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Dear Joe,

I am writing to provide the Committee with an update on the Scottish Government's engagement with international human rights systems and institutions. This letter includes details of anticipated activity over the course of 2022 and 2023.

You will recall that I last updated the Committee in relation to international human rights activity in February 2021.

I remain mindful of the recommendations published in November 2018 by the then Equality and Human Rights Committee in its report entitled *Getting Rights Right: Human Rights and the Scottish Parliament*¹. Amongst other recommendations, that report drew particular attention to the importance of broadening and improving awareness of Scotland's participation in international human rights monitoring and reporting mechanisms.

The report also recognised that the ongoing scrutiny exercised by international institutions, alongside the domestic scrutiny function of the Scottish Parliament, provides important constructive challenge to public authorities in Scotland and helps maintain our collective focus on respecting, protecting and fulfilling human rights for every member of Scottish society.

General Overview

The UK has signed and ratified seven core UN human rights treaties and seven further treaties within the Council of Europe system. The principal UN and Council of Europe instruments are listed at **Annex A**.

The UK is also making progress towards ratification of an eighth Council of Europe treaty.

¹ <https://digitalpublications.parliament.scot/Committees/Report/EHRIC/2018/11/26/Getting-Rights-Right--Human-Rights-and-the-Scottish-Parliament-3>

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This is the Istanbul Convention (the European Convention on Preventing and Combatting Violence against Women and Domestic Violence)². In particular, further compliance measures necessary in advance of ratification were put in place at Westminster during 2021 by means of the Domestic Abuse Act 2021³. The Scottish Government welcomes that progress and notes that all measures necessary for ratification in respect of devolved matters in Scotland have now been taken.

In addition, the UK has human rights obligations under eight fundamental International Labour Organisation conventions⁴ together with a number of further significant treaties such as the Aarhus Convention⁵, the Rome Statute of the International Criminal Court⁶ and the Genocide Convention⁷.

Monitoring and Compliance

Compliance with treaty obligations is monitored and examined by the relevant UN and Council of Europe treaty bodies on a cyclical basis.

These committees are generally comprised of recognised independent experts with specialist knowledge of human rights. In certain cases, periodic and ad hoc inspection visits may be carried out by the relevant body. The monitoring and reporting activity undertaken by individual UN treaty bodies is supplemented by the Universal Periodic Review (UPR) carried out approximately every four to five years by the UN Human Rights Council (further details of the UPR process are provided below).

Compliance information may also be requested by, or submitted to, the International Labour Organisation and the Compliance Committee established under the Aarhus Convention.

In addition, the UK cooperates with UN Special Procedures⁸ in fulfilment of their mandates and has issued a standing open invitation to all thematic special procedures to undertake visits to the UK, including Scotland. This commitment includes facilitating visits to the UK by UN Special Rapporteurs (UNSRs) and responding to communications and requests for information on specific thematic issues. The Scottish Government strongly supports the work of UNSRs and welcomes visits to Scotland in both a formal and an informal capacity.

The Scottish Government actively supports and participates in UK engagement with all of the above international human rights monitoring mechanisms. Scottish Government Ministers and officials work closely with Whitehall counterparts to ensure that formal reporting processes (via the UK as the State Party) properly reflect devolved policies and actions in Scotland.

² <https://www.coe.int/en/web/istanbul-convention/text-of-the-convention>

³ <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted>

⁴ <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

⁵ <https://unece.org/environment-policy/public-participation/aarhus-convention/text>

⁶ <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

⁷ https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

⁸ <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx>

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Scottish Government Reporting Policy

In addition to contributing to formal reporting by the UK, our general policy in Scotland is also to publish (where possible) a more detailed standalone report for core international treaties. Visits or communications from UNSRs may also merit a Scotland-specific response or position statement.

These standalone documents are explicitly intended to support informed debate in Scotland in relation to compliance with international human rights obligations. Our hope is that they will be of direct assistance not just to the Parliament but also to the many civil society organisations that have a close interest in the subject matter of each treaty. In addition, these position statements contribute more generally to the pool of information available to external observers who wish to know more about Scotland's human rights record and our performance against specific human rights treaty obligations.

