

# How the human right to a healthy environment advances the rights of disabled people

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# How the human right to a healthy environment advances the rights of disabled people

## 1. Summary

This briefing makes the case that incorporation of the human right to a healthy environment advances the rights of disabled people. It recommends that both the human right to a healthy environment and the United Nations Convention on the Rights of Persons with Disabilities are incorporated with sufficient ‘teeth’ so that they work in practice to address systemic discrimination and access to justice on the environment.

## 2. Context and definitions

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.<sup>1</sup> 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 Convention on the Rights of Persons with Disabilities (CRPD).<sup>2</sup> In September 2021, the Scottish Government announced it would consult on a new Human Rights Bill ‘in the coming year.’<sup>3</sup>

### 2.1 The human right to a healthy environment

Without a healthy environment, we cannot survive. Globally and here in Scotland, we are facing a climate emergency,<sup>4</sup> a sharp decline in biodiversity,<sup>5</sup> unsafe levels of air

pollution,<sup>6</sup> and food insecurity.<sup>7</sup> A healthy environment underpins enjoyment of other human rights including the right to life itself. The Taskforce's Report recommends that the right to a healthy environment be incorporated 'with substantive and procedural elements.'<sup>8</sup>

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 the 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.'<sup>9</sup> This aligns with the definition given by the UN Special Rapporteur on human rights and the environment.<sup>10</sup> 156 out of 193 United Nations Member States have already recognised the human right to a healthy environment,<sup>11</sup> and there is evidence that the incorporation of the human right to a healthy environment is associated with improved environmental outcomes.<sup>12</sup>

The **procedural** right to a healthy environment gives citizens powers to be involved in environmental decision making and hold the government and other actors to account on policies and laws that affect the environment. It protects three human rights relating to democratic processes: 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. These rights have already been created by the Aarhus Convention<sup>13</sup> which the Scottish Government is obliged to implement in relation to Scotland's legal system. However, since 2014, the Aarhus Convention's governing institutions have made several findings – most recently in August 2021 – that Scotland's legal system is non-compliant with the Convention due to the excessive costs of taking legal action.<sup>14</sup> To

find out more, see the [Environmental Rights Centre for Scotland's](#) website and resources.<sup>15</sup>

## 2.2 The United Nations Convention on the Rights of Persons with Disabilities

The CRPD and its Optional Protocol were agreed in December 2006 following decades of work by civil society, disability activists and the United Nations to move disabled people away from being considered as objects of charity to independent individuals capable of exercising their rights and making decisions about issues that affect their lives.

The United Kingdom ratified the CRPD in 2009. Its key provisions include accessibility (Article 9), the right to life (Article 10), living independently and being included in the community (Article 19), health (Article 25), access to justice (Article 13) and participation (Articles 29 and 30). Article 3 of the CRPD sets out the general principles that underpin all of the rights inherent in activating disabled people's active engagement with and participation in society, including: respect for inherent dignity; individual autonomy (including the freedom to make one's own choices, and independence of persons); non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of disabled people as equal citizens; equality of opportunity and accessibility.<sup>16</sup>

These general principles reflect the social model of disability: '[that] disabled people have impairments but disability is not an inevitable consequence of having an impairment, it is created by physical, organisational and attitudinal barriers and these can be changed and eliminated' (Barbara Lisicki, 2013).<sup>17</sup>

A profound example of systemic discrimination in Scotland is that disabled people are more likely to live in poverty. In 2018, Scope found that disabled people in Scotland spent on average £632 a month on excess costs related to living as disabled

(including increased use of heating, special equipment, and care costs).<sup>18</sup> These are the highest excess costs in the UK. Once these costs are fully accounted for, half a million Scots disabled people and their families are living in poverty, which is 48% of the total in Scotland.<sup>19</sup> Poverty is compounded by place deprivation. In 2019, 25% of people living in the least deprived quintile had a limiting longstanding illness, compared with 46% in the most deprived quintile.<sup>20</sup> In addition, people with a limiting longstanding illness are less likely to leave school with qualifications,<sup>21</sup> are more likely to be unemployed<sup>22</sup> or to earn less<sup>23</sup> than people with no limiting longstanding illness.

