

Position Paper: Women's Commissioner Recommendation

March 2022

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

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1. The Recommendation

In January 2021 the First Minister's National Advisory Council on Women and Girls (NACWG) published its [third annual report](#), on the topic of "Creating an Intersectional Gender Architecture". In that report NACWG made a number of recommendations, two of which related to the Commission:

Recommendation 5

"We call on the Scottish Human Rights Commission (SHRC) to appoint a Commissioner tasked specifically with promotion and protection of Women's Rights. This Commissioner would lead work to realise rights for all women and girls as set out in CEDAW, the Istanbul Convention and other international instruments

We also call for the expansion of the mandate of the Scottish Human Rights Commission, with sufficient resourcing to allow it to take on cases on behalf of individuals."

The second element of Recommendation 5, that the Commission's powers be expanded to enable it to take individual cases to court, was accepted by the Scottish Government¹, and will be taken forward in considering the Commission's powers more broadly as part of the overall development of the new Human Rights Bill. The Commission is actively engaged in that process.

In terms of the first element of Recommendation 5, that the Commission appoint a Commissioner tasked specifically with leading work on the promotion the rights of women and girls, the Scottish Government was supportive in principle, but recognised the independence of the Commission and that the appointment of a Commissioner with a specific mandate was a matter for the Commission and the Scottish Parliament Corporate Body ("SPCB").²

Following the publication of NACWG's recommendations, the Commission was invited by SPCB to provide its views on the proposal. The proposal has been considered internally and the Commission has had discussions with NACWG to better understand the aims of the proposal.

The purpose of this position paper is to set out the Commission's views on the proposal. Regrettably, the Commission is unable to support the appointment of a Commissioner with that specific remit within the Commission for the reasons set out below.

2. Paris Principle Requirements

The Commission is Scotland's National Human Rights Institution ("NHRI"). As an NHRI, the Commission must demonstrate compliance with the Paris Principles.

The Paris Principles are a set of minimum standards that NHRI's must meet in order to be considered credible and to operate effectively. The Paris Principles were endorsed by the United Nations General Assembly in 1993.

One of the core Paris Principle requirements is that NHRI's have a broad mandate, so that they are able to promote and protect all human rights, in recognition of the indivisibility and interdependence of human rights.³ The Paris Principles state:

"A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence."⁴

This principle has been elaborated upon by the Global Alliance of National Human Rights Institutions ("GANHRI") Sub-Committee on Accreditation ("SCA"). The SCA is responsible for assessing NHRI's compliance with the Paris Principles. It issues General Observations, which apply to all NHRI's and are binding on NHRI's seeking accreditation.⁵ In its General Observation 1.2 the SCA elaborated on the requirement of a broad mandate, which was confirmed to be an essential requirement of the Paris Principles:

"An NHRI's mandate should be interpreted in a broad, liberal and purposive manner to promote a progressive definition of human rights which includes all rights set out in international, regional and

domestic instruments, including economic, social and cultural rights.”

“The NHRI’s mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent.”⁶

NHRI’s that are assessed by the SCA as fully complying with the Paris Principles are accredited with ‘A status’, while those that partially comply are accredited with ‘B status’. It is also open for the SCA to find an NHRI not to be Paris Principle compliant, and so denied accreditation. Only ‘A status’ NHRI’s have independent participation rights at the UN Human Rights Council, its subsidiary bodies and some General Assembly bodies and mechanisms. They are also eligible for full membership of GANHRI, including the right to vote and hold governance positions.

The SCA has explained the important role of NHRI’s as follows:

“NHRIs are established by States for the specific purpose of advancing and defending human rights at the national level, and are acknowledged to be one of the most important means by which States bridge the implementation gap between their international human rights obligations and actual enjoyment of human rights on the ground. The establishment and strengthening of NHRIs pursuant to the Paris Principles falls within the set of international human rights commitments made by States. It is therefore the responsibility of the State to ensure that it has in place a Paris Principle-compliant NHRI.”⁷

2.1. The Commission

The Commission was established in 2008 with a broad mandate to promote, and encourage best practice in relation to, all international human rights treaties ratified by the UK, including: the European Convention on Human Rights; the International Covenant on Civil and

Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of Persons with Disabilities; the Convention on the Elimination of all Forms of Discrimination Against Women; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸

The Commission interprets its mandate in a broad, purposive manner, recognising that all rights are universal, indivisible, and interdependent. The work of the Commission is conducted with reference to a Strategic Plan, which is developed in consultation with members of the public and a wide range of stakeholders.⁹

The Commission first secured GANHRI accreditation in 2010, was reaccredited in 2015 and again in 2021. On each occasion it secured ‘A Status’ accreditation, as it was found to be fully compliant with the Paris Principles.¹⁰

2.2. Thematic Approach

As a consequence of the Paris Principle requirement of a broad mandate, human rights institutions that take a thematic approach, focusing on one or more areas covered by particular international human rights treaties, may find it difficult to satisfy the SCA of its compliance with the Paris Principles.

Academic research into the accreditation process and the decisions of the SCA on accreditation has led some to conclude that “thematic national institutions are likely to find it difficult to obtain accreditation and the few that have applied have received a B or C grade.”¹¹

In interpreting the Paris Principles the SCA has noted that NHRIs, which will have a broad mandate, should engage with other national human rights institutions, including those with a thematic approach:

“Regular and constructive engagement with all relevant stakeholders is essential for NHRIs to effectively fulfil their mandates. NHRIs should develop, formalize and maintain working

relationships, as appropriate, with other domestic institutions established for the promotion and protection of human rights, including sub-national statutory human rights institutions, thematic institutions, as well as civil society and non-governmental organizations.”¹²

The Commission is concerned that appointment of a Commissioner with a specific mandate in relation to women and girls would be a departure from its current structure and approach, adding a specific thematic focus, which could jeopardise its ‘A status’ accreditation.

