

Realising the Right to Adequate Housing (RTAH) for Minority Ethnic (ME) Communities Experiencing Homelessness

*A Critical Analysis of Scotland's Proposed
Human Rights Bill and its Potential Impact*

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DEDICATION



In honour of the minority ethnic communities who navigate the dual challenges of racism and housing inequality, this work is dedicated towards amplifying your voices and championing a future where everyone has access to a home that not only provides shelter but also blossoms into a sanctuary of belonging.

Table of Contents

<u>LIST OF ABBREVIATIONS</u>	4
<u>EXECUTIVE SUMMARY</u>	6
<u>1. INTRODUCTION: AIMS, METHODOLOGY AND SCOPE</u>	7
<u>2. THE INTERNATIONAL RIGHT TO ADEQUATE HOUSING (RTAH) IN SCOTS LAW</u>	10
2.1 ICESCR AND THE RTAH: DEFINITIONS, SIGNIFICANCE AND IMPLICATIONS	10
2.1.1 STATES PARTIES' OBLIGATIONS: 'PROGRESSIVE REALISATION', 'MINIMUM CORE' AND NON-DISCRIMINATION	12
2.1.2 THE PROHIBITION ON RETROGRESSIVE MEASURES	14
2.2 SCOTLAND'S HOMELESSNESS LEGAL FRAMEWORK	15
2.2.1 TEMPORARY ACCOMMODATION (TA)	18
2.3 CULTURAL ADEQUACY (CA)	21
2.3.1 THE INTERPLAY OF CULTURE AND RELIGION	24
<u>3. THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION IN HOUSING</u>	27
3.1 ICERD AND THE PRINCIPLE OF NON-DISCRIMINATION	27
3.1.1 STATES PARTIES' OBLIGATIONS	29
3.2 SCOTLAND'S RACE EQUALITY LEGAL FRAMEWORK	30
3.2.1 THE PUBLIC SECTOR EQUALITY DUTY (PSED)	30
3.2.2 RACE EQUALITY POLICIES	32
3.3 UNVEILING THE REALITY OF RACISM IN SCOTLAND	34
3.3.1 INSTITUTIONAL RACISM IN HOMELESSNESS SERVICES	34
3.3.2 RACIAL HARASSMENT FROM NEIGHBOURS AND COMMUNITY	36
<u>4. CONCLUSION</u>	38
<u>5. RECOMMENDATIONS</u>	39
<u>APPENDIX: LIST OF TABLES</u>	42
TABLE 1: MINORITY ETHNIC (ME) COMMUNITIES IN SCOTLAND	42
TABLE 2: THE NATURE OF STATES PARTIES' OBLIGATIONS UNDER ICESCR FOR THE RTAH	42
TABLE 3: THE (MINIMUM) NORMATIVE CONTENT OF THE RTAH, AS SPECIFIED IN GC4.	43
TABLE 4: RELIGIOUS INFLUENCE ON CULTURAL DYNAMICS: AN EXPLORATORY ANALYSIS	44
<u>BIBLIOGRAPHY</u>	46

LIST OF ABBREVIATIONS

ALACHO	Association of Local Authority Chief Housing Officers
CA	Cultural Adequacy
CERD	UN Committee on the Elimination of Racial Discrimination
CESCR	UN Committee on Economic, Social and Cultural Rights
CIH	Chartered Institute of Housing Scotland
CRER	Coalition for Racial Equality and Rights
COSLA	Convention of Scottish Local Authorities
DLUHC	Department for Levelling Up, Housing & Communities
EHRC	Equality and Human Rights Commission
ESCRs	Economic, Social and Cultural Right(s)
FSD	Fairer Scotland Duty
HPSG	Homelessness Prevention and Strategy Group
HRCS	Human Rights Consortium Scotland
HRSAG	Homelessness and Rough Sleeping Action Group
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR	International Covenant on Civil and Political Rights
IHR	International Human Rights
IHRL	International Human Rights Law
UNCRC	United Nations Convention on the Rights of the Child
LAs	Local Authorities
MC	Minimum Core

ME	Minority Ethnic
NHRIs	National human rights institutions
NGOs	Non-governmental organisations
NPF	National Performance Framework
OHCHR	Office of the UN High Commissioner for Human Rights
PSED	Public Sector Equality Duty
REF	Race Equality Framework
REAP	Race Equality Action Plan
RTAH	Right to Adequate Housing
SHRC	Scottish Human Rights Commission
SFHA	Scottish Federation of Housing Associations
SPICE	Scottish Parliament Information Centre
TPAS	Tenant Participation Advisory Service
UN	United Nations
UNGA	United Nations General Assembly
UN-HABITAT	United Nations Human Settlements Programme
UAO	Unsuitable Accommodation Order

EXECUTIVE SUMMARY

This policy report examines whether the forthcoming Scotland Human Rights Bill will establish and realise the RTAH for ME communities in practice, or if it merely stands as a symbolic aspiration. It aims to explore the potential impact and challenges of incorporating international law in Scots law, and how improved legislation can ignite positive changes in policy and practice. This report adopts a doctrinal legal methodological approach, utilising desk-based methods. It draws upon primary and secondary sources, including published data and reports to achieve its aims.

This report finds that the harmonised incorporation of ICESCR and ICERD treaties is imperative in ensuring that ME communities in Scotland have a meaningful mechanism to assert their rights and hold the state accountable for its human rights obligations. This paper illustrates the intersectionality among race, culture, ethnicity, and religion to better understand the needs of ME communities; in particular defining cultural adequacy in housing. It concludes by stating that robust legislation does not guarantee the practical realisation of rights. The Bill only marks the first milestone, as it is equally crucial to consider measures for effective policy implementation. Accordingly, the following six [recommendations](#) are made to the Scottish Government and stakeholders:

- (1) Establish a Minimum Core encompassing the seven RTAH elements*
- (2) Strengthen State Accountability via Measuring Progressive Realisation*
- (3) Abolish the Discretionary 'intentionality test' under Housing Act 1987*
- (4) Establish a Uniform Working Definition of Cultural Adequacy (CA)*
- (5) Increase Funding for Culturally Adequate Housing Supply*
- (6) Integrate ICERD directly within housing law and policy*

It is the sincere aspiration of this report that its findings and recommendations will serve as valuable insights for the Scottish Government, NGOs and other stakeholders. By addressing the unique needs and challenges faced by ME communities, it is anticipated that these recommendations will guide and prompt strategic actions that prioritise inclusivity, equality, and the enhancement of housing rights for all.

1. Introduction: Aims, Methodology and Scope

Scotland has received notable praise from the UN for its progressive and visionary approach towards human rights compared to the rest of the UK.¹ However, despite efforts, Scotland still confronts major challenges in meeting its human rights obligations.² A housing emergency persists with 1.5 million people living in overcrowded, dangerous, unstable or unaffordable housing.³ Further, minority ethnic (ME) groups continue to be subject to unwavering racial discrimination and harassment, including in relation to housing.⁴ In response to persistent human rights concerns and advocacy by NGOs,⁵ the Scottish Government proposed a new Human Rights Bill in 2021.⁶ The Bill seeks to incorporate the following four international human rights (IHR) treaties into Scots law: i) International Covenant on Economic, Social and Cultural Rights (ICESCR); ii) International Covenant on Civil and Political Rights (ICCPR); iii) United Nations Convention on the Rights of the Child (UNCRC) and; iv) International Convention on the Elimination of All Forms of Racism (ICERD).⁷ The aim is to bring the broad range of IHR into a single legislative document enforceable in domestic courts.⁸ The Government pledged that the Bill will ‘help people and communities to live with dignity wherever they are in Scotland, whatever their circumstances’.⁹ It has so far accepted 30 recommendations made by the National Taskforce for Human Rights Leadership,¹⁰ who strive to ‘make these rights real in everyday life, enable their full and equal enjoyment and provide the maximum protection possible within devolved competence’.¹¹ This begs the question, will the proposed Bill deliver the right to adequate housing (RTAH) for ME communities, or

¹ The National Scotland, [‘UN: Scotland is more committed to human rights than England’](#) (11 November 2018).

² Scottish Human Rights Commission (SHRC), [‘Scottish human rights “report card” submitted to United Nations: highlights threats to Human Rights Act, calls for action to tackle rights concerns across Scotland’](#) (12 April 2022).

³ Shelter Scotland, [‘What is the housing emergency in Scotland?’](#) (2023).

⁴ Runnymede, [‘Taking Stock: Race Equality in Scotland’](#) (May 2020).

⁵ Shelter Scotland, [‘Shelter Scotland submission to the National Taskforce for Human Rights Leadership’](#) (January 2021).

⁶ Scottish Government, [‘New Human Rights Bill’](#) (12 March 2021).

⁷ Ibid. Note: Whilst Scotland is not itself a State party, it has the competency to implement international obligations of the UK (the official State party). See: Scotland Act 1998, Schedule 5 para 7(1)-(2).

⁸ Ibid.

⁹ *Supra* note 1.

¹⁰ Scottish Government National Taskforce for Human Rights Leadership, [‘National Taskforce for Human Rights Leadership Report’](#), (12 March 2021).

¹¹ Ibid, pp. 60-61.

does it merely a symbolic aspiration? In light of this imminent and potentially transformative legal reform, this policy report aims to evaluate the potential impact and challenges of incorporating the RTAH and combating racial discrimination, as outlined in the two ICESCR and ICERD treaties, within Scotland's existing legal framework. In particular, the report focuses on how improving legislation can ignite positive changes in policy and practice.

According to population data, 4% of the Scottish population are from a ME background, with the Asian population (Pakistani, Chinese, Indian and Bangladeshi) being the largest minority ethnic group at 2.7%.¹² Other ME communities include Arabs, Africans and Caribbeans, as well as White Gypsy/Travellers, Polish and Mixed Ethnicities.¹³ This report will not extend to ME refugees and asylum seekers, due to the complexity of added immigration issues that fall outside the scope of Scotland's devolved powers.¹⁴ This report chooses to focus on ME communities for several reasons. First, ME communities are disproportionately affected by the housing crisis in Scotland.¹⁵ Several studies show that this group are particularly impacted by housing disadvantage¹⁶ and experience the highest levels of homelessness risks.¹⁷ A 2022 report shows that 18% of homeless applicants are from a minority ethnic (non-White Scottish or Other British) group, despite representing only eight per cent of the adult population according to the latest 2011 Census.¹⁸ ME groups are more likely to live in poor quality housing, in more deprived neighbourhoods and are less likely to be homeowners.¹⁹ This is exacerbated by the fact that poverty levels for ME communities

¹² See: [Appendix: List of Tables – Table 1: Minority Ethnic \(ME\) Communities In Scotland](#); Scotland Census, '[Ethnicity](#)' (3 August 2021).

¹³ Ibid.

¹⁴ See: Scottish Parliament, '[Devolved and Reserved Powers](#)' (2023).

¹⁵ Deborah Menezes, Gina Netto, Sacha Hasan, 'Minoritised Ethnic Access to Housing in Scotland at Key Transition Points' (June 2023) Heriot Watt University; Sue Lukes, Nigel de Noronha, Nissa Finney, 'Slippery discrimination: a review of the drivers of migrant and minority housing disadvantage' (2019) 45(17) pp. 3188-3206.

¹⁶ Centre for Homelessness Impact, '[Ethnic Inequalities and Homelessness in the UK](#)' (December 2022).

¹⁷ See: Glen Bramley, Suzanne Fitzpatrick, Jill McIntyre, Sarah Johnsen, 'Homelessness and Black and Minoritised Ethnic Communities in the UK: A Statistical Report on the State of the Nation' (November 2022) Heriot Watt University, Oak Foundation, I-Sphere.

¹⁸ UK Collaborative Centre for Housing Evidence, '[Race Equality In Housing: A Review Of The Policy Approach In England, Scotland And Wales](#)' (14 December 2022).

¹⁹ Ibid, p. 7. See also: William Shankley and Nissa Finney, 'Ethnic minorities and housing in Britain' in Bridget Byrne, Omar Khan, Claire Alexander, James Nazro, William Shankley (Eds.) *Ethnicity and Race in the UK* (Bristol University Press, 2020).

are double the national average and rising.²⁰ Despite the significant toll on ME communities, there appears to be a lack of focused initiatives to address their specific needs which this report aims to address. Secondly, to truly uphold Scotland's commitment to promoting race equality,²¹ it is imperative to understand the intricate relationship between race and housing. Non-white ME groups face unique obstacles when seeking access to housing that require targeted solutions. For example, they are more likely to experience harassment and racism from neighbours and community, hidden homelessness, overcrowding due to a shortage of large housing stock for multi-generational families, limited access to housing support and homelessness services, as well as inadequate and culturally inappropriate temporary accommodation (TA).²² Thirdly, there is a dearth of scholarly research examining the intersection of housing and race, and the resulting implications for ME communities in Scotland. As Bramley et. al states, 'what is particularly distressing is the apparent link between homelessness and race discrimination. This needs further investigation.'²³ By directing attention to the lived experiences of ME communities in Scotland, the report aims to advocate for improved legislation, as well as targeted interventions and policy measures, that can address the specific needs and concerns of these communities, leading to more equitable housing outcomes for all. As Moons and Hubeau assert, the RTAH 'should no longer be seen as giving rise to an obligation of means, but rather to an enforceable obligation of result'.²⁴

This report is divided into two sections. Section I will outline the international legal framework on the RTAH and define States parties' obligations. It will interpret the RTAH through the ICESCR and its seven elements interpreted in CESCR's General Comment No.4,²⁵ focusing specifically on defining the cultural adequacy (CA) element within the Scottish context. It illustrates the intersectionality among ethnicity, culture and religion to better understand the needs of ME communities. Section II will analyse the intersection of race and housing through an analysis of ICERD and Scotland's race

²⁰ Joseph Rowntree Foundation, '[Ethnicity, poverty and the data in Scotland](#)' (October 2021), p. 1.

²¹ See: Scottish Government, '[Race equality framework for Scotland 2016 to 2030](#)' (21 March 2016) and Scottish Government, '[Race Equality: immediate priorities plan](#)' (14 September 2021).

²² *Supra* note 15 and 16.

²³ *Supra* note 17.

²⁴ Nico Moons and Bernard Hubeau, 'Conceptual and Practical Concerns for the Effectiveness of the Right to Housing' (2016) 6(3) *Oñati Socio-Legal Series*, pp. 656.

²⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 4: The Right to Adequate Housing (Art 11(1) of the Covenant)' (1991) E/1992/23.

policy framework, highlighting systemic racism as a key barrier to realising the RTAH. This report argues that the incorporation of ICESCR and ICERD is imperative in ensuring that ME communities in Scotland have a meaningful mechanism to assert their rights and hold the state accountable for fulfilling its obligations. To ensure that the RTAH is of reach to ME communities, both treaties must be harmonised; the Government's commitment to anti-racism and discrimination needs to be fully embedded within housing policy. The report concludes by stating that robust legislation does not guarantee the practical realisation of rights. The Bill only marks the first milestone, as it is equally crucial to consider measures for effective policy implementation to realise the RTAH.

