

Scottish Human Rights Commission response to the Call for Evidence on the Rule of Law from the House of Lords Constitution Committee

April 2025

Introduction

The Scottish Human Rights Commission ('the SHRC') welcomes the House of Lords Constitution Committee's inquiry into the Rule of Law in the United Kingdom, and the opportunity to offer the following comments. Our submission to the call for views is rooted in the SHRC's role as one of the three A-Status National Human Rights Institutions in the UK, with a mandate to promote human rights for people in Scotland.

As a founding member of the European Network of National Human Rights Institutions (ENNHRI), the Commission welcomes this network's leadership on rule of law issues at regional level. We make annual returns to a pan-European assessment of the rule of law situation, focusing on the situation in Scotland as per our statutory mandate.

We welcome the opportunity to share analysis based on this work with the Lords Committee and hope that you will find our assessments useful. We direct the Committee to our sister NHRIs at the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission should further insight be helpful in respect of the position in England, Wales and Northern Ireland.

Defining the Rule of Law - Human Rights

Human Rights and the Rule of Law are interconnected and mutually reinforcing concepts. Part of the function of human rights law function is to protect all people from arbitrary abuse of state power. Established international and domestic definitions of the rule of law have emphasised this interconnection as summarised below. Notably Lord Bingham's eight principles of the rule of law in democratic societies include laws that protect human rights and compliance by the state with international law as well as national law. Evidence to this Committee has previously highlighted that Lord Bingham's analysis was integral to the Constitutional Reform Act 2005's explicit reference to the rule of law.¹

The Council of Europe has three core principles: human rights, democracy and the rule of law which every Member States must accept.² The rule of law is referenced in the preamble to the European Convention on Human Rights³ and the European Court of Human Rights has invoked the rule of law in its decisions, for example in interpreting Article 6 and the right of access to courts.⁴ In 2016 the Venice Commission adopted a checklist of core elements of the rule of law,⁵ endorsed by the Ministers' Deputies and the Parliamentary Assembly of the Council of Europe, which include respect for human rights, both internationally and domestically. The Introduction to the checklist articulates the rationale for references to human rights.

"The Rule of Law would just be an empty shell without permitting access to human rights. Vice-versa, the protection and promotion of human rights are realised only through respect for the Rule of Law: a strong regime of Rule of Law is vital to the protection of human rights. In addition, the Rule of Law and several human rights (such as fair trial and freedom of expression) overlap."⁶

The UN has established a Global Focal Point for the Rule of Law under auspices of the Secretary General.⁷ This acts a coordination mechanism for UN agencies, including the Office of the High Commissioner for Human Rights (OHCHR), working to principles articulated in the New Vision of the Secretary-General for the Rule of Law.⁸ This provides that " Human rights and the rule of law are mutually reinforcing – the advancement of the rule of law is essential for the protection of all human rights, and human rights are central to the rule of law."

The European Commission conducts an annual survey of the Rule of Law situation in the European Union.⁹ This work is based on six principles, including "effective judicial protection by independent and impartial courts with effective judicial review including respect for fundamental rights."¹⁰

Human rights are part of the domestic and international legal systems that apply to the UK including within the complexities of the asymmetric system of devolved government which requires effective collaboration between governments at Westminster and Holyrood. As a 'dualist' state, international law and domestic laws sit in separate spheres, meaning that with some important exceptions, international law cannot be directly applied by UK courts. However, as a principle of international law and as set out in the Vienna Convention on the Laws of Treaties, the UK - in all parts of the state - should act by the principle of good faith in adhering to its international obligations, including human rights standards.¹¹

The UK state therefore has more than only a political incentive to comply with international human rights treaties and their monitoring processes, but a legal obligation, albeit a legal obligation with limited opportunities for enforcement. International monitoring bodies and domestic human rights bodies such as the National Human Rights Institutions play an essential role in upholding this compliance.

The ENNHRI Rule of Law Report was introduced in 2020 and is a key tool to advance ENNHRI's strategic priority to protect human rights, the rule of the law and democracy regionally.¹² It identifies common threats and developments and enables an in-country assessment over time. The report supports ENNHRI's engagement with the Council of Europe and the European Commission's rule of law report, and

as a result while no single definition of the rule of law is proscribed, the relevant principles from these organisations could be considered as guiding.

