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Editorial

Realising International Human Rights: Scotland on the Global Stage

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The impetus for, and the challenges to human rights implementation today remain as salient and complex as they were when the 1993 Vienna Declaration and Programme of Action promoted National Plans of Action as one of several operational measures intended to revitalise commitment to the realisation of international human rights.¹ Today more than thirty countries have National Plans of Action.² Scotland's National Action Plan (SNAP) – the first for Scotland, launched on 10th December 2013, and the first of its kind in the UK – acts as a 'roadmap' towards 'realising the full potential of human rights.'³ In common with other National Action Plans, SNAP seeks to clarify lines of accountability, create concrete consensus-based milestones, and promote a national human rights culture. This collection of papers is inspired by what went on *behind* the action plan. It was born in the wake of the process, led by the Scottish Human Rights Commission (SHRC), which informed the baseline evidence of national lacunae and good practice in the protection of international human rights in which SNAP is grounded. The papers provide an insight into Scotland's advances in realising rights, through engaging with and building upon the initial work coordinated by the SHRC to create a baseline study of how effectively

rights were being realised in Scotland. The Scottish experience is that this scoping process which informed the baseline study provides an observatory for critically exploring the interplay between international human rights standards and the pursuit of practical progress in human rights protection in particular contexts, for example care of the elderly, housing provision, and mental health policy. The papers not only reflect on the outcomes in such contexts, but reflect on the journey towards realising rights within them.

Questions and challenges surrounding the realisation of international rights in practice have become increasingly significant as the international human rights regime has developed, and the focus has shifted from law-making to implementation and enforcement at the national level.⁴ There has, however, been a lack of discourse and negotiation around implementing international standards within domestic systems.⁵ Academic and policy literature has frequently focused on the practice of civil society actors in exercises of fact-finding and monitoring⁶, often by external international actors. This special issue draws attention to a different manifestation of international human rights monitoring processes – a national, internal, participative process of evidence gathering, mapping the integration and impact of the international human rights framework. This process, led by a National Human Rights Institution (NHRI), highlights the role played by such institutions in efforts to translate international standards into lived experiences of rights. The number of NHRIs is increasing, encouraged by the UN, and literature constantly places these bodies as important as well as contested actors on the international human rights stage.⁷ The evolution of NHRIs requires a new interrogation of the processes at play between grounded events (rights violations) and international law. The NHRIs themselves are generating a new

body of work and evidence for examining and monitoring progress towards greater realisation of rights.

Scotland's recent experience of working towards a national human rights action plan is characterised by the push and pull of local, national, regional and global forces, energising as well as impeding efforts to give further effect to international human rights law. Scotland has emerged as a pro-rights voice within the UK. In the context of economic austerity, the shifting place of the UK within Europe, and contestation over the future shape of the domestic legal framework of human rights protection, the devolved institutions of governance in Scotland have committed to maintain and enhance the legal status of regional/international rights instruments (in sharp contrast to the ongoing UK Government position). In asserting the country as an increasingly independent political force, Scotland's current (and previous) Government⁸, has reacted against UK Government-led policies pertaining to human rights. It has pledged to integrate human rights-based indicators into Scotland's national performance framework, and has supported the development of SNAP.⁹ The SHRC has been and continues to be a pivotal force in promoting a pro-human rights voice for Scotland, working alongside its sister organisation, the Scotland Office of the UK-wide Equality and Human Rights Commission.¹⁰ The SHRC, which began operations in 2008,¹¹ embarked upon an innovative approach of grounding international rights in everyday contexts.¹² This required building and transforming collaborations and networks using a human rights framework, urging organisations to recognise their role in realising rights. It is an approach reflected across its activities, including the evidence-gathering stage that preceded SNAP. In this process, the SHRC commissioned reviews of legal and social research in Scotland and drew upon

international monitoring exercises (for example, treaty reviews). It facilitated a participative process, involving collaboration with a range of local civil society actors (including, for example, the Scottish Trade Union Congress, Scotland's Commissioner for Children and Young People, the Scottish Association for Mental Health, and Scottish Women's Aid) and conducted a series of focus groups with rights holders across the country. The input of an active civil society has strengthened Scotland's pro-rights voice and demonstrates the breadth of human rights discourse beyond the elite political and public sphere. The experience of working towards a national human rights action plan, however, highlighted the gulf existing between international human rights law, the expectations of rights-holders, and lived experiences. These challenges will be familiar to many actors across the world who, in the context of regressive global forces and regional/national pressures, favour an international outlook and seek to facilitate reliance upon global standards to achieve, ultimately, more impactful integration of internationally-recognised rights.

It is against this backdrop that the project of learning from the process and outcomes of the baseline evidence-gathering process emerged from within the SHRC's Research Advisory Group. The SHRC established this multidisciplinary group, representing five different higher education institutions in Scotland, to engage with academia and to seek critical guidance on its research strategies and priorities. An unanticipated gain of our involvement as academic members of the Research Advisory Group was the opportunity to participate in a knowledge-exchange space which was in itself unique at that time, and through which we were able to witness and appreciate the magnitude of the task of operationalising the SHRC's mandate to further realise human rights in Scotland. Its objective of doing so in a meaningful way

required a multi-faceted and multi-layered methodology on a national scale, and involved attempts to capture the disparate experiences of Scotland's people played out in divergent social and geographical milieus. This special issue is one tangible outcome of these interactions within the Research Advisory Group. Each paper is inspired in its own way by the experience, offering different legal and sociological perspectives on aspects of the baseline mapping process or on particular emergent issues and themes.

