THE UNIVERSITY *of* EDINBURGH
Edinburgh Law School

# Incorporating ICERD in Scotland: Learning through a comparative analysis of state approaches to children and young people's racial discrimination claims

**Author: Judi Martin**

**Project-Based Report**
**Programme of Study:** Human Rights LLM

## Abstract

The Scottish Government plans to incorporate various United Nations treaties in a new Human Rights Bill, including the International Convention on the Elimination of Racial Discrimination (ICERD), to commit to the reduction of inequality and the enjoyment of human rights for everyone.[1] Children and young people of ethnic minority groups in Scotland face structural and intersectional discrimination which pose multiple barriers to accessing their rights.[2] Since being historically left out of major policy and legislative decisions, they are at increased risk of having their rights violated.[3] While the Scottish Government promises to make rights real for everyone in Scotland through this new Bill, it will be one of few states to directly incorporate ICERD into domestic law. Furthermore, an identified gap in research on ICERD and comparative best practice of state responses to claims of racial discrimination in relation to children and young people means that there is a lack of guidance for the effective incorporation of this treaty. This study aims to make a start at addressing this gap through an inquiry into state approaches to incorporation of ICERD with a focus on administrative justice and access to remedy for children and young people to draw out learning for Scotland's new Human Rights Bill.[4]


[1] Scottish Government (2021). New Human Rights Bill. https://www.gov.scot/news/new-human-rights-bill/
[2] Cebula, C., Evans, J., (2021). Ethnicity, poverty and the data in Scotland. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjqyd3n9uj7AhXnhP0HHckeAZ44ChAWegQIGRAB&url=https%3A%2F%2Fwww.jrf.org.uk%2Ffile%2F58804%2Fdownload%3Ftoken%3D3KFzo6VH%26filetype%3Dbriefing&usg=AOvVaw2r91mg2rLmDLUehfn0sIsL
[3]Columbia Global Policy Initiative, The Office of the United Nations Secretary-General's Envoy on Youth, (2014). Overcoming Youth Marginalization: Conference Report and Policy Recommendations. https://www.un.org/youthenvoy/wp-content/uploads/2014/10/Columbia-Youth-Report-FINAL_26-July-2014.pdf
[4] Article 6, United Nations, (1965). International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). https://www.ohchr.org/sites/default/files/cerd.pdf

**Table of Contents:**

## 1. Introduction

The Scottish Government plans to incorporate various United Nations treaties in a new Human Rights Bill, including the International Convention on the Elimination of Racial Discrimination (ICERD), to commit to the reduction of inequality and the enjoyment of human rights for everyone.[5] Children and young people of ethnic minority groups[6] in Scotland face structural and intersectional discrimination which pose multiple barriers to accessing their rights.[7] Since being historically left out of major policy and legislative decisions, they are at increased risk of having their rights violated.[8] While the Scottish Government promises to make rights real for everyone in Scotland through this new Bill, it will be one of few states to directly incorporate ICERD into domestic law. Furthermore, a gap in research on ICERD and comparative best practice of state responses to claims of racial discrimination in relation to children and young people means that there is a lack of guidance for the effective incorporation of this treaty.[9] This study aims to make a start at addressing this gap through an inquiry into state approaches to incorporation of ICERD with a focus on administrative justice and access to remedy for children and young people to draw out learning for Scotland's new Human Rights Bill.[10]

The scope of this study is limited to a comparison of three states: Australia, Norway and Aotearoa New Zealand. These states have somewhat incorporated ICERD into their domestic law and were selected due to having a similar dualist framework to Scotland and having available and accessible cases. The dissertation will present these incorporation frameworks and their accessibility to administrative justice for children and young people of ethnic

[5] Scottish Government (2021). New Human Rights Bill. https://www.gov.scot/news/new-human-rights-bill
[6] Together, (no date). Terminology around race and ethnicity. https://www.togetherscotland.org.uk/media/2134/terminology-paper-ik-ns-md-3.pdf
[7] Cebula, C., Evans, J., (2021). Ethnicity, poverty and the data in Scotland. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjqyd3n9uj7AhXnhP0HHckeAZ44ChAWegQIGRAB&url=https%3A%2F%2Fwww.jrf.org.uk%2Ffile%2F58804%2Fdownload%3Ftoken%3D3KFzo6VH%26filetype%3Dbriefing&usg=AOvVaw2r91mg2rLmDLUehfn0sIsL
[8] Columbia Global Policy Initiative, The Office of the United Nations Secretary-General's Envoy on Youth, (2014). Overcoming Youth Marginalization: Conference Report and Policy Recommendations. https://www.un.org/youthenvoy/wp-content/uploads/2014/10/Columbia-Youth-Report-FINAL_26-July-2014.pdf
[9] The need for consideration of each individual treaty before incorporation has been acknowledged by scholars such as Busby,N., McCall Smith, K., (2021). Incorporation of the CERD and CRPD and Equivalent Rights Provision for LGBTI Communities and Older Persons. P 3. https://www.pure.ed.ac.uk/ws/portalfiles/portal/215762783/AAP_Paper_Nicole_Busby_and_Kasey_McCall_Smith_UN_Treaties.pdf
[10] Article 6, United Nations, (1965). International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). https://www.ohchr.org/sites/default/files/cerd.pdf

minorities. This will be done under three key themes, which according to international guidance[11], must be adequate and suitable in order to achieve accessible and child friendly administrative justice for all children and young people. These are; access to competent (courts and) tribunals, types of remedies and redress, and dispute resolution methods. To support research this dissertation has made use of case law where available, civil society reports, CERD concluding observations and relevant secondary literature. In parts this dissertation will fall into a more descriptive than analytical nature since each of these states anti-racial discrimination legal frameworks and redress schemes are available in piecemeal and so a descriptive presentation for each is needed. Through this comparative description and analysis it concludes its findings with specific recommendations for Scotland. Overall, the study concludes that while Scotland should already have better protection and access to justice for children than the states studied due to the UNCRC (Scotland) Incorporation Bill[12], direct incorporation of ICERD will further protect children and young people, obligating the state and public authorities to ensure access to justice those who are discriminated against. However, to ensure the effective implementation of the new Human Rights Bill, it must be accompanied by specific and functioning guidance which sets out how rights violations will be remedied and effectively redressed.

## 2. Background: Children's Rights in Scotland

### 2. i. Incorporation of the UNCRC in Scotland

In 2021, the Scottish Parliament unanimously passed the UNCRC Incorporation (Scotland) Bill[13] with the aim of delivering "*a fundamental shift in the way children's rights are respected, protected and fulfilled in Scotland*" and "*ensuring that children's rights are built into the fabric of decision-making in Scotland and […]can be enforced in the courts*".[14]

[11] Council of Europe. (2010) Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. https://www.coe.int/en/web/children/child-friendly-justice (COE); UNICEF, National human rights institutions (NHRIs) Series: Tools to support child-friendly practices.
Chiild Friendly Complaint Mechanisms, p 11 a https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/NHRI_ComplaintMechanisms.pdf (UNICEF).
[12] UNCRC (Scotland) (Incorporation) Bill 2021. https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf (UNCRC Incorporation Bill).
[13] Ibid.
[14] United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, (2020). Policy Memorandum. Para 6. https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/policy-memorandum-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf

The United Nations Convention on the Rights of the Child is an international human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children.[15] According to this treaty, these rights all children have should be guaranteed by the state and respected without discrimination.[16] Compared to other human rights treaties, it is a developed and detailed document with 54 articles and continuous guidance elaborated by the Committee on the Rights of the Child through general comments. It is also the most ratified human rights treaty, with the excepted ratification of the United States.[17] Incorporation of this treaty is seen as a major step towards making rights a reality for all children and young people in Scotland.[18]

However, the Supreme Court judgment on the UNCRC Incorporation bill noted that under the Scotland Act 1998[19], incorporation of human rights treaties must be done within the parameters of current devolution arrangements.[20] According to the Scotland Act, equal opportunities is a matter reserved to Westminster and so careful consideration must be given by constitutional lawyers to ensure ICERD's incorporation complies. While the devolved matters prohibit the Scottish Parliament from extending provisions beyond those maintained within the Equality Act 2010, there is still scope to introduce ICERD and its rights which protect against racial discrimination, however this complex issue is beyond the scope of this study. Nevertheless, having explicit protections for children of ethnic minorities against racial discrimination by public bodies will give added protection against their rights being at risk.

### 2. ii. New Human Rights Bill: making rights justiciable

During a time of uncertainty post-Brexit, to ensure non-regression from EU rights protections, an advisory group for the Scottish Government on human rights recommended the incorporation of various international human rights treaties into Scots Law including

[15] UN Convention on the Rights of the Child (1990). https://www.ohchr.org/sites/default/files/crc.pdf (UNCRC)
[16] Ibid. Article 2
[17] UNICEF, UNCRC Frequently asked questions,.https://www.unicef.org/child-rights-convention/frequently-asked-questions
[18]‘ Together, (no date). ‘What are People Saying about Incorporation?’https://www.togetherscotland.org.uk/about-childrens-rights/monitoring-the-uncrc/incorporation-of-the-un-convention-on-the-rights-of-the-child/
[19] UK Supreme Court Judgement (2021) [2021] UKSC 42. https://www.supremecourt.uk/cases/docs/uksc-2021-0079-judgment.pdf
[20] Ibid.

