SHRC

Scottish Human Rights Commission

Annual Report 2013-14



Participation, accountability, non-discrimination, empowerment and legality (the PANEL principles) are five key elements of a human rights based approach. Our website has more information about this.

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#### SHRC/2014/01

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# "Scotland is a country where everyone is able to live with human dignity"

The vision of Scotland's National Action Plan for Human Rights, published on 10 December 2013.



# About the Commission

The Scottish Human Rights Commission has a broad remit to promote and protect human rights for everyone in Scotland.

reated by an Act of the Scottish Parliament in 2006, the Commission is accountable to the people of Scotland through the Scottish Parliamentary Corporate Body.

The Commission began working in Scotland in December 2008. Since then, we have carried out extensive research into how human rights are experienced by people in Scotland, where gaps remain and what can be done to better promote and protect human rights for all. We have also developed practical resources for civil society and the public sector to help improve understanding and awareness of how to put human rights into practice.

The Commission is proud to play its part in helping build a better Scotland and a better world, where human rights are enjoyed by all people.

Our strategy and legal team regularly identifies and responds to strategic legal and policy issues that affect people's human rights. We raise awareness of human rights through our communications and outreach work.

We have developed, in close collaboration with partners from across Scottish society, Scotland's first national action plan for human rights.

The Commission plays an important role as a bridge between human rights in Scotland and the international human rights system. We share our experiences with our counterparts in other countries and we bring back good practice from elsewhere to our work here in Scotland.

We are accredited as an "A Status" national human rights institution within the UN system, which means we can report directly to the UN on human rights issues such as the rights of older people, health, business and climate justice. It also means we can make contributions to the UN Human Rights Council.

The Commission chairs the European Network of National Human Rights Institutions, one of four regional groups which bring together human rights bodies from around the world. The European Network is made up of 40 human rights institutions from all over Europe and works alongside regional groups from Africa, Asia/Pacific and the Americas.

# Welcome from the Commission

We are pleased to report on another successful year for the Scottish Human Rights Commission in our work to promote and protect human rights for everyone in Scotland.

This year saw a major step forward in the realisation of human rights, right across Scotland, with the launch of Scotland's first National Action Plan for Human Rights (SNAP) on 10th December 2013 – International Human Rights Day.

SNAP is grounded in extensive research into the state of human rights in Scotland – the institutions, policies and practices that affect how people's rights are realised – and has been developed by the Commission with partners from across civil society, Scottish Government and the public sector. It sets out a bold roadmap towards a Scotland where we can all live with human dignity, backed by commitments to practical action across a range of priorities, over the coming years.

The Commission has continued to promote the benefits of using a human rights based approach across all aspects of public policy, including health and social care, justice and safety and tackling poverty.

This year, our engagement with both civil society and the public sector contributed to a human rights based approach being taken in several new areas. For example, "see me" – Scotland's campaign to tackle stigma in mental ill health – was relaunched with an explicit human rights focus.



The Scottish Parliament's Welfare Reform Committee took on board our evidence about the human rights impact of "austerity" policies, highlighting this in their own report and recommendations for action on the bedroom tax.

In its recommendations on proposed changes to arrangements for monitoring and inspection of prisons, the Scottish Parliament's Justice Committee recommended that the Scottish Government address concerns raised by the Commission.

Our work with survivors of historic child abuse continued this year with the publication of a draft Action Plan on Justice for Victims. This important step emerged from an "InterAction" process, facilitated by the Commission over preceding years, which brought together survivors of abuse, institutions, government, residential care workers, civil society and others.

In our role as a bridge between Scotland and the international human rights system, the Commission was pleased to welcome and support the UN Special Rapporteur on the Right to Adequate Housing in her investigations in Scotland. We were also pleased to work with the Glasgow 2014 Commonwealth Games Organising Committee to help develop the first ever human rights policy in Games history – an important part of the Glasgow Games legacy.

