

## WELFARE REFORM COMMITTEE

### WOMEN AND WELFARE INQUIRY

#### WRITTEN SUBMISSION RECEIVED FROM THE HUMAN RIGHTS CONSORTIUM SCOTLAND

##### **About the HRCS**

The Human Rights Consortium Scotland (HRCS) is a network of over 160 organisations and individuals. It was established in January 2010 to help address the gap in knowledge of human rights within NGOs and to build capacity on applying human rights principles and standards to the delivery of publicly funded services. The HRCS was borne out of an unmet need and in response to specific problems. The HRCS campaigns, writes briefings, delivers training and recruits advocates who support human rights and the benefits they bring to communities across Scotland.

Our members have a track record in demanding more domestically enforceable human rights than those currently incorporated under the ECHR, and the need for a mechanism to ensure domestic law keeps pace with European Court of Human Rights (ECtHR) jurisprudence. Examples include: Glasgow Disability Alliance which seeks incorporation into Scot's law of UN Convention on the Rights of Persons with Disabilities; Together (the Scottish Alliance for Children's Rights) which campaigned for the incorporation of the UN Convention on the Rights of the Child during the recent passage of the Children and Young People Scotland Bill; the Campaign for Freedom of Information in Scotland which has asserted that the ECtHR jurisprudence on Article 10 of the ECHR means that the right to access information law in Scotland needs to catch up.

No one is asking for the *status quo* on human rights rather our members support the development of human rights standards in parallel with improved access to justice to address breaches. Members also want more proactive mainstreaming of human rights across our 10,000 public services. This submission is inspired by our work on promoting economic and social rights as human rights.

##### **Overview**

The HRCS is very concerned about the impact of austerity on economic and social rights and the equal enjoyment of rights under the European Convention on Human Rights (ECHR). The HRCS defers to other organisations practical expertise on women's experiences of being on benefits or employment support. This submission focuses on standards and processes in crafting a new system and enabling redress when the UK system fails women.

Posing the question 'What is the impact of welfare reform on women?' has prompted some reflection about how internationally defined economic and social rights can influence practical improvements to the design and delivery

of welfare law and services in Scotland. For example the UK has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which means all our laws and policies should comply. However, too few people know about the detail of the rights or know about the guidance to give the listed rights practical effect.

The priority for the HRCS is for a 'preventative positive strategy' which means the State respects, protects and fulfils individual human rights across public services in Scotland. Designing and delivering welfare which has an equally positive impact on men and women, and ensuring access to justice when people have a problem are key elements of a human rights compliant system.

Any new welfare system using devolved powers should be subject to an Equality and Human Rights Impact Assessment (EqHRIA) and resources have been produced jointly by the Equality and Human Rights Commission Scotland (EHRC) and the SHRC. The information, guidance and resources can be found at <http://www.scottishhumanrights.com/eqhria>

## United Nations

The UN Committee on Economic, Social and Cultural Rights examined the UK's record of delivering on the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2009. ICESCR is very relevant as:

- **Article 9** The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.
- **Article 11 (1)** The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization

The UN Committee made a number of conclusions and recommendations to the UK Government but in practice some relate to the Scottish Government too including:

"The Committee urges the State party 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. The Committee reiterates its recommendation that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order. In this respect, the Committee again draws the attention of the State party to its general comment no. 9 (1998) on the domestic application of the Covenant."<sup>1</sup>

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<sup>1</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights United Kingdom of Great Britain and Northern Ireland, the Crown

The UK record on ICESCR will again be examined by the United Nations at a hearing in 2016 and civil society in Scotland will be proposing 'lists of issues' which the UN may wish to raise directly with the UK Government in 2015.

The HRCS and some of its members have worked on ICESCR submissions, Hearings and trying to give effect to Concluding Observations. In addition, on 21st April, the SHRC and the Scottish Government hosted a "WORKSHOP ON ENGAGEMENT WITH THE INTERNATIONAL HUMAN RIGHTS SYSTEM" and we anticipate more organisations will make submissions to the UN as a result.

It would be helpful if the Welfare Reform Committee could give a public airing to the kinds of issues and solutions in respect of welfare and poverty, which civil society intends to raise with the UN so that Scotland has had a formal opportunity to consider if it can fix the problems using devolved powers. Under ICESCR our Government should progressively realise the rights to the maximum extent of its available resources. We consider "welfare" extends to in work payments which people receive to compensate for low wages.

In conjunction with other Scottish Parliament committee's the Welfare Reform Committee could instigate a hearing of the practical impact of ICESCR in Scotland. This would highlight the rights and remedies which ICESCR can offer Scotland.

### **Promoting Test Cases and Best Practice**

Section 6 of the Scottish Commissioner for Human Rights Act specifically prohibits the SHRC taking up or advising on cases which creates a gap in its ability to help people and communities. As cases involving human rights and austerity can be costly and difficult to progress, it would be helpful if the SHRC could take up individual cases and test unfair rules which are considered to restrict economic and social rights.

### **Conclusions**

The Welfare Reform Committee can give the UN's 'Concluding Observations on ICESCR' and other relevant ones practical effect in Scotland when proposing improvements on welfare in Scotland. The HRCS believes that human rights need to be brought closer to communities across Scotland to achieve a fairer and more equal Scotland.

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