

Justice Committee

Commission on a UK Bill of Rights

Written submission from the Scottish Human Rights Commission

The Scottish Human Rights Commission is a statutory body created by the Scottish Commission for Human Rights Act 2006. The Commission is a national human rights institution (NHRI) and is accredited with 'A' status by the International Co-ordinating Committee of NHRIs at the United Nations. The Commission is the Chair of the European Group of NHRIs and it is also a representative of Scotland on the Advisory Panel to the Commission on a Bill of Rights. The Commission has general functions, including promoting human rights in Scotland, in particular to encourage best practice; monitoring of law policies and practices; conducting inquiries into the policies and practices of Scottish public authorities; intervening in civil proceedings and providing guidance, information and education.

Introduction

The Scottish Human Rights Commission (SHRC) welcomes this opportunity to submit evidence to the Commission on a Bill of Rights on its discussion paper "Do we need a UK Bill of Rights?" SHRC will express its views in relation to the primary question of the discussion paper:

- Do you think we need a UK Bill of Rights?

The SHRC believes that the current political climate presents singularly unfavourable conditions in which to launch a consultation on a UK Bill of Rights and proposes alternative steps which are more likely to lead to progressive, rather than retrogressive, outcomes for the public.

Accordingly, SHRC makes three observations:

1. SHRC believes that there is a need to retain and build on the Human Rights Act 1998 (HRA). Not only should all of the rights but also all of the mechanisms within the HRA be retained to ensure practical and effective implementation of the Convention. SHRC considers that each of these mechanisms is essential to ensure that the Convention rights are respected in practice.

However SHRC does not consider that the *status quo* presents sufficient guarantees of the respect, protection and fulfillment of all human rights. Consequently SHRC proposes that the following steps are also required:

2. The incorporation of all of the UK's international human rights obligations into domestic law, including but not limited to the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights;

3. The development of a practical action plan to ensure the comprehensive integration of human rights across all areas of law, policy and practice as the most practical way forward at this time for the progressive realisation of all human rights. In Scotland SHRC is promoting such a forward and outward looking approach – to include active engagement of the public, Scottish Parliament and Scottish Government – in shaping Scotland’s National Action Plan. This will be a practical roadmap to progressively bring the living experience of all, particularly the most vulnerable, up to the standards of the international human rights legal obligations already ratified by the UK.

SHRC is disappointed at the way in which the Government formed the Commission on a Bill of Rights. While the Commission is formed by distinguished individuals and accomplished professionals, the lack of cultural, occupational, social and gender diversity is of real concern and not sufficiently reflective of the UK as a whole. A wide range of representation is not only relevant for equality or life experience reasons but provides public legitimacy and political credibility. In addition, the consultation process is not deliberative and the short time period is insufficient to permit a proper public engagement. Debates about human rights are not only about matters of technical law or the jurisdiction of a Court in Europe. They are matters of social values, democratic organisation, and ultimately about the recognition and protection of the human dignity of all. This debate has a constitutional and social magnitude and the composition and process of the Commission fails to reflect this reality.

1. The Human Rights Act 1998

A critical issue for any discussion around human rights must be the status of the Human Rights Act 1998 (HRA), which incorporates the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) into domestic law.¹ SHRC believes that the HRA represents an effective basis for the realisation of Convention rights and that its full potential is only beginning to be realised in practice. SHRC considers that there are real risks in the current political environment that a Bill of Rights process will result in a reduction in the legal protection of human rights, adversely impacting on the most vulnerable people.²

The current debate about the HRA has become highly politicised and fueled by misinformation, including by Government Ministers, and distorted media coverage.³ There is an urgent need to provide clarity about the HRA, its purpose and real impact in our society. Human rights are not a luxury or optional extra for a civilised society, but rather its fundamental values and legal framework. SHRC feels that much more can be done to inform the public of the real benefits of the HRA and promote increased public ownership.

¹ The UK was a founding member of the Convention and exercise large influence in its design. The UK ratified the Convention in 1951. It came into force in 1953. The rights contained in the Convention are civil and political rights.

