



## **CARE for Scotland's Response to the Equalities and Human Rights Committee's Call for Evidence on 'Human Rights and the Scottish Parliament'**

### **Introduction**

1. Christian Action Research & Education (CARE) is a well-established Christian social policy charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives. CARE for Scotland is a department of CARE.

2. CARE for Scotland welcomes the inquiry of the Equalities and Human Rights Committee on 'Human Rights and the Scottish Parliament.' Our submission engages with how the Scottish Parliament could enhance its approach to promoting and protecting human rights, and particularly, the right to freedom of religion or belief (FoRB), parental rights, and the right to life for all.

3. As the Brexit debate continues, it is not yet clear how leaving the EU will affect the UK and its human rights protections. The main source of human rights in the UK derives from the European Convention of Human Rights (the ECHR) incorporated into domestic law via the Human Rights Act 1998 (the HRA). It must be emphasised that leaving the European Union will have no impact on the UK's obligations under the ECHR. It should be noted also that although the 2015 Conservative manifesto contained a proposal to withdraw from the ECHR (including repealing the HRA) and replace it with a British Bill of Rights, the 2017 Conservative manifesto made clear that this would not occur during the lifetime of the present Westminster Parliament. Repeal of the HRA then is dependent upon the Conservatives winning the next Westminster election with a sufficient majority to command support for this policy if indeed it is included in the next Conservative manifesto.

4. Although the UK is scheduled to leave the EU on 29<sup>th</sup> March 2019, it is as yet unclear what the final deal between the UK and the EU will include. This lack of clarity applies also to the extent to which provisions contained in the Charter of Fundamental Rights of the European Union (the Charter) will remain part of UK law post Brexit. In January 2018, MPs voted in favour of excluding the Charter from the EU Withdrawal Bill. However, this Bill has yet to be passed by the House of Lords and it is possible that it may be amended further to reinstate the Charter into the Bill.

5. The submission focuses on the right to FoRB, and more specifically, 1) the importance and benefits of protecting the right, 2) the clash of protected characteristics that results in the right to FoRB being marginalised, and 3) how the issue could be addressed to ensure that the right to FoRB is fully protected. It starts by considering the underlying philosophical basis of human rights and the need to rediscover this in order to avoid human rights being used as a vehicle to marginalise the right to FoRB.

## ***Participation and Engagement***

### ***How can the Scottish Parliament empower people to make them more aware of their rights under domestic and international human rights law and to build a strong human rights culture in Scotland?***

6. It is important in seeking to build a strong human rights culture in Scotland to recognise the philosophical origin of human rights in the Judeo-Christian tradition. The webpage of the Equalities and Human Rights Committee suggests that human rights have their origin in post-Enlightenment secular thinking. That analysis fails to address the long-standing Christian human rights tradition which developed during the Middle Ages and laid the foundation of the subsequent development of human rights during the early modern era. The reason this is important is because human rights cannot be seen in isolation from the underlying worldview which underpins society and, in particular, our understanding of what constitutes fairness and the common good. To see human rights as an end in themselves rather than as a means to an end, is to open them up to subjective interpretation based on the exercise of power by organised interests who seek to promote particular political ideologies.

7. The Christian understanding of human rights is based on the Biblical teaching that human beings are made in the image of God and, therefore, have inherent dignity. This approach sees human rights as being based on objective right and the pursuit of justice. It is far removed from the subjective and individualistic character of much of the secular human rights discourse which has emerged in recent years. In the Christian human rights tradition, the obligation to ensure access to material resources on the part of the poor and the oppressed is prioritised. It is the recognition of the image of God in fellow human beings and in response to the law of God that the rights of others are to be respected.<sup>1</sup> These rights are not subjective in nature or possessed by the recipient. Rather they are based on objective right, conferred by God on humanity and recognised by society in law with regard to each person. They rest on the indivisibility of justice and moral goodness.

