 **European and External Relations Committee**

**Evidence Session on the Scottish Government’s Proposals on an Independent Scotland’s International Policy**

**June 2014**

The Scottish Human Rights Commission (SHRC) was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. SHRC is the national human rights institution (NHRI) for Scotland with a mandate to promote and protect human rights for everyone in Scotland. SHRC is a public body and is entirely independent in the exercise of its functions. In June 2010, SHRC was accredited with “A” status by the International Coordinating Committee of NHRIs. SHRC was elected chair of the European Network of NHRIs (ENNHRI) in May 2011. In May 2013 SHRC was re-elected as ENNRI Chair and also elected as Deputy Chair of the International Coordinating Committee of NHRIs.

SHRC welcomes the Committee’s consideration of Scotland’s international policy, particularly the role that human rights plays in Scotland’s relationship with the international community. One of the key roles of the Commission is as a bridge between Scotland and the international human rights system. The Commission does this through engaging directly with Inter-Governmental Organisations, including through international reviews of progress and raising awareness and understanding of the international human rights system with people and civil society in Scotland.

Scotland’s human rights obligations do not end at its borders. In recognition of this fact Scotland’s first National Action Plan for Human Rights (SNAP), launched in December 2013 pursues three outcomes, one of which - “Better World” - is particularly relevant to this discussion:

* Scotland gives effect to its international obligations at home and internationally.

Under this outcome area the Scottish Government and others have made a series of commitments, including to:

* Develop effective cross-government coordination of the implementation of all human rights obligations;
* Explore the benefits of incorporating additional human rights obligations in our domestic law;
* Pursue the development of a National Action Plan on Business and Human Rights;
* Champion climate justice at home and abroad;
* Engage constructively in international human rights reviews.

In anticipation of the roundtable evidence session with the Committee on 12 June 2014, SHRC would like to draw the Committee’s attention to the human rights framework provided by some of the Inter-Governmental Organisations which the Committee will be considering.

**UNITED NATIONS**

Since its foundation in 1945, the United Nations has played a key role in maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Due to its unique international character, and the powers vested in its founding Charter, the UN can take action on a wide range of issues, and provides a forum for its 193 Member States to express their views.

Membership of the UN is open to all peace-loving States that accept the obligations contained in the United Nations Charter and, in the judgment of the United Nations, are able to carry out these obligations. States are admitted to membership in the United Nations by decision of the General Assembly upon the recommendation of the Security Council.

Human Rights are central to the United Nations with the Preamble of the UN Charter stating:

We the peoples of the United Nations [are] determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.[[1]](#footnote-1)

The first global expression of human rights, the Universal Declaration of Human Rights, was adopted in 1948.[[2]](#footnote-2) Since that time the UN has adopted a number of international human rights treaties[[3]](#footnote-3), created the position of United Nations High Commissioner for Human Rights in 1993 and established the Human Rights Council in 2006.[[4]](#footnote-4)

The UK plays an active role within the UN system with a permanent seat on the Security Council and, amongst other things, current elected membership of both the Economic and Social Council[[5]](#footnote-5) and the Human Rights Council[[6]](#footnote-6). The UK also plays a leading role in supporting the work of a number of the UN’s specialized agencies such as the World Health Organization, the International Labour Organization and UN Educational, Scientific and Cultural Organization. The White Paper sets out a commitment to being an active member of global institutions, this will involve choices about the role that Scotland would play.[[7]](#footnote-7)

As a National Human Rights Institution in compliance with the UN Principles on the Status of National Institutions (the Paris Principles) SHRC is recognised within the UN system and has speaking rights in a number of different UN human rights fora.[[8]](#footnote-8) This means that Scotland has a distinct voice, particularly in the context of statements to the Human Rights Council and in relation to engagement with UN bodies.

The UK has ratified seven of the nine main UN human rights treaties. The UK has designated independent mechanisms under CRPD and a National Preventive Mechanism under the Optional Protocol to the Convention Against Torture. SHRC is part of both mechanisms, which currently operate at the UK level. The UK has only accepted two of seven individual communications mechanisms linked to UN human rights treaties – those related to the Disability Convention and the Women’s Convention.

The UK has yet to ratify two of the main treaties along with a number of key optional protocols to the main treaties. SHRC considers that ratification of these obligation should be pursued as a priority. The White Paper sets out that Scotland would accede, in its own name, to all relevant international human rights treaties, but is silent as to which treaties would be considered relevant, or whether this would include those treaties which the UK has not yet ratified.[[9]](#footnote-9)

The UK has also lodged a number of reservations or “interpretive declarations” which seek to limit its international obligations under human rights treaties. SHRC considers that the continuing need for these reservations should be subject to periodic review.

The UK reports on the implementation of each of the treaty obligations on a regular basis to UN monitoring bodies. It also reports each four and a half years to the Human Rights Council on the full range of its human rights obligations under the Universal Periodic Review. SHRC has expressed concern on a number of occasions that the UK has failed to properly represent law, policy and practice in Scotland in information submitted for review.[[10]](#footnote-10)

None of the UN treaties have been incorporated into domestic law in Scotland. The rights contained in the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) are incorporated into domestic law through the Human Rights Act 1998 and the Scotland Act 1998. However, the success of embedding civil and political rights in Scotland’s constitutional framework has not yet been replicated and extended to other internationally recognised rights. In its White Paper the Scottish Government sets out that:

“…independence would give Scotland the ability to consider whether other rights, such as those in the United Nations Convention on the Rights of the Child, should also be enshrined.”[[11]](#footnote-11)

SHRC has consistently expressed its view that there is scope for greater incorporation of international obligations to be achieved within Scotland’s constitutional framework, whatever the outcome of the referendum.

