

## Summary

### Accreditation of Scottish Human Rights Commission (UK) the International Coordinating Committee of National Human Rights Institutions

-November 2009-

#### I. BACKGROUND

The Scottish Human Rights Commission (hereafter the SHRC or the Commission) has submitted its application for membership to the Chairperson of the International Coordinating Committee of National Human Rights Institutions (ICC) and sent the sustaining documents to the National Institutions Unit on 17 July 2009 to be considered for the November 2009 session. This is their first application.

The following sections provide background information on the Committee, based on the supporting documentation received from it by the National Institutions Unit of OHCHR, in its capacity as Secretariat of the ICC, in accordance with Article 10 of the ICC Statute and Rules 3.3 and 3.4 of the Rules of Procedures for the ICC Sub-Committee on Accreditation.

#### II. DOCUMENTATION PROVIDED IN SUPPORT OF THE APPLICATION

To allow the ICC to make a decision as to the compliance of the SHRC, with the Paris Principles, the following documentation was submitted by the mentioned institution in support of its application:

- A cover letter from the chair of the Scottish Human Rights Commission
- A statement of support from the Government of the United Kingdom
- A statement of support from the Equality and Human Rights Commission
- A statement of support from the Northern Ireland Human Rights Commission
- A copy of the draft Memorandum of Understanding between the Scottish Human Rights Commission, Equality and Human Rights Commission and the Northern Ireland Human Rights Commission
- A statement of compliance with the Paris Principles
- Annex 1: *Legislative texts*
- The Scottish Commission for Human Rights Act 2006 Act
- The Scottish Commission for Human Rights Act 2006 (Commencement No. 1) Order 2007
- The Scottish Commission for Human Rights Act 2006 (Commencement No. 2) Order 2008
- Scottish Commission for Human Rights (Specification) Order 2008
- Annex 2: SHRC Strategic Plan 2008-2012
- Annex 3: SHRC Annual Report 2008-2009
- Annex 4: Organisationnel Chart
- Annex 5: *Budget Documents*
- Budget Act 2009
- Budget letter from the Scottish Parliament

### III. CHARACTER OF THE NHRI

#### 1. Establishment

The SHRC was established under the powers of the Scottish Parliament, as laid out in the Scotland Act 1998 (an Act of the UK Parliament which received Royal Assent on 19 November 1998 the official version of which can be accessed at the Office of Public Sector Information<sup>1</sup>. The duties, powers and functions of the Commission are laid out in the Scottish Commission for Human Rights Act 2006 (the SCHR Act). The SCHR Act was adopted by the Scottish Parliament on 2 November 2006 and received Royal Assent on 8 December 2006.

In the SCHR Act, “human rights” means—(a) The Convention rights within the meaning of section 1 of the Human Rights Act 1998 (c.42), (that is the rights in Articles 2-12 and 14 of the European Convention on Human Rights as well as Articles 1 to 3 of the First Protocol and Articles 1 and 2 of the sixth Protocol) and (b) other human rights contained in any international convention, treaty or other International instrument ratified by the United Kingdom. The definition of human rights is restricted to conventions ratified by the UK. (Section 2(2), SCHR Act)

According to a statement by the UK government dated 16 July 2009. The SHRC is the third statutory body for human rights to be established in the United Kingdom.

There is no single UK national human rights institution (NHRI), nor is there any intention that such an institution be created. The geographical jurisdiction of the SHRC covers Scotland only. The Equalities and Human Rights Commission (EHRC) — whose jurisdiction covers England, Wales and Scotland — and the SHRC have overlapping human rights competences in Scotland. The EHRC has competence in Scotland over matters relating to equalities, and over human rights relating to reserved matters (including immigration, employment, social security, national security and terrorism, and a number of other areas reserved to the UK Parliament, as set out in Schedule 5 of the Scotland Act 1998). In the exercise of its general duty to promote human rights, the Commission is not limited by jurisdiction, and it is thus free, for example, to co-operate with the two other UK NHRIs in promoting human rights domestically, and to do so at the regional and international levels as appropriate. In the exercise of its powers to protect human rights, the Commission may only exercise these in relation to Scottish public authorities, which operate within the scope of the Scottish Parliament, as defined by the Scotland Act 1998” Neither the EHRC nor the SHRC have any remit in Northern Ireland, which is covered by the jurisdiction of the Northern Ireland Human Rights Commission (NIHRC).