2. The International Right to Adequate Housing (RTAH) in Scots Law

2.1 ICESCR and the RTAH: Definitions, Significance and Implications

The international RTAH is regrettably overlooked due to its nature as an economic, social and cultural right (ESCR). ESCRs are perceived to be the 'poor cousins of the rights world'²⁶ as obligations arising from them have been harder to define and enforce than civil and political rights.²⁷ This complexity stems from the positive nature of these rights, demanding proactive state action despite finite resources, along with the difficulty of measuring its progress due to its ambiguity and differences in interpretation.²⁸ Nonetheless, the RTAH is an indispensable right, 'integral to core human rights values such as dignity, equality, inclusion, wellbeing, security of the person and public participation'.²⁹ Per se, homelessness is a *prima facie* violation of the RTAH. It is not only a 'profound assault'³⁰ to the individual's dignity and wellbeing but endangers the whole society fabric.³¹ As Fredman highlights, 'homelessness

²⁶ Markus Moos, *A Research Agenda for Housing* (Edward Elgar Publishing, 2019), pp. 15-30.

²⁷ David Bilchitz, 'Giving Socio-Economic Rights Teeth: The Minimum Core and Its Importance' (2002) 118 *South African Law Journal*, pp. 484–581.

²⁸ Courtney Jung, Ran Hirschl and Evan Rosevear, 'Economic and Social Rights in National Constitutions' (2014) 62 (4) *The American Journal of Comparative Law*.

²⁹ OHCHR, 'Guidelines for the Implementation of the Right to Adequate Housing - Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (2019) A/HRC/43/43, p. 4.

³⁰ *Ibid*, 'Guideline No. 5', p.7.

³¹ Miroslav Tvrđon, Radoslav Lojan, Tibor Mahrik, Stefan Zaharia, Vladimirovna Ekaterina Davydova, 'Homelessness as a Social Problem – Socio-pathological phenomenon – Qualitative Analysis (2022) 13(2) *Journal of Education Culture and Society*, pp. 95-97.

leaves an individual exposed to a range of risks: physical assault, rape, illness, exposure to the elements, and severe discomfort'.³² Further, homelessness drastically diminishes an individual's ability to enjoy other fundamental rights such as health, education and non-discrimination, as 'without basic socio-economic entitlements, civil and political rights cannot be fully exercised'.³³ It is therefore imperative that states prioritise the realisation of the RTAH as it serves as a catalyst for the fulfilment of all other human rights, in turn promoting positive outcomes for communities while safeguarding their dignity.

In international law, the RTAH is derived from the right to an adequate standard of living found in Article 11(1) ICESCR.³⁴ It is also found in several other subject-specific international treaties and conventions that are less relevant for the purposes of this report.³⁵ The RTAH is interpreted by the CESCR in a broad sense as not merely shelter but as 'the right to live somewhere in security, peace and dignity'.³⁶ In determining whether housing is 'adequate', the CESCR identified the following seven interwoven elements that should be taken into consideration by all States parties: i) legal security of tenure; ii) availability of services; iii) affordability; iv) habitability; v) accessibility; vi) location and; vii) cultural adequacy (CA).³⁷ These elements form a foundational core that should be guaranteed to all individuals as part of the RTAH. In principle, any individual who does not have access to these entitlements may bring a complaint to the CESCR stating that they are deprived of the RTAH as established in international human rights law (IHRL).³⁸ By incorporating the RTAH into Scots law, individuals will be able to directly assert their rights locally and alleviate the need for complex arguments connecting to civil and political rights enforceable under the UK Human Rights Act.³⁹ Further, there is a strong expectation that the Government will

³² Sarah Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (OUP, 2008), p. 205.

³³ *Ibid*, p. 67.

³⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted: 16 December 1966; entry into force: 3 January 1976), Article 11(1).

³⁵ See: Universal Declaration of Human Rights (UDHR) Article 25(1); International Covenant on Civil and Political Rights (ICCPR) Article 17(1); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 14(2)(h); United Nations Convention on the Rights of the Child (UNCRC), Article 27(3); ICERD, Article 5(e)(iii).

³⁶ *Supra* note 25, para 7.

³⁷ *Ibid*, para 8.

³⁸ Padraic Kenna, *Housing Rights and Human Rights* (Brussels: FEANTSA, 2005), p.5. See also: OHCHR, 'Complaints about human rights violations' (2023)

³⁹ Human Rights Act 1998 (c. 42) (UK).

use these seven elements as benchmarks to measure how its housing legal and policy framework will meet the required human rights standards, thereby improving access to the RTAH.

2.1.1 States Parties' Obligations: 'Progressive Realisation', 'Minimum Core' and Non-Discrimination

International law imposes explicit obligations on States to 'respect, protect and fulfil' human rights.⁴⁰ These should ideally be fully embedded and respected in domestic law to hold the State accountable.⁴¹ First, Article 2 ICESCR places positive duties on States to 'progressively realise' all ESCRs.⁴² The intentional wording of 'progressive realisation' recognises that ESCRs cannot be fulfilled immediately but that steps should be taken 'within a reasonable short time'.⁴³ For States parties to satisfy their obligations, they must demonstrate that they have 'taken whatever steps are necessary...to realise the right for every individual in the shortest possible time in accordance with the maximum of available resources'.⁴⁴ For instance, the CESCR states that the adoption of legislation is 'highly desirable' to achieve this and in some cases 'may even be indispensable'.⁴⁵ The RTAH is not specifically protected in Scots law and therefore the Bill is an important first step of establishment and legal recognition of the RTAH that is welcomed. The Government recognises its international duties in its National Performance Framework (NPF), where it commits to 'respect, protect and fulfil human rights and live free from discrimination'.⁴⁶ Further, Scotland's 'Housing to 2040' introduced in 2021, sets out the country's vision to progressively realise the RTAH.⁴⁷ This policy aims to ensure that everyone has 'a safe, good quality and affordable home that meets their needs in the place they want to

⁴⁰ See: [Appendix: List of Tables, Table 2: The Nature of States Parties' Obligations under ICESCR for the RTAH](#). See also: David Jason Karp, 'What is the responsibility to respect human rights? Reconsidering the 'respect, protect, and fulfil' framework' (2020) 12(1) International Theory, pp. 83-108.

⁴¹ CESCR, 'General Comment No. 9: The domestic application of the Covenant' (3 December 1998) E/C.12/1998/24, paras 2-5. See also: C. Economides, 'The Relationship Between International and Domestic Law' (1993) European Commission for Democracy Through Law Venice Commission, paras 3.6 and 4.9(c).

⁴² *Supra* note 34, ICESCR Article 2.

⁴³ CESCR, 'General Comment No. 3: The Nature of States Parties' Obligations' (14 December 1990) E/1991/23, para 2.

⁴⁴ *Ibid*, paras 13-14.

⁴⁵ *Ibid*, para 3.

⁴⁶ Scottish Government, '[National Outcomes: Human Rights' National Performance Framework](#)' (2023).

⁴⁷ Scottish Government, '[Housing to 2040](#)' (15 March 2021).

be',⁴⁸ through investing ~£16 billion in affordable housing supply to deliver 100,000 homes by 2031, building stronger and more vibrant places, improving community involvement and more by 2040. However, the seven elements of the RTAH are yet to form a core part of the strategy. A holistic approach encompassing the seven elements is vital to ensure that all aspects of housing are taken into account, which will make the realisation of the RTAH achievable.

Secondly, States parties have an immediate 'minimum core obligation' to provide essential levels of enjoyment of each right.⁴⁹ The minimum core (MC) approach aims to establish a minimum legal content for all ESCRs.⁵⁰ It seeks to 'set a quantitative and qualitative floor of socio-economic rights that must be immediately realised by the state as a matter of top priority'.⁵¹ States have a 'margin of appreciation' in their choice of means to fulfil this right.⁵² As clarified by the CESCR, the MC is a 'presumptive legal entitlement, a non-derogable obligation, and an obligation of strict liability'.⁵³ It exists regardless of the state's availability of resources.⁵⁴ As McCall-Smith contends, states 'arguing that social protection is unaffordable in the context of delivering the MC ESC rights is a losing argument'.⁵⁵ The Government must therefore define a MC for the RTAH that encompasses the aforementioned seven elements. Whilst the Government has committed to a MC, it has not yet been defined nor expanded on how it will be enforced.⁵⁶ IHRL and literature states that street homelessness and forced evictions violate the MC of the RTAH.⁵⁷ Hence, Scotland's base MC should, at the very least, prioritise eradicating rough sleeping and preventing forced evictions, both of which remain persistent challenges. However, this is Scotland's baseline of compliance, 'it

⁴⁸ Ibid.

⁴⁹ Ibid, para 10.

⁵⁰ Katharine G. Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content' (2008) 33 (113) *The Yale Journal of International Law*, p. 125.

⁵¹ The World Bank, 'Minimum Core Obligations of Socio-Economic Rights' (26 January 2018).

⁵² CESCR, 'General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1 of the Covenant)' (14 December 1990) E/1991/23, para 4.

⁵³ Ibid, para 10.

⁵⁴ Ibid, para 11.

⁵⁵ Kasey McCall-Smith, 'Minimum Standards for Delivering Economic, Social and Cultural Rights' (22 June 2020) *The Scottish Government: Academic Advisory Panel to the National Taskforce for Human Rights Leadership Minimum Standards for Delivering Economic, Social and Cultural Rights*, p. 21. See also: ILO, *Fiscal Space for Social Protection and the SDGs, Extension of Social Security Working Paper*, ESS048 (ILO 2017).

⁵⁶ Scottish Government, '[A Human Rights Bill for Scotland consultation](#)' (15 June 2023), Part 7: The Duties.

⁵⁷ Markus Moos, *A Research Agenda for Housing* (Edward Elgar Publishing, 2019), p. 19.

does not limit national ambitions which may go further'.⁵⁸ The UN Guidelines on the Implementation of the RTAH should be used as a guiding framework.⁵⁹ It highlights 16 guidelines and actions that Scotland should take to realise the RTAH, including the immediate need to 'guarantee the RTAH as a fundamental human right linked to the dignity and the right to life', as well as 'take immediate steps to ensure the progressive realisation of the RTAH in compliance with the standard of reasonableness'.⁶⁰

Lastly, the second immediate obligation on States parties is to not discriminate in access to the RTAH, in accordance with Article 2(2) and 3 ICESCR.⁶¹ To comply with this duty, the Scottish Government must develop targeted solutions for the specific barriers ME communities face in relation to housing, which will be further explored in Chapters 1.2 and 1.3. This is crucial to ensure that the RTAH is truly accessible to everyone, including ME communities, as required under IHRL.⁶²

2.1.2 The Prohibition on Retrogressive Measures

The concept of progressive realisation safeguards against the regression of rights. States parties are not permitted to reduce the level of protection once a certain level has been reached, even under resource constraints.⁶³ States must refrain from 'diminishing the protection of the Covenant rights through legislation, changes in policy or withdrawal of funds', except in exceptional circumstances that have not been defined.⁶⁴ For example, a recent report by LA chief executives suggested removing the latest advancements in the Unsuitable Accommodation Order (UAO) legislation which had widened the legislation out to all households and limited time in unsuitable

⁵⁸ Mitchell Lynsey, Elaine Webster, Diana Camps, 'Incorporating International Human Rights: The Right to Cultural Life in Scotland' (2023) Human Rights Consortium Scotland, p. 23.

⁵⁹ OHCHR, 'Guidelines for the Implementation of the Right to Adequate Housing - Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' A/HRC/43/43 (26 December 2019).

⁶⁰ Ibid, p. 4-5; 'Guideline No.1' and 'Guideline No.2'.

⁶¹ *Supra* note 25, para 6. See also: CESCR, 'General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2)', 42nd session, UN Doc E/C.12/GC/20 (2 July 2009) (GC20), paras 6, 23 and 30.

⁶² *Supra* note 25, para 6.

⁶³ CESCR, 'General Comment No 3: The Nature of States Parties Obligations (Art. 2, par.1)', 5th session, UN Doc E/1991/23 (14 December 1990) (GC3), para 9.

⁶⁴ Ibid, para 9. See also: UK Parliament, '[Joint Committee on Human Rights: Twenty-First Report 4: The Status of Economic, Social and Cultural Rights](#)' (2004), para 50.

accommodation from 14 to 7 days.⁶⁵ Further, Glasgow City Council introduced a £2m cut to its homelessness budget, leading to an increase in rough sleeping.⁶⁶ Both examples show a reduction in the level of protection that had already been provided and would therefore be in violation of Scotland's IHRL obligations.

2.2 Scotland's Homelessness Legal Framework

Known as 'the land of milk and honey'⁶⁷ and 'the most progressive in Europe',⁶⁸ Scotland is internationally recognised for its legal rights-based response to homelessness.⁶⁹ One key legal feature is the Housing (Scotland) Act 1987, as amended by the Homelessness etc. (Scotland) Act 2003, which lays down the right to temporary and permanent accommodation for unintentionally homeless persons.⁷⁰ Under Section 29, local authorities (LAs) must provide accommodation to anyone who is threatened with homelessness within the next two months.⁷¹ Since 2012, this duty applies irrespective of priority need.⁷² The purpose is to offer temporary accommodation (TA) until permanent accommodation becomes available. As Goodlad states, Scotland's 'remedy is seen not as humanitarian or charitable treatment but entitlement to accommodation and support'.⁷³ To access this right, individuals must present themselves as homeless by filing a homeless application with an LA of their choice.⁷⁴ Whilst the application process is ongoing, LAs have a statutory duty to provide interim accommodation.⁷⁵ This is in contrast to England where the right to

⁶⁵ Solace Scotland, '[Housing in Scotland: Current Context and Preparing for the Future](#)' (July 2023), para 40, p. 10.

⁶⁶ See: Gabriel McKay, '[Glasgow homelessness 'crisis' as staff struggle with cuts](#)' (*The Herald*, 8 August 2023); Chris Clements, '[Glasgow faces rough sleeping rise after funding reduced, charity warns](#)' (*BBC*, 6 July 2023); Stewart Paterson, '[Homeless budget cuts: Meals stopped and an end to decorating flats](#)' (*Glasgow Times*, 4 April 2023)

⁶⁷ Gerry Mooney, Lynee Poole, 'A land of milk and honey?' *Social policy in Scotland after Devolution* (2004) 24(4), p. 459.

⁶⁸ Scottish Government, '[Health and Homelessness Standards](#)' (3 March 2005).