ICERD in a new Human Rights Bill.[21] To be effective, the new human rights framework must be enforceable as "*without effective enforcement, rights are practically worthless*".[22] An integral part of enforcement is the provision of adequate remedy and redress when a right is infringed, and this must be accessible to all people. To achieve this, appropriate consideration must be given to vulnerable groups in society, including children of ethnic minority groups. Recent statistics show how systemic racism effects children in the UK.[23] Particularly the exclusion of particular ethnic minority groups from public services, including predominantly Gypsy and Roma pupils from schools for reasons such as bullying or racism or exclusion due to perceived disrupted behaviour or misconduct. This exclusion is pinpointed to systemic racist issues related to lack of staff diversity and lack of promotion of tolerance within schools as well as lack of reporting of racism by teachers and victims.[24] Despite these statistics, the UK government deny systemic racism within the UK. The Commission on Race and Ethnic Disparities, appointed by then Prime Minister Boris Johnson, published a report in 2021 boasting of diverse society and defending the UK against criticisms of racism saying, "*we therefore cannot accept the accusatory tone of much of the current rhetoric on race, and the pessimism about what has been and what more can be achieved*."[25] This report has been condemned by UN experts who have referred to previous UN findings of institutional racism and deep-rooted inequalities out of concern that this denial of institutional racism existing further diverts the issue from being acknowledged let alone resolved.[26] This is an important indicator as to why human rights should be taken out of political debate and embedded into

[21] National Taskforce for Human Rights, (2021). Leadership Report, p 12. Rec 4. https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/

[22]Swannie, B. (2021). 'Corrective Justice and Redress under Australia's Racial Vilification Laws'. 40 U Queensland LJ 27. P 36. https://heinonline.org/HOL/LandingPage?handle=hein.journals/qland40&div=6&id=&page

[23] UK Government (2021). Department of Education. Education, skills and training. Ethnicity facts and figures. https://www.ethnicity-facts-figures.service.gov.uk/education-skills-and-training/absence-and-exclusions/permanent-exclusions/latest#main-facts-and-figures

[24] Barnardos (2020). 'How systemic racism affects young people'. https://www.barnardos.org.uk/blog/how-systemic-racism-affects-young-people-uk ; see also Emma Sullivan (2020). 'Human Rights and Race Discussion incorporating ICERD alongside Race and Equality Policy to ensure Equal Rights Enjoyment in Scotland. https://hrcscotland.org/wp-content/uploads/2020/11/Sullivan_HRCS_Dissertation_HRCS-Copy.pdf ; and Coalition for Racial Equality and Rights (2016). 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. P 7. https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/INT_CERD_NGO_GBR_24533_E.pdf

[25] UK Government (2021). Report of the Commission on Race and Ethnic Disparities. Independent Report. https://www.gov.uk/government/publications/the-report-of-the-commission-on-race-and-ethnic-disparities/foreword-introduction-and-full-recommendations#what-lies-behind-disparity

[26] UN Special Procedures (2021).UN Experts Condemn UK Commission on Race and Ethnic Disparities Report. https://www.ohchr.org/en/press-releases/2021/04/un-experts-condemn-uk-commission-race-and-ethnic-disparities-reportt

domestic legislation. This can only be done with the incorporation of internationally recognised human rights, making them justiciable and holding the state and public authorities accountable. It is understood that we cannot rely on political parties to prioritise human rights in their agenda or commit to eradicating racism, so a permanent domestic legislative framework is needed. Just as importantly – as this dissertation will argue, a detailed and working mechanism of accountability in the shape of a complaints procedure which is accessible to all, needs to accompany this legislation.

### 2. iii. Child friendly complaints procedure

Once the UNCRC Incorporation (Scotland) Bill comes into effect, public authorities will be under a legal duty to act compatibly with children's rights.[27] This duty will encourage public authorities to consider children's rights in all decisions that affect their lives, including the creation of a complaints procedure framework. Guidance on how to ensure a child rights-based approach to complaints procedures is given by the Council of Europe[28] and UNICEF[29]. A rights-based approach, the child's best interest, participation and non-discrimination are some of the overarching principles underpinning a child friendly complaints mechanism as identified by UNICEF in line with the UNCRC.[30] These guidelines will be used throughout this study to compare the selected states' approaches to complaints procedures to ensure they are child friendly.

## 3. The International Convention on the Elimination of Racial Discrimination

### 3. i. Article 6

There are a number of international instruments which protect against discrimination.[31] However, ICERD is the only instrument which deals exclusively with racial discrimination. Racial discrimination is defined 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*

[27] UNCRC (Incorporation) (Scotland) Bill, Section 6
[28] COE
[29] UNICEF
[30] Ibid. p 11
[31] For example, UDHR, ICCPR, UNCRC and also other regional conventions include anti-discrimination as a principle.

*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*."[32]

The Committee on the Elimination of Racial Discrimination is entrusted with the application of the Convention and in its most recent review has recommended that the UK and devolved governments ensure that "*the principles and the provisions of the Convention are directly and fully applicable under domestic law*" in order to contribute to the elimination of racial discrimination.[33]

An integral part of the elimination of racial discrimination is to legally protect ethnic minority groups and individuals against discriminatory practice by providing adequate access to justice and redress.[34] Legal incorporation is important for the justiciability of human rights because it gives access to courts for remedy and redress when an individual's human right is violated.[35] Full implementation of an incorporated treaty relies on this mechanism of redress being effective. Justice is provided under Article 6 of ICERD which says:

"*States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination*."[36]

This Article will be referenced throughout this dissertation since, as will be demonstrated, despite incorporating this treaty, neither of the selected states studied have strictly adhered to this article. An accessible and effective mechanism which allows for complaints of human rights violations to be heard and redressed is the teeth of human rights law, holding

[32] ICERD, Article 1.
[33] CERD/C/GBR/CO/21-23. Section C (8). https://digitallibrary.un.org/record/1311152
[34] Gaze, B., & Hunter, R, (2009). Access to justice for discrimination complainants: courts and legal representation. University of New South Wales Law Journal, 32(3), 699–724. https://search.informit.org/doi/10.3316/agispt.20100251
[35] Ursula Kilkelly (2019) The UN convention on the rights of the child: incremental and transformative approaches to legal implementation, The International Journal of Human Rights, 23:3, pp 323-337, https://www.tandfonline.com/doi/citedby/10.1080/13642987.2018.1558974?scroll=top&needAccess=true p 326
[36] Article 6, ICERD.

accountability between the citizen and the state.[37] This procedure must be effective otherwise the document is merely a list of ideas and this must be considered when incorporating ICERD into domestic law.

The need for access to justice in the UK has been noted by the Committee.[38] Its recommendations made to the UK insist on the need for the provision of legal aid for people of ethnic minorities, to ensure fair and effective access to seek justice.[39] Specifically relating to children in the UK, the Committee has iterated concerns over exclusion and racial bullying within schools and education and lack of balanced teaching about the history of the British Empire and colonialism.[40] While incorporation of the selected human rights treaties is welcomed by many civil society organisations in Scotland, the response to ICERD incorporation has been comparatively less enthusiastic. Organisations in Scotland are already weary that legislation is not enough[41] and organisations which promote equality for Black and Brown ethnic minority groups are not fully convinced of the change incorporation of ICERD promises to bring, particularly due to an issue already with access to justice for ethnic minorities in Scotland.[42]

This scepticism of ICERD may be due to lack of research available on incorporation of ICERD, which is significantly comparable to the extensive research done on other treaties.[43] Why it is the case that racial discrimination and ICERD is not given the same importance as other treaties such as UNCRC or UNCRPD is an important question worth considering. The unfortunate lack of attention ICERD has received could be a representation of discrimination in and of itself, however to explore this further would go beyond the wordcount available for this dissertation. Despite the treaty being one of the first human rights treaties it also remains one of the most underutilised.[44] There is a lack of case law under ICERD particularly in comparison to other regional conventions.[45] This may be due to various reasons, many states

[37] Frédéric, M., (2009). The Nature of International Human Rights Obligations. P 4. http://dx.doi.org/10.2139/ssrn.1472196
[38] CERD/C/GBR/CO/21-23, Section C (8), Section 21.
[39] Ibid.
[40] Ibid. section 34-35
[41] https://thepromise.scot/news/childrens-rights-legislation-is-not-enough
[42] Information gathering discussions with civil society representatives.
[43] Busby, McCall Smith. P 3.
[44] Keane, p252
[45] Frederic Megret, The relevance of international instruments on racial discrimination to racial discrimination policy in Ontario. December 2004, available at https://www.ohrc.on.ca/en/book/export/html/8979

having reservations on Article 14 on making individual complaint cases to the Committee.[46] Lack of use could also be attributed to a lack of awareness and promotion within the international legal sphere due to a general principle of non discrimination, so much so that Article 14 has been noted as a communications procedure with "*minor significance*".[47] While some of ICERD's prohibitions such as the prohibition of apartheid and segregation, could be seen as outdated, ICERD's value is held outside of the convention itself. Resolutions and general comments are intended to keep ICERD updated and relevant in today's modern society to protect against contemporary forms of racism.[48] Its use as a 'living instrument' throughout the years has kept it relevant through its growing body of General Comments nd Conluding Observations. [49] While these have are non-binding, they have maintain a special status as a "legitimate source of interpretation" for the treaties, which give states more guidance and recommendations on how to comply with and implement the Convention.