In the constitutional context of devolution, the UK Government considers it appropriate that separate institutions exist with a human rights mandate in England and Wales, Scotland and in Northern Ireland. In relation to Scotland in particular, the nature of the jurisdiction between the Scottish Parliament and Westminster means it is appropriate for there to be a separate Human Rights Commission covering devolved matters in Scotland.

A memorandum of understanding exists between the EHRC, the SHRC and the NIHRC to guide their operations and interactions and has been submitted with this application

#### 2. Independence

##### *Organizational independence*

The Commission function independently, in the exercise of its functions, and is not subject to the direction or control of:

- Any member of the Parliament;
- Any member of the Scottish Executive (now known as the Scottish Government);

<sup>1</sup> [http://www.opsi.gov.uk/Acts/acts1998/ukpga\\_19980046\\_en\\_1](http://www.opsi.gov.uk/Acts/acts1998/ukpga_19980046_en_1)

- The Parliamentary Corporation (known as the Scottish Parliament Corporate Body (SPCB) and described below). (Paragraph 3 of Schedule 1 to the SCHR Act)

The Commission is established by the SCHR Act as a “body corporate”, meaning that it has distinct legal personality and may, amongst other functions, assume contractual obligations. Paragraph 8 of Schedule 1 of the SCHR Act gives the Commission the general power to do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its functions.

“Section 17 of the SCHR Act protects the Commission from actions of defamation, providing absolute privilege in relation to any statement made by the Commission (i) in conducting an inquiry; (ii) in communicating with any person for the purposes of an inquiry; or (iii) in a report of an inquiry. Any other statement made by or to the Commission in pursuance of the purposes of the SCHR Act (the promotion and protection of human rights) has qualified privilege.”

The Commission does not receive instruction from the Crown, the Government or the Parliament on the exercise of its functions. (Paragraph 2 of Schedule 1 to the SCHR Act) provides, in addition, that the Commission is not a servant or agent of the Crown (Her Majesty Queen Elizabeth II, i.e. the State).

The Commission selects, appoints and directly employs and manages its own staff (section 11) This is subject only to the Scottish Parliamentary Corporate Body (SPCB's)<sup>2</sup> consent as to numbers of staff (i.e. to ensure that the Commission stays within the budget allocated by Parliament) and the SPCB's approval of terms and conditions (i.e. to ensure that remuneration and conditions of service are broadly in line with those applying in comparable posts within the public sector).

The Commission's strategic plan is reviewed by the Parliament, which the SHRC is accountable to. It must lay before the Scottish Parliament a Strategic Plan at the beginning of each four year period. The Strategic Plan must set out

- a) the Commission's objectives and priorities for the period of the Plan;
- b) a statement of any areas of the law which the Commission proposes to review;
- c) details of the other activities or kinds of activities which the Commission proposes to undertake during that period; and
- d) a timetable for each review and other activity or kind of activity referred to in paragraphs (b) and (c).

### **3. Composition, appointment process, tenure**

#### **3.1 Composition**

As per schedule 1(1) to the SCHR Act, the Commission consists of the following members:

- A member appointed to chair the Commission; and
- Not more than 4 other members.

The statement of compliance indicates the following: in practice the Chair of the Commission, Professor Alan Miller, took up office in March 2008. Three other Members, Professor Kay

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<sup>2</sup> The Scottish Parliamentary Corporate Body (SPCB or “Parliamentary Corporation”) was established by section 21 of the Scotland Act 1998. It is chaired by the Presiding Officer of the Scottish Parliament and consists of four other Members of the Scottish Parliament (MSPs), drawn from government and opposition parties, directing the work of the Parliament's 400 staff. It represents the MSPs in ensuring the smooth administration of the Scottish Parliament, and in exercising certain other functions accorded to it by statute including the running of open, competitive selection processes for senior public appointments including those of SCHR Members other than the Chair, and appointments to other rights-based institutions such as the Public Services Ombudsman and the Commissioner for Children and Young People. Appointments to the Commission by the SPCB do not require the approval of the Parliament.