² See SHRC’s position (30 March 2010) available at <http://www.scottishhumanrights.com/news/latestnews/article/jointstatement>.

³ For an example of the prerequisites for a successful Bill of Rights process see: Developing a Bill of Rights for the UK, Alice Donald with the assistance of Philip Leach and Andrew Puddephatt, Global Partners & Associates, Human Rights & Social Justice Research Institute, London Metropolitan University, 1 March 2010.

There is abundant evidence that the HRA has measurably expanded legal protection as well as improved the level of dignity of the most vulnerable people living in the UK.⁴ The HRA has in fact played a vital role in the development of UK law and policy.⁵ The HRA has led to better policy outcomes by promoting greater personalisation in public services and ensuring consideration of the different groups in society.⁶

The HRA created new mechanisms to enhance the implementation and enforcement of human rights in the UK. So, in addition to incorporating most Convention rights, the HRA requires courts to take account of the case law of the European Court of Human Rights (ECtHR). However, there is simply no requirement in Section 2 of the HRA for the domestic courts to “slavishly follow” the ECtHR case-law as has been claimed by some who seek the repeal of the HRA.⁷

Section 3 of the HRA plays a significant role in the evolutionary interpretation of the Convention, as a living instrument, in that it requires domestic legislation to be interpreted through the lens of the Convention rights. Even where legislation was developed specifically to be “rights based” it must be interpreted with continuing reference to the ECHR.⁸ Accordingly, the HRA is a practical means of “future-proofing” legislation.

Section 4 of the HRA, contrary to a number of interventions on this issue, has not affected UK parliamentary supremacy. This continues intact and unaffected by a declaration of incompatibility.⁹ Only the UK Parliament can make changes to primary legislation.

SHRC also references the independent evaluations of the experience in Scotland of The State Hospital and of the *Care About Rights?* project in the care sector, which evidence that Section 6 of the HRA (compliance duty of public authorities and others), plays a vital role in the delivery of public services. In particular:

- a more individualised and person centred approach to service delivery and a move away from “blanket” policies;
- a reduction in stress for staff and service users as policies were understood and there was greater confidence in their compliance with human rights;
- a reduction in complaints

⁴ See for example: *Human Rights and the Commission on a Bill of Rights*. Equality and Diversity Forum. 2011, available at http://www.edf.org.uk/blog/wp-content/uploads/2011/10/EDF_HRA_briefing2010111.rtf ; *Review of the Implementation of the Human Rights Act*. Department of Constitutional Affairs. 2006, available at

http://www.justice.gov.uk/guidance/docs/full_review.pdf; Klug, Francesca and Starmer, Keir (2005) *Standing back from the Human Rights Act: how effective is it five years on?* *Public law* (Winter). pp. 716-728. For case studies see for example; <http://www.ourhumanrightstories.org.uk> prepared by the British Institute for Human Rights (BIHR), Liberty and other human rights organisations.

⁵ *Review of the Implementation of the Human Rights Act*. Department of Constitutional Affairs. 2006, available at http://www.justice.gov.uk/guidance/docs/full_review.pdf; also Analysis of the impact of the Human Rights Act produced by the Ministry of Justice and Joint Committee on Human Rights in 2007.

⁶ *Ibid*

⁷ *R v Horncastle* [2009] UKSC 14; *Runa Begum v Tower Hamlets* [2002] 2 All ER 668 para 17

⁸ For example the Adults with Incapacity (Scotland) Act 2000 is rights based legislation, but it is now 11 years old and the ECtHR has developed a significant amount of jurisprudence on legal capacity since 2000.

⁹ Section 4 of the HRA

- better communication and clearer understanding of common framework of shared responsibilities.¹⁰

Each of these mechanisms must be retained. Today, all of us – particularly the most vulnerable - can challenge actions by public authorities more promptly at national courts rather than through the increasingly lengthy processes at Strasbourg.

