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**The Scottish Human Rights Commission**

**Submission to the United Nations Human Rights Committee (The Committee):**

**NHRI report on the United Kingdom’s 7th periodic report under the International Covenant on Civil and Political Rights (ICCPR)**

**May 2015**

The Scottish Human Rights Commission (SHRC) is the national human rights institution (NHRI) for Scotland, accredited with A status by the International Coordinating Committee of NHRIs. SHRC was established by an Act of the Scottish Parliament. It has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice, including through education, training and awareness raising, and by publishing research. SHRC also has a number of powers including:

-The power to conduct inquiries into the policies or practices of Scottish public authorities.

-Recommending such changes to Scottish law, policy and practice as it considers necessary.

-The power to enter some places of detention as part of an inquiry.

-The power to intervene in some civil court cases.

SHRC is one of the three NHRIs in the UK and currently chairs the European Network of NHRIs. SHRC is a member of the UK’s National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

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1. **Part I. Summary of recommended questions**

**The Commission recommends that the Committee ask the United Kingdom*:***

1. What measures it will take to ensure the non-regression and the protection of all Covenant rights of all people across UK jurisdictions.
2. What steps are being taken to ensure protection of Article 15 of the Covenant for refugees, with accompanying appropriate guidance in Scotland, and which steps have been taken to ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant are protected.

**In relation to Scotland:**

1. To explain the measures taken to consider whether the use of stop and search powers, particularly non-statutory searches and on such a large scale, by Police Scotland is within the framework of the Covenant.
2. To identify what measures it will take to ensure greater reporting of hate crimes in Scotland.
3. To outline what measures are being taken to reduce suicide rates in Scotland and what impact is being made by any such measures.
4. To explain how compliance with the Covenant is assured with regard to the assessment, diagnosis or admission of mental health prisoners in Scotland.
5. To clarify how it intends to ensure that institutional learning regarding deaths in custody is being utilised to prevent deaths in custody and following police contact.
6. To describe how it plans to ensure that Police Scotland’s “rousing” policy is necessary and proportionate when applied to all detainees regardless of risk.
7. To outline how its plans to reduce the risk of suicide and self-harm amongst prisoners with mental health conditions.
8. To explain how it plans to provide for effective and independent investigation of deaths in mental health settings in Scotland.
9. To specify how it plans to ensure that any changes on arming police officers are effectively consulted and publicly communicated. In addition, the Committee could ask the United Kingdom what process are in place to increase transparency and improve the scrutiny of armed policing in Scotland, particularly in relation to monitoring, collating and reporting processes.
10. To enquire what the current view and position is in relation to repealing all legal defences to corporal punishment currently in the Criminal Justice (Scotland) Act 2003.
11. To provide information about what measures it will take to ensure that legislation brought forward provides adequate and robust procedural safeguards for individuals who are unable to consent to their treatment in psychiatric hospitals and other care settings. The Committee should also ask the United Kingdom how it will ensure that current legislation in Scotland is observed and that patients are receiving adequate levels of care and social stimulation.
12. To outline what concrete steps have been taken to reduce the prison population and move away from a culture of retribution to one that promotes offender reformation and social rehabilitation.
13. To explain what interim, medium and long-term measures are being taken to remedy the prison conditions in Young Offenders Institutions, particularly access to open air and physical activities.
14. To describe what concrete steps have been taken to ensure the use of custody for women is only used when the possibility of community alternatives have been fully addressed. Furthermore, to outline what concrete steps have been taken to ensure the full implementation of the Report of the Commission on Women Offenders since 2012.
15. To outline what steps it has taken to ensure the availability and accessibility of appropriate mental health services for those deprived of liberty in Scotland.
16. To describe what plans are in place to ensure that sufficient additional safeguards are available before any decision is taken to remove the requirement for corroboration in Scotland.
17. To explain how it is planning to maintain a sustainable and high quality legal assistance system across Scotland, as well as ensuring that current and proposed changes to legal aid do not limit access to justice, particularly children and women's access to legal advice and services in areas of civil law in Scotland.
18. To indicate whether, and to what extent, the laws on public procession and static assemblies in Scotland respect the provisions of the Covenant with regard to freedom of association and freedom of expression, and what steps have been taken to implement the UN Special Rapporteur recommendations in Scotland.
19. To indicate its plans to tackle barriers to a career in the Judiciary for women.
20. To explain what steps it is taken to realise the Covenant rights of the Gypsy/Traveller community in Scotland.

**Part II. Introduction, Scope and Structure and of this report**

 **Introduction**

1. SHRC welcomes the opportunity to make its first submission to the Human Rights Committee (hereafter the Committee) in advance of the United Kingdom review in July. This document expands and updates our previous List of Issues (LoI) report sent to the Committee in July 2014.

 **Scope**

2. This report covers the legal framework, policies and practices in Scotland. The Scotland Act 1998, which established the Scottish Parliament, requires both the Scottish Parliament and Scottish Government[[1]](#endnote-1) to observe and implement all of the UK’s international human rights obligations.[[2]](#endnote-2) Under the terms of the Scotland Act 1998 all issues which are not explicitly reserved to the UK Parliament are devolved to the Scottish Parliament. Consequently issues such as justice, detention, policing, physical and mental health, education and social care are within the powers of the Scottish Parliament. A meaningful understanding of the obligations of the Scottish Parliament and Government to observe and implement ICCPR will be crucial to ensuring law, policy and practice in Scotland are fully compliant.

1. **Structure of the report**

3.In selecting material for this report we have followed the Committee’s List of Issues structure adopted in November 2014. This submission addressed each of the questions and additional information requested by the Committee in relation to Scotland. Further information and background can be found in our previous submission for the LoI (July 2014). The Committee will find a number of questions that we suggest the Committee put to the UK during its review.

1. **Sources**

4. This report draws primarily on a four year research project by SHRC which culminated in the publication of *Getting it Right: human rights in Scotland* in October 2012[[3]](#endnote-3) and led to the development of Scotland’s first National Action Plan for Human Rights (SNAP).[[4]](#endnote-4) It also draws on other SHRC sources, such as our interventions and responses to consultation about proposed legislative change, and many external sources, including reports published by NGOs, Ombudsmen, inspectorates, regulators and data provided by EHRC Scotland in relation to discrimination matters.

The SHRC would be very pleased to provide any clarification, further information, or other assistance to Committee experts before, during or after the forthcoming session.

 **Part III. Background regarding recommended questions**

**Constitutional and legal framework within which the Covenant is implemented**

**(Art. 2)**

5. We welcome the Committee enquiry about the State measures taken to give effect to all Covenant rights not covered by the Human Rights Act 1998 (HRA) in the domestic legal order, particularly in Scotland. In relation to **plans to repeal the Human Rights Act 1998** and adopt a **UK Bill of Rights,** SHRC continues to be concerned about the latent regressive character of the proposed human rights framework.[[5]](#endnote-5) It is our view that in the current political environment any new UK Bill of Rights would result in a weaker replacement for the HRA by undermining the universality principle as well as reducing government accountability at home, and internationally.**[[6]](#endnote-6)**

5.1. As the Committee is aware, the place of human rights in Britain is at a critical juncture. In 2011, the previous UK Government established a Commission on a UK Bill of Rights[[7]](#endnote-7) that reported in December 2012. Following its report members of the UK Government, including the Secretaries of State for Justice and Home Affairs, promoted the repeal of the HRA.[[8]](#endnote-8) The current UK Government has included a legislative proposal for a British Bill of Rights to replace the HRA.[[9]](#endnote-9) The proposal has been couched in adverse language by referring to the “damaging effects of Labour’s Human Rights Act” and the “misuse of human rights laws”.[[10]](#endnote-10)

5.2. It is also important to note that ICCPR is not incorporated in domestic law and the HRA does not extend to all ICCPR rights. There has been very little public awareness of the Covenant and its Optional Protocols among judges, public officials, police and law enforcement officers, legal advisers and the public at large. The Scottish Government, through its commitment to implementation of Scotland’s first National Action Plan for Human Rights (SNAP) 2013-2017, has committed to explore the benefits and implications of incorporation of the UK international obligations in Scotland (p.43).

5.3. SHRC recommends the Committee ask the United Kingdom what measures it will take to ensure non- regression and the protection of all Covenant rights across all jurisdictions in the UK.

**Non-discrimination, equality between men and women, prohibition of advocacy of national, racial or religious hatred and minority rights (Arts. 2, 3, 20, 26 and 27)**

**6. Hate Crime.** Paragraph 29 of the state report records some data relating to reporting and prosecution of racist incidents in Scotland. The Crown Office and Procurator Fiscal Service report on Hate Crime in Scotland 2013–14 provides details of hate crime cases reported, specifically;

• 4,148 (68.9%) were race hate crimes;

• 890 (14.8%) were sexual orientation hate;

• 587 (9.8%) were religion hate crimes;

• 154 (2.6%) were disability hate crimes; and

• 25 (0.4%) were transgender identity hate crimes.

There were increases in hate crime figures for four out of the five monitored strands between 2012 – 13 and 2013 – 14; (race increased by 3%, sexual orientation increased by 22 %, disability increased by 12 % and transgender increased by 78%. There is no clear evidence on the extent to which hate crime may be underreported. The Scottish Crime and Justice Survey (SCJS) 2012 -13 suggests that just under two-fifths (39%) of hate crimes were reported to the police in 2012/13.[[11]](#endnote-11) The most common reason given for crime not being reported to the police was that the victim felt the police could have done nothing (37%) or the incident was seen as too trivial to report (36%). Nearly one-in-four violent crimes (23%) went unreported to the police because the victim "dealt with the matter themselves" and 14% of violent crimes were unreported because the incident was considered a personal or family matter. In 2015 the EHRC commenced a project on preventing and tackling homophobic, biphobic and transphobic hate crimes in Great Britain, including Scotland.

6.1. SHRC recommends the Committee ask the United Kingdom what measures it will take to ensure to ensure greater reporting of hate crimes in Scotland.

6.1 **Stop and search, particularly non-statutory** searches in Scotland. A total of 519,213 searches were carried out in Scotland between April and December 2013. This figure is almost two times higher than the 312,645 searches conducted by London's Metropolitan force for all 2013, which polices a population much greater than that of Scotland. 2,912 of these searches related to children. 79% of the searches of children were conducted without any statutory basis or reasonable suspicion of a crime.[[12]](#endnote-12) They were classified as consensual, where a police officer stops a child without any cause and the child searched is claimed to have agreed to be searched. Such non-statutory searches have been banned in other parts of the UK.

6.2. In June 2014 Police Scotland agreed to stop non-statutory searches of children under 12. However following an official information request from the media it released figures showing that 356 children under 12 were stopped and searched by police officers during the second semester of 2014. It transpired that this figure was incorrect and the figure was much lower. Serious questions have been raised about police data collection, particularly following the disclosure of the fact that 20,000 records had been lost due to an error between May and July 2014.[[13]](#endnote-13)

6.3. In June 2014, the Scottish Police Authority, the public body to which Police Scotland is accountable, highlighted a number of areas for improvement around targeting, proportionality, training, data gathering, transparency and informed consent. In January 2015, SHRC continued to express concerns about the legality and proportionality of non-statutory stop and search of individuals. The exercise of power by public officials must be governed by clear and publicly-accessible rules of law. The public must not be vulnerable to interference by public officials acting on any personal whim, malice, predilection or purpose other than that for which the power was conferred – in other words it cannot be arbitrary - the antithesis of legality. This was particularly concerning in the case of children and other vulnerable people.[[14]](#endnote-14) On February 16 2015, the Scottish Police Authority announced that the stop and search of children under 12 in Scotland has now ceased.

6.4. SHRC recommends the Committee ask the United Kingdom to explain the measures taken to consider whether the use of stop and search powers, particularly non-statutory searches and on such a large scale, by Police Scotland is within the framework of the Covenant.

**Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (Arts. 2, 6, 7, 9, 10 and 16)**

7. **High suicide rates in Scotland**, and suicides in prisons. Suicide rates in Scotland continue to be above the UK average, at a rate of 15.3 per 100,000 of the population, as compared to a UK average of 11.6.[[15]](#endnote-15) While suicide rates fell in Scotland by 13.8 per cent between 2000-2002 and 2008-2010 they still remain higher than in England and Wales. A 10 year evaluation of the Choose Life suicide prevention strategy in Scotland concluded that there was a need to link suicide prevention to drug and alcohol services, primary care and clinical mental health services.[[16]](#endnote-16) The Scottish Government launched a new suicide prevention strategy in December 2013 which will run until 2016.[[17]](#endnote-17)

7.1. SHRC recommends the Committee ask the United Kingdom to explain what measures are being taken to reduce the suicide rates in Scotland and what impact is being made by any such measures.

7.2 There is a noticeable increase in the number of **prisoners with mental health** problems in Scotland.[[18]](#endnote-18) In 2010, the UK National Preventive Mechanism, of which SHRC is a member , rated mental health as the most significant and recurring concern across all types of detention.[[19]](#endnote-19) The “very high levels of self-harm in women’s prisons” has also been identified as a particular concern regarding mental health care in prisons.[[20]](#endnote-20) Women charged with incidents of violent and disruptive behaviour may have underlying mental health difficulties. The Mental Welfare Commission for Scotland found in its 2014 report on Women Detained by the Criminal Courts, a significant increase on offences involving fire-raising, particularly associated to situations of suicide attempts and alcohol use.[[21]](#endnote-21)

7.3. SHRC recommends the Committee ask the United Kingdom to explain how compliance is assured with regard to the assessment, diagnosis or admission of mental health prisoners in Scotland.

**8. Deaths at the hands of police and deaths in custody** in Scotland. Police Scotland was formed in April 2014, amalgamating the previous eight police forces throughout Scotland. Responsibility for the delivery of healthcare within police settings also moved to the National Health Service (NHS Scotland) in April 2014. Figures from 2013 reveal that there were three deaths in custody, a further 18 deaths following police contact, and eight serious injuries following police contact from April to the end of September.[[22]](#endnote-22) It is currently unclear how much ‘institutional’ learning has taken place as a result of previous deaths in custody across different police settings or cross-border. The number of deaths in police custody in 2013-14 was three. The three deaths (and eight serious incidents) in custody, during this period, all involved vulnerable detainees.[[23]](#endnote-23) Her Majesty’s Inspectorate for Police for Scotland (HMICS) raised concerns that Police Scotland is increasingly caring for highly vulnerable individuals within limited policing resources.[[24]](#endnote-24)

8.1 SHRC recommends the Committee ask the United Kingdom how it intends to ensure that institutional learning regarding deaths in custody is being utilised to prevent deaths in custody and following police contact.

9. Concerns have been raised by the HMICS that the hourly rousing of all detainees was disproportionate in lower risk cases in police custody. Rousing involves eliciting a comprehensible verbal response from a detainee, even when they are sleeping. All detainees were subject to at least an hourly rousing policy. Police Scotland’s policy on rousing could negatively impact detainees, particularly when they spend more than one night in custody.[[25]](#endnote-25)

9.1. SHRC recommends the Committee ask the United Kingdom how it plans to ensure that Police Scotland’s rousing policy is necessary and proportionate when applied to all detainees regardless of risk.

**10. Effective and independent investigation of cases of death**. The Equality and Human Rights Commission’s Human Rights Review 2012 found that people with mental health conditions do not always receive appropriate support in the prison system, leaving them at increased risk of suicide and self-harm.[[26]](#endnote-26) Her Majesty’s Inspectorate of Prisons for Scotland’s Annual Report found that the management of prisoners at risk of suicide or self-harm remains a challenge for the service in Scotland.[[27]](#endnote-27)

10.1 SHRC recommends the Committee ask the United Kingdom how it plans to reduce the risk of suicide and self-harm amongst prisoners with mental health conditions.

10.2. **Effective and independent investigation of cases of death in mental-health settings.** There is no single person or agency automatically responsible for investigating deaths of patients in mental health settings. In Scotland, a review of Fatal Accident Inquiry legislation recommended a mandatory fatal accident inquiry into the death of any person who is subject at the time of death to compulsory detention by a public authority.[[28]](#endnote-28) The Scottish Government recently consulted on proposals to reform Fatal Accident Inquiry legislation, proposing two alternatives for independent investigation in relation to mental health settings,[[29]](#endnote-29) however neither option has been taken forward in the legislation currently before Parliament.

10.3. SHRC recommends the Committee ask the United Kingdom how it plans to provide for effective and independent investigation of deaths in mental health settings.

11. **Electro-shock weapons** (Tasers) in Scotland. In 2010, Scotland’s then largest police force introduced a pilot programme to deploy electro-shock weapons to non-firearms trained officers. In response SHRC encouraged key actors, such as Strathclyde Police and Authority, the Scottish Government and Parliament, to participate in the development of a human rights framework of responsibilities for the roll out and use of electro-shock weapons under strictly limited and regulated circumstances in Scotland. The deployment of Tasers was postponed in Scotland. However, on 9 February 2015, the Police Federation, which represents police officers, voted for all frontline uniformed officers to be offered a Taser to provide adequate protection.

11.1. There are also accountability concerns about the **arming of police officers with firearms** in Scotland. Before the launch of the new single force, Strathclyde Police, Tayside Police and Northern Constabulary allowed specialist officers to routinely carry guns. Police Scotland has adopted this approach across the country since its launch in April 2014. Previous policy on firearms indicated that officers had to retrieve their weapons from locked safes in armed response vehicles with permission from a senior officer. In October 2014 the Chief Constable responded to community concerns, which were supported by SHRC, by guaranteeing that armed policing officers will only be deployed to firearms incidents or where there is a threat to life.[[30]](#endnote-30) SHRC is concerned that all changes of policy need to be objectively justified and its human rights impact fully assessed.

11.2. SHRC recommends the Committee ask the United Kingdom how it plans to ensure that any changes on arming police officers are effectively consulted and publicly communicated. In addition, the Committee could ask the United Kingdom what process are in place to increase transparency and improve the scrutiny of armed policing in Scotland, particularly in relation to monitoring, collating and reporting processes.

12. The continuing legality of **corporal punishment of children** at home has continually been highlighted as a human rights concern in the UK. Section 51 of the Criminal Justice (Scotland) Act 2003 provides for parents a defence of ‘justifiable assault’ on children. This section also sets out certain types of assault that are unjustifiable in relation to children. There is evidence of the negative effect on children’s mental and physical wellbeing in Scotland. While the Scottish Government has taken some initiatives to promote positive parenting, they fall short of the public education campaign recommended by the UN Committee on the Rights of the Child.

12.1. SHRC recommends the Committee ask the United Kingdom what is its current view and position in relation to repealing of all legal defences to corporal punishment currently in the Criminal Justice (Scotland) Act 2003.

**Liberty and security of person (Art. 9)**

13. **Legal safeguards** for those unable to consent to their placement or treatment **in psychiatric hospitals and other care settings** in Scotland. The Mental Welfare Commission for Scotland (MWC) has found that that some of the safeguards of the M**ental Health (Care and Treatment) (Scotland) Act 2003** are increasingly not happening, particularly the Mental Health Officer’s consent to emergency detention.[[31]](#endnote-31) In a recent review of dementia units, the Mental Welfare Commission for Scotland has also found that only 58% of the individuals they reviewed in 2013 had an assessment of their capacity documented in their care file.[[32]](#endnote-32) It is also concerning to note the MWC findings about significant levels of use of antipsychotics, anxiolytics and sedative antidepressants, in the dementia units. These medications all potentially carry risks of side effects, particularly in older people - only 76% of the patients had an accompanying treatment plan; this means that 24% of people may have treatment that is not properly authorised.[[33]](#endnote-33)

13.1. Similarly, case-law from the European Court of Human Rights[[34]](#endnote-34) and the Supreme Court of the UK[[35]](#endnote-35) has identified a gap in the legal safeguards provided to patients in psychiatric hospitals and other care settings who are regarded as ‘voluntary’ patients as a consequence of being incapable of consent but compliant with their admission to such units. Both cases identified a need for a lawful process to assess and authorise such deprivations of liberty. The Scottish Law Commission has made detailed recommendations to the Scottish Ministers for legislation to address this gap.[[36]](#endnote-36) SHRC considers that any legislation put forward as a consequence of these proposals will require careful consideration to ensure it provides sufficient scrutiny and protection to address all situations of deprivation of liberty in accordance with the Covenant.[[37]](#endnote-37)

13.2. SHRC recommends the Committee ask the United Kingdom what measures it will take to ensure that legislation brought forward provides adequate and robust procedural safeguards for individuals who are unable to consent to their treatment in psychiatric hospitals and other care settings*.* The Committee should also ask the United Kingdom how it will ensure that current legislation in Scotland is observed and that patients are receiving adequate levels of care and social stimulation.

**Treatment of persons deprived of their liberty (Art. 10)**

14. Conditions of detention, including measures to address the high **prison population and overcrowding** in Scotland. Her Majesty’s Inspectorate of Prisons for Scotland (HMIPS) MIPS has expressed that while the quality and improved fabric of the newer prisons in Scotland undoubtedly provides a better environment for prisoners to live in, the issue of **overcrowding still remains** (e.g. HMP Edinburgh and HMP Inverness).[[38]](#endnote-38) It is the case that prison cells designed for single occupancy are regularly used to house two prisoners. This has a detrimental effect on the conditions for the prisoners. Regular overcrowding also reduces the ability of the prison to provide sufficient work, education, exercise and access to facilities such as the gymnasium and library.[[39]](#endnote-39)

14.1. SHRC recommends the Committee ask the United Kingdom what concrete steps have been taken to reduce the prison population and move away from a culture of retribution to one that promotes their reformation and social rehabilitation.

15. Educational and recreational activities and levels of violence in **young offenders institutions in Scotland.** An inspection of HMYOI **Polmont** in 2012 found that young offenders are locked in their cells for long periods during the day, evenings and at weekends. This continued to be significant issue in 2013 - 14.[[40]](#endnote-40) Access to purposeful activity for young offenders resident in Blair House is particularly poor. Some of these concerns have been expressed previously by both HMIPS and the UK National Preventive Mechanism.[[41]](#endnote-41) A more recent inspection of HMYOI Polmont in March 2014 found considerable progress and positive impact on young people. A Young People’s Strategy was developed to create a learning environment and support young people. However, HMCIPS highlighted that such Strategy should also apply to young detainees in HMP & YOI Cornton Vale and HMP & YOI Grampian.[[42]](#endnote-42) HMCIPS has also raised concerns about the timing of physical activity particularly at weekends in HMYOI Polmont.[[43]](#endnote-43)

15.1. SHRC recommends the Committee ask the United Kingdom to explain what interim, medium and long-term measures are being taken to remedy this situation in Young Offenders Institutions, particularly access to open air and physical activities.

15.2. Scotland has one of the lowest ages of criminal responsibility in the world at just 8. While the minimum age of prosecution has been raised to 12 years and the majority of cases are dealt with through the children’s hearing system the criminalisation of children at age 8 raises serious concerns.

16. Disproportionate number of **women prisoners.** HMIPS recommended that HMP & YOI Cornton Vale facility’s design capacity be reduced to less than 300 inmates.[[44]](#endnote-44) In early 2011 it held 385 inmates. HMP Greenock, HMP & YOI Grampian also holds women offenders. In response to this, in June 2011 the Scottish Government established a Commission, led by former Lord Advocate, Dame Elish Angiolini, to examine how female offenders are dealt with in the criminal justice system. Consequently, it is reported that Cornton Vale will close its doors to remand and convicted women prisoners in four years' time (2018). On 26 January 2015, the Scottish Government announced that it would now undertake a period of "extensive engagement with key partners" including the Scottish Prison Service with a view to investing in smaller regional and community-based custodial facilities across the country instead of building a national facility to replace Cornton Vale.[[45]](#endnote-45) Since 2012 there are has been considerable investment to improve the living conditions at Cornton Vale.[[46]](#endnote-46)

16.1. SHRC recommends the Committee ask the United Kingdom what concrete steps have been taken to ensure the use of custody for women is only used when the possibility of community alternatives have been fully addressed

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16.2. SHRC recommends the Committee ask the United Kingdom what concrete steps have been taken to ensure the full implementation of the Report of the Commission on Women Offenders since 2012.

17. **Prisoners with mental health problems,** particularly women in prisons. This remains a challenge for the service in Scotland.[[47]](#endnote-47) The **detrimental effect of overcrowding** has already been noted by HMIPS in terms of impact to the “dignity, safety, infection control, mental health and general health issues” of both prisoners and staff and the lack of improvement in this area from previous inspections.[[48]](#endnote-48) In this respect HMIPS found that NHS Greater Glasgow and Clyde should ensure that the mental health team in place in HMP Barlinnie has the necessary resources to deliver the level of mental health interventions identified.[[49]](#endnote-49) Prisoners in HM Edinburgh can also experience substantial delays for interventions.[[50]](#endnote-50)

17.1. SHRC recommends the Committee ask the United Kingdom to explain what steps it has taken to ensure the availability and accessibility of appropriate mental health services for those deprived of liberty in Scotland.

**Right to an effective remedy and a fair trial (Arts. 2, 14 and 24)**

18. The requirement for **corroboration** of evidence in Scotland.[[51]](#endnote-51) In 2010 the UK Supreme Court in Cadder v HM Advocate [2010] UKSC 43 found that the way in which police in Scotland detained suspects for questioning without legal advice or representation was not compatible with the European Convention on Human Rights and was therefore unlawful in terms of the Scotland Act 1998. In response the Scottish Government brought forward legislation to provide for legal advice an representation, but also announced that it would “balance” this by removing other safeguards. One of the safeguards that the Scottish Government proposed removing was the need for corroboration of evidence. There was significant concern expressed about this proposal from the legal community and SHRC.[[52]](#endnote-52) The Scottish Government therefore established a Review chaired by Lord Bonomy to consider the system of evidence in criminal trials, and in particular what additional safeguards should be put in place if the requirement for corroboration was to be removed. The Scottish Government is now considering the report, but has announced that it will not remove the requirement of corroboration immediately, and it will give full consideration to the recommendations of the report before taking further action.

18.1. It is the duty of the courts to ensure that a fair trial is achieved in any given case. Courts must therefore be in a position, as a matter of domestic law, to ensure the trial is fair and that convictions are based on evidence of sufficient quality. It is the responsibility of the State to put in place rules of procedure and evidence that provide an effective means whereby the courts can perform their duty.

18.2. SHRC recommends the Committee ask the United Kingdom what actions are being taken to ensure that sufficient additional safeguards are put in place before any decision is taken to remove the requirement for corroboration in Scotland.

19. There has been a real term decline in **legal assistance** expenditure for years. The Law Society of Scotland has expressed concern that the lack of investment or re-investment of efficiency savings in legal assistance has made it increasingly difficult to maintain a sustainable, high quality legal assistance system across Scotland.[[53]](#endnote-53)

19.1. Following the Scottish Government's Strategic Spending Review, the **legal aid fund** is facing a cut of 7.2% over the years 2012-13 to 2014-15. Cuts to legal aid in Scotland are expected to impact on the availability of specialist discrimination advice and casework.[[54]](#endnote-54) An already pressurised legal aid budget may be unable to absorb the extra responsibility of supporting discrimination cases which could directly impact on provision of the legal advice regarding discrimination and equality.

19.2. From 31 January 2011 the way that a child is assessed for civil and children’s legal assistance changed via Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010. Previously, a child would be assessed in the same way as an adult, on the basis of their own personal disposable income and capital. From 31 January 2011, a solicitor assessing a child who applies for any civil or children’s legal assistance must take into account the financial circumstances of anyone who owes a duty of aliment to that child or young person. SHRC is concerned about the impact of this regulation on children and young people’s access to legal advice and legal aid. An evaluation of the legislation would be advisable.

19.3. SHRC recommends the Committee ask the United Kingdom how it is planning to maintain a sustainable, high quality legal assistance system across Scotland, as well as ensuring that current and proposed changes to legal aid do not limit access to justice, particularly children and women's access to legal advice and services in areas of civil law in Scotland.

20. The ICCPR’s Concluding Observation (2008) noted that the UK Government should “ensure that **asylum-seeker**s have full access to early and free legal representation so that their rights under the Covenant receive full protection.” The Scottish Refugee Council and others are concerned about the frequent and repeated arbitrary moves around the UK’s Immigration Removal Centres (IRC) and particularly about movement to and from Dungavel IRC. These cross-border moves between England and Scotland have a specific adverse impact on the ability of legal representatives to act on detainees’ behalf in different jurisdictions. A new Home Office policy of 30th March 2015 now requires all asylum applicants who wish to submit further submissions in support of new asylum or human rights claims by those who have exhausted appeal rights, to do so in person in Liverpool, rather than at the local UKBA office or by post. The Home Office will not fund the travel expenses for those travelling from Scotland, many of whom are likely to be destitute where there asylum support has been terminated once their appeal rights are exhausted.

20.1. SHRC recommends the Committee ask the UK which steps have been taken to ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant are protected.

**Freedom of conscience and religious belief, expression, peaceful assembly and association (Arts. 18, 19, 21 and 22)**

21. **N**otification periods for a **procession** and alleviating the financial costs associated with obtaining a procession licence. As the Committee is aware the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association visited the United Kingdom in 2013. In Scotland the UNSR identified a number of areas where protection for the rights to **freedom of peaceful assembly and association** should be enhanced.[[55]](#endnote-55) These recommendations include a) reducing the notification period for demonstrations and b) to ensure that the exercise of rights is not subject to cost recovery measures.

21.1. SHRC recommends the Committee ask the United Kingdom to indicate whether, and to what extent, the laws on procession and static assemblies in Scotland respect the provisions of the Covenant with regards to freedom of association and freedom of expression, and what steps have been taken to implement the UNSR recommendations in Scotland.

**Gender Pay Gap & Judicial Diversity (Articles 2, 3, 25 and 26), List of Issues paragraph 6 and 9**

**22. Gender pay gap**. A 2013 report highlights significant gender segregation in the Scottish Government’s flagship modern apprenticeship programme: 95.4% of hairdressing apprenticeships were taken up by women in 2011/12, but women accounted for only 2.1% of engineering apprenticeships. Under devolved Scottish equality regulations, the Scottish Government and listed public authorities are required to publish pay gap, information every two years. Although equal pay legislation remains reserved to the UK Government, the Scottish Government has continued to support the Close the Gap project which work with employers, unions and workers to address the gender pay gap in Scotland.[[56]](#endnote-56)

**23. The representation of women in the Judiciary** has risen since 1998. Section 14 of the Judiciary and Courts (Scotland) Act 2008 place a duty to have regard to the need to encourage diversity in the range of individuals available for selection to judicial appointments. However, at present, the Judiciary of Scotland lists of Judicial Office holders (as at 19th May 2015) indicate that nine out of 33 (27%) Senators of the Royal College of Justice are women. One out of six (17%) Sheriffs Principal are women and twenty–nine out of 132 (22 %) full time sheriffs are women. Women therefore represent 23 % overall in these categories.

These levels of gender inequality are not representative of the rest of Europe. Scotland sits second from the bottom of the 45 EU member states.[[57]](#endnote-57) The Council of Europe report on European Judicial Systems 2014 observe an almost equal male/ female distribution in the Judiciary (average 49% women).

23.1 SHRC recommends the Committee ask the United Kingdom to indicate its plans to tackle barriers to a career in the Judiciary for women.

**Protection of minorities (Art. 27)**

24. The Equal Opportunities Committee of the Scottish Parliament has published two reports into discrimination faced by Gypsy/Travelling people this session. *Gypsy/Travellers and Care* was published in 2012, and *Where Gypsy/Travellers Live* was published in 2013.[[58]](#endnote-58) The Committee noted that twelve years on from the first Scottish Parliament inquiry into Gypsy/Traveller life, it is concerning to see that the appalling situation of many Gypsy/Travellers has witnessed little change. The Committee, together with the Commission,[[59]](#endnote-59) has recommended the adoption of a national action plan, including fit-for-purpose housing strategies which embrace Gypsy/Traveller needs.

24.1. SHRC recommends the Committee ask the United Kingdom to indicate what steps are being taken to address the Covenant rights of the Gypsy/Traveller community in Scotland.

**25. Combating human trafficking.** A Human Trafficking and Exploitation (Scotland) Bill was introduced into the Scottish Parliament on 11 December 2014.[[60]](#endnote-60) However, there remain a number of areas in the draft legislation which need further consideration. Definitions of trafficking could be better aligned with international law, particularly the EU trafficking directive[[61]](#endnote-61) and the Council of Europe Trafficking Convention. In line with the Modern Slavery Act in England and Wales, there should be a statutory defence on the face of the Bill for trafficking victims who have been forced to commit criminal acts. This would sit alongside new guidelines drawn up by Scotland’s chief prosecutor, the Lord Advocate.[[62]](#endnote-62)

References:

1. The Scottish Executive is renamed the Scottish Government under the Scotland Act 2012. [↑](#endnote-ref-1)
2. SHRC notes that both the Scottish Government and Parliament should, in compliance with the Scotland Act 1998, observe and implement UK’s international obligations. [↑](#endnote-ref-2)
3. An unprecedented three year research project by the Scottish Human Rights Commission, Getting it Right? Human Rights in Scotland, found that while Scotland has made notable progress, it can do better. It has a relatively strong legal and institutional framework for human rights, some examples of positive strategy and policy direction, but the actual outcomes for people often remain inconsistent. In response the Commission proposed the development of SNAP to help bring about the necessary progress in implementation of human rights at the level of service delivery and practice. [↑](#endnote-ref-3)
4. For further information visit <http://scottishhumanrights.com/actionplan> [↑](#endnote-ref-4)
5. For further information visit <https://www.conservatives.com/~/media/Files/Downloadable%20Files/HUMAN_RIGHTS.pdf> [↑](#endnote-ref-5)
6. SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/resources/policysubmissions/borrpublicationsnov2011> [↑](#endnote-ref-6)
7. See Final Report of the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://enf.org.uk/blog/?page_id=1870> [↑](#endnote-ref-7)
8. At the 2013 Conservative Party Conference, Home Secretary Theresa May said in her speech that “The next Conservative manifesto will promise to scrap the Human Rights Act. ... the Conservative position is clear – if leaving the European Convention is what it takes to fix our human rights law, that is what we should do”. The Guardian, 30 September 2013: ‘Conservatives promise to scrap Human Rights Act after next election’. <http://www.theguardian.com/law/2013/sep/30/conservitives-scrap-human-rights-act> [↑](#endnote-ref-8)
9. See 2015 Queen’s Speech, available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430029/queens-speech-briefing-pack.pdf> [↑](#endnote-ref-9)
10. Ibid for language used by the Government. For further information see SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/resources/policysubmissions/borrpublicationsnov2011> [↑](#endnote-ref-10)
11. See The Scottish Crime and Justice Survey (SCJS) 2012 -13 [↑](#endnote-ref-11)
12. For further information visit <http://www.bbc.co.uk/news/uk-scotland-31148437> [↑](#endnote-ref-12)
13. For further information see BBC <http://www.bbc.co.uk/news/uk-scotland-31525040> [↑](#endnote-ref-13)
14. For further information visit <http://www.scottishhumanrights.com/news/latestnews/stopandsearchfeb15> [↑](#endnote-ref-14)
15. 2012 rates of suicide per 100,000 population: From: Samaritans (2014) Suicide Statistics Report 2014. Further information see <http://www.samaritans.org/sites/default/files/kcfinder/files/research/Samaritans%20Suicide%20Statistics%20Report%202014.pdf>. [↑](#endnote-ref-15)
16. RUSSELL, P., LARDNER, C., JOHNSTON, L. & GRIESBACH, D. 2010. Evaluation of Phase 2 (2006-08) of the Choose Life Strategy and Action Plan. Patricia Russell & Associates, Clarity, Lucy Johnston Research, Griesbach & Associates. See also The National Confidential Inquiry into Suicide and Homicide by People with Mental Illness Annual Report July 2014. [↑](#endnote-ref-16)
17. See Scotland Government Strategy at <http://www.scotland.gov.uk/Publications/2013/12/7616> [↑](#endnote-ref-17)
18. Responsibility for the provision of healthcare services, including mental health services, to prisoners was transferred from the Scottish Prisons Service to NHS Health Boards on 1 November 2011. For a further discussion See HMCIPS (2007). HM Chief Inspector of Prisons for Scotland Annual Report 2006-7. H. C. I. o. Prisons. Edinburgh, Scottish Government. HMCIPS (2011). Her Majesty's Chief Inspector of Prisons for Scotland Annual Report 2010-2011. Edinburgh, HM Chief Inspector of Prisons for Scotland. SAMH revealed that figures obtained from parliamentary questions showed there were 219 cases of self-harm in Scottish jails in 2010, an increase of 140% from 91 cases in 2004 SAMH (2011). SAMH RESEARCH BRIEFING: MENTAL HEALTH AND CRIMINAL JUSTICE IN SCOTLAND Glasgow, Scottish Association for Mental Health. See also Scottish Prison Commission (2008). Scotland’s Choice: Report of the Scottish Prisons Commissions. Edinburgh. [↑](#endnote-ref-18)
19. The detention of individuals for mental health reasons is governed in Scotland by the Mental Health (Care and Treatment) (Scotland) Act 2003. [↑](#endnote-ref-19)
20. Mental Welfare Commission for Scotland (2011). Mental Health of Prisoners. Edinburgh, Mental Welfare Commission for Scotland. [↑](#endnote-ref-20)
21. See Mental Welfare Commission for Scotland report at <http://www.mwcscot.org.uk/media/190441/women_offenders_final_report.pdf> [↑](#endnote-ref-21)
22. Letter from Police Investigations and Review Commissioner to the Justice Sub-Committee on Policing, 9 October 2013

<http://www.scottish.parliament.uk/s4_JusticeSubCommitteeonPolicing/Inquiries/20131009_PIRC_to_CG.pdf> and <http://www.scotsman.com/news/politics/top-stories/police-talks-sought-over-number-of-deaths-1-3148732> [↑](#endnote-ref-22)
23. HMICS Thematic Inspection of Police Custody Arrangements in Scotland, August 2014 [↑](#endnote-ref-23)
24. Ibid [↑](#endnote-ref-24)
25. HMICS Thematic Inspection of Police Custody Arrangements in Scotland, August 2014 <http://www.hmics.org/sites/default/files/publications/Thematic%20Inspection%20of%20Police%20Custody%20Arrangements%20in%20Scotland.pdf> [↑](#endnote-ref-25)
26. See <http://www.equalityhumanrights.com/uploaded_files/humanrights/ehrc_hrr_full_v1.pdf> [↑](#endnote-ref-26)
27. HMIPS 2013-14 Annual Report at <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-27)
28. Report of findings of Review of Fatal Accident Inquiry Legislation, an independent review, Lord Cullen, November 2009 [↑](#endnote-ref-28)
29. See <http://www.scotland.gov.uk/Publications/2014/07/6772/0> [↑](#endnote-ref-29)
30. See <http://www.scotsman.com/news/politics/top-stories/police-scotland-u-turn-on-armed-police-patrols-1-3559413> [↑](#endnote-ref-30)
31. For further detail see Mental Health Act monitoring 2013-4 report available at <http://www.mwcscot.org.uk/media/203499/mha_monitoring_2013_2014__3__final.pdf> , tables on p.12 and pp 44-5. [↑](#endnote-ref-31)
32. MWC’s Dignity and respect dementia continuing care visits report, October 2014, available at <http://www.mwcscot.org.uk/media/191892/dignity_and_respect_-_final_approved.pdf> [↑](#endnote-ref-32)
33. Ibid. [↑](#endnote-ref-33)
34. See for example *HL v United Kingdom* 45508/99 (2004) ECHR 471 [↑](#endnote-ref-34)
35. See for example *P v Cheshire West and Chester Council*; *P and Q v Surrey County Council* [2014] UKSC 19 [↑](#endnote-ref-35)
36. See Scottish Law Commission Report at <http://www.scotlawcom.gov.uk/index.php/download_file/view/1328/98/> [↑](#endnote-ref-36)
37. Ibid [↑](#endnote-ref-37)
38. HMIPS 2013-14 Annual Report at <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-38)
39. Ibid [↑](#endnote-ref-39)
40. HMIPS 2013-14 Annual Report at <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-40)
41. National Preventive Mechanism, Third Annual Report 2011–12, February 2013. Section 3. [↑](#endnote-ref-41)
42. HMIPS 2013-14 Annual Report at <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-42)
43. Ibid [↑](#endnote-ref-43)
44. HMCIPS (2011). HMP & YOI Cornton Vale – Follow-up Inspection 1-4 February 2011. Edinburgh, HM Chief Inspector of Prisons for Scotland. Other sources put the capacity in 2011 at times as high as 450: ‘Rough justice’, Ross Reid, Holyrood Magazine, 5 September 2011, p.32-35 at <http://content.yudu.com/Library/A1twpy/HolyroodmagazineIssu/resources/35.htm> There are also places for a small number of women prisoners at Inverness, Greenock, Dumfries and Aberdeen prisons. [↑](#endnote-ref-44)
45. See <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-30958609> [↑](#endnote-ref-45)
46. HMIPS 2013-14 Annual Report at <http://www.scotland.gov.uk/Resource/0045/00454059.pdf> [↑](#endnote-ref-46)
47. Ibid [↑](#endnote-ref-47)
48. HMCIPS (2011). Her Majesty's Chief Inspector of Prisons for Scotland Annual Report 2010-2011. Edinburgh, HM Chief Inspector of Prisons for Scotland. [↑](#endnote-ref-48)
49. Ibid [↑](#endnote-ref-49)
50. Ibid [↑](#endnote-ref-50)
51. For further information on this issue see for example <http://www.scotland.gov.uk/About/Review/CarlowayReview/Corroboration> and SHRC responses to the Carloway Review at <http://scottishhumanrights.com/news/latestnews/carlowaynewsjune2011>. In addition, a group has been set up by the Scottish Government to consider additional safeguards and changes in practice that might be needed in Scotland’s criminal justice system when the corroboration requirement is abolished. SHRC Commissioner Shelagh McCall is a member of this reference group (see http://news.scotland.gov.uk/News/Group-to-examine-corroboration-safeguards-8fe.aspx) [↑](#endnote-ref-51)
52. SHRC responses to the Carloway Review at <http://scottishhumanrights.com/news/latestnews/carlowaynewsjune2011> [↑](#endnote-ref-52)
53. See Law Society of Scotland’s Legal Assistance in Scotland report available at <http://www.lawscot.org.uk/media/391321/legal-assistance-in-scotland-discussion-paper.pdf> [↑](#endnote-ref-53)
54. Scottish Government Spending Review at <http://www.gov.scot/resource/doc/358356/0121130.pdf> and White Paper on Legal Reform at <http://www.gov.scot/Resource/Doc/359686/0121521.pdf> [↑](#endnote-ref-54)
55. See Report at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39.Add.1_AUV.pdf> [↑](#endnote-ref-55)
56. See [www.equalityhumanrights.com/sites/default/files/documents/Scotland/Research/part\_1\_final\_report\_170713.pdf](http://www.equalityhumanrights.com/sites/default/files/documents/Scotland/Research/part_1_final_report_170713.pdf) [↑](#endnote-ref-56)
57. Council of Europe report on European Judicial Systems 2014 [↑](#endnote-ref-57)
58. ‘Gypsy/Travellers and Care’ report at <http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-12-03w-rev2.pdf> and ‘Where Gypsy/Travellers Live’ at <http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf> [↑](#endnote-ref-58)
59. See Committee’s report ‘Where Gypsy/Travellers Live’ at <http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-13-01w.pdf> [↑](#endnote-ref-59)
60. In November 2011, the Equality and Human Rights Commission published an inquiry report into human trafficking in Scotland, available at [www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/human-rights-scotland/inquiry-human-trafficking-scotland](http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/human-rights-scotland/inquiry-human-trafficking-scotland) [↑](#endnote-ref-60)
61. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> [↑](#endnote-ref-61)
62. For a further discussion see [www.scottish.parliament.uk/S4\_JusticeCommittee/Inquiries/20150330\_Lord\_Advocate.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20150330_Lord_Advocate.pdf) [↑](#endnote-ref-62)