

The Scottish Human Rights Commission

Submission on the Seventh Periodic Report of the United Kingdom to the United Nations Committee on the Elimination of all forms of Discrimination Against Women (The Committee)

(8 -26 July 2013)

The Scottish Human Rights Commission (SHRC) is the national human rights institution (NHRI) for Scotland, accredited with A status by the International Coordinating Committee of NHRIs. SHRC was established by an Act of the Scottish Parliament and has a general duty to promote awareness, understanding and respect for all human rights and to encourage best practice (including through education, training and awareness raising, and by publishing research). SHRC also has a number of powers including:

- The power to conduct inquiries into the policies or practices of Scottish public authorities;
- Recommending such changes to Scottish law, policy and practice as it considers necessary.
- The power to enter some places of detention as part of an inquiry, and
- The power to intervene in some civil court cases.

SHRC is one of the three national human rights institutions in the UK and currently chairs the European Group of NHRIs. SHRC is a member of the UK's National Preventive Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

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Introduction

1. The Commission welcomes the opportunity to make its first submission to the Committee on UK compliance with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). This report aims to update the Committee on recent developments and identify what in the view of SHRC are the key achievements and significant challenges for the implementation of CEDAW in Scotland.

2. The Commission recognises the efforts that have been made by the Scottish and UK Governments to promote women's human rights since the last periodic review. Notwithstanding these achievements, the Commission considers that there is significant scope for improvement in a number of areas, including:

- I. Incorporation and systematic implementation of CEDAW ;
- II. Removing the current threat to the Human Rights Act 1998;
- III. Strengthening measures to address violence against women and the conditions of women in detention;
- IV. Strengthening prevention and protection measures as well as victims' right to effective remedy in areas such as trafficking; and
- V. Taking urgent measures to address risks of destitution

Some significant developments include:

- I. Reviews of the legislation governing victims' rights, and the development of specific equality duties in Scotland¹;
- II. Improvement in prison conditions, particularly sanitation;
- III. Some good practice models related to access to justice and effective remedy such as specialised domestic abuse courts; and
- IV. Progress towards tackling violence against women

SHRC would welcome the Committee's consideration of these issues, developed below.

3. Before an 'Article by Article' analysis of the implementation of CEDAW, SHRC would like to highlight three general areas affecting the implementation of CEDAW.

3.1. First, as the Committee is aware, the UK has yet to incorporate CEDAW in our various domestic legal systems, including in Scotland. However, under the terms of the Scotland Act 1998, which established the Scottish Parliament, both the Scottish Parliament and Scottish Government must observe and implement all of the UK's international human rights obligations.² Under the terms of the Scotland Act 1998 all issues which are not explicitly reserved to the UK Parliament are devolved to the Scottish Parliament. Consequently issues such as justice, detention, policing, physical and mental health, education and social care are within the powers of the Scottish Parliament. A meaningful understanding of the obligations of the Scottish Parliament and Government to observe and implement CEDAW will be crucial to ensuring law, policy and practice in Scotland are fully compliant.

3.2. Second, political discourse and media coverage in the UK is generating a negative perception of human rights. This has a particular impact on areas such as social security, criminal law and immigration, which impact on the effective implementation of CEDAW.³ As a consequence, there is a risk that public confidence in human rights is diminishing. It is important that both the UK Government and the Scottish Government take steps to reverse this trend by supporting and promoting a culture of human rights, in accordance with their treaty obligations under CEDAW.

3.3. Third, SHRC has promoted and coordinated a collaborative process to develop Scotland's first National Action Plan for Human Rights (SNAP). The commitments in SNAP are currently the subject of negotiation, involving Government, other public and private bodies,

civil society and marginalised rights holders. The negotiation is based on a major research project to identify gaps and good practices in the realisation of internationally recognised human rights, including those in CEDAW.⁴ That research, *Getting it Right? Human Rights in Scotland* was published on 30 October 2012 followed by a public consultation on the evidence. The present submission draws on the findings of both.

3.3.1. SNAP will launch in December 2013. The outcomes of the present review will be considered in its finalisation to ensure it represents an agreed roadmap with clear indicators and independent monitoring for the implementation of the Convention and other international human rights obligations.

4. The SHRC would be very pleased to provide any clarification, further information, or other assistance to Committee experts before, during or after the forthcoming UK session or the NHRI meeting on Monday 15 July 2013, which SHRC will attend.

Articles 2, 3 and 5 – Legislative and Policy Measures

5. The UK has yet to incorporate CEDAW in our various domestic legal systems, including in Scotland. While the UK has ratified the CEDAW Optional Protocol there has been limited effort to raise awareness concerning the availability of the mechanism by the various jurisdictions in the UK. In fact in 2008, the Ministry of Justice commissioned a review of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in the UK, which found a lack of practical benefits arising from the UK's acceptance of the right of individual complaint.⁵

Recommendation 1:

That the Committee recommends the UK incorporate CEDAW into domestic law and that both the UK and Scottish Government commit to raising awareness of the availability of the right of individual petition under OP-CEDAW.