Universal Periodic Review

In the latter half of 2021, my officials began their planning work and stakeholder engagement in preparation for the fourth cycle of the UPR.

The UPR is a unique process which enables the human rights records of all UN Member States to be reviewed by the UN Human Rights Council. Each UPR cycle lasts around four to five years and culminates in an examination of the overall human rights performance of each individual state party by means of an “interactive dialogue” held in Geneva. All UN member states are entitled to make observations and recommendations as part of the process and the outputs from the dialogue are then addressed by the relevant State Party over the next reporting cycle. Issues previously identified in the course of monitoring by treaty bodies may inform the recommendations made under the UPR, as per concerns raised by National Human Rights Institutions and civil society activists.

The UK's record was last reviewed in May 2017 and the next UPR examination is currently due to take place in Geneva in November 2022. In January 2022, in preparation for the State Party report, the Scottish Government and the Ministry of Justice jointly facilitated two virtual stakeholder sessions covering both devolved and reserved areas of policy, which were attended by civil society representatives from across Scotland.

The Scottish Government has now contributed to the UK State Party report and officials will continue to liaise closely with the Ministry of Justice to ensure that devolved policies are accurately reflected in the report as the final edit takes place ahead of publication. We will also work with UK Government counterparts to ensure that the position of the Scottish Government is reflected in the UK's overall response to the recommendations which emerge from the forthcoming interactive dialogue.

In line with the established approach to previous UPR examinations, we expect Scottish Government officials to be part of the UK delegation for the interactive dialogue in Geneva in November. My intention is to publish a Scottish position statement in advance of the examination and then to address the recommendations which emerge from the UPR by means of a standalone Scottish response, I will write to the Committee to draw your attention to both these publications once they become available.

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The Scottish position statement⁹ and response¹⁰ for the third cycle of the UPR in 2017 can be found on the Scottish Government website.

UN Treaty Bodies

In September 2021, the Scottish Government coordinated Scottish participation in a dialogue session between the UN's Subcommittee on Prevention of Torture (SPT) and UK public authorities. The purpose of the session was to discuss with the SPT the implementation of the recommendations it made in its October 2020 report following its 2019 visit to places of detention in the UK.

In January 2022, the Scottish Government contributed to the UK Government's response to the List of Issues published by the UN Committee on Economic, Social and Cultural Rights in advance of its examination of the UK's record under the International Covenant on Economic, Social and Cultural Rights (ICESCR) (not yet published). Later this year, the Scottish Government will publish its own standalone response on Scotland's record under the ICESCR. I will write separately to the Committee in relation to both publications once they are available.

UN Special Procedures

In my February 2021 update I drew attention to the work of Prof Michael Fakhri and Prof Olivier De Schutter, who are respectively the UN Special Rapporteur (UNSR) for the right to food and the UNSR for human rights and extreme poverty. They wrote jointly to the UK Government in 2020 highlighting the deepening level of food insecurity faced by low income households in the UK.

The Scottish Government published its own standalone response to that communication in February 2021¹¹ and I drew the attention of the Committee to that response in my February 2021 update. The UK response¹² was subsequently published on 10 March 2021 and can be found on the UN website¹³.

The Committee will also wish to be aware that Prof Fakhri wrote to the First Minister in June 2021 following the Scottish Parliament election. His letter commented positively on a number of human rights developments in Scotland, including the bill to incorporate the UN Convention on the Rights of the Child, the recommendations developed by the National Taskforce for Human Rights Leadership and the extent of cross party commitment to food policy and to Scotland's food system. He drew attention in particular to the significance of enshrining the right to food in domestic law. The Scottish Government's response emphasised our commitment to the right to food and to the mechanisms necessary to ensure that this right is properly respected, protected, and fulfilled.

