The procedural right to a healthy environment creates three human rights relating to democratic processes as created by the Aarhus Convention, which Scotland is obliged to implement. These are: the right of access to environmental information, the right to participate in environmental decision-making, and the right of access to justice and effective remedies in relation to environmental matters.¹⁴ Scotland's legal system is currently not compliant with the Aarhus Convention on access to justice due to the excessive costs of environmental litigation.¹⁵ To find out more, see the Environmental Rights Centre for Scotland's website and resources.¹⁶

3. Gaps in the right to food, and environmental issues associated with the dominant food system

This section summarises some of the key gaps in the right to food and environmental issues arising from our dominant food system.

3.1 Lack of affordability and adequacy of food

In Scotland, not everyone has their right to food realised. They do not have access to sufficient, adequate, and culturally acceptable food that is produced and consumed sustainably.

Food poverty is defined as the 'the inability to acquire or consume an adequate or sufficient quantity of food in socially acceptable ways, or the uncertainty that one will be able to do so.'¹⁷ In 2019 in Scotland, 9% of all adults were worried they would run out of food due to a lack of money or other resources.¹⁸ This percentage share was much higher for people earning an income of under £14,444 (23%), people with limiting longstanding illnesses (18%), and people living in the most deprived quintile in Scotland (16%).¹⁹ Between April 2018 and September 2019, the Trussell Trust and independent food banks together distributed over 596,472 food parcels in Scotland.²⁰



This situation was attributed to ‘a weakened social security system, low pay and insecure work [which] are tightening the grip of poverty and forcing people to crisis point.’²¹ The COVID-19 lockdown saw the situation worsen.²²

Moreover, many people experience barriers to accessing healthy food. The cheapest food is often detrimental to our health, impacting on our human right to the highest sustainable level of physical and mental health. Food Standards Scotland explains: ‘we are encouraged by a food and drink environment in which high fat, salt and sugar food is cheap, widely available and heavily promoted.’²³ It reports that the food we are consuming in Scotland is making us ill and is linked with obesity, cancers, high blood pressure and strokes, diabetes and other issues.²⁴

The affordability and accessibility of healthy food contributes to health inequalities because the cost of eating a healthy diet is greater than the cost of eating a less healthy diet.²⁵ Public Health Scotland notes, ‘people on low incomes and those living in deprived areas often consume a less healthy diet and are therefore more likely to experience the adverse health outcomes associated with a poor diet. This could be due to them not having affordable healthy food options available where they live.’²⁶ Public Health Scotland recommends implementing a rights-based approach to food and food poverty to reduce nutrition-related inequalities and improve health.²⁷

3.2 Environmental degradation

The dominant industrialised food system is characterised by large-scale commodity production for global markets, long supply chains, monocultures, intensive livestock farming and the intensive use of synthetic inputs and antibiotics.²⁸ Worldwide, food systems – from field to fork - make up around a third of greenhouse gas emissions. The UN Secretary General last year declared, ‘food systems are one of the main reasons we are failing to stay within our planet’s ecological boundaries... The fallout



of the assault on our planet is impeding our efforts to eliminate poverty and imperilling food security.²⁹

The many adverse environmental impacts across the food supply chain include biodiversity loss and land use change from intensive farming,³⁰ impacts on water supplies,³¹ use of harmful chemicals in pesticides and fertilisers³² (which impact both on the environment and our health), emissions from transportation (including refrigeration and air miles), waste from plastic packaging, and wasted food.³³

In Scotland, agriculture^a alone makes up a quarter of our greenhouse gas emissions.³⁴ Scotland's biodiversity is now more depleted than in 88% of 240 countries and territories across the world.³⁵ Among the key pressures on Scotland's biodiversity are changing use of sea and land areas for food, and overexploitation of animals and plants including overfishing.³⁶ Yet, despite the pressures that the dominant food system places on our climate and biodiversity, the UK as a whole is only 60% self-sufficient in food.³⁷

In addition, globally, one third of all food - enough to feed billions – goes to waste. This accounts for approximately 8% of global emissions and uses 30% of the planet's agricultural area.³⁸ In Scotland, nearly one million tonnes of food and drink is wasted each year.³⁹ This illustrates the inequalities surrounding access to food: where some people don't have enough, at the same time as food is going to waste.

Simultaneously, climate change, including increases in frequency and intensity of extreme weather events, is already adversely affecting the ability of food systems to deliver good food for everyone.⁴⁰ Biodiversity loss is also leading to a collapse in food

^a Note that emissions from agriculture do now equate to emissions for the whole of the food system in Scotland. – Agricultural emissions include Emissions from livestock, agricultural soils (excluding carbon stock changes which are included in the LULUCF sector), stationary combustion sources and off-road machinery.



systems.⁴¹ One of the best-known examples of this is the link between declining bee populations and global food security and nutrition.⁴² In this way, the dominant food system and environmental destruction are in a self-perpetuating adverse feedback loop.

