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Localising human rights law: A case-study of civil society interpretation of rights in Scotland

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Abstract

Literature, most notably in anthropology and international law, has explored experiences and contributions of local-level actors in efforts to realise international human rights. This article contributes a new and complementary perspective to one aspect of this scholarship, on the localisation of international rights language. It focuses on the localisation of *legal language* in a European context. It explores claims by civil society actors about the applicability of legal human rights standards, drawing upon data generated during the participative mapping process that underpinned Scotland's first National Human Rights Action Plan. The article provides a qualitative case-study of engagements with three particular rights – the right to life, the right not to be subjected to inhuman or degrading treatment, and the right to respect for private and family life. It finds significant evidence of civil society actors using the language of human rights law to anchor interpretive claims about how the rights should apply, in a way that is prescribed, but not defined by, authoritative institutional interpretations. The case-study reveals how interpretive engagement with human rights law corresponds to a sense of entitlement to use the language of international human rights. It thereby contributes to a richer understanding of the drivers of, and risks to, local-level ownership of human rights language, highlighting insights for both scholarship and human rights advocacy.

Keywords

Localisation; ownership; interpretation; civil society; mapping; right to life; inhuman or degrading treatment; private and family life.

Introduction

Questions about how different actors use human rights language to advance individual or collective claims speak to the relevance of supranational human rights law beyond institutional contexts. In recent decades such questions have most notably been critiqued in scholarship in anthropology and in international law. Anthropology as a discipline has seen a shift from a degree of scepticism about human rights to another “wave”¹ of work, which has included examination of the international human rights system in practice.² One focus has been on processes of ‘localisation’³, on how “transnational concepts and language are deployed in their contexts of reception”.⁴ Alongside these perspectives, international law scholarship has highlighted human rights ‘from below’, primarily in response to economic globalisation.⁵ Questions about the use of human rights language have often been asked in the context of grassroots activism and social movements – of “counter-culture”.⁶ The focus has been on the use of human rights language as political discourse, predominantly based on studies in the Global South⁷ and the United States.⁸ Other literature from a socio-legal perspective has emphasised the desirability of exploring empirical realities of human rights implementation at the national level.⁹ Socio-legal literature has a strong history of emphasising the workings of law in practice and exploring lay peoples’ shaping of law¹⁰, and it has developed a focus on international human rights law relatively recently.¹¹ A key contribution of the literature across these fields has been to foreground questions of human rights in practice through a socio-legal lens¹² and to highlight the experiences and roles of local actors.¹³

In this article, we advocate a different and complementary direction within the literature by bringing together a focus on law and local-level engagement with human rights from a European perspective. We explore how civil society actors in Scotland invoke supranational (regional/international) legal standards to support claims of human rights

violations. Focusing on a European constitutional democracy as a site of analysis brings insights from a geographical and political perspective that is under-represented in current literature on the localisation of international human rights. This combined focus contributes to a richer understanding of what can animate, and what can compromise, local-level ownership of human rights language.

As little is known about what local-level engagement with supranational human rights *law* looks like, including in states that might be considered to have relatively advanced levels of rights protection, we do not know how this kind of engagement might relate to a sense of entitlement to use, and ownership over, rights language. Yet this is vital. Both are elements of translating supranational standards into increased protection in local contexts, where rights matter most. Knowing more about these processes can provide insights for advocates who wish to tailor their interventions to promote ownership of rights language, and can inform our understanding of how such ownership impacts on progress towards rights realisation.

We focus on how civil society actors framed their own or others' experiences using the language of three legal human rights standards. The examples used, within a qualitative case-study approach, are the right to respect for private and family life, the right not to be subjected to inhuman or degrading treatment, and the right to life. In the first section below we say more about rights 'ownership' and the significance of a focus on law. In the main section we outline our approach and the parameters of the research data before analysing the key findings. We highlight two themes for analysis: the nature and depth of claims made, and the extent to which these claims push the boundaries of authoritative, institutional interpretations. We find evidence of civil society actors using the language of human rights law to ground *interpretive* claims about how the rights should apply, in a way that is *prescribed but not defined by* institutional interpretations. This, we argue, corresponds to a

sophisticated sense of entitlement to use the language of human rights law. In the third section we bring together insights for scholarship and human rights advocacy.

Rights realisation and ownership of human rights law in local contexts

Human rights advocates suggest that local ownership of international rights language is an essential component of ‘making rights real’.¹⁴ As Merry notes: “The impact of human rights law depends, as does all law, on changing local consciousness of rights and relationships.”¹⁵ The conviction that rights-holders themselves should feel able to, and be supported in, “appropriating”¹⁶ their rights is evident in public outreach programs and rights education campaigns. It is recognised that “[h]uman rights can only be achieved through an informed and continued demand by people for their protection”.¹⁷ The UN promotes human rights education, including through campaigns around particular treaties.¹⁸ It gives a special role to national human rights institutions (NHRIs), seen as bridges between national contexts and the UN/regional systems. Both demonstrate the importance it gives to reaching out to the public to promote human rights. Congruent with the emphasis placed on appropriating rights language is the individual empowerment inherent in the conceptualisation of the liberal, rights-bearing subject; a conceptualisation that has been argued to underpin the modern human rights regime.¹⁹ Human rights differ from other kinds of legal rights in this symbolic prominence that they give to the empowerment aspect of the holding and claiming of rights against the state. A sense of entitlement to claim, and ownership over, supranational human rights language is seen as essential. At the moment, however, we do not know enough about how entitlement and ownership are impacted by engagement with human rights *law*.

Examining engagement with law can help to answer conceptual and practical questions about ownership of rights language because law is the backbone of the human rights regime as it has taken shape internationally over the past seventy years. The centrality

of “tyrannosaurus lex”²⁰ within the international human rights system has rightly been critiqued, and the legal formulation of rights is but one aspect of a broader conceptualisation of human rights as a transnational discursive practice²¹, but at the same time rights-advocates call upon the legal standards. These standards hold the possibility of official stamps of validity²², accountability²³, and remedies.²⁴ The promise of law’s protection remains attractive.²⁵

To explore engagement with human rights law we draw upon data generated during the participative, multi-stakeholder process that provided the evidence base for Scotland’s first National Human Rights Action Plan. This process, led by an NHRI, the Scottish Human Rights Commission (SHRC), aimed to capture the perspectives of rights-holders, civil society organisations (CSOs) and academics on good practice and gaps in respect of the range of internationally recognised human rights. National processes of mapping evidence of rights realisation to underpin action plans is a relatively new and developing context.²⁶ This is not a context of contentious disputes; instead it invites, because of its consultative, participative, evidence-gathering nature, micro-level engagements with the meaning and scope of particular rights.

In this context we can explore how different actors engage with human rights law – an approach that does not detract from but complements some of the less “juro-centric”²⁷ approaches to exploring processes of human rights localisation. Our question is, how did participants in Scotland’s process use the language of human rights law to frame assertions about gaps in respect for rights?

The Case-study: Human rights law in the Scottish mapping process

Approach to the data

We explore how participants in the mapping engaged with the meaning of the rights to respect for private/family life, freedom from inhuman/degrading treatment, and the right to life by examining what they say about, and the kinds of circumstances that they link to, these particular standards. Participative baseline mapping processes provide interesting material for analysing a wide range of questions. For example, how often participants engage with the process without using the term human rights at all or without referencing human rights in a legal way; which category of participants are most or least likely to invoke rights (including in a legal way); and whether the nature of the language used by participants impacts upon the likelihood of their contributions being picked up by the NHRI. Presently, however, we intentionally adopt a different focus in order to learn about the dynamics of participants' interaction with *law* in this unique context. We aim to better understand the implications thereof for the phenomenon of ownership of the language of human rights law.