⁹ [Human rights in the UK: Universal Periodic Review, 2017 – Scottish Government position - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/human-rights-uk-2017/pages/12.aspx)

¹⁰ [Universal periodic review of human rights in the United Kingdom 2017: response to recommendations - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/universal-periodic-review-2017/pages/2.aspx)

¹¹ [Food insecurity and poverty - United Nations: Scottish Government response](https://www.gov.scot/publications/food-insecurity-and-poverty/pages/1.aspx)

¹² <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36035>

¹³ More generally the UN website provides a search facility which enables all UNSR communications to be retrieved either on a country-by-country basis, or thematically. This is at:

<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

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Other developments over the course of the last year have included the publication of a report from Prof Joe Cannataci, the UNSR on the Right to Privacy¹⁴ in June 2021. This set out his findings and recommendations from his visit to the UK undertaken in June 2018. The Scottish Government contributed to the UK's comments on this report submitted in March 2021, in advance of their publication¹⁵.

Council of Europe Treaty Bodies

In June 2021, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted a periodic visit to the UK¹⁶. Whilst the delegation ultimately decided on this occasion not to visit Scotland and focused instead on places of detention in England, the Scottish and UK Governments liaised closely in order to plan effectively for the visit and to ensure that any request to visit institutions in Scotland could be properly facilitated and supported.

In a related exercise, the Scottish Government worked with a range of public authorities, including the Scottish Prison Service, Police Scotland, and the National Health Service, to engage with a report prepared by the Scottish Sub-Group of the National Preventative Mechanism (NPM) in relation to human rights compliance in places of detention in Scotland¹⁷. Whilst the NPM is a UK entity comprised of domestic bodies with responsibility for inspection, scrutiny and standards in places of detention, its report explicitly examined compliance with recommendations made by the CPT following two previous visits to Scotland in 2018¹⁸ and 2019¹⁹.

In August 2021, we contributed to the UK Government's response to comments made by the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission in relation to the UK Government's 40th report on the UK's conformity with the European Social Charter (ESC), focusing on Articles 3 and 11-14 covering the right to safe and healthy working conditions, the right to protection of health, the right to social security, the right to social and medical assistance, and the right to benefit from social welfare services.²⁰ In September, we contributed to the UK Government's 41st report on the UK's conformity with the ESC, focusing on Articles 2-6 covering the right to just conditions of work, the right to a fair remuneration, the right to organise, and the right to bargain collectively.

In March 2022, we began a process of engagement with the Secretariat to the Advisory Committee on the Framework Convention for the Protection of National Minorities, in advance of a visit to Stornoway by the Advisory Committee in April 2022. We will continue to engage with the Advisory Committee and the Department of Levelling Up, Housing and Communities throughout the Advisory Committee's ongoing preparation of their fifth monitoring report on the UK's implementation of the Framework Convention.

¹⁴ [A/HRC/46/37/Add.1](https://undocs.org/A/HRC/46/37/Add.1)

¹⁵ <https://undocs.org/A/HRC/46/37/Add.9>

¹⁶ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-the-united-kingd-4>

¹⁷ https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/08/NPM_report_FINAL.pdf

¹⁸ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-the-united-kingdom-focusing-on-police-and-prisons-in-scotland>

¹⁹ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-the-united-kingdom-focusing-on-scottish-prisons>

²⁰ <https://rm.coe.int/uk-government-response-to-comments-from-the-children-and-young-people-/1680a408cb>

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International Labour Organisation

Over the course of the year the Scottish Government contributed to UK reporting on compliance with a number of International Labour Organisation (ILO) conventions in accordance with Article 22 of the ILO Constitution, and covered the Work in Fishing Convention, the Equal Remuneration Convention, and the Discrimination (Employment and Occupation) Convention.

Liaison with UK Missions

The Foreign, Commonwealth and Development Office (FCDO) made two new appointments to the UK missions in Geneva and Strasbourg during 2021:

- Simon Manley CMG was appointed the UK's Permanent Representative to the World Trade Organisation, United Nations, and other International Organisations in Geneva;
- Sandy Moss was appointed the UK's Permanent Representative to the Council of Europe in Strasbourg.

I would like to record my particular appreciation of Simon and Sandy's positive and proactive engagement with the Scottish Government following their appointment to their respective posts. Further constructive and informative meetings have been held at official level. Such contacts underline the importance and extent of the effective long-term working relationship which exists at an operational level between human rights and international policy officials supporting, respectively, the Scottish and UK Governments.

