

*This joint evidence is submitted by the following members of the Human Rights Consortium Scotland: Amnesty International Scotland, Nourish Scotland, Health and Social Care Alliance Scotland (the ALLIANCE), SCVO, Advocard, Women for Independence, Scottish Independent Advocacy Alliance, Alcohol Focus Scotland, MND Scotland, C-Change Scotland, The Jimmy Reid Foundation, Inclusion Scotland, the Scottish Youth Parliament, Coalition of Racial Equality and Rights (CRER), and CLAN Childlaw.*

*We also highlight the valuable recommendations made within evidence from HRCS members including Together, the ALLIANCE and the Scottish Youth Parliament.*

## **Human Rights and the Scottish Parliament**

We greatly welcome the Equalities and Human Rights Committee's (EHRiC) consideration of the Parliament's role around promoting human rights in Scotland.

We further note that in doing so, the Committee has the support of the breadth of Scottish civil society. The Scotland Declaration on Human Rights<sup>1</sup> is supported by more than 140 organisations and states that four key principles must apply in all decisions around human rights:

- No going back
- Progression
- Transparency
- Participation

We highlight that all of these four principles are very relevant for the remit of this inquiry.

It is vital that the Parliament does not aim to merely 'comply' with human rights treaties and law but instead aims to continually take action and decisions for the **progressive realisation** of rights.

We encourage EHRiC to therefore adopt a bold and deliberate approach to human rights. A human rights culture is not built by small change and positive messages but by very deliberate participation, leading to clarity of the change needed to transfer power from the 'state' to individuals, and by then changing policy, law and practice to put this in place and ensure that it happens.

We further note that this is best achieved by embedding consideration of human rights within the annual and regular processes and procedures of the Parliament. Whilst individual inquiries are helpful, we recommend that the Committee focuses its

---

<sup>1</sup> Text, signatories and background at [www.humanrightsdeclaration.scot](http://www.humanrightsdeclaration.scot)

attention on how to embed human rights scrutiny across the core Parliament functions and timetable.

### **Expertise and understanding**

It is essential that MSPs and Parliament staff have a good understanding of human rights and what these mean in law, policy and practice. Without this understanding amongst individuals, it will be impossible to effectively embed human rights within the different aspects of law and policy scrutiny that go on within the Parliament. With this increased understanding, the Parliament could be a world leader in taking its role in human rights very seriously.

However, we are concerned that currently there are significant gaps in this level of understanding and note that this echoes a request from the Health and Sport Committee for training in this area. Therefore, we recommend that **all MSPs and staff receive at least one-day training in human rights**, with periodic refresher courses, including a particular subject focus for each Committee. Consequently, we recommend that there is **budget and human resources** set aside for this. We consider that this is one of the most important actions that the Committee can take in order to be a guarantor of human rights.

We also recommend that Parliament Committees consider bringing in **experts around implementation of human rights** for more in-depth analysis of particular areas of policy or law. These experts could both be from within Scotland – and we draw attention to the expertise of the Scottish Human Rights Commission, see below – but also internationally.

### **Scottish Parliament as an institution**

Recent profile given to sexual harassment and to the gender pay gap again highlights the necessity of institutions taking a human rights-based approach. Without a **human right-based approach by the Parliament itself**, their work to promote and progress human rights, particularly with other public authorities, will ring hollow and be ill-received. The Parliament's Corporate Body must take advice around what it means for them to put the PANEL (Participation, Accountability, Non-Discrimination and Equality, Empowerment and Legality) human rights principles into practice.

### **Using UN treaties on rights**

**We urge the Committee to support the incorporation of UN treaties on rights into Scots law.** This is one of the most far-reaching and important steps that this Parliament can take to make our law an international leader in human rights. We suggest that the Committee should discuss with the SHRC and the Scottish Government around the role that they specifically can play in progressing and preparing for incorporation of UN treaties into Scots law. We also urge the individual

Committee members, as representatives of political parties, to consider what they can do to concrete support for this policy direction within their own party policy consideration structures.

**Monitoring of progress against UN treaties on rights provides a framework and means of international scrutiny of Scotland's record on rights which should be fully embraced.** Whilst we welcome the Scottish Government's positive approach to engagement in these processes to date, we believe that this could be much better and much more focused towards using these processes to bring about improvement. For example, it is difficult to know what the Scottish Government will do, or do differently, as a result of the recent UPR process.