The Commission is proud of its status as an accredited "A status" national human rights institution (NHRI) within the UN system. As part of our regular monitoring of the implementation of human rights in Scotland, the Commission gave evidence to meetings of the UN Human Rights Council and to the 27th meeting of the International Coordinating Committee of NHRIs. We also provided evidence to reviews of the implementation in Scotland of the Convention Against Torture and the Convention on the Elimination of Discrimination Against Women.

Unfortunately, debates about human rights at UK level continued to be hostile, with threats to repeal or dismantle human rights laws becoming more frequent and vocal. The Commission has continued to express its clear view that a more productive focus for debate is how to better realise human rights for everyone in practice. Given the potentially significant impact in Scotland of a change to the UK's human rights laws, the Commission will continue to contribute to these debates wherever useful.

With Scotland having voted No to independence and greater devolution now on the horizon, it is important that Scotland takes the opportunity this presents to refresh its commitment to realising human rights. The year ahead will see the Commission working to build on the strong foundations of Scotland's National Action Plan to achieve a better culture, work towards full incorporation of international human rights and secure further tangible improvements in the respect, protection and fulfilment of people's rights in practice.

Professor Alan Miller, Chair Professor Kay Hampton, Commissioner Shelagh McCall, Commissioner Matt Smith OBE, Commissioner

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## Our Strategic Priorities

The Commission works to a set of strategic priorities. These are developed in consultation with our stakeholders and staff team and agreed by our Commissioners.

The Commission's second Strategic Plan covers the period 2012-16. It sets out the following five priorities:

and respect for

Supporting the implementation of human rights in practice.

- Progressing the realisation of human rights of people in Scotland and beyond through further developing our international role.

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where in our view Scotland

The full Strategic Plan is available on the Commission's website.

#### Our Work in 2013-14

The Commission carries out a broad range of activities to promote and protect human rights. Our work includes advising Parliament on human rights issues in law and policy, raising the profile of human rights through communications and outreach and supporting other organisations to develop a human rights based approach to their own work.

In April 2013, we were taking in the feedback from our recently published insights paper on *The Future of Human Rights in Scotland*. The paper looked at the ways that human rights protection could be strengthened in Scotland now and in the future. This started a discussion about the role of human rights in the lead-up to the referendum on Scottish independence.

In May, the UK's record was reviewed by the UN Committee Against Torture. The Commission's report to the Committee called for more to be done to ensure compliance in the context of health and social care settings, welfare reform policies, historic child abuse, immigration, custody settings and corporal punishment. The UN Committee's recommendations reflected a range of concerns raised by the Commission.

In June, we held the latest in a series of "InterActions" bringing together survivors of historic abuse, institutions, government, residential care workers, civil society and others. This took place as part of a continued programme of work, with CELCIS, on securing access to justice and remedies for survivors and resulted in the publication of a draft Action Plan for Justice for Victims.

The UK's compliance with the UN Convention on the Elimination of Discrimination Against Women was reviewed in July. In concluding observations, the UN Committee addressed issues that had been raised by the Commission and civil society organisations. These included violence against women, the impact of legal aid and welfare reforms, childcare costs, female stereotypes in the media, occupational segregation and women in prison.

In September, the Commission welcomed the UN Special Rapporteur on the Right to Adequate Housing to Scotland. We helped facilitate discussions between her, a wide range of civil society organisations and people whose right to adequate housing has been directly affected in recent years. The Rapporteur's findings highlighted the negative human rights impact of policies including the "bedroom tax". In the wake of her visit, the Commission repeated its calls for all international human rights obligations to be incorporated into Scotland's domestic laws, so that future policies take full account of human rights and can be challenged where they result in a breach of rights.

In October, we jointly hosted a conference called "Responsibility and Rights" with the Institute for Business and Human Rights and Anti-Slavery International. Sponsored by the Joseph Rowntree Foundation, the conference explored human rights issues raised by the Glasgow 2014 Commonwealth Games.

October also saw the Commission taking part in a major international conference bringing together leading thinkers, civil society leaders and policy makers to identify and share examples of how to achieve climate justice – putting human rights at the heart of efforts to tackle climate change.

