

Scottish Human Rights Commission

**SUBMISSION TO THE EQUALITY AND HUMAN RIGHTS
COMMITTEE**

Human Rights and the Scottish Parliament Inquiry

MARCH 2018

I. Introduction

1. The Scottish Human Rights Commission (the Commission) welcomes the Equalities and Human Rights Committee's inquiry on human rights and the Scottish Parliament. As the Committee is aware, the Commission also submitted written evidence to the Commission on Parliamentary Reform in 2017. This evidence recommended a further strengthening of human rights in parliamentary processes to ensure that the Parliament is able to act as an effective human rights guarantor. This evidence should be read in conjunction with the response below.
2. Parliaments are cornerstones of national protection systems. They play a critical role in ensuring government compliance with their national and international human rights obligations and share a responsibility, with other branches of the State, to protect, respect and fulfil human rights.
3. There is increasing recognition of the importance of national parliaments in protecting and promoting human rights. The United Nations¹, Council of Europe², European Union³ and the Commonwealth⁴ have all recently focused

¹ UNGA Res 68/272 'Interaction between the United Nations, national parliaments and the Inter-Parliamentary Union' (19 May 2014) UN Doc A/RES/68/272 (www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/272)

Report of the Secretary-General on the Interaction between the United Nations National Parliaments and the Inter-Parliamentary Union (UNGA/A/68/827) (2 April 2014); UNGA Resolution 67/1 'Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels' (24 September 2012); UNCEDAW Committee, Statement on the relationship of the Committee on the Elimination of Discrimination against Women with parliamentarians (2010)

² PACE Resolution 1823 (2011) 'National parliaments: guarantors of human rights in Europe'; Council of Europe, 'Brighton Declaration adopted at the High-level Conference on the future of the European Convention on Human Rights' (20 April 2012)

(www.coe.int/t/dghl/standardsetting/cddh/CDDHDOCUMENTS/CDDH_2012_007_en.pdf); Council of Europe, 'Brussels Declaration adopted at the High-level Conference on the 'Implementation of the European Convention on Human Rights, our shared responsibility'' (27 March 2015) (http://justice.belgium.be/fr/binaries/Declaration_EN_tcm421-265137.pdf).

³ DROI policy paper on enhancing cooperation between the European Parliament and EU national parliaments on EU human rights policy.

attention on the role of national parliaments. The developing understanding of what makes parliaments effective human rights guarantors provides significant opportunities for the Scottish Parliament to strengthen its role.

4. The Scotland Act 1998 placed the European Convention of Human Rights (ECHR) at the heart of the Scottish Parliament by linking its competence to the human rights drawn from the ECHR. The Scotland Act 1998 also transferred responsibility for the implementation of all other international human rights obligations within devolved competence to the Scottish Parliament. These include the core United Nations treaties along with the regional human rights treaties of the Council of Europe and the European Union.
5. In this light, the key role of the Scottish Parliament in terms of human rights includes not only its law-making function and corresponding scrutiny, but the construction of a legal and policy framework which is in accordance with Scotland and the UK's (international and regional) human rights obligations and which also strengthens the rule of law. Parliamentary activity as a whole covers the entire spectrum of civil, cultural, economic, political, and social rights and thus has an immediate impact on the enjoyment of these rights.
6. Increased parliamentary awareness of human rights should go hand in hand with greater parliamentary involvement in the work of civil society and the national human rights institutions. The Belgrade Principles which were adopted in 2012 highlight the important partnership between National Human Rights Institutions (NHRIs) and Parliaments. The Commission would welcome further discussion with the Scottish Parliament on how we can work together in accordance with the Belgrade Principles.⁵
7. Human rights should thoroughly permeate parliamentary activity. The Commission believes that further embedding a rights based approach in the structures and processes of the Scottish Parliament will strengthen its effectiveness to deliver the best outcomes for the lives of people in Scotland.
8. In this submission, the Commission follows the structure and answers each of the question presented by the Committee. In doing so the commission will provide specific recommendations for both the Equality and Human Rights Committee and the Scottish Parliament.

