I have come today from the Scottish Human Rights Commission. I’d like to use this time to address two questions:

**Is there a human right to food?**

**How should it be pursued in Scotland?**

The human rights movement rests on the recognition that people are not merely recipients of welfare, charity and goodwill but holders of rights to the essentials we need to live with dignity. Clearly that includes freedom from hunger and access to sufficient nutritious food which are at the heart of the human right to food.

In Scotland the new Millennium marked a culture shift in human rights. In 1998, the Human Rights Act and the Scotland Act (creating the Scottish Parliament and Government) were passed, bringing some (although not all) of the human rights in the European Convention on Human Rights directly into Scotland’s own laws. The combined effect of the Scotland Act and the Human Rights Act places a duty on Members of the Scottish Parliament, Government and public authorities to comply with the European Convention on Human Rights observe and implement the UK’s international human rights obligations. This gave people in Scotland, for the first time, a direct route to enforcing some international human rights through Scotland’s own legal system. But the European Convention does not, unfortunately, contain the right to food. Although the Scotland Act does empower MSPs to observe and implement all the UK’s international human rights obligations.

The human right to food, although not part of the law of Scotland, is legally binding on the UK as part of the right to an adequate standard of living which sits alongside a significant number of rights found in international human rights treaties which the UK has signed up to.

But where do they all come from?

The 1948 Universal Declaration of Human Rights recognised the inherent dignity of every human being and set the standard for all the rights belonging to us. From this a system of international human rights began to evolve that now comprises a comprehensive set of international laws, treaties and monitoring mechanisms.

Over the next decades, Scotland, as part of the United Kingdom, played an important part in developing international human rights laws. The UK has signed up to many international treaties including the European Convention on Human Rights in 1953, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which entered into force in 1976.

The right to food is found in the Covenant on Economic, Social and Cultural Rights as part of the right to an adequate standard of living. This made the right to food legally binding in international law.

During the drafting of the International Covenants in the 1960s so called civil and political rights and economic and social rights were separated. The Cold War politics of the era meant that, at the risk of being too general – one half of the world embraced civil and political protections and the other embraced economic and social protections.

This is best understood by looking at the regional human rights systems that developed. Whereas the systems for the Americas and Africa recognise the right to food the European Convention on Human Rights does not. Economic and social rights, such as the right to an adequate standard of living, have been more or less neglected in Western Europe. But the landscape is changing – newer national Constitutions tend to make no distinction between different kinds of human rights, the Optional Protocol containing the Complaints Mechanism to the Covenant on Economic, Social and Cultural Rights has now entered into force demonstrating that these sorts of rights can be the subject of cases against countries brought by, or on behalf of, individuals. Overall, the UK’s failure to bring economic, social and cultural rights into its domestic legal systems goes against the international trend. Which is particularly jarring considering the current party political attacks on the existing human rights legislation we do have.

So what does the right to adequate food contain?

As an economic, social and cultural right, the general obligations is to ensure that the “maximum of available resources” are used to progressively realise the right to adequate food. Let’s break that down and consider to what extent this is done in Scotland: Firstly the maximum of available resources includes resources potentially available, such as from progressive taxation; but more widely a broad range of types of resources such as land and so the former UN Special Rapporteur on the right to food has recommended that countries with grossly unequal patterns of land ownership should undertake human rights based land reform as part of their obligations under the right to food. Secondly “progressive realisation” means reasonable, planned and fairly prioritised steps to realise the right to food. These steps, which should crucially include the development of a national food security or right to food strategy, include immediately prioritising the eradication of hunger and malnutrition, identifying and prioritising those who are most food insecure. This also applies at times when resources are limited – the most vulnerable in society should be prioritised, not punished.

More broadly, to realize the right to food, food must be available, accessible and adequate.

**Availability** - food should be available for sale in markets and shops. Food should be available from natural resources.

**Accessibility** - food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable.

**Adequacy** - means that the food must satisfy dietary needs. For example, if children’s food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food should also be safe for human consumption and free from contaminants including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable so religious and cultural taboos must be accommodated.

Fulfilling these outcomes requires that states respect, protect and fulfil the right to food.

Scotland must **respect** people’s existing access to food and means of obtaining it. The UN High Commissioner for Human Rights’ guidance refers to this meaning states cannot suspend legislation or policies that give people access to food and the guidance gives the specific example of unjustifiable changes to social welfare legislation. I am sure many of you are making the links here with the UK’s Government’s welfare reform program.

Scotland is also required to **protect** our right to food against violations by third parties. Businesses being the obvious example. This means that the food sold in our markets must be safe and nutritious, this also extends to the obligation to regulate advertising and supporting parents and professionals to encourage healthier eating and physical exercise.

The obligation to **fulfil** is about being proactive and facilitating food security. This covers many bases of policy from land reform to minimum wage. An important element of the fulfil obligation includes providing social safety nets for the most deprived.

**So what is the state of realisation of the right to food in Scotland?**

The impact of public sector cuts and welfare reform has undoubtedly given rise to concerns about the right to food in Scotland. When we first started mapping the gaps in human rights in Scotland back in 2009 issues around access, accessibility adequacy was nowhere near as a common a concern among those with direct experience of poverty and those campaigning for social justice as they are now. Here we are in 2014 with the scandal of food banks as a defining political issue. It appears that there most certainly is a compelling evidence that the UK is regressing on its obligations rather than progressively realising it. The disproportionate impact of lack of access to nutritious food on women, children and disabled people is also an indictment of Scotland’s human rights record in this area.

**What can be done to realise the right to food in Scotland?**

There is work going on in Scotland at the moment to give greater effect to the right to food as a recognised and enforceable legal right. This work is within SNAP, Scotland’s National Action Plan for Human Rights. The evidence base for SNAP found that Scotland needed a more systematic approach to assure and not assume the realisation of human rights in practice. SNAP brings together government, public bodies, trade unions, feminist organisations, civil society and people with direct experience of poverty to agree actions on all areas affecting people’s lives. One particular action group focuses on the human right to an adequate standard of living which contains the right to food.

The work of another group convened by the Commission, Amnesty International and the Scottish Government are committed to exploring the potential benefits of further incorporation of human rights treaties into the law of Scotland.

It is our intention that incorporation of the International Covenant on Economic and Social Rights will be a key feature of these discussions. What this could look like in a formal legal sense is that we could enforce those rights in a Scottish court and also that public institutions were bound by them as they are now with the European Convention rights (s.6 Human Rights Act).

Work around the right to food within SNAP will focus on empowerment, ability and accountability.

Empowerment: Empowering people in poverty to understand and claim their rights and take part in identifying how their rights should best be realised;

Ability: development of a national right to food strategy;

Accountability: increasing accountability through incorporation of Economic, Social and Cultural Rights. This will provide a chance to turn political rhetoric into real enforceable rights.

A human rights based approach is ultimately about shifting power to people. People struggling to access food in Scotland today are invariably the same people who feel totally disempowered and disenfranchised in terms of accessing other rights. The right to food is about ensuring that the State prioritises those who are most food insecure, they should have the first call on resources and support. People as rights holders should be able to hold those in power to account. The human rights framework has much to offer in order to achieve true accountability for the right to food in Scotland. Scotland’s National Action Plan for Human Rights will be working on this basis to achieve the vision of a Scotland in which everyone lives with dignity. And we hope that over the next four years to work with many of you here towards that goal. Thanks very much for listening and I look forward to your feedback.