We selected the rights to respect for private/family life, freedom from inhuman/degrading treatment, and the right to life for inclusion in the case-study. We sought standards composed of distinctive legal rights language, which would allow us to efficiently identify relevant engagements within the data; we sought rights that were included in the domestic legal framework of the Human Rights Act 1998 and the European Convention on Human Rights²⁸; and we sought rights composed of terms/ideas that were emotive and potentially familiar to a wide range of participants who were not necessarily legal experts. Whilst several other rights were considered (and would be interesting to analyse in future research, including socio-economic rights), we deemed the chosen standards, and the selection of three different examples, to embody the appropriate balance between time constraints of the study and its objectives.

We undertake a qualitative case-study of two existing data-sets, which represent key points in the exercise of mapping rights realisation in Scotland. They provide direct insight

into how rights were discussed by a wide range of individuals and groups, whether they specialised in rights protection and promotion or not.

Table 1: Data format and source

	A	B
	Collected transcripts and records	Consultation responses
Data format	Transcribed consultation-event discussions, interviews, and focus groups.	Compilation of written consultation responses.
Source	Individuals, civil society organisations. ²⁹	Civil society organisations, individuals, political actors, public sector organisations.

The first data-set (A) is a collection of transcripts and records of consultation events/interviews conducted between summer 2011 and summer 2012. This data-set shows participants giving accounts of personal experiences, as well as referring to experiences of others that they have encountered through activism, which they believe to be incompatible with respect for human rights. These records cover ten one-to-one interviews, thirteen events, and twelve focus groups, held across Scotland with a variety of stakeholders. The second data-set (B) is a comprehensive collection of consultation responses (‘Individual and Organisation Responses’), submitted during a five-month participation period following publication of a report in October 2012 by the SHRC summarising three-years of evidence gathering.³⁰ The consultation addressed two questions: “1. Based on the evidence presented in the report *Getting it right? Human rights in Scotland*, or your own experience, what do you consider to be the most urgent human rights issues which should be addressed in Scotland’s

National Action Plan for Human Rights?; 2. What specific and achievable actions do you consider would best address the concerns you identify in your response to question 1?''.

In the analysis, participants are anonymised or identified by name depending on the data source and the permissions obtained by the SHRC (which included permissions for the data to be reused). In order to maintain the confidentiality that was assured when seeking consent to participate, the identities of individuals and groups involved in the consultation events (A) were protected. All groups were informed about the project in writing prior to the focus groups and interviews and key contacts were asked to provide this information to their group members. In order to ensure informed consent, this information was again provided in writing and explained to each participant and interviewee prior to the focus group or interview commencing. Below, we identify participants by a descriptor, mirroring the source documents. Each group/individual referenced in data-set (B) consented in writing to their responses being published.

In conducting the analysis, we made a decision about keyword terms and compiled a list of instances of these in each data-set. The keywords differ depending on the right in question. In order to maximise capture of relevant references, we accounted for variations in how we anticipated participants might use the language. In respect of the right to life, we searched for the precise phrase, whereas in respect of the right to respect for private and family life, we searched separately for 'private life' and 'family life' as well as 'privacy', and in respect of the right not to be subjected to inhuman or degrading treatment, we searched more broadly using the keywords 'inhuman*' and 'degrad*'. We individually examined all references returned in the context of the surrounding text and noted emerging themes. We re-examined the relevant parts of the data and jointly compiled an unstructured list of initial points of interest. We again re-examined the relevant parts of the data alongside this list and manually coded the data, resulting in the grouping and labelling of a number of categories.

We considered these categories alongside the initial, flexible themes that we had previously identified and confirmed or modified the themes accordingly.

We acknowledge our own role in interpreting participants’ ways of talking about the rights in this case-study. Our previous knowledge of the law plays a role, given that we are asking how participants use the language of the rights. Seeing the data through our own perspectives – a combination of academic knowledge, of community legal practice experience, and of being close to the evidence-gathering process (as a member of the SHRC’s Research Advisory Group and as its former Communications and Outreach Officer³¹) – does not, in our view, create any conflict with the analysis presented here. We have aimed to manage any potential bias through a reflexive approach.³²

Overview of results

Table 2: Search results

	Privacy/private			
	life/family life	Inhuman*/degrad*	Right to life	Combined
Total returns	73	39	11	123
Number of exclusions	27 ³³	22 ³⁴	5 ³⁵	54
Number analysed	46	17	6	69

Table 2 presents an overview of the search results. We do not focus on *how often* the keywords arise; instead we consider in depth *how* civil society actors use the terms. Of the one hundred and twenty-three total returns, for the three rights considered across both datasets, we excluded fifty-four. We determined exclusions according to several criteria, including, for example, irrelevant uses of the terms. At this stage we also excluded from analysis invocations that we identified as naturalistic, or ‘non-legalistic’, uses of the search terms, given our focus on legal language.³⁶ We excluded only eight out of the total of fifty-four exclusions on this basis; the vast majority of exclusions were for other reasons.³⁷ We erred on the side of caution in making these determinations, so as to avoid including in the analysis those references that may have been, but were not indisputably, a use of legalistic language. For example, in a focus group discussion a participant with experience of working in care homes uses the term ‘degrading’ in describing his concerns about the institutional care of older persons. Recounting his experiences, he describes it as degrading for the women in the home that he, a man, was the only person designated to help them to the toilet.³⁸ His description of the unacceptable circumstances might be evidence of incidental engagement with a legal human rights term or it might be evidence of his awareness of the legal frame within which the consultation is taking place. Similarly, in another group a participant describes as ‘degrading’ a situation in which disabled persons had been required to give their weight and the weight of their wheelchair when booking taxi services.³⁹ Again, this might reflect that the context of consulting about the state of rights realisation presented a human rights law frame and so implicitly validated the use of this language if participants were familiar with it. This is plausible and would be interesting to explore in a different context. Presently, we err on the side of caution and exclude such references from analysis.

We analyse sixty-nine legalistic uses of the terms. These terms are used by twenty-six different participants – individuals, CSOs, political actors and public bodies. These legalistic references include examples such as:

Children and young people, older people and people with disabilities who use care, support and social work services, have a right to life, freedom from torture, inhumane or degrading treatment or punishment [...]⁴⁰

An organisational respondent, referring to work with black and minority ethnic communities, writes:

[Children and young people] face yet another layer of inequality preventing them from realizing many human rights as set out in the UNCRC, UN Declaration of Human Rights and the European Convention (right to life, security of person, to play, to a safe home, to not face torture, degradation, etc).⁴¹

Another organisational respondent advocates a health and social care integration approach that:

[...] respects people's right to private and family life and strives to enable people to be included as citizens who enjoy the right to independent living.⁴²

In such examples, participants plainly engage with rights language in a legalistic way. Further examples will be seen in the analysis.

We explore two key themes: the depth and reach of legalistic claims; and the extent to which claims are implicitly or explicitly descriptive of already-existing authoritative interpretations, or are prescriptive of new directions in the scope of the rights. Embedded in these themes are insights about how local actors engage with, navigate, and appropriate the language of legal standards.

The nature of legalistic claims

The language of rights might be invoked in different ways. Goodale, in research on rights discourse in Bolivia, describes how rights language might be used in connotative or denotative ways, echoing a distinction commonly found in philosophy, linguistics and semiotics, and cultural theory.⁴³ Human rights have connotative power when individuals or groups “gesture toward” broad human rights ideas; they have denotative power when individuals or groups invoke specific standards.⁴⁴ Legalistic uses of rights language are inherently denotative. But denotative claims can themselves be more or less specific and more or less developed: they might lean towards being superficially legalistic or they might be more *interpretive* (i.e. making and justifying connections to specific experiences). The nature of the legalistic uses of rights language is a key theme in the data. The majority of participants, in relation to all three case-study rights, refer to those rights in ways that develop connections to specific circumstances.