6. Recent events and statements create concerns about the future of the Human Rights Act 1998 (HRA) in the UK, particularly looking ahead to the next UK General Election (due to take place in 2015).⁶ In 2011, the current UK Government established a Commission on a UK Bill of Rights⁷ that reported in December 2012. Following its report members of the UK Government, including the Secretaries of State for Justice and Home Affairs, promoted the repeal of the HRA. SHRC is concerned that in this environment a UK Bill of Rights would result in a weaker replacement for the HRA as well as reducing government accountability at home, and internationally.⁸

Recommendation 2:

That the Committee recommends the UK ensure all rights and obligations under the HRA are retained.

Violence Against Women

7. There are a range of statutory remedies, civil and criminal, available to tackle violence against women (VAW). Remedies are found within a number of different statutes as there is no consolidated act dealing with VAW. Furthermore, legislation is both UK wide and Scottish.⁹ The prevention of VAW including, rape, forced marriage, trafficking, female genital mutilation, domestic violence or any other act of gender-based violence should be one of the pillars of the Scottish Government policy and law.

8. The Government is in the process of consulting on a new strategy to address VAW, and tackling it has been identified as a priority for the advancement of equality of opportunity

between women and men in Scotland.¹⁰ The Scottish Government's current strategy on VAW (*Safer Lives: Changed Lives*) does not actually contain an associated action plan to show how its four themes of Protection, Provision, Prevention and Participation will be taken forward.¹¹

9. In the areas of domestic violence, specialised domestic abuse Courts have been positively received in Scotland.¹² An evaluation of the pilot showed some improvements to the process/practice for dealing with domestic abuse as well as improved experiences for victims and witnesses.¹³ The pilot highlighted the importance of provision of specialist independent advocacy and support groups which assisted survivors of abuse, ensured child safety and helped to ensure that the survivor's evidence and opinion was properly presented in Court.

10. It has been noted that criminal law is insufficient to combat domestic violence¹⁴ and an over reliance on civil remedies could be also inadequate. The current system places an undue burden on the survivor of abuse to pursue court orders and subsequently enforce compliance, leading to limited use of such civil remedies.¹⁵

Recommendation 3:

That the Committee recommends the full implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence across the UK.

11. Women's human rights organisations in Scotland have expressed concern at the disclosure of victims' medical and other personal records in rape trials.¹⁶ The Criminal Justice and Licensing (Scotland) Act 2010 broadens the definition of information that must be disclosed to records that are material or relevant to the case, unless they are sensitive.¹⁷ The right to respect for private life is protected in the HRA. There is no statutory obligation to notify the complainers that their records are disclosed or provisions for complainers to oppose requests for disclosure. There is therefore a concern that complainers are unable by themselves to claim their right to privacy and be part of the determination process of how their medical and other personal records may be used.¹⁸

Recommendation 4:

That the Committee recommends the development of guidance on the protection of complainers' privacy rights in rape cases in Scotland.

Corporal Punishment

12. The continuing legality of corporal punishment of children at home has continually been highlighted as a human rights concern in the UK.¹⁹ Section 51 of the Criminal Justice (Scotland) Act 2003 provides a defence of 'justifiable assault' for parents. This section also sets out certain types of assault that are unjustifiable. There is evidence of the negative effect on children's mental and physical wellbeing in Scotland.²⁰ While the Scottish Government has taken some initiatives to promote positive parenting, they fall short of the public education campaign recommended by the UN Committee on the Rights of the Child.²¹

Recommendation 5:

That the Committee recommends the prohibition of corporal punishment of children in all settings, repealing of all legal defences currently in place, and further promote positive non-violent forms of discipline as an alternative to corporal punishment across the UK.

Article 6 - Trafficking in Women

13. Criminal offences related to trafficking are provided for in a range of statutes in Scotland.²² Nevertheless there has been a much criticised lack of prosecutions for trafficking offences in Scotland.²³ Scotland secured its first two prosecutions for trafficking related offences in 2011²⁴ and a further three in 2012.²⁵ This compares with a total of 123 convictions for human trafficking in England and Wales from 2003 to 2009. Baroness Kennedy (who led an in-depth inquiry into human trafficking in Scotland on behalf of the Equality and Human Rights Commission) argued that the failure to secure more prosecutions for trafficking in Scotland, despite having 13.5 per cent of the UK trafficking trade, indicates the failure of the Scottish criminal justice system to address this human rights issue.²⁶

14. The inquiry found that people are trafficked to and within Scotland for the purposes of sexual exploitation, forced labour including domestic servitude, and for forced criminal activity.²⁷ Scotland is not included as part of the UK's anti-trafficking strategy and this could risk creating gaps in practice with regard to the implementation of the UK's obligations. The Anti-Trafficking Monitoring Group has found that there is little coordination of training on trafficking across Scotland and a lack of integration of measures to prevent trafficking into other key policy areas such as poverty reduction or social inclusion.²⁸ While trafficking is included in the Scottish Government's strategy for combating violence against women, the coordination of anti-trafficking efforts remains partial in Scotland.²⁹

15. NGOs such as Amnesty International UK have additionally reported that many victims/survivors of human trafficking are missing out on vital support as front line staff cannot identify victims.³⁰ Appropriate identification and support for the immediate physical and psychological needs of victims are two of the key areas of competence for local authorities in responding to the crime of human trafficking.