Also in October, we contributed to a World Health Organisation conference on the benefits of a human rights based approach to health, based on our experiences of evaluating the State Hospital in Carstairs.

In **November**, we responded to the Procurement Reform (Scotland) Bill consultation, recommending that human rights be explicitly included in the legislation.

**November** also saw the Commission give evidence to Draft Scottish Government Guidance on Relationships, Sexual Health and Parenthood Education in Schools, highlighting that the provision of effective sexual health education is an essential element of realising the right to education and the right to the highest attainable standard of health.

International Human Rights Day on 10th

December saw the launch of Scotland's National
Action Plan for Human Rights and marked five
years since the Commission started its work.
Extensive media coverage, a parliamentary debate
and lots of social media around the launch of a new
animation all helped to raise the profile of human
rights and the Commission's work to protect and
promote them. On the same day, the Glasgow 2014
Commonwealth Games Organising Committee
published a human rights policy for the Games,
the first of its kind in Commonwealth history.

Police Scotland's use of stop and search powers hit the news in January 2014. Commenting on two reports showing a high number of stop and search operations, our Chair, Alan Miller, said they "demonstrate the need for greater clarity – for the public on the dramatic increase in the use of stop and search powers, and for officers as to how such powers should be exercised."

At the annual "Gathering" of Scottish civil society in **February**, we took part in an event with a range of organisations, looking at food poverty as a human rights issue. The event led to increased interest in the right to food, an important international human right that should be fully incorporated into Scottish law.

In March, we were busy finalising our new web portal to help organisations carry out Equality and Human Rights Impact Assessments (EQHRIA), which we launched in April 2014. A major project, delivered with the Equality and Human Rights Commission, and supported by eight partners including NHS Health Scotland, COSLA and the Scottish Government, EQHRIA is a practical tool for public bodies.

In March, we were invited to join a meeting convened by the Council of Europe's Commissioner for Human Rights (pictured below) to promote the development of national action plans for human rights across ten Central European countries. Our work on Scotland's National Action Plan was presented as a model of good practice.



## Focus: Scotland's National Action Plan for Human Rights

SNAP is the first action plan for human rights to be developed in any part of the UK, providing a roadmap to achieve a bold vision of a Scotland where each and every person can live a life of human dignity.

aunched in December 2013 after an extensive process of research, development and collaboration, SNAP is now the home for collective action, on a wide range of human rights issues, by dozens of partners working across government, civil society and the public sector.

Actions are underway to realize human rights in health and social care settings, to improve access to justice and safety and to explore human rights based approaches to tackling poverty.

Plans are also being developed to raise awareness of, understanding of and accountability for human rights, so that a better human rights culture develops across Scotland.

Finally, partners in SNAP are working on initiatives to give better effect to Scotland's international human rights obligations, with a particular focus on business and human rights, climate justice and international development.

In line with UN guidance on National Action Plans for human rights, SNAP has been developed in an inclusive way, based on evidence of gaps in human rights protection (see *Getting it Right*, published by the Commission in 2012) and will be independently monitored.

Experience from Nordic and Commonwealth countries, among others, shows that National Action Plans have great potential to deliver practical, sustainable improvements in how people's rights are protected in practice. This is particularly true for people who are marginalised and excluded in society.

SNAP has received strong support from across Scottish civil society and from across the political spectrum, including all sides of the independence debate. This is very welcome and should provide a robust foundation for its continued implementation and development, as an integral part of Scotland's future.

SNAP has also been welcomed internationally and has been promoted to other countries as an example of good practice.

A full report on the first year of SNAP's implementation will be published in December 2014.

SNAP is the first action plan for human rights to be developed in any part of the UK



# Focus: Our Legal and Policy Work

Engaging with legislative and policy processes is an important part of the Commission's work to ensure better protection for human rights. In 2013-14, the Commission team prepared and submitted responses to 13 Scottish Parliament and Scottish Government consultations.

In developing our responses, we worked with relevant civil society organisations and public bodies to explore the human rights issues involved and make considered recommendations for changes to law, policy and practice.