One respondent who refers to the “right to family life” links it specifically to changes in immigration rules relating to income thresholds and settlement of non-national partners of migrant workers, and highlights the impact of these rules on family unification:

A threshold of £18,600 rising to £22,400 for one child with an extra £2,400 for each additional child, places a substantial income bar on the right to family life.⁴⁵

In other responses, participants make specific connections to the right to respect for private and family life that include inadequate support and assessment of parental capacity⁴⁶; lack of access to housing and discrimination on the basis of age in the private housing market⁴⁷; lack of options for intersex people to adopt children⁴⁸; lack of independent legal representation for sexual offence complainers;⁴⁹ insufficient attention to securing emotional nurture for looked-after children and young people⁵⁰; and use of a “mosquito” device by the police service as an anti-social behaviour management tool.⁵¹ All of these are linked to legalistic references to the right. In relation to the right to life, in one instance a link is made to fuel poverty and failure of governmental intervention⁵²; in another example a participant states:

I believe that the issue of homeless people should be addressed in Scotland. It is quite a common thing to see around the streets in Edinburgh even in the harsher months of winter time. To this extent, a socio-economic dimension of the right to life should be taken into account.⁵³

These are clear examples of views about what the scope of the right to life should encompass. In relation to the right not to be subjected to inhuman or degrading treatment, participants make connections that act to justify that specific harms merit this particular label. One respondent, criticising a National Health Service practice of sending patients to England for treatment, writes:

This means continuing to send people in severe pain on 1,000 mile return journeys [...] surely breaching “degrading and inhumane treatment” stipulations.⁵⁴

Such engagements indicate a sense of entitlement to make claims about what these rights should mean.

Some participants, particularly in relation to inhuman/degrading treatment, elaborate in a way that further justifies a situation's perceived human rights implications:

Chronic pain devastates lives. People can, despite the conditions from which they suffer, have reasonable, functional lives – it is long-term pain that wrecks the person. This is what forces sufferers to give up their jobs; many plunge into poverty, some lose their homes and social lives. Marriages or partnerships often split, as suffering constant or regular pain affects personalities.⁵⁵

Other respondents who directly invoke inhuman/degrading treatment also justify a link by expanding upon the characteristics of particular experiences:

[...] we know that degrading and inhuman treatment and being punished for things that no other citizen would be punished for are common in care settings and through the care systems. People with learning disabilities, especially in care settings but sometimes in family homes with informal carers, are kept in a child-like, dependent, state; being told what they must do, having to ask permission for nearly everything they do and punished if they disobey the sometimes complicated rules they have to follow. This is not the experience of everyone but it happens to people with learning disabilities much more often than to any other citizen and is acknowledged by most research and investigation.⁵⁶

[...] I have been a carer of family members in the psychiatric system, in particular my youngest son who received dehumanising treatment as a patient of [an Intensive Psychiatric Care Unit] in February 2012, where he was locked in a seclusion room without a toilet or water to drink, for hours on end, with a broken hand, and had to defecate on the floor. Patients were not allowed pens to write with and had to ask for water to drink.⁵⁷

Such examples highlight characteristics of harm, including attacks on personality and mental suffering caused by claims of loss of social connections, destitution, infantilisation, poor sanitary conditions, and inadequate medical attention. These claims assert sophisticated connections between particular circumstances and the individual's/group's views of what the prohibition of inhuman/degrading treatment should encompass. We speculate that a tendency to make very detailed claims might reflect a strong sense of emotional connection, leading to a stronger sense of confidence in making more elaborate claims, or alternatively a lesser familiarity with the right, which might increase a perceived need to make more detailed claims. The extent of detail given in relation to different rights likely also depends on whether participants links to several issues or expands on only one issue. This is speculative; the number of references analysed, and our focus on *what* was said rather than *how often*, does not allow us to infer an explanation for the greater evidence of particularly detailed claims in relation to inhuman/degrading treatment. Although in lesser proportion, detailed claims were also present elsewhere in the data. For example, one organisation states:

[...] one of the most high-profile ways that victims of crime have their rights to private and family life violated is by the media. [...] Regularly outside courthouses we see 'media scrums' photographing and filming victims and witnesses attending

court; these images can be and are widely broadcast without the consent of the victims. Once there has been a public trial, the media can – and do – use images of victims to illustrate further stories without the consent of the victims often many years afterwards.⁵⁸

This participant continues with an illustrative example of the experience of one family. Across the contributions there is significant evidence of particular links being made to particular rights.

Such engagements are more than superficial invocations of rights language. They go much further than “allusive reference to the idea of human rights”.⁵⁹ They are claims that the language of a right, expressed in broad terms and fluid in its meaning, should encompass particular experiences situated in particular localities. They can be described as extra-judicial *interpretations*⁶⁰ of human rights law. Extra-judicial interpreters are any actors, beyond judicial/quasi-judicial institutions, who make claims about how the words within a legal standard should be fleshed out into concrete protections (even if the idea of interpretation in human rights law is overwhelmingly associated with formal contexts of monitoring and adjudication).⁶¹ Indeed it is extra-judicial interpretation that drives initial institutional engagement with the scope of a right. As De Feyter reminds us, rights are given life through claims anchored in local sites of harm where rights-holders actually experience what they perceive to be violations.⁶² Interpretive claims link experiences to rights standards, generating new understandings of those rights. The advantage of understanding claims in the case-study as *interpretations* is that it emphasises that they connect specific lived experience to specific legal rights.

Integral to the possibility of interpretive claim-making is a sense of entitlement to engage in this way with the legal standards. This is the key point. *Interpretive* claims rest

upon an integral, underpinning appropriation of the legal language. This is so even if not consciously articulated. By their nature, claims that attempt to give substance, through specific connections, to the sometimes broad and always fluid text of a legal standard must be founded upon a sense of prerogative to talk about human rights law in this way. When interpretive claims are voiced, a sense of entitlement is inherent.

To reiterate, we focus on *how* the language was used. We cannot, in any case, know from this data *why* interpretive claims were made. Here, we draw out two insights concerning knowledge and context, which are relevant to understanding the ways in which interpretive claims were made.

Firstly, knowledge of supranational human rights law language was widely spread and certainly not exclusive to the NHRI. We see some of Merry's insights, from research on the interrelation between local activism and transnational human rights fora, playing out here at a more micro-level and in this slightly narrower context of engagement with legal language. Merry identifies a category of intermediary translators ("national political elites, human rights lawyers, feminist activists and movement leaders, social workers and other service providers, and academics")⁶³, who occupy a middle ground, facilitating linkages between international rights discourse and local experiences. There are echoes of these insights. The voices of some of these kinds of actors are present in our case-study; for example, one participant self-identifies as a human rights lawyer, there is an academic-led group, and there are individuals who we infer are activists. Some participants might see themselves as 'translating', packaging others' experiences into a "meta-language"⁶⁴ (as observed in socio-legal research) of human rights. There are examples, although very limited, in which participants refer to their internal consultations which fed into the mapping process.⁶⁵ There are also differences: In our case-study, there are participants who make interpretive legalistic claims who could not be described as activists, and so on; the range of those using the language of supranational

human rights law is broad, from local authorities to youth organisations, to small groups close to the grassroots as well as non-affiliated individuals. Also, even if some participants see themselves as “navigating a divide”⁶⁶, it would seem to be between those for whom they advocate and the NHRI/duty-bearer audience, rather than transnational fora. There is no explicit evidence of any having one foot in the supranational arena (for some, such as a local authority, this seems unlikely), although the experience of individuals (including within organisations) could be important. What we do see, is not a physical foot in the camp of supranational fora, but a *knowledge* connection to supranational (in particular, regional) human rights law. The consultative mapping context, with the focus on supranational human rights law, is a different frame of engagement and yet we see some of Merry’s insights reflected therein, with a variation on the kinds of knowledge and the location this knowledge. In summary, a range of different kinds of actors had sufficient knowledge of human rights law language to be able to invoke it as part of interpretive claims.