SHRC believes that the HRA should be retained. In addition it calls on the UK Government to take a proactive and co-ordinated approach to ensure that public bodies as well as the wider public are better informed about what the Human Rights Act is and how it relates positively to daily life experience.

1.1. Devolution

The HRA plays a significant role in devolution. The Convention rights were a core component of the means of improving constitutional arrangements within the UK in the late 1990's. The HRA is integrated into the UK constitutional framework within which devolved powers are exercised in Scotland, Wales and Northern Ireland. The HRA is embedded into the Scotland Act 1998, the Government of Wales Act 1998, the Belfast/Good Friday Agreement and the Northern Ireland Act 1998. Before the enactment of the HRA there was a weaker recognition of human rights as a formal component of the UK constitutional order. The HRA provides a coherent framework and minimum threshold of protection of human rights throughout the UK. This level of integration of the HRA into the constitutional arrangements provides a strong constitutional case for its retention.

Repeal of the HRA is likely to undermine such constitutional arrangements and consistent cross-UK interpretation of the Convention. Instead it may well have the unintended consequence of cementing a two-tier system of human rights protection within the UK as it is likely that the Scottish Parliament would not agree to the replacement of the HRA by a UK Bill of Rights and any subsequent lowering of the existing level of protection provided by the HRA in such devolved areas as health and social care, education, social work, housing, criminal justice, etc. This would therefore present the legitimate question for the UK Government to answer - why should individuals in London, Belfast and Cardiff have less human rights protection than those in Glasgow?

SHRC believes that full weight should be given to the constitutional and devolutionary implications of repeal of the HRA and its substitution by a UK Bill of Rights.

1.2. Scotland

Human rights are better protected within Scotland's constitutional governance than at a UK level. The existing constitutional arrangements of the Scotland Act 1998 and the HRA mean that while Scottish courts can only make declarations of

¹⁰ For further discussion see *Human Rights in a Health Care Setting: Making it Work for Everyone* and *Training and Capacity Building Programme related to Care and Support for Older People* at <http://www.scottishhumanrights.com/>

incompatibility in respect of Acts of the UK Parliament, they can invalidate Acts of the Scottish Parliament if they are judged not to be compatible with the Convention.¹¹

There are also other clear differences; the Scottish Parliament is prevented from legislating inconsistently with the Convention.¹² The Scotland Act also prevents the Scottish Government making legislation or doing any other act incompatible with the Convention rights.¹³ The constitutional consequence is that any provision enacted under these circumstances (outside its legislative competence) is not law.¹⁴

There is also a special judicial procedure for the determination of questions that arise in Scottish courts in relation to the competence of acts of the Scottish Parliament or the Scottish Government, including challenges to the acts of the Lord Advocate which are taken to the UK Supreme Court.¹⁵ This latter question has instigated a strong opposition from the present Scottish Government to allow a non-Scottish court to interfere with the Scottish criminal system.¹⁶ As the national human rights institution for Scotland, SHRC played an active role in this constitutional debate and helped clarify the necessary constitutional role of the Supreme Court in ensuring a consistent interpretation of the Convention across the UK.¹⁷

In addition, both the Scottish Government and Parliament must take into account the whole range of international human rights obligations by observing and implementing them.¹⁸

There are significant differences and experiences about how the HRA operates between the different UK jurisdictions.¹⁹ The HRA has had a general positive effect in Scotland and SHRC has recommended a series of concrete steps to further embed it within the devolutionary framework. These include a more consistent and transparent human rights scrutiny of proposed legislation and particularly of “emergency legislation”, the development of integrated equality and human rights impact assessment processes for policy and decision making, and the improvement of mechanisms for ensuring compliance with human rights.²⁰

¹¹ Schedule 6 of the Scotland Act 1998; Section 29(2)(d) of the Scotland Act 1998

¹² Section 29(2)(d) of the Scotland Act 1998

¹³ Section 57(2) of the Scotland Act 1998

¹⁴ Section 29(1) of the Scotland Act 1998

¹⁵ e.g. *Somerville v Scottish Ministers* 2008 SC (HL) 45; *Cadder (Appellant) v Her Majesty's Advocate* [2010] UKSC 43; *Fraser v HM Advocate* [2011] SLT 515.