The Committee should therefore **scrutinise the Scottish Government's reporting to each treaty monitoring process** (recognising that this is input to the UK response), **their acceptance of any recommendations/concluding observations and their action to implement these.** This should also include consideration of gaps and inadequacies within the UN recommendations made. We suggest that this scrutiny should include both EHRiC detailed evidence sessions and a full Parliamentary debate. We also suggest that the Committee should proactively **raise human rights impacts within the UN recommendations with the UK Government and reserved bodies**, emphasising that action to promote the human rights of Scots should not be hindered by devolution-reserved divides.

We also urge the Committee to pursue more **deliberate connections with UN bodies**, and encourage the Scottish Government to do so also. This should include drawing on their expertise in advising on policy and law, as well as Ministers taking part in treaty monitoring sessions. For example, the UN Special Rapporteur on the Right to Food Hilal Elver has significant expertise around this issue which could directly inform the upcoming Good Food Nation Bill.

UN treaty monitoring processes work best when civil society is fully engaged with them. Civil society can raise awareness of particular issues with UN Committee members and provide the evidence and grounding to focus UN scrutiny on areas with the biggest impact. However, due to significant strain on civil society funding and capacity, most organisations simply are unable to take part in these processes in any meaningful way. This is especially true for the most marginalised and excluded groups in our society such as refugees and asylum seekers, Black and Minority Ethnic communities and disabled people. In order to be fully engaged, civil society need to be resourced and have the capacity to do so. **The Committee should ask the Scottish Government and public authorities to specifically include engagement with UN rights treaty monitoring processes in their funding for civil society organisations.** The Scottish Government should also explore ways that they can enable the up-skilling of civil society around engagement in UN treaty monitoring.

**Human rights must be embedded in Parliament processes**

Consideration of human rights needs to be meaningful, timely and embedded within the policy and legislative scrutiny of the Parliament. We highlight that embedding a human rights-based approach will also bring progress in other policy areas and aims, such as towards the Sustainable Development Goals. **All Committees when considering legislation and policy should specifically consider its impact on human rights and seek evidence on this**, both as a specific question within written evidence calls and as a specific Committee evidence session. We note the potentially valuable role of human rights experts in this regard.

Furthermore, a **Human Rights Impact Assessment** should be carried out on every piece of legislation and made public. In particular we emphasise the importance of human rights scrutiny of the budget process and refer to the work of the SHRC in this area.

Under the Human Rights Act 1998, public authorities must not act in a way which is incompatible with the European Convention on Human Rights (ECHR). This means that individuals can take cases to court when ECHR rights have been breached by these authorities. The Parliament has an important role to play in encouraging public authorities to not only *not* act against ECHR rights, but to positively adopt a human rights-based approach. **We recommend that EHRiC in its annual work programme includes inviting public authorities to be questioned around the extent to which they embed human rights in their work.**

**We also encourage the Committee and Scottish Government to consider what duties and reporting mechanisms for public authorities in Scotland are needed in order to strengthen the promotion and protection of human rights.** For example, it would be beneficial to consider the effectiveness of the requirements on authorities around the Public Sector Equality Duty and how these could and should be replicated for progressing human rights, including what legislative change may be needed for this to happen.

**We consider that there would be great benefit to periodic joint inquiries between EHRiC and other subject Committees, and between Scottish Parliament and Westminster Committees.** For example, there would be value in a joint inquiry into the promotion of human rights within trade, or a joint inquiry between the Justice Committee and External Affairs Committee on the role of overseas technical assistance, including Police Scotland training, in promoting or hindering human rights.

### **Transparency and accessibility is key**

**We urge the Committee to recommend that the Parliament works to the highest possible standard of transparency and accessibility of information around human rights.** This is key to enabling debate around rights, raising awareness of rights and to building a human rights culture. This also reflects Scotland's membership of the Open Government Partnership, a global platform that promotes transparency, accountability, openness and participation.