⁴ See: The Mahe Declaration 2014, Pipitea Declaration 2015, and Kotte Declaration 2016 on actions by parliamentarians to promote and protect human rights.

⁵ The Belgrade Principles are available here:

<https://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>

Q1. Participation and Engagement:

Can the Scottish Parliament empower people to make them more aware of their rights under domestic and international human rights law and to build a strong human rights culture in Scotland?

Participation

9. Participation in decisions which affect our lives is a fundamental element of human rights, as well as being a key component of a human rights based approach.⁶ The importance of participation is recognised in a range of international human rights law treaties and in general comments on a range of articles. In addition, participation is one of the founding principles of the Scottish Parliament.
10. The following recommendations address areas within Scottish Parliamentary processes where the participation of rights holders can be strengthened and developed.

Recommendations

11. Assess current practice within the Scottish Parliament against good (national and international) practice models for participation and identify areas for improvement across committees and other decision-making processes. This would include: ensuring the effective participation and inclusion of a wide range of rights-holders, with the support and access needed to enable meaningful contributions by for example, providing communication aids, alternative formats, travel and care costs and skilled facilitation.
12. Committees should ensure that they work alongside people with direct, lived experience of an issue as a matter of course, with the expectation of participation and engagement built in to all their activities. This would serve not only to understand where there may be gaps in rights realisation and protection, but also to ensure that people with lived experience are able to develop and articulate solutions alongside lawmakers. While this can reasonably be expected to be challenging given parliamentary timescales, ultimately it will result in high-quality, well-grounded recommendations for law and policy.
13. Committees should ensure that rights holders and communities are kept informed as to the outcome of their decisions and deliberations.

⁶ For further information on HRBA see: <http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/>

14. Committees should systematically visit communities and people who are most affected by the relevant policy or legislative discussion.⁷ This external engagement will provide rich opportunities to engage with those affected by their decisions and ensure that the Parliament acts for all of Scotland's diverse communities.
15. The Parliament should ensure that it supports a broad, well-informed public debate around the incorporation of international human rights law into Scotland's domestic legal framework.
16. The Parliament should also strengthen coordination between national and international partners to ensure that Scotland learns from developing good practice and receives regular input from relevant national human rights stakeholders, in particular national human rights institutions (NHRIs) and civil society.

Empowerment and awareness of human rights

17. In general the Scottish Parliament can do a great deal to make people aware of their rights and increase the visibility of human rights in the work of the parliament, the government at large and the public. While the Scottish Parliamentary Committees already make efforts to empower people through a number of means more could be done to ensure people understand their rights and are involved in decisions which affect their lives.

Recommendations

18. The Scottish Parliament should organise human rights focused public discussions involving the government, NHRIs, civil society, and rights holders. This discussions should have broader media coverage and take place throughout the national territory.
19. The Parliament should issue human rights publications that plainly explain the parliament's law-making, oversight and budgetary roles from a human rights perspective.
20. The Committees should stimulate parliamentary debates on relevant human rights issues, for example on the Universal Periodic Review (UPR) or presenting a human rights prize (e.g. the 'Thistle') to individuals or

⁷ The UN Convention on the Rights of Persons with Disabilities also includes procedural obligations of participation requiring that in other decision-making processes concerning issues relating to persons with disabilities States "shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations" (article 4 (3)). Article 8 of the ECHR also confers a right of participation in decision making in some circumstances where Article 8 rights are at stake e.g. *Taskin and other v. Turkey* (Application no. 46117/99), 10 November 2004 regarding environmental matters; *McMichael v United Kingdom* (1995) 20 EHRR 205; *TP&KM v UK* (Application No. 28945/95 – Judgment 10 May 2001).

organisations who campaign for human rights and fundamental freedoms in Scotland and overseas.