4. The transformative potential of incorporating the right to a healthy environment and the right to food

4.1 Incorporation to reframe policy

Food poverty is on the rise, and the dominant industrialised food system is contributing to the climate and nature emergencies. Our depleted environmental conditions cannot support the production of nutritious food at the scale we need. The status quo is untenable.

Incorporation of a healthy environment and food as fundamental human rights would place a legal obligation on the Scottish Government to comply with these rights across all areas of policy and decision making and could make it easier to hold the Government to account if it fails to do so. It could therefore prioritise tackling food poverty and delivering a food system which does not damage the environment above the current dominant drivers of economic growth and profit margins.

The UN Special Rapporteur on human rights and the environment has detailed how the right to food can act as a steer for more environmentally-friendly farming practices including agroecology: citing positive examples from Brazil, Denmark, Ecuador, India, the Philippines, Senegal, the United States, Benin, Brazil, Cameroon, Cuba, Egypt, India, Mozambique, Nepal, the Niger and the Philippines.⁴³ Agroecology is the application of ecological concepts and principles in farming, promoting farming practices that 'mitigate climate change, work with wildlife, and put farmers and communities in the driving seat.'⁴⁴



Embedding the rights to a healthy environment and the right to food combines the policy agendas of tackling environmental degradation and food poverty in a mutually reinforcing way. For example, it could provide the legal basis for policy choices to foster the increase in organic food. Certified organic production indicates an agroecology approach and that the food has been produced through approved, regulated methods which sustain the health of soils, water and air; use no artificial fertilisers; use fewer pesticides; and have higher animal welfare standards.⁴⁵ Organic production accounts for only a tiny percentage (2.1%) of agriculture in Scotland and has been in decline for several years,⁴⁶ despite a Scottish Government Organic Action Plan 2016-2020.⁴⁷ In addition to its limited availability, organic food is typically more expensive. The UN Special Rapporteur on human rights and the environment cites Turkey as a positive example in this regard: ‘Turkey passed a law on organic agriculture in 2004 and a by-law on organic agriculture principles and practices in 2010. The number of farmers and areas under organic cultivation has grown rapidly since 2010, with the area in organic production jumping more than 60 per cent between 2010 and 2014.’⁴⁸

4.2 Exercising our rights needs rights with ‘teeth’

For the transformative potential of the human right to a healthy environment and the right to food to be realised, the rights must be articulated and incorporated with sufficient ‘teeth’ so that they can work in practice. These teeth must include as a minimum:

- (1) further definition, according to agreed standards, of the six defining features of the substantive human right to a healthy environment;
- (2) justiciable rights that are enforceable against state and non-state actors across all areas of policy;



(3) affordable access to justice, meaning the ability to enforce these rights before a court or independent tribunal; and

(4) effective remedies.

The threat of public interest litigation on healthy and sustainable food could serve as additional pressure on the government to restructure our food system. For example, incorporation of the right to a healthy environment could potentially provide a basis for a legal challenge to the prevalence of food produced with high levels of pesticides and chemicals. Likewise, incorporation of the right to food could potentially provide a basis for a legal challenge against the Scottish Government for failing in their responsibility to tackle food poverty.

5. Conclusion

The right to a healthy environment and right to food are mutually reinforcing and, if incorporated with sufficient teeth, could serve as a basis to transform the environment and our food system so that we all have access to healthy and sustainable food, now and for future generations.

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- ¹ National Taskforce for Human Rights Leadership (Mar 2021) [The National Taskforce for Human Rights Leadership Report](#)
- ² Ibid., Recommendations 1(b) and 2; United Nations (1966) [International Covenant on Economic, Social and Cultural Rights](#) ('ICESCR'), Art 11
- ³ Scottish Government (Sept 2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), p 10
- ⁴ Ibid., see p 90, also see Scottish Food Coalition (30 Apr 2021) [Party Manifesto Commitments on Food](#)
- ⁵ [Scottish Food Coalition](#) (website accessed 17 Aug 2021)
- ⁶ Ibid.
- ⁷ De Schutter (January 2014) [Report of the Special Rapporteur on the right to food: The transformative potential of the right to food](#) § 2; for an earlier iteration, see United Nations Economic and Social Council (1999) [General Comment 12: The right to adequate food \(art. 11\)](#), § 8; United Nations Office of the High Commissioner for Human Rights (2010) [The Right to Adequate Food Fact Sheet No. 34](#); Scottish Food Coalition (website accessed 21 Sept 2021) [Right to Food](#)
- ⁸ United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#), § 74
- ⁹ National Taskforce for Human Rights Leadership (Mar 2021) [The National Taskforce for Human Rights Leadership Report](#), Recommendation 2
- ¹⁰ Taskforce report, p 77 (emphasis added)
- ¹¹ United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)
- ¹² Ibid., p 4
- ¹³ Boyd (2011) [The Environmental Rights Revolution](#); Jeffords and Minkler (2016) [Do constitutions matter? The effects of constitutional environmental provisions on environmental outcomes](#) *Kyklos*, 69(2): 294–335; Jeffords (2016) [On the temporal effects of static constitutional environmental rights provisions on access to improved sanitation facilities and water sources](#), *Journal of Human Rights and the Environment*, 7(1): 74–110
- ¹⁴ United Nations Economic Commission for Europe (1998) [Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \('Aarhus Convention'\)](#)
- ¹⁵ Aarhus Meeting of the Parties (2011) [Decision IV/9i on compliance by the United Kingdom of Great Britain and Northern Ireland](#); (2014) [Decision V/9n on compliance by the United Kingdom of Great Britain and Northern Ireland](#) Paragraph 2(a); (2017) [Decision VI/8k concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention](#); Environmental Rights Centre for Scotland (Sept 2021) [Access to justice on the environment, and whether Scotland is providing it](#)
- ¹⁶ [Environmental Rights Centre for Scotland](#) (website accessed 17 Aug 2021); Friends of the Earth Scotland (website accessed 17 Aug 2021) [Environmental Rights](#)
- ¹⁷ Public Health Scotland (website accessed 26 Aug 2021) [Improving Health, Food Poverty](#)