⁶⁹ See: E Watts, 'The impact of legal rights to housing for homeless people: a normative comparison of Scotland and Ireland' (2013) Dissertation Thesis University of York; Isobel Anderson, Regina Serpa, 'The Right to Settled Accommodation for Homeless People in Scotland: A Triumph of Rational Policy-Making?' (2013) 7(1) *European Journal of Homelessness*.

⁷⁰ Housing (Scotland) Act 1987, s.29 and 31.

⁷¹ *Ibid*, s.29.

⁷² Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012.

⁷³ Robina Goodlad, 'Scottish Homelessness Policy: Advancing Social Justice?' (2005) 50(1) *Scottish Affairs*, pp. 86-105.

⁷⁴ Homeless Persons (Suspension of Referrals between Local Authorities) (Scotland) Order 2022.

⁷⁵ *Supra* note 70.

accommodation is limited to only those 'in priority need'.⁷⁶ This has resulted in a significant number of homeless persons, who are not pregnant women, dependent children or with mental and/or physical disabilities, having no right to accommodation nor adequate help.⁷⁷ In this way, Scotland distinguishes itself by adopting a 'welfare paternalist ethos, increasingly distinct from accepted English norms'.⁷⁸ By providing a legal route to secure housing, Scotland's approach effectively minimises the associated stigma with homelessness and empowers those impacted by it.⁷⁹

Homelessness is defined broadly, including instances for example, where someone has accommodation, yet it is not reasonable to occupy it (such as due to risk of violence or domestic abuse).⁸⁰ This expansive definition is favoured as it challenges the misconception that homelessness is solely limited to rough sleeping.⁸¹ By acknowledging and addressing a broader spectrum of homelessness, the legal framework in Scotland is in line with IHRL guidelines and helps prevent the marginalisation of certain homeless individuals or groups.⁸² This is especially important to formally recognise and offer support to individuals from minority ethnic backgrounds, who are more likely to be in situations of hidden homelessness due to overcrowding, rather than rough sleeping.⁸³

However, the law does not guarantee the right to permanent accommodation to those deemed 'intentionally homeless'.⁸⁴ This refers to persons who 'deliberately did or failed to do anything which led to the loss of accommodation which it was reasonable for them to continue to occupy'.⁸⁵ Instances include failure to pay rent arrears despite having the means to do so and eviction resulting from anti-social behaviour.⁸⁶ Whilst

⁷⁶ The Homelessness (Priority Need for Accommodation) (England) Order 2002, s.2.

⁷⁷ Crisis, '[The Homelessness Legislation: An Independent Review of the Legal Duties owed to Homeless People](#)' (2015), p.12.

⁷⁸ Hal Pawson, Emma Davidson, 'Radically divergent? Homelessness policy and practice in post-devolution Scotland' (2008) 8(1) European Journal of Housing Policy, p. 45.

⁷⁹ Beth Watts, '[Having a legal right to settled accommodation empowers homeless people in Scotland](#)' (*LSE Blog*, 2 December 2014).

⁸⁰ *Supra* note 70, s.24; Housing (Scotland) Act 1996, s.175-177.

⁸¹ Crisis, '[Public attitudes towards homelessness: wave one](#)' (11 April 2021).

⁸² *Supra* note 29, p. 7.

⁸³ Gina Netto, Filip Sosenko, Glen Bramley, '[Poverty and Ethnicity in Scotland: Review of the literature and datasets](#)' (April 2011) Joseph Rowntree Foundation.

⁸⁴ *Supra* note 70, s.26 and 31.

⁸⁵ Scottish Government, '[Homelessness in Scotland: 2021/22](#)' (18 August 2022).

⁸⁶ Shelter Scotland, '[Intentionally or unintentionally homeless](#)' (6 January 2023).

LAs no longer have a duty to apply the intentionality test, they retain the discretion to exercise it.⁸⁷ This is problematic as it excludes vulnerable individuals who may be facing complex situations, thus leaving those in need of support to fall within the gaps of the system. For example, the 'Aye We Can' consultation in 2018 found that LGBT persons were wrongly classed as intentionally homeless due to a lack of understanding of family breakdown when sexuality is disclosed.⁸⁸ Further, Crisis stated that when operating in Lothians, every 'intentionally homeless' person they worked with had unaddressed underlying support needs.⁸⁹ Moreover, the inconsistency in practice is concerning as some LAs choose to investigate intentionality while others opt not to do so, leading to disparities in support received by applicants across different regions.⁹⁰ To align with international standards, it is imperative for Scotland to completely abolish the intentionality test, thereby ensuring that homelessness support is accessible to all individuals who require it.

The Housing (Scotland) Act 1987 is further amended by the Housing (Scotland) Act 2001 which requires LAs to provide a minimum of standards in TA, as well as advice and assistance to homeless persons.⁹¹ It also introduced a right to review for homelessness applications, giving individuals the chance to challenge decisions within 21 days of receiving it.⁹² However, in the instance that the accommodation offer made is unsuitable, applicants find themselves in a precarious situation. Refusing an unsuitable offer could result in prolonged homelessness due to potential delays in receiving a new offer and limited support from LAs who have, in principle, fulfilled their duty under section 29. To avoid this, NGOs such as Shelter advise initial acceptance of an unsuitable accommodation offer and to thereafter request for a transfer or an exchange.⁹³ However, this involves a high degree of uncertainty and further, upon acceptance, applicants forfeit their right to review under the Housing Act 2001.

⁸⁷ *Supra* note 70, s.33.

⁸⁸ Glasgow Homelessness Network, ['Can we fix homelessness in Scotland: Aye We Can'](#) (March 2018), para 2(3).

⁸⁹ Crisis, ['Consultation on local connection and intentionality provisions in homelessness legislation: Response from Crisis'](#) (April 2019), p.3.

⁹⁰ *Supra* note 88.

⁹¹ Housing (Scotland) Act 2001, s.2.

⁹² *Ibid*, s.4.

⁹³ Shelter Scotland, ['Requesting a review of a homeless decision'](#) (2023).

Alongside legislation, several policies and mechanisms work to fight against homelessness, such as the creation of the Homelessness and Rough Sleeping Action Group (HRSAG) which brings together experts to provide recommendations to the Government on eradicating rough sleeping and improving TA.⁹⁴ Other policies include the Ending Homelessness Together Action Plan, Implementation of Rapid Rehousing Transition Plans and the Rapid Rehousing and Housing First Approach.⁹⁵ Although Scotland's legal framework appears robust on paper, the law in practice reveals shortcomings in fully realising the RTAH, as examined in section 2.2.1. Reiterating Anderson, 'while the Scottish approach still compares favourably internationally, robust commitment to policy delivery, as well as monitoring implementation and review of outcomes all remain essential to ensure policy effectiveness'.⁹⁶

2.2.1 Temporary Accommodation (TA)

While Scots law provides all homeless persons the right to TA,⁹⁷ it is deficient in providing adequate protections to ensure quality standards in TA. The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 (UAO) places duties on LAs to provide TA that is 'suitable for occupation by a homeless household, taking into account the needs of the household'.⁹⁸ Accommodation is considered unsuitable if it is not wind and watertight, doesn't meet minimum safety standards and not suitable for occupation taking into account the needs of the household.⁹⁹ LAs must always fulfil these 'basic standards' without exemption,¹⁰⁰ yet they often fail to do so. In addition, there are location and further physical standards that must be met which are more in line with the RTAH's seven elements,¹⁰¹ yet these are subject to exceptions; for example, if the LA did not have suitable accommodation available due to lack of.¹⁰² The UAO was extended in 2019 to mandate that LAs restrict their use of unsuitable

⁹⁴ Scottish Government, ['Homelessness and Rough Sleeping Action Group'](#) (2023).

⁹⁵ Scottish Government, ['Ending homelessness together: annual report 2022'](#) (20 October 2022) and ['Rapid Rehousing Transition Plans Annual Report: 2020-21'](#) (5 May 2022)

⁹⁶ Isobel Anderson, 'Delivering the Right to Housing? Why Scotland Still Needs an 'Ending Homelessness' Action Plan' (2019) 13(2) *European Journal of Homelessness*, p. 131.

⁹⁷ *Supra* note 70, s.29.

⁹⁸ The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, Article 4(B).

⁹⁹ *Ibid*, Article 4.

¹⁰⁰ *Ibid*.

¹⁰¹ *Ibid*, Art 5. See also: Scottish Government, 'Homelessness Code of Guidance' (November 2019), paras 8.7-8.15.

¹⁰² *Supra* note 98, Art 6.

accommodation to a maximum of seven days and in 2020, this was extended to all households.¹⁰³ This includes the use of B&Bs and hotels.¹⁰⁴ As part of what is suitable, LAs must ‘take into account the needs of the household’.¹⁰⁵ However, the landmark decision in *Glasgow City Council v X*¹⁰⁶ clarified that LAs do not have an absolute duty to take into account individual needs in TA, provided that general needs are taken into account.¹⁰⁷ The Court in this case distinguished between TA and permanent accommodation, the latter subject to a higher standard. This issue was whether the LA had an absolute duty to provide suitable TA to a household with four children, including one disabled child who required a separate bedroom due to his support needs.¹⁰⁸ The Inner House ruled in favour of the Council, which has in effect limited LA duties to take into account cultural needs as required under IHRL, as one type of individual need of the household. Ergo, the Court’s interpretation results in ME communities facing a higher risk of being placed in TA which does not meet their specific needs, obstructing the full realisation of the RTAH.

TA standards are even further expanded in the Interim Code of Guidance,¹⁰⁹ which includes a set of advisory standards for LAs to have ‘regard to’.¹¹⁰ It includes standards such as sufficient bedroom space, an affordability guarantee, and the identification of cultural or religious need when determining location.¹¹¹ The Government is in the process of compiling these standards into a single Temporary Accommodation Standards Framework (TASF).¹¹² While the Guidance aligns with the seven elements of the RTAH to a large extent, it is not legally binding and therefore its effectiveness is undermined as LAs often do not follow it. For example, many households are unable

¹⁰³ The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020.

¹⁰⁴ Scottish Government, ‘[Homeless Persons \(Unsuitable Accommodation\) \(Scotland\) Order 2020 amendment: BRIA](#)’ (8 May 2020), para 1.5.

¹⁰⁵ *Supra* note 98.

¹⁰⁶ *Glasgow City Council v X and Shelter, the National Campaign for Homeless People Limited (Interveners)* [2023] CSIH 7

¹⁰⁷ *Ibid*, para 43.

¹⁰⁸ *Ibid*, para 3 and 14.

¹⁰⁹ Scottish Government, ‘Homelessness Code of Guidance: Annex A: Advisory Standards for Temporary Accommodation’ (November 2019).

¹¹⁰ *Ibid*, Chapter 8.

¹¹¹ *Ibid*.

¹¹² Scottish Government, ‘[Temporary accommodation standards framework](#)’ (26 April 2023).

to afford TA charges¹¹³ and are provided with little to no security of tenure by way of occupancy agreement and often eviction which does not require a court order.¹¹⁴

Despite legal duties in place, LAs fail to meet their obligations. First, LAs do not always provide TA to eligible households. For example, in 2021/22, there were 690 cases of households not receiving TA.¹¹⁵ As SPICE states, some LAs use ‘gatekeeping’ tactics’ by informing homeless persons to try other housing alternatives before applying as homeless.¹¹⁶ Further, as found by Scottish Housing Regulator, ‘a number of councils are finding it increasingly difficult to fully meet their statutory duties, particularly those relating to the provision of TA’, with much of this relating to problems in ‘accessing an adequate supply of appropriate TA’.¹¹⁷ It further states, ‘pressures on councils are considerable...There is an emerging risk of systemic failure in the provision of homelessness services, particularly in securing TA’.¹¹⁸ Secondly, a report by a government-commissioned Task and Finish group shows that a large number of individuals are stuck in TA for lengthy periods, with ME groups more likely to experience prolonged stays in TA than their white counterparts.¹¹⁹ For example, in 2021/2022, African households spent an average of 333 days in TA, whereas White Scottish households spent an average of 205 days.¹²⁰ Ironically, TA is not as temporary as the name suggests. The ideal is, as Foster argues, ‘providing permanent homes for the homeless...instead of temporary solutions’.¹²¹ However, the insufficient supply of suitable housing hinders LAs capacities to fulfil their role effectively. LAs are simply unable to allocate homes when demand exceeds supply. For instance, a 2021 Shelter report states that, ‘Scotland still falls short when it comes to meeting demand, resulting in high numbers of households in TA as LAs struggle to source suitable permanent accommodation within which they can discharge their homelessness

¹¹³ Rebecca Morton, Ben Christman, [‘Charges for temporary homeless accommodation in Scotland – law and reality’](#) (Legal Services Agency, 2021).

¹¹⁴ Shelter Scotland, [‘Eviction if you’re staying in temporary accommodation’](#) (2023).

¹¹⁵ Scottish Government, [‘Temporary Accommodation Task and Finish Group: final report and recommendations’](#) (30 March 2023).

¹¹⁶ SPICE, [‘Homeless temporary accommodation – policy and statistics’](#) (25 April 2023).

¹¹⁷ Scottish Housing Regulator, [‘Homelessness services in Scotland: A thematic review - February 2023’](#) (9 February 2023), Part 5: Challenges.

¹¹⁸ Ibid.

¹¹⁹ *Supra* note 115.

¹²⁰ Ibid.

¹²¹ Dawn Foster, [‘What can the UK learn from how Finland solved homelessness’](#) (*The Guardian*, 22 March 2017).

duties'.¹²² Thirdly, LAs place individuals and households in unsuitable 'squalid' TA conditions, with ME communities experiencing heightened levels of severe housing deprivation.¹²³ For example, in 2021/22, there were 2,015 breaches of the UAO,¹²⁴ with the quality of temporary accommodation being 'extremely variable'.¹²⁵ It is therefore strikingly evident that, despite the existence of defined legal obligations, a huge implementation gap remains as LAs fail to meet their statutory obligations in relation to the provision and quality of TA. It is therefore imperative as a preliminary step, that the Government 'prioritises the delivery of new social homes by 2025', as recommended by the Task and Finish Group through the Affordable Housing Supply Programme.¹²⁶ Finally, as McCall-Smith observes, housing in Scotland is 'often discussed as a commodity rather than a right'.¹²⁷ Whilst a rights-based approach is necessitated to incorporate the RTAH, its effectiveness is constrained without a sufficient housing supply; even a robust legal framework cannot ensure adequate housing without this fundamental support.