In Scotland, it has been argued that the current anti-discrimination framework within the UK and Scotland under the Equality Act and Public Sector Equality Duties (PSED) offer similar protections as incorporation of ICERD would bring and has been criticised as ineffective due to lack of enforcement and issues already with access to justice for ethnic minority groups.[50] Analysis of the current race framework has shown that gaps remain in the framework which incorporation of ICERD would fill in collaboration with policy – for example the current Race Equality Framework Action Plan (REFAP), and making these rights justiciable through

[46] Article 14,ICERD. For more on reservations see Wheatley, Steven, 'The Core UN Human Rights Treaty Systems', The Idea of International Human Rights Law (Oxford, 2019; online edn, Oxford Academic, 21 Mar. 2019), https://doi.org/10.1093/oso/9780198749844.003.0005 , accessed 9 Dec. 2022.
[47] Theo van Boven, "The Petition System under the International Convention on the Elimination of all forms of Racial Discrimination. A sobering balance sheet."
https://www.mpil.de/files/pdf2/mpunyb_vanboven_4.pdf pg 272, 285
[48] UN, Durban Declaration 2002. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Declaration and Programme of Action. (2002), available at
https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf , follow up to this in A global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action : resolution / adopted by the General Assembly, 2021
https://digitallibrary.un.org/record/3896585?ln=en
[49] Keane, D., (2020). Mapping the International Convention on the Elimination of All Forms of Racial Discrimination as a Living Instrument, *Human Rights Law Review*, Volume 20, Issue 2, Pages 236–268, https://doi.org/10.1093/hrlr/ngaa013
[50] Coalition for Racial Equality Rights (CRER) (2016). Shadow Report
https://www.ohchr.org/sites/default/files/Documents/HRBodies/CERD/ConsultationCivilSociety/NGOs/CRER.pdf

incorporation will bring better enforcement.[51] Despite its critiques, treaties dedicated to the protection of minority groups who are vulnerable to having their rights violated are necessary to ensure that no one falls through the gaps in human rights protection. Treaties such as CEDAW, CRPD and UNCRC, are needed to ensure all people and groups have equal enjoyment and protection of their rights. Therefore, ICERD, is needed to be included in the new Human Rights Bill in Scotland to ensure all people will enjoy this new framework of human rights

This study furthers this, by demonstrating the need for full and direct incorporation of ICERD in the New Human Rights Bill in Scotland to ensure an effective and accessible complaints mechanism in order to for these rights to become justiciable. The next section will explore the incorporation of ICERD by the selected states, the complaints mechanisms provided under Article 6 and their use of dispute resolutions will be presented and compared.

## 4. Dispute Resolution Methods

This section will examine the types of dispute resolution methods used within administrative justice systems provided for through anti-discrimination legislation in the selected states. Multiple forms of Alternative Dispute Resolution (ADR) have become popular alternatives to litigation within many areas of law.[52] This is due to the benefits of these methods in contrast to litigation such as affordability, timeliness and confidentiality which now judicial bodies and governments as well as corporations see the benefits of their use in areas of administration.[53] ADR is still being introduced into the realm of human rights as they are usually only ever considered commercial and contract law.[54] However, it is worth

[51] Sullivan.
[52] Brown, H. J., Marriott, A,(2018). ADR Principles and Practice. Sweet and Maxwell, p 6. ; Collins P, Demeter D and Douglas S, (2021) Dispute Management. Cambridge University ;
CRIN (2016). Rights, Remedies & Representation: Global Report on Access to Jutice for Children, https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf and Beqiraj, J., and McNamara, L.,(2016). Children and Access to Justice: National Practices, International Challenges, Bingham Centre for the Rule of Law Report.
https://www.biicl.org/documents/1355_childrenandaccesstojusticenationalpractices_finaloctober2016.pdf?showdocument=1
[53] Menkel-Meadow, C. (1997). Introduction: what will we do when adjudication ends-a brief intellectual history of adr. UCLA Law Review, 44(6), P.1616. https://heinonline.org/HOL/P?h=hein.journals/uclalr44&i=1632
[54] McGregor, L., (2015). Alternative Dispute Resolution and Human Rights: Developing a Rights-Based Approach through the ECHR, European Journal of International Law, Volume 26, Issue 3, PP. 607–634, https://doi.org/10.1093/ejil/chv039

illuminating how these different areas of law are similar. Human rights treaties which are incorporated into domestic legislation can be considered a type of social contract, similar to type of contract, with positive and negative duties between the state and its citizens. When the latter party violates this contract there are multiple forms of administrative process which are well established in criminal law however, when the state is in violation of its obligation under an incorporated human rights treaty, this dissertation will show there is less workable domestic framework in many states let alone guidance on how citizens can go about holding the state accountable and seeking justice and redress.

This section presents each state's anti-discrimination framework and their supplementary complaint bodies, comparing the relevant institutions and tribunals and their specific use of ADR. Throughout this section, in order to remain within the scope this dissertation which is to draw learning for Scotland's incorporation Bill and ensure a non-discriminatory access to justice for children and young people in the new Human Rights Bill, analysis is given to whether or not these procedures comply with ICERD and are suitable for children and young people. First, consideration is given to ICERD in relation to guidance given to dispute resolution and of child friendly complaints procedure.

### 4. i. ICERD and child friendly complaints procedure

Article 6 of ICERD indicates that States should assure protection through national tribunals as well as the right to seek redress from these tribunals.[55] A general recommendation by CERD urges states to establish a national institution to facilitate the implementation of the Convention with necessary functions such as the promotion and education of the rights protected under ICERD, monitoring legislative compliance and assisting the government in reporting to the Committee.[56] However, it does not give this institution the specific purpose of handling complaints procedures. Neither does the Convention specify which method of dispute resolution States should provide for victims of violation of this Convention to seek justice, remedy and redress. The Durban Declaration and programme of action on ending

[55] A6, ICERD
[56] OHCHR, General recommendation XVII on the establishment of national institutions to facilitate the implementation of the Convention, CERD, 1993
https://tandis.odihr.pl/bitstream/20.500.12389/19429/1/01648.pdf

racism, however, gives more detailed procedural guidance.[57] This document declares the governments agreements on implementing the recommendations made at the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa in 2001.[58] Specifically in relation to dispute resolution methods it urges states to consider the:

"*new and innovative methods and procedures of conflict resolution, mediation and conciliation between parties involved in conflicts or disputes based on racism, racial discrimination, xenophobia and related intolerance should be explored and, where possible, established*."[59]

This leaves States open to interpret this guidance and explore the many forms of ADR, rather than litigation, in cases of racial discrimination. This section will focus on conciliation, mediation and litigation through a specialised tribunal, due to their use by the selected states.

The Durban Declaration does however, urge states to ensure access to legal remedy programmes. These must be "*developed to enable the most vulnerable groups to have access to the legal system*".[60] Guidance for appropriate access to justice for children is given by UNICEF, which indicates the need for a child friendly complaints process where the child's best interests must be considered at every stage of the complaints process as well as having their dignity upheld throughout.[61] The key elements to achieving this include ensuring a quick and timely process rather than a protracted one.[62] Similarly the COE recommends that professionals are trained to recognise and prioritise the child's best interest at every stage of the process, saying that before during and after judicial or non-judicial proceedings, a multidisciplinary approach should be taken.[63] This means multi-disciplinary representation should be in place to support the child socially, emotionally and legally, making the process as accessible and child friendly as possible.

[57] Section 164, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Declaration and Programme of Action (Durban Declaration) https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf
[58] Maran, R. (2002).'A Report from the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban, South Africa, 2001.' *Social Justice*, vol. 29, no. 1/2 (87-88), 2002, p178. http://www.jstor.org/stable/29768127. Accessed 4 Dec. 2022.
[59] Durban Declaration, section 164 (g)
[60] Ibid. 164 (f).
[61] UNICEF P 13-18.
[62] Ibid. p15.
[63] COE p 23 .

These elements will be further explored and used to analyse the selected states' use of dispute resolution methods in order to determine which method is more child friendly and appropriate to claims of racial discrimination. While there is secondary literature on the use of ADR in cases of social justice which will be referred to, there is limited literature on child friendly ADR. Furthermore, much of the literature available only really considers children in relation to family disputes or children giving evidence rather than children making claims themselves, remaining in the tradition sociological thought of the child as developing and not as a whole person.[64] This type of thinking led to the association of children by sociology and many aspects of society, only within broad umbrellas such as 'the family' and 'education' and is now considered outdated since it goes against UNCRC principles which gives agency to children.[65] Nevertheless, this section will use the available literature when relevant.