Like the approach to the baseline mapping process, this special issue is a further example of the collaborative working approach. In addition to representing perspectives of the Research Advisory Group's diverse membership, each article creates new scholarly partnerships. The articles are authored by early career researchers working with experienced academic scholars, and serves to foster the professional development of new voices into the field of human rights; or by practitioners in the human rights field alongside academic scholars, which has the potential to bridge the gap between scholarly intellectualism and 'events on the ground'. Ferrie and Hosie's article explores methodological challenges in collecting data that is perhaps not understood within a human rights framework. It describes the development of Scotland's evidence baseline as a new space allowing for data collection and solution generation shared by rights-holders and duty-bearers. Webster and Flanigan explore discursive and interpretive practices bridging the gap between experiences of rights-holders/civil society actors and legal definitions of rights, where these practices are understood as instances of localisation of international rights language. Boyle and Hughes focus on the less examined economic, social and cultural (ESC) rights, problematise the issue of access to remedies, and explore the risks and

benefits in constitutionalising or legislating for ESC rights. Stavert and McGregor's article looks at the right to health, with a focus on mental health as it is integrated into the United Nations Convention on the Rights of Persons with Disabilities. Reflecting on the international and domestic legal framework, it explores the necessary shift towards reforming practices. Love and Lynch, using Scotland as a case-study, consider the challenging, yet urgent, task of realising human rights for older people in light of global demographic movement towards ageing societies. Clark, Matthew and Burns also use a case-study; in this instance of a Scottish civil society organisation, whose work is explored through the conceptual framework of 'intersectionality'. Examining three interconnected issues – power, privilege and justice – it aims to transcend class, gender and race by examining intersectional experiences of rights. The articles explore strengths and limitations in national realisation of internationally-accepted standards, revealed through, or inspired by, the evidence-gathering process that underpinned the action plan.

It is the editors' hope that the articles cumulatively provide the readership with an illustrative glimpse into this process that we believe speaks to a number of internationally-shared conceptual and methodological challenges at the interface between international human rights law and efforts to realise human rights in practice at the national level. Three key themes underlie the articles: methods of measuring the impact and effectiveness of national legislation and policy against international standards; the framing of emerging individual issues and long-standing societal challenges in human rights language; and the impact of NHRIs on the human rights landscape, on the realisation of rights and the fluency with which rights are discussed. These themes are relevant to an international audience working on and with human

rights. This special issue thereby connects international standards to ‘events on the ground’¹³ by offering a snapshot of one nation’s efforts to further realise rights.

¹ World Conference on Human Rights, Vienna Convention and Declaration of Action, 25 June 1993, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>, in particular ‘C. Cooperation, development and strengthening of human rights’. See also K. A. Annan (1997), ‘Strengthening United Nations Action in the Field of Human Rights: Prospects and Priorities’, *Harvard Human Rights Journal* 10 (1), 1-9.

² UN Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/PlansActions/Pages/PlansofActionIndex.aspx>.

³ Scottish Human Rights Commission, *Scotland’s National Action Plan for Human Rights 2013-2017*, p. 17, <http://www.scottishhumanrights.com/application/resources/documents/SNAP/SNAPpdfWeb.pdf>.

⁴ Rachel H. Murray and Elizabeth A. Mottershaw, ‘National responses to human rights judgments: The need for government co-ordination and implementation’, *European Human Rights Law Review*, 2012, no. 6: 639-53.

⁵ Notable exceptions are Rachel H. Murray, *The Role of International Human Rights Institutions at the International and Regional Levels* (Oxford: Hart Publishing, 2007); Richard Carver, ‘A New Answer to an Old Question: National Human Rights Institutions and the Domestication of International Law’, *Human Rights Law Review* 10, no. 1 (2010): 1-32; and Ryan Goodman and Thomas Pegrum, *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions* (New York: Cambridge University Press, 2012).

⁶ Hans Thoolen and Berth Verstappen, *Human rights missions: a study of the fact-finding practice of non-governmental organizations* (Dordrecht: Martinus Nijhoff Publishers, 1986); Office of the High Commissioner for Human Rights, ‘Training Manuel on Human Rights Monitoring’, 2001, <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>; Philip Alston and Colin Gillespie, ‘Global human rights monitoring, new technologies, and the politics of information’, *European Journal of International Law* 23, no. 4 (2012): 1089–1123.

⁷ Julie A. Mertus, *Human Rights Matters: Local Politics and National Human Rights Institutions* (Stanford: Stanford Studies in Human Rights, 2009); Goodman and Pegrum, *Human Rights, State Compliance and Social Change*; Mark Goodale, *Human Rights at the Crossroads* (New York: Oxford University Press, 2013).

⁸ The 2011-2016 and 2016-present Scottish Governments are constituted by Scottish National Party Members of the Scottish Parliament.

⁹ See, e.g., *The Guardian*, ‘Nicola Sturgeon: SNP will work across party lines to keep Human Rights Act’, 24 May 2015, <https://www.theguardian.com/politics/2015/may/24/nicola-sturgeon-snp-work-across-party-lines-keep-human-rights-act>; SNAP Human Rights Innovation Forum, 9 December 2015, <http://news.scotland.gov.uk/Speeches-Briefings/SNAP-Human-Rights-Innovation-Forum-2040.aspx>.

¹⁰ Alongside the Scotland Office of the UK-wide Equality and Human Rights Commission; <https://www.equalityhumanrights.com/en/commission-scotland>.

¹¹ Scottish Commission for Human Rights Act 2006, <http://www.legislation.gov.uk/asp/2006/16/contents>.

¹² Scottish Human Rights Commission, Annual Report 2008-2009, <http://www.scottishhumanrights.com/media/1148/cranualreport2008-2009pdf.pdf>.

¹³ Ryan Goodman and Derek Jinks, ‘Measuring the effects of human rights treaties’, *European Journal of International Law* 14, no. 1 (2003): 182.