8. At the root of the Christian human rights tradition is an undergirding ethical framework which sustains the understanding that those who govern do so with a responsibility to administer justice and to promote the common good of society. Rights are not to be vehicles for the assertion of power by individuals or groups in order to dominate others. However, as Dr James Orr argued in a publication for the influential Respublica think tank, unfortunately, much of the modern secular rights agenda seems to have fallen for this temptation to facilitate the domination of particular interests and the advancement of specific political ideologies. Rather than human rights being a mechanism to ensure plurality and respect for difference, it has become the means by which conformity and uniformity is imposed within society and upon religious minorities in particular. It is essential, therefore, Orr argues, to return to a more traditional understanding of human rights where accommodation is made between different groups in order to ensure that no one is more equal than anyone else.<sup>2</sup>

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<sup>1</sup> Evangelical Alliance, *Faith & Nation*, London, 146-147.

<sup>2</sup> J. Orr, 'Beyond Belief: Defending religious liberty through a British Bill of Rights', (November 2016) Respublica, 3.

## **The Right to Freedom of Religion or Belief (FoRB)**

9. FoRB is a fundamental human right protected by international, regional, and domestic law provisions. It is a human right that goes beyond recognising human beings as political and economic entities. Indeed, religion and belief set up the moral foundations for our everyday lives and prescribe certain behaviours. Religion further affirms that there is a higher authority than the Government and so sets up moral limitations to its work.

10. Religious liberty is beneficial for all communities. Indeed, the public service and contribution of religious groups to their communities has been remarkable for many years.<sup>3</sup> Nonetheless, the place for religion and the manifestation of religious belief in the public square is increasingly circumscribed and in a way that is causing significant concern. This has an adverse effect not only on those who wish to enjoy their religious liberty, but also on those who benefit from services provided by religious groups (predominately on a voluntary basis). Hence, the right to FoRB must be protected not only because it is a fundamental human right but also because of the positive impact on communities.

11. The Scottish Parliament must act to ensure that the right to FoRB is adequately protected and enforced.

## **The Clashes of Protected Characteristics**

12. The right to FoRB, especially religious manifestation, is not adequately protected where it clashes with other equality laws.

13. In the UK, the anti-discrimination and equality provisions are incorporated in the Equality Act 2010. Section 4 of the Equality Act 2010, enlists nine protected characteristics, namely, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

14. Under the Equality Act 2010, the protected characteristics are on the same legal footing. However, the empirical reality suggests a hierarchy of the protected features. For example, religious discrimination has been given lower priority than discrimination on the grounds of sexual orientation.<sup>4</sup> The primary rationale argued in support of this hierarchy is that religion and belief are matters of choice, contrary to other protected characteristics. This was indeed the conclusion drawn by Lord Justice Sedley in *Eweida v British Airways*, stating that:

“...one cannot help observing that all of these apart from religion or belief are objective characteristics of individuals; religion and belief alone are matters of choice.”

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<sup>3</sup> The Cinnamon Network, Cinnamon Faith Action Audit National Report, May 2015. Available at: <http://www.cinnamonnetwork.co.uk/wp-content/uploads/2015/05/Final-National-Report.pdf>; the Church of England, Church of England at a glance. Available at: <https://www.churchofengland.org/about-us/facts-stats.aspx>; Paul Bickley, Good Neighbour: How Churches help communities flourish (Tackling Poverty Together Church Urban Fund and Theos: 2014) 4. Available at: <http://www2.cuf.org.uk/sites/default/files/PDFs/Research/Good%20Neighbours%20Report-CUF-Theos-2014.pdf>.

<sup>4</sup> A. Carey and G. Carey, *We Don't Do God: The Marginalization of Public Faith* (Monarch Books: Oxford, 2012); Megan Pearson, 'Religious discrimination and the 'hierarchy of rights': non-existent, appropriate or problematic?' (2016) *International Journal of Discrimination and the Law*, Vol 16, 37-50.