### 4. ii. Australia

Australia does not have a human rights act but instead has specific anti-discrimination laws and policies to protect human rights and combat racial discrimination. Australia's Racial Discrimination Act (1975) is an "*,Act relating to the elimination of racial and other discrimination*" [66] and "*gives effect to the Convention*" citing it throughout the text and printed in full at the end.[67] It makes racial discrimination unlawful saying;

"*It is unlawful for a person to do any act involving a 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 any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."*[68]

While this specific piece of legislation protects people against racial discrimination in areas of public life, like access to public services and education, and provides the right to equality before the law, it has received much criticism for its effectiveness and Australia's legislative

[64] Jenks,C., (2009). Constructing childhood sociologically, in Jenks Chris, Mary Jane Kehily, (eds) *An Introduction to Childhood Studies,* p 102.
[65] Ibid.p 105, and UNCRC.
[66]Australian Racial Discrimination Act 1975 (No. 52, 1975) Compilation No. 17 (Australian RDA) https://www.legislation.gov.au/Details/C2016C00089 ,
[67] Ibid. section 9 on racial discrimination to be unlawful, sub2, ICERD is printed in full from page 26.
[68] Section 9 (1). Australia RDA 1975

framework as a whole.[69] The lack of a Federal Human Rights Act in Australia has been criticised by civil society organisations who describe the current human rights framework as inadequate.[70] According to these criticisms, the assortment of national laws provide a haphazard protection of rights which lack enforceability, particularly with regards to protection against racial discrimination.[71]

A Race Commissioner is appointed under the Racial Discrimination Act.[72] This Commissioner and its Commission has similar functions to those recommended by the Durban Declaration and must promote the protected rights under the Anti-Discrimination Act, conduct research and education programmes, and print guidelines for compliance. The Race Commissioner can also inquire and report to the Minister as to laws and policies which relate to human rights to ensure compliance with ICERD of its own initiative or directed by the Minister or in response to a complaint.[73]

While the setting up of a special Race Commissioner has been welcomed by civil society organisations as it ensures better monitoring of compliance with ICERD. However, significantly, there is no obligation of the state to comply or consider these inquiries or reports.[74] This function has been critiqued by various civil society organisations who have said the inquiries amount to reports of no authority and its mandate to investigate only once referred to by the minister is limiting.[75] While the Australian human rights framework has been criticised for lacking adequate protection due to its lack of a comprehensive bill of rights, contrastingly, there is a comprehensive framework set out for its administration, under the Human Rights Commission Act (1986). Enforcement of the RDA is done through a complaints based system. Complaints of violation of the Anti-Discrimination Act are filed through the Human Rights Commission.[76] The functions of the Human Rights Commission, as well as other Commissions including the Race Commission and National Children's

[69] Idem, Section 10.
[70] Australian NGO Coalition Submission to the UN Committee on the Elimination of Racial Discrimination, (2017). *Australia's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, p9 (Australian NGO Shadow Report) https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/INT_CERD_NGO_AUS_29334_E.pdf
[71] Ibid. p 9
[72] Australian RDA
[73] Ibid. Section 20
[74] Australian NGO Shadow Report.
[75] Ibid.
[76] Australia RDA Section 20 Note: " For the provisions about inquiries into complaints of discrimination and conciliation of those complaints: see Part IIB of the *Australian Human Rights Commission Act 1986*."

Commissioner,[77] are laid out by the Human Rights Commission Act 1986 which gives statutory guidance on making a complaint including complaints in regards to racial discrimination.[78] It is worth noting that the National Children's Commission has similar powers to the Race Commissioner in that it is limited to the promotion of the awareness of children's rights and does not take any complaints.[79]

Conciliation is held by the President or member of the Commission selected by the President through a "*conference*".[80] The proceedings are to be "*conducted in such a manner as the person presiding over the conference considers appropriate*" and to ensure neither parties are disadvantaged.[81] If the complaint is terminated an application can then be made to the Federal or Federal Circuit Court and Family Court within 60 days of the terminated complaint.[82] Thirty-eight per cent of the total complaints lodged under the RDA were conciliated, twenty one percent terminated for "*no reasonable prospect of conciliation*", others being withdrawn, discontinued or terminated for other reasons.[83]

There are some critiques about Australia's use of compulsory conciliation when it comes to racial vilification.[84] While mainly focusing on the prohibitions under Part IIA of the RDA, Swannie argues that while corrective justice is needed in cases of racial discrimination and hatred, private settlement may not be the most suitable method to use.[85] Due to the nature of racism, Swannie argues that instances of racial discrimination or hatred must be publicly convicted and access to court proceedings must not be restricted to victims.[86] Private settlements are a similar concern amongst civil society, while recognising the lower costs of conciliation, confidentiality "*results in a lack of dialogue about racial discrimination*."[87] However, considering cases which involve or are brought about by children, prioritising the child's best interest will sometimes mean confidentiality is best. However, the child's own

[77] Australian Human Rights Commission Act 1986 Section 8, (1) https://www.legislation.gov.au/Details/C2021C00559
[78] Ibid.
[79] Ibid. 46MB.
[80] ibId. 26 JP.
[81] Ibid. 46PK(1).
[82] Ibid. 46PO.
[83] Australaian Human Rights Commission 2020-21 Complaint Statistics, https://humanrights.gov.au/sites/default/files/2022-02/ahrc_ar_2020-2021_complaint_stats.pdf Chart 6: Racial Discrimination Act – Outcomes of finalised complaints p25
[84] Swannie
[85] Ibid,.
[86] Ibid.
[87] Aus NGO Shadow report p 11.

views on how they would like to approach the case must be considered and taken into account.

### 4. iii. Norway

As of 2018, Norway has a comprehensive and general anti-discrimination Act, the Equality and Anti-Discrimination Act.[88] Enforcement of this Act is carried out by the Anti-Discrimination Tribunal[89], as per the Equality and Anti-Discrimination Ombud Act.[90] This Act sets out the organisation and powers of the Ombud and the Tribunal. Their jurisdictions encompass the Equality and Anti-Discrimination Act as well as sections of others including special acts on working conditions and tenancy.[91]

The Ombud and the Tribunal are both "*an independent public administrative agency*"[92]. The Ombud has multiple statutory functions. Its primary function is to monitor Norwegian law and administrative practice to ensure it is in accordance with international treaties including CEDAW, CRPD and ICERD. Under Norway's ICERD obligations, it must promote equality to prevent discrimination on the basis of the protected characteristics of the EAD Act, in all sectors of society.[93] When there is a breach of public authority compliance, it can provide guidance as to the role and functions of the ombud and tribunal and the acts which are in its jurisdiction in individual cases.[94] It also has a supervisory role over public authorities, ensuring compliance with the Equality Act and AD Act like making equality statements, and can propose improvements for equality, even undertaking follow up visits, having a greater presence in the monitoring process than the Australian Race Commissioner.[95]

---

[88] Norwegian Equality and Anti-Discrimination Act 2018 (EAD) https://lovdata.no/dokument/NLE/lov/2017-06-16-51#KAPITTEL_1 , for more info on comparative approaches to anti- discrimination laws see EU Council Comparative approaches to anti-discrimination laws 2021 P 11; European network of legal experts in gender equality and non-discrimination, (2017). A comparative analysis of non-discrimination law in Europe. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj07JK88YT5AhWWScAKHWc1CEo4ChAWegQICBAB&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fredirection%2Fdocument%2F49316&usg=AOvVaw1IW3hr_9WytjByj0A444Wy

[89] Norway EAD Section 35.

[90] Ibid.

[91] Norwegian Act relating to the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (Equality and Anti-Discrimination Ombud Act) 2022 Section 2 https://lovdata.no/dokument/NLE/lov/2017-06-16-50

[92] Ibid. section 4

[93] Ibid. section 5

[94] Ibid.

[95] Ibid.

While the Ombud provides guidance for victims of discrimination and the monitoring of compliance with AD Act, the Tribunal enforces provisions of the EAD Act, which mainly focus on the prohibition of discriminatory acts by public authorities.[96] The Tribunal uses a standard dispute resolution which is litigation but, interestingly, the proceedings of the Tribunal are conducted in writing.[97] A chairperson will determine whether an oral hearing should be held to elucidate the case, except claimants are entitled to an oral hearing in cases of sexual harassment or when claims for redress have been made.[98]

These written proceedings are a practical approach to dispute resolution, representing a common "*Nordic legal mind*"[99] which is known for its 'peculiarities' often described as "*pragmatism, realism (with) absence of formality*".[100] in comparison to the rest of Europe's "trends in over-administration and centralization" .[101] While this procedure relies heavily on the trust of an efficient mailing system let alone trust between the court and civilians, having the proceedings of the Tribunal conducted in writing may actually be a useful protocol for complaints made by children and young people. If the procedure ensured that the information and writing were in a child friendly manner then it has the potential to be a child friendly dispute resolution method when a child does not feel comfortable or does not want to go to court, but would rather have a process which is carried out in writing.

### 4. iv. Aotearoa New Zealand

The New Zealand Human Rights Act 1993 protects right holders against the discrimination of public bodies.[102] Aotearoa New Zealand's human rights administrative justice system, including complaints of racial discrimination, is a three step process which attempt to exhaust all methods, moving from informal to formal, before entering into litigation.[103] The institution provided by the state for processing these complaints is the Human Rights

[96] IbidSection 7.
[97] Ibid. section 8.
[98] Ibid. section 9.
[99] Pia Letto-Vanamo, ., Ditlev. Tamm. (2019). Nordic Legal Mind. In: Letto-Vanamo, P., Tamm, D., Gram Mortensen, B. (eds) Nordic Law in European Context. Ius Gentium: Comparative Perspectives on Law and Justice, vol 73. Springer, Cham. https://doi.org/10.1007/978-3-030-03006-3_1 p1
[100] Ibid. p 9
[101] Ibid. p 9 and to read more about "Nordic-ness" and distinct legal culture see chp 1.
[102]New Zealand. Human Rights Act 1993 (version 1/7/22) https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html?search=ts_act_human+rights_resel&p=1&sr=1
[103] New Zealand Government, Citizens Advice Bureau. (2022) "What can I do if I have been unlawfully discriminated against?" https://www.cab.org.nz/article/KB00000983

Commission. In each state, all complainants must go through a mechanism tailored towards adults and there is no specific process or protocol for children and young people. While there are free legal advice services which children and young people can contact who can assist in the initial stages of making a complaint, only a few can actually represent the claimant in court, who have observed to having limited resources which can restrict them in doing this.[104]

Firstly, a complaint is submitted to the Human Rights Commission. Here, the Commission will attempt to guide the complainant in reaching out to the offending party and attempting to solve the dispute informally.[105] If the issue cannot be resolved informally, the next stage is mediation. This is a form of ADR and it is arranged by the Commission and is "*free and confidential*" and is facilitated through multiple forms – over the phone, through letters or in person.[106] The method works by a mediator guiding the parties to a solution which is acceptable by both. Finally, if the complainant is not satisfied with the decision made through mediation they can review the decision by filing a case, through litigation with the Human Rights Tribunal. The Tribunal is an independent judicial body, separate to the Commission, and hears claims relating to breaches of the Human Rights Act 1993 as well as others.[107] In this Tribunal, rather than seeking a resolution which is agreed between both parties in mediation, instead a judge considers both parties cases and decides whether or not discrimination or a violation of the law has occurred.