21. It is vital that MSPs and Parliamentary staff are empowered to better identify human rights issues in their day to day work. We recommend that the Scottish Parliament builds the capacity of Members of the Scottish Parliament (MSPs) and other Parliamentary staff in relation to human rights. This can be done through MSP and staff training and education programme on human rights, including on the tools available for human rights monitoring and reporting and the vocabulary of human rights. Training should be available to parliamentary support staff.
22. Parliamentary information should be clear, relevant, timely and accessible to all sectors of society.⁸
23. Full consideration must be made of all groups in society in parliamentary process and outputs, in particular those marginalised groups, both in terms of intersectional discrimination (e.g. gender and ethnicity, etc.), those living in poverty and the groups of people who are not directly protected by the Equality Act (e.g. asylum seekers and irregular migrants).
24. As per its founding principles, the Scottish Parliament should ensure that non-discrimination is at the core of all of its activities relevant to this inquiry, including participation, engagement, parliamentary procedures and processes and accountability.

⁸ See for example, UN General Assembly Resolution No. 59, 1946 and UDHR Art. 19.

Q2. Parliamentary procedure and process

Are there further steps the Scottish Parliament could take to ensure that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies?

25. Consideration of human rights in parliamentary process requires the effective monitoring of human rights standards. This includes not only the availability of appropriate laws, policies and administrative procedures, but also the mechanisms to redress violations and secure human rights.

The Equality and Human Rights Committee (EHRiC)

26. It is crucial that Scotland's parliamentary human rights committee has wide mandate that includes civil, political and social, cultural and economic rights,⁹ and strong and continuous¹⁰ powers to allow them to review legislative proposals (*ex ante* and *ex post* review); give and seek advice; conduct inquiries; scrutinise compliance with international human rights obligations;¹¹ and table debates around topics affecting human rights in Scotland and beyond.

27. Steps should be taken to ensure public trust and confidence in the independence of this Committee; members of the Committee should preferably have a proven expertise and interest in human rights; and the Convener should be elected by MSPs.

28. The following recommendations address areas within Scottish Parliamentary processes where accountability can be strengthened and developed.

Recommendations

29. In line with the principles above (para. 26) Human Rights should be made a permanent responsibility of EHRiC and consideration be given to the resources allocated to this committee to ensure it can adequately deliver on

⁹ Currently the check on legislative competence relates only to the rights contained within the Human Rights Act 1998 and does not include wider consideration of the international human rights obligations that are within the competence of the Scottish Parliament. See Para 7(2) of sched 5 to the Scotland Act 1998.

¹⁰ At the moment the Equality and Human Rights Committee of the Scottish Parliament has had Human Rights added to its remit for this Parliamentary term only.

¹¹ Parliamentary involvement at the UN is now considered a way to add democratic support to the work and recommendations of international bodies; and a means to increase human rights promotion and protection at the national level. This has been highlighted by the OHCHR and both the Human Rights Council and the General Assembly resolutions. For instance, the Human Rights Council in its resolution 26/29 adopted in June 2014 highlighted the crucial role that parliaments play in translating international commitments into national policies and laws and hence in contributing to the fulfilment by each State Member of the United Nations of its human rights obligations and commitments and to the strengthening of the rule of law. The UN General Assembly, most recently in its resolution 68/272, recognized the unique role of national parliaments in support to the work of the UN in various fields, including human rights.

its mandate supported by specialised staff with expertise in human rights law and policy.