Secondly, the legal language tended not to be used in conjunction with demands for judicial remedies. In the written consultation responses there is some appeal to adjudicatory or legislative solutions⁶⁷ but in responding to the question, ‘What specific and achievable actions do you consider would best address the concerns you identify in your response [...]?’ , participants suggested barriers in the form of funding,⁶⁸ policy framework gaps⁶⁹, lack of community and individual engagement⁷⁰, and a need for awareness-raising amongst service providers⁷¹, rights-holders⁷², and the public.⁷³ This policy-orientated approach indicates that participants had a keen appreciation of the political/attitudinal/financial barriers to remedying perceived violations in the local landscape. That the use of legalistic language does not translate into the ‘judicialisation’ of remedies sought shows participants taking a selective approach to the way they used law to ground claims – they presumably saw the invocation of

legal standards as useful for influencing duty-bearers to remove non-legal barriers to rights-realisation. Legalistic interpretive claims did not imply a demand for judicialised remedies.

In summary, there is evidence of individuals/CSOs making *interpretive* connections between particular circumstances and views of what the rights should encompass. We have suggested that this kind of engagement is integrated with a sense of entitlement to invoke legal human rights language; interpretive claim-making and this sense of entitlement coexist. Logically, interpretive claims also coincide with knowledge of legal language, and this was evidenced in the range of different kinds of actors, not restricted to a top-tier of experts, who used the language of the case-study rights. Civil society actors' engagement with legal language tended to be accompanied by demands, not for legal remedies, but for accountability outside of the legal sphere. This indicates that interpreters had an appreciation of how the legal standards might usefully be invoked locally. Knowledge of these standards then, was placed within the local policy/practice context.

The influence of authoritative interpretations

If local actors *interpret* rights, this raises questions about how these interpretations interact with authoritative interpretations. De Feyter and Parmentier, in their introduction to *The Local Relevance of Human Rights*, note this book's concern with whether local invocations of rights "coincided" with "legal definition[s]".⁷⁴ A key theme found in the mapping data – which is an extension of the first examined above – is the extent to which participants who make assertions about the applicability of the rights do so in a way that mirrors or exceeds judicially-sanctioned fields of application. That is, the extent to which they, implicitly or explicitly, defer to fields of application that have been institutionally recognised (by national courts or by the European Court of Human Rights (ECtHR), the most immediate sources of

human rights law in the UK in respect of the case-study rights), or entail more radical claims that challenge current boundaries of applicability of the rights. To take the example of inhuman/degrading treatment, an instance of the former type of claim might be rules governing maximum cell occupancy and hygiene provision for prisoners in state detention, and of the latter, rules governing the withdrawal of state social security benefits on the basis of missed appointments regarding out-of-work benefits. In the data analysed, participants tend to show prescriptive, but not radical ways of talking about the rights and their applicability.

This is seen in a claim relating to a gap in protection of the right to respect for family life – inadequate support and assessment of capacity for parents with learning disabilities.⁷⁵ The ECtHR, in 2017, found a violation of Article 8 ECHR due to a state's failure to take adequate steps to facilitate contact with a hearing-impaired parent.⁷⁶ Seen in this light, the claim put forward at the time of the evidence-gathering (2012/13) concerning parents with learning disabilities appears to be an expansive and progressive understanding of the scope of the right. The organisation putting forward this interpretive link shows awareness of case-law linked to the ECHR (and the UN Convention on the Rights of Persons with Disabilities⁷⁷). Another respondent, referring also to family life, links it to options for intersex people to adopt children.⁷⁸ This pushes the boundaries of the right's applicability beyond established fields of recognition of transsexual identities and adoption of children by homosexual couples.⁷⁹ Similarly, one organisation describes minimum financial requirements imposed by immigration rules as incongruent with respect for family life. There was at the time broad civil society criticism of the rules, which were only later challenged judicially.⁸⁰ Other examples are diverse: from a lack of independent legal representation for sexual offence complainers⁸¹, to sharing of information amongst professionals about young people in the

care of the state⁸². Despite this diversity, it is notable how often participants make claims that were at that time not quite radical, yet still prescriptive.

Similar claims are seen in respect of the other rights. For example, the treatment of persons with autism spectrum disorders within the mental health system is described by one organisation as treatment that could “undoubtedly be categorised as cruel, inhuman and degrading treatment [...]”.⁸³ This claim shows an extension of the officially-mandated scope of meaning of this right. From a European human rights law perspective, in this phase of the mapping process the treatment of persons with disabilities had only recently been highlighted as a field of application, as interpreted by the ECtHR in *Stanev v. Bulgaria*⁸⁴ and *Dorđević v. Croatia*.⁸⁵ The Article 3 aspect of the former case concerned the living conditions of a man diagnosed with schizophrenia within a social care institution, and the latter, persistent harassment of a man with mental and physical disabilities by private persons. The respondents make no explicit reference to any national, European, or international decisions. Another group does make reference to the *Dorđević* decision in the context of a claim concerning disability-related hate-crime:

[...] some hate crimes will reach the threshold of cruel, inhuman or degrading treatment or punishment which is prohibited under Article 3 of the ECHR.

In the recent case of *Dordevic v Croatia*, the European Court of Human Rights found that acts of harassment taken in their entirety may breach the threshold of Article 3 and that Croatia failed to protect this right because “No serious attempt was made to assess the true nature of the situation complained of, and to assess the lack of a systematic approach which resulted in the absence of adequate and comprehensive measures”.⁸⁶

Another participant refers to the scope of “freedom from degrading treatment” in relation to male domestic abuse. This right had at that time been used in the ECHR system to widen states’ duties in respect of violence against women.⁸⁷ Similarly, a participant who refers to Scottish Gypsy Travellers invokes the “right not to be tortured or inhumanly or degradingly treated or punished” and continues: “This includes living in substandard or squalid conditions such as those involving ‘slopping out’ or living on the roadside with no basic service provision. Many Scottish Gypsy Travellers are living in such conditions.”⁸⁸ This is a prescriptive connection to officially recognised fields of application – situations of destitution⁸⁹ and inadequate sanitation in detention (the reference to ‘slopping out’ is an implicit reference to a Scottish court decision in *Napier v. Scottish Ministers*, which found a violation of Article 3 ECHR).⁹⁰ Interaction with authoritative interpretations is also reflected in claims related to the right to life, in which it is linked to homelessness in Scotland and to fuel poverty.⁹¹ In the examples highlighted there are different degrees of implicit or explicit reference to existing official interpretations.

To the best of our knowledge these are claims that *expanded* recognised fields of application of the rights. These participants make connections between particular experiences and the legal rights in a way that pushes the boundaries of the rights’ interpretation, yet in a way that resonates with their existing stages of interpretive development. These are claims that are neither ambitiously prescriptive, nor purely descriptive. We might have expected participants to appeal to the visionary capacity of rights; their claims being characterised more by aspiration than official judicial understandings. However, none of the interpretations of the case-study rights could be described as radical.

