Connecting Scotland – how Scottish organisations engage internationally

The Scottish Human Rights Commission

In 2006, the Scottish Human Rights Commission was established by an Act of the Scottish Parliament with a remit to promote and protect human rights for everyone in Scotland. Accredited within the UN system as an “A status” national human rights institution (NHRI), the Commission also chairs the European Network of over 40 NHRIs and is deputy chair of the International Coordinating Council of over 100 NHRIs, forming a bridge between Scotland and the international human rights community.

The Scottish Human Rights Commission welcomes the second strand of the Committee’s inquiry on ‘Connecting Scotland: how Scotland can engage most effectively in a globalising world’.

The Commission was established by the Scottish Parliament in 2006 as Scotland’s National Human Rights Institution (NHRI). Section 2 of the Scottish Commission for Human Rights Act 2006 sets out the general duty of the Commission to promote human rights. One of the Strategic Priorities of the Commission is progressing the realisation of human rights of people in Scotland and beyond through further developing our international role.

The Commission acts as a bridge between the international human rights framework and the domestic legal framework, linking Scotland to significant international activity through the international network of NHRIs, as well as to the United Nations and regional human rights bodies such as the Council of Europe, the European Union, and the Organisation for Security and Cooperation in Europe.

THE UNITED NATIONS

Since its foundation in 1945 the United Nations has been the international organisation primarily responsible for maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. Due to the unique international character, and the powers vested in its founding Charter, the UN can take action on a wide range of issues, and provides a forum for its 193 Member States to express their views.

Human Rights are central to the United Nations with the Preamble of the UN Charter stating:

We the peoples of the United Nations [are] determined... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.1

The first global expression of human rights, the Universal Declaration of Human Rights, was adopted in 1948.2 Since that time the UN has adopted a number of international human rights treaties3, created the position of United Nations High Commissioner for

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2 General Assembly resolution 217 A of 10 December 1948.
3 [http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx)
Human Rights in 1993 and established the Human Rights Council in 2006. It has also recognised the important role that NHRIs such as the Commission play through the adoption of the [UN Paris Principles](http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx).

The UN's system of human rights protection has three main components: it establishes international standards through its Charter and legally binding and non-legally binding documents; it mandates Committees and Treaty Bodies, along with Special Rapporteurs and experts, to work in various ways to promote and protect human rights; and, it offers technical assistance to help member states improve human rights promotion and protection.

The Commission works with different parts of the UN system in order to promote human rights in Scotland. The key bodies are:

- **General Assembly**
  The main deliberative body of the UN, where all Member States are represented equally. It meets throughout the year although most of its meetings are between September and December. It adopts around 300 resolutions each year on a broad range of issues. The resolutions are not legally binding on member states, but represent the moral authority of the world community.

- **Security Council**
  It has primary responsibility for maintaining international peace and security and can authorise the use of force. Some of its decisions are legally binding on all UN Member States. It has 15 members, including 5 permanent and 10 elected countries.

- **Human Rights Council**
  Created in 2006 as the principal human rights political body of the UN, in place of the former Commission on Human Rights, it is composed of 47 Member States. It meets in sessions throughout the year and can address the full spectrum of human rights issues and make recommendations to States. The Council also undertakes a review of the fulfilment of the human rights obligations of every UN Member State through the [Universal Periodic Review](http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx).

- **Treaty Bodies**
  Committees of independent human rights experts mandated to monitor the compliance by States with the international human rights treaties to which they are parties. There are nine committees in place.

- **Special Procedures**
  Independent human rights experts mandated by the Human Rights Council to monitor a particular country or thematic issue. Currently there are around 40 procedures, including individual experts (Special Rapporteurs, Independent Experts, and Special Representatives of the Secretary-General) and Working Groups.

- **Secretariat and Office of the High Commissioner for Human Rights (OHCHR)**
  The UN Secretariat is the civil service of the United Nations. It is headed by the UN Secretary-General (currently Mr. Ban Ki-moon) and its main office is in New York. The UN
human rights programme is led by the High Commissioner for Human Rights (currently Mr. Zeid Ra’ad Al Hussein) whose office is in Geneva.