It is possible to find examples of accredited NHRI’s with a structure that covers a number of themes. One such example is the New Zealand Human Rights Commission (“NZ Commission”), which has four Commissioners: a Chief Commissioner, Equal Employment Opportunities Commissioner, Race Relations Commissioner and Disability Rights Commissioner. However, with three thematic Commissioners and an overarching Chief Commissioner, the NZ Commission has a very different structure to the Commission’s, which has three part time Commissioners and a full time Chair.

A Commissioner with a specific mandate will also require to be supported by staff with a specific focus on that area of the Commission’s work. The NZ Commissioners, along with its Director of Human Rights Proceedings, are supported by a staff of 60.¹³ The Commission, on the other hand, has a Full Time Equivalent staff of 10.5, plus 2.4 on Fixed Term Contracts. Of necessity, the Commission must take a more generalist approach to its legal and policy work, to ensure sufficient flexibility in staffing its work and overall coverage of its mandate. If a Commissioner with a thematic mandate was added on to the current Commission structure that would inevitably cause an imbalance in the Commission’s overall work. That would be the case even if the appointment came with additional staff who were to be focused on the rights of women and girls, due to the overall size of the Commission.

If the Commission was to be restructured to apply a thematic approach covering the Convention on the Elimination of Discrimination Against Women (“CEDAW”), in order to be Paris Principle compliant, it may be

necessary to also appoint Commissioners with thematic mandates covering the other key international human rights treaties, and ensure that all were adequately resourced.

However, whether or not a thematic approach might be possible and desirable with a more comprehensive increase in the Commission's resources, is something that it would be best to consider in a holistic way, along with other possible structures, taking account of the Commission's overall mandate, the wider Scottish human rights landscape, any expansion of the Commission's powers, and learning from the experiences of other NHRI's. There may be significant challenges with a wide thematic model, in ensuring that the universal, indivisible and interdependent nature of human rights was reflected in the work of the Commission, warding against the development of silos, or the prioritisation of certain rights over others. There is also the concern about rights that do not necessarily fall easily within a particular Treaty remit, for example the right to a healthy environment.

Consideration is being given to the Commission's powers as part of the work that is underway in relation to the incorporation of a number of human rights treaties, including CEDAW. The pre-legislative consultation on the Human Rights Bill is imminent. In the Commission's view, any consideration of the structure and resourcing of the Commission ought to be undertaken in a holistic way, taking all relevant factors into account, including the Commission's powers.

3. Equalities

It is also important to note that a Commissioner appointed to the Commission with this specific mandate may not be in a position to engage fully with the relevant Equality law protections, as the Equalities and Human Rights Commission is the Equality regulator for the whole of Britain.

4. Accountability

From the Commission's discussions with NACWG, we understand that a key aim behind the Recommendation is to strengthen accountability and

scrutiny mechanisms in relation to the rights of women and girls. The strengthening of accountability and scrutiny mechanisms is also a longstanding key concern of the Commission. In our discussion with the Co-Chairs of NACWG we identified a lot of synergy between the Commission's work and the aims of NACWG. With work underway in relation to the incorporation of four UN Human Rights treaties and other rights, the Commission is promoting the inclusion of robust accountability and scrutiny measures, across all of the human rights treaties that are to be incorporated into Scots law and will actively engage with stakeholders, including NACWG, in relation to its work in this area.

¹ The Scottish Government Response to the First Minister's National Advisory Council on Women and Girls, 2020 Report and Recommendations December 2021, page 17: [Scottish Government Response to the First Minister's National Advisory Council on Women and Girls \(www.gov.scot\)](http://www.gov.scot)

² The Scottish Government Response to the First Minister's National Advisory Council on Women and Girls, 2020 Report and Recommendations December 2021, page 18: [Scottish Government Response to the First Minister's National Advisory Council on Women and Girls \(www.gov.scot\)](http://www.gov.scot)

³ [Paris Principles - GANHRI](http://www.ganhri.org)

⁴ Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

⁵ <https://ganhri.org/accreditation/general-observations/>

⁶ General Observation 1.2: [EN GeneralObservations Revisions adopted 21.02.2018 vf \(2\).pdf](https://www.ganhri.org/EN/GeneralObservations_Revisions_adopted_21.02.2018_vf(2).pdf), page 7 - 8

⁷ General Observation [EN GeneralObservations Revisions adopted 21.02.2018 vf \(2\).pdf](https://www.ganhri.org/EN/GeneralObservations_Revisions_adopted_21.02.2018_vf(2).pdf) page 1 para 2

⁸ <https://www.legislation.gov.uk/asp/2006/16/contents>

⁹ [shrc_strategic_plan_2020-2024_vfinal.pdf \(scottishhumanrights.com\)](https://www.shrc.scot.nhs.uk/shrc_strategic_plan_2020-2024_vfinal.pdf)

¹⁰ B Status means the NHRI is partially compliant. <https://ganhri.org/membership/>

¹¹ Linda C Reif, *The Shifting Boundaries of NHRI Definition in the International System*, in *Human Rights State Compliance and Social Change: Assessing National Human Rights Institutions*, p 52, at 3.2.1

¹² General Observation 1.5: [EN_GeneralObservations_Revisions_adopted_21.02.2018_vf\(2\).pdf](#)
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¹³ <https://www.hrc.co.nz/about/commissioners-and-senior-leadership/>