Here again we can draw out two insights concerning knowledge and context, relevant to understanding the nature of these claims.

A tendency towards balance between description and prescription indicates diffuse human rights knowledge. Where interpretations by courts are not explicitly invoked, but where claims nevertheless tend towards non-radical extensions of a court's existing approach, this balance could have been coincidental. It is more likely, we argue, that it reveals tacit knowledge. That is, knowledge circulating within the local advocacy culture of the kinds of things that the rights 'officially' protected against.

A tendency towards balance also shows that human rights law language was used in a measured way. Claims are not far-fetched; they tend to be "plausible".⁹² Arguably, this is a reflection of the nature and objectives of the mapping process. The mapping was intended to underpin achievable change by national duty-bearers. Claims that were plausible had a greater chance of being taken seriously. On the one hand, this kind of measured invocation of human rights law might result in a loss of radical potential.⁹³ It might constrain the possibility of cutting-edge extra-judicial interpretations. Such interpretations are important because local-level experiences motivate legal change. On the other hand, this kind of measured use of human rights law might be positive from the perspective of longer-term ownership of rights language. There is perhaps a greater probability that such claims will be acted upon. Merry highlights the significance of this as an aspect of fostering human rights empowerment. The possibility of implementation, she argues, is "fundamental to establishing human rights consciousness."⁹⁴ And not just the possibility of implementation, but the possibility of official responsiveness: discussing the vulnerability of nascent individual rights consciousness, Merry finds that "only if there is institutional support for this perspective will this new subjectivity be sustained."⁹⁵ This point resonates in the current context. Although the claim-recipients in Merry's research (on women's rights in Hawai'i)⁹⁶ are primarily state authorities, this finding seems relevant when the recipients are a public actor like an NHRI. Merry's conclusions, although in respect of individuals and not organisations, are relevant:

“If [...] claims are treated as unimportant, unreasonable, or insignificant, they are less likely to take a rights approach to their problems” and vice versa.⁹⁷ Potential disengagement can result if claims are dismissed as implausible. In this sense, making claims that are influenced, but not determined, by authoritative institutional interpretations can be seen as paradoxical, by constraining interpretive freedom at the same time as supporting interpretive ownership.

In summary, actors invoking the case-study rights did not use the process as a forum for radical creativity. This suggests official understandings of the rights were navigated based on either explicit or tacit knowledge circulating within the local advocacy culture. From the perspective of fostering a sense of entitlement to appropriate the language of rights, a tendency towards making plausible interpretive claims gives rise to some perils, but also promise.

The role of NHRIs

The case-study shows civil society actors in Scotland using human rights law to anchor but not define interpretive claims. We have explained this kind of engagement with reference to a diffuse circulation of knowledge about legal standards, placed within the local context. We argue that this kind of legalistic interpretative engagement with the open language of rights is bound up with a sense of entitlement to make claims about how they should be understood and why they should apply in particular contexts. As such, it can be conducive to promoting a sense of local-level ownership of rights language.

These findings are relevant to the work of NHRIs (and other rights-promoting organisations) and highlight space for new perspectives. They urge NHRIs to consider their potentially positive role in supporting engagement with *law*. The findings suggest that the participative consultation process in Scotland encouraged the making of interpretive claims.

Not only were participants asked for their views on how rights were being undermined, but the SHRC explicitly tied the mapping exercise to supranational legal standards. It observed during the process that rights-holders' knowledge of "human rights laws and principles" would be a key driver of local-level appeals to human rights.⁹⁸ Such an approach may have encouraged participants to appropriate the legal language. This is exemplified in a comment made by one interviewee: "I was looking at this last night, this freedom from degrading treatment [...]"⁹⁹ It is possible that the SHRC's approach of linking to supranational standards, in a participative process, contributed to a culture in which the language of human rights law was 'up for grabs'.

Whilst NHRIs might be comfortable using human rights *law* as a framework, they should also consider the potential benefits in concrete interactions. There may be a perception that talking about law will alienate rather than encourage local-level ownership, but our findings do not support this. There may be a perception that talking about law means favouring snail-pace judicial remedies that might never materialise, but our findings indicate that a legalistic approach can be bound up with a sense of entitlement to use rights language without being bound up with a focus on judicialised remedies. Further, rights-promoting organisations should continue to seek strategies for supporting local actors who want to develop legalistic interpretive claims. One such strategy might be to cultivate a greater engagement with the actual meaning of human rights language. In the case-study it is striking that participants do not make any reference to the meaning of the words themselves: 'privacy', 'private', 'family', 'inhuman', 'degrading', or 'life'. We might have expected participants to express a sense of emotional identification, which would translate into a focus on ideas like the essence of family, personal autonomy, inferiority or humiliation. Instead, they talk about the rights in a way that focuses on their applicability. This might be because they are reticent to engage in 'inappropriate' emotional ways with the terms of the rights.

However this might be explained, the findings show that participants were not openly motivated by the meaning of the words, yet the value-base of rights language is a potential resource.¹⁰⁰ Adding an element of more direct engagement with meanings of ideas like humiliation or personal integrity¹⁰¹ and so on, could support a sense of entitlement because ideas like these are often intuitively understood. Doing so could also provide NHRIs with a different perspective from which to navigate institutional interpretations – it is generally accepted that such organisations should communicate human rights law to the public in simple ways¹⁰², but this need not mean rights standards should be devoid of conceptual substance or reduced to a series of authoritative examples.

The findings suggest that NHRIs and similar bodies should be aware of how they themselves understand the scope of rights. If they judge the appropriateness of new directions in a right's meaning primarily with reference to authoritative interpretations, they risk stifling civil society innovation. Ambitious claims give impetus to new institutional interpretations, and support longer-term advances in protection. When faced with new interpretations, NHRIs should be alive to a risk of too readily dismissing certain interpretations as far-fetched. Baxi cautions that “the fluidity/ambiguity of human rights norms and standards” can “foster patterns of human rights silencing [...]”¹⁰³; some interpretations will be seen to count while others will not. To avoid undermining ownership of rights language, NHRIs should reflect on their receptiveness to new interpretations.

In light of the case-study, the question of how NHRIs engage with *law*, when navigating between institutional and aspirational understandings of rights, promoting empowerment of rights-holders and accountability of duty-bearers¹⁰⁴, seems significant to the success of their objective of improving local rights ownership. There is space to integrate this question into the vibrant literature on NHRI effectiveness and impact.¹⁰⁵ This question moves

beyond concern with what has been described as the limitations of “excessive legalism”¹⁰⁶ in the practice of NHRIs, to re-inject a different kind of focus on law.

Conclusion

We have aimed to provide a new perspective on the relevance of human rights norms to the localisation scholarship. We have focused on a denotative form of engagement with human rights law in the unique context of an NHRI-led baseline mapping process in Scotland. This process provided a forum in which local actors were invited to express a view on how the often-fluid language of supranational human rights law should connect to experiences on the ground. The case-study thereby contributes to an understanding of localisation processes. It evidences the making of legalistic interpretive claims within a multi-level knowledge context, embedded in a local policy and practice landscape. It suggests that these legalistic interpretive engagements are bound up with a sense of entitlement to use the language of rights.