Hampton, Ms Shelagh McCall, Mr. John McNeill, took up office in May 2008. The Chair is full-time and the other members are part-time (up to 30 days per year). The appointment to the post of Chair and as part-time Members were by public, competitive recruitment.

The current composition is 2 female and 2 male. There is no indication of whether other social forces are represented.

### **3.2 Selection and Appointment**

The members appointed to chair the Commission is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament. The other members are to be individuals appointed by the Parliamentary corporation. (schedule 1, Section 1)

According to the statement of compliance the method of appointment is set out in rule 3.11 of the Standing Orders of the Scottish Parliament<sup>3</sup> whereby the Presiding Officer chooses a selection panel including the convener of the most relevant Committee and between four and seven other Members of the Scottish Parliament (MSPs), having regard to the balance of parties in the Parliament.

The Standing Orders set out that the selection panel chooses a candidate, although the process of selection is not specified. A member of the selection panel then nominates that candidate to the Parliament.

The Parliament has a 30 minute debate on whether they should accept the candidate and the MSPs vote on it. For the vote to carry there needs to be a majority of the members voting in favor of the appointment and that majority needs to be at least ¼ of all MSPs.

The nomination is then sent to the Queen who appoints the individual.

There is no indication in the rules, as to whether the issue of diversity is considered or whether civil society is involved in the selection. In practice, according to the statement of compliance, the adverts posted by the Scottish Parliament included the following stipulation on diversity: "We are looking for the Commission to reflect, as wide as possible, Scottish society in relation to human rights." The advert also stated, "This appointment will be made in accordance with equal opportunities legislation and all job applicants will be treated fairly, with respect and without bias. No applicant will receive less favorable treatment than others because of his or her gender, gender identity, sexual orientation, marital, family or part-time status, racial group (which includes colour, race, nationality, national or ethnic origin), religion, disability (unless objectively justified), age (subject to the operation of a retirement age policy) or trade union membership/ non membership/ activities."

### **3.3 Tenure**

Each member of the Commission holds for a period not exceeding 5 years as the SPCB may determine at the time of appointment. (Paragraph 5 of Schedule 1 to the SCHR Act). The statement of compliance indicates that in practice the Chair was appointed for a period of 5 years with the possibility of renewal for a further period of up to 5 years. The part-time members were appointed for 4 years with the possibility of renewal for a further period of up to 5 years. (According to Paragraph 5 of Schedule 1 to the SCHR Act), the Chair may be relieved of office by Her Majesty at the Chair's request, or may be removed from office by Her Majesty if condition A or B is satisfied. Other Members may be relieved of office by the SPCB at the Member's request or removed from office by the SPCB if condition A or B is satisfied.

Condition A: the SPCB is satisfied that the member has breached the terms of appointment and the Scottish Parliament resolves that the member should be removed from office for that reason.

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<sup>3</sup> Standing Orders are official written rules of Parliament,

Condition B: the Scottish Parliament resolves that it has lost confidence in the Member.

For the Scottish Parliament to so resolve it must be the view of at least two thirds of those Members voting.

There is no information on the definition of “breached the terms of appointment or “lost confidence”.

According to the statement of compliance the Chair is full-time and the other Members are part-time and may work for a maximum of 30 days per year.

#### **4. Organizational infrastructure**

##### **4.1 Infrastructure**

The Commission has three staff teams: strategy and legal, communications and outreach, business management.

The Commission may do anything which appears necessary or expedient for the purposes of, or in connection with, or which appears conducive to, the exercise of its functions. In particular the Commission may enter into contracts and, with the consent of the SPCB, acquire and dispose of land. (paragraph 8 of Schedule 1 of the SCHR Act)

The Commission has its head office at Optima House, 58 Robertson Street in Glasgow, where it co-locates with the Equality and Human Rights Commission in Scotland. It also co-locates in Edinburgh with the Scottish Public Services Ombudsman, an independent body established by the Scottish Parliament to investigate complaints of maladministration against Scottish public authorities.

The Commission has a budget of £1,000,000 per year which is allocated as described below under “budget”.