Recommendation 6:

That the Committee recommends the development of a comprehensive, coordinated and integrated strategy to prevent and combat human trafficking across the UK.

Article 10 - Education

16. Findings from [Getting it Right?](#) highlighted a lack of understanding across public authorities about what human rights are, including CEDAW and other instruments. In the subsequent participation process many organisations have called for human rights education to be further integrated into the national curriculum, as well as within initial and training and development of those in the public sector.³¹

17. Girls and young women are consistently outperforming boys at school in Scotland. Nevertheless, evidence remains of gender inequalities across subject choices at every level of education.³² In particular, there is noted under-representation in science, technology, engineering and maths based occupations and in modern apprenticeship programme.³³

Recommendation 7:

That the Committee recommends increase efforts to integrate human rights in school and professional curricula and development and to combat gender inequality in science, technology, engineering and maths based occupations in Scotland.

Article 11 and 13 – Employment and other Economic and Social Areas

18. Scottish Government policy focuses on work as the key route out of poverty. However, the gender gap pay and a lack of access to quality and affordable childcare remain a substantial barrier to women's employment. For those women in paid work, an unacceptable

gender pay gap remains in Scotland. The most recent review of gender pay differentials in Scottish public sector organisations (2013) reveal only 17.4 per cent could claim to be delivering equal pay (a gap of 5 per cent or less) with 58 public bodies reporting gender pay gaps of between 5.13 per cent and 31.9 per cent.³⁴

19. Moreover, rates of employment amongst women in Scotland are the lowest since 2002 (66 per cent), with unemployment climbing from 3.8 percent in March 2008 to a peak of 8.3 in late 2011, reducing to 7 percent in March 2012.³⁵ Cuts to public sector jobs, where twice as many women are employed than men in Scotland, accounts for a high proportion of the rise in female unemployment.³⁶

20. The Scottish Government has adopted the Living Wage scheme, which encourages employers to adopt a sustainable wage for employees.³⁷ The Scottish Government has urged employers in the private, public and third sectors to follow suit. Calls have been made, for example, to use the Procurement Reform Bill to amend the Public Contracts (Scotland) Regulations 2006 to require that the living wage is a part of any contracting authority's bid for a public sector contract.³⁸ Whilst welcoming the living wage, women's human rights organisations in Scotland have also expressed a concern that it places an exclusive focus on the formal labour market as the route out of poverty which misses the critical problem of women's engagement in the informal labour market which is often unpaid.³⁹

Recommendation 8:

That the Committee recommends increased efforts to tackle the gender pay gap, including educational and employment initiatives for women as well as direct support to employers to improve job evaluation, pay transparency and flexible work options in Scotland.

21. The UK has one of highest costs of childcare for in the world - 26.6% of average family incomes, compared to an OECD average of 11.8%.⁴⁰ Scotland has some of the highest childcare costs in Britain and equality of access to affordable care remains inconsistent.⁴¹ The proposed increase of the amount and flexibility of free early learning and childcare for 3 and 4 year olds, and 2 year olds who are looked after or in kinship care, from an annual provision of 475 hours to 600 hours in the Scotland's Children and Young People Bill is welcomed. Nevertheless, only 21 per cent of local authorities are able to satisfy current demand, and therefore, without improved infrastructure a rise in allocation is unlikely to be able to be fulfilled.⁴²

Recommendation 9:

That the Committee recommends further steps to ensure the effective provision of affordable, good quality childcare in Scotland.

22. Since the 2010 General Election the UK Government has prioritised the reduction of the public debt, pursuing a programme of austerity and cuts in public spending. Changes to the provision of social security benefits by the Westminster government are predicted to have a disproportionate effect on women (especially disabled women and women from minority ethnic groups⁴³ as well as single parents, 92 per cent of whom are women.)⁴⁴ Recent research supported by the Scottish Parliament indicates that these cuts are anticipated to have the most severe impact on those in the most deprived areas.⁴⁵

23. Crucially the UK Government has failed to adequately assess the impact of these measures on human rights.⁴⁶ Such an assessment would have highlighted, inter alia, that the austerity measures will not be done "*fairly whilst protecting the most vulnerable*" as claimed by the UK in their submission to this reporting process.⁴⁷ Concluding its inquiry on welfare reform, the UK Joint Committee on Human Rights criticised the UK Government for a lack of information on how it had assessed the human rights and equality impact of the new

Welfare Reform Act 2012.⁴⁸ The Joint Committee further raised concerns that the Welfare Reform Bill (as it was) “*may risk breaching human rights in leading to destitution (engaging the prohibition of degrading treatment), discrimination and retrogression in the realisation of economic, social and cultural rights.*”⁴⁹

24. Concern about the impact of any budget reductions and cutbacks on support services for victims of domestic abuse or refugee accommodation have also been raised by this Committee and civil society in Scotland.⁵⁰

Recommendation 10:

That the Committee recommends the UK and all of those involved in the implementation of welfare reform urgently assess the equality and human rights impact of all measures to ensure that their cumulative impact does not breach CEDAW rights - particular attention should be given to disabled women and lone mothers who will be amongst the hardest hit.