We have highlighted how our findings reflect some elements of, and complement, two of Merry’s key insights (in relation to intermediary translators and the impact of authorities’ responses on the stability of rights consciousness) and the case-study itself reflects an underpinning understanding of local civil society actors as valid interpreters of human rights. Yngvesson’s observation that law’s essence “is not simply invented at the top but is transformed, challenged, and reinvented in local practices [...]”¹⁰⁷, relies upon a “dynamic”¹⁰⁸ view of how law shapes and is shaped by local engagements, in a way that is consonant with the work of international lawyers and legal anthropologists like Baxi, Rajagopal, Goodale and Merry. Although law may not invade all facets of human rights discourse¹⁰⁹, the case-study reveals law’s anchoring quality, which is seen in the way participants talk about the rights. To conceive of engagements with the scope of meaning of

rights as forms of *interpretation* shines a different kind of light on local-level interactions with human rights norms. None of the actors that we identify as interpreters of the case-study rights self-identify in this way, and, as noted earlier, the idea of human rights interpretation has tended to be reserved for institutional bodies. Yet an advantage of an interpretive perspective on localisation questions is that it recalls the status of local-level rights-holders as the “originary”¹¹⁰ creators of rights, and is symbolic of the empowerment of rights advocates as legitimate interpreters of those rights. This in turn highlights that although the right to *know about* human rights standards may be a foundation of human rights ‘literacy’¹¹¹, one’s sense of entitlement to say what a right *should mean* goes further. This is an aspect of local-level engagement with human rights that merits greater examination for its potentially significant contribution to ‘making rights real’. Rights-holders and their advocates must feel entitled and empowered to make rights claims if human rights are to be a promising route to support political and social objectives. We have aimed then, to add a different kind of example of what local-level ownership can look like; one that moves towards a richer understanding of the drivers and risks to local-level ownership of rights language, and provides insights to inform interventions aimed at bringing justice closer for rights-holders in local contexts.

¹ Annelise Riles, 'Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage', *American Anthropologist* 108, no. 1 (2006): 52-65, p. 62

² Mark Goodale et al., 'Toward a Critical Anthropology of Human Rights', *Current Anthropology* 47, no. 3 (2006): 485-511, pp. 485-490; Mark Goodale, 'Introduction to “Anthropology and Human Rights in a New Key”', *American Anthropologist* 108, no. 1 (2006): 1-8; Sally Engle Merry, 'Anthropology and International Law', *Annu. Rev. Anthropol.* 35 (2006): 99-116, p. 109.

³ Mark Goodale and Sally Engle Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge Cambridge University Press, 2007), pp. 13-27.

⁴ Daniel M Goldstein, 'Whose Vernacular? Translating Human Rights in Local Contexts', in *Human Rights at the Crossroads*, ed. Mark Goodale (New York: Oxford University Press, 2013): 111-21, p. 121.

⁵ Upendra Baxi, *The Future of Human Rights* (New Delhi: Oxford University Press, 3rd edn, 2008); Koen De Feyter et al., *The Local Relevance of Human Rights* (Cambridge, Cambridge University Press, 2011).

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- ⁶ George Ulrich, 'Epilogue: Widening the Perspective on the Local Relevance of Human Rights', in *The Local Relevance of Human Rights*, eds. Koen De Feyter et al. (Cambridge: Cambridge University Press, 2011), 338.
- ⁷ For examples see the contributions to De Feyter et al., *The Local Relevance of Human Rights*, and Goodale and Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local*.
- ⁸ E.g. Sally Engle Merry et al., 'Law from Below: Women's Human Rights and Social Movements in New York City', *Law & Society Review* 44, no. 1 (2010): 101-28.
- ⁹ Simon Halliday and Patrick Schmidt, eds., *Human Rights Brought Home: Socio-Legal Perspectives on Human Rights in the National Context* (Oxford: Hart, 2004).
- ¹⁰ Austin Sarat and Thomas R. Kearns, eds., *Law in Everyday Life* (Michigan: University of Michigan Press, 1995).
- ¹¹ Halliday and Schmidt, *Human Rights Brought Home*.
- ¹² Halliday and Schmidt, *Human Rights Brought Home*; Sally Engle Merry, 'New Legal Realism and the Ethnography of Transnational Law', *Law & Social Inquiry* 31, no. 4 (2006): 975-95.
- ¹³ E.g. Richard J Maiman, 'We've Had to Raise Our Game': Liberty's Litigation Strategy under the Human Rights Act 1998', in *Human Rights Brought Home: Socio-Legal Perspectives on Human Rights in the National Context*, eds. S Halliday and Patrick Schmidt (Oxford: Hart, 2004); Balakrishnan Rajagopal, 'International Law and Social Movements: Challenges of Theorizing Resistance', *Colum. J. Transnat'l L.* 41(2002): 397.
- ¹⁴ E.g. European Union Committee of the Regions and European Union Agency for Fundamental Rights, 'Making Rights Real: A Guide for Local and Regional Authorities', 12 December 2014, http://fra.europa.eu/sites/default/files/fra-cor-making_rights_real-booklet_en.pdf
- ¹⁵ Sally Engle Merry, 'Human Rights and Transnational Culture: Regulating Gender Violence Through Global Law', *Osgoode Hall LJ* 44, no. 1 (2006): 53-75, p. 55.
- ¹⁶ Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist* 108, no. 1 (2006): 38-51, p. 39.
- ¹⁷ United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/Education/Training/Pages/HREducationTrainingIndex.aspx>
- ¹⁸ United Nations, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx>
- ¹⁹ For an overview and critique of this conceptualisation of the rights bearing subject, see Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford: Hart Publishing, 2000).
- ²⁰ Richard A. Wilson, 'Tyrannosaurus Lex: The Anthropology of Human Rights and Transnational Law', in *The Practice of Human Rights: Tracking Law between the Global and the Local*, eds. Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2007).
- ²¹ Mark Goodale, 'Locating Rights, Envisioning Law between the Global and the Local', in *The Practice of Human Rights: Tracking Law between the Global and the Local*, eds. Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2007), pp. 8-9.
- ²² Merry et al., 'Law from Below', 108.
- ²³ Wilson, 'Tyrannosaurus Lex', 351-355.
- ²⁴ Remedies such as injunctions against state institutions.
- ²⁵ Wilson, 'Tyrannosaurus Lex', 351.
- ²⁶ Council of Europe, Commissioner for Human Rights, 'Workshop on Developing and Implementing National Action Plans for Human Rights, Conclusions', Strasbourg, 27-28 March 2014, 3, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2531623&SecMode=1&DocId=2145406&Usage=2>.
- ²⁷ Rajagopal, 'International Law and Social Movements', 406.
- ²⁸ The Human Rights Act 1998 renders rights within the European Convention for Human Rights enforceable in domestic courts; Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950.

²⁹ In this data set participants are not always identifiable by name, although we can infer from the immediate context that participants using the keyword terms are individuals or civil society organisations.

³⁰ This report distils the issues raised during the mapping exercise into eight themes – Dignity and care, Health, Where we live, Education and work, Private and family life, Safety and security, Living in detention and Access to justice, and the Right to an effective remedy. The report suggests that while Scotland has made notable progress in the realisation of rights, it can do better. It concludes that Scotland has a relatively strong legal and institutional framework for human rights and some examples of positive policy direction, but that outcomes for people often remain inconsistent.

³¹ See the Editorial in this special issue on the origins of the project in the SHRC Research Advisory Group and development of collaborative writing partnerships.

³² See Glaser and Strauss on the value of the expert researcher and the importance of reflexivity to allow new insights to emerge from the data; Barney G. Glaser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (London: Weidenfeld and Nicolson, 1967), 251-2. See also Laura Finlay, “‘Outing’ the Researcher: The Provenance, Process, and Practice of Reflexivity”, *Qualitative Health Research* 12, no. 4 (2002): 531-45.