Other International Visits, Delegations and Activity

As a consequence of the COVID-19 pandemic, there has been a continued significant reduction in general activity involving visiting experts and other interested parties.

However, I am very pleased to report that the Scottish Human Rights Defender Fellowship continued to operate. Following delays due to Covid, the two 2020 Fellows, from Brazil and Colombia, arrived in Scotland in September 2021. Prior to arrival they undertook part of their Fellowship remotely, from their home countries, with support from the Fellowship team based at the University of Dundee. Both Fellows then completed a three month residential period in Scotland and were able to carry out a programme of visits and engagements. These included a meeting with Angus Robertson MSP, the Cabinet Secretary for Constitution, External Affairs and Culture.

Alongside these engagements they were also able to take advantage of opportunities for respite and recuperation in a place of safety. This is an essential part of the programme and recognises the risks that the Fellows experience in their day to day lives. The Fellows left Scotland in December, but we remain in close contact with them in order to ensure they continue to be supported and are able to take best advantage of learning from their time in Scotland.

Again, due to delays caused by Covid, the two 2021/22 Fellows, from the Philippines and Belarus, arrived in Scotland in February to undertake a three month residential Fellowship. As with previous Fellows, they have completed a wide-ranging programme of visits and engagements, including a joint meeting with Neil Gray, Minister with Special Responsibility for Refugees and me.

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The Fellows also met members of this Committee, including yourself as Convener and Deputy-Convener, Maggie Chapman. The Fellows finished their Programme in the middle of April.

In addition, we have also recently heard that Laura Miti, one of our 2019 Fellows, has been recommended for appointment by Zambia's President, Hakainde Hichilema, to the Zambia Human Rights Commission to serve as a Commissioner. I have written to Laura to offer my congratulations and best wishes.

Forthcoming Activity

As a consequence of the COVID-19 pandemic there has been significant disruption to normal international reporting schedules, including reporting under major treaties such as ICESCR. However, we now expect activity in 2022 to return to a more predictable timetable and to include:

- Contributing to the UK's State Party Report and Response to the Recommendations for the UPR, and developing and publishing parallel Scottish standalone position statements;
- Publishing a Scottish Government standalone position statement on compliance with the International Covenant on Economic, Social and Cultural Rights following our contribution to the UK State Party response;
- Contributing to the UK's next annual report under the European Social Charter, expected in Autumn 2022. The theme for 2022 will be "Children, families and migrants" and will cover compliance with Articles 7, 8, 16, 17, 19, 27 and 31;
- Continuing to engage with the Advisory Committee on the Framework Convention for the Protection of National Minorities as they prepare their fifth monitoring report on the UK;
- Contributing to UK reporting on compliance with ratified ILO Conventions in accordance with Article 22 of the ILO Constitution and the ILO's reporting schedule;
- Responding to the UK Government's legislative proposals for a 'modern Bill of Rights' and their implications for the fulfilment of the UK's obligations under the European Convention on Human Rights;
- Continuing to develop the Scottish Human Rights Defender Fellowship Programme which will return to its usual sixth month residential timetable in Autumn 2022.

[Note: The activity identified above is subject to change and it is possible that other events and activity, for example visits by UN Special Rapporteurs, may be added at short notice]

Conclusion

I hope that the information provided in this letter is helpful to the Committee and will assist in enabling appropriate further consideration to be given to monitoring and reporting activity as well as more general engagement with international human rights mechanisms. A full list of 2021 activity can be found in **Annex B**.

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I would of course welcome and encourage further discussion by the Committee of the role which the Scottish Parliament can play in supporting Scotland's engagement with international institutions and processes, and in ensuring that Scotland can account successfully for its efforts to ensure that internationally-recognised human rights are respected, protected and fulfilled, and that every member of society can live with human dignity.