While thematic questions change each year, the subjects cover a range of matters that relate to the exercise of state power and checks and balances. These have included the independence, resourcing and powers of the NHRI; the quality of civic space and protections for human rights defenders; state compliance with international and domestic judicial decisions and corruption and abuse of power.

Each of the Great Britain and Northern Ireland NHRIs submit an annual return to ENNHRI, and these are available here: <https://rule-of-law.ennhri.org/>

Role of National Human Rights Institutions

Independent and effective National Human Rights Institutions are often highlighted as key rule of law indicators, as recognised by the Council of Europe: (“Considering that effective, pluralist and independent national human rights institutions (NHRIs) are among the pillars of respect for human rights, the rule of law and democracy”) as has the EU.¹³ NHRIs form a crucial part of the checks and balances on the exercise of power by all branches of government, providing monitoring, reporting, investigatory and sometimes litigation to ensure accountability for the compliance with a state’s international obligations in respect of human rights.

International obligations are in our case determined by reference to the sources of international law, but most centrally international human rights treaties which the UK has elected to comply with.¹⁴ In Scotland, compliance with these standards is built into the constitutional framework through the Scotland Act¹⁵ and embedded into the foundational principles of the Scottish Parliament. The Scottish Parliament has moved to strengthen respect for international human rights through incorporation of the UN Convention on the Rights of the Child.¹⁶ The Scottish Government has also committed to further incorporation.¹⁷

The Commission's recognition as an A-Status NHRI means that we are considered to comply with a set of principles endorsed by the UN General Assembly and subsequently developed by the Council of Europe. These principles can be summarised as pluralism, independence and effectiveness.¹⁸

Maintaining a strong NHRI network across Great Britain and Northern Ireland is therefore a critical part of the process of upholding the Rule of Law, and the Committee may be interested in work ongoing by the Scottish Government to bring the powers of the SHRC in line with those of the EHRC and the NIHRC to ensure a consistent approach, via its planned Human Rights Bill.

Role of Civil Society

An active and engaged civil society is an essential component of accountability. Media, academics and NGOs all play essential roles in monitoring and reporting state exercise of power.

While the Commission has not specifically identified direct interference with funding security or grant conditions for civil society organisations, those we have engaged with have described an increasingly challenging funding environment, putting their operational sustainability at risk.¹⁹ Threats to the financial sustainability of universities have been reported for many years²⁰ and several have recently indicated significant financial cuts that will impact both teaching and research.²¹

The Commission does not formally monitor the media in Scotland and the UK. We are aware of anecdotal instances shared with the Commission through other engagement that some journalists have been the subject of legal action that may amount to Strategic Litigation Against Public Participation (known as SLAPPs) but have no ability to assess these claims. Other research that the Commission is aware of has identified issues with the sustainability of legacy media outlets and challenges with disinformation. As with civil society and academy, the ability of in particular legacy media to robustly hold state organs to account in their reporting is undermined through fiscal sustainability.

Threats to the Rule of Law in the UK

The Commission's monitoring and reporting activities highlight threats to human rights that raise rule of law concerns in Scotland. Our first State of the Nation report²² was published in December 2024, to mark International Human Rights Day. This summarises monitoring work aligned to civil and political rights as expressed in the EHRC and International Covenant on Civil and Political Rights.

The Commission identified the following issues relevant to a contraction of civic space:

- While the Police, the Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023—does not directly apply to Scotland, Scottish residents engaging in protests in England and Wales could face stricter restrictions. These laws have expanded police powers to impose noise limits, criminalise trespass, and restrict certain forms of protest. The UN Human Rights Committee has called for the UK to amend these laws to ensure compliance with international human rights standards.

- In 2024, several student protest encampments at Scottish universities linked to university investments and actions in the Occupied Palestinian Territories, brought the issue of peaceful assembly into focus.
- The Abortion (Safe Access Zones) (Scotland) Act 2024 introduced restricted on protests near abortion service providers, aiming to protect patients and staff from intimidation. The Commission recognised this as a proportionate restriction on the right to protest in order to protect other rights, such as access to healthcare.
- The media continues to be a predominant platform for harassment and hate speech, with social media increasing public harassment faced by women, LGBTI+, Scottish Gypsy/Travellers and other minority ethnic and religious communities.
- SLAPPs have also come under scrutiny in Scotland following proposals to introduce anti-SLAPP measures in England and Wales. Though anecdotal concern about SLAPPs brought in Scotland have been shared with the Commission, there is limited independent research to identify the scale at which such measures are used.
- There is currently debate about extending Scotland's Freedom of Information laws to ensure greater transparency and accountability.