Article 12 - Health Care Services

25. There is a noticeable increase in the number of prisoners with mental health problems in Scotland.⁵¹ In 2010, the UK National Preventive Mechanism rated mental health as the most significant and recurring concern across all types of detention.⁵² The “*very high levels of self-harm in women’s prisons*” has also been identified as a particular concern regarding mental health care in prisons.⁵³ Cornton Vale, as Scotland’s only all-women prison, has been the source of significant concern for some time now. HMCIPS conducted his first full inspection of Cornton Vale in 2009 and has subsequently made a number of follow up inspections. HMCIPS has voiced concern about the detrimental effect overcrowding has on the “*dignity, safety, infection control, mental health and general health issues*” of both prisoners and staff and the lack of improvement in this area from previous inspections.⁵⁴ HMCIPS recommended that the facility’s design capacity be reduced to less than 300 inmates. In early 2011 it held 385 inmates.⁵⁵ HMCIPS has also drawn attention to the cycle of violence in which young people held in prisons and younger offenders institutions often find themselves.⁵⁶ There are widespread concerns about the treatment of women offenders in Scotland.

26. In response to this, in June 2011 the Scottish Government established a Commission, led by former Lord Advocate, Dame Elish Angiolini, to examine how female offenders are dealt with in the criminal justice system.⁵⁷ One of the findings of the Commission on Women Offenders is that the mental health needs of women in prisons are not being addressed adequately. The “*very high levels of self-harm in women’s prisons*” has also been identified as a particular concern regarding mental health care services in prisons.⁵⁸

27. *Getting it Right?* and the subsequent participation process have identified continuous concerns about the experience of minority ethnic women, including Scottish Gypsy/Travellers, in accessing culturally appropriate health care.⁵⁹

Recommendation 11:

That the Committee recommends the development of a timetable to implement the recommendations of the Commission on Women Offenders and ensure the availability and accessibility of appropriate facilities and services for women in detention with mental health problems and/or drug or alcohol dependency in Scotland.

Asylum

28. Dungavel House is an immigration removal centre (IRC) for female and male foreign nationals being removed from the UK. Dungavel is the only IRC in Scotland. In August 2012,

Her Majesty's Inspectorate of Prisons (HMIP) undertook a follow-up inspection of Dungavel House. The inspection raised concerns regarding the effective operation of Rule 35: Special Illnesses and Conditions (including torture claims) of the Detention Centre Rules 2001.⁶⁰ The inspection noted that whilst the health care environment had improved,⁶¹ "*health service staff had not been trained to recognise and treat signs of torture,*"⁶² which can impact on the identification of victims that are exposed to serious forms of violence against women.

Recommendation 12:

That the Committee recommends the UK to ensure that immigration staff are adequately trained to recognise, treat and report any signs of trauma and torture experienced by (women) asylum seekers.

Article 15- Equality before the law

31. The combination of the reduction of government funding of EHRC (including the closure of the EHRC legal grants programme)⁶³ and cuts to legal aid in Scotland will impact on the availability of specialist discrimination advice and casework.⁶⁴ An already pressurised legal aid budget may be unable to absorb the extra responsibility of supporting discrimination cases which could directly impact on provision of the legal advice regarding discrimination and equality. Women's organisations based in Scotland have also argued that the lowering of eligibility for legal aid in Scotland may create a new barrier to justice for victims of domestic abuse. They argue that women wishing to obtain a civil protection order from an abusive partner may be required to pay a contribution to legal costs which effectively means that a woman's socioeconomic status determines her ability to protect her human rights.⁶⁵

32. In addition, the UK government has recently introduced fees for individuals who wish to access employment tribunals via the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013. This legislation will extend to Scotland and it is likely to affect the ability of many women to pursue cases of discrimination and equal pay and act as a deterrent to claims.⁶⁶ The scheme operates on the principle that the more complex cases should carry higher fees. Discrimination and equal pay claims are considered to be complex and accordingly fall into the higher band of fees. 82 per cent of sex discrimination complaints were brought by women and equal pay complaints are more often brought by women. Women in these types of cases will therefore bear a higher fee and will be more deterred from bringing claims (there is, however, provision for exemption of the fees for those with lower incomes). In addition, there is a possibility that, as fees will deter claims generally, this could act as a disincentive to employers to fulfil their equality duties.

Recommendation 13:

That the Committee recommends that changes to legal aid do not limit women's access to legal advice and services in areas of civil law, and for criminal cases in Scotland. That the UK monitors and mitigate the impact of its changes to Employment Tribunals on women's access to justice.