The Commission’s role is promoting and monitoring the effective implementation of international human rights standards at the national level, so it works closely with UN mechanism. The Commission has various opportunities to participate in the UN human rights system, including following-up to results and recommendations at the national level. These include:

- “To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject with due respect for their independence.”

- “To submit to the Government, Parliament and any other competent body… recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.”

There are also a number of principles (Belgrade Principles) aimed at providing guidance on how the interaction and cooperation between NHRIs and Parliament should be developed.

One of the key areas of focus of the UN are the Sustainable Development Goals (SDGs), which build upon the Millennium Development Goals and converge with the post 2015 development agenda. The Commission has been working with the UN to ensure that the SDGs promote robust accountability and financial mechanisms and explicit reference of human rights obligations.

Another area of focus has been climate justice, recognising the leading role that Scotland has taken in relation to tackling climate change. Scotland is an unique position to lead on climate change targets and climate justice towards a new climate treaty in Paris at the end of this year.

**UN Treaties**

There are ten core international human rights instruments. Each of these instruments (nine human rights treaties and the Optional Protocol to the UN Convention Against Torture (OPCAT)) has established a committee of experts to monitor implementation of the treaty provisions by its States parties (known as treaty-monitoring bodies or treaty bodies). The UK has ratified seven of those treaties:

2. International Covenant on Civil and Political Rights (ICCPR).
5. Convention Against Torture and other forms of cruel, inhuman and degrading treatment or punishment and its Optional Protocol (CAT).
The UK Government has an obligation to submit an initial report on each treaty, followed by periodic reports, and emergency or other reports requested by the treaty-monitoring body. The Commission provides parallel reports to the treaty bodies to ensure completeness and objectivity. Civil society also plays an important role in providing information to the treaty bodies on particular human rights concerns. One of the key roles that the Commission has played has been supporting Scottish civil society to ensure greater representation of Scottish issues at treaty body examinations.

Treaty bodies analyse the State reports and discuss them in public sessions, in the presence of State representatives. The Commission believes that this process could be enhanced by having a representative of the Scottish Government present during this examination, so specific questions on Scotland can be answered. This will contribute to the principles of accountability, transparency and participation during the examination process, as well as ensuring better implementation of recommendations. At the end of the examination of each State report, the treaty bodies adopt concluding observations/recommendations. States are expected to implement those recommendations and to provide, in their next reports, information on the measures taken to that end.

Most recently, the Commission reported and engaged with the UPR (2012), CEDAW (2013); CAT (2013); CRPD (2014) and ICCPR (2015). Treaty Bodies have now begun to specifically note the importance of the devolved jurisdictions in the implementation of their recommendations. These recommendations explicitly mention and engage with Scottish issues. For example, in 2014 the Commission made written and oral submissions to the CEDAW committee.\(^5\) As a result the committee noted that it had a much better understanding of the UK constitutional reality, and in its observations the committee calls on the UK to “encourage its parliaments, in line with their procedures and where appropriate, to take the necessary steps with regard to the implementation of the present concluding observations between now and the next reporting process”. A number of civil society organisations that have noted the increased willingness of UN bodies to focus on issue in Scotland as part of considerations of the wider UK.

In 2013 the Commission made its first submission to the CAT committee which directly influence the recommendations of that committee in a number of ways including recommendations on the incorporation of the Convention in the domestic legal order and the maintenance of the current level of human rights protection provided by the Human Rights Act. It also made Scottish specific comments noting the low minimum age of criminal responsibility and the lack prohibition of corporal punishment of children in all settings, as well as issues relating to the recommendations of the Commission on Women Offenders in Scotland.

A list of Scottish specific recommendations from treaty bodies is included as an Annex to this paper.

