

Equality and Human Rights Committee Inquiry on Human Rights and the Scottish Parliament

Introduction

We welcome this Equalities and Human Rights Committee Inquiry which recognises the important role that the Scottish Parliament has as a human rights guarantor. One of the priorities in our strategic plan, laid before Parliament in March, is to establish a culture of children's human rights in Scotland. Children do not have the same political or economic power as adults – it is therefore essential that in its role as a human rights guarantor the Scottish Parliament pays particular attention to children and young people's rights and ensures that they are fully involved in decision making. It is worth noting that the majority of existing studies exploring the role of parliament as a human rights guarantor do not consider children and young people as rights holders distinct from adult rights holders. Where studies have considered younger people, they have focused on young people rather 'children'.

In our recent response to the Committee's call for evidence around opportunities for Parliamentary involvement in the UPR process, we highlighted numerous resolutions from the Human Rights Council, indicating its commitment to increasing the involvement of parliaments in the Universal Periodic Review (UPR) process¹ - in recognition of the important role that legislatures can play in holding the executive to account on their human rights record. In 2015, the UN Human Rights Council prioritised exploring the '*possible synergies*' between the Council and parliaments in order to ensure that the UPR has the greatest impact at the national level.² At a panel discussion on the contribution of Parliaments to the work of the Human Rights Council (June 2016), Adam Abdelmoula, Director of the Human Rights Council and Treaty-Mechanisms Division further noted that there was '*growing international consensus about the importance of the role of parliaments in the promotion and protection of human rights.*³

Context

The essential role of parliaments in ongoing monitoring of human rights at national level has been clearly articulated by the UN General Assembly, the Human Rights Council, UN human rights treaty

¹ https://www.law.ox.ac.uk/sites/files/oxlaw/unhrcares3014_0.pdf

² Human Rights Council, [Resolution 30/14 on the Contribution of parliaments to the work of the Human Rights Council](#), 1 October 2015, UN Doc A/HRC/RES/30/14 (2015).

³ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

bodies, the Inter-Parliamentary Union (IPU), the Council of Europe (CoE)⁴ and the European Union⁵. This developing understanding and clarity around the role of national parliaments in being effective human rights guarantors should provide considerable stimulus for the Scottish Parliament in its broad role and for the EHRIC Committee as it progresses its work programme.

When it comes to human rights promotion and protection, the Scottish Parliament and Members of the Scottish Parliament (MSPs) are essential actors. MSPs are the elected representatives of the people, and the Scottish Parliament has the power and responsibility to establish a legislative framework favourable for human rights, to ensure implementation of international human rights obligations, to safeguard appropriate funding for human rights policies through the budgetary process, to scrutinise the Scottish Government, and to raise awareness of human rights issues.

National Parliaments are in a unique position to entrench human rights into their work, particularly in monitoring and scrutinising Governments in fulfilment of their international human rights commitments. Specifically they should:

- Ensure that human rights obligations under constitutional and international law are implemented openly, constructively, innovatively and proactively and that international human rights provisions are mainstreamed into their national law, preferably through incorporation and, if possible, by giving the norms constitutional status;
- Ensure that bills brought before the parliament and the parliamentary committees are consistent with the agreed human rights obligations and that existing legislation is reviewed to determine whether it is compatible with those obligations;
- Identify adequate resources in order to develop international human rights expertise;
- Actively participate in national mechanisms for reporting and follow-up, as well as in the resulting national human rights action plans, and contribute to the implementation of recommendations for which legislative action is required;
- Engage more proactively and systematically in the work of the treaty bodies and the universal periodic review through a set of principles and guidelines;

⁴ UN General Assembly, Resolution 65/123, 13 December 2010.; UN Human Rights Council Resolution 22/15 (2013), preamble; Council of Europe, Parliamentary Assembly, Resolution 1823 (2011), [National parliaments: Guarantors of human rights in Europe](#), 23 June 2011, p 1; Inter-Parliamentary Union (IPU)/OHCHR, [Human Rights: Handbook for Parliamentarians No 26 \(2016\)](#).

⁵ DROI policy paper on enhancing cooperation between the European Parliament and EU national parliaments on EU human rights policy.