This statutory Tribunal satisfies Article 6 of ICERD in that it is a national tribunal, competent to deal with racial discrimination cases within its jurisdiction, however is it child friendly? There is no child friendly procedure existing within the Tribunal and the available data is limited with the most recent review of the Tribunal being 2002, a much needed investigation into its workings is needed.[108] According to the most recent study of it, "*the Tribunal was set up to ensure that justice was being seen to be done – to allay fears of a 'toothless' administrative body, and to deal with the difficult cases where agreement could be reached through mediation*".[109] It was set up as a forum of last resort to deal with "*the issues arising in the area of human rights law and to guide future development through judgements which*

[104] New Zealand Aotearoa, (2002). Youth Law https://youthlaw.co.nz/free-legal-help/how-we-can-help/
[105] NZ Citizens Advice Bureau, "What can I do if I have been unlawfully discriminated against?".
[106] Ibid. mediation section.
[107] NZ Human Rights Act 19, Section 94, Functions and powers of Tribunal.
[108] Archer, A., (2009).'Talking with the Tribunal: A Study of the Complaints Review Tribunal'.9 Auckland U L Rev 157, p 158. https://heinonline.org/HOL/P?h=hein.journals/auck9&i=177
[109] Ibid.

*would set a direction to be followed*".[110] However, despite being a pragmatic approach to resolving disputes, it is not accessible to children.

While this three-step process and attempt to exhaust all methods before the courthouse approach can be beneficial for complainants in solving the dispute and achieving acknowledgement from the offending party in an inexpensive manner, there are some aspects which don't consider the child's best interest especially in cases of racial discrimination. Attempting to solve the dispute informally may not always be safe for a child to approach the offending party or even with legal help. At the initial stage, a discussion should be had with the child after the complaint is submitted and accepted by the Commission to consider the type of claim and the method which should be suitable to the child in order to uphold their dignity.[111] This discussion should involve the child so that they can be heard and participate in deciding which method is the best one to take, whether it be to attempt informal resolution or go straight to litigation. Therefore, there should not be a compulsory dispute resolution method enforced upon children in order to be respectful and consideration given to the child's voice.

While mediation is usually conducted by an impartial and neutral mediator, in cases involving children, a mediator which prioritises the child's best interest is needed in order to fulfil the requirements of a child friendly complaints procedure.[112] In New Zealand this is often practiced in other areas of law such as family law, where there has been particular movement towards sector specialisation.[113] This is the recognition that the nature of certain disputes and certain social situations requires particularized mediation responses, like for example, cases such as custody or child protection.[114] In these cases, the mediator upholds the child's best interests, rather than remaining neutral and impartial.[115] Family Group Conferencing is another specialised form of mediation which originated in child protection work in Maori communities.[116] This approach takes into consideration the child's best

[110] Ibid.
[111] UNICEF, 13-18.
[112] Ibid.
[113] Jarrett, B., (2009). 'The Future of Mediation: A Sociological Perspective', J Disp Resol 49, P 68. https://heinonline.org/HOL/P?h=hein.journals/jdisres2009&i=70
[114] Ibid.
[115] Ibid.
[116] Ibid.

interest and also their community and extended family members can have input into where and what approach the parenting should take and outcome should be.[117]
Conciliation as used by Australia may be the best ADR method to use in racial discrimination claims relating to children and young people, as long as it remains confidential and protects the child's best interest at every stage. Despite the type of ADR used though, an important aspect is that ADR is compulsory before litigation.

## 5. Access to Administrative Justice

While the complaints procedure itself must be child friendly, the mechanism must be child accessible in order to work effectively. This chapter will present and analyse state approaches to providing access to courts and tribunals in relation to racial discrimination claims and its effective compliance with ICERD. While it will consider claims made by both adults and children and young people, greater consideration is given to the latter where data is available, to gain a better understanding of comparative approaches to child accessible complaints mechanisms.

### 5. i. ICERD and Child Friendly Complaints Procedure

If all children and young people cannot access their right to remedy and redress then not only is this a violation of ICERD but also the failings of the working of human rights law accountability and improvement cycle. This cycle ensures that human rights are being upheld by allowing and empowering rights holders to hold duty bearers accountable for not complying with certain treaties or laws or providing certain rights. This can only be done through effective complaints procedures and the enforcement of justiciable rights. Measures must be in place to prevent barriers which hinder minority ethnic groups from accessing the mechanism and ensure no exclusion for any groups of children from making a complaint. These include attitudinal barriers where children may not feel encouraged to make a complaint due to regular discrimination and intimidation, communication barriers including multiple languages and easy access to information by email or phone, and economic barriers.

[117] Ibid.

The first step of creating a child-friendly complaints procedure is acknowledging the difference between an adult complaint and a child complaint.[118] For instance, the nature of these complaints will differ greatly in formality and tone, where an adult must make an official written complaint, many children instead would pose their complaint as a question, often asking for a 'friend'.[119] The UNCRC must be considered in all aspects concerning children, especially in the creation of a complaints procedure framework. A rights-based approach, the child's best interest, participation and non-discrimination are some of the overarching principles underpinning a child friendly complaints mechanism as identified by UNICEF in line with the UNCRC.[120]

### 5. ii. Australia

There are very few complaints made by children and young people through the Human Rights Commission, according to its conciliation record. In 2020-21, the Commission received 15,746 enquiries, mostly in writing.[121] Ten per cent of these complaints were in relation to racial discrimination. Just two per cent of the total complaints under the ADA were 13-17 year olds and 0.5 per cent were under 12 years old.[122] It is worth noting, for the purpose of analysis, that the percentage of children and young people who filed complaints under the Age Discrimination Act in the same year was a total of 8.5 percent, showing the low percentage of children and young people making complaints throughout the system, but also a noticeably lower percentage making complaints about racial discrimination. Furthermore, throughout that year, 3,113 complaints were officially received through the Commission, of these complaints just six per cent were lodged under the Age Discrimination Act and seventeen per cent were lodged under the Racial Discrimination Act.[123] This shows that children and young people who feel like they have been racially discriminated against are less likely to file a complaint unlike those who feel like they are discriminated against based on age. Since racial discrimination would predominantly impact those from ethnic minority groups it can be assumed that they either have less access to complaints processes or have distrust or feel discouraged from making a complaint.

[118] UNICEF p 9.
[119] Ibid.
[120] UNICEF P 11 .
[121] Australia. Human Rights Commission 2020-21 Complaint Statistics, p2 https://humanrights.gov.au/sites/default/files/2022-02/ahrc_ar_2020-2021_complaint_stats.pdf
[122] Ibid. Table 29: Age Discrimination Act – Age group of complainants p 27
[123] Ibid. p 2

The low percentage of racial discrimination complaints made by children does not mean Australia has eliminated racial discrimination, far from it. Racial discrimination and racial hatred are major issues in Australia notably in schools and education.[124] A lack of a promotional framework of the complaints process through the Human Rights Commission may be at fault. Another reason may be because it is not child friendly, thus discouraging children from accessing the process. In Victoria however, child friendly approaches to complaints are provided by schools. A standard commenced in July 2022 for all schools to ensure they have a child friendly complaints process.[125] According to this policy, the procedure should be able to handle all types of complaints and refer the child to the relevant authorities. Under this standard, schools should provide online and printed information of the complaints policy within the school, provide students with the skills required to file a complaint and to facilitate discussions with students about what would help them speak up if they have concerns to ensure the process is child-centred and empowering.[126]

While this approach aligns with the UNICEF guidelines on child friendly complaints mechanisms, complaints of discrimination are extremely sensitive and are often complaints about the practices of the school itself. Moreover, the school is not always a suitable place for the provision of a human rights complaints mechanism, nor is it intended to be. Therefore, an independent and separate body is needed and not just an advisory body.