Role as an independent mechanism

\(^5\) http://scottishhumanrights.com/publications/consultationresponses/article/submissioncedaw
Along with its general duty set out by the Scottish Parliament, the Commission is one of the independent mechanisms appointed by the UK Government under two key international human rights conventions – the UN Disability Convention and the Optional Protocol to the UN Convention against Torture. This work includes promoting, protecting and monitoring the implementation of those conventions in close collaboration with the other UK independent mechanisms under each treaty, to ensure that international standards are fully implemented in Scotland.\(^6\)

**Human Rights Council and Special Procedures**

The Commission regularly makes statements to the Human Rights Council,\(^7\) and provided assistance to UN special rapporteurs on Adequate Housing and Violence against Women’ visits to the UK/Scotland in 2013.

**COUNCIL OF EUROPE**

Founded in 1949, the Council of Europe (CoE) is Europe’s most inclusive institution, including 47 countries and 820 million citizens. It promotes co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation.

Signing and ratifying the European Convention of Human Rights is a prerequisite for CoE membership, demonstrating compliance with Article 3 of the Statute which requires:

> Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council.

A number of human rights bodies have been established by various CoE conventions and decisions, the most prominent of which is the European Court of Human Rights (ECtHR).\(^8\)

**ECtHR**

While there are relatively few cases from Scotland that have gone to the ECtHR, the jurisprudence of the court has played an important role in the development of human rights protections in Scotland.

In recent years the UK has been particularly vocal in the process of reform of the ECtHR. The Commission has observer status at the CoE’s Steering Committee on Human Rights and has been active in trying to ensure that ECtHR is reformed in a way that is consistent with the protection of human rights. While some of the measures to improve the function of

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\(^6\) The UK independent mechanisms under the Disability Convention are the Equality and Human Rights Commission, the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission. There are 20 bodies who make up the National Preventive Mechanism on Torture.


\(^8\) Other human rights bodies include: the European Committee of Social Rights and the Governmental Committee under the European Social Charter; the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; the Advisory Committee on the Framework Convention for the Protection of National Minorities; the European Commission against Racism and Intolerance (ECRI); the Group of Experts on Action against Trafficking in Human Beings (GRETA); and the Commissioner for Human Rights.
the ECtHR been welcome, such as the introduction of streamlined processes through Protocol 14, there have also been serious attacks on the functioning and independence of the ECtHR. The Commission has worked to defend against these attacks in cooperation with other NHRIs and civil society. The Commission has led European NHRI delegations at the last three High Level Conferences, arguing that people in Scotland, and across Europe must have access to justice through the right of individual petition to the ECtHR, and that the independence of the ECtHR must remain the cornerstone of the Convention system.

The Commission has also been working with colleagues across Europe to ensure that applicants are better informed of the admissibility criteria. This has been done through website guidelines, engaging in deeper review of the execution of judgments process, holding roundtable information sessions on the reform of the Court, disseminating information on the Court and recent case law of prominence, in addition to the legislative, awareness and/or litigation functions of NHRIs. Throughout the reform process NHRIs have focused on ensuring the recognition of the importance of national implementation, requiring national authorities to take responsibility through effective measures to prevent violations and ensure effective remedies. The Commission has argued that national implementation, such as through Scotland’s National Action Plan on human rights, along with practical initiatives on execution and promotion in combination with the measures being implemented by the Court in addressing the backlog of applications, create the possibility of deepening Member States’ commitments to prevention of abuses through strengthening domestic systems on remedies, coupled with Council of Europe oversight.

**Amicus Curiae**

While there have been very few Scottish cases at the ECtHR, the Commission has worked alongside colleagues making collective interventions with *amicus curiae* to the cases of *D.D. v Lithuania* and *Gauer v France* which both related to the rights of disabled people.

**Council of Europe Commissioner of Human Rights**

Successive Council of Europe Commissioners of Human Rights have made working with NHRIs a priority of their work. The current Commissioner, Nils Muiznieks, used his first Human Rights Comment to focus on how National Human Rights Institutions can help mitigate the effects of austerity. The Commissioner cited examples of good work from Scotland along with countries such as Portugal and Spain.