##### **4.2 Staffing**

The Commission needs the consent of Parliament (SPCB) on the number of staff to appoint. (Paragraph 11-12 of Schedule 1 of the SCHR Act) The Commission may, with the approval of the SPCB, determine the terms and conditions of appointment of staff make arrangements for the payment of pensions, allowances and gratuities to any person who has ceased to be a member of staff. The Commission may enter into arrangements for the sharing of premises, staff, services and other resources with any other public body.

According to the statement of compliance, in addition to 4 commissioners, the Commission has three staff teams: strategy and legal, communications and outreach, business management. The Commission has 10 staff in total. Seven of ten staff are women.

The Commission’s structure is as follows: Strategy and Legal team has five staff, responsible for advising on the Commission’s strategy, operational planning, legal and policy advice, research and international work. The Communications and Outreach Team has two staff, responsible for communications functions including relations with the media, external communications via web, events, publications and outreach with diverse sections of Scottish society. The Business Management team has three staff, responsible for office management and our financial accountability.

The staffing structure and the number of staff was agreed with the SPCB. The Commission recruited staff by competitive recruitment with the support of an external and independent recruitment consultancy to ensure good practice and employment law were followed throughout

recruitment. The staff recruited has a wide diversity of religious beliefs, are members of a number of ethnic groups, and come from a number of different backgrounds and professional expertise” (Statement of compliance pg. 12).

### **4.3 Premises (accessibility)**

The Commission’s head office is in central Glasgow. Glasgow is Scotland’s largest population centre and the Commission’s offices are centrally located, within 15 minutes walk of all main bus and rail links. The office is accessible to people with physical disabilities and includes enhanced accessibility features including a functioning induction loop for people with hearing impairments and accessible facilities. Access to the office, including public transport links, is described on our website, which includes an interactive map. (statement of Compliance)

Section 4(4)(b) of the SCHR Act requires the Commission to have regard in particular to the importance of exercising its functions in relation to those groups in society whose human rights are not, in the Commission’s opinion, otherwise being sufficiently promoted.

The Commission does not have local or regional offices. However one of the key roles of the Outreach Coordinator is to develop a network of human rights in practice across the whole country, in order to ensure the Commission is increasingly accessible to people from outside the Central belt of Scotland.

The Commission also has an office in the centre of Edinburgh which is also physically accessible to people with physical disabilities. Additionally in the statement of compliance in its role as an independent body named under the Convention on the Rights of Persons with Disabilities, the Commission will establish a structure to ensure the participation of people with disabilities in this work.

### **4.4 Budget**

The Commission is required to prepare proposals for its use of resources and expenditure and submit these to the SPCB for approval. (Under Schedule 1 paragraph 15 of the SCHR Act), the Commission is required to keep proper accounts and prepare annual reports for each financial year. These are sent to the Auditor General for audit and then laid before Parliament. (Under paragraph 14 of Schedule 1 to the SCHR Act ).Additionally the statement of compliance indicates that the SHRC receives its budget directly from the Scottish Parliament and is financially accountable to the Scottish Parliament, operates within the normal conventions of financial responsibility, transparency and accountability applicable to any publicly funded body.

The Parliamentary Corporation is to pay any expenses incurred by the Commission in the exercise of its functions, and the remuneration and allowances of each member of the Parliamentary Corporation may determine. The Commission may, in the course of a financial year, prepare revised proposals for its use of resources and expenditure during the remainder of the year and send the proposals to the Parliamentary corporation for approval. The Commission must also account for these resources through the Auditor General. Under Schedule 1 paragraph 15 of the SCHR Act),

The budget for the financial year 2009-2010 has been approved for £1,000,000 (one million British pounds) according to a letter for the Scottish Parliament to the Chair of the SHRC. According to the SCHR accounts for the year ended 2008-2009 report, the Scottish Parliament also awarded SCHR a cash budget of £1,000,000 for financial year 2008-09. The Commission’s actual net expenditure at £521,000 was significantly under budget. as this the first year of operation and staff were not in place until part way through the year”

The Commission may charge reasonable fees in connection with anything done by it. The statement of compliance indicates that this could be related to its information, guidance and education functions; however as a general rule these functions are provided free of charge. (According to section 3(2) of the SCHR Act). This may restrict accessibility to certain groups.