List of Recommendations SHRC advises that the Committee should recommend that the UK:

1. **incorporate CEDAW into domestic law and that both the UK and Scottish Government commit to raising awareness of the availability of the right of individual petition under OP-CEDAW.**
2. **ensure all rights and obligations under the HRA are retained.**
3. **fully implement the Council of Europe Convention on preventing and combating violence against women and domestic violence.**
4. **develop guidance on the protection of complainer's privacy rights in rape cases in Scotland.**
5. **prohibit corporal punishment of children in all settings, repealing of all legal defences currently in place, and further promote positive non-violent forms of discipline as an alternative to corporal punishment.**
6. **develop a comprehensive, coordinated and integrated strategy to prevent and combat human trafficking across the UK.**
7. **increase efforts to integrate human rights in school and professional curricula and development and to combat gender inequality in science, technology, engineering and maths based occupations in Scotland.**
8. **increase efforts to tackle the gender pay gap, including educational and employment initiatives for women as well as direct support to employers to improve job evaluation, pay transparency and flexible work options.**
9. **take further steps to ensure the effective provision of affordable, good quality childcare in Scotland.**
10. **urgently assess the equality and human rights impact of the welfare reform to ensure that its cumulative impact does not breach CEDAW rights.**
11. **develop a timetable to implement the recommendations of the Commission on Women Offenders and ensure the availability and accessibility of appropriate facilities and services for women in detention with mental health problems and/or drug or alcohol dependency in Scotland.**
12. **ensure that immigration staff are adequately trained to recognise, treat and report any signs of trauma and torture experienced by (women) asylum seekers.**
13. **ensure that changes to legal aid do not limit women's access to legal advice and services in areas of civil law, and for criminal cases in Scotland. That the UK monitors and mitigate the impact of its changes to Employment Tribunals on women's access to justice.**