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In 2013 the Commissioner came to Scotland to help launch Scotland’s National Action Plan for Human Rights, which he described as “a bold venture which aims to bring human rights home in people’s everyday life”, he noted that “It signals a strong commitment to internationally agreed human rights standards which is particularly significant in the current context of economic crisis and austerity.”

The Commission has continued to work closely with the Commissioner, including by supporting his promotion of the Scottish model across Europe, including in countries such as Ukraine.

EUROPEAN UNION

There has been significant growth of human rights related legislation within the EU in recent years. The entry in force of the Lisbon Treaty means this increase is certain to continue, especially in the areas of asylum, migration, and criminal law.

The Court of Justice of the European Union is likely to face a growing number of human rights issues. In addition, the developments in European fundamental rights architecture, such as the accession of the European Union to the European Convention on Human Rights and the emergence of important new human rights actors, such as the EU Commissioner for Justice, Fundamental Rights, and Citizenship in 2010 and the EU Special Representative on Human Rights in 2012, demonstrate the growing importance of human rights discussions within the EU.

The European Parliament issued a resolution on 14 January 2009 on the Situation of Fundamental Rights in the European Union 2004-2008, urging Member States to set up NHRIs and ensure their independence, in light of the important preventative function which their work entails.\textsuperscript{14}

The Commission has worked with the subcommittee on Human Rights of the European Parliament (DROI), particularly in relation to Business and Human Rights, which is an important issue for NHRIs and was the topic of the 10th Biennial Conference of the ICC which resulted in the Edinburgh Declaration calling for: more national and international monitoring of businesses’ compliance with human rights law; that advice should be given to companies, governments, campaigners and individuals about corporate responsibility; and that institutions themselves have an important role to play in supporting companies and victims of potential human rights violations.\textsuperscript{15}

The Commission also works closely with the European Union Agency for Fundamental Rights to promote awareness of the indivisibility and interrelatedness of human rights, enshrined in UN human rights instruments and the EU Charter on Fundamental Rights.

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE)

The Organization for Security and Co-operation in Europe (OSCE) is the world’s largest security-oriented intergovernmental organisation. Its mandate includes issues such as arms control and the protection of human rights, freedom of the press and fair elections. The OSCE differs from most other intergovernmental organisations in that its constitutive charter


\textsuperscript{15} See http://www.scottishhumanrights.com/international/biennial/edinburghdec.
is non-binding, providing a great deal of flexibility as to its work. It does not have members, rather States are designated as Participating in the OSCE.

The Commission has worked closely with the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), particularly on issues relating commitments made in the human dimension aim to ensure full respect for human rights and fundamental freedoms; to abide by the rule of law; to promote the principles of democracy by building, strengthening and protecting democratic institutions; and to promote tolerance throughout the OSCE region.

THE COMMONWEALTH

The Commonwealth Charter makes particular references to human rights, including the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. The Commission works in cooperation with NHRIs across the Commonwealth on a variety of issues, including playing a leading role on the issue of climate justice.

The Commission worked closely with the Commonwealth Games Organising Committee, and other partners, to address important human rights concerns and to help make the Glasgow Games an example for others to follow. For the first time in over 80 years of Commonwealth Games history, there was a human rights policy for the Games. The policy set out how human rights were protected and promoted in the preparation and delivery of the Glasgow Games, including respecting freedoms, promoting participation and adopting a sustainable procurement policy.

OTHER MULTINATIONAL ORGANISATIONS

While the OECD, WTO, NATO and other organisations based on trade, development or security are not seen primarily as human rights bodies, it is essential that Scotland applies its human rights obligations to all of its international engagement. It is important that States understand that their obligations and duties under international law to respect, to protect and to fulfil human rights extend to all of their actions, even in fields not usually associated with human rights.