³³ On the privacy/private life/family life keyword search across both data-sets, we excluded seventeen returns from analysis because they repeated/mirrored section headings in the *Getting it Right?* Report; two because they were not claims about gaps in human rights protection (e.g. as in ORG-0051a- Crown Office and Procurator Fiscal Service -000: “COPFS fully supports parents’ and children’s rights to private and family life as they are enshrined in article 8 of ECHR and set out in the Children (Scotland) Act 1995”); two because we deemed them not to be relevant uses of the terms (e.g. in INV-001a-KTainsh-000 referring to self-employment: “This would help to: make people ‘Responsible’ for their own actions and family life, and reduce dependency on the National Social Services budget.”); four because they appeared to form part of a facilitator’s questions/notes within the ‘collected transcript’ documents (e.g. as in notes of a break-out group discussion in a consultation in 2009 recording priority issues in the rural north of Scotland: “Where people are named as accused of a crime they will be discriminated against. When they are found not guilty that will change nothing and will often not be publicised. freedom of press and labelling – privacy”); and two because we deemed them to be not-legalistic (see note 36).

³⁴ On the inhuman*/degrad* keyword search across both data-sets, we excluded eleven returns from analysis because they overlapped with earlier returns within the search (i.e. where a participant referred to ‘inhuman and degrading’ treatment, this incidence was counted only once); five because we deemed them to be irrelevant (e.g. because they invoked alternative meanings of the terms, such as in ORG-0028a-Victim Support Scotland-000: “Where the state has an opportunity to do this and fails to do so, it is not only failing to uphold the human rights of victims, it is constructively contributing to the further degradation of these rights”), or because they appeared to form part of a facilitator’s questions/notes within the ‘collected transcript’ documents (e.g. in a consultation event in 2009, the facilitator asked: “How should we go about making the international human rights obligations real in Scotland? Any thoughts on how we should promote, and monitor the Convention on the Rights of Persons with Disabilities, and the Convention against Torture, inhuman and degrading treatment in particular?”); and six because we deemed them to be non-legalistic (see note 36).

³⁵ On the right to life keyword search across both data-sets, we excluded five returns from analysis because they appeared to form part of a facilitator’s questions/notes within the ‘collected transcript’ documents (e.g. in a consultation event in 2009 a question is noted – “What examples of relevant work do you know of in this area that SHRC should be aware of?” with a note of the following response: “What about right to life? (Euthanasia, gender screening, assisted suicide)”).

³⁶ Our criteria for identifying legalistic references were the following questions: were the terms referred to in a way that mirrored the legal formulation of the right (i.e. ‘inhuman or degrading treatment’ and variations like ‘inhumane and degrading treatment?’); and/or were they referred to alongside an acknowledgement of a legal standard (i.e. ‘Article 3’ or ‘stipulations’ on ill-treatment, and so on)?

³⁷ See notes 33-35 for details on grounds of exclusion.

³⁸ (A) Social Work Student ‘F’, Consultation event, 2011.

³⁹ (A) Name not attributed, Consultation event, 2010.

⁴⁰ (B) ORG-0032a-Care Inspectorate-000; see also (B) ORG-0058a-SCLD-000.

⁴¹ (B) ORG-0024a-Shakti Women’s Aid-000.

⁴² (B) ORG-0040a-Alliance-000.

⁴³ For a brief overview of the ‘denotation/connotation distinction see Theo van Leeuwen, *Introducing Social Semiotics* (London, Routledge, 2005), 37.

⁴⁴ Mark Goodale, ‘The Power of Right(s): Tracking Empires of Law and New Modes of Social Resistance in Bolivia (and Elsewhere)’, in *The Practice of Human Rights: Tracking Law between the Global and the Local*, eds. Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2007), 146-7.

⁴⁵ (B) ORG-0052a-STUC-000.

⁴⁶ (B) ORG-0026a-People First (Scotland)-000.

⁴⁷ (B) ORG-0049ab-Aberdeen City Council-000.

⁴⁸ (B) INV-006a-JKermode-101.

⁴⁹ (B) ORG-0019a-Rape Crisis Scotland-000; ORG-0028a-Victim Support Scotland-000.

⁵⁰ (B) ORG-0029b-CELCIS-000.

⁵¹ (B) ORG-0041a-Scottish Youth Parliament-000.

⁵² (B) ORG-0010a-Human Rights Lawyer Scottish Green Party-000.

⁵³ (B) INV-029a-VPerezSaez-000.

⁵⁴ (B) ORG-15a-Dorothy-Grace Elder: Scottish Parliament’s cross party group on chronic pain-000.

⁵⁵ (B) ORG-15a-Dorothy-Grace Elder: Scottish Parliament’s cross party group on chronic pain-000.

⁵⁶ (B) ORG-0026a-People First (Scotland)-000.

⁵⁷ (B) INV-022a-CMuirhead-000.

⁵⁸ (B) ORG-0028a-Victim Support Scotland-000.

⁵⁹ Goodale, ‘The Power of Right(s)’, 150.

⁶⁰ The idea of extra-judicial interpretation is commonly used in U.S.-focused literature on ‘popular’ or ‘progressive’ constitutionalism within a debate about sources of authoritative meanings of constitutional texts. See Amy J Cohen and Michal Alberstein, ‘Progressive Constitutionalism and Alternative Movements in Law’, *Ohio State Law Journal* 72 (2011): 1083-113. Proponents of this movement emphasise a shift in power where interpretations of legal norms are made outside of the typical legal/judicial paradigm. In this paradigm, ordinary people’s interpretations of these norms are equally as valid as the authoritative judicial interpretation. Cohen and Alberstein conclude that the engagement of ordinary people can ‘transcend, if not transform, our current legal system with its court-centred focus’ (at 1111). This approach echoes socio-legal work on popular legal culture; e.g. Barbara Yngvesson, ‘Inventing Law in Local Settings: Rethinking Popular Legal Culture’, *Yale LJ* 98 (1989), 1689-1709. For our purposes, we understand the term ‘extra-judicial’ to include any voices outside of authoritative judicial/quasi-judicial institutions, including academic scholars, legal practitioners, political advocates and groups, human rights promoting and protecting organisations, and of course rights-holders themselves.

⁶¹ Two examples of work on human rights interpretation are, on the European Court of Human Rights’ practice, George Letsas, *A Theory of Interpretation of the European Convention on Human Rights* (Oxford: Oxford University Press, 2nd edn, 2009), and from an international law perspective, David McGrogan, ‘On the interpretation of human rights treaties and subsequent practice’, *Netherlands Quarterly of Human Rights* 32, no. 4 (2014): 347-378. Constitutional interpretation, including but not limited to the interpretation of fundamental rights, has received greater attention. There is a broad and longstanding theoretical literature on legal interpretation in more general perspective, which addresses basic features of interpretation (including how legal meaning is attributed to everyday words and the relationship between legal meaning and ordinary meaning). See, for example, Aharon Barak, *Purposive Interpretation in Law* (Princeton: Princeton University Press, 2005), and Jerzy Wróblewski (1985), ‘Legal Language and Legal Interpretation’, *Law and Philosophy* 4: 239-55.

⁶² Koen De Feyter, ‘Sites of Rights Resistance’, in *The Local Relevance of Human Rights*, (Cambridge: Cambridge University Press, 2011).

⁶³ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006), p. 134.

⁶⁴ Maureen Cain, ‘The General Practice Lawyer and the Client: Towards a Radical Conception’, *International Journal of the Sociology of Law* 7 (1979), 331-354, 335.