- Oversee human rights policies and actions by Governments, especially the implementation of recommendations/concluding observations resulting from the international human rights mechanisms.⁶

The call for evidence specifically asks about for the Scottish Parliament's role in the protection and promotion of human rights in three particular areas.

1. Participation and engagement

The Scottish Parliament has a key role to play in facilitating active participation and engagement in human rights. The four founding principles of the Scottish Parliament, namely power sharing, accountability, accessibility and equal opportunities aim to provide an accessible, open, transparent and participative Parliament. Embedding a rights based approach in its structures and processes can only service to enhance and build on these four principles.

As noted earlier, the Parliament has a key collective role, but MSPs also play a significant individual role. Crucially, MSPs represent their electorate regardless of the age of their constituents. Given that children under 16 do not form part of the Scottish Parliament electorate, greater efforts must be made to ensure that their voices are heard and that they are engaged with the work of MSPs and the Parliament more broadly.

Article 12 of the Convention on the Rights of the Child (CRC) states that *"the child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child given due weight in accordance with the age and maturity of the child."* The UN Committee on the Rights of the Child which monitors implementation of the CRC explains what this means in practice in its General Comment 5⁷ (General Comments provide the interpretation by the Committee of the CRC provisions and principles)

⁶ Human Rights Council, [Panel discussion on the contribution of parliaments to the work of the Human Rights Council and its universal periodic review](#), Summary report of the UN High Commissioner for Human Rights, UN Doc A/HRC/35/16 (2017), 1-2, para 49; Inter-Parliamentary Union & UN Office of the High Commissioner, [Human Rights: Handbook for Parliamentarians No 26 \(2016\)](#), p 98.

⁷ General Comment No 5 (2003) [General measures of implementation of the Convention on the Rights of the Child \(arts. 4, 42 and 44, para 6\)](#)
https://www.unicef-irc.org/portfolios/general_comments/GC5_en.doc.html

article 12 requires consistent and ongoing arrangements. Involvement of and consultation with children must also avoid being tokenistic and aim to ascertain representative views.'

General Comment 12 provides helpful guidance on the what meaningful participation should look like⁸ - both for individual children and for groups of children.

Further guidance can also be found at international level. I refer to my recent submission around how the Scottish Parliament could play a more active role in the UPR process. In that submission I highlighted the '*Handbook on Child Participation in Parliament*', (2011), produced by the Inter-Parliamentary Union (IPU) and Unicef. This recognised the role of children and young people in Parliamentary decision-making and human rights monitoring, stating that 'a Parliament informed by children's voices will function better and enjoy stronger democratic practices'.⁹

The IPU has formulated five principles to guide child participation in parliaments:

1. Children have the right to be listened to, to freely express their views on all matters that affect them, and to freedom of expression, thought, association and access to information;
2. Measures should be put in place to encourage and facilitate children's participation in accordance with their age and maturity;
3. Participation should promote the best interests of the child and enhance the personal development of each child;
4. All children have equal rights to participate without discrimination;
5. All children have the right to be protected from manipulation, violence, abuse and exploitation.¹⁰

The handbook states that involving children and young people in the work of the Parliament should be sustainable and long-term, allowing for relationships to be built, rather than being a one-off event or consultation¹¹. Participation should also involve a wide range of children and young people, including those who might otherwise find it difficult to contribute their views. In order to increase child

⁸ General Comment No 12 (2009) The Rights of the child to be heard)
right <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

⁹ <http://archive.ipu.org/PDF/publications/child-parl-e.pdf> 21

¹⁰ IPU/UNICEF, [A Handbook on Child Participation in Parliament](#) (2011), p 17, [based upon Gerison Lansdown, UNICEF, The Evolving Capacities of the Child \(2005\), §3.](#)

¹¹ 0 <http://archive.ipu.org/PDF/publications/child-parl-e.pdf> 21

participation, the handbook recommends holding committee hearings in different venues across the country, including rural areas. It also suggests committee members make on-site visits to existing groups of children and young people. There are numerous examples of international good practice cited in the handbook such as:

- The Brazilian National Congress has a 'Little Plenary', through which schools select legislative proposals written by pupils and submit them to Congress.
- The South African Parliament's work on their national children's bill. The Children's Institute at the University of Cape Town worked with groups of children and young people to improve their 'legislative literacy'. They created a child-friendly version of the draft bill and sought in particular to engage with marginalised children throughout the bill process. As a result of this approach, the bill more accurately reflected the needs of the children and young people it was seeking to serve.
- In Zambia, a children's parliamentary caucus was created. The handbook states that 'the advantage of a caucus or other informal group is that membership is open to all legislators, which can enhance the group's reach. Members of the caucus can meet with children in the constituency or invite them to meet with the caucus in the capital.' It further recommends all of the Parliament's committees should be represented on the caucus in order to 'bring a child perspective to their respective committee work'.

I am aware that the Scottish Parliament undertakes numerous activities with children and young people to raise awareness of that institution and its work, not least an outreach 'Your School' programme for primary and secondary age children. I would be interested in seeing an evaluation of this service on how effectively it engages with all groups of children and how involved they are in the development of the programme.

It is clearly important to educate children and young people about the structures of government and the role of parliament. This is essential to promoting lifelong civic engagement/responsibility. It is also essential that the Scottish Parliament learn from international best practice. There are many innovative approaches across the world and I am fortunate as a member of the British and Irish Network of Ombudsman and Children's Commissioners (BINOCC) and the European Network of Ombudspersons for Children (ENOC) to have seen some of these in action. Some of the most popular approaches include: children's mock parliaments or other mock parliamentary sessions; field trips to parliament;

parliamentary field trips to schools or other areas integral to the support and care of children; internet communication technology (online applications).

Reflecting UNCRC article 30, these opportunities must be sure to reach children from marginalised communities. For example, Australia organises a week-long National Indigenous Youth Parliament aimed at training the traditionally under-represented indigenous young people (ages 16-25) about parliamentary processes where they introduce, debate on mock bills and meet members of the Australian Parliament.

I note that the call for evidence asks whether the Scottish Parliament should 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. In order to undertake this role, MSPs should also be required to have an in depth understanding of the constitutional and legal framework in which they find themselves and within which the Parliament operates, the international human rights obligations of the state and how different branches of government interact. All parliamentarians and staff should undertake regular training on human rights and this should include specific training on the rights set out in treaties which have a focus on particular groups such as those with disabilities, or migrant groups. Building MSP and staff capacity in relation to human rights is essential to developing the Parliament's role as an effective human rights guarantor.

Best practice suggests that ongoing training/ educational seminars should be offered to keep parliamentarians up to date on evolving policy and legal developments. This is particularly important in the devolved framework of the UK and there are numerous accessible sources available to support this aim. ¹² Other countries, such as South Africa, organise seminars for new members of parliament to familiarise them with parliamentary procedure and the legal framework of their work. ¹³

Recommendations

- Evaluate current practice and its effectiveness
- Draw from international experience of good practice to learn what works

¹² See, for example, Kirsteen Shields, [SPICE Briefing: Human Rights in Scotland](#), 13 January 2017; The Westminster Consortium, [Human Rights and Parliaments: Handbook for Members and Staff](#) (March 2011); various resources are available through the [Scottish Human Rights Commission](#).

¹³ IPU/OHCHR, [Human Rights: Handbook for Parliamentarians No 26 \(2016\)](#), p 94, <http://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>

- Work with international partners (as per SHRC response recommendation)
- Provide training for MSPs and their staff

2. Parliamentary procedures and process

As noted previously, there has been much work undertaken on how to entrench human rights into the daily work of parliaments and ensure their role as human rights guarantors. This has included the Human Rights Council, the IPU, the CoE and the Westminster Consortium, as well as the Scottish Human Rights Commission (SHRC) 2017 submission to the Scottish Parliament Commission on Parliamentary Reform.¹⁴ Many of their recommendations are referenced here.