2.3 Cultural Adequacy (CA)

Stricto sensu, under international law, every state is obliged to ensure that CA is respected in order to fulfil their duty to progressively realise the RTAH.¹²⁸ As all ESCR rights are interdependent, the RTAH also encompasses the right to take part in cultural life under Article 15 ICESCR.¹²⁹ This is recognised in Scots law where LAs have a duty to assess applicants' housing support needs when allocating accommodation, however, the explicit consideration of CA is absent.¹³⁰ As the Bill incorporates the CA, the crucial question to be examined is – what should CA look like within the Scottish context for ME communities? The CESCR offers little when it comes to providing normative content to CA in relation to housing. The CESCR has defined CA in a narrow sense as, 'the way housing is constructed, the building materials used and the policies

¹²² Tatora Mukushi, '[Housing as a human right – realising the human right to housing in Scotland](#)' (*Shelter Scotland*, December 2021), p. 23.

¹²³ The Scotsman, '[Edinburgh Council put homeless families in squalid rooms costing](#)' (31 March 2019).

¹²⁴ *Supra* note 85: Temporary accommodation.

¹²⁵ *Ibid.*

¹²⁶ *Supra* note 115.

¹²⁷ *Supra* note 55.

¹²⁸ *Supra* note 23.

¹²⁹ *Supra* note 34, ICESCR Article 15 1(a).

¹³⁰ Housing Support Services (Homelessness) (Scotland) Regulations 2012.

supporting these must appropriately enable the expression of cultural identity and diversity of housing'.¹³¹ The cultural significance of housing construction is pertinent to certain ME communities as elaborated later. However, the definition provided by the CESCR is insufficient. It ties the expression of cultural identity solely to policies supporting housing build and further, lacking clarity on whether both housing exterior and interior are included. In any case, CA should be interpreted beyond mere physical construction. It should be interpreted as facilitating the realisation of the right to express and practice one's cultural identity within the home and surrounding areas. As stated by CIH Scotland, CA 'also encompasses the space surrounding homes...outdoor space plays an important role in promoting cultural life'. Further, fulfilling CA should 'not be used to justify the provision of housing that is inadequate in terms of security of tenure, quality, accessibility, affordability or location'.¹³²

The CESCR defines culture holistically, encompassing 'ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence'.¹³³ Culture therefore forms an integral part of an individual's identity; to deny it is to negate the very essence of their existence. In relation to rights, 'cultural rights are an integral part of human rights, which are universal, indivisible and interdependent',¹³⁴ with all persons having 'a right to conduct their own cultural practices, subject to respect for human rights and fundamental freedoms'.¹³⁵ This is reaffirmed in UN Declaration on Cultural Diversity and the Fribourg Declaration.¹³⁶ In relation to housing, the Geneva

¹³¹ *Supra* note 25.

¹³² CIH Scotland, ['Walking the Talk – An overview of the right to adequate housing and human rights issues for landlords in Scotland'](#) (31 January 2022).

¹³³ CESCR, 'General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights)', para 13, p. 3-4. See also: UN Educational, Scientific and Cultural Organisation (UNESCO), 'Universal Declaration on Cultural Diversity' (2 November 2001); Preamble states: 'culture is 'the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs''

¹³⁴ *Ibid*, para 5.

¹³⁵ *Ibid*.

¹³⁶ UNESCO, 'Universal Declaration on Cultural Diversity' (2 November 2001); 'The Fribourg Declaration on Cultural Rights' (7 May 2007).

UN Charter on Sustainable Housing states that 'housing policy should take into consideration questions of cultural identity, value and emotional wellbeing',¹³⁷ that should be addressed through, for example, 'housing that takes into consideration the background and culture of inhabitants'.¹³⁸ Similarly, the SHRC has interpreted CA domestically in its broad sense, stating 'housing policy and practice must appropriately enable the expression of cultural identity'.¹³⁹ For many ME communities, this involves an understanding into their different cultures and upbringing. For instance, Chinese households are against the open plan kitchens as according to their 'feng shui' traditions, the kitchen is considered 'an inauspicious area as the energy drains away in this location'.¹⁴⁰ Further, many Asians have a strong preference for living within their communities, 'expressed as a desire for living in multi-generational, extended family households'.¹⁴¹ The Government has acknowledged this and have encouraged LAs to consider larger accommodation for ME households.¹⁴² However, with an insufficient supply of affordable properties with three or more bedrooms, ME household needs are not being met.¹⁴³ This has resulted in severe overcrowding amongst South Asian households, leading to disadvantage in other areas.¹⁴⁴

The UN Guidelines on the RTAH states that 'participation in the design, construction and administration of housing should reflect the diversity of communities and ensure that the needs of all residents are represented'.¹⁴⁵ However, Netto finds that there is a gap in service provision responsiveness to cultural needs, including dietary needs, religious and gender preferences, as well a lack of interpreting and translation services.¹⁴⁶ This is for several reasons, such as the absence of legislation compelling LAs to meet cultural needs, lack of cultural awareness and training, and the

¹³⁷ Geneva UN Charter on Sustainable Housing (16 April 2015) E/ECE/1478/Rev.1, para 16.

¹³⁸ Ibid, para 16 (iii).

¹³⁹ SHRC, '[Our Law and Policy Work - Right to Housing](#)' (2023).

¹⁴⁰ Deborah Menezes, Gina Netto, Sacha Hasan, 'Minoritised Ethnic Access to Housing in Scotland at Key Transition Points' (June 2023) Herriot Watt University, p.29; Michael Oon, '[Feng Shui of the Open Plan Living Room](#)' (*Dr Michael Oon: The Feng Shui Consultant*, 2023).

¹⁴¹ Stuart Cameron, 'Ethnic Minority Housing Needs and Diversity in an Area of Low Housing Demand' (2000) 32(8) Environment and Planning A: Economy and Space, p. 1435.

¹⁴² Scottish Government, '[Housing needs of minority ethnic groups: evidence review](#)' (29 January 2021), 3.5, 3.6.1, 3.9.1.

¹⁴³ Ibid.

¹⁴⁴ *Supra* note 83.

¹⁴⁵ *Supra* note 29, 'Guideline No.3' para 24(c).

¹⁴⁶ Gina Netto, 'Chapter 9: Racism and Housing in Scotland' in Neil Davidson, Minna Liinpää, Maureen McBride, Satnam Virdee (eds), *No problem here: Understanding Racism in Scotland* (Luath Press, 2018), p. 124.

problematic ‘one-size-fits-all’ service delivery. As advocated by Runnymede, Scotland must ‘firmly debunk the ‘treating everyone the same’ narrative.¹⁴⁷ The ‘inclusion for all’ approach fosters cultural insensitivity, in strict violation of the RTAH. On the whole, for Scotland to meet its CA obligation, ME communities should have access to accommodation that is in line with their social, religious, language and dietary needs.

2.3.1 The Interplay of Culture and Religion

Religion plays a prominent role in shaping one’s way of life, which in turn exerts a formative impact on one’s cultural identity. Cultural practices are often rooted in religious teachings.¹⁴⁸ This symbiotic relationship between culture and religion is recognised in the UN Resolution 47/135¹⁴⁹ and is especially important to consider when fulfilling CA, given the notable presence of religious communities amongst ME groups. According to the 2011 Census, Pakistanis, who form the largest ME group, come from Muslim backgrounds.¹⁵⁰ In other words, around 92% of Scottish Muslims are classified as from a ME group.¹⁵¹ Further, Islam stands as the second most prevalent faith in Scotland with 77 thousand individuals identifying as Muslim; this number continuing to rise.¹⁵² Empirical evidence demonstrates that ME communities exhibit a stronger attachment to religion compared to their White counterparts.¹⁵³ For instance, a 2007 study found that 86% of Muslims affirmed ‘my religion is the most important thing in my life’, compared with 11% of the general British population.¹⁵⁴ John Bird identified five reasons for this increased visible religiosity: i) ethnic origins in societies that have high levels of religiosity such as in Pakistan; ii) a basis for community and solidarity; iii) preservation of cultural identity through lifestyle choices

¹⁴⁷ Rowena Arshad, ‘Lessons Learnt about ‘Race’ in Scotland’ in Runnymede, [‘Taking Stock: Race Equality in Scotland’](#) (May 2020), p.8.

¹⁴⁸ See: [Appendix: List of Tables, Table 4: Religious Influence on Cultural Dynamics: An Exploratory Analysis.](#)

¹⁴⁹ UNGA, ‘Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’, 3 February 1992, A/RES/47/13.

¹⁵⁰ Stefano Bonino, [‘Muslims in Scotland: Demographic, social and cultural characteristics’](#) (LSE, 16 November 2016)

¹⁵¹ Peter Hopkins, [‘Scotland’s Islamophobia Report of the Inquiry into Islamophobia in Scotland By the Cross-Party Group on Tackling Islamophobia’](#) (2021) Newcastle University.

¹⁵² Scottish Government, [‘Census 2011 equality results: analysis, part two’](#) (26 March 2015), Chapter 3: Religion.

¹⁵³ *Supra* note 146.

¹⁵⁴ David Cheesman, ‘The Margins of Public Space – Muslims and Social Housing in England’ (2007) 1(1) *People, Place & Police Online*, p.40.

in line with religious doctrines; iv) early socialisation process creating strong familial pressure to uphold religious commitments and; v) a means of coping with oppression.¹⁵⁵ The strong religious influence on the cultural identities of ME communities is well established, yet the Government has shown minimal to no engagement with religion or belief in relation to housing needs. LAs therefore have little understanding of how religion and culture intertwine, resulting in a 'risk of suppressing the expression of cultural identity by failing to recognise the diversity of housing needs'.¹⁵⁶ Refusing or failing to allocate to cultural needs may amount to discrimination in violation of ICESCR.¹⁵⁷ Ergo, fostering an understanding of housing needs from a religious perspective in Scotland is crucial to meet its legal obligations and combat discrimination.

From a religious perspective, a multi-purpose living space is desirable to accommodate congregational prayers and social interactions, given the norms of larger households and extended relations.¹⁵⁸ Larger accommodation is also required as 'the pattern of unmarried children living with their parents is very common among Muslim families'.¹⁵⁹ Further, a separate bathroom and toilet area, as well as a low sink is more convenient for ablution before the five obligatory daily prayers.¹⁶⁰ Additionally, LAs should consider the following inexhaustive religious requirements when allocating accommodation: i) halal dietary options; ii) ablution and prayer spaces; iii) location to and from Islamic schools and places of worship (especially important for men, due to the obligatory Friday afternoon mosque attendance)¹⁶¹ and; iv) gender-segregated accommodation for privacy and modesty purposes. Gender-segregation becomes particularly essential when sharing accommodation with 'non-mahrams'; the Arabic translation of *غير المحارم*, defined as persons with whom marriage is generally permissible (i.e. individuals other than parents, grandparents, siblings and children).¹⁶²

¹⁵⁵ John Bird, *Sociology in Action – Investigating Religion* (Collins Educational, 1999).

¹⁵⁶ *Supra* note 132, p. 41.

¹⁵⁷ *Supra* note 34, ICESCR Article 2(2); *Supra* note 25, para 9.

¹⁵⁸ Open Society Foundation, 'Chapter 7: Experiences of Muslim Communities: Housing' (2010) pp. 77-83 in Open Society Institute, *Muslims in Leicester* (Open Society Foundations, 2010).

¹⁵⁹ *Ibid*, p. 80.

¹⁶⁰ *Supra* note 154.

¹⁶¹ The Holy Quran, Surah 62 Ayah 9. See also: The Prophet (PBH) said 'The Friday prayer in congregation is an obligatory duty upon every Muslim except four; a slave, a woman, a child and a sick person' (Abu Dawud).

¹⁶² See: The Pilgrim Co, ['Who is your mahram and non-mahram?' \(2023\)](#).

This holds even greater significance for Muslim women who wear the hijab around non-mahrams, ensuring both their comfort and safety.¹⁶³ Requirements such as these should be included in the TASF and or complied in a new framework specifically dedicated to identifying the cultural needs of ME communities. For example, the TASF states that LAs should 'provide single-gender accommodation for households experiencing domestic abuse'.¹⁶⁴ This could be extended to include single-gender accommodation for households that require it due to religious beliefs to place a greater importance on meeting cultural needs. Furthermore, it is essential to recognise that cultural variations exist within the same religion and individuals exhibit varying levels of religious practice. As such, it becomes imperative for LAs to offer options that grant individuals the autonomy to choose how they express their faith. Housing should allow space for individuals to interpret and express their own beliefs in a way that is comfortable to them and aligns with basic human rights norms. Integrating religious considerations into homelessness accommodation is a crucial part of the CA requirement to fulfil the RTAH, as well as broader principles of respecting individual rights, promoting inclusivity, and fostering a sense of belonging for all.

Obstacles in fulfilling CA stem from bias towards ME groups and their beliefs. Studies show that 75% of Muslims experience islamophobia as a regular or everyday issue in Scotland.¹⁶⁵ Islamophobia manifests in several forms such as verbal abuse, physical assault such as 'having the hijab pulled off', as well as social exclusion.¹⁶⁶ Muslims are often perceived 'as problematic, embodying a difference incompatible with the rest of society'.¹⁶⁷ As Hopkins identifies, islamophobia, 'threatens education, limits employment prospects, and impacts everyday issues, including health, wellbeing and housing'.¹⁶⁸ From a human rights perspective, it is vital that respect and tolerance for all faiths is promoted and that anti-religious prejudices and hatred are condemned in the provision of services and within society.

¹⁶³ Ibid.

¹⁶⁴ *Supra* note 112, 'Provision of temporary accommodation'.

¹⁶⁵ Marcus Nicolson, '[Islamophobia report reveals Scotland not quite as tolerant as it would like to think](#)' (*The Conversation*, 21 July 2021). See also: Newcastle University, '[Islamophobia in Scotland: report reveals four-fifths of Muslims experienced abuse](#)' (29 June 2021).

¹⁶⁶ *Supra* note 151.

¹⁶⁷ Sara Kidd, Lynn Jamieson, '[Experiences of Muslims Living in Scotland](#)' (*Scottish Government*, 2011), p. 16.

¹⁶⁸ *Supra* note 151. See also: Islam Channel, '[Report shows rise in Islamophobia in Scotland](#)' (2021).

3. The Elimination of All Forms of Racial Discrimination in Housing

3.1 ICERD and the Principle of Non-Discrimination

Originating as a response to anti-Semitism, the ICERD is the oldest IHR convention (used interchangeably with ‘treaty’), providing a comprehensive framework on eliminating racial discrimination in national states.¹⁶⁹ Racial discrimination is defined under Article 1(1) as, ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life’.¹⁷⁰ The ICERD recognises both direct and indirect discrimination. Proof of discriminatory intent is not required; ‘if a policy’s impact is disparate, it will fall under discrimination’.¹⁷¹ The ICERD therefore seeks to address the systemic barriers and biases that engender unequal outcomes based on race, promoting equality to achieve outcomes that are more balanced. Ergo, ‘the overall objective of ICERD is to ensure equality of outcomes rather than (solely) procedural equality of opportunity’.¹⁷²

Understanding the grounds of racial discrimination, requires an understanding of ‘the use of the conceptual device of “intersectionality”’.¹⁷³ For example, ‘young black men experience discrimination on the grounds of race, age and gender’.¹⁷⁴ International law confirms that racial discrimination includes race, religion, ethnicity and cultural discrimination (also referred to as ‘racism’).¹⁷⁵ As Modood asserts, ‘cultural racism

¹⁶⁹ International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (adopted: 21 December 1965; in force: 4 January 1969 in accordance with Article 19 by UNGA Resolution 2106).