INTERNATIONAL COORDINATING COMMITTEE OF NHRIs

The International Coordinating Committee of NHRIs (ICC) is the global network of NHRIs. It is a forum for exchanging best practice and promoting international standards for human rights. The Commission was accredited as being fully in compliance with the United Nations principles on the status of national institutions in June 2010, and reaccredited in May 2015. This gives the Commission direct speaking rights at the United Nations and the ability to work within the international network of NHRIs to develop international standards, and to bring best practice back to Scotland. The Commission has developed strong links with fellow NHRIs around the world, supporting those under pressure and sharing best practice experience with NHRIs from all continents. The Commission gives Scotland its own voice in the international human rights community, including within the United Nations human rights system, and brings experience back to benefit the people of Scotland.

In 2010 the Commission worked with the Scottish Parliament to host the 10th International Conference of NHRIs, with a focus on business and human rights. The resulting “Edinburgh Declaration” is a global standard which has created a framework for business, civil society, and government to work together to promote human rights.

The Commission has is actively involved in the International Coordinating Committee of NHRIs, including, acting as a Bureau member since 2011, being Chair of the European Network of NHRIs since 2011, and ICC Secretary since 2013.

The Commission also chairs a working group on climate change and human rights in the Commonwealth Forum of NHRIs, and is a member of a number of working groups on legal issues, older people, human rights education and business and human rights.

The Commission hopes that this will be of assistance to the Committee and looks forward to engaging further with the work of the Committee.

May 2015
Annex 1. Scotland and the UN Treaties - Summary of recent concluding observations/recommendations of the UN Treaty bodies in relation to Scotland.

CAT (2013)

- “The Committee notes with satisfaction...: (d) Criminal Procedure (Legal Advice, Detention and Appeals) (Scotland) Act 2010, which provides for the right to access solicitors for detained persons in Scotland; The committee also welcomes actions taken by the State party to amend its policies, programmes and administrative measures in order to ensure greater protection of human rights and give effect to the Convention, including: (a) Establishment of the Commission for Equality and Human Rights, in 2007, and the Scottish Human Rights Commission, in 2008; (e) Measures undertaken in England, Scotland and Northern Ireland to reform the criminal justice system and upgrade the prison estate in England and Scotland; (f) Adoption of strategies to prevent suicide and self-harm in custody, such as .... the revised suicide risk management strategy ACT2Care, introduced in 2005 in Scotland”.
- “The Committee welcomes the enactment of the Criminal Justice and Licensing (Scotland) Act 2010, which raises the age of criminal prosecution from 8 to 12 years in Scotland. The Committee remains concerned, however, that criminal responsibility starts at the age of 8 in Scotland”.
- The Committee takes note of amendments to legislation in England, Wales, Scotland and Northern Ireland, which limit the application of the defence of “reasonable punishment” (or “justifiable assault” in Scotland), but remains concerned that some forms of corporal punishment are still legally permissible in the home by parents and those in loco parentis. The Committee recommends that the State party prohibits corporal punishment of children in all settings ...repealing all legal defences currently in place, and further promote positive non-violent forms of discipline via public campaigns as an alternative to corporal punishment.
- “The Committee welcomes.... the steps taken by the Scottish government to implement the recommendations made by the Commission on Women Offenders. The Committee is nevertheless concerned at the unprecedented increase of women in prison over the last 15 years, at information that about half of them have severe and enduring mental illness, and at the disproportionate rate of self-harm amongst women prisoners”.
- The Committee recommends that the State party pay due attention to the recommendations of the Commission on Women Offenders (Scotland) and those contained in the Corston Report (England and Wales) and, in particular, ensure effective diversion from the criminal justice system for petty non-violent offenders, increase the use of community sentences, and implement changes to the prison regime to further reduce deaths and incidents of self-harm.

CEDAW (2013)

- “The Committee stresses that the Convention is binding on all branches of Government and invites the State party to encourage its parliaments, in line with their procedures and where appropriate, to take the necessary steps with regard to the implementation of the present concluding observations between now and the next reporting process under the Convention”.
- “The Committee is concerned that the Equality Act replaces the Gender Equality Duty (GED) with a single Public Sector Equality Duty (PSED) that covers all
prohibited grounds of discrimination, and that the specific duty requirements of the PSED have no explicit gender component in England, unlike in Scotland and Wales, and does not adequately protect women against multiple discrimination”.