### 5. iii. Norway

The Ombud gives guidance to people experiencing discrimination and points them towards the Equality and Anti-Discrimination Tribunal. Unlike Australia's conciliation register of complaints, under Norway's tribunal, there is a lack of access to tribunal reports to gain an insight into the types of claims that are being made and by whom. While there is a lot of research and reports for gender and sex discrimination claims filed under the tribunal, there are significantly less reports and data collected on claims made in relation to racial discrimination. This lack of reporting and statistics of racial discrimination claims has been noted by the Committee on the Elimination of Racial Discrimination which has

[124] Australia NGO shadow report
[125] Australia. Victorian Government, Schools – complaints processes guidance. Guidance on Child Safe Standard, p 7 available at https://www.vic.gov.au/schools-complaints-process-guidance
[126] Ibid. Examples of actions for child-focused complaints processes, Develop complaints processes to be child-centred and empowering https://www.vic.gov.au/schools-complaints-process-guidance#examples-of-actions-for-child-focused-complaints-processes

recommended that the state promote access to justice and complaints procedures through public education campaigns.[127]

The Tribunal is a complaints body and can make final, legally binding decisions on harassment and discrimination cases as well as award compensation.[128] While the legislation framework is comprehensive the tribunal poses major barriers to access justice for ethnic minorities. Significantly, proceedings, decisions and all communication with the Tribunal take place in Norwegian. "*Parties that are not proficient in written Norwegian can send their enquiries in English. The parties will then be offered an unofficial translation of our letters into English*."[129] The complaint form is also in Norwegian with no English alternative provided. There is also no reference to the provision of translators which is in violation of ICERD in equal treatment and access to justice.[130]

Language barriers are present in many public services in Norway. A recent study found that the main discrimination faced when seeking healthcare was the language barrier, making universal healthcare services inaccessible to people who only speak the African language.[131] This qualitative study involving Africans living in Norway and their experience with discrimination in healthcare services considered their coping strategies to discrimination. It found that there was a major lack of awareness of the routes to access justice when faced with racial discrimination.[132] Similarly, it was found that there was a lack of awareness for specific avenues for racial discrimination claims.[133] Out of fifteen participants involved in the study only two had any awareness of the Equality and Anti-Discrimination Ombud.[134] Importantly, it was noted that despite having awareness these two participants did not contact the organisation for support.

[127] CERD/C/NOR/CO/23-24. Para 9, 10
[128] The Equality and Anti-Discrimination Ombud https://www.ldo.no/en/ldo-english-page/
[129] Anti-Discrimination Tribunal https://www.diskrimineringsnemnda.no/språk/1230
[130] ICERD A5(a) 6
[131] Kofi Taadi, P., (2021. *Racial Discrimination in Norway: Africans experiences while using healthcare services*, Noragric. https://nmbu.brage.unit.no/nmbu-xmlui/bitstream/handle/11250/2976722/Peter%20Kofi%20Taadi%20Master%20thesis.pdf?sequence=1&isAllowed=y
[132] Ibid.
[133] Ibid. p 67 .
[134] Ibid. . P 68.

This lack of communication available for those who don't speak Norwegian or English poses a major barrier to access to justice for ethnic minority groups. This shows that while a tribunal has been created in accordance with ICERD, it is not accessible to those who need it and risks being incompetent. There is also debate on the legislative wording itself. Ethnic minority groups in Norway are protected under this Anti-Discrimination and Equality Act;

"*The purpose of this Act is to promote equality and prevent discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or other significant characteristics of a person*."[135]

According to the EU Council, ethnicity includes national origin, descent, skin colour and language – but research shows and argues that the state of Norway has historically avoided using the term "race" which contributes to discrimination and hostility towards acknowledging racism throughout Norwegian society and addressing racial discrimination.[136]

The Ombud also does not include "race" as a ground for discrimination, this means there is no accessible legal guidance or protections for those who believe they have been discriminated against due race or colour. This does not align with ICERD's definition of racial discrimination despite the Ombud being set up to ensure the Norwegian Government's compliance with ICERD. ICERD and its wide definition and grounds for discrimination is better and should be used with General Comments as interpretative guidance as gives a wide scope for grounds and persons protected under the characteristics and having them all individually listed when filing for a complaint means the victim of discrimination can determine themselves which accurately represents the discrimination.

### 5. iv. Aotearoa New Zealand

Aotearoa New Zealand's Human Rights Tribunal could have better diversity and representation amongst the panel. Without adequate representation there is a lack of diversity

[135] Norway, Act relating to equality and a prohibition against discrimination (Equality and Anti-Discrimination Act) (2018) Section 1. Purpose. https://lovdata.no/dokument/NLE/lov/2017-06-16-51.
[136] Taadi p 69.

and trust of the system. Within the panel there re members from  a minority ethnic groups such as a member of the Maori iwi and of Tongan ethnic group. Under the Human Rights Act, the Minister of Justice must maintain a panel of people to ensure the "*the efficient and expeditious exercise of the jurisdiction of the Tribunal throughout New Zealand*"[137]. In terms of the qualifications of these members, the Act requires them to have knowledge or experience in "*different aspects of matters likely to come before the Tribunal*".[138] These include legal aspects, human rights, current social and cultural issues as well as knowledge of "*the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society*."[139] Out of the 17 current panel members about 3 don't have legal qualifications and diversity amongst these qualifications, which relate to the experiences required by the Act as stated above, could be improved. Only approximately 3 which have experience working with children and young people, possibly one which is properly trained. The Office of Human Rights Proceedings, Te Tari Whakatau Take Tika Tangata, offers free legal representation to applicable clients. This gives access to justice for those who can't afford legal representation.

## 6. Types of Remedy

Justiciable rights require first and foremost an established mechanism to receive and appropriately manage complaints when a right is violated and one which is easily and equally accessible to all citizens. But what makes this accountability system effective is the decisions made by the institution or tribunal and whether or not proper remedies are given. Remedies should take the form of adequate compensation to any damage caused due to the violation made, but also acknowledgement of the act in the form of apology, and correction to rectify and stop the violation from occurring again. This section compares the different types of remedies available for cases of racial discrimination from the selected states' complaints institutions and tribunals.

### 6. i. ICERD and Child friendly approach

Article six of ICERD obligates states to provide assurance of remedies through established institutions and tribunals which deal with violations of the provisions under the

[137] NZ HRA SECTION 101 PANEL , 1(a).
[138] NZ HRA Section 101 Panel 2A (a).
[139] NZ HRA Section 101 Panel 2A (e).

Convention.[140] The same article also gives rights-holders the "*the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination*."[141] The Committee/CERD has also elaborated guidance for this article specifically in relation to remedies.[142] It notifies states that punishment of the perpetrator for discriminating is not the only remedial action the court should take.[143] Accompanying punishment, the Committee recommends the relevant courts and tribunals "*should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate*".[144] The Committee also emphasises that consideration should be given to "*the degree to which acts of racial discrimination and racial insults damage the injured party's perception of his/her own worth and reputation (which) is often underestimated*".[145]

### 6 .ii. Australia

Of the complaints made under the RDA approximately twenty-one per cent were aboriginal and/or Torres Strait Islander while the rest of the percentage is unknown, under five percent of the complainants were aboriginal and Torres islander under the Age Discrimination Act while the rest of the percentage was unknown.[146] The most common grounds for complaints under the RDA were about issues related to race, ethnic origin, national origin and racial hatred.[147] The areas under which these complaints were received were most commonly the provision of goods and services, racial hatred, and employment, with education just making up three per cent of the total complaints under the RDA.[148]

According to the Human Rights Commission, in the year 2020, the remedies agreed upon by both parties through conciliation were commonly in the form of apologies, anti-

[140] ICERD A6.
[141] ICERD A6.
[142] ICERD Committee general comment no. 26, General recommendation XXVI on article 6 of the Convention, 24 March 2000 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7498&Lang=en
[143] Ibid. (2).
[144] Ibid.
[145] Ibid. (1).
[146] Australia. Human Rights Commission 2020-21 Complaints Statistics Indigenous status of complaints p 12 https://humanrights.gov.au/sites/default/files/2022-02/ahrc_ar_2020-2021_complaint_stats.pdf
[147] Ibid. Table 24: Racial Discrimination Act – Complaints received by ground p22.
[148] Ibid. Table 25: Racial Discrimination Act – Complaints received by area p23.

discrimination training and the financial compensation.[149] It must be noted firstly that these cases were made on behalf of a child or young person by their guardian, most commonly a parent. In line with ICERD, the remedies agreed upon were considerate of the offending parties' need to acknowledge the wrong doing, correct the wrong doing to ensure it doesn't happen again, and consider the financial damage caused to the complainant due to the discrimination. For example, in 2020, a complaint was filed against an employer for not allowing people with immigrant status to apply for an apprenticeship.[150] Conciliation resulted in an order for the offending party to change this specific discriminating policy. While there is not further information available about whether or not the complainant managed to apply in the end, since the case was considered successfully conciliated it can be assumed that the complaint was satisfied with the outcome being the change of policy.