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- ⁶⁵ There are glimpses in the data of some participants consciously assuming an intermediary role; e.g. (B) ORG-0058a-SCLD-000.
- ⁶⁶ Merry, *Human Rights and Gender Violence*, p. 20, 229.
- ⁶⁷ (B) ORG-0033a-name redacted-010; (B) ORG-0048a-AutismRights-000; (B) ORG-0048b-AutismRights-000 (this respondent organisation also advocated a public inquiry); (B) ORG-0026a-People First (Scotland)-000; (B) ORG-0041a-Scottish Youth Parliament-000.
- ⁶⁸ E.g. (A) Ex-offender and support liaison for offenders leaving prison, one-to-one interview, 2011; (B) ORG-15a-Dorothy-Grace Elder: Scottish Parliament's cross party group on chronic pain-000; (B) ORG-0026a-People First (Scotland)-000.
- ⁶⁹ (B) ORG-0032a-Care Inspectorate-000; (B) ORG-0048a-AutismRights-000; (B) ORG-0048b-AutismRights-000; (B) ORG-0010a-Human Rights Lawyer Scottish Green Party-000.
- ⁷⁰ (B) ORG-0049ab-Aberdeen City Council-000; (B) ORG-0029b-CELCIS-000.
- ⁷¹ (B) ORG-0026a-People First (Scotland)-000; (B) ORG-0032a-Care Inspectorate-000; (B) ORG-0058a-SCLD-000; (B) ORG-0028a-Victim Support Scotland-000.
- ⁷² (B) ORG-0026a-People First (Scotland)-000; (B) ORG-0029b-CELCIS-000.
- ⁷³ (B) ORG-0033a-name redacted-010; (B) ORG-0048a-AutismRights-000.
- ⁷⁴ Koen De Feyter and Stephan Parmentier, 'Introduction: Reconsidering Human Rights from Below', in *The Local Relevance of Human Rights, EUIC Studies in Human Rights and Democratisation*, eds. Koen De Feyter et al. (Cambridge: Cambridge University Press, 2011), p. 3.
- ⁷⁵ (B) ORG-0026a-People First (Scotland)-000.
- ⁷⁶ *Kacper Nowakowski v. Poland*, Application no. 32407/13, 10 January 2017.
- ⁷⁷ United Nations General Assembly, *Convention on the Rights of Persons with Disabilities*, 13 December 2006, A/RES/61/106.
- ⁷⁸ (B) INV-006a-JKermode-101.
- ⁷⁹ E.g. respectively *B v. France*, Application no. 13343/87, 25 March 1992 and *E.B. v. France*, Application no. 43546/02, 22 January 2008.
- ⁸⁰ On challenges to the minimum income immigration rules in the UK, see summary in United Kingdom House of Commons Library, 'The Financial (Minimum Income) Requirements for Partner Visas', Briefing Paper No. 06724, 27 January 2017; see <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06724>.
- ⁸¹ (B) ORG-0019a-Rape Crisis Scotland-000; ORG-0028a-Victim Support Scotland-000; Independent legal representation for sexual offence complainers was examined in the 2016 Scottish case *WF, Petitioner* [2016] CSOH 27.
- ⁸² (B) ORG-0029b-CELCIS-000; government plans for the sharing of information amongst professionals regarding children generally was examined in the 2016 UK case *The Christian Institute and ors v the Lord Advocate (Scotland)* [2016] UKSC 51.
- ⁸³ (B) ORG-0048a-AutismRights-000.
- ⁸⁴ *Stanev v. Bulgaria* [GC], Application no. 36760/06, 17 January 2012.
- ⁸⁵ *Dorđević v. Croatia*, Application no. 41526/10, 24 July 2012.
- ⁸⁶ (B) ORG-0026a-People First (Scotland)-000.
- ⁸⁷ *Opuz v. Turkey*, 33401/02, 9 September 2009.
- ⁸⁸ (A) Name not attributed, consultation event, 2009.
- ⁸⁹ E.g. *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011.
- ⁹⁰ E.g. *Peers v. Greece*, 28524/95, 19 April 2001. The term 'slopping out' was used by a range of media outlets, see <http://www.bbc.co.uk/news/uk-scotland-14763605> and <http://www.dailyrecord.co.uk/news/scottish-news/landmark-human-rights-ruling-backs-1080882>; see *Napier v. Scottish Ministers* [2001] WL 1346975.
- ⁹¹ (B) INV-029a-VPerezSaez-000 and (B) ORG-0010a-Human Rights Lawyer Scottish Green Party-000 respectively. On the application of the right to life to socio-economic contexts, see Elizabeth Wicks, 'The Meaning

of Life: Dignity and the Right to Life in International Human Rights Treaties', *Human Rights Law Review* 12, no. 2 (2012): , 119:219, p. 206-208.

⁹² Goodale, 'The Power of Right(s)', 150.

⁹³ Similar to the idea of a loss of radical potential is the observation by Merry et al. of the "compromises" inherent in "mobilizing" law; Merry et al., 'Law from Below', 125.

⁹⁴ Sally Engle Merry, 'Rights Talk and the Experience of the Law: Implementing Women's Human Rights to Protection from Violence', *Human Rights Quarterly* 25, no. 2 (2003): 343-81, p. 381.

⁹⁵ Merry, *Human Rights and Gender Violence*, p. 181.

⁹⁶ Merry, 'Rights Talk and the Experience of the Law'.

⁹⁷ Merry, *Human Rights and Gender Violence*, p. 215, 220, 223; see also Yngvesson, 'Inventing Law in Local Settings', 1709.

⁹⁸ *Getting it Right? Human Rights in Scotland*, 2012, p. 32.

⁹⁹ Male survivor of domestic abuse, one-to-one interview, 2011.

¹⁰⁰ Research by Merry, Levitt, Rosen and Yoon on the use of human rights in social movement activism on discrimination in the United States suggests that the values dimension makes the human rights framework accessible; Merry et al., 'Law from Below', 125.

¹⁰¹ The ideas of humiliation and personal integrity are a feature of institutional interpretations of the right not to be subjected to inhuman or degrading treatment (*Ireland v. United Kingdom*, Application no. 5310/71, 18 January 1978, Series A, No. 25 (1979-80)) and the right to respect for private life (e.g. *Y.F. v. Turkey*, Application no. 24209/94, 22 July 2003, para. 33).

¹⁰² Gauthier de Beco and Rachel Murray, *Commentary on the Paris Principles on National Human Rights Institutions* (Cambridge: Cambridge University Press, 2014), p. 64.

¹⁰³ Upendra Baxi, 'Epilogue: Whom May We Speak For, With, and After? Re-Silencing Human Rights', in *Silencing Human Rights: Critical Engagements with a Contested Project*, eds. Gurminder K. Bhambra and Robbie Shilliam (Hampshire: Palgrave Macmillan, 2009), p. 258.

¹⁰⁴ On the space occupied by NHRIs, see Anne Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?', *Human Rights Quarterly* 28, no. 4 (2006), 904-946.

¹⁰⁵ For an overview see recent book-length studies by Julie Mertus, *Human Rights Matters: Local Politics and National Human Rights Institutions* (Stanford: Stanford University Press, 2009); and Sonia Cardenas, *Chains of Justice: The Global Rise of State Institutions for Human Rights* (Pennsylvania: University of Pennsylvania Press, 2014).

¹⁰⁶ Obiora Chinedu Okafor and Shedrack C. Agbakwa, 'On Legalism, Popular Agency and "Voices of Suffering": The Nigerian National Human Rights Commission in Context', *Human Rights Quarterly* 24, no. 3 (2002): 662-720, p. 699.

¹⁰⁷ Yngvesson, 'Inventing Law in Local Settings', 1693.

¹⁰⁸ Yngvesson, 'Inventing Law in Local Settings', 1693.

¹⁰⁹ Goodale, 'Locating Rights', 8-10.

¹¹⁰ Baxi, *The Future of Human Rights*, vi.

¹¹¹ Baxi, 'Epilogue: Whom May We Speak For, With, and After?', 258.