¹⁷⁰ Ibid, Article 1(1).

¹⁷¹ Maya K. Watson, [‘The United States’ Hollow Commitment to Eradicating Global Racial Discrimination’](#) (*American Bar Association*, 6 January 2020). For a case example of indirect discrimination, see: *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (US).

¹⁷² HRCS, [‘Incorporation of International Human Rights Briefing Series: The UN International Convention on the Elimination of All Forms of Racial Discrimination \(ICERD\)’](#) (November 2021).

¹⁷³ See: Committee on the Elimination of Discrimination Against Women (CEDAW), ‘General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures’ (2004) on gender aspects of racial discrimination; Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (OUP, 2016), p. 494.

¹⁷⁴ Iyiola Solanke, *Discrimination as Stigma: A Theory of Anti-discrimination Law* (Bloomsbury, 2016), p. 143.

¹⁷⁵ See: Patrick Thornberry, *International Law and the Rights of Minorities* (OUP, 1991), p. 264.

builds on biological racism a further discourse which evokes cultural differences from and alleged “civilised” norm to vilify, marginalise or demand cultural assimilation’.¹⁷⁶ For instance, persons whose religious identity has been ‘racialised’ and used as a basis for discrimination, as seen through the lived experiences of Muslims, are protected under ICERD.¹⁷⁷

The RTAH is intrinsically linked to the ICERD, as the persistence of racial discrimination significantly curtails access to the right for ME communities. As CESCR states, the RTAH ‘cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments’.¹⁷⁸ The common phenomena of ME communities experiencing discrimination with respect to housing is recognised in international law. Specifically, Article 5(e)(iii) ICERD prescribes the right to non-discrimination with respect to housing. Further, Article 14 creates an individual complaints mechanism, which has resulted in several housing rights cases relating to discrimination.¹⁷⁹ Additionally, the CESCR has advocated for avoiding race segregation in housing, specifically on the Roma population¹⁸⁰ and those of African descent.¹⁸¹ As Bratt et al states, ‘patterns of segregation and discrimination in housing have led to the race/ethnic differentials in people’s access to high-quality housing’.¹⁸²

Lastly, the principle of non-discrimination is closely linked to the UN Principles of Tolerance:

¹⁷⁶ Tariq Modood, ‘Difference, Cultural Racism and Anti Racism’ in Bernard Boxill (ed.), *Race and Racism* (OUP, 2001), p. 239.

¹⁷⁷ Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (OUP, 2016), p. 494. See also: Charter of the UN (1945), Articles 1 and 55; ICCPR, Article 26.

¹⁷⁸ *Supra* note 25, para 9.

¹⁷⁹ See: *L. R. et al. v Slovakia*, Communication No. 31/2003, U.N. Doc. CERD/C/66/D/31/2003 (2005); *F. A. v Norway*, Communication No. 18/2000, U.N. Doc. CERD/C/58/D/18/2000 (2001).

¹⁸⁰ CERD, ‘General recommendation XXVII on Discrimination Against Roma’ (16 August 2000) A/55/18. See also: CERD, ‘General recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent) (1 November 2002).

¹⁸¹ CERD, ‘General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent’ (3 October 2011) CERD/C/GC/34.

¹⁸² Rachel Bratt, Michael Stone, Chester Hartman, *A Right to Housing: Foundation for a New Social Agenda* (Temple University Press, 2006), p. 62.

*‘Measures must be taken to ensure equality in dignity and rights for individuals and groups wherever necessary. In this respect, **particular attention should be paid to vulnerable groups which are socially or economically disadvantaged so as to afford them the protection of the laws and social measures in force, in particular with regard to housing, employment and health, to respect the authenticity of their culture and values, and to facilitate their social and occupational advancement and integration, especially through education**’.*¹⁸³

It is therefore of immediate importance that the ICERD, with reference to the non-binding yet influential, UN Principles of Tolerance, is directly integrated within Scots housing law and policy to ensure access to the RTAH for ME communities.

3.1.1 States Parties’ Obligations

The ICERD invokes both negative and positive obligations on States parties to eliminate racial discrimination ‘by all appropriate means...without a delay’,¹⁸⁴ and in relation to the RTAH.¹⁸⁵ There is therefore no ‘progressive realisation’ element as found in the ICESCR. States parties have strict immediate obligations to eliminate discriminatory laws and practices within national legislative frameworks and guarantee the enjoyment of all rights without discrimination, including the RTAH to promote *de facto* equality.¹⁸⁶ This includes public bodies refraining from implementing racist and discriminatory practices.¹⁸⁷ Further, States are required to advance ‘substantive equality’, through taking ‘special and concrete measures to ensure the adequate development and protection of certain racial groups’.¹⁸⁸ However, these measures ‘should not lead to the maintenance of separate rights for different racial groups’, nor

¹⁸³ UNESCO, ‘Declaration of Principles on Tolerance’ (16 November 1995), Article 3.

¹⁸⁴ *Supra* note 169, ICERD Article 2.

¹⁸⁵ Article 5(e)(iii).

¹⁸⁶ *Ibid*, Article 5. See also: ‘Committee on the Elimination of Racial Discrimination (CERD), General recommendation 20 (48) on Article 5: Committee on the Elimination of Racial Discrimination, 48th session’ (26 February-15 March 1996).

¹⁸⁷ *Supra* note 169, ICERD Article 2(1).

¹⁸⁸ *Supra* note 169, ICERD Article 1(4), 2(2).

should they continue after their objectives have been reached.¹⁸⁹ Lastly, States parties have an obligation to guarantee *de jure* equality (equality before the law),¹⁹⁰ and ensure that everyone within their jurisdiction has effective protection and remedies against racial discrimination.¹⁹¹ As with the ICESCR, States parties have the liberty to decide how they implement their obligations, so long as the chosen measures seek to achieve the full realisation of the right in question.¹⁹² It is therefore incumbent on Scotland to take special measures to advance the protection of the RTAH for ME communities and ensure that policies aspire to eliminate racial discrimination.

3.2 Scotland's Race Equality Legal Framework

Most aspects of race and equality law are reserved to Westminster Parliament.¹⁹³ Primary legislation on this subject is not within the scope of Scotland's devolved powers.¹⁹⁴ However, the Scottish Parliament can encourage equal opportunities, impose duties on public bodies and create secondary legislation.¹⁹⁵

3.2.1 The Public Sector Equality Duty (PSED)

Scotland is bound by the UK Equality Act 2010, which has consolidated over 116 pieces of legislation on race, sex, disability and the like into one Act.¹⁹⁶ Section 149 sets out the PSED, which requires all public bodies to 'have due regard' to: i) eliminate discrimination, harassment, victimisation and another prohibited conduct; ii) advance equality of opportunity and; iii) foster good relations.¹⁹⁷ 'Due regard' must be considered during decision-making processes, design of policies and delivery of

¹⁸⁹ CERD, 'General Recommendation no. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination' (24 September 2009) CERD/C/GC/32, para 19.

¹⁹⁰ *Supra* note 169, ICERD Article 5.

¹⁹¹ *Ibid*, Article 6.

¹⁹² Nisuke Ando, National Implementation and Interpretation, in Dinah Shelton (ed.), *The Oxford Handbook of International Human Rights Law* (Oxford University Press, 2013), p. 702.

¹⁹³ David Torrance, '[Reserved matters in the United Kingdom](#)' (*UK Parliament House of Commons Library*, 24 June 2022)

¹⁹⁴ Scotland Act 1998, Schedule 5. See also: Colm O'Connell, '[The place of equal opportunities in the devolution settlement: a legal analysis](#)' (*Equality and Human Rights Commission: Research Report 33, 2009*).

¹⁹⁵ Equality Act 2010 (UK), Schedule 19 Part 3; Explanatory Notes, para 16. See also: Scottish Government, '[Mainstreaming equality: Scottish Government's equality duties](#)' (1 March 2016).

¹⁹⁶ Equality and Human Rights Commission, '[What is the Equality Act?](#)' (28 April 2022).

¹⁹⁷ *Supra* note 186, Equality Act 2010 (UK), Section 149.

services.¹⁹⁸ In particular, LAs must take steps ‘to meet the needs of persons’,¹⁹⁹ and ‘remove and minimise disadvantages suffered by persons’,²⁰⁰ who possess certain protected characteristics, such as race, religion and belief.²⁰¹ However, the Act is highly criticised for being ‘not fit for purpose’.²⁰² As the Chair of the Women and Equalities Committee highlights, ‘service providers are not afraid to discriminate, knowing that they are unlikely to be held to account’.²⁰³ Further, the Select Committee on the Equality Act stated that ‘there is a fundamental flaw in the current PSED, namely that a public authority can make no progress towards the aims of the general duty and yet be judged compliant with it by the courts’.²⁰⁴ For instance, in *FC v SSWP*, the Supreme Court held that undertaking an impact assessment is not always required.²⁰⁵ As such, the Select Committee recommends that the legislation be amended to include that all public bodies are required to ‘take all proportionate steps towards the achievement of the matters’.²⁰⁶ Although Scotland’s influence over legislative changes in the Equality Act is limited, it can direct its efforts towards enforcing the specific duties it holds within its devolved powers.

Part I of the Equality Act sets out specific duties, which has been enforced as the ‘Fairer Scotland Duty’ (FSD) in 2018.²⁰⁷ Scottish LAs have a legal duty to pay ‘due regard’ to how they can ‘reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions’.²⁰⁸ This procedural duty ‘is not a tick-box exercise but is meaningful’ and it must ‘take place well before reaching a decision and influences that decision’.²⁰⁹ Additionally, Scottish Regulations (as amended) place specific equality duties on certain public bodies, including LAs to enable the better

¹⁹⁸ Shelter England, [‘Public sector equality duty under the Equality Act 2010’](#) (2023).

¹⁹⁹ *Supra* note 186, S. 149 (3)(b)

²⁰⁰ *Ibid*, S.149 (3)(a)

²⁰¹ *Ibid*, Section 4, 9 and 10.

²⁰² SIA, [‘Equality Act 2010 – “Not fit for purpose”](#)’ (2019).

²⁰³ House of Commons Women and Equalities Committee, [‘Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission’](#) Tenth Report of Session 2017-19 (17 July 2019).

²⁰⁴ UK Parliament, [‘Select Committee on the Equality Act 2010 and Disability The Equality Act 2010: the impact on disabled people’](#) Report of Session 2015-16 (24 March 2016), Chapter 8: The Public Sector Equality Duty, para 345.

²⁰⁵ *Patmalniece (FC) (Appellant) v Secretary of State for Work and Pensions (Respondent)* (2011) UKSC 11, para 76.

²⁰⁶ *Ibid*, para 346.

²⁰⁷ *Supra* note 186, Part 1.

²⁰⁸ Scottish Government, [‘Fairer Scotland Duty: guidance for public bodies’](#) (19 August 2022), p.2.

²⁰⁹ *Ibid*, p.3.

performance of the general equality duty,²¹⁰ through reporting on and publishing equality outcomes, as well as assessing the impact of applying a proposed new or revised policy.²¹¹ Whilst the FSD strengthened the need for consideration across all staff levels, there are concerns that ‘links between (poverty, inequality and race) needed to be better incorporated and made more explicit throughout the legislation to help with implementation and delivery’.²¹² Moreover, LAs are struggling to meet the FSD due to challenges in ‘developing systems that avoided ‘box-ticking’ consideration of socioeconomic disadvantage; setting success criteria and relevant outcomes; allocating time and budget to implement the duty; and developing different assessment processes and reporting mechanisms that avoided duplication of the work required under other duties’.²¹³ Due to these challenges and a deficiency in addressing intersectionality within domestic legislation, ME households continue to live in deprived areas and ‘are less satisfied with their neighbourhoods, have less access to open space and to the internet, experience poorer mental and physical health and are more likely to report experiencing domestic abuse’,²¹⁴ with non-white ME groups most likely to experience overcrowding.²¹⁵

3.2.2 Race Equality Policies

The Government avows that it is ‘determined to show leadership in advancing race equality, tackling racism and addressing barriers that prevent ME communities...from realising their human rights’.²¹⁶ Efforts are evident through the Government’s policy work that aims to target racism and promote race equality. First, the Race Equality Framework (REF) 2016-30 sets out the actions of the Government, in partnership with agencies and stakeholders, to achieve ‘six themed visions’, including ‘fewer

²¹⁰ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. See also: Equality and Human Rights Commission, [‘Public authorities in Scotland: who is covered by the Specific Duties under the Public Sector Equality Duty?’](#) (15 June 2022).

²¹¹ Ibid, Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, Reg 5.

²¹² EHRC, [‘Evaluating the socio-economic duty in Scotland and Wales’](#) (March 2021), p.17.

²¹³ Lizanne McMurrich, [‘Report on the review to consider how the council’s approach to the implementation of the Fairer Scotland Duty has delivered on the duty to reduce socio-economic disadvantage – Progress Update’](#) (30 September 2021) North Lanarkshire Council Report Policy and Strategy Committee, para 2.2.2.

²¹⁴ Scottish Government, [‘Housing to 2040: Fairer Scotland Duty’](#) (15 March 2021), Summary of Evidence.

²¹⁵ Ibid.

²¹⁶ Scottish Government, [‘Race Equality Immediate Priorities Plan’](#) (September 2021), p.4

inequalities in housing for ME communities'.²¹⁷ Secondly, the Race Equality Action Plan (REAP) 2017-21 has worked to implement the REF and has introduced further commitments.²¹⁸ It stated that it will ensure a 'renewed focus on the specific needs of ME communities',²¹⁹ and has given particular regard to Gypsy Traveller communities. For instance, the Government published a framework with COSLA to provide £20 million funding and specific support to Gypsy Travellers by 2040, 'providing shower and toilet facilities to unauthorised encampments, keeping seasonal sites open all year and use of holiday caravan site'.²²⁰ This targeted support is commended and initiatives such as these should be encouraged to meet the needs of non-white ME groups as well. Following the end of REAP, the Race Equality Immediate Priorities Plan (IPP) 2021 was designed as a short-term delivery mechanism to report on the progress made thus far and identify gaps and key areas for development.²²¹ For example, it notes that the 'evidence review on housing needs and experiences of ME groups informed the development of the equality position statement underpinning the Housing to 2040 strategy', such as 'the Affordable Housing Supply programme which continues to support the needs of ME communities'.²²² Whilst the gathering of evidence on ME communities to inform race equality work is laudable, the IPP failed to report on the specific intended action to be taken by May 2021, on the issue of poor accommodation and overcrowding for ME groups.²²³ Hence, a disparity exists between Government commitments and actionable steps toward achieving outcomes.