The statement of compliance further indicates the following: the Commission does not receive funding from donors through international development assistance. In addition to its annual budget the Commission has received a grant from the Scottish Government for the preparation of a human rights framework for the design and implementation of an Acknowledgement and Accountability Forum for historic child abuse. Any funding provided for specific projects, over and above the Commission's core functions, is managed in the same way as, and does not require to be offset against, our Parliamentary funding.

## **5. Working methods**

The Commission (Section 7 (1) of the SHRC Act) must, before the beginning of each 4 year period, lay before the Parliament a plan (referred to in this section as a "strategic plan") setting out information as to how the Commission proposes to fulfill its general duty during that period.

*The plan must, in particular, set out the Commission's objectives and priorities for the period to which the plan relates, a statement of any areas of the law which it proposes to review under section details of the other activities or kinds of activities which it proposes to undertake during that period, and a timetable for each review and other activity or kind of activity. Before laying a strategic plan before the Parliament, the Commission must provide a draft of it to, and invite comments on it from—the Parliamentary corporation, and such other persons as the Commission considers appropriate.*

This Strategic Plan, which is developed independently by the Commission (which consults only the SPCB and such other persons as the Commission itself thinks appropriate) is not open to any amendment by Parliament.

Under Section 15 of the SCHR Act the Commission is required to lay an Annual Report before Parliament and it is published. (see no. 6.5)

Additionally the Commission has the power to monitor laws, policy and practices (section 4); to cooperate with others (section 5); to conduct enquiries; to enter into places of detention and conduct interview and inspections. ,

*Sec 3 (19) For the purposes of its general duty, the Commission may—*

*(a) publish or otherwise disseminate information or ideas,*

*(b) provide advice or guidance,*

*(c) conduct research,*

*(d) provide education or training.*

*(2) The Commission may charge reasonable fees in connection with anything done by it or on its behalf under subsection (1).*

*(3) Sums paid to the Commission in respect of fees charged under subsection (2) are to be retained by it and applied to meet expenses incurred by it in doing anything under Subsection (1)*

The statement of compliance stipulates that:

The members of the Commission (including the Chair) meet monthly. The minutes from these meetings are available on the Commission's website. The Commission has established its own working methods and decision making protocols (as it is empowered to do according to paragraph 7 of Schedule 1 to the SCHR Act).

Heads of team and other senior staff meet with the Chair of the Commission at least weekly or fortnightly. All staff meets monthly. Heads of the staff teams meet monthly. Teams meet at least fortnightly.

Commissioners have taken lead interest in different areas of the Commission's work. The Commission has determined a need to establish three working groups: Legal Advisory Group, Research Advisory Group, and Cultural Panel.

The mandate and composition of these groups is in development, but the composition will be as follows – each group will be chaired by a member of the Commission and supported by relevant staff from the Commission. Other members of the group will be drawn from diverse areas of society with an interest in that area of the Commission's work.

## GENERAL MANDATE

### **6. Mandate to protect human rights**

#### *General functions*

#### **6.1 Advisory Functions and functions regarding national legislation**

Under section 4 of the SHRC Act the Commission has the following powers:

##### *Monitoring of law, policies and practices*

*(1) For the purposes of its general duty, the Commission may review and recommend changes to—*

*(a) any area of the law of Scotland, or*

*(b) any policies or practices of any Scottish public authorities.*

*(2) The Commission must consult the Scottish Law Commission before undertaking a review of any area of the law under subsection (1) (a).*

Examples from the statement of compliance include:

The Commission has submitted evidence to the Joint Committee on Human Rights of the Houses of Parliament on the Equality Bill, recommending amendments to ensure that the Bill is consistent with human rights law. We are also engaging in the consultation in Scotland on the specific duties which Scottish public authorities will have under the Equality Bill to ensure that these are linked to human rights in practice.

The Commission is planning a civil society-government roundtable to discuss the follow up to the concluding observations of the UN Committee on Economic, Social and Cultural Rights in Scotland.