Information of cases from previous years has been made available online and show similar remedial action taken. For example, in 2018, a student took a comprehensive text which they believed had statements which were discriminatory against aboriginal women. Through conciliation, the parties agreed upon a remedy which included a statement of regret provided by the offending party, in this case the school, a policy and practice change of the comprehensive test to put a stop to the discrimination and a 2,000 AUS Dollar awarded in compensation to the victim.[151] In another case in 2012, a child was denied membership to a sporting club due to racial discrimination. Unlike the previous case, the remedy was solely directed at rectifying the damage incurred to the victim and compensation of 7,800 to the complainant was agreed upon.[152]

If conciliation is not successful the case is taken to court and the types of orders which can be given if unlawful discrimination has occurred, are similar to those given in Norway and NZ. These include, the ordering of the respondent to stop and not repeat the unlawful discrimination, perform a reasonable act or conduct to redress the damage suffered by the

[149] Australia. Human Rights Commission 2020-21, Conciliation Register, 2020-21, Australian Human Rights Commissioner, these were complaints made by parents on behalf of their children https://humanrights.gov.au/sites/default/files/2022-02/ahrc_ar_2020-2021_complaint_stats.pdf
[150] Conciliation record case 2020.
[151] Conciliation record case 2018 .
[152] Conciliation record case 2012.

victim, to pay financial compensation.[153] The judge may also award costs of the proceedings to the losing party.[154]

### 6. iii. Norway

The Tribunal is a complaints body that can make final, legally binding decisions on harassment and discrimination cases as well as award compensation.[155] In terms of the types of decisions the Tribunal can make IT can order the stoppage of an act or measure which discriminates or contributes to discrimination, and can prevent repetition by setting deadlines for compliance with the order.[156] The Tribunal also has powers to order compensation and redress to those who are subject to discrimination.[157] This covers economic losses resulting from the treatment but also non-economic loss "*shall be set in an amount that is reasonable in view of the nature and scope of the harm, the relationship between the parties and the circumstances otherwise*."[158] Emotional or physical damage for child is hard to measure and so more guidance should be given on this. These orders can also be followed by a coercive fine if the order is not complied with which accrues until the order has been satisfied[159] this ensures accountability is held and the tribunal decisions are effective and not just guiding. The fine is payable to the state however this might be more justified if this is payable to the complainant.

An interim interdict is also available for use by the Tribunal.[160] This is for when there is a delay in the process which contributes to harm. A Tribunal chairperson has the power to order an interim interdict as a temporary order whilst the case is going through the process. This is necessary for cases involving children and young people as the Tribunal can ensure the child's best interest is considered even before the result is deliberated. This legislation also penalises contravention of the prohibition of discrimination by individuals and groups of people acting together. The degree of culpability is considered which includes whether or not it was racially motived and whether or not it was committed against a person ages under

[153] Aus HRC Act 46PO(4) for more info on court proceedings see *Federal Court of Australia Act 1976*.
[154] Ibid. 46PO Note 2.
[155] Norway The Equality and Anti-Discrimination Ombud https://www.ldo.no/en/ldo-english-page/
[156] Ibid. section 11.
[157] Ibid. section 12 and 38.
[158] Ibid.section 38.
[159] Ibid. section 13.
[160] Ibid. section 11.

18.[161] The types of administrative decisions also available to the Tribunal includes making a statement which states that another public administrative agency has breached the provisions of the legislation.[162]

### 6. iv.Aotearoa New Zealand

In New Zealand, the Human Rights Commission can include remedial action within the award decided through mediation. As per the method of mediation, this award must be agreed between both parties to come into effect. Possible outcomes of mediation could include an apology, educational training, a promise not to repeat the same behaviour and compensation.[163]

The orders from the Tribunal can be similar but have a heavier weight due to the decision being binding. The Tribunal has the power to award compensation for any financial loss due to discrimination including the loss of any benefit due to the discrimination, or for "*humiliation, loss of dignity, and injury to feelings*."[164] It can also make an order stopping the other party from continuing or repeating the conduct you're complaining about and order the other party to do particular things to put right any loss or damage you've suffered. [165]

Similar to Norway, Significantly, the Tribunal also has powers to issue an interim order.[166] This is a temporary order which is issues by the Court while the legal proceedings continue. It is vital for urgent issues for example, for a child who has been discriminated against and can't access education, the chairperson or deputy chairperson can make an interim order for the child to access school while the legal proceedings are happening and until the decision on whether the discrimination was unlawful or not has been made. This means the child's best interests can be taken into consideration even when timeliness is an issue and he case can't be solved quickly.

Membership of the Tribunal in Aotearoa NZ and their necessary qualifications are detailed in the legislation. The Tribunal consists of two members of the High Court and panel members

[161] Ibid. section 39.
[162] Norway. (Equality and Anti-Discrimination Ombud Act) statements, b.
[163] New Zealand Citizens Advice Bureau. "What can I do if I have been unlawfully discriminated against?" Feb 22, under "Mediation".
[164] Ibid.
[165] Ibid.
[166] NZ Human Rights Act,Section 95, Functions and powers of Tribunal, Power to make interim order

maintained by the Minister of Justice and must have knowledge or experience in "*different aspects of matters which come before the Tribunal*" or knowledge of "*cultural issues and the needs and aspirations (including life experiences) of different communities of interest and population groups in New Zealand society*", knowledge of social and economic or qualifications in law or human rights.[167] This is to ensure the "*the efficient and expeditious exercise of the jurisdiction of the Tribunal throughout New Zealand*".[168] The current members of the panel have legal qualifications, however, diversity amongst these qualifications, which relate to the experiences required by the Act as stated above, could be improved. There is little representation of minority ethnic groups, only a handful of members of Maori iwi and Tongan ethnic groups, so very few who would have lived experiences of racial discrimination. In terms of qualifications, out of seventeen members there are only three which have some experience working with children and young people.[169] Proper representation and qualifications are needed in order to have fair remedies and decisions made to satisfy the complainant but also to rectify the issue.

## 7. Conclusion

It is clear that none of the selected states have a child friendly or accessible complaints mechanism for claims of racial discrimination made by children and young people and loose compliance to ICERD means less protection and an administrative justice system. Denmark fails to use full and broad definition of racism stated in ICERD which means there is less protection for those who experience multiple forms of racial discrimination. This allows states and public authorities to determine for themselves what racism is, moving away from the international and universal standard maintained in ICERD. Similarly to Denmark, Aotearoa NZ's tribunal is inaccessible and unattractive to those facing racial discrimination, let along children and young people. Australia's system however seems to be the most accessible and efficient. As practiced in Australia, conciliation, once private and confidential, is the most suitable method to use for cases relating to children and young people. Importantly, ADR must be compulsory in cases relating to children and young people and the method used must adhere to the international guidelines of child friendly justice. These methods must be accessible in every aspect; proceedings must be available in every language,

[167] NZ Human Rights Act 1993.
[168] Ibid. Section 101 Panel 1(a) https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM305402.html
[169] New Zealand. Human Rights Tribunal. The current list of the Tribunal Panel members and qualifications can be found here https://www.justice.govt.nz/tribunals/human-rights/about/

children and young people need to be able to lodge a complaint informally within schools and education institutions, and the process must be free. Children and young people must be empowered to make complaints when experiencing discrimination and a lot of this stems to trust of the complaint system that fair remedies and redress will be given. These remedies must be flexible and consist of multiple forms; structural interdicts, compensation and apologies.

Similarly to these states, currently, only a limited child friendly complaints mechanism currently exists in Scotland and there is no specific complaints mechanism for children and young people of minority groups. The UNCRC (Incorporation) (Scotland) Bill and associated implementation measures will expand the current mechanisms by giving the Children and Young People's Commissioner and Scottish Human Rights Commission, as well as groups with sufficient interest, the standing needed to take legal action on behalf of children and young people in relation to their UNCRC rights. However, the selected states have a similar feature and while a necessary one to establish may not be enough in terms of meeting the requirements of a child friendly complaints mechanism set by UNICEF and the COE. There is a need for child friendly mechanisms rather than just adult versions, for children's complaints, it is simply not enough to have institutions which only "refer or reorient cases."[170] Therefore, it may be appropriate to establish a separate children's tribunal. This is to ensure the child's best interest is protected at every stage even considered by the adjudicator.

**8. Recommendations for Scotland**

The new Human Rights Bill for Scotland offers an opportunity for even greater protection and access to justice for specific groups of children, including those of minority ethnic groups, ensuring those who have been racially discriminated against have access to justice. Many lessons can be drawn from the successes and shortcomings of the states included in this study, from which four key recommendations can be drawn to support the development of child-friendly complaints mechanisms and access to justice for children and young people of minority ethnic groups in Scotland:

[170] UNICEF p9.

1. **Ensure the full and direct incorporation of ICERD, in so far as the powers of the Scottish Parliament allow.**

Direct and full incorporation is the most effective way to achieve the domestic integration of these globally accepted human rights maintained in these international treaties.[171] Printing the treaty in its entirety would ensure that no aspect of the treaty is disregarded or left out during the drafting process. It would ensure that the wide scope of the definition of racism articulated in Article 1 of ICERD is embedded in Scots law to ensure protection against all types and forms of racism. It would also promote compliance with Article 6 ICERD to embed the right to accessible remedy and redress.

2. **Include an interpretive clause that gives weight to treaty body General Comments and wider international human rights jurisprudence.**

Treaty body general comments and observations, as well as declarations and resolutions such as the Durban Declaration ensure that interpretation of ICERD is up to date with contemporary understandings of racism and supported by detailed implementation guidance. This would encourage the establishment of a competent national tribunal and adequate access to justice for vulnerable groups including a child friendly mechanism. As described by Keane as a 'living instrument', ICERD and other international treaties cannot be used to their full advantage singularly, or they risk becoming outdated with narrow scope for interpretation. Instead, they must be used as they were intended and designed, as part of the UN treaty body system – to be continually updated and guided by civil society and government reporting through general comments and concluding observations. Therefore, to ensure adequate protection from all forms of racial discrimination and guidance for effective access to justice for all children and young people, the new Human Rights Bill must include an interpretation clause to allow for ICERD's significant accompanying documents to reflect the evolving contemporary world.