This year, we submitted responses to:

- Health and Sport Committee Consultation on Victims and Witnesses (Scotland) Bill – National Confidential Forum
- Victims and Witnesses (Scotland) Bill
- Welfare Reform Committee at the Scottish Parliament
- Courts Reform (Scotland) Bill
- + Children and Young People (Scotland) Bill 2013
- Tribunals (Scotland) Bill
- Criminal Justice (Scotland) Bill
- Scottish Government Draft Guidance on the Conduct of Relationships, Sexual Health and Parental Education in Scottish Schools

- ♣ Procurement Reform (Scotland) Bill
- Public Petitions Committee at the Scottish Parliament on Mental Health legislation
- Scottish Government Consultation on the Draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014
- Regulation of Investigatory Powers (Scotland)
   Act 2000: Revised Codes of Practice for Covert
   Surveillance and Covert Human Intelligence
   Sources
- Draft proposals for a Mental Health (Scotland)
   Bill

Our submissions were influential in a number of cases, leading to human rights concerns being addressed through subsequent reports, policies and changes to practice.

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#### Welfare Reform Committee

Certain welfare reform measures have been shown consistently to have an adverse impact on people's human rights. In May 2013, the Scottish Parliament's Welfare Reform Committee heard evidence from the Commission on the human rights impact of the UK Welfare Reform Act.

Our evidence highlighted issues including the UK Government's failure to meet its international human rights obligations, including protecting and fulfilling the right to social security, adequate housing and an adequate standard of living. We also noted the discriminatory effect of some social security cuts on disabled people and others, as well as the cumulative impact of cuts, leading

to destitution that could amount to inhuman or degrading treatment, which is prohibited by the Human Rights Act.

The Commission also highlighted that the introduction of a policy like the "bedroom tax" should be assessed for its impact on human rights before being brought in, providing a good example of why incorporating all international human rights into Scotland's laws would be beneficial.

We were pleased to see the Committee's final report calling for the abolition of the "bedroom tax" policy and its recognition that it "may well breach human rights".

#### The Criminal Justice (Scotland) Bill

This Bill included proposals to remove the need for corroboration in Scots law. In our submission to the legislative process, the Commission highlighted the important role played by corroboration in preventing someone from being convicted on evidence of insufficient quality. We argued that if corroboration is abolished without sufficient additional safeguards being introduced, there is a danger that Scots law will have inadequate measures in place to allow for effective challenge to the quality of evidence. This increases

the risk of miscarriages of justice, violating the right to a fair trial.

In line with our recommendations, the Scottish Parliament's Justice Committee concluded that the removal of the need for corroboration should only take place after an independent review of other reforms that may be needed to ensure sufficient checks and balances are in place within the criminal justice system as a whole. As a result, the Scottish Government established a review to consider additional safeguards.

# Replacing Prison Visiting Committees – the Draft Public Services Reform (Prison Visiting Committees) Order

The Commission responded to proposals from the Scottish Government to introduce a new system of independent monitoring of prisons, abolishing Prison Visiting Committees. Our evidence highlighted the need to ensure that human rights standards were explicitly articulated in the proposed legislation, noting the "striking lack of reference to either OPCAT [the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment

or Punishment adopted on 18 December 2002] or any other relevant human rights standards required to establish an effective system that prevents human rights violations".

In its report on the proposals, the Scottish Parliament's Justice Committee agreed with the majority of the Commission's views, recommending that the Scottish Government consider incorporating more detail into the Order in the areas suggested by the Commission.

### Focus: Health and Social Care

Health and social care services matter to everyone in Scotland. We all use these services at some point during our lives and many of us will experience our loved ones using them too.

We know, from research evidence, that there is still inconsistent respect and protection of people's rights in health and social care settings. This is why the Commission has focused significant attention on addressing these gaps since we began working in 2008.

We have promoted and developed tools to embed a human rights based approach in policy and practice, including the *Care About Rights* package of training and guidance, which remains extremely popular and well-used.