It is evident that Scotland has made promising legal advances to enhance race equality; however, as with its homelessness framework, the challenge lies in its effective implementation. As Young finds, 'there is a clear disconnect between the theoretically positive activity within the public sector and the outcomes for minority ethnic people themselves'.²²⁴ This stems from an 'absence of both a cultural awareness around race equality and a policy commitment to operationalise it'.²²⁵ In

²¹⁷ Scottish Government, '[Race equality framework for Scotland 2016 to 2030](#)' (21 March 2016).

²¹⁸ Scottish Government, '[Race equality action plan: final report](#)' (19 March 2021), section 6, p.8.

²¹⁹ *Ibid.*

²²⁰ *Supra* note 218, Chapter 5. See also: Scottish Government, '[Improving the lives of Gypsy/Travellers: 2019-2021](#)' (9 October 2019).

²²¹ *Supra* note 216.

²²² *Ibid.*, p. 24.

²²³ *Ibid.*

²²⁴ Runnymede, '[Scotland and Race Equality: Directions in Policy and Identity](#)' (June 2016), p. 19.

²²⁵ Runnymede, '[Taking Stock: Race Equality in Scotland](#)' (May 2020).

particular, evidence of the low level of racial literacy among those in leadership or policy development is of serious concern, affecting outcomes for ME groups.²²⁶ As Boyle finds, there is ‘a lack of support or guidance for duty bearers’ on what language on race rights mean in practice.²²⁷ For example, the Government recognises race equality in housing, yet this commitment is not fully embedded within housing policy.²²⁸ As the CEO of Homelessness Impact urged, ‘to maximise effectiveness, it is imperative that (homelessness) policies and programmes explicitly consider race as a factor, and be subject to robust evaluation’.²²⁹

3.3 Unveiling the Reality of Racism in Scotland

Racism is a multi-faceted, deeply entrenched societal ill that poses as an immense barrier to realising the RTAH.²³⁰ Racism not only exists but its presence is belittled. As HRCS reports, there is a ‘lack of recognition of systemic racism in Scotland, with a self-perception of friendliness (that) often masks or downplays people’s lived experience of racism’.²³¹ Runnymede recalls one case they managed in Falkirk; ‘the family had appalling racist language on their wall, but the local police and local MP told me it wasn’t racist, and I was like, “hold on, I don’t understand this”’.²³² Therefore, ‘a key to progressing race equality is to develop a systems understanding of race matters’.²³³ In accord with Mc-Call Smith, ‘entrenchment of ES(C)R rights requires not only changes in law, but changes in society’.²³⁴

3.3.1 Institutional Racism in Homelessness Services

Evidence demonstrates that institutional racism operates within the provision of homelessness services, leading to discriminatory and considerably worse outcomes

²²⁶ Ibid.

²²⁷ *Supra* note 224, p. 23.

²²⁸ *Supra* note 18.

²²⁹ Centre for Homelessness Impact, ‘[Ethnic Inequalities and Homelessness in the UK](#)’ (December 2022), p. 37.

²³⁰ Scottish Government, ‘[Housing Needs of minority ethnic groups: evidence review](#)’ (29 January 2021)

²³¹ HRCS, ‘[Scotland’s Human Rights Record – Universal Periodic Review: UK, 4th Cycle 2022](#)’ (May 2022), p. 27.

²³² *Supra* note 4, p.5.

²³³ *Supra* note 147, p.8.

²³⁴ *Supra* note 55.

for ME communities.²³⁵ Institutional racism can be defined as ‘the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin’.²³⁶ As a manifestation of institutional racism, both direct and indirect discrimination operate within homelessness service provisions. Direct discrimination ‘occurs when a person or groups of people are treated less favourably than others on racial grounds’.²³⁷ For example, studies show that ME groups are disproportionately provided homelessness accommodation in more deprived areas.²³⁸ In general, African and Caribbean communities are more likely to be living in the most deprived areas,²³⁹ where neighbourhood issues of crime, vandalism, disorder and security are of concern. The proportion of ME groups living in the Scottish Index of Multiple Deprivation (SIMD) areas had worsened between the 2001 Census and 2011 Census.²⁴⁰ As neighbourhoods determine school quality, job opportunities and safety among a host of other things,²⁴¹ deliberately allocating ME households in poorer localities perpetuate a cycle of disadvantage. Indirect discrimination is ‘the imposition of conditions or requirements that, while not apparently discriminatory in themselves, have the effect of lowering the proportion of people from certain ethnic groups able to benefit from access to public services, including housing’.²⁴² In other words, ‘policy and practice continue to have unintended consequences that disadvantage particular groups’.²⁴³ This issue has been examined throughout the report, as for example, ME communities are more likely to experience lack of culturally appropriate accommodation, poor quality of housing, substandard accommodation, including access to key facilities.²⁴⁴

²³⁵ *Supra* note 146, pp. 162-179. See also: Gina Netto, Cathy Fancy, Hal Pawson, Delia Lomax, Satnam Singh, Sinead Powers, ‘Black and Minority Ethnic Communities and Homelessness in Scotland’ (2004) No. 184 Social Research Development Department Research Programme

²³⁶ The Stephen Lawrence Inquiry, ‘[Report of an inquiry by Sir William Macpherson of Cluny](#)’ (February 1999) Cm 4262-I, para. 6.34, p.49.

²³⁷ *Supra* note 146, p. 163.

²³⁸ Sophie King, ‘[Why are people of colour disproportionately impacted by the housing crisis?](#)’ (*Shelter Scotland*, 5 February 2021).

²³⁹ *Supra* note 18.

²⁴⁰ *Ibid.*

²⁴¹ *Supra* note 182, p. 60.

²⁴² *Supra* note 146, p. 165.

²⁴³ *Supra* note 18, p.3.

²⁴⁴ CRER, ‘[Anti-racist policy making: Learning from the first 20 years of Scottish devolution](#)’ (March 2021).

Scotland can draw valuable lessons from the accomplishments of Toronto's Homes First (HF) Scheme; a model success of effective homelessness policy tailored to ME communities.²⁴⁵ This scheme provides permanent housing immediately to those experiencing homelessness, along with tailored support for issues such as addiction and mental illness.²⁴⁶ Staff underwent anti-racist training, services were offered in multiple languages and alternative cultural healing methods were introduced.²⁴⁷ A 2016 report found that 'enhancing HF with anti-racist principles of practice for ME homeless adults successfully improved housing stability and community functioning compared to usual care'.²⁴⁸ It further stated 'the culturally adapted intervention may increase access to care through offering choice to racialized populations'.²⁴⁹ Whilst Scotland does have a HF scheme, it has been implemented as 'an additional to existing service provision', rather than the ideal 'whole systems cross-sector approach'.²⁵⁰ Further, its' use is limited in practice, it is under resourced and there is no evidence to suggest it is tailored towards ME groups.²⁵¹ As Phillips states, 'in order for HF programmes to succeed, they must be supported by a robust supply of affordable housing and adequate income supports, as well as a great deal of attention being paid to the psychosocial issues that often accompany homelessness'.²⁵²

3.3.2 Racial Harassment from Neighbours and Community

Defined by the Commission for Racial Equality, racial harassment occurs 'when the conduct is unwanted and has the effect or purpose of violating the other person's dignity or creating an intimidating, or offensive environment for that person'.²⁵³ The CRER reports that discrimination and harassment towards ME communities in Scotland remains a significant problem with rates not improving in the last five years.²⁵⁴ Patterson's study finds that, ME communities are 'viewed as a threat to

²⁴⁵ Homes First, ['What We Do'](#) (2023).

²⁴⁶ Colin Robert Phillips, 'The Promises of Housing First and the Realities of Neoliberalism: Lessons from Toronto's Streets to Homes Programme' (2016) Ryerson University Thesis.

²⁴⁷ *Supra* note 228.

²⁴⁸ Vicky Stergiopoulos, Agnes Gozdzik, Vachan Misir, Anna Skosireva, Aseefa Sarang, Jo Connelly, Adam Whisler & Kwame McKenzie, 'The Effectiveness of a Housing First Adaptation for Ethnic Minority Groups: Findings of a Pragmatic Randomized Controlled Trial' (2016) BMC Public Health.

²⁴⁹ *Ibid.*

²⁵⁰ Shelter Scotland, ['Housing First in Scotland Topic Briefing'](#) (April 2019), p.7.

²⁵¹ *Ibid.*

²⁵² *Supra* note 246.

²⁵³ *Supra* note 18.

²⁵⁴ *Supra* note 244.

stability, housing resources and established white residents', which has resulted in the onus on ME communities to 'trade off' (their) minority identity for a British cultural view.²⁵⁵ As stressed by Beider, 'this passive culturist perspective portrays minority groups as submissive recipients of services rather than activists'.²⁵⁶

Research shows that the ME group most likely to be victims of racist incidents in Scotland are Pakistanis.²⁵⁷ Their religious identity has been 'racialised' and used as a basis for discrimination.²⁵⁸ Goldie finds that 'Scottish Muslims are racialised through signification of their culture'.²⁵⁹ In a post 9/11 environment, Hopkins argues that those who display their 'Muslimness', through markers such as skin colour, beard and dress, are more likely to be marginalised through everyday racism.²⁶⁰ This is confirmed by a Shelter Report which finds that 'visibly Muslims' experience frequent verbal and physical harassment, damage to property, as well as violent attacks.²⁶¹ As such, many ME groups fear of experiencing racial harassment when looking for accommodation, acting as severe barriers to accessing the RTAH. For example, Shelter finds that, 'in certain social housing areas, racial harassment is a regular occurrence and that under-reporting was likely to be common'.²⁶² Reporting remains uncommon due to fear amongst ME groups; 'as a brown person, you are going to be silent and that's something that is instilled in us...yes, because of colonisation'.²⁶³ This is due to factors such as 'lack of trust in the police and justice system, confusion surrounding the process, and feeling desensitised to harassment'.²⁶⁴

²⁵⁵ Sheila Patterson, *Dark strangers: A sociological study of the absorption of a recent West Indian migrant group in Brixton, South London* (Indiana University Press, 1964), p. 167.

²⁵⁶ Harris Beider, *Race, Housing and Community: Perspectives on Policy and Practice* (Hoboken: John Wiley & Sons, 2012), p.9.

²⁵⁷ Scottish Government, '[Racist Incidents Recorded By The Police In Scotland, 2013-14](#)', p.2.

²⁵⁸ See: Natan Lerner, 'Freedom of Expression and Advocacy of Group Hatred: Incitement to Hate Crimes and Religious Hatred' (2010) *Religion and Human Rights*, pp. 137-145.

²⁵⁹ Paul Goldie, 'Cultural Racism and Islamophobia in Glasgow' in Neil Davidson, Minna Liinpää, Maureen McBride, Satnam Virdee, *No Problem Here: Understanding Racism in Scotland* (2018), pp. 128-144.

²⁶⁰ Nick Hopkins, 'Dual Identities and Their Recognition: Minority Group Members' Perspectives' (2011) 31(2) *Political Psychology*, p. 269. See also: Peter Hopkins, 'Gendering Islamophobia, racism and White supremacy: Gendered violence against those who look Muslim' (2016) 6(2) *Dialogues in Human Geography*.

²⁶¹ *Ibid*, pp. 39-41,

²⁶² *Ibid*, p. 21.

²⁶³ *Ibid*, p. 41.

²⁶⁴ CRER, '[Anti-racist policy making: Learning from the first 20 years of Scottish devolution](#)' (March 2021).

It is therefore of utmost importance to cultivate an anti-racist culture, not only to proactively prevent individuals from encountering racism in the first instance but also to create an environment where individuals feel empowered and at ease to report and seek redress if they do experience it. Further, LAs must act upon racism and heightened marginalisation and factor these considerations into accommodation offers. It is incumbent upon LAs to prioritise secure and inclusive localities for ME communities, avoiding the use of segregated housing solutions that further seclude and contribute to prejudice against ME groups.

4. Conclusion

The domestic incorporation of ICESCR and ICERD signifies a long-awaited and essential step towards establishing and ensuring the RTAH. As Moos argues, 'IHR treaties have no real teeth, they must be fought for on the ground on political terrain'.²⁶⁵ Indeed, the incorporation cultivates a deeper commitment to the RTAH and its interrelated rights, including stronger legislative measures and policy implementation to ensure ESCRs are respected, protected and fulfilled with equal importance to civil and political rights. Through the formalisation of these rights, the aspiration is to empower ME communities, gaining heightened awareness of their entitlements and fostering a culture that tightly respects human rights. Unfortunately, the harsh reality for ME communities in Scotland is the agonising experience of homelessness, severe housing disadvantage, racism and harassment, as well as a lack of culturally appropriate accommodation and services. This requires immediate and comprehensive action which the Bill seeks to address. This report finds that as part of the forthcoming Bill, the ICESCR and ICERD work together to improve access to the RTAH for ME communities. The former ensures that the RTAH is entrenched in domestic Scots law in a way that respects the cultural identities and needs of ME groups, whilst the latter ensures that access to the RTAH is not obstructed by racial discrimination. However, the Bill faces significant challenges in its pursuit of realising the RTAH. Despite Scotland's relatively robust legal framework, there remains a large disparity between the 'law in books' and the 'law in action'.²⁶⁶ Scotland faces a severe shortage of affordable and culturally adequate housing supply, LAs are failing to meet

²⁶⁵ Markus Moos, *A Research Agenda for Housing* (Edward Elgar Publishing, 2019), p.20.

²⁶⁶ *Supra* note 24, p. 656-657.

their legal duties and institutional racism combined with the lack of accountability stand as 'key barrier(s) to realising ESCR rights in Scotland'.²⁶⁷ After strengthening the legal framework, ensuring effective policy implementation holds equal importance. As the CESCR states, 'the adoption of legislative measures...is by no means exhaustive of the obligations of States parties'.²⁶⁸ Ergo, to increase the Bill's chances of success, Scotland 'seeking to fulfil its obligation to protect, promote and fulfil ESCRs must do more than merely repeat the text of the ICESCR or other international treaties'.²⁶⁹ A holistic approach involving 'legislative, policy and social measures combined with political commitment and accountability',²⁷⁰ is necessitated to ensure the successful incorporation of the RTAH and other related rights and principles. Particularly concerning ME groups, the Bill's success hinges on guaranteeing the fundamental principles of equality and non-discrimination. While challenges persist on the horizon, the continued efforts of both governmental bodies and non-governmental organisations to incorporate the Bill within Scotland's devolved powers stand as a beacon of hope, illuminating the path toward a more just and equitable future where everyone, regardless of their background, is afforded the fundamental right to a safe and dignified home.