Yours sincerely,

Christina McKelvie

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INTERNATIONAL HUMAN RIGHTS TREATIES RATIFIED BY THE UK

UNITED NATIONS

Signed and ratified by the UK

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of all Forms of Racial Discrimination (CERD)
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT)

COUNCIL OF EUROPE

Signed and ratified by the UK

- European Convention on Human Rights (ECHR)
- European Social Charter (ESC)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment (CPT)
- European Charter for Regional and Minority Languages (ECRML)
- Framework Convention for the Protection of National Minorities (FCPNM)
- European Convention on Action against Trafficking in Human Beings (CATHB)
- Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

Signed but not yet ratified by the UK

- Revised European Social Charter (rESC)
- Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (CPVW – “Istanbul Convention”)

LIST OF HUMAN RIGHTS INTERNATIONAL TREATY REPORTING ACTIVITY AND ENGAGEMENT WITH UN SPECIAL PROCEDURES (from February 2021 to date)

Date	Treaty / Mechanism	Type of Engagement
February 2021	ILO	Contribution to provision of further information on UK compliance with <i>C149 – Nursing Personnel Convention</i> and <i>C189 – Domestic Workers Convention</i>
February 2021	ILO	Contribution to UK response to ILO questionnaire on Apprenticeships
March 2021	UNSR Right to Privacy	Updating Right to Privacy Report (from 2018 visit to Scotland)
May 2021 to October 2021	NPM	Engagement with the NPM Scottish Sub-Group on their report on places of detention in Scotland
May 2021	ILO	Contribution to UK report on <i>C188 – Work in Fishing Convention</i>
June 2021	ILO	Contribution to UK 2021 Report on <i>C100 - Equal Remuneration Convention</i>
June 2021	ILO	Contribution to UK response to 2019 Direct Requests on <i>C100 - Equal Remuneration Convention</i>
June 2021	ILO	Contribution to UK 2021 Report on <i>C111 - Discrimination (Employment and Occupation) Convention</i>
June 2021	ILO	Contribution to UK response to 2019 Direct Requests on <i>C111 - Discrimination (Employment and Occupation)</i>
June 2021	ICESCR	Provision of comments on draft General Comment on Economic, Social and Cultural Rights

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June 2021	SPT	Participation in a UK-wide round-table discussion with SPT representatives to discuss implementation of their recommendations made following their 2019 visit to the UK.
August 2021	ESC	Response to comments and recommendations made by the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission in relation to the UK's 2020 ESC report
September 2021	UNSR Right to Food	Response to letter from UNSR Right to Food
September 2021	ESC	Contribution to UK State Party report on labour rights.
September 2021 to December 2021	Human Rights Defender Fellowship Programme	Residential programme in Scotland for the 2021 Fellows.
December 2021	UN CRPD	Provision of comments on draft General Comment on Art 17 (right to work and employment)
January 2022	ICESCR	Contribution to UK State Party report in response to List of Issues
January 2022	UPR	Civil society dialogue sessions delivered in partnership with UK Ministry of Justice
February 2022 to April 2022	Human Rights Defender Fellowship Programme	Residential programme in Scotland for the two 2021/22 Fellows.
March 2022	UPR	Contribution to UK State Party report
March 2022	FCPNM	Engagement with the Secretariat of the Advisory Committee in advance of their monitoring visit to the UK.

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Abbreviations

CEDAW – Convention for Elimination of all Discrimination against Women (UN)
CERD – Convention for the Elimination of Racial Discrimination (UN)
CPT - Convention for the Prevention of Torture (C of Europe)
ECMRL – European Charter for Regional or Minority Languages (C of Europe)
ECRI - European Commission against Racism and Intolerance (C of Europe)
ESC – European Social Charter (C of Europe)
FCPNM – Framework Convention for the Protection of National Minorities (C of Europe)
HRD – Human Rights Defender
ICESCR - International Covenant on Economic, Social and Cultural Rights (UN)
ICCPR – International Covenant on Civil and Political Rights (UN)
ILO – International Labour Organisation
OHCHR – Office of Human Rights Commissioner for Human Rights
UNCAT - Convention against Torture (UN)
UNCRC – Convention on the Rights of the Child (UN)
UNCRPD – Convention on the Rights of Persons with Disabilities (UN)
UNSR – UN Special Rapporteur
UPR – Universal Periodic Review
SPT - The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN)

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