15. This approach erroneously classifies and simplifies what religion is. Religion or belief cannot be treated as a hobby, which can be picked up or put down. It is constitutive of identity and requires a full and adequate recognition in and protection by law, equal to other protected characteristics. Such a perception of religion as something that can be picked up or put down with ease and without reconstituting identity damages the right of individuals who would wish to manifest their religious belief, including in places like the workplace.

16. One of the measures that could assist with ensuring that the right to manifest religious belief is protected in the workplace would be, for example, the mechanism of reasonable accommodation of religious belief. The Scottish Parliament should consider the formal mechanism of reasonable accommodation of religious belief in the workplace.

### **The Mechanism of Reasonable Accommodation in the Workplace**

17. The Scottish Parliament should endorse the principle of ‘reasonable accommodation’ of religious belief in the workplace and encourage all public bodies to adopt this as best practice. Reasonable accommodation is a mechanism that allows for an exception to be made for an employee in order to accommodate their needs. The principle of reasonable accommodation is already included in law with regard to the treatment of people with disabilities.<sup>5</sup> In the United States and Canada, this approach also applies to the accommodation of religious belief in the workplace.<sup>6</sup> Currently the employee bears the burden of proof to show that indirect discrimination has occurred where an employer requires them to act in a way contrary to their religious beliefs or where the employer refuses to make accommodation for the manifestation of those beliefs. Under reasonable accommodation the burden of proof is placed on the employer to show accommodation of the employee’s beliefs and practice of his/her religion would place an undue burden on the operation of the organisation.

18. Although the Scottish Parliament has no power to amend the Equality Act 2010 to incorporate reasonable accommodation, it could encourage the adoption of this principle as best practice throughout the public and private sectors. To do so would be to recognise the right to freedom of thought, conscience and religion. It would have the effect of reconciling the potentially conflicting approaches adopted in implementing equality and human rights approaches which has led to increasing cases of people of faith having their rights neglected in order to impose uniformity.

19. Reasonable accommodation of religious belief in the workplace (in the UK) has been considered by the Equality and Human Rights Commission (EHRC) on a few occasions. In its report from 2013 ‘Religion or Belief in the Workplace: A Guide for Employers Following Recent European Court of Human Rights Judgments’<sup>7</sup>, the EHRC indicated that:

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“Employers should review workplace policies and practices to ensure that they do not unjustifiably discriminate against an employee who requests a

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<sup>5</sup> Section 20 of the Equality Act 2010.

<sup>6</sup> US: Title VII of the Civil Rights Act of 1964 (Title VII); Canada: Section 15 of the Canadian Charter of Rights and Freedoms. See also: Library of Parliament, Legal and Legislative Affairs Division, Parliamentary Information and Research Service, An Examination of the Duty to Accommodate in the Canadian Human Rights Context (January 2012) 7. Available at: <https://lop.parl.ca/content/lop/researchpublications/2012-01-e.pdf>.

<sup>7</sup> Equality and Human Rights Commission, Religion or Belief in the Workplace: A Guide for Employers Following Recent European Court of Human Rights Judgments (2013), available at: [https://www.equalityhumanrights.com/sites/default/files/gd.12.411-2\\_religion\\_belief\\_workplace\\_employers\\_26-03-14b.pdf](https://www.equalityhumanrights.com/sites/default/files/gd.12.411-2_religion_belief_workplace_employers_26-03-14b.pdf)

change due to a particular belief. Employers are encouraged to consider how they would respond were such a situation to arise in the future.

An employer should take all requests seriously and should not make assumptions about the significance of religion or belief, or disregard a request because it is made by only one employee. Even those who have the same religion may not share the same beliefs or practices.

Employers are encouraged to take as their starting-point consideration as to how to accommodate the request unless there are cogent or compelling reasons not to do so, assessing the impact of the change on other employees, the operation of the business and other factors outlined below.