5. Recommendations

This policy report proposes the following recommendations:

(1) Establish a Minimum Core encompassing the seven RTAH elements²⁷¹

The MC should prioritise eradicating rough sleeping and preventing forced evictions to be in line with baseline IHRL.²⁷² The determination of the MC should be established via an inclusive participatory procedure encompassing the perspectives of ME communities to ensure that housing policies are culturally

²⁶⁷ *Supra* note 55, p. 2.

²⁶⁸ *Supra* note 43, para 4.

²⁶⁹ Bonavero Institute of Human Rights, '[The Development and Application of the Concept of the Progressive Realisation of Human Rights: Report to the Scottish National Taskforce for Human Rights Leadership](#)' (28 January 2021), p.5.

²⁷⁰ Julie Fraser, 'Domestic Implementation of International Human Rights Treaties: Legislative and Other Effective Measures' in *Social Institutions and International Human Rights Law Implementation* (CUP, 2020), p.76.

²⁷¹ See: [Appendix: List of Tables, Table 3: The \(Minimum\) Normative Content of the RTAH, as specified in GC4.](#)

²⁷² *Supra* note 57.

sensitive, responsive to community needs, and developed in consultation with those directly affected.

(2) Strengthen State Accountability via Measuring Progressive Realisation

The seven RTAH elements should be used as indicators. To accurately gauge progress among ME communities, data should be collected and analysed in a disaggregated manner. This involves categorising information based on ethnicity, among other relevant variables which will offer insights into disparities and challenges faced by different ethnic groups, enabling targeted interventions. Further, meaningful engagement with ME communities is crucial to aid in a more holistic evaluation of housing rights progress.²⁷³ Inclusion of ME communities in the measurement process fosters rights-awareness and empowers them to hold authorities accountable.

(3) Abolish the Discretionary ‘Intentionality Test’ under Housing Act 1987

The elimination of the intentionality test is imperative to secure unhindered access to homelessness accommodation for vulnerable individuals navigating complex circumstances, ensuring both consistency in support services and equitable assistance.

(4) Establish a Uniform Working Definition of Cultural Adequacy (CA)

CA should be defined as facilitating the realisation of the right to express and practice one’s cultural identity within the home and surrounding areas. The definition should also encompass religious housing needs. As highlighted by Fraser, integrating religious considerations within human rights discourse is crucial to prevent alienation and exclusion.²⁷⁴ To acknowledge the growing religiosity (such as the rise of Islam as the world’s largest religion)²⁷⁵ and diverse beliefs worldwide, housing policies should respect and accommodate these aspects.

²⁷³ For useful insights on how to engage with ME groups in a sensitive manner see: Tanveer Parneez, Anna Martowicz (eds), [‘Guidelines for Practitioners: How to engage with Ethnic Minorities and Hard to Reach Groups’](#) (BEMIS, 2015).

²⁷⁴ Julie Fraser, *Social Institutions and International Human Rights Law Implementation* (CUP, 2020), p. 269.

²⁷⁵ Ibid.

(5) Increase Funding for Culturally Adequate Housing Supply

ME communities grapple with substantial challenges related to overcrowding and housing that does not align with their cultural needs. To address this challenge, it is essential to prioritise boosting housing supply, particularly with accommodations that align with the cultural and religious needs and preferences.

(6) Integrate ICERD directly within housing law and policy

To ensure the comprehensive effectiveness of the RTAH, a harmonious integration of ICESCR and ICERD is essential. Acknowledging the intersectionality of ME experiences, through factors such as race, disability, and religion, is crucial. LAs must act upon racism and heightened marginalisation and factor these considerations into accommodation offers. Concurrently, the Government should invest in capacity-building initiatives for relevant government agencies, civil society organizations, and community leaders to actively foster a culture of respect and tolerance towards ME communities.

APPENDIX: LIST OF TABLES

Table 1: Minority Ethnic (ME) Communities in Scotland

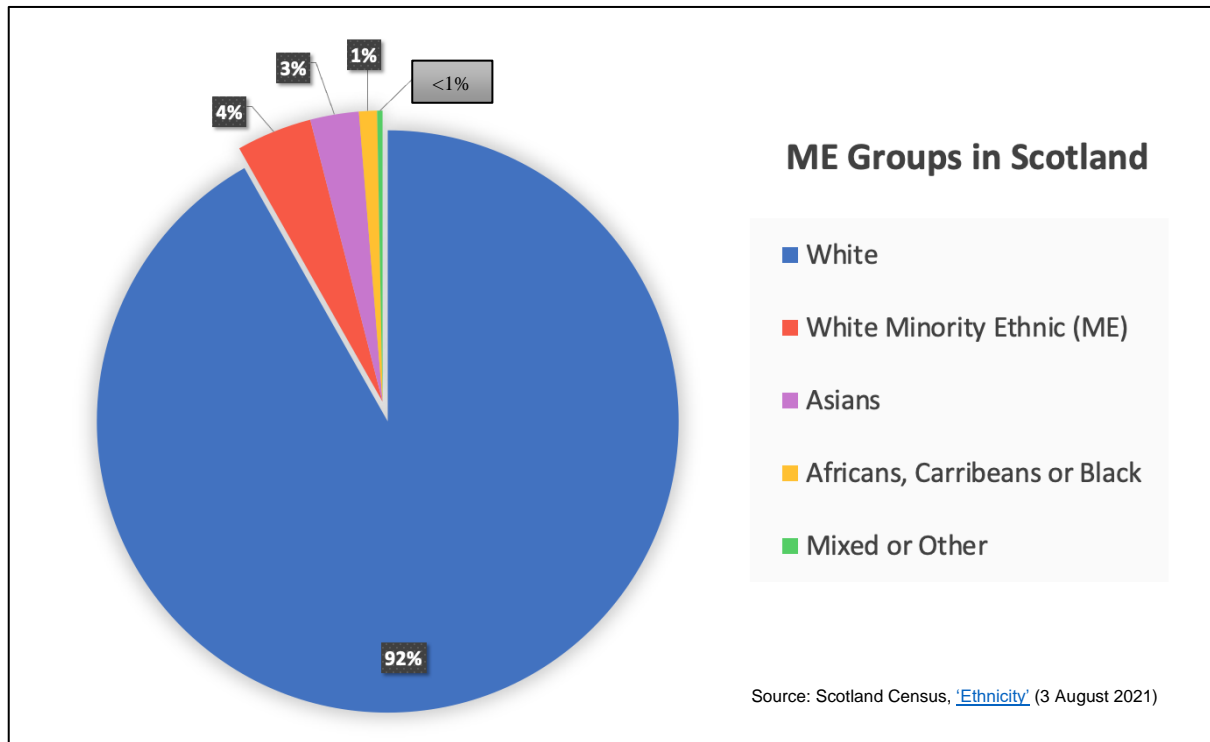


Table 2: The Nature of States Parties' Obligations under ICESCR for the RTAH

Principle Obligation	Immediate Obligations		Progressive Realisation
Take steps to achieve progressively the full realisation of the RTAH ²⁷⁶	Minimum Core	Non-discrimination	For States parties to satisfy their obligations, they must demonstrate that they have 'taken whatever steps are necessary...to realise the right for every individual in the shortest possible time in accordance with the maximum of available resources' ²⁷⁹
	States must ensure for everyone a minimum access to the RTAH that adheres to	States must not discriminate access to the RTAH. Any discrimination is a strict	

²⁷⁶ *Supra* note 42.

²⁷⁹ *Supra* note 44.

	the seven elements ²⁷⁷	violation of the ICESCR ²⁷⁸	
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Table 3: The (Minimum) Normative Content of the RTAH, as specified in GC4.²⁸⁰

The Seven Elements of the RTAH	Normative Content²⁸¹
Legal security of tenure	'Housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats' ²⁸²
Availability of services	'Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal' ²⁸³
Affordability	'Housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights' ²⁸⁴
Habitability	'Housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards' ²⁸⁵

²⁷⁷ *Supra* note 25.

²⁷⁸ *Supra* note 61.

²⁸⁰ *Supra* note 25.

²⁸¹ OHCHR and UNHABITAT, '[Fact Sheet No. 21 \(Rev. 1\): The Human Right to Adequate Housing](#)' (2009).

²⁸² *Ibid*, p. 3.

²⁸³ *Ibid*.

²⁸⁴ *Ibid*.

²⁸⁵ *Ibid*, p. 4.

Accessibility	'Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account' ²⁸⁶
Location	'Housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas' ²⁸⁷
Cultural Adequacy	'Housing is not adequate if it does not respect and take into account the expression of cultural identity' ²⁸⁸

Table 4: Religious Influence on Cultural Dynamics: An Exploratory Analysis

Cultural Aspect	Religious Influence
Moral values	Cultural norms often align with religious teachings, such as giving charity, importance of food and being kind to your neighbour.
Social Customs	Practices influenced by religious guidelines, such as modest dress codes.
Language and Symbols	Religious texts and terminology integrated into cultural language, such as Arabic.
Dietary Practices	Food preferences and rituals based on religious beliefs, such as halal or kosher.
Art and Architecture	Religious symbols and motifs incorporated into cultural designs.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

Festivals and Events	Celebrations based on religious occasions, such as community iftars during Ramadan.
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BIBLIOGRAPHY

Primary Sources

International Treaties and Conventions

International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted: 16 December 1966; entry into force: 3 January 1976)

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (adopted: 21 December 1965; entry into force 4 January 1969)

UN Committee on Economic, Social and Cultural Rights (CESCR)

CESCR, 'General Comment No. 1: Reporting by States Parties' (27 July 1981) E/1989/22

CESCR, 'General Comment No. 3: The Nature of States Parties' Obligations' (14 December 1990) E/1991/23

CESCR, 'General Comment No. 4: The Right to Adequate Housing (Art 11(1) of the Covenant' (1991) E/1992/23

CESCR, 'General Comment No. 7: The Right to Adequate Housing: Forced Evictions' (20 May 1997) E/1998/22

CESCR, 'General Comment No. 9: The domestic application of the Covenant' (3 December 1998) E/C.12/1998/24

CESR, 'General Comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights' (10 December 1998) E/C.12/1998/25

CESCR, 'General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)' (21 December 2009) E/C.12/GC/21

UN Committee on the Elimination of Racial Discrimination (CERD)

CERD, 'General recommendation No. 34 adopted by the Committee: Racial discrimination against people of African descent' (3 October 2011) CERD/C/GC/34

CERD, 'General recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent)' (1 November 2002)

CERD, 'General recommendation XXVII on Discrimination Against Roma' (16 August 2000) A/55/18

Other UN Jurisprudence

Committee on the Elimination of Discrimination Against Women (CEDAW), 'General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures' (2004) on gender aspects of racial discrimination' (2004)

Geneva UN Charter on Sustainable Housing (16 April 2015) E/ECE/1478/Rev.1

Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1987) E/CN.4/1987/17

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (January 1997)

UNESCO, 'Declaration of Principles on Tolerance' (16 November 1995)

UN-HABITAT, 'Housing rights legislation: Review of international and national legal instruments' United Nations Housing Rights Programme Report No.1' (1 January 2002).

UNGA, 'Report of the Special Rapporteur in the field of cultural rights' (30 July 2019) A/74/255

UNGA, 'Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities', 3 February 1992, A/RES/47/13

OHCHR, 'Fact Sheet No. 21 (Rev. 1): The Human Right to Adequate Housing' (2009)

OHCHR, 'Guidelines for the implementation of the right to adequate housing – Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context' (26 December 2019) A/HRC/43/43

OHCHR, 'Universal Declaration on Cultural Diversity' (2 November 2001)

UK Legislation

Equality Act 2010

Human Rights Act 1998

Legislation (Scotland)

Proposed Human Rights (Scotland) Bill 2023

The Homeless Persons (Suspension of Referrals between Local Authorities) (Scotland) Order 2022

The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020

The Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014

Homelessness (Abolition of Priority Need Test) (Scotland) Order 2012

The Homelessness etc. (Scotland) Act 2003

Housing (Scotland) Act 2001

Scotland Act 1998

Housing (Scotland) Act 1987

Housing (Homeless Persons) Act 1977

Regulations (Scotland)

Housing Support Services (Homelessness) (Scotland) Regulations 2012

Homeless Persons (Provision of Non-Permanent Accommodation (Scotland) Regulations 2010

Case Law

Glasgow City Council v X and Shelter, the National Campaign for Homeless People Limited (Interveners) [2023] CSIH 7 (Scotland)

Patmalniece (FC) (Appellant) v Secretary of State for Work and Pensions (Respondent) [2011] UKSC 11 (UK)

Secondary Sources

Journal Articles

Alston P, Quinn G, 'The nature and scope of states parties' obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9(2) Human Rights Quarterly, pp. 156-229

Anderson I, 'Delivering the Right to Housing? Why Scotland Still Needs an 'Ending Homelessness' Action Plan' (2019) 13(2) European Journal of Homelessness, pp. 131-159.