- “The Committee is concerned that, following the findings of the Carloway Review of criminal law and practice in Scotland, the burdensome requirements of corroboration impede the prosecution of rape and other sexual violence cases. The Committee is also concerned that the three-year limitation period for sexual abuse cases for civil law suits in Scotland, including where a child is a victim, unduly limits access to justice for victims”.

- “The Committee is particularly concerned at reports of under-representation of women and girls in science, technology, engineering and mathematics (STEM), and in apprenticeships especially in Scotland, which ultimately affects the gender pay gap in the labour market”.

ICESCR (2009)

- “The Committee is concerned about the chronic shortage of housing, in particular social housing, for the most disadvantaged and marginalized individuals and groups, such as persons with disabilities, especially in Scotland, or Catholic families in Northern Belfast…”

- “The Committee calls upon the State party, in line with its general comment no. 4 (1991) on the right to adequate housing, to intensify its efforts to ensure that everyone has access to housing and to review its policies and develop effective strategies, including a gender impact assessment, aimed at increasing the levels of affordable housing, including social housing. The Committee also recommends that the State party take into consideration the Homelessness etc. (Scotland) Act 2003 as best practice, especially its provision relating to the right to housing as an enforceable right.”

- “The Committee is concerned about the increasing suicide rates in Northern Ireland and Scotland, particularly among mental health patients, who face difficulties in accessing the complaints system.”

ICCPR (2008)

- “The Committee is concerned that despite anti-social behaviour orders (ASBOs) being civil orders, their breach constitutes a criminal offence which is punishable by up to five years in prison. The Committee is especially concerned with the fact that ASBOs can be imposed on children as young as 10 in England and Wales and 8 in Scotland, and with the fact that some of these children can subsequently be detained for up to two years for breaching them. The Committee is also concerned with the manner in which the names and photographs of persons subject to ASBOs (including children) are frequently widely disseminated in the public domain.”

CERD (2011)

- “The Committee also notes with appreciation the input to its proceedings by the Equality and Human Rights Commission (EHRC), the Human Rights Commissions of Scotland, Wales and Northern Ireland and various non-governmental organizations (NGOs) that were consulted in the preparation of the report.”

- While welcoming the adoption of the national approach to racist bullying that was published in November 2010 and the introduction of respectme, a Scottish anti-
bullying service that is partly funded by the Government, the Committee expresses concern at the increased reports of racist bullying and name-calling in the State party’s schools. The Committee urges the State party to introduce awareness-raising campaigns in the State party’s schools with a view to changing the mindset of pupils, and to promote tolerance and respect for diversity in the education sector.”

CRC (2008)

- The Committee notes that the State party functions with devolved government arrangements and that this system makes it difficult to have a single body coordinating implementation of the Convention… the Committee remains concerned at the lack of a body mandated to coordinate and evaluate a comprehensive and effective implementation of the Convention throughout the State party, including at local level.
- The Committee recommends that the State party, in accordance with article 12 of the Convention, and taking into account the recommendations adopted by the Committee after the day of general discussion on the right of the child to be heard in 2006: (b) Support forums for children’s participation, such as the United Kingdom Youth Parliament, Funky Dragon in Wales and Youth Parliament in Scotland;
- The Committee, while noting amendments to legislation in England, Wales, Scotland and Northern Ireland which restrict the application of the defence of “reasonable chastisement”, is concerned that this defence has not been removed. The Committee welcomes the commitment of the National Assembly in Wales to prohibiting all corporal punishment in the home, but notes that under the terms of devolution it is not possible for the Assembly to enact the necessary legislation.
- The Committee is concerned that: (e) The age of criminal responsibility is set at 8 years of age in Scotland and at 10 years for England, Wales and Northern Ireland;