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Response to the Equality and Human Rights Committee

Draft Budget Scrutiny 2020-21 Consultation

August 2019

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the national human rights institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

Introduction

With an increased focus in recent years on the need to better connect budget scrutiny with national outcomes, the Commission welcomes both the Committee’s focus on the delivery of national equalities and human rights priorities as part of its scrutiny of the Scottish Government’s Budget for 2020-21 and the opportunity to respond as part of its draft budget scrutiny. This submission first sets out some general points about human rights based budgeting, before responding to specific consultation questions.

**Human rights based budgeting**

“Budgets are a key sign of a government's values. So, if human rights are not in there, what’s being said is that they are not a value worth counting”.

Prof. Aoife Nolan.

Human rights budgeting enhances the social impact of economic policy by ensuring that budgetary decisions benefit those most in need. It improves transparency and accountability, by linking budgetary decisions more directly to the human rights outcomes the government has prioritised. It provides the opportunity for government to work in cooperation with civil society to more effectively implement policies by, for example, strengthening the monitoring and evaluation of programmes and plans. This, in turn, deepens citizen participation in democratic processes. It can also be used to progress government’s compliance with its national and international human rights commitments.

**Human rights budgeting needs to be embedded into a broader rights-based policy process.** Before the development of the budget comes the development of laws, polices and plans that are also shaped by human rights standards. The budget should then be created to directly realise these laws, policies and plans.

**This involves:**

* **examining a country’s human rights international human rights obligations and commitments;**
* **analysing the human rights concerns facing different groups within and across different social sectors (e.g. housing, health, social care, education etc);**
* **designing policies that respond to those concerns;**
* **generating adequate resource to fund those policies;**
* **allocating adequate budget to implement those policies;**
* **monitoring of whether the money was spent as planned, what was delivered and to whom; and**
* **evaluating whether the policy was implemented and what impact it had.**

At present the Scottish government does not take a human rights based approach to its budgeting or its more general policy development processes and the budget is not routinely scrutinised through a rights lens. Developing such processes will help future administrations to progressively realise human rights.

Good rights based laws and policies can also still result in unacceptable experiences of rights holders if they are not properly resourced. Human rights budget work can help identify where this is the case. Taking human rights standards into account when developing the budget is not a magic bullet. It can, however, help us to ask the right questions to support effective, transparent, fair and accountable use of national resources.

The government has expressed its intention to be a leader in human rights. It would be helpful for the government to set out in full, how it will take this ambition forward by embedding a human rights based approach to the development of law, policy, and resourced action.

Consultation Questions

**Question 1:** What are the key public policy areas where individuals and protected groups are struggling to access their rights?

Question 2: Which groups of people are most likely to be affected and why?

During 2017, over 1,000 people took part in a National Participation Process around Scotland to inform the future of Scotland’s National Action Plan for Human Rights (SNAP). Twenty-five human rights themes emerged from this work, including a mixture of key rights and policy areas, as well as specific groups of people whose rights are least respected in practice.

Since July 2018, a Development Working Group of around twenty people and organisations from across civil society and the public sector has been building on this to develop a second phase of SNAP (SNAP 2). Using the findings of the National Participation Process, a variety of other evidence sources[[1]](#footnote-1), and a set of 11 criteria, the DWG has identified key issues requiring action under each of the 25 themes, and agreed a draft set of 62 potential actions. Many of these are aligned to national and local government policy priorities. Potential actions have been further scoped in terms of: activity type; timescale; resources required; potential impact and feasibility; and connection to long-term SNAP outcomes. A draft proposal for SNAP 2, including detail of all suggested potential actions, will be published in September 2019. A wider engagement and consultation exercise will then take place throughout autumn to sense-check, modify and refine the draft actions. We invite the Committee to explore the draft proposal for SNAP 2 in full when published, and to engage in the process of finalising SNAP 2.[[2]](#footnote-2)

There is a significant opportunity for the extensive and collective analysis undertaken by the group to inform public policy across government and parliament going forward. It is recommended that government and Parliament engage significantly in SNAP going forward and draw on its potential, to more fully understand where individuals and protected groups are struggling to access their rights and which groups of people are most likely to be affected and why.

Question 4: Is the level of public sector funding provided enough to deliver national priorities and better outcomes for people and communities, please provide evidence?

**Human rights as a national priority**

The Commission considers that the full realisation of human rights is a matter of national priority. Scotland’s National Outcome on Human Rights is drawn directly from the international human rights obligation – *to respect, protect and fulfil human rights.* This, coupled with the recommendations from the First Minister’s Advisory Group on Human Rights and the findings from EHRiC’s Inquiry on human rights show that on paper, there is a strong commitment from government and across Parliament, to deliver on Scotland’s international human rights obligations. This has to be matched with adequate resourcing if this is to be realised in practice, which is a key aspect of the ‘*fulfil’* element of the National Outcome and international commitment.

There are a number of human rights structures, both short and long term, required in order to advance the ambition of human rights as a national priority.

**Taskforce for Human Rights Leadership**

An illustrative example of where we do not see a coherence between policy commitment and human rights delivery was in the lack of