¹⁶ SPOR (27 Oct 2010) cols 29553 – 29585; 29611 – 29679. Recently, the Scottish Government appointed a special review group to consider the role of the UK Supreme Court in criminal appeals.

¹⁷ SHRC submitted evidence to the Advocate General's consultations and wrote to all Members of the Scottish Parliament ahead of their debate on this issue in June 2011. SHRC also provided written evidence to the review group chaired by Lord McCluskey. See more at <http://www.scottishhumanrights.com>

¹⁸ Schedule 5 para 7 (2) of the Scotland Act 1998

¹⁹ In Scotland there is range of legislation that is human rights based in areas such as mental health and protection of adults at risk of harm. E.g. Mental Health (Care and Treatment) (Scotland) Act 2003 and Adult Support and Protection (Scotland) Act 2007. SHRC since its creation has successfully promoted a human rights based approach to law, policy and practice; see our work at www.scottishhumanrights.com

²⁰ *Submission to the Scotland Bill Committee.*, Scottish Human Rights Commission, September 2011, available at http://www.scottish.parliament.uk/S4_ScotlandBillCommittee/Inquiries/Scottish_Human_Rights_Commission.pdf. See other SHRC submissions to Scottish/UK Bills at www.shrc.com

SHRC considers that the HRA provides an important pillar of the constitutional framework of devolution and ensures a basis for the consistent interpretation of human rights throughout the UK.

1.3. The European Human Rights System

A repeal of the HRA and introduction of a UK Bill of Rights could create a complex situation for the legal protection of human rights both at home and in Europe. For example, national courts would be presented with considerable legal challenges as the UK will remain a contracting party to the Convention (and its rights will remain legally binding) but would have a second instrument: the UK Bill of Rights.²¹ This Bill could provide different standards to those of the Convention.²² This would hinder legal certainty and a risk of national jurisprudence developing out of synch with European interpretations of human rights.

The present arrangements under Section 2 of the HRA by which domestic courts are required to “take account” of ECHR jurisprudence in fact lends itself more to the exercise of margin of appreciation by the ECtHR than would the adoption of a UK Bill of Rights. The ECtHR already defers properly to the greater knowledge and experience of domestic decision-makers arising from “their direct and continuous contact with the vital forces of their countries”.²³

In this respect, former Lord Chief Justice Lord Woolf has warned of conflict between the Convention and a proposed British Bill of Rights. He fears judges would be put in a difficult position as they tried to balance opposing rights.²⁴ He added:

“If you have a further convention – a British convention – there's going to be a complication in the position, because you're going to have two conventions to which the courts are going to have a regard.”²⁵

Lord Hope, the Deputy President of the UK Supreme Court has articulated in relation to the repealing of the HRA that:

“... it's very difficult to see how simply wiping out the Human Rights Act is really going to change anything until we withdraw from the convention – which, personally, I don't think is conceivable.”²⁶

Similarly, the former President of the ECtHR has expressed the view that the plans to replace the HRA could jeopardise the protection given by the Convention. He stated that this:

²¹ The rights contained in the Convention are civil and political rights, though there is a separate Social and Economic Charter of 1961.

²² Although the current Coalition Agreements commits the present Government to maintaining Convention rights within UK law, there is no guarantee that subsequent Governments would apply the same standard.

²³ Belgian Linguistic Case, (1968) EHRR 252

²⁴ The Guardian, 2011. *British bill of rights 'will put judges in a difficult position'*, 21 February.

²⁵ Ibid

²⁶ Wagner, A, 2010. *Repeal of Human Rights Act would make no difference*, UK Human Rights Blog, 5 August, available at t <http://ukhumanrightsblog.com/2010/08/05/repeal-of-human-rights-act-would-make-no-difference/>

“could mean that most rights [in the convention] are protected to more or less the same extent, but not 100% of them. This could create divergences between the case law [from Strasbourg] and the law in the UK.”²⁷

The right of individual petition is the foundation of the Convention system and the importance of the ECtHR should not be ignored.²⁸ However, it is equally important to remember that:

“The machinery of complaint to the Court is [thus] subsidiary to national systems safeguarding human rights”²⁹.