In 2013-14, we were delighted to see other agencies really embrace this approach in their own work. For example:

- → The "see me" campaign to tackle stigma and discrimination in mental health was re-launched with human rights at the heart of its new approach.
- ♣ In May 2013, the ALLIANCE announced at a major conference, "Being Human", that their own campaigning and advocacy work would now be grounded in a human rights based approach.
- ➡ In a review of National Care Standards, both the Care Inspectorate and the Scottish Government committed to ensuring a human rights based approach underpinned the whole process.

- → The Scottish Government is taking a human rights based approach to implementing Commitment 5 of the Mental Health Strategy, and through its work on Self-Directed Support.
- ➡ NHS Health Scotland are co-convening the Human Rights Action Group on Health and Social Care through Scotland's National Action Plan for Human Rights, and have made a range of commitments themselves under this priority.

As Scotland moves towards integrating health and social care provision, there will be a continued need and opportunity to develop services that ensure people's dignity, balance risk and autonomy and uphold the rights of everyone, including people using services and the staff that provide them.

Significant work is planned in this area for 2014-15 through Scotland's National Action Plan for Human Rights.



# Focus: Justice for Survivors of Historic Abuse

Sexual abuse and serious physical or emotional abuse or neglect is a breach of the human right to be free from torture or other cruel, inhuman or degrading treatment. The Commission has been working since 2009 to promote effective access to justice and remedies for survivors of historic child abuse.

In 2013-14, a draft Action Plan on Justice and Remedies was published for consultation. This followed an "InterAction" process that brought together survivors of abuse, institutions, government, residential care workers, civil society and others. The InterAction process is based on a Human Rights Framework for Justice and Remedies for Historic Child Abuse in Scotland, published by the Commission in 2010.

The draft Action Plan sets out two outcomes:

- Acknowledgement of historic abuse of children in care and effective apologies are achieved.
- Accountability of historic abuse of children in care will be upheld, including access to justice, effective remedies and reparation.

In finalising the Action Plan, parties have been encouraged to consider steps which will deliver ten commitments, including exploring options for a national survivor support fund, considering the merits of an Apology Law and considering the value of a National Inquiry.

Our work on historic abuse will continue in 2014-15, when we expect a final Action Plan to be agreed and taken forward by the Scottish Government and others.

In developing the Action Plan, we work in partnership with the Centre of Excellence for Looked After Children in Scotland (CELCIS). We are very grateful for all of their input to this process.

Our work on historic abuse will continue in 2014-15, when we expect a final Action Plan to be agreed and taken forward by the Scottish Government and others.



## Focus: Our International Work

The Commission plays an important role as a bridge between Scotland and the international human rights system.

The are proud to be accredited as an "A status" national human rights institution (NHRI) within the UN human rights system, which enables us to contribute to the monitoring of UN treaty implementation in Scotland.

In 2013-14, the Commission gave evidence to the 25th meeting of the UN Human Rights Council. Our Chair, Alan Miller, delivered a joint statement on behalf of the Commission, the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission, noting the negative impact of welfare changes and public spending decisions on people's right to adequate housing and an adequate standard of living. Commissioner Kay Hampton contributed evidence on the Scottish approach to children's rights in the justice system.

We also took part in the 27th meeting of the International Coordinating Committee of National Human Rights Institutions, which brings together over 100 organisations like the Commission from around the world. We were able to share lessons from Scotland on developing a national action plan and the relationship between NHRIs and Parliaments.

In May 2013, the Commission was re-elected as Chair of the European Network of NHRIs (ENNHRI). Through this work, we bring together over 40 organisations from around Europe to share lessons and ideas about how to promote and protect human rights across the continent.



#### Monitoring the implementation of UN Treaties

In 2013-14, the UN Committee Against Torture assessed the UK's compliance with the **Convention Against Torture**. The UN Committee was concerned about many of the gaps that the Commission highlighted about Scotland's record under the Convention. It recommended changes in the law and policy around using restraint against children, detention in police custody, police use of Taser, high levels of imprisonment and overcrowding and corporal punishment of children.