References

- ¹ Specific equality duties have been introduced in Scotland, which require listed public bodies to report progress on mainstreaming equality every two years; to publish every four years a set of equality outcomes which they consider will enable them to better perform the equality duty; to assess the equality impact of applying a proposed new or revised policy or practice, and review any policy or practice to ensure that it complies with the equality duty. Scottish Ministers must publish proposals every four years for activity to enable a listed authority to better perform the general equality duty. Compliance with the duty to publish has increased from 31.8 per cent (prior to January 2013) to 80 per cent (post April 30 2013). Mejka, W. 2013 Gender Pay Gaps- the good, the not-so good, and the non-compliant: performance monitoring of Scotland's public sector in meeting the specific equality duty on publishing gender pay gap data in 2013. http://scottish.parliament.uk/S4_EqualOpportunitiesCommittee/13_June_papers.pdf
- ² SHRC notes that both the Scottish Government and Parliament should, in compliance with the Scotland Act 1998, observe and implement UK's international obligations.
- ³ See for example. Home Secretary Theresa May has accused judges of making the UK more dangerous by ignoring rules aimed at deporting more foreign criminals available at <http://www.bbc.co.uk/news/uk-21489072>
- ⁴ For more information see <http://www.scottishhumanrights.com/actionplan>
- ⁵ The evaluation report was conducted by Professor Jim Murdoch of the University of Glasgow. Available at <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/publications/docs/un-optional-protocol-women.pdf>
- ⁶ For further information see SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/publications/consultationresponses/article/borrpublicationsnov2011>
- ⁷ See Final Report of the UK Government appointed Commission of Inquiry on a Bill of Rights at http://enf.org.uk/blog/?page_id=1870
- ⁸ See SHRC response to the UK Government appointed Commission of Inquiry on a Bill of Rights at <http://www.scottishhumanrights.com/publications/consultationresponses/article/borrpublicationsnov2011>
- ⁹ Relevant statutes include the Domestic Abuse (Scotland) Act 2011, Female Genital Mutilation Act 2003, Forced Marriage (Civil Protection) Act 2007, Matrimonial Homes (Family Protection) (Scotland) Act 1981, the Protection from Harassment Act 1997, the Protection from Abuse (Scotland) Act 2001, the Housing (Scotland) Acts 1987 and 2001, the Children (Scotland) Act 1995 and the Legal Aid (Scotland) Act 1986.
- ¹⁰ Reid Howie Associates and Equality Plus (2010). Reporting on Progress Towards Equality of Opportunity for Women and Men Made By Public Authorities in Scotland: Ministerial Priorities for Gender Equality: Tackling Occupational Segregation, Reid Howie Associates, Equality Plus.
- ¹¹ The Scottish Government is, however, currently developing a Violence Against Women strategy (due to be published in Autumn 2013) which is has the potential to be more effective in meeting needs and align Scotland better with the requirements set out by CEDAW.
- ¹² For a further discussion see CJ Scotland at <http://www.cjscotland.co.uk/2012/05/glasgow-domestic-abuse-court/>
- ¹³ Reid Howie Associates (2007). Evaluation of The Pilot Domestic Abuse Court. Edinburgh, Reid Howie Associates.
- ¹⁴ Kenneth Norrie, "Families in Fear", The Journal, 18 July 2011.
- ¹⁵ Rosengard, A. (2009). Understanding And Tackling Domestic Abuse In North Ayrshire. Final Report to the North Ayrshire Violence against Women Forum. Irvine, North Ayrshire Violence against Women Forum.
- ¹⁶ See for example rape crisis Scotland at <http://www.rapecrisisscotland.org.uk/workspace/publications/SensitiveRecords.pdf>
- ¹⁷ Sensitive is defined as "causing serious prejudice to the public interest"
- ¹⁸ For a further discussion see Raitt, F. Disclosure of records and privacy rights in rape cases. The Edinburgh Law Review 15.1 (2011): 33-56
- ¹⁹ The UN Committee on the Rights of the Child has also recommended three times that the UK Government change its law. Concluding observations CRC/C/GBR/CO/4. 20 October 2008.
- ²⁰ SCCYP submission to SHRC on SNAP, 29 March 2013, para 2 c).
- ²¹ See also CRC GC No. 8 (2006)
- ²² These include Section 22 of the Criminal Justice (Scotland) Act 2003 <http://www.legislation.gov.uk/asp/2003/7/section/22>; Sections 4 and 5 of the Asylum and Immigration (Treatment of Claimants) Act 2004; <http://www.legislation.gov.uk/ukpga/2004/19/section/4> Section 26 of the Antisocial Behaviour etc. (Scotland) Act 2004 <http://www.legislation.gov.uk/asp/2004/8/section/26>; Sections 10 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 <http://www.legislation.gov.uk/asp/2005/9/contents>; and the Criminal Justice and Licensing (Scotland) Act 2010 Criminal Justice and Licensing (Scotland) Act 2010.
- ²³ Amnesty International Scotland (2011). Migration and trafficking in Scotland,. Edinburgh. EHRC (2011). Inquiry into Human Trafficking in Scotland. Glasgow, EHRC Scotland. The Herald (2008). Human trafficking: Authorities failing victims in Scotland. The Herald. Edinburgh. Collins, L. (2010). Rights group questions zero trafficking prosecutions. Press Association Scotland, PA Newswire Scotland. The Herald (2010). No prosecutions for trafficking. Herald Scotland. Glasgow. Amnesty International Scotland (2011). Migration and trafficking in Scotland,. Edinburgh. EHRC (2011). Inquiry into Human Trafficking in Scotland. Glasgow, EHRC Scotland.
- ²⁴ The first convictions under section 22 of the Criminal Justice (Scotland) Act 2003 were secured in September 2011 against a man and a woman for their involvement in a UK-wide prostitution ring. 'Pair admit sex trafficking offences', The Times, 10 September 2011. The couple pleaded guilty to moving 14 men and women to various addresses in cities throughout the UK, in order to sell sex. The ring was smashed by a joint police operation led by Strathclyde Police, along with colleagues from Northern Ireland and other UK forces, along with the Border Agency, Crown Office, charities and local authorities. Proceedings under the Proceeds of Crime Act 2002 are to follow.
- ²⁵ Information provided by the Crown Office and Procurator Fiscal Service in the development of Scotland's National Action Plan for Human Rights, 5 April 2013.
- ²⁶ The Equality and Human Rights Commission Scotland undertook an in-depth inquiry into human trafficking in

Scotland, with a particular focus on commercial sexual exploitation which reported in November 2011 EHRC (2011). Inquiry into Human Trafficking in Scotland. Glasgow, EHRC Scotland. There were ten key findings and recommendations from the inquiry: The need for a comprehensive strategy in Scotland to tackle human trafficking which would make Scotland a hostile environment for traffickers; The need for increased awareness amongst the public, first responders and front-line staff about trafficking, especially trafficking indicators; The introduction by the Scottish Government of a comprehensive Trafficking Bill; Improved intelligence sharing across the UK; Improving prosecution, sufficiency of evidence and sentencing; Better collaboration of law enforcement agencies in Scotland to make Scotland a high-risk, low-return proposition for organised criminals; Embedding anti-trafficking into regulatory frameworks and practices; Encouraging the private sector to raise awareness of human trafficking and take steps to prevent the enabling of trafficking; Reviewing the process of identifying trafficked persons to develop an independent and transparent system with onward referral of victims/survivors to relevant support; and Developing comprehensive end-to-end services for victims/survivors of trafficking. Statistically while Scotland might be expected to have approximately ten per cent of the UK crime figures in proportion to the population, the Association of Chief Police Officers Scotland (ACPOS) estimates that it has a disproportionate 13.5 per cent share of the UK trafficking. Separate research commissioned by the Scottish Government Lebov, K. (2009). Human Trafficking in Scotland 2007/08, Justice Analytical Services/Organised Crime Unit. Lebov, K. (2010). "Human Trafficking in Scotland." *European Journal of Criminology* 7(1): 77-93. indicates that, in the period April 2007 to March 2008, 79 individuals believed to be victims/survivors of human trafficking came into contact with agencies in Scotland.