To reach a fully considered, balanced, and reasonable conclusion, an employer should consider, amongst other factors:

The cost, disruption and broader impact on business or work if the request is accommodated

Whether there are health and safety implications for the proposed change

The disadvantage to the affected employee if the request is refused

The impact of any change on other employees, including on those who have a different religion or belief, or no religion or belief

The impact of any change on customers or service users, and

Whether work policies and practices to ensure uniformity and consistency are justifiable.”

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20. Although the EHRC has subsequently reversed its position on reasonable accommodation, CARE for Scotland believes that there remains much merit in this approach. A number of weaknesses in the EHRC’s latest approach have been identified in the academic literature that are discussed below.

### **No Additional Protection**

21. Firstly, the EHRC erroneously concluded that introducing such a mechanism of reasonable accommodation of religious belief in the workplace would not add any substantial additional protection. That this is not the case can be seen by studying the work of Griffiths and Vickers.

22. Griffiths noted that the current legal framework for indirect religious discrimination claims might not be adequate<sup>8</sup> as it relies on showing that the requirement complained of is disadvantageous to the group as a whole rather than just to the individual involved. The consequence of this is that individuals unable to show that the entire group was disadvantaged were unsuccessful in their claims. The mechanism of reasonable accommodation of religious belief in the workplace would have replaced the requirement to show group disadvantage and so address the individual needs of an employee to have their religious belief accommodated.

23. The EHRC agreed that the mechanism of reasonable accommodation would provide a more precise framework for requests of accommodation of religion. Nonetheless, the EHRC then asserted that this was not enough to justify the introduction of the new legal mechanism.

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<sup>8</sup> Elisabeth Griffiths, ‘The ‘reasonable accommodation’ of religion: Is this a better way of advancing equality in cases of religious discrimination?’ (2016) *International Journal of Discrimination and the Law* Volume 16 (2-3) 161 -176, 167. See also: G. Pitt, ‘Taking religion seriously’ (2013) *Industrial Law Journal* 42: 398–408.

24. The EHRC failed to consider that the formal mechanism of reasonable accommodation of religious belief in the workplace would introduce more clarity to religious accommodation and to the practice of balancing the conflicting rights. The degree of clarity offered by the formal mechanism of reasonable accommodation should have been perceived as an extra protection sufficient to justify its introduction.

25. Furthermore, the mechanism of reasonable accommodation would have provided a more transparent framework and so would help achieve legal certainty<sup>9</sup>, which is not achieved by the current system.

### **No prohibition of an informal accommodation**

26. Secondly, the EHRC considered the argument that the mechanism of reasonable accommodation already exists to accommodate disability needs. However, the EHRC did not believe that it should be extended to religion. The EHRC concluded that both cases are different in that 'the reasonable adjustment duty requires an employer to remove barriers to ensure disabled people have the same opportunities to participate in society and does not result in less favourable treatment of people with another protected characteristic.' The EHRC warned against the fact that establishing such a mechanism to accommodate religious belief would lead to privileging religious belief over other protected characteristics. Nonetheless, the EHRC considered that there was nothing in the law to prevent employers from accommodating religious belief voluntarily. However, such a voluntary model may be controversial as it would introduce uncertainty regarding employees' rights and discrepancy of the approach between different workplaces.

27. It is agreed that some protected characteristics, like for example, disability have an impact on the ability to perform specific jobs. Griffiths argued that this was the case with protected characteristics like pregnancy, age, and disability. This also justified special rules to safeguard these features.<sup>10</sup> Griffiths indicated that characteristics of sex, race, sexual orientation or religion and belief would have less impact on the ability to do specific jobs or tasks.<sup>11</sup>

28. Nonetheless, Griffiths suggested that 'the manifestation of religious belief is potentially more like disability than sex or race are, because of the multifaceted nature of religious belief which... can often be interpreted by an individual believer in a variety of ways.'<sup>12</sup> She concluded that 'religious belief is complex, and the requirements of indirect discrimination do not allow for a particularly nuanced or individualised approach to the manifestation of religious belief.'<sup>13</sup>

29. Vickers indicated that 'even if in some respects the views and beliefs are chosen, nonetheless, this should not be used as a reason to reduce protection for religion and belief

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<sup>9</sup> M. Gibson, 'The God 'dilution' religion, discrimination and the case for reasonable accommodation' (2013) Cambridge Law Journal 72: 589.