This subsidiary character is articulated in Articles 13 and 35 (1) of the Convention. This also has been confirmed by the Interlaken Declaration.³⁰ A considerable programme of reform to improve the ECtHR’s working and efficiency started with the adoption of Protocol 14 of the Convention and the Interlaken Action Plan. To this effect State parties need to both sufficiently support the Court’s capacity to adjudicate cases as well as to better discharge their responsibility to ensure a more effective implementation of such binding adjudications. The role of the ECtHR must be preserved and strengthened so as to ensure a common floor of protection of human rights across Europe.

The repeal of the HRA or any retrogressive move in relation to the ECtHR would have adverse legal and political consequences.³¹ It would not only undermine the legal protection of human rights at home but would make it more difficult for the UK governments to credibly promote human rights in foreign policy. The Secretary-General of the Council of Europe has warned that perceptions of the UK having a disparaging attitude towards upholding human rights could be misinterpreted:

“If the UK with its long-standing tradition as a human rights defender were now to be perceived as calling the convention into question, this could have a negative knock-on effect in other countries”³²

The Convention has arguably become the most practically effective international human rights instrument in the world. If the Parliament chose to repeal the HRA (or even withdraw at a later stage from the Convention) there would be irreparable harm to the UK’s international standing. It will also risk damaging human rights compliance in other countries where Convention rights are not sufficiently promoted and

²⁷ Hirsch, A, 2010. UK bill of rights plan a 'bad idea', warns head of European court. The Guardian Sunday, 27 June

²⁸ There are two sources of petitions of complaint under the European Convention: inter-state applications under Article 24 and petitions by individual persons under Article 25 of the Convention

²⁹ *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V, 26 March 2006

³⁰ Interlaken follow up: Principle of Subsidiarity. Note by the Jursiconsult. Strasbourg July 2010. P 4

³¹ For a further discussion see Michael Pinto-Duschinsky, *Bringing Rights Back Home: Making human rights compatible with parliamentary democracy in the UK* (London: Policy Exchange, 2011). The UK has been a member of the Council of Europe, and a party to the ECHR, long before the UK joined the European Union. Membership of the European Union is based on respect and protection for the rights set down in the Convention.

³² Warrell H, 2011. Warning over UK human rights debate, Financial Times, 26 October, available at <http://www.ft.com/cms/s/0/293ab150-ffe0-11e0-89ce-00144feabdc0.html#axzz1byXClokl>

respected and so ultimately may risk destabilising the whole European human rights system.

SHRC considers that much weight needs to be given to the adverse legal and political consequences – at home and abroad – of the repeal of the Human Rights Act and, particularly the destabilising effect that could have on the whole European human rights system.

2. Incorporation of other human rights obligations in domestic law

Human rights are universal, indivisible, interdependent and universal without any conditions attached for enjoyment. Both economic, social and cultural as well as civil and political rights are essential for the effective protection of human dignity. Together, they constitute the cornerstone of a civilised society. This requires treating them in a fair and equal manner, on the same footing and with the same emphasis. It is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights.³³

In the sphere of civil and political rights the HRA introduced into UK law the 1950's human rights standards adopted in the Convention. This was not intended to be the end of evolution of human rights legal protection but a key step in improving their enforcement in the UK. SHRC itself was explicitly empowered by the Scottish Parliament to promote not only the Convention but the full range of human rights guaranteed by international conventions to which the UK is a party.

The UK has ratified a wide range of international human rights treaties that create a number of international obligations. However, it has failed to incorporate this broader range of human rights into our domestic legal systems, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of the Child (CRC) and the UN Convention on the Rights of Persons with Disabilities (CRPD). There is a progressive and desirable international law procedure that begins with treaty signature and acceptance of obligations to government incorporation into the domestic level.