²⁷ Equality and Human Rights Commission Scotland, *Inquiry into Human Trafficking in Scotland: Report of the Equality and Human Rights Commission* (Glasgow, 2011), p.36.

²⁸ The Anti-Trafficking Monitoring Group. All Change Preventing Trafficking in the UK Devolved Policies. April 2012.

²⁹ Ibid.

³⁰ Amnesty International Scotland (2008). *Scotland's Slaves: An Amnesty International briefing on trafficking in Scotland*. Edinburgh, Amnesty International Scotland.

³¹ SHRC, *Getting it Right?: Human Rights in Scotland*, Edinburgh:

<http://scottishhumanrights.com/actionplan/downloadfullreport>

³² EHRC Triennial review (2010): *How Fair Is Britain?*, London, EHRC.

³³ Skills Development Scotland, 2011

³⁴ Mejka, W. 2013 Gender Pay Gaps- the good, the not-so good, and the non-compliant: performance monitoring of Scotland's public sector in meeting the specific equality duty on publishing gender pay gap data in 2013.

http://scottish.parliament.uk/S4_EqualOpportunitiesCommittee/13_June_papers.pdf

³⁵ Over the same period male unemployment has rise from 4.2 per cent to a peak of 10 per cent mid 2010, reducing to 8.7 by march 2012. See: Centre for economic & social inclusion, 2012, *Jobs, skills and unemployment in Scotland*, Wise Group & Glasgow City Council.

http://stats.cesi.org.uk/website_documents/jobs_unemployment_poverty_Scotland.ppt#260,21,Unemployment

³⁶ Submission Women in Scotland's Economy Research Centre, Glasgow Caledonian University. *Women in Scotland's Economy (WiSE) briefing paper January 2013: Where are women in Scotland's labour market?*

http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Women_in_Scotlands_Economy_Research_Centre_Glasgow_Caledonian_University.pdf

³⁷ The living wage is defined as a wage that gives individuals and families enough income to meaningfully participate in society and that meets socially acceptable standards. Scottish Government, 2010i

³⁸ Scotland's National Action Plan Consultation Report 2013 (forthcoming)

³⁹ Informal labour is estimated to be worth 30% of the current GDP at minimum wage levels, Scotland's National Action Plan Consultation Report 2013 (forthcoming)

⁴⁰ OECD (2011), *Doing Better for Families*, available at <http://www.oecd.org/social/soc/doingbetterforfamilies.htm>

⁴¹ Daycare Trust and Children in Scotland (2012) *The Scottish Childcare Lottery*,

http://www.childreninScotland.org.uk/docs/Scottish_Childcare_Lottery.pdf

⁴² Ibid.

⁴³ Oxfam, 2012, *The Perfect Storm: Economic stagnation, the rising cost of living, public sector spending cuts, and the impact on UK Poverty*: Oxford <http://policy-practice.oxfam.org.uk/publications/the-perfect-storm-economic-stagnation-the-rising-cost-of-living-public-spending-228591>

⁴⁴ Office for National Statistics, 2008, *Social Trends*, 39.

⁴⁵ Christina Beatty and Steve Fortherrigill, *Hitting the poorest places the hardest, the local and regional impact of welfare reform*, Sheffield Hallam University, Centre for Regional Economic and Social Research, April 2013,

http://www.shu.ac.uk/research/cresr/sites/shu.ac.uk/files/hitting-poorest-places-hardest_0.pdf

⁴⁶ <http://scottishhumanrights.com/news/latestnews/article/welfare-reform-after-evidence>

⁴⁷ CEDAW/C/GBR/Q/7/Add.1 <http://daccess-ods.un.org/TMP/6800953.74584198.html>

⁴⁸ Joint Committee on Human Rights (2011). *Legislative Scrutiny: Welfare Reform Bill*, summary. London, UK Parliament. See also SHRC Evidence to the Welfare Reform Committee, Scottish Parliament (28 May 2013) available at <http://www.scottishhumanrights.com/news/latestnews/article/welfare-reform-after-evidence>

⁴⁹ Ibid

⁵⁰ UN Doc. CEDAW/C/UK/CO/6.Scottish Women's Aid (2009). *Analysis of Single Outcome Agreements 2009*, Scottish Women's Aid.

⁵¹ Responsibility for the provision of healthcare services, including mental health services, to prisoners was transferred from the Scottish Prisons Service to NHS Health Boards on 1 November 2011. For a further discussion See HMCIPS (2007). *HM Chief Inspector of Prisons for Scotland Annual Report 2006-7*. H. C. I. o. Prisons. Edinburgh, Scottish Government. HMCIPS (2011). *Her Majesty's Chief Inspector of Prisons for Scotland Annual Report 2010-2011*. Edinburgh, HM Chief Inspector of Prisons for Scotland. SAMH revealed that figures obtained from parliamentary

questions showed there were 219 cases of self-harm in Scottish jails in 2010, an increase of 140% from 91 cases in 2004 SAMH (2011). SAMH RESEARCH BRIEFING: MENTAL HEALTH AND CRIMINAL JUSTICE IN SCOTLAND Glasgow, Scottish Association for Mental Health. See also Scottish Prison Commission (2008). Scotland's Choice: Report of the Scottish Prisons Commissions. Edinburgh.