Parliaments must establish structures and responsibilities that ensure consistent and rigorous monitoring and compliance with international human rights obligations through all parliamentary processes. Ensuring that these are in place is crucial to ensuring that the Parliament can fulfil its responsibilities to protect and realise human rights. Key to this would be the development of mechanisms for rigorous scrutiny and accountability of the Scottish Government. This could be achieved in a variety of ways. Specialised Committees are seen as good practice and the creation of the Equality and Human Rights Committee (EHRiC), in 2016 is a positive which should lead to more effective engagement with human rights by the Scottish Parliament. It is important however that the Committee does not work in isolation and that there is cross fertilisation across other Committees and within the Parliament more broadly. Parliament as a whole should also exercise responsibility in many of the same areas to complement the work of the specialised Committee. I would also see the wider Parliament as having a key role in the following:

- Budget setting and scrutiny
- Following up on recommendations/concluding observations
- Proactive engagement with the UPR process and other reporting processes

There is also scope for specialist issue human rights based Committees or sub-Committees which could be responsible for key areas, such as children's rights. This would also help to ensure that issues not

¹⁴ Scottish Human Rights Commission, [Submission to the Commission on Parliamentary Reform](#), February 2017.

immediately thought of as 'children's issues', such as transport, housing or climate change are considered from a children's rights perspective.

A further option is ensuring that direct engagement with stakeholders is built into the legislative framework. The Scottish Parliament does this to some extent, but there is scope for developing this much further, especially with children and young people.

In addition to ensuring national implementation, parliamentarians can be essential promoters of human rights and the value that their protection brings to the community both at home and abroad. To that end, parliamentarians can and should mobilize public awareness and support for human rights.

Recommendations

- Creation of a Children's Rights sub Committee – similar to the European Parliament's intergroup on children
- Formalise procedures with the Scottish Youth Parliament (as set out in the Together Scotland
- Encourage parliamentary debate on human rights issues, particularly those that have been raised by the general public as matters of concern
- Encourage debate within each political party on human rights issues and the state's/country's international obligations in that area
- Organise local, regional or national campaigns to raise awareness of human rights issues
- Participate in debates on television or the radio or in meetings, or give interviews on human rights matters
- Write articles on human rights for newspapers and magazines
- Organize or contribute to workshops, seminars, meetings and other events in your constituency in favour of human rights
- Support local human rights campaigns
- Use International Human Rights Day, observed on 10 December, to draw public attention to human rights. Use other international days (such as International Women's Day or International Day of Persons with Disabilities) to draw attention to the issues affecting those groups.¹⁵

3. Accountability

¹⁵ IPU/OHCHR, [Human Rights: Handbook for Parliamentarians No 26 \(2016\)](#), p 106.

The Scottish Parliament has an important role in holding the Scottish Government to account with regard to meeting its international human rights obligations. There have been a number of developments in Scotland in this regard. For example

- The Children and Young People (Scotland) Act 2014 places a duty on Ministers to *“keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements”* and to raise awareness and understanding of the UNCRC.
- To further these duties, the Scottish Government should undertake Child Rights and Wellbeing Impact Assessments (CRWIA) to assess the extent to which policies, legislation and other measures are promoting and protecting the rights of children and young people. CRWIA should be able to support MSPs in their scrutiny of legislation and policy and help to raise awareness and understanding of rights implications of Scottish Government proposals. There is scope to involve children and young people in undertaking these.
- Under this same Act, Ministers are also under a duty to publish a Children’s Rights Report every three years and this will set out the progress made over the past three years to implement children’s rights and what further actions the Scottish Government will take. The report should set out specific commitments from the Scottish Government to address the UN Committee’s 2016 Concluding Observations. There is a clear scrutiny role for the Parliament here.
- The Equalities and Human Rights Committee has recently undertaken a consultation asking about the role of Parliament in scrutinising the UPR process and I have made numerous suggestions as to how this could be enhanced. In 2017, the Human Rights Council made 227 recommendations to the UK through this process and many of these recommendations relate specifically to children and young people’s rights, such as incorporation of the CRC and protecting children from violence

Recommendations

- As the primary developer of legislation and the law that directly impacts children and young people, parliaments must ensure that children and young people’s rights are mainstreamed into their day-to-day work, and make it a priority to engage children in this endeavour.
- This should cut across all the work, structures and functions of parliament, whether oversight, budgeting, law-making or representation.



Children are affected by a host of issues, ranging from transportation policy to health and education. Their involvement should not be limited to child rights discussions. Indeed, their contribution should help mainstream children's rights across all policy areas.

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