

Cabinet Secretary for Rural Affairs, Food and the Environment
Richard Lochhead MSP

Minister for Environment, Climate Change and Land Reform
Aileen McLeod MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot



Professor Alan Miller
Chair
Scottish Human Rights Commission
4 Melville Street
Edinburgh
EH3 7NS

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Dear Alan

We write jointly to thank you for your letter of 18 January on the Land Reform (Scotland) Bill.

The Scottish Government welcomes the helpful and constructive contribution which the Scottish Human Rights Commission (“SHRC”) has made to the debate on land reform.

We would like to stress that the Scottish Government is fully committed to implementing international human rights obligations and to making human rights real for everyone in Scotland. That includes in the context of land reform.

As we indicated in our response to the Rural Affairs, Climate Change and Environment Committee (the “Committee”), and in the Stage 2 sessions on the Bill which took place on 20 and 27 January, we recognise that a number of human rights treaties have particular significance for the land reform debate. These include treaties that have not, at present, been incorporated as a matter of domestic Scots law, including the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the UN Convention on the Rights of the Child and the UN Convention on the Rights of People with Disabilities.

We also recognise the importance of voluntary codes for land reform, such as the Food and Agriculture Organisation of the UN’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (VGGTs).

Over and above the general competence to observe and implement international obligations conferred by the Scotland Act, Scottish Ministers have publicly acknowledged the importance of international treaties and obligations, including the ICESCR. As a matter of good governmental practice, the Scottish Ministerial Code explicitly requires Scottish Ministers to comply with international law, including international treaties. This of course contrasts with the revised UK Ministerial Code, from which a corresponding obligation was removed last year.

Our response to the Committee's Stage 1 report was intended to highlight that treaties such as the ICESCR are not prescriptive in defining specific implementation mechanisms. They impose, instead, a duty on states to work progressively to realise rights in line with rights and principles, which in many cases take the form of outcomes or broadly-defined principles. There are, in consequence, some practical challenges to be addressed in imposing statutory requirements in legislation such as the Land Reform (Scotland) Bill, which seek to translate treaty obligations into detailed legislative provisions in a form that would be enforceable in the domestic courts.

We have listened carefully to the range of evidence which the Committee heard throughout Stage 1 of the Bill and have brought forward amendments to ensure the consideration of human rights, including economic, social and cultural rights takes place, where relevant, within the Bill. This includes, in particular, in the preparation of the land rights and responsibilities statement (Part 1) and in the preparation of the new guidance on engaging with communities in decisions relating to land (Part 4). We have also accepted, in principle, amendments that seek to reflect human rights considerations in the decision making process on applications from communities to buy land to further sustainable development (Part 5).

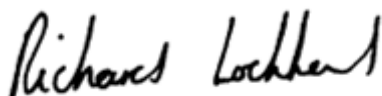
Our preferred approach to referring to human rights within the Bill, was to avoid referring to specific treaties on the face of the Bill in order to avoid the difficulties which could arise from using a definitive list of instruments relating to human rights. We want to ensure that rights contained in other human rights instruments are also given due regard, where relevant. Such a broad approach would also allow future developments in relation to human rights to be taken into account.

We are working carefully with the Committee on this issue and feel we will be able to achieve a balanced approach which, if agreed by the Committee when it votes on Part 11 of the Bill at Stage 2 and further at Stage 3, will refer to both the ICESCR and VGGTs whilst also allowing Scottish Ministers to give appropriate consideration to other human rights instruments where these are relevant. We are also continuing to consider the potential benefits of the SHRC playing a more formal role in assisting Scottish Ministers in identifying treaty obligations which are likely to be relevant to their duties under the Bill, ahead of Stage 3.

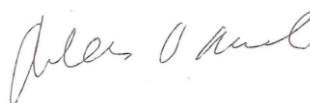
We trust this letter provides comfort to the SHRC of the commitment this Government has to the progressive realisation of economic, social and cultural rights in Scotland, both in the specific context of land reform, and in the wider sense as made clear by the First Minister in her keynote speech at the Innovation Forum on 9 December 2015.

We look forward to working with the SHRC in future to ensure all human rights are given due recognition in our work, in a way that works best for the people of Scotland.

A copy of this response to your letter of 18 January has been sent to Rob Gibson, MSP, in his capacity as Convenor of the Rural Affairs, Climate Change and Environment Committee.



RICHARD LOCHHEAD



AILEEN MCLEOD