While the UK's position is often that the treaty rights are reflected in different pieces of legislation, the approach taken by the state is unsystematic and fragmentary. The so called sectoral law reform examines legislation concerning different areas in order to identify and make the changes needed to bring existing legislation into conformity with their international obligations. Such a fragmentary approach fails to understand the functional relationship between specific rights and the whole system and focuses on ad hoc solutions, producing gaps and inadequacies in legislative protection.³⁴ Consequently, the Concluding Observations of the UN treaty bodies that monitor human rights compliance frequently call on the UK government to incorporate these obligations.³⁵ SHRC notes that the UK is under a legal obligation to comply with the ICESCR and to give it full effect in its domestic legal order.³⁶

³³ The 1993 Vienna Declaration and Programme of Action, para 5

³⁴ Twenty-first Report of Session 2003-04, *The International Covenant on Economic, Social and Cultural Rights*, HL Paper 183, HC 1188.

³⁵ For example Concluding Observations of the Committee on Economic, Social and Cultural Rights on the UK in 2009; The UN Committee on the Rights of the Child has repeatedly called on the UK

In practice, the SHRC believes that there is, at present, insufficient legal protection for economic, social and cultural rights in the UK. The current economic climate makes it all the more imperative that these rights form an objective legal reference to consider the fairness of resource allocation, including the requirement of prioritisation of the most marginalised and the realisation of at least minimum essential levels of these rights for everyone, as well as non-discrimination.

SHRC considers that a natural next step in the legal protection of human rights in the UK is the incorporation of other international human rights obligations, including those related to economic, social and cultural rights, into national law.

SHRC believes that there are a variety of constitutional models around the world to ensure judicial enforcement of these rights whilst guaranteeing an appropriate balance between the judiciary and the democratically elected governments and parliaments. The experience of the South African Constitutional Court (SACC)³⁷, for example, demonstrates how a superior domestic court can uphold ESC rights, and determine the “reasonableness” of the States’ measures to progressively realise those rights³⁸. Whilst the SACC is applying the South African Constitution, superior courts in other countries have similarly upheld economic, social and cultural rights based on the direct application of international human rights law³⁹. There also various European experiences to learn from such as those in Finland and Germany.⁴⁰

Enabling the full spectrum of human rights to be enforceable domestically is likely to have a positive effect on the current public perception of human rights. By embracing economic, social and cultural rights (such as the right to adequate housing and the right to the highest attainable standard of physical and mental health) as an essential component of a modern UK democracy a real sense of ownership and public

Government to incorporate the Convention into UK law, most recently in its October 2008 Concluding Observations

³⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 9 on the domestic application of the Covenant, 1998.

³⁷ While the South African Constitutional Court is frequently cited as an example, it is far from the only superior domestic court to uphold ESC Rights – for recent overviews see inter alia, International Commission of Jurists (ICJ), Courts and the Legal Enforcement of Economic, Social and Cultural Rights. Comparative Experiences of Justiciability, 2008, Human Rights and Rule of Law Series No. 2, available at: <http://www.unhcr.org/refworld/docid/4a7840562.html>, Malcolm Langford (ed.), Social Rights Jurisprudence, emerging trends in international and comparative law, CUP, 2008; Yash Ghai and Jill Cottrell (eds), Economic, Social and Cultural Rights in Practice, the role of judges in implementing economic, social and cultural rights, Interights, London, 2004. For a good range of sources on the “justiciability” of ESC rights available at: http://www.escr-net.org/resources/resources_show.htm?doc_id=1052983&attribLang_id=13441

³⁸ See for example Treatment Action Campaign and others v Minister of Health and others 2002 (4) BCLR 356.

³⁹ See for example, Mendoza Beatriz Silva y otros c. Estado Nacional y otros s/ daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza – Riachuelo Expediente M. 1569. XL, Corte Suprema de Justicia de Argentina, Julio 8, 2008. available at http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1469153&focus=14020,13991,13992&attribLang_id=13441 (last viewed 14 April 2011).