Scotland's access to justice system is highly complex, fragmented, and often inaccessible. Complaints mechanisms rarely result in systemic change, and the legal framework is challenging to navigate. The SHRC's 2023 review of complaints mechanisms for economic, social, and cultural rights highlighted issues with awareness, complexity, and ineffective remedies.²³

Failure to protect, respect and fulfil human rights is not limited to civil and political rights incorporated domestically. Compliance with rights protected by international law are, in the SHRC's view routinely, undermined by laws, policy and practices. This has been evidenced through a number of recent international human rights monitoring processes which have highlighted ongoing - sometimes decades - of inaction in response to the expert recommendations on improved compliance from UN treaty bodies.

The SHRC has sought and continues to call for parliamentary and government action to respond to gaps in the implementation of obligations made visible in through spotlight projects, including an examination of the impacts of institutionalisation on Article 19 of the UNCRPD,²⁴ failure to meet even minimum core obligations of ICESCR in the Highlands and Islands of Scotland and the lack of

implementation of recommendations concerning human rights in places of detention, including from torture prevention bodies.²⁵

Rule of Law and International Influence and Effectiveness

The SHRC routinely engages with a range of international human rights bodies at both the United Nations and Council of Europe level. We also enjoy positive working relationships with the UK Permanent Mission in Geneva who lead on international human rights engagement.

While we welcome the UK's record in engaging with the UN human rights systems - submitting treaty body reports and attending constructive dialogues, human rights council membership and through the Universal Periodic Review process - we do believe that the approach could be further strengthened. We routinely engage with the UK Government at both political and official level to encourage an open and productive approach that takes the devolved nature of the UK into account.

In addition, while the UK - through which Scottish Government participates externally - is generally a timely and efficient participant in the international rules-based system, its approach to the implementation of these standards can undermine the effectiveness of the accountability mechanisms that exist under international law while denying potential victims of rights violations access to domestic courts without incorporation into domestic law.

While the UK is strong voice advocating for the rule of law, human rights and democracy and rule of law abroad, there is in our a view a risk that failure to comply in all parts of the state with both the letter and spirit of international human rights obligations poses a risk to the effective promotion of this message abroad. Further opportunities to play an active role in international human rights mechanisms could also be explored, for example, prioritising membership of state-based groups and supporting UK human rights experts' efforts to join UN treaty bodies or appointments to Special Procedures could further enhance the UK's standing.

About the Commission

The Scottish Human Rights Commission (the Commission) is a public body created by the Scottish Commission for Human Rights Act 2006.

We are an independent, expert body that works with and for the people of Scotland; we monitor, listen, speak up for all of our rights and respond when things go wrong.

The SHRC is also part of the international human rights system. It is accredited by the United Nations as its trusted organisation to provide impartial evidence on the enjoyment of human rights in Scotland.

The SHRC is independent of Government. We are accountable to the people of Scotland via the Scottish Parliament.

¹ House of Lords - Constitution - Sixth Report

² 1949 Statute, recital 3 of the preamble and Article 3

³ European Convention on Human Rights

⁴ Ibrahim v. the United Kingdom

⁵ Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) - Venice Commission

⁶ Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) - Venice Commission

⁷ The Global Focal Point for the Rule of Law - United Nations and the Rule of Law

⁸ A new vision for the rule of law

⁹ Annual Rule of Law Cycle - European Commission

¹⁰ What is the rule of law? - European Commission

¹¹ Vienna Convention on the Law of Treaties (1969) Article 26

¹² ENNHRI-Strategic-Plan-2022-2025.pdf

¹³ For example, The European Parliament, The establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights - Wednesday, 7 October 2020

¹⁴ [Scottish Commission for Human Rights Act s.2](#)

¹⁵ Scotland Act 1998 Sch. 5 Para. 7(2)

¹⁶ United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

¹⁷ Human rights - gov.scot

¹⁸ Paris Principles - GANHRI

¹⁹ [SHRC submission to ICESCR 2025](#)

²⁰ US_PostBudgetBrief24-25-Jan-2024-.pdf

²¹ What are the problems facing Scottish universities? - BBC News

²² [State of the Nation report 2024: Civil and Political Rights in Scotland](#)

²³ Access to Justice for Everyone

²⁴ Tick Tock...

²⁵ [Review, recommend, repeat: An assessment of where human rights have stalled in places of detention](#)