⁵² The detention of individuals for mental health reasons is governed in Scotland by the Mental Health (Care and Treatment) (Scotland) Act 2003.

⁵³ Mental Welfare Commission for Scotland (2011). Mental Health of Prisoners. Edinburgh, Mental Welfare Commission for Scotland.

⁵⁴ HMCIPS (2011). Her Majesty's Chief Inspector of Prisons for Scotland Annual Report 2010-2011. Edinburgh, HM Chief Inspector of Prisons for Scotland.

⁵⁵ HMCIPS (2011). HMP & YOI Cornton Vale – Follow-up Inspection 1-4 February 2011. Edinburgh, HM Chief Inspector of Prisons for Scotland. Other sources put the capacity in 2011 at times as high as 450: 'Rough justice', Ross Reid, Holyrood Magazine, 5 September 2011, at <http://www.holyrood.com/articles/2011/09/05/scotlands-female-prison-population-soars/>. There are also places for a small number of women prisoners at Inverness, Greenock, Dumfries and Aberdeen prisons.

⁵⁶ HMCIPS (2009). HM Chief Inspector of Prisons for Scotland Annual Report 2008-2009. Edinburgh, HM Chief Inspector of Prisons for Scotland. This is reflected in the extremely high re-offending rate amongst young offenders: in 2008-09, it was estimated that over 85 per cent of the population of Polmont YOI had been there before their current sentence. There is also a strong correlation between children who have been in care and youth and adult offending. One per cent of Scottish children have been in care, whereas 50 per cent of young Scottish prisoners have been in care – rising to 80 per cent of those convicted of violent offences. (EHRC, 2010b)

⁵⁷ Commission on Women Offenders (2012). Commission on Women Offenders: Final Report 2012. Glasgow, Commission on Women Offenders. The Commission made 37 recommendations for change focusing on seven key areas of: service redesign; alternatives to prosecution; alternatives to remand; sentencing; prisons; community reintegration; and leadership, structures and delivery. The Scottish Government has agreed to consider further the following four recommendations: (i) a proposal for two new sentencing options, which the Scottish Government will examine in more detail with criminal justice partners, in the context of the on-going development of existing community sentencing options, (ii) a call for a review of services for women with borderline personality disorders (BPD), where the Scottish Government will prioritise work to implement the other recommendations made by the Commission on Women Offenders regarding BPD and other mental health provision, and (iii) two proposals to reform the leadership and delivery of adult offender services in the community, in response to which the Scottish Government will undertake a detailed consultation to consider what the optimal structures would be. The Scottish Government has undertaken to report annually. In his first annual report the Cabinet Secretary for Justice clarified the Government's ambition to reverse the trend in imprisonment of women, and outlined that the Scottish Prison Service will develop detailed plans to replace Cornton Vale.

⁵⁸ Mental Welfare Commission for Scotland (2011). Mental Health of Prisoners. Edinburgh, Mental Welfare Commission for Scotland.

⁵⁹ SHRC, Getting it Right?: Human Rights in Scotland, Edinburgh available at www.scottishhumanrights.com/

⁶⁰ 2001 No.238 Immigration: The Detention Centre Rules 2001.

⁶¹ Over a third of all uniformed staff had been trained in mental health first aid. However, a mental health professional did not deliver the training. HM Inspectorate Of Prisons Report on HMP & YOI Cornton Vale Follow-up Inspection 30 January - 2 February 2012, para 1.20.

⁶² HM Chief Inspector of Prisons, 2012, Report on an unannounced short follow-up inspection of Dungavel House Immigration Removal Centre 31 July-2 August 2012.

⁶³ Which has provided £14 million in grant funding to 285 front line services including CAB, Law Centres; Race Equality Councils and Disability Law Service since 2009.

⁶⁴ Following the Scottish Government's Strategic Spending Review, the legal aid fund is facing a cut 7.2% over the years 2012-13 to 2014-15. Scottish Government Spending Review and White Paper on Legal Reform

⁶⁵ For further discussion see engender submission to CEDAW available at engender.org.uk

⁶⁶ There will be a two-tier fee system, with fees payable by the applicant on the lodging of the claim and for a hearing: Level 1 - straightforward claims (e.g. unlawful deductions, notice pay and redundancy pay) will cost £160 to lodge the claim, with a further £230 hearing fee; and Level 2 - most other claims (e.g. unfair dismissal, discrimination and equal pay) will attract a £250 fee to lodge the claim and an additional £950 hearing fee. There are further fees on appeal (£400 issue fee and £1200 hearing fee).