30. Part of the remit of a newly constituted EHRiC would be to work collaboratively with other committees and establish effective working relationships in and outside Parliament. For example: consider the appointment of Human Rights Rapporteurs for each subject Committee of the Parliament to ensure mainstreaming of human rights and a consistency of approach to human rights scrutiny.¹²
31. Beyond EHRiC, each parliamentary committee, within its area of competence, should consistently take human rights into consideration in both its legislative scrutiny and broader thematic work.
32. Other clear human rights mechanisms should be considered by EHRiC to ensure that that people's human rights are being taken into consideration when the Scottish Government and public authorities are creating policies:
 - a. Introduce effective and transparent Human Rights Impact Assessments of primary and secondary legislation and introduce additional checks for human rights compliance for amendments and subordinate legislation.
 - b. Ensure that Concluding Observations from treaty monitoring bodies and recommendations from other international human rights bodies provide a framework for its work. This includes: scrutinising Scottish Government human rights treaty reports; engage with treaty bodies by sending, where appropriate, representatives and holding debates on particular treaty bodies. Parliamentary involvement at the UN is now considered a way to add democratic support to the work and recommendations of international bodies; and a means to increase human rights promotion and protection at the national level.
 - c. Take a human rights based approach to its scrutiny of the Scottish Government fiscal policy¹³ and national budget. For example: in monitoring Scottish Government spending, the Parliament can, if necessary, hold the Government accountable for inadequate performance in the area of human rights. The use of human rights budget analysis can help to better understand existing gaps and

¹² In the last session of Parliament the Justice Committee appointed such a Rapporteur which allowed for the building of expertise and specific committee time devoted to reporting on human rights issues.

¹³ For further information see: <http://www.scottishhumanrights.com/economic-social-cultural-rights/fiscal-policy/human-rights-and-a-scottish-approach-to-taxation/> and <http://www.scottishhumanrights.com/economic-social-cultural-rights/fiscal-policy/>

challenges and make the budget cycle more amenable to stakeholder engagement, transparency, objectivity and accountability.

- d. Undertake systematic scrutiny of the Scottish Government's response to court judgments against it concerning human rights.

Q3. Accountability

Could the Scottish Parliament do more to ensure that international human laws, for example, the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights obligations are being followed in Scotland?

33. There is considerable scope for the Scottish Parliament to ensure international Human Rights obligations are being followed in Scotland. The Commission considers that people in Scotland deserves the legal protection of the full length of human rights, including not only civil and political but also economic social and cultural rights.

Recommendations

34. Further implement and incorporate human rights standards, in particular the seven UN human rights treaties, that the UK is a signatory to, into Scots law.¹⁴ It is also important that parliamentarians attend the UK Universal Periodic Review and other regional and international human rights reviews where Scotland's compliance with international treaties is assessed.¹⁵

35. Review existing legislation to determine whether it is compatible with international human rights obligations. One of the key aspects of the Scotland's legislative framework should its availability to fulfil all human rights, reduce existing inequalities and address entrenched discrimination.

36. Scrutinise the role and effective functioning of the national system for the protection of human rights, including ensuring that Scotland's NHRI has adequate funding according to its responsibilities¹⁶; reviewing the National Action Plans;¹⁷ ensure that the Scottish Government prepares a national plan for the Sustainable Development Goals and review its implementation.

37. Jointly develop a strategy with the NHRIs to follow up systematically across the Scottish Parliament the recommendations made by regional and international human rights mechanisms.¹⁸ This joint strategy is developed as an integral part of the Scotland's National Action Plan for Human Rights and is monitored and reviewed with the participation of civil society, people most affected by its actions, Scottish Government and other public authorities.

¹⁵ See Human Rights Council Resolution 26/29 (2014).

¹⁶ This should including reviewing funding arrangements in light of additional areas of responsibility resulting from further devolution.

¹⁷ This includes Scotland's National Action Plan for Human Rights and the future National Action Plan on Business and Human Rights.

¹⁸ These are the International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of Racial Discrimination (ICERD); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and OPCAT; Convention on the Elimination of Discrimination against Women (CEDAW); Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).

38. Enact subordinate legislation to make more meaningful and effective rights, which have already been set out in primary legislation, for example the rights to effective support in the community contained in sections 25-27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 or Section 3 of the Land Reform (Scotland) Act 2016: Duty to promote land rights and responsibilities statement.
39. Ensure that laws and policies do not discriminate unfairly against specific individuals and groups. All public authorities have a clear obligation to end discrimination and to enact effective laws or policies against both direct and indirect discrimination by public and private actors.

End.