

**CONSULTATION SUBMISSION on**

**OUR 10 YEAR STRATEGY FOR POLICING IN SCOTLAND**

**May 2017**

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

 **Introduction**

The Commission welcomes the opportunity to respond to the consultation on the 10 year strategy for policing in Scotland. The Commission, since its inception, has provided periodic recommendations to the police in Scotland in relation to the development of their strategic and operational standards.[[1]](#footnote-1) The Commission also provided a set of recommendations for the creation of the new police force via the Police and Fire Reform (Scotland) Act 2012.[[2]](#footnote-2) We welcome the commitment to the values of fairness, integrity and respect as well as to a rights based approach to policing in the proposed strategy. However, we recommend that human rights should be explicitly cited whilst mainstreamed across the whole strategy.

The current priorities all impact on human rights and while considering human rights standards would help shape the planned work; they are not currently considered within the draft strategy. The second part of this response provides some example of the relationship between the police priorities and human rights.

Human rights principles and standards can helpfully guide all programming in all phases of public policy. This includes not only assessment and analysis, but also programme planning and design, for example goal setting and strategy development. Embracing the strategic and practical application of human rights to the provision of policing has the potential to enhance the delivery of effective services. This should produce better results for both service users and staff in a culture which respects, protects and fulfils human rights obligations.

**1. Human rights law and standards**

Police play a vital role in defending some of our most fundamental human rights and are in a real sense the day-to-day defenders of human rights. They support our ability to live free from violence, crime and fear, and help create an environment within which other rights and freedoms can be enjoyed. In order to discharge those tasks, police often have to interfere with the rights of those mindful to harm the rights of others. Therefore, it is an important principle of human rights law that police are obliged to know, and to apply, international standards for human rights in both its strategy and operations.

Domestically the Human Rights Act 1998 (HRA) requires all public authorities[[3]](#footnote-3) – including the police – to act in a way which is compatible with the individual rights and freedoms contained in the European Convention on Human Rights (ECHR). Furthermore all legislation must be read and applied compatibly with the ECHR obligations.

There are also a range of international obligations applicable to Scotland which recognise that the primary purpose of policing includes the protection of human rights.[[4]](#footnote-4) In Scotland, the Scottish Parliament and Ministers have a responsibility to observe and implement international obligations, including international human rights treaties within the areas of its devolved competence. Those obligations are:

• International Covenant on Civil and Political Rights (ICCPR)

• International Covenant on Economic, Social and Cultural Rights (ICESCR)

• International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

• Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT)

• Convention on the Rights of the Child (CRC)

• Convention on the Rights of Persons with Disabilities and its Optional Protocol (CRPD).

It ought to be clear from the strategic priorities that police activities will be compliant not solely with domestic arrangements, but also with the international standards which apply in Scotland by virtue of the United Kingdom’s ratification of international instruments and the Scotland Act 1998.

During the passage of the Police and Fire Reform (Scotland) Act 2012 the Commission expressed regret that the human rights obligations relating to the police were not more clearly included in the statement of policing principles.

Given the centrality of human rights to the work of Police Scotland and the Scottish Police Authority, and the absence of an explicit statement relating to human right in the policing principles, the Commission considers that it is essential to explicitly reference human rights within the Strategy for Policing in Scotland. In addition there is an existing commitment made by Police Scotland as part of Scotland’s National Action Plan to further embed human rights within the structures and culture of policing. This includes strengthening accountability for the respect of human rights as well as training on human rights for the police.

The benefits of introducing human rights into the strategy and everyday policing have been highlighted in other UK jurisdictions. For example, the former Northern Ireland Police Ombudsman, Dame Nuala O'Loan, reported that adopting a human rights based approach to policing in Northern Ireland made a significant difference, observing that *'[w]hen human rights are factored into everyday policing, things change':*

 *People are now coming forward to help police in a way that has not happened in the past. Complaints of abuse of force, intimidation and harassment by police officers fell over seven years from 52% to 36% of complaints… People and police officers are safer, and suffer less injury. Part of this can be attributed to wider political events; however much of the improvement is clearly the result of the introduction of human rights-compliant policing in a context of real leadership and of strong accountability mechanisms. [[5]](#footnote-5)*

Human rights principles relevant for policing are: participation; accountability; non-discrimination; universality and inalienability; inter-dependence; and legality. These principles are explained below. The 10 year strategy for policing in Scotland could explicitly built around these principles. While the draft strategy mentions a rights based approach, it currently does not explain how the (human) rights framework shape its priorities, focus areas and activities. We suggest the final draft gives explicit consideration to this issue.

**2. Strategic police priorities and human rights principles**

This section will illustrate how a human rights lens would enhance strategy by focusing on some of the current priorities. We will focus on localism response and accountability as these link closely to some of the elements of a human rights based approach to policing,

‘**Localism’** links closely to participation. Everyone has the right to participate in decisions which affect them. Participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood. The policing principles are most likely to be met, and change is more likely to be effective, if all of those affected are engaged with the process. This principle underpins an important aspect of a human rights based approach. This is to identify and, where necessary, challenge power relationships and structures which determine who makes decisions and whose voice gets heard and acted upon. This requires a move to new models of support which are genuinely participative and person-centred.