Disabled people continue to face increased barriers and exclusion in their day-to-day lives, including feeling unable to influence decisions affecting their local area.<sup>24</sup> Full incorporation of the CRPD in Scotland will help to challenge systemic discrimination and realise disability rights.

### 3. The right to a healthy environment: a disability rights issue

In this section we explore how the combination of systemic discrimination and social exclusion experienced by disabled people manifests in relation to three of the six features of the substantive right to a healthy environment: a safe **climate**, healthy **biodiversity and ecosystems**, and **healthy and sustainably produced food**; and in relation to two of the three features of the procedural right to a healthy environment: **participation in environmental decision making** and **access to justice**.

#### 3.1 Disabled people's experience of a healthy environment (substantive rights): increased risk of harm and reduced access to benefit

##### 3.1.1 A safe climate

In Scotland, climate change is resulting in increased coastal erosion,<sup>25</sup> rising temperatures, increased rainfall, and rising sea levels.<sup>26</sup>

The UN High Commissioner for Human Rights considers that globally, disabled people are at a greater risk from the impacts of climate change due to social and economic factors including poverty, discrimination, and stigma.<sup>27</sup> Extreme weather events including the threats of bigger wildfires, longer droughts, and more intense storms and floods are amplified, with disabled people less likely to be evacuated safely or have insurance that protects their assets and homes.<sup>28</sup>

In Scotland, we are increasingly reeling from the impact of one storm to another, with major clean-up and repair operations.<sup>29</sup> It is estimated that around 284,000 homes, businesses and services across Scotland are at risk of flooding from rivers, surface water and the sea.<sup>30</sup> Ground floor and level access properties – most suited to disabled people with mobility impairments – are particularly vulnerable to flooding, as are many nursing and residential homes which have been built on flood plains. Although there is some progress in understanding the social vulnerability to climate change,<sup>31</sup> full inclusion of the needs of disabled people is required to inform local climate resilience plans.

### 3.1.2 Healthy biodiversity and ecosystems

In Scotland, 49% of species have declined in the last 25 years, and one in nine species is at risk of national extinction.<sup>32</sup> Scotland's biodiversity is now more depleted than in 88% of 240 countries and territories across the world.<sup>33</sup> There is also evidence that biodiversity loss and climate changing activities increase the risk and frequency of pandemics,<sup>34</sup> which must act as further incentive to reverse the damage to ecosystems.

Both COVID-19 and the impacts of lockdown have impacted disproportionately on disabled people and 'supercharged' existing inequalities,<sup>35</sup> including access to greenspace for health and wellbeing.<sup>36</sup> The incorporation of both the CRPD and the

right to a healthy environment could help to implement more equitable lockdown measures and the necessary environmental protections to reduce the risk of future pandemics.

### 3.1.3 Healthy and sustainably produced food

The right to food means that everyone should be able to afford healthy food without sacrificing any other basic needs such as heating or housing.<sup>37</sup> Yet, many people do not have the money or resources for daily essentials and even less access to food which is healthy and sustainable.<sup>38</sup>

For disabled people, poverty combined with the impacts of COVID-19 lockdown has infringed this right further. An April 2020 survey by Inclusion Scotland of over 800 disabled people found that two-thirds (67%) of respondents had problems accessing food either for themselves or the people that they cared for. In some instances there was no assistance for disabled people and those with long term health conditions to shop for food.<sup>39</sup>

## 3.2 Disabled people's experience of environmental democracy (procedural rights): eco-ableism and a lack of access to justice

### 3.2.1 Participation of disabled people in environmental decision-making

The right to participate in environmental decision making is enshrined in Article 6 of the Aarhus Convention.<sup>40</sup> Yet, it can be difficult and intimidating to be involved in environmental decision-making, particularly within the planning system in Scotland,<sup>41</sup> and barriers to participation are worse for marginalised groups including disabled people.

The right of disabled people to participate in political and public life is protected by Article 29 CRPD, which states, 'parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.'<sup>42</sup>

The Committee on the Rights of Persons with Disabilities has stressed, ‘the effective and meaningful participation of persons with disabilities, through their representative organisations, is... at the heart of the Convention.’<sup>43</sup>

Inclusion Scotland identifies that many disabled people are concerned about environmental issues including climate change in Scotland and want to be involved in action but describe being alienated by ‘eco-ableism’. This is when non-disabled environmental activists and policy makers fail to recognise that many of the changes they are advocating for the environment may discriminate against disabled people.