3. **Include a requirement for statutory guidance that promotes access to legal remedies, including promoting public awareness of access to remedies especially amongst children.**

The new Human Rights Bill must be accompanied by a robust and detailed code of practice or statutory guidance to show how the administrative justice system will work. It should give

171

guidance on how a complaints procedure will function for those whose rights protected under the Bill have been violated and include a specific protocol for a child friendly and accessible procedure which must adhere to the guidelines used in this research. This would help to ensure children and young people feel empowered to make a complaint, know where to go and how to easily access support.

### 4. Creation of a children's administrative justice tribunal

The new Human Rights Bill must build on the new UNCRC Incorporation (Scotland) Bill when passed. But despite these protections, when accessing justice, children and young people, especially those of minority groups, may continue to fall through the cracks as often the selected states in this study have shown due to a justice system which has simply been designed by and for adults which may never bend appropriately enough to fit the specific needs of children. The final recommendation of this dissertation, while idealist, is for the creation of a children's tribunal designed by and for children and young people to use when in one of their rights has been violated to seek remedy and redress in a child-friendly and accessible process. Scotland has done pioneering work in the creation of children's hearing system, for children and young people who are in conflict with law. However there needs to be a system created for children and young people who feel that the state or public authorities have violated their legal duties to them. This dissertation has shown don't just need child friendly processes but a system for children and young people to feel empowered to use when a violation of their right occurs.

## Bibliography

### Legal Documents

Australian Human Rights Commission Act 1986 Section 8, (1) https://www.legislation.gov.au/Details/C2021C00559

Australian Racial Discrimination Act 1975 (No. 52, 1975) Compilation No. 17 https://www.legislation.gov.au/Details/C2016C00089

Judgement by the Attorney General and the Advocate General for Scotland - United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, European Charter of Local Self- Government (Incorporation) (Scotland) Bill, 6th October 2021, available at https://www.supremecourt.uk/cases/docs/uksc-2021-0079-judgment.pdf

New Zealand. Human Rights Act 1993 (version 1/7/22) https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html?search=ts_act_human+rights_resel&p=1&sr=1

Norewegian Act relating to the Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (Equality and Anti-Discrimination Ombud Act) 2022 https://lovdata.no/dokument/NLE/lov/2017-06-16-50

Norwegian Equality and Anti-Discrimination Act 2018 https://lovdata.no/dokument/NLE/lov/2017-06-16-51#KAPITTEL_1

UNCRC (Scotland) (Incorporation) Bill 2021, available at https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/stage-3/bill-as-passed.pdf

UN Office of the High Commissioner for Human Rights, UN General Assembly resolution 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination, available at https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

UN Convention on the Rights of the Child (UNCRC) (1990), available at https://www.ohchr.org/sites/default/files/crc.pdf

UN, Durban Declaration 2002. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Declaration and Programme of Action. (2002), available at https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf

A global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action : resolution / adopted by the General Assembly, 2021 https://digitallibrary.un.org/record/3896585?ln=en

**International Documents**

Committee on the Elimination of Racial Discrimination, Committee general comment no. 26, General recommendation XXVI on article 6 of the Convention, 24 March 2000 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7498&Lang=en

Committee on the Elimination of Racial Discrimination, UK CERD Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom of Great Britain and Northern Ireland, 26 August 2016, available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf

Council of Europe. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010) available at https://www.coe.int/en/web/children/child-friendly-justice

EU Council, Comparative approaches to anti-discrimination laws (2021) https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj07JK88YT5AhWWScAKHWc1CEo4ChAWegQICBAB&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fredirection%2Fdocument%2F49316&usg=AOvVaw1IW3hr_9WytjByj0A444Wy

UNICEF, National human rights institutions (NHRIs) Series: Tools to support child-friendly practices. Child Friendly Complaint Mechanisms, p 11 available at https://www.unicef.org/eca/sites/unicef.org.eca/files/2019-02/NHRI_ComplaintMechanisms.pdf

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, Policy Memorandum, (2020) https://www.parliament.scot/-/media/files/legislation/bills/current-bills/united-nations-convention-on-the-rights-of-the-child-incorporation-scotland-bill/introduced/policy-memorandum-united-nations-convention-on-the-rights-of-the-child-scotland-bill.pdf

**Secondary sources**

Carolyn Archer, 'Talking with the Tribunal: A Study of the Complaints Review Tribunal' (2000) 9 Auckland U L Rev 157, https://heinonline.org/HOL/P?h=hein.journals/auck9&i=177.

Australian Human Rights Commission 2020-21 Complaint Statistics, https://humanrights.gov.au/sites/default/files/2022-02/ahrc_ar_2020-2021_complaint_stats.pdf

Australian Human Rights Commission 2020-21, Conciliation Register, 2020-21, https://humanrights.gov.au/sites/default/files/2022-02/ahrc_ar_2020-2021_complaint_stats.pdf

Australian NGO Coalition Submission to the UN Committee on the Elimination of Racial Discrimination, *Australia's Compliance with the International Convention on the Elimination of All Forms of Racial Discrimination*, October 2017, P.9 accessed at, https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/INT_CERD_NGO_AUS_29334_E.pdf

Barnardos 'How systemic racism affects young people', 21st July 2020, available at https://www.barnardos.org.uk/blog/how-systemic-racism-affects-young-people-uk

Coalition for Racial Equality and Rights, 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) available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/INT_CERD_NGO_GBR_24533_E.pdf

Brian Jarrett, 'The Future of Mediation: A Sociological Perspective' (2009) 2009 J Disp Resol 49 / MLA: Jarrett, Brian. "The Future of Mediation: A Sociological Perspective." *Journal of Dispute Resolution*, vol. 2009, no. 1, 2009, pp. 49-76. *HeinOnline*, https://heinonline.org/HOL/P?h=hein.journals/jdisres2009&i=70

David Keane, Mapping the International Convention on the Elimination of All Forms of Racial Discrimination as a Living Instrument, *Human Rights Law Review*, Volume 20, Issue 2, June 2020, Pages 236–268, https://doi.org/10.1093/hrlr/ngaa013

Ursula Kilkelly (2019) The UN convention on the rights of the child: incremental and transformative approaches to legal implementation, The International Journal of Human Rights, 23:3, pp 323-337, https://www.tandfonline.com/doi/citedby/10.1080/13642987.2018.1558974?scroll=top&needAccess=true

Kate Offerdahl, Alicia Evangelides, and Maggie Powers, Overcoming Youth Marginalization (2014) https://www.un.org/youthenvoy/wp-content/uploads/2014/10/Columbia-Youth-Report-FINAL_26-July-2014.pdf

Pia Letto-Vanamo, DitlevTamm, (eds) Nordic Law in European Context. Ius Gentium: Comparative Perspectives on Law and Justice, vol 73. Springer, Cham. https://doi.org/10.1007/978-3-030-03006-3_1

Frederic Megret. The relevance of international instruments on racial discrimination to racial discrimination policy in Ontario. December 2004, available at https://www.ohrc.on.ca/en/book/export/html/8979

National Taskforce for Human Rights, Leadership Report, 12th March 2021, available at https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/

New Zealand Government, Citizens Advice Bureau. "What can I do if I have been unlawfully discriminated against?" Feb 22, available at https://www.cab.org.nz/article/KB00000983

Emma Sullivan 'Human Rights and Race Discussion incorporating ICERD alongside Race and Equality Policy to ensure Equal Rights Enjoyment in Scotland, (2020), https://hrcscotland.org/wp-content/uploads/2020/11/Sullivan_HRCS_Dissertation_HRCS-Copy.pdf

Scottish Government, (2021), "Human Rights Bill. Four United Nations treaties will be added to Scots law", https://www.gov.scot/news/new-human-rights-bill/

Bill Swannie, 'Corrective Justice and Redress under Australia's Racial Vilification Laws' (2021) 40 U Queensland LJ 27 available at https://heinonline.org/HOL/LandingPage?handle=hein.journals/qland40&div=6&id=&page=

Peter Kofi Taadi, *Racial Discrimination in Norway: Africans experiences while using healthcare services*, Noragric, (2021) https://nmbu.brage.unit.no/nmbu-xmlui/bitstream/handle/11250/2976722/Peter%20Kofi%20Taadi%20Master%20thesis.pdf?sequence=1&isAllowed=y

Together, 'What are People Saying about Incorporation?', available at https://www.togetherscotland.org.uk/about-childrens-rights/monitoring-the-uncrc/incorporation-of-the-un-convention-on-the-rights-of-the-child/ accessed 23 August 2022

UK Government. Department of Education, Education, skills and training: Ethnicity facts and figures, 24th February 2021, available at https://www.ethnicity-facts-figures.service.gov.uk/education-skills-and-training/absence-and-exclusions/permanent-exclusions/latest#main-facts-and-figures

UK Government. Report of the Commission on Race and Ethnic Disparities. Independent Report published 31 March 2021, available at

https://www.gov.uk/government/publications/the-report-of-the-commission-on-race-and-ethnic-disparities/foreword-introduction-and-full-recommendations#what-lies-behind-disparity

UNICEF, UNCRC Frequently asked questions, available at https://www.unicef.org/child-rights-convention/frequently-asked-questions accessed on 23 August 2022

UN Special Procedures, UN Experts Condemn UK Commission on Race and Ethnic Disparities Report
19 April 2021 https://www.ohchr.org/en/press-releases/2021/04/un-experts-condemn-uk-commission-race-and-ethnic-disparities-report