For example, the Committee should insist that the advice to the Presiding Officer on the human rights aspects of legislative competence is made public. Human Rights Impact Assessments of legislation by the Scottish Government should also be made public. Much more attention and resourcing should be given by the Scottish Government to making their response and actions to address UN Treaty monitoring recommendations accessible and transparent. This is an area where we are falling behind international best practice. For example, the New Zealand National Plan of Action as a result of recommendations made to them in their 2014 UPR is an excellent example of best practice<sup>2</sup>.

### **Building human rights progress into Committee workplan**

There are two aspects of work that we specifically suggest that the Committee includes in its annual workplan to enhance continual learning and progression around human rights:

- The first of these is to seek expert **evidence on what court judgments around the ECHR** have taken place in the preceding year and the implications of these for law, policy and practice in Scotland.
- Secondly, it would be valuable for the Committee to seek **evidence annually on new developments and best practice around human rights internationally**. This is particularly important when we will no longer have the EU framework progressing rights post-Brexit. However, it is also a very practical way to ensure that ‘we are a leader, not a laggard, in human rights terms’ (Scotland Declaration on Human Rights).

### **Strengthening the Scottish Human Rights Commission (SHRC)**

We welcome that the Parliament decided in 2006 to establish the Scottish Human Rights Commission who have a unique and essential role to play in the protection of human rights in Scotland. We now call on the Parliament to commit to the strengthening of this Commission, firstly through **increased resourcing**. The SHRC are hampered in the work that needs to be done by their lack of capacity. For example, the Commission has the statutory power to intervene in court cases to add understanding to the court’s deliberations around human rights. However, the Commission have not yet been able to make use of this power.

**We also urge the Committee to take a strenuous view of the extent to which the Parliament pay heed to the SHRC’s advice.** We were very disappointed when the proposed amendments to the Social Security Bill which would have made the rights principle real by including a ‘due regard duty’ requirement were not accepted at Stage Two of the Bill. This amendment was supported by the SHRC with the express purpose that this would provide for a human rights-based approach to social security. The SHRC are Scotland’s experts on human rights – if the Parliament is to

---

<sup>2</sup> New Zealand National Plan of Action on UPR Recommendations at: <https://t.co/ebxWVVzsH6>

promote and progress human rights, we strongly urge the Parliament to pay great heed to those experts.

### **Meaningful participation**

We recognise the Committee's steps to take a more participatory approach to their work. As a key plank of human rights, it is essential that participation is a major feature of the way in which the Committee -and the Parliament as a whole – does its work. This participation needs to be meaningful and characterised by dignity and respect for individuals and communities. Therefore we highlight some key features that should shape an approach to participation in policy and law scrutiny:

- There is a lot of evidence that exists around individuals' views on issues that affect their daily lives. We suggest that firstly, **in all inquiries and work, the Parliament begins by gathering existing participatory evidence.**
- Individuals are both the beneficiaries and recipients of law, policy and practice but they are also the experts on which law, policy or practice changes would have most impact in making their rights real. **Participation should therefore ask these questions.**
- All of us can participate best when it is not a one-off opportunity which is complicated and appears to bear little relation to my life, but when the opportunities are many and varied; where you are fully informed about the issues at hand; when you know your views will be respected and taken seriously; and where the communication is two-way and includes being clear about policy and law changes that happened or did not happen as a result.
- There are many civil society organisations which are well-placed to facilitate engaging individuals in policy and law discussions. **The Parliament should make good use of these organisations' expertise in this area, and they should set aside sufficient resource to make this participation real and frequent.**
- **The Committee in each part of its workplan, should consider the ways in which it will engage the participation of individuals,** with a particular view to ensuring participation from different communities within Scotland.

### **Strengthen civil society**

The role of civil society is critical to the full protection and advancement of human rights. As noted above, civil society also have specific roles to play in relation to the Parliament around facilitating participation, reporting in UN treaty monitoring processes and contributing to scrutiny of the Government and public authorities around their implementation of UN recommendations. The many different types of civil society organisations also have a crucial role in raising awareness of rights and in ensuring that organisations can advocate for rights at a local level. **The Committee should investigate resourcing and capacity of civil society in**

**Scotland around human rights and what more can be done to strengthen their role.**

March 2018

*For more information about this evidence, please contact:*

*Mhairi Snowden, Coordinator*

*Human Rights Consortium Scotland*