Examples of eco-ableism include:

- ableist approaches to climate change activism, such as blocking roads in ways that negatively impact on disabled people who rely on taxis or public transport to travel;
- the initial rush to ban plastic straws when many disabled people need them to drink;
- low-carbon transport designs which overlook the needs of disabled people, such as walking/cycling lanes that make access to bus stops more difficult or remove disabled parking bays, or a push for low emission zones without support for disabled people who rely on cars;
- recycling initiatives that do not include providing appropriate support and information to disabled people.<sup>44</sup>

Including disabled people in environmental activism, undertaking Equality Impact Assessments and co-designing urban policy initiatives at the outset will lead to better decisions for all.<sup>45</sup>

### 3.2.2 Access to justice

Access to justice is a basic principle of law which means the ability to go before a low-cost court or tribunal to challenge laws or decisions taken by public authorities, and in some cases private actors, which are in breach of human rights and other laws. Access to justice is the sharpest tool of accountability in a functioning rule of law and, often, the availability of it alone is enough to improve compliance with human rights and other laws. The Taskforce notes, 'under international human rights law, remedies and routes to remedy require to be *accessible, affordable, timely, and effective*. The element of adequacy of a remedy is mostly concerned with access to justice, where considerations of accessibility, transparency, legal advice and aid, timelines, and affordability, are ensured.'<sup>46</sup>

Scotland's legal system across a range of areas has been found to be deficient on access to justice due to a number of barriers to litigation. These include: poor access to information about court cases; limitations on standing; short-time limits for taking cases; prohibitive costs; and lack of access to legal advice and independent advocacy.<sup>47</sup>

On disability rights, the right of access to justice is enshrined in Article 13 of the CRPD. It not only clarifies what access to justice means for disabled people, but also upholds equal and effective participation at all stages of and in every role within the justice system as a core element of the right. Yet, Inclusion Scotland has found that access to justice is not readily available for disabled people.<sup>48</sup>

Disabled people still have to 'fight for rights' and have difficulties raising actions under equality law and other legislation to challenge discrimination. A lack of funding for law centres, reductions in legal aid and cuts to services has worsened access to justice in recent years. Inclusion Scotland further reports that court buildings are

often inaccessible, and a lack of understanding of accessibility and inclusive communication within the justice system prevents disabled people from taking part.

Moreover, there is a lack of advocacy and peer support for disabled people which compounds all of the above. These barriers to access to justice mean that disabled people are further disadvantaged if they want to challenge poor environmental decisions.

On the environment, access to justice is enshrined by detailed provisions within Article 9 of the Aarhus Convention, which requires ‘access to a review procedure before a court of law or another independent and impartial body established by law’<sup>49</sup> in a way that is ‘fair, equitable, timely and not prohibitively expensive’.<sup>50</sup> In principle, the provisions of the Aarhus Convention can be considered a useful starting point for access to justice provisions across the whole of the forthcoming human rights framework,<sup>51</sup> and would go some way towards advancing Article 13 CRPD.

Notwithstanding, Scotland’s legal system remains non-compliant with Article 9 of the Aarhus Convention due to the excessive costs of judicial review proceedings.<sup>52</sup> Furthermore, the environmental sector has identified the need for additional reforms to ensure affordable and timely access to justice, including the establishment of an environmental court or tribunal.<sup>53</sup> Implementing reforms to address the non-compliance in the environmental sphere is pressing, and the learning from this should be applied to other rights to ensure access to justice provisions work across the forthcoming Human Rights (Scotland) Act.

#### 4. Conclusion and recommendations

This briefing has provided an overview of how substantive environmental problems in Scotland impact disproportionately on disabled people. More data and genuine

engagement are required to better understand these impacts if we are to secure everyone's substantive environmental rights equally.

This briefing has also highlighted shortcomings in procedural rights. In terms of participation, it is imperative to have socially just responses to our climate and nature emergencies, which means that disabled people must have an equal seat at the decision-making table on environmental matters. Climate change policy needs to mitigate against adverse impacts on disabled people. To achieve this, it is vital that Equality and Human Rights Impact Assessments are undertaken and acted upon that take account of disabled people's priorities and perspectives.