This priority also highlights the **inter-dependence** and inter-relatedness of human rights. The realisation of one right often depends, wholly or in part, upon the realisation of others. For instance, the realisation of the right to access to justice may depend, in certain circumstances, on realisation of the right to information.

In terms of ‘**response’,** the detection and investigation of crime is a core purpose of policing. Human rights law places a general duty on States to ensure the protection of human rights such as the right to life; freedom from inhuman treatment; freedom of thought and expression as well as assembly and association; and the non- discrimination principle. This includes a duty of effective investigation in cases of violations of rights. In order to do this job effectively the police are granted a number of powers and a wide degree of discretion in the performance of their duties -investigatory and coercive powers are integral to this. It is essential that police strategy and operations are grounded inhuman rights standards and norms and the rule of law.

This priority links closely with the principle of **legality** under human rights law. The full range of legally protected human rights must be respected, protected and fulfilled by Police Scotland. A human rights based approach requires the recognition of rights as legally enforceable entitlements, and is linked to national and international human rights law (see above). It is necessary to identify the human rights which are impacted and look to the relevant standards to the appropriate response..

Any response should also consider the principle of **non- discrimination**. This does not only mean that all forms of discrimination must be prohibited, prevented and eliminated, but requires the prioritisation of those in the most vulnerable situations.

Taking this approach will improve service delivery processes to victims of crime who are vulnerable in Scotland e.g. Black Minority Ethnicity and victims of gender-based crime and vulnerable children and adults. Non-discrimination is crucial in the delivery of policing activities, enabling equality of access and service provision. It is also vital there is robust governance in place so that equality as per the provisions of the Equality Act 2010 is mainstreamed into Police Scotland’s day-to-day business.

**‘Accountability’** is essential to maintain public confidence in policing and inspire trust. The Commission welcomes the focus on accountability, particularly on the importance of instilling public confidence and ensuring transparency.

Accountability requires effective monitoring of human rights standards. For accountability to be effective there must be appropriate laws, policies, administrative procedures and mechanisms of redress in order to secure human rights. For this purpose: it is important to align the activities to be developed with human rights standards. It also requires to understand views and personal experiences of accountability procedures, for example whether all people know where to seek redress and have support to do so (whether complaints or protection).

There are a number of international instruments that recognise the importance of monitoring and measurement based on human rights indicators against which police policies are assessed. In particular:

 1. The European Code of Police Ethics, which requires accountability

mechanisms, based on communication and mutual understanding between the public and the police, to be promoted.

 2. The 2011 Luxemburg Declaration, which reiterates the need to ensure transparency, accessibility, accountability, legitimacy, impartiality and integrity in all systems created for police oversight and specifically promotes respect for the rule of law and human rights through and within all police oversight activities. It also calls for strong civil society participation in police oversight.

**3. Conclusion**

The promotion and protection of human rights is at the very core of policing. They are an intrinsic part of all police’s functions, powers and duties. They enhance the ability of the police and the police authority to fulfil their role. We welcome the commitment to the values of fairness, integrity and respect. However, the Commission recommends that human rights give substance and meaning to these values and should be explicitly referenced and clearly identified across the whole strategy.

The Commission has illustrated how human rights can enhance some of the draft priorities, by highlighting the link with human rights principles. While the current priorities all impact on human rights and considering human rights standards would help shape the planned work; they are not currently considered within the draft strategy.

Human rights principles can guide all programming in all phases of public policy, including not only assessment and analysis at operational level, but also programme planning and design, for example goal setting and strategy. Embracing the importance and the strategic and practical application of human rights to the provision of policing has the potential to deliver more effective services. This should produce better results for both service users and staff in a culture which respects, protects and fulfils human rights obligations.

Human rights are also important because of the values they represent. There is an ever increasing expectation by the part of members of the community that policing should reflect fundamental values and respect the dignity of all people. These expectations enable a greater community’s trust, cooperation, and in turn, a more effective policing.

**End.**

1. There have been a number of welcome developments over recent years with law, policy, and practice changes relating to police issues, including police questioning, fire arms deployment, the minimum age of prosecution, and non-statutory stop and search. Many of these changes have come as a direct result of human rights challenges, including recommendations from the Commission and other national and international human rights bodies. [↑](#footnote-ref-1)
2. Our full submission and recommendations are available at http://www.scottishhumanrights.com/news/scottish-police-reform-must-include-human-rights/ [↑](#footnote-ref-2)
3. Human Rights Act 1998 S. 6 [↑](#footnote-ref-3)
4. See for example Article 2 of the United Nations Code of Conduct for Law Enforcement Officials states that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. The European Code of Police Ethics 2001 states that the main purposes of the police in a democratic society governed by the rule of law includes the requirement to protect and respect the individual’s fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights (ECHR). [↑](#footnote-ref-4)
5. Dame Nuala O’Loan, The Guardian, My Lessons for the Police, 26 June 2009, available at: http://www.guardian.co.uk/commentisfree/2009/jun/26/human-rights-police-northern-ireland [↑](#footnote-ref-5)