<sup>10</sup> Elisabeth Griffiths, 'The 'reasonable accommodation' of religion: Is this a better way of advancing equality in cases of religious discrimination?' (2016) International Journal of Discrimination and the Law Volume 16 (2-3) 161 -176, 162.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 171.

interests: such choices are so closely related to concepts of identity that they become 'fundamental choices.'<sup>14</sup>

### **Uncertainty**

30. Thirdly, the current approach without any formal mechanism of reasonable accommodation of religious belief in the workplace creates discrepancies in the approach (if any) to accommodating religious belief in the workplace. Consequently, some individuals may be granted religious accommodation while others in the same or similar situation would not. Having a recognised formal mechanism for reasonable accommodation of religious belief in the workplace would provide some precedent for dealing with differing cases and hence would add more structure and clarity to handling religious accommodation. Such a formal mechanism would ensure that religious accommodation is applied consistently, without arbitrarily limiting the right to religious manifestation and without jeopardising the concurring rights of others. Currently, even if such an informal mechanism exists, there is no oversight of the situation, and any irregularities are brought to light only once legal actions are anticipated.

31. Vickers criticised the current approach indicating that 'the potential for inconsistency in the law governing religion or belief in the workplace is hardly surprising given the existence of the two legal frameworks, one based on human rights, and one on equality.'<sup>15</sup> Vickers claimed that the case of *Ladele* is a result of such tensions. Vickers warned that 'a court is not the appropriate body to determine detailed questions related to the content of religious belief.'<sup>16</sup> The formal mechanism of reasonable accommodation of religious belief in the workplace would help to take this burden from courts.

### **Other considerations**

32. The formal mechanism of reasonable accommodation would be beneficial for employees and businesses. Griffiths indicated that 'allowing employees to manifest their religious belief as long as no harm is done to others could improve employee well-being, improve a company's public image and help with the recruitment and retention of staff.'<sup>17</sup> This potentially means a better quality of working life and higher satisfaction.

33. Furthermore, with the formal mechanism of reasonable accommodation in place, individuals would have more clarity concerning their rights and obligations in the workplace.

34. Lastly, the mechanism of conscientious objection can provide some guidance on how reasonable accommodation of religious belief in the workplace may apply. Indeed, the accommodation of conscientious objection of medical staff to abortion is an example of how reasonable accommodation could be modelled.<sup>18</sup>

### ***Parliamentary Procedure and Process***

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<sup>14</sup> Lucy Vickers, 'Achbita and Bougnaoui: One Step Forward and Two Steps Back for Religious Diversity in the Workplace' (2017) *European Labour Law Journal* 1-26, 13. See also: P.W. Edge, 'Religious rights and choice under the European Convention on Human Rights' (2000) 3 *Web JCLI*.

<sup>15</sup> Lucy Vickers, 'Achbita and Bougnaoui: One Step Forward and Two Steps Back for Religious Diversity in the Workplace' (2017) *European Labour Law Journal* 1-26, 3.

<sup>16</sup> *Ibid.* 11.

<sup>17</sup> Elisabeth Griffiths, 'The 'reasonable accommodation' of religion: Is this a better way of advancing equality in cases of religious discrimination?' (2016) *International Journal of Discrimination and the Law* Volume 16 (2-3) 161 -176, 174.

<sup>18</sup> Wendy Chavkin, Laurel Swerdlow, and Jocelyn Fifield, 'Regulation of Conscientious Objection to Abortion An International Comparative Multiple-Case Study' (2017) *Health Hum Rights* 19(1): 55-68.