In terms of access to justice, the strong provisions of the Aarhus Convention could be used as a basis for access to justice provisions across all new human rights including disability rights; but, learning from the environmental sphere, further measures need to be implemented to ensure that access to justice is achieved in practice.

#### 4.1 Recommendations

**Incorporation of the human right to a healthy environment and the CRPD has transformative potential.** It could impose a duty on Government to comply with the rights at all times, and give us the ability to hold the Government to account for failing to deliver the rights through the credible threat of public interest litigation. For this to be realised, the rights must be articulated with sufficient 'teeth'. These teeth must include as a minimum:

(1) further definition, according to agreed standards, of the substantive elements 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;

(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.

As the Scottish Government moves towards consulting on the statutory framework for a Human Rights (Scotland) Bill, these features should be developed in partnership with civil society and rights-holders including disabled people.

It will be some years before we have a Human Rights (Scotland) Act. In the meantime, there are pressing reforms that can be delivered now to further environmental rights and the rights of disabled people.

## About us

- Environmental Rights Centre for Scotland's vision is for a Scotland where every person's right to live in a healthy environment is fully realised. For more information see [www.ercs.scot](http://www.ercs.scot);
- Inclusion Scotland is a national 'Disabled People's Organisation' (DPO) – led by disabled people. Inclusion Scotland works to achieve positive changes to policy and practice, so that disabled people are fully included throughout all Scottish society as equal citizens. For more information see <https://inclusionScotland.org/>.



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<sup>1</sup> National Taskforce for Human Rights Leadership (Mar 2021), [The National Taskforce for Human Rights Leadership Report](#)

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<sup>4</sup> Adaptation Scotland (2021), [Climate Projections for Scotland: Summary](#)

<sup>5</sup> State of Nature Partnership (2019), [The State of Nature 2019 report](#)

<sup>6</sup> Ricardo Energy & Environment for the Scottish Government (website accessed Jul 2021), Scottish Air Quality, [Local Air Quality Management](#), and [Standards](#)

<sup>7</sup> Scottish Government (2019), [Scottish Health Survey: Supplementary Tables](#), Spreadsheet 16, Tables 785-788

<sup>8</sup> Ibid., Recommendation 2

<sup>9</sup> Ibid., p 77 (bold added)

<sup>10</sup> 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](#)

<sup>11</sup> Ibid., p 4

<sup>12</sup> Boyd (2011) [The Environmental Rights Revolution](#); Jeffords and Minkler (2016) [Do constitutions matter? The effects of constitutional environmental provisions on environmental outcomes](#) *Kyklos*, vol. 69, No. 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*, vol. 7, No. 1:74–110

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- <sup>21</sup> Scottish Government (2021), [Summary Statistics for Attainment and Initial Leaver Destinations: No. 3: 2021 Edition](#)
- <sup>22</sup> Scottish Government (2019), [Scotland's People Annual Report: A National Statistics publication for Scotland](#), p 15
- <sup>23</sup> Scottish Government (2019), [Scottish Health Survey: Supplementary Tables](#), Spreadsheet 4, Table 194
- <sup>24</sup> Scottish Government (2019), [Scottish Health Survey: Supplementary Tables](#), Spreadsheet 21, Tables 940 and 944, Spreadsheet 18, Table 872
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- <sup>27</sup> United Nations Human Rights Council (Apr 2020), [Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change](#), § 58, see also Intergovernmental Panel on Climate Change (2014), [Climate Change 2014: Impacts, Adaptation, and Vulnerability: Summary for Policy Makers](#), p 6
- <sup>28</sup> See e.g. US National Council on Disability (2006) [The Impact of Hurricanes Katrina and Rita on People with Disabilities: A Look Back and Remaining Challenges](#); Kosanic et al (2019) [Climate concerns and the disabled community](#) *Science* Vol. 366, Issue 6466, pp. 698-699; UNEP (9 Dec 2019) [Story: How climate change disproportionately impacts those with disabilities](#)
- <sup>29</sup> Met Office (Jul 2020), [State of the UK Climate report](#), ch 8



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