Cheesman D, 'The Margins of Public Space – Muslims and Social Housing in England' (2007) 1(1) *People, Place & Police Online*

Clarke A, Watts B, Parsell C, 'Conditionality in the context of housing-led homelessness policy: Comparing Australia's Housing First agenda to Scotland's "rights-based" approach' (2019) 55(1) *Australian Journal of Social Issues*

Economides C, 'The Relationship Between International and Domestic Law' (1993) *European Commission for Democracy Through Law Venice Commission*

Goodlad R, 'Scottish Homelessness Policy: Advancing Social Justice?' (2005) 50 *Scottish Affairs* pp. 86-105

Hopkins N, 'Dual Identities and Their Recognition: Minority Group Members' Perspectives' (2011) 31(2) *Political Psychology*

Hopkins P, 'Gendering Islamophobia, racism and White supremacy: Gendered violence against those who look Muslim' (2016) 6(2) *Dialogues in Human Geography*

Jung C, Hirschl R, Rosevear E, 'Economic and Social Rights in National Constitutions' (2014) 62 (4) *The American Journal of Comparative Law*

Karp D.J, 'What is the responsibility to respect human rights? Reconsidering the 'respect, protect, and fulfil' framework' (2020) 12(1) *International Theory*

Lerner N, 'Freedom of Expression and Advocacy of Group Hatred: Incitement to Hate Crimes and Religious Hatred' (2010) *Religion and Human Rights*

Lukes S, Noronha N, Finney N, 'Slippery discrimination: a review of the drivers of migrant and minority housing disadvantage' (2019) 45(17) pp. 3188-3206

Moons N, Hubeau B, 'Conceptual and Practical Concerns for the Effectiveness of the Right to Housing' (2016) 6(3) *Oñati Socio-Legal Series*, pp. 656-675

Pawson H, Davidson E, 'Radically divergent? Homelessness policy and practice in post-devolution Scotland' (2008) 8(1) *European Journal of Housing Policy*, pp. 39–60

Stergiopoulos V, Gozdzik A, Misir V, Skosireva A, Sarang A, Connelly J, Whisler A, McKenzie K, 'The Effectiveness of a Housing First Adaptation for Ethnic Minority Groups: Findings of a Pragmatic Randomized Controlled Trial' (2016) *BMC Public Health*

Tvrdon M, Lojan R, Mahrik T, Zaharia S, Davydova V.E, 'Homelessness as a Social Problem – Socio-pathological phenomenon – Qualitative Analysis (2022) 13(2) Journal of Education Culture and Society

Watts B, 'Homelessness, Empowerment and Self-reliance in Scotland and Ireland: The Impact of Legal Rights to Housing for Homeless People' (2014) 43(4) Journal of Social Policy

Young K.G, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content' (2008) 33 (113) The Yale Journal of International Law

Books

Beider H, *Race, Housing and Community: Perspectives on Policy and Practice* (Hoboken: John Wiley & Sons, 2012)

Bird J, *Sociology in Action – Investigating Religion* (Collins Educational, 1999)

Boxill B (ed.), *Race and Racism* (OUP, 2001)

Bratt R, Stone M, Hartman C, *A Right to Housing: Foundation for a New Social Agenda* (Temple University Press, 2006)

Byrne B, Khan O, Alexander C, Nazro J, Shankley W (Eds.), *Ethnicity and Race in the UK* (Bristol University Press, 2020)

Davidson N, Liinpää M, McBride M, Virdee S (eds), *No problem here: Understanding Racism in Scotland* (Luath Press, 2018)

Fraser J, *Social Institutions and International Human Rights Law Implementation* (CUP, 2020)

Fredman S, *Human Rights Transformed: Positive Rights and Positive Duties* (OUP, 2008)

Hohmann J, *The right to housing law, concepts, possibilities* (Oxford: Hart Publishing, 2013)

Keane D, Waughray A (eds), *Fifty Years of the International Convention on the Elimination of all Forms of Racial Discrimination: A Living Instrument* (Manchester University Press, 2017)

Lenzerini F, *The Culturalization of Human Rights Law* (OUP, 2008)

Monaghan K, Plessis M, Malhi Tajinder, *Race, Religion and Ethnicity Discrimination: Using International Human Rights Law* (Justice, 2003)

Moos M, *A Research Agenda for Housing* (Edward Elgar Publishing, 2019)

Open Society Institute, *Muslims in Leicester* (Open Society Foundations, 2010)

Patterson S, *Dark strangers: A sociological study of the absorption of a recent West Indian migrant group in Brixton, South London* (Indiana University Press, 1964)

Smith Susan J, *International encyclopaedia of housing and home* (Elsevier Science, 2012)

Solanke I, *Discrimination as Stigma: A Theory of Anti-discrimination Law* (Bloomsbury, 2016)

Thornberry P, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary* (OUP, 2016)

Thornberry P, *International Law and the Rights of Minorities* (OUP, 1991)

Scottish Government and Parliament Publications

DLUHC, '[Overcrowding in South Asian households: a qualitative report](#)' (15 December 2022)

EHRC, '[Race report statistics](#)' (15 October 2020)

EHRC, '[Is Scotland Fairer?](#)' (25 October 2018)

EHRC, '[Race report – Healing a divided Britain: the need for a comprehensive race equality strategy](#)' (18 August 2016)

Lyle K, '[Addressing Race Inequality in Scotland: The Way Forward](#)' (December 2017)
Scottish Government Independent Race Equality Adviser

Sara Kidd, Lynn Jamieson, '[Experiences of Muslims Living in Scotland](#)' (*Scottish Government*, 2011)

Scottish Government, '[Temporary accommodation standards framework](#)' (26 April 2023)

Scottish Government, '[A Human Rights Bill for Scotland consultation](#)' (15 June 2023)

Scottish Government, '[Homelessness in Scotland: update to 30 September 2022](#)' (31 January 2023)

Scottish Government, '[Prevention of Homelessness Duties – A Joint Scottish Government and COSLA Consultation](#)' (22 November 2022)

Scottish Government, '[Race Equality: immediate priorities plan](#)' (14 September 2021)

Scottish Government, '[Housing to 2040](#)' (15 March 2021)

Scottish Government, '[New Human Rights Bill](#)' (12 March 2021)

Scottish Government National Taskforce for Human Rights Leadership, '[National Taskforce for Human Rights Leadership Report](#)', (12 March 2021)

Scottish Government, '[Housing Needs of minority ethnic groups: evidence review](#)' (29 January 2021)

Scottish Government, '[Fairer Scotland Duty: guidance for public bodies](#)' (19 August 2022)

Scottish Government, '[Social Housing allocations guidance](#)' (31 December 2020)

Scottish Government, '[Homeless Persons \(Unsuitable Accommodation\) \(Scotland\) Order 2020 amendment: Children's Rights and Wellbeing Impact Assessment \(CRWIA\)](#)' (8 May 2020)

Scottish Government, '[Improving the lives of Gypsy/Travellers: 2019-2021](#)' (9 October 2019)

Scottish Government, '[Homelessness: code of guidance](#)' (7 November 2019)

Scottish Government, '[Ending Homelessness Together: High Level Action Plan](#)' (November 2018)

Scottish Government, '[A fairer Scotland for all: race equality action plan and highlight report 2017-2021](#)', Section 4: Housing (11 December 2017)

Scottish Government, '[Race equality framework for Scotland 2016 to 2030](#)' (21 March 2016)

Scottish Housing Regulator, '[Regulation of Social Housing in Scotland: Our framework](#)' (February 2019)

Scottish Parliament, '[Equalities Human Rights and Civil Justice Committee: Session 6](#)' (21 February 2023)

SPICE, '[Economic, social and cultural rights and the proposed Human Rights Bill](#)' (16 March 2022)

Shelter Publications

Shelter Scotland, '[What is the housing emergency in Scotland?](#)' (2023)

Shelter England, '[Public sector equality duty under the Equality Act 2010](#)' (2023)

Shelter Scotland, '[Intentionally or unintentionally homeless](#)' (6 January 2023)

Shelter Scotland, '[Requesting a review of a homeless decision](#)' (2023)

Shelter Scotland, '[Eviction if you're staying in temporary accommodation](#)' (2023)

Sophie King, '[Why are people of colour disproportionately impacted by the housing crisis?](#)' (*Shelter Scotland*, 5 February 2021)

Shelter Scotland, '[Shelter Scotland submission to the National Taskforce for Human Rights Leadership](#)' (January 2021).

Shelter Scotland, '[Shelter Scotland submission to the Universal Periodic Review Fourth Cycle](#)' (March 2022)

Mukushi T, '[Housing as a human right – realising the human right to housing in Scotland](#)' (*Shelter Scotland*, December 2021)

Shelter Scotland, '[Housing First in Scotland Topic Briefing](#)' (April 2019)

Shelter Scotland, '[Affordable Housing Need in Scotland - Summary Report September 2015](#)' (October 2015)

Reports

ALACHO, CIH, SAL, SFHA, Shelter Scotland, TPAS Scotland and Wheatley Group, '[Scottish Housing Day - Housing as a Human Right](#)' (September 2019)

Cepeda M, O'Regan K, Scheinin M, '[The Development and Application of the Concept of the Progressive Realisation of Human Rights: Report to the Scottish National Taskforce for Human Rights Leadership](#)' (*Bonaverro Institute of Human Rights*, 28 January 2021) 1/2021

Centre for Homelessness Impact, '[Ethnic Inequalities and Homelessness in the UK](#)' (December 2022)

CIH Scotland, [‘Walking the Talk – An overview of the right to adequate housing and human rights issues for landlords in Scotland’](#) (31 January 2022)

CRER, [‘Ethnicity And Homelessness In Scotland: An Analysis of the Rates and Causes’](#) (April 2023)

CRER, [‘Anti-racist policy making: Learning from the first 20 years of Scottish devolution’](#) (March 2021)

CRER, [‘Minority ethnic communities and housing in Scotland – Room for Improvement?’](#) (July 2020)

CRER, [‘Submission to the United Nations Committee on the Elimination of Racial Discrimination – Alternative \(Scotland\) report on the United Kingdom’s twenty-first to twenty-third periodic reports’](#) (July 2016)

Colm O’Cinneide, [‘The place of equal opportunities in the devolution settlement: a legal analysis’](#) (*Equality and Human Rights Commission: Research Report 33*, 2009)

David Torrance, [‘Reserved matters in the United Kingdom’](#) (*UK Parliament House of Commons Library*, 24 June 2022)

EHRC, [‘From local voices to global audience: Engaging with the International Convention on the Elimination of All Forms of Racial Discrimination’](#) (November 2015)

EHRC, [‘What is the Equality Act?’](#) (28 April 2022)

EHRC, [‘Evaluating the socio-economic duty in Scotland and Wales’](#) (March 2021)

Menezes D, Netto G, Hasan S, [‘Minoritised Ethnic Access to Housing in Scotland at Key Transition Points’](#) (June 2023) Herriot Watt University

HRSAG, [‘Ending Homelessness: The report on the final recommendations of the Homelessness and Rough Sleeping Action Group’](#) (27 June 2018)

HRCS, [‘Incorporation of International Human Rights Briefing Series: The UN International Convention on the Elimination of All Forms of Racial Discrimination \(ICERD\)’](#) (November 2021)

HRCS, [‘Scotland’s Human Rights Record – Universal Periodic Review: UK, 4th Cycle 2022’](#) (May 2022)

HRCS, Scottish Human Rights Commission, '[All Our Rights In Law: views from the wider public – A report to the National Taskforce on Human Rights Leadership](#)' (March 2021)

HRCS, '[Incorporating International Human Rights: The Right to Cultural Life in Scotland](#)'

House of Commons Women and Equalities Committee, '[Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission](#)' Tenth Report of Session 2017-19 (17 July 2019)

McMurrich L, '[Report on the review to consider how the council's approach to the implementation of the Fairer Scotland Duty has delivered on the duty to reduce socio-economic disadvantage – Progress Update](#)' (30 September 2021) North Lanarkshire Council Report Policy and Strategy Committee

McCall-Smith K, '[Minimum Standards for Delivering Economic, Social and Cultural Rights](#)' (22 June 2020) The Scottish Government: Academic Advisory Panel to the National Taskforce for Human Rights Leadership Minimum Standards for Delivering Economic, Social and Cultural Rights

Miller A, '[Recommendations for a new human rights framework to improve people's lives - Report to the First Minister](#)' (10 December 2018) First Minister's Advisory Group on Human Rights Leadership

Netto G, Sosenko F, Bramley G, '[Poverty and Ethnicity in Scotland: Review of the literature and datasets](#)' (April 2011) Joseph Rowntree Foundation

Netto G, Fancy C, Pawson H, Lomax D, Singh S, Powers S, '[Black and Minority Ethnic Communities and Homelessness in Scotland](#)' (2004) No. 184 Social Research Development Department Research Programme

Parnez T, Martowicz A (eds), '[Guidelines for Practitioners: How to engage with Ethnic Minorities and Hard to Reach Groups](#)' (BEMIS, 2015)

Runnymede Trust, '[Taking Stock: Race Equality in Scotland](#)' (May 2020)

Social Bite, '[Temporary Accommodation in Scotland: Interim Report](#)' (June 2018)

Solace Scotland, '[Housing in Scotland: Current Context and Preparing for the Future](#)' (July 2023)

SHRC, '[At a Crossroads - which way now for the human rights system in Scotland? - Exploring the experience of human rights protection for the people of Scotland - a discussion paper](#)' (19 June 2023)

SHRC, '[Right to Housing](#)' (2023)

SHRC, '[Spotlight Briefing: Minimum Core Obligations in Scotland](#)' (21 April 2023)

SHRC, '[Building a new human rights framework for Scotland – Key legal features](#)' (14 September 2022)

SHRC, '[Submission to the UN Human Rights Council: NHRI Report on the United Kingdom's 4th Cycle Universal Periodic Review](#)' (30 March 2022), p. 17-18

SHRC, '[Housing Rights in Practice: Lessons learned from Leith](#)' (May 2020)

SHRC, '[Getting it Right? Human Rights in Scotland](#)' (October 2012)

SIAA, '[Briefing: Independent advocacy and the Human Rights Bill](#)' (January 2023)

UK Collaborative Centre for Housing Evidence, '[Race Equality In Housing: A Review Of The Policy Approach In England, Scotland And Wales](#)' (14 December 2022)

UK Parliament, '[Select Committee on the Equality Act 2010 and Disability The Equality Act 2010: the impact on disabled people](#)' Report of Session 2015-16 (24 March 2016)

Webster E, Busby N, Miller A, Shields S, '[Integrated Implementation of Scotland's New Human Rights Framework: Workshop Series Findings](#)' (October 2022)

Wilson W, Barton C, 'Comparison of homelessness duties in England, Wales, Scotland and Northern Ireland' (5 April 2018) UK Parliament House of Commons Library Briefing Paper Number 7201

News/Blogs

Bonino S, '[Muslims in Scotland: Demographic, social and cultural characteristics](#)' (LSE, 16 November 2016)

Clements C, '[Glasgow faces rough sleeping rise after funding reduced, charity warns](#)' (BBC, 6 July 2023)

Foster D, '[What can the UK learn from how Finland solved homelessness](#)' (*The Guardian*, 22 March 2017)

Homeless Action Scotland, '[Prevention of Homeless Duty – Our Response](#)' (8 April 2022)

Homes First, '[What We Do](#)' (2023)

Islam Channel, '[Report shows rise in Islamophobia in Scotland](#)' (2021)

McKay G, '[Glasgow homelessness 'crisis' as staff struggle with cuts](#)' (*The Herald*, 8 August 2023)

Newcastle University, '[Islamophobia in Scotland: report reveals four-fifths of Muslims experienced abuse](#)' (29 June 2021)

Nicolson M, '[Islamophobia report reveals Scotland not quite as tolerant as it would like to think](#)' (*The Conversation*, 21 July 2021).

Paterson S, '[Homeless budget cuts: Meals stopped and an end to decorating flats](#)' (*Glasgow Times*, 4 April 2023)

Rogaly K, Elliott J, Baxter D, '[What's causing structural racism in housing?](#)' (*Joseph Rowntree Foundation*, 14 September 2021)

The Pilgrim Co, '[Who is your mahram and non-mahram?](#)' (2023)

Watson M.K, '[The United States' Hollow Commitment to Eradicating Global Racial Discrimination](#)' (*American Bar Association*, 6 January 2020).