#### **6.2 Encouraging ratification and implementation of international standards**

Section 2 that deals with promotion of human rights and section 3 that deals with the Commission's power to provide information, guidance and education also gives the Commission an implicit mandate related to implementation of international standards. The Commission can also provide advice and guidance (Section 3 (1) (c)) to review and recommend changes to any area of the law of Scotland or any policies and practices of any Scottish public authorities (section 4 of SCHR Act). For example The Commission has encouraged the ratification of the Convention on the Rights of Persons with Disabilities in joint press releases with the Equality and Human Rights Commission, the Northern Ireland Human Rights Commission and the Equality Commission of Northern Ireland (who, together with SHRC collectively form the UK's independent

framework body under Article 33 of the Convention), as well as in debate at the Cross-party group on human rights of the Scottish Parliament.

### **6.3 Monitoring functions**

Refer to 6.1 the Commission is entitled to monitor laws and practices. There is a restriction on this in reference to Scottish public authorities therefore limiting the private sector

According to section 8 of the SCHR Act the Commission has the power to conduct inquiries.

According to section 11 of the SCHR Act the Commission has the power to enter and inspect places of detention and to interview persons detained there.

According to section 14 of the SCHR Act the Commission has the power to intervene in certain civil legal proceedings.

The statement of compliance indicates the following:

The Commission forms part of the National Prevention Mechanism in the UK under the Optional Protocol to the Convention Against Torture. The functioning of that body is currently being determined and this will help shape their approach to visiting places of detention. According to section 11 of the SCHR Act the Commission may, for the purposes of an inquiry, enter any place where an individual is detained by, or with the authority or consent of a Scottish public authority, inspect that place and conduct inquiries with detainees (with their consent). According to paragraph 3 of Schedule 3 of the SCHR Act, the Commission may bring to the attention of the Court of Session (the highest civil court in Scotland) any incident where a person intentionally obstructs the Commission in the exercise of this power. The Court may deal with the matter as though it were contempt of the Court. (statement of compliance).

The Commission has yet to make specific recommendations to Government, but will certainly continue to monitor compliance with its advice and recommendations. For example, the Commission is currently developing advice on a human rights framework for the development of an Acknowledgement and Accountability Forum on historic child abuse (a form of transitional or restorative justice akin to a truth and reconciliation forum) which the Scottish Government is consulting on. Once we submit our advice we will remain an independent monitor of human rights in the process of developing and implementing the Forum.

### **6.4 Investigation**

Section 8 of the SCHR Act provides that the Commission can conduct an inquiry into the policies and practices of any Scottish public authority in so far as they relate to Commission's general duty to promote human rights. There are some restrictions in terms of the scope of the inquiry in that the Commission can only investigate Scottish public authorities and cannot undertake an inquiry into to policies and practices of a Scottish public authority in relation to individual cases (section 9 (3))

The Scottish Commission for Human rights /Specification order) 2008 specifies that the UN convention on the Rights of Persons with Disabilities for the purposes of section 9 of the SHRC Act, allows the Commission to conduct enquiries on public authorities related to the respect of the rights contained in the convention.

Section 10 of the SCHR Act is about the power to compel witnesses to give evidence, and is further elaborated in schedule 2 and includes administration of oaths (section 3) the possibility to refer obstruction of the Commission in the conduct of an inquiry to the highest civil court, which may treat this as equivalent to contempt of court (section 4) Reports of inquiry are presented before Parliament and a report must contain the result of the inquiry and recommendations of the findings (section 12).

The Commission has not yet exercised its powers of inquiry. The Commission intends to undertake a human rights interaction in relation to procurement processes during the current operational plan, with the view to conducting an inquiry if necessary.

## **6.5 Reporting**

Article 15 of the Act empowers the Commission to report to Parliament annually on the exercise of its function, on enquires and activities. Article 16 further provides that these reports should be published. According to the statement of compliance nothing in the enabling legislation requires public, private or voluntary bodies to formally respond to the Commission's recommendations and reports. The Commission has not yet made recommendations to government, but plans to follow up with meetings at high/ministerial as well as operational levels, seminars, workshops and other initiatives, as well as through raising awareness and interest of civil society and the wider population in our recommendations.

## **7. Mandate to promote human rights**

### **7.1 By raising awareness on human rights norms and issues**

Section 2 General duties to promote human rights.