In summer 2013, the Commission gave oral and written evidence to the UN Committee on the Convention to Eliminate all Forms of Discrimination Against Women. Sixteen of the Committee's recommendations reproduced ours, in areas including personal, social and

emotional development in schools, expanding the limitation period for claims regarding historic abuse, adopting a national framework to combat trafficking in women and girls, and taking action to increase participation by girls in science, technology, engineering and maths.

Importantly, the Committee also recognised the role of devolved parliaments within the UK and, in its recommendations, reflected the UK's constitutional framework. This represented a significant step forward when it comes to Scotland's interests and experiences being better understood and reflected within the UN human rights system.



"Scotland's National Action Plan for Human Rights is a bold venture which aims to bring human rights home in people's everyday life. It signals a strong commitment to internationally agreed human rights standards which is particularly significant in the current context of economic crisis and austerity."

Nils Muižnieks, Council of Europe Commissioner for Human Rights

#### Who We Are

The Commission team is made up of a full time Chair, three part time Commissioners and eleven members of staff.

#### Chair of the Commission

Professor Alan Miller has a combination of experience and expertise in the field of human rights grounded in 25 years involvement with the legal, academic and voluntary



communities within Scotland. He previously ran a law practice in Castlemilk, Glasgow and is a past President of the Glasgow Bar Association and former Director of the Scottish Human Rights Centre. He also teaches human rights on the LLM programme at the University of Strathclyde where he is a member of the Centre for the Study of Human Rights Law.

#### Commissioners

Professor Kay Hampton is Professor of Communities and Race Relations and holds a PhD in Sociology. Kay works as a freelance social researcher, trainer and special advisor on fair and



accountable governance; risk and outcomebased business development strategies; and the realisation of equality, diversity, human rights and social justice outcomes.

Shelagh McCall is a qualified lawyer. She began her career practising as a criminal defence solicitor in East Lothian before being called to the Scottish Bar in 2000. In January 2006 Shelagh



joined the United Nations as a prosecution appeals counsel at the International Criminal Tribunal for the former Yugoslavia, where she handled appeals in cases of crimes against humanity and war crimes. In 2009, she was appointed as a part-time Sheriff. Shelagh has been a legal member of the Mental Health Tribunal for Scotland since 2013.

Matt Smith OBE was the Scottish Secretary of UNISON (1993-2010) and served as President of the STUC (1999-2000). He is a member of a number of public bodies including the Employment



Appeals Tribunal, Scottish Water and the Scottish Standards Commission. He serves as a Justice of the Peace in Ayrshire.

Our website gives details of the Commission's staff team.

## Accountability

The Commission operates within a structure of good governance and strong internal controls. We strive to lead by example.

We follow the recommendations set out by the Nolan Committee, adhering to the Seven Principles for Public Life:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- + Honesty
- Leadership

The Commission works to a Strategic Plan covering 2012-2016 and, this year, carried out activities in line with its third Operational Plan, spanning 2012-2014. The Commission meets monthly (apart from August) to review progress and plan ahead, in line with this framework. Minutes of each meeting are published on our website.

An internal Finance, Risk and Audit Committee assesses the Commission's internal controls on an ongoing basis. A Business Risk Management Group also meets monthly to assess business risks to the Commission.

The Commission is committed to continuous improvement and to training and professional performance. All Commission staff have access to continuing professional development and in 2013-2014, staff took part in training in risk management, communications and project management.

The Commission does not provide advice to individuals or take on individual cases. However, we do signpost people to other sources of support. In 2013-14, we handled 223 public enquiries.

The Commission received and answered 10 Freedom of Information requests.

Three formal complaints were received.

The Audited Accounts for 2013-2014 and a reporting statement relating to the Public Services Reform (Scotland) Act 2010 will be published in December 2014.

We follow the recommendations set out by the Nolan Committee, adhering to the Seven Principles for Public Life.

"Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world... Unless these rights have meaning there, they have little meaning anywhere."

Eleanor Roosevelt, architect of the Universal Declaration of Human Rights