***What further steps could the Scottish Parliament take to ensure that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies?***

35. There is a need for much more rigorous consideration of human rights prior to legislation being proposed by the Scottish Government and passed by the Scottish Parliament. The Scottish Parliament and the Scottish Government should take greater care when appealing to human rights standards. One example of this is the Scottish Government's recent consultation on the review of the Gender Recognition Act which cites the Yogyakarta Principles as a source of authority. These principles have no standing in international law and are simply a declaration of a group of committed activists and academics which were drawn from only 25 countries.<sup>19</sup> There is no international consensus among member states of the United Nations to support these principles and they have never been ratified by the UN General Assembly. A non-binding and non-legislatively drafted document without any governmental or inter-governmental input such as the Yogyakarta Principles should not be cited as a source of authority of international 'best practice' with regard to human rights law.

36. Although the Scottish Government has still to bring forward legislation in relation to the review of the Gender Recognition Act, the inadequacy of the analysis in that consultation highlights that there is a need for a much more nuanced and accurate analysis of the international human rights framework in policy and legislative discussions. The Scottish Parliament should certainly seek to set an example of best practice in this regard.

37. A further example of the failure to have a fully informed and nuanced discussion of human rights prior to policy and legislative initiatives being brought forward relates to the information sharing provisions of the Children and Young People (Scotland) Act 2014 which was considered as a Bill by the Scottish Parliament in 2013/14. In 2013, CARE provided written evidence to the then Education and Culture Committee (the Committee) in which we highlighted the fact that the UN Convention on the Rights of the Child (UNCRC) recognises the role of parents.<sup>20</sup> We suggested that 'children's rights should not be viewed in isolation from parental rights and the family context'. Citing the Preamble and Articles 3, 5 and 29 of the UNCRC, we stated that the Convention indicates 'the central role of parents in the raising of children and the duty of State Parties to respect the rights of, and support, parents in this role'. Specifically, we expressed the concern that the proposal to introduce a Named Person for every child in Scotland might erode the rights and the important role of parents and civil liberties would be infringed. Other evidence highlighted specific concerns that the information sharing provisions in the Bill were not compliant with Article 8 of the ECHR.<sup>21</sup> Unfortunately, there was no adequate consideration of these points by the Committee. Very little time was given over to taking evidence on the Named Person scheme. Most of the organisations asked to give oral evidence were supportive of the scheme. The Committee seemed to accept at face value the assurances of Ministers that the scheme was ECHR compliant without adequately questioning Ministers to establish the basis of this assertion. The information sharing provisions of the Bill were subsequently found by the UK Supreme Court to be in breach of Art 8 of the ECHR. Evidently the assurances given by Ministers proved to be unfounded. This raises the issue that more scrutiny has to be given to any draft law and especially, their compliance with actual international legal obligations.

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<sup>19</sup> See <https://www.splcenter.org/sites/default/files/adf-ap-and-others-v-france-echr-brief.pdf>, p.8, Para 36.

<sup>20</sup> CARE's written evidence is available at: [www.parliament.scot/S4\\_EducationandCultureCommittee/Children%20and%20Young%20People%20\(Scotland\)%20Bill/CAREforScotland.pdf](http://www.parliament.scot/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/CAREforScotland.pdf)

<sup>21</sup> [http://www.parliament.scot/S4\\_EducationandCultureCommittee/Children%20and%20Young%20People%20\(Scotland\)%20Bill/SchoolhouseHomeEducationAssociation.pdf](http://www.parliament.scot/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/SchoolhouseHomeEducationAssociation.pdf)



## **Accountability**

***What more could the Scottish Parliament do to ensure that international treaties, for example, the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights obligations are being followed in Scotland?***

### Parental Rights

38. The Parents right to decide on their children's education is protected under Article 18(4) of the International Covenant in Civil and Political Rights that equips them with the right to 'ensure the religious and moral education of their children in conformity with their own convictions.' This right is often neglected when the state introduces a school curriculum that overrides those wishes, for example incorporating sexual education classes, without giving the parents an option to opt out their children from such curriculum. This is important when considering, for example, the demands of the Time for Inclusive Education campaign (the TIE campaign) and the Scottish Government's LGBTI Inclusive Education Working Group (the Working Group) which involve promoting a moral education that does not conform with the convictions of some parents. The difficulty is compounded when a parent chooses to send their child to a faith school. Any requirement placed on teachers to acquiesce with and promote a worldview which is wholly at odds with their own religious worldview and even the religious ethos of the school would be problematic.