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- ¹⁸ Scottish Government (2019) [Scottish Health Survey: Supplementary Tables](#), Spreadsheet 16, Table 785
- ¹⁹ Ibid., Tables 786, 788, 787 and respectively
- ²⁰ Independent Food Aid Network & A Menu for Change (Jan 2020) [Emergency Food Parcel Provision in Scotland April 2018 to September 2019](#)
- ²¹ Scottish Housing News (9 Jan 2020) [New report highlights ‘shame’ of soaring food bank use in Scotland](#) (quote from Margaret MacLachlan, project manager for A Menu for Change)
- ²² SPICe (Mar 2021) [Health inequality and COVID-19 in Scotland](#); Glasgow Centre for Population Health (8 May 2020) [Food in uncertain times](#)
- ²³ Food Standards Scotland (2020) [The Scottish Diet: It needs to change](#), p 4
- ²⁴ Ibid., pp 5, 6
- ²⁵ NHS Health Scotland (2015) [Position Statement on Food Poverty](#), p 3, and M Rao et al (2013) [Do healthier foods and diet patterns cost more than less healthy options? A systematic review and meta-analysis](#), *BMJ Open*
- ²⁶ Public Health Scotland (website accessed 16 Aug 2021) [Diet and healthy weight](#)
- ²⁷ NHS Health Scotland (2015) [Position Statement on Food Poverty](#), p 4
- ²⁸ [Glasgow Food and Climate Declaration](#) (website accessed 24 Aug 2021)
- ²⁹ United Nations Secretary-General (2 December 2020) [Speech at Columbia University: The State of the Planet](#)
- ³⁰ Arneeth et al (2019) [Framing and Context in Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems](#)
- ³¹ Ibid.
- ³² [Pesticide Action Network UK](#) (website accessed 25 Aug 2021)
- ³³ Zero Waste Scotland (website accessed 17 Aug 2021) [Working to reduce food waste](#)
- ³⁴ Scottish Government (2019) [Scottish Greenhouse Gas Emissions 2019](#), p 10; Scottish Government (website accessed 17 Aug 2021), [Agriculture and the environment](#), [Scottish Greenhouse Gas Emissions 2019 \(www.gov.scot\)](#) p 13
- ³⁵ RSPB (2021) [Biodiversity Loss: The UK’s global rank for levels of biodiversity loss](#)
- ³⁶ NatureScot (website accessed 17 Aug 2021) [Key pressures on biodiversity](#); Scottish Government (2015) [Scotland’s Biodiversity: a Route Map to 2020](#); IPBES (2019) [Global Assessment Report on Biodiversity and Ecosystem Services](#)
- ³⁷ National Farmers Union Scotland (website accessed 17 Aug 2021) [Farming and the food supply chain](#)
- ³⁸ Table (10 Feb 2021) [Why the climate emergency demands food waste regulation](#)
- ³⁹ Zero Waste Scotland (website accessed 17 Aug 2021) [Working to reduce food waste](#)
- ⁴⁰ Intergovernmental Panel on Climate Change (Jan 2020) [Climate Change and Land](#), § A.2.8, p 10
- ⁴¹ Food and Agricultural Organisation (2019) [The State of the World’s Biodiversity for Food and Agriculture](#), p 17
- ⁴² Food and Agricultural Organisation (20 May 2019) [Declining bee populations pose threat to global food security and nutrition](#)
- ⁴³ United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#), § 73 onwards at page 12
- ⁴⁴ Soil Association (website accessed 17 Aug 2021) [What is agroecology?](#)



⁴⁵ Soil Association (website accessed 26 Aug 2021) [Why Organic?](#)

⁴⁶ Scottish Government (2019) [Review of the environmental and socio-economic barriers and benefits to organic agriculture in Scotland](#)

⁴⁷ Scottish Government (2016) [Organic Ambitions: Scotland's organic action plan 2016-2020](#)

⁴⁸ United Nations General Assembly (Dec 2019) [Right to a Healthy Environment: Good Practices: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, § 74](#)