*(1) The Commission's general duty is, through the exercise of its functions under this Act, To promote human rights and, in particular, to encourage best practices in relation to human rights.*

Under section 2 (3) of the SCHR Act, "promote", in relation to human rights, means promote awareness and understanding of, and respect for, those rights and in deciding what action to take under this Act in pursuance of its general duty, the Commission must have regard, in particular, to the importance of exercising its

Functions under this Act in relation to—

(a) the Convention rights, and (b) human rights of those groups in society whose human rights are not, in the Commission's opinion, otherwise being sufficiently promoted.

However the Commission is restricted to promoting only the rights in conventions that the UK has ratified in addition to those enshrined in national laws (Section 2 (2), SCHR Act) although its mandate does extend to promoting best practice in relation to human rights

### **7.2 Through programmes for teaching and research**

Section 3 Information, guidance, education etc.

(1) For the purposes of its general duty, the Commission may—

- (a) Publish or otherwise disseminate information or ideas,
- (b) Provide advice or guidance,
- (c) Conduct research,
- (d) Provide education or training.

According to its statement of compliance, in the Strategic and Operational Plans, the Commission is establishing a Cultural Advisory Group to support cultural events which emphasize human rights, working with Scottish schools and curriculum development bodies to support the integration of human rights based approach to education and the development of "charters of rights" for Scottish schools.

The Commission's publications are available free of charge on its internet site in English. Other language versions may be available on request, subject to degree of interest and the proportionate and effective use of the Commission's resources.

Although the prohibition, prevention and elimination of discrimination, including all forms of racial discrimination is relevant to all of the Commission's work, no such public awareness campaigns have yet been undertaken. However, the forthcoming review of the UK by the UN Committee on the Elimination of all forms of Racial Discrimination will provide an opportunity to launch such a campaign.

### **7.3 Addressing public opinion**

Section 3(1) of the SCHR Act provides that the Commission may, inter alia, "publish or otherwise disseminate information or ideas"

The statement of compliance indicates that the Commission has begun a programme of journalistic engagement, to raise awareness and understanding of, and engender sympathy for, human rights among the journalistic community. The Chair of the Commission has met with the editors of several leading daily and weekly publications, and has provided training to those working in broadcast media. He has also addressed meetings of the National Union of Journalists. The Commission is developing a training pack on human rights for journalists.

## **8. Quasi-jurisdictional functions**

Section 6 of the SCHR Act provides that the Commission has no power to assist in claims or legal proceedings nor does the Commission have any powers to handle individual cases. (Article 9 (3). Under Article 8 to 9 lists the Commission's powers of enquiry and several restrictions to this power to public authorities and has no power to inquire over private entities, or other civil society actors.

See part on Investigations 6.4

## **RELATIONSHIP WITH RELEVANT HUMAN RIGHTS STAKEHOLDERS AND OTHER BODIES**

### **9. Relationship with national stakeholders**

#### **9.1 Relationships with Civil Society**

There is no formalized relationship with civil society and no provision in the legislation. The statement of compliance indicates a wide range of civil society organizations participated in the Commission's nationwide consultation on the development of its first Strategic Plan (a list of contributing bodies is included in Annex 3 to the Strategic Plan and details of specific activities with civil society organization are enumerated in the statement of compliance. The Commission has frequent contact with NGOs in delivering workshops on particular human rights issues, in participating in the cross-party group on human rights at the Scottish Parliament, in its outreach work and in events and conferences as well as in developing its operational work.

#### **9.2 Relationship with other bodies**

Section 5 of the SCHR Act empowers the Commission to consult, act jointly, cooperate with, or assist any other person. According to the statement of compliance this article requires that the Commission ensure, as far as possible, that it does not unnecessarily duplicate activities undertaken by any other statutory body.

The statement of compliance indicated the following:

In Scotland, the Commission cooperates with other public bodies which have relevant functions; works closely with the Scottish Commissioner for Children and Young People where we have common priorities; meets monthly to discuss areas of mutual interest. The Commission also cooperates with the Equality and Human Rights Commission in Scotland which (in Scotland) has a mandate to promote equality and good relations, and to promote and protect human rights in relation to issues reserved to the competence of the UK Parliament.