⁴⁰ The JCHR has discussed some of these models in its Twenty-Ninth Report of Session 2007-2008, *Does the UK need a bill of rights*, JCHR.

confidence in human rights would be created. It would also produce a clearer understanding of the importance of human rights throughout the UK.

In this respect, The Parliamentary Joint Committee on Human Rights welcomed incorporation in the context of the previous UK Bill of Rights process.⁴¹ The JCHR added:

“While we recognise that the inclusion of economic and social rights in a UK Bill of Rights would not be a panacea to all economic and social ills, it would in our view make a real practical difference in relation to a number of ongoing human rights problems.., for example: the lack of security of tenure for older people in residential accommodation (the right to housing)”⁴²

Similarly, the UN Committee on Economic, Social and Cultural Rights has urged the UK:

“...to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights”⁴³

The Committee also recommended adopting a national human rights plan of action including specific programmes regarding the realisation of economic, social, and cultural rights.⁴⁴

SHRC believes that the next natural step in the development of human rights in the UK is the incorporation of the already ratified international human rights legal obligations – including but not limited to the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights.

3. Scotland’s National Action Plan for human rights.

SHRC considers that development of an action plan to ensure the comprehensive integration of human rights across all areas of law, policy and practice is the most practical way forward at this time for the progressive realisation of all human rights. In Scotland SHRC is promoting a forward and outward looking approach – to include active engagement of the public, Scottish Parliament and Scottish Government - in shaping a practical roadmap to bring the living experience of all, especially the most vulnerable, up to the standards of those international human rights legal obligations already ratified by the UK.

SHRC is currently mapping the realisation throughout Scotland of both economic, social and cultural rights as well as civil and political rights. The central aim of the

⁴¹ The JCHR “welcomes UK Government’s preparedness to consider the inclusion of economic and social rights.” Twenty-Ninth Report of Session 2007-2008, *Does the UK need a bill of rights*, JCHR. para 164

⁴² *Ibid.* para. 198

⁴³ Concluding Observations of the Committee on Economic, Social and Cultural Rights on the UK in 2009

⁴⁴ *Ibid*

research is to understand the extent to which people in Scotland, particularly the most vulnerable, are able to realise their human rights in their day to day lives. The report of the research will highlight the gaps as well as the good practices and will inform the development of the first National Action Plan for human rights within the UK. This National Action Plan shall also include clear indicators and benchmarks as well as an independent monitoring mechanism so as to assure, and not assume, the desired outcomes.

SHRC believes that full consideration should be given to the development of a national action plan for human rights, consistent with the UK's international human rights legal obligations, with reference to the proposed Scotland's National Action Plan.

Conclusion

SHRC reiterates its belief that the current political climate presents singularly unfavourable conditions in which to launch a consultation on a UK Bill of Rights and proposes alternative steps which are more likely to lead to progressive, rather than retrogressive, outcomes for the public.

Accordingly, SHRC makes three observations:

1. SHRC believes that there is a need to retain and build on the HRA. Not only should all of the rights but also all of the mechanisms within the HRA be retained to ensure practical and effective implementation of the Convention. SHRC considers that each of these mechanisms is essential to ensure that the Convention rights are respected in practice.

However SHRC does not consider that the *status quo* presents sufficient guarantees of the respect, protection and fulfillment of all human rights. Consequently SHRC proposes that the following steps are also required:

2. The incorporation of all of the UK's international human rights obligations into domestic law, including but not limited to the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights;
3. The development of a practical action plan to ensure the comprehensive integration of human rights across all areas of law, policy and practice as the most practical way forward at this time for the progressive realisation of all human rights. In Scotland SHRC is promoting a forward and outward looking approach – to include active engagement of the public, Scottish Parliament and Scottish Government – in shaping Scotland's National Action Plan. This will be a practical roadmap to progressively bring the living experience of all, particularly the most vulnerable, up to the standards of the international human rights legal obligations already ratified by the UK.

Scottish Human Rights Commission
11 November 2011