39. The Scottish Parliament should respect the right of parents to choose the type of education their children receive. Additionally, it should respect the rights of parents to have their children educated in accordance with their religious and philosophical convictions. These rights must be meaningful with real choice contained within the Scottish education system to ensure they are respected.

### The Right to Life

40. Finally we would draw the Committee's attention to the right to life of all children that continues to be neglected. Children at risk of abortion also have human rights.

- The right to life is protected under Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that states 'Every human being has the inherent right to life.'
- The right to life of the unborn is recognised in Article 6(5) of the ICCPR where it says that 'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.'
- The right to life of the unborn is further protected in Article 1 of the UN Convention on the Rights of the Child (UN CRC) in that the provision defines a child as 'every human being below the age of eighteen years.' The right is not dependent on the birth status of the child.

41. Every life-and-death decision for a mother and her unborn baby must comply with four key principles of international human rights law: Inclusion – human rights apply to absolutely everyone, including the child 'before as well as after birth'. Inherency – rights are inherent in each human being. Neither governments nor courts can confer or withhold human rights. The child's rights pre-exist birth – they 'inhere' in the child's humanity, they inhere in her mother's humanity. Equality – some human beings cannot be 'more equal' than others – thus the child at risk of abortion has the same right to life as every other member of the human family. Indivisibility – the rights of a member of one set of vulnerable human beings cannot

be sacrificed for the rights of a member of another more powerful set. It is not the state of being independent or achieving a particular size or age or power that confers human rights, it is simply being human. This is the irrevocable legal basis of all human rights.<sup>22</sup>

42. This raises serious concerns about Scotland's current abortion law and in particular in cases where viability of life is strong. Most European states have a 12 week limit on abortion. The 24 week limit in Scotland is out of line with the European norm. The right to life of all children should be protected by the Scottish Parliament regardless of their birth status. However, there is an overwhelming case at the very least to review and reduce the current 24 week limit to the European norm of 12 weeks. Moreover, there is a positive obligation on states under the ECHR to protect human rights and this duty should be applied in the case of every child where life is viable regardless of birth status.

42. In cases of disability the situation is even more concerning. According to the law children with disabilities in Scotland can be aborted right up to term. This is wholly unacceptable and represents legalised discrimination against disabled people and denial of their most fundamental human right.

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<sup>22</sup> Thomas Finegan. 'International human rights law and the "unborn": texts and travaux préparatoires,' *Tulane Journal of International and Comparative Law*, 89-126 (2016).

## **Conclusions**

43. The next year of negotiations surrounding leaving the EU and the years following Brexit should be used to ensure that human rights that were protected under the EU law are adequately protected with the UK domestic law and Brexit does not become the highway to restriction of human rights. The debates on human rights surrounding Brexit should also be used to revisit the question of the protection of certain neglected human rights, for example, of the right to FoRB and what else can be done to strengthen the protection. As demonstrated in this submission, the right to FoRB would greatly benefit from extra protections, for example, by way of introducing a formal mechanism of reasonable accommodation of religious belief in the workplace.

44. Additionally it offers the opportunity to reassess our approach to human rights, to adopt more robust scrutiny of proposed legislation and to return to a more genuine interpretation of the conventions. Fundamental rights such as the rights of parents to choose the type of education for their children and the right to life for all members of the human family have been neglected. If we are to create a truly free and fair society orientated towards the common good, these rights must be reprioritised.