The Commission has participated actively in two meetings of the International Coordinating Committee of NHRIs (in Nairobi (2008) and in Geneva (2009), and is one of the European NHRI representatives on two ICC working groups – on climate change and human rights and on business and human rights – where we are actively contributing to the development of guidance for all NHRIs on how to integrate these areas into NHRIs work.

The Commission is a member of the independent framework body, under article 33 of the Convention on the Rights of Persons with Disabilities.

The Commission has a programme of judicial engagement and has met with senior members of the judiciary. We are establishing a Legal Advisory Group and have met with a wide range of members of the legal profession, including through presentations to professional associations.

The Commission participates in the Scottish Parliament's Cross Party Group on Human Rights, which includes Members of the Scottish Parliament and civil society.

The Commission works closely with the other independent bodies that are supported by the Parliament: Scotland's Commissioner for Children and Young People, the Scottish Public Services Ombudsman, the Scottish Information Commissioner; the Office of the Commissioner for Public Appointments in Scotland and the Scottish Parliamentary Standards Commissioner.

#### **10. Cooperation with the United Nations and other organizations**

In its statement of compliance the Commission participated, as an observer, in the UK's Universal Periodic Review in 2008. The Commission also participated in the review of the UK by the UN Committee on Economic, Social and Cultural Rights in May 2009 – submitting a written briefing, co-organizing and chairing an oral briefing by all NHRIs to the Committee. The Commission wrote to the Secretariat and to the Chair of the Committee to request that it permit the differentiated participation of NHRIs in the review, including separate marked seating and an opportunity to intervene in the review.

Together with the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission the Commission is finalizing a meeting with the Ministry of Justice (UK Government) to discuss its reactions and plans to implement the Committee's concluding observations.

The Commission will be organizing a roundtable with the Scottish Government and civil society to raise awareness of and promote implementation of the Committee's concluding observations.

The Commission has accepted an invitation by the Council of Europe Commissioner for Human Rights to visit the Council of Europe and meet with the various human rights mechanisms therein.

The chair of the Commission has been engaged primarily with the OHCHR through the meeting of NHRIs and has had some involvement in sharing information with OHCHR and attending meetings.

#### **SPECIFIC MANDATE (OPTIONAL)**

According to its statement of compliance. The UK ratified the OPCAT on 10 December 2003. On 31 March 2009, the United Kingdom's Ministry of Justice published a written ministerial statement designating the Commission along with 17 other existing oversight bodies as the UK National Preventive Mechanism. Her Majesty's Inspectorate for Prisons will assume the NPM coordination role for the 18 bodies. The bodies are in the process of developing procedures for how the NPM will operate.

## **SUMMARY OF THE ANNUAL REPORT**

The Annual Report of the Commission is of 2008 to 2009 is divided into 5 chapters.

### Chapter 1

The Commission – How it was formed and why: this includes the history of the establishment of the Commission, its mandate powers and duties.

### Chapter 2

Laying the internal foundations: how the commission started, the financial system, internal policies, standards and future plans.

### Chapter 3

Building relationships throughout Scotland: includes information on their nation wide consultation on an action plan, key findings, education and cultures.

### Chapter 4

Supporting human rights in the world: includes engagement with other human rights actors.

### Chapter 5

Looking to the future: activities and strategies planned e.g. promoting and protecting human dignity, bring human rights to life and human rights around the world.

In general, since the SHRC is still a new institution, the annual report focused mainly on the processes for the Commission's establishment and set up of its infrastructure. Most importantly the Commission lays its vision and plans based on a national consultation it had with various stakeholders. (See chapter 3) In the report it is indicated that people felt that the Commission could play a valuable role in supporting the practical application of human rights by public, private and voluntary bodies – making them more “user-friendly”. Given the size of the Commission, people did show concern about the amount of work outlined, and there was a warning that work must be carefully prioritized so as not to overwhelm staff. It was highlighted in the responses that decisions on priorities must be clearly explained. Overall people felt that the Commission should be the body that drives the changes, which others should have a role in delivering. Participants felt quite strongly that the Commission needs to be seen to take a public stand for human rights in Scotland. People felt that the Commission should react to events which reveal widespread human rights concerns. Although important, reacting to a wide range of issues can consume time and resources, and it was felt this work should not dominate. The principal focus should be on achieving long term goals.