**COUNCIL OF EUROPE**

Founded in 1949, the Council of Europe (CoE) is Europe’s most inclusive institution, including 47 countries and 820 million citizens. It promotes co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation.

There are five requirements for joining the CoE: European identity; statehood; an invitation from the Committee of Ministers to join (following consultation with the Parliamentary Assembly); ability and willingness the requirements of members elucidated in Article 3; and ratification of the Statute.

Signing and ratifying the ECHR is a prerequisite for CoE membership, demonstrating compliance with Article 3 of the Statute which requires:

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council.

The UK has not yet ratified the Revised European Social Charter which includes a broad range of economic, social and cultural rights and permits collective complaints by organisations. Nor has it ratified Protocol 12 of ECHR which includes a free-standing equality right.

A number of human rights bodies have been established by various CoE conventions and decisions, the most prominent of which is the European Court of Human Rights (ECtHR).[[12]](#footnote-12) While there are relatively few cases from Scotland that have gone to the ECtHR, the jurisprudence of the court has played an important role in the development of human rights protections in Scotland. There is a judge elected for each High Contracting Party to the ECHR so should Scotland ratify the ECtHR in its own right a judge would be elected for Scotland.

In recent years the UK has been particularly active in the process of reform of the ECtHR. SHRC has observer status at the CoE’s Steering Committee on Human Rights and has been active in trying to ensure that ECtHR is reformed in a way that is consistent with the protection of human rights.

**OSCE**

The Organization for Security and Co-operation in Europe (OSCE) is the world's largest security-oriented intergovernmental organisation. Its mandate includes issues such as [arms control](http://en.wikipedia.org/wiki/Arms_control) and the promotion of human rights, freedom of the press and fair elections. The OSCE differs from most other intergovernmental organisations in that its constitutive charter is non-binding, providing a great deal of flexibility as to its work. It does not have members, rather States are designated as Participating in the OSCE.

SHRC has worked closely with the OSCE’s [Office for Democratic Institutions and Human Rights](http://en.wikipedia.org/wiki/Office_for_Democratic_Institutions_and_Human_Rights) (ODIHR), particularly on issues relating commitments made in the [human dimension](http://en.wikipedia.org/wiki/Three_generations_of_human_rights) aim to ensure full respect for human rights and fundamental freedoms; to abide by the [rule of law](http://en.wikipedia.org/wiki/Rule_of_law); to promote the principles of democracy by building, strengthening and protecting democratic institutions; and to promote [tolerance](http://en.wikipedia.org/wiki/Toleration) throughout the OSCE region.

**COMMONWEALTH**

The Commonwealth Charter makes particular references to human rights, including the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. SHRC works in cooperation with NHRIs across the Commonwealth on a variety of issues, including playing a leading role on the issue of climate justice. With the Commonwealth Games later in the year

SHRC has been working with the Games Organising Committee, and other partners, to address important human rights concerns and to help make the Glasgow Games an example for others to follow. For the first time in over 80 years of Commonwealth Games history, there is a human rights policy for the Games.[[13]](#footnote-13) The policy sets out how human rights have been, and will be, protected and promoted in the preparation and delivery of the Glasgow Games, including respecting freedoms, promoting participation and adopting a sustainable procurement policy.

**OTHER MULTINATIONAL ORGANISATIONS**

While the OECD, WTO and other organisations based on trade and development are not seen primarily as human rights bodies, it is essential that Scotland applies it human rights obligations to all of its international engagement. It is important that States understand that their obligations and duties under international law to respect, to protect and to fulfil human rights extend to all of their actions, even in fields not usually associated with human rights.

1. <http://www.un.org/en/documents/charter/> [↑](#footnote-ref-1)
2. General Assembly resolution [217 A](http://www.un.org/en/ga/search/view_doc.asp?symbol=a/res/217(III)) of 10 December 1948. [↑](#footnote-ref-2)
3. <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> [↑](#footnote-ref-3)
4. <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx> [↑](#footnote-ref-4)
5. 1 January 2013 - 31 December 2016. [↑](#footnote-ref-5)
6. 1 January 2014 - 31 December 2016. [↑](#footnote-ref-6)
7. Page 208. [↑](#footnote-ref-7)
8. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx> [↑](#footnote-ref-8)
9. Page 569. [↑](#footnote-ref-9)
10. See Scottish Human Rights Commission, *Submission to the UN Committee on Economic, Social and Cultural Rights,* April 2009, page 12, “In general SHRC notes that the State report does not fully reflect the realisation of economic, social and cultural rights in Scotland.” [↑](#footnote-ref-10)
11. Page 357. [↑](#footnote-ref-11)
12. Other human rights bodies include: the European Committee of Social Rights and the Governmental Committee under the European Social Charter; the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; the Advisory Committee on the Framework Convention for the Protection of National Minorities; the European Commission against. Racism and Intolerance (ECRI); the Group of Experts on Action against Trafficking in Human Beings (GRETA); and the Commissioner for Human Rights. [↑](#footnote-ref-12)
13. <http://downloads.glasgow2014.com/sites/default/files/documents/Glasgow%202014%20-%20approach%20to%20human%20rights%20-%20December%202013.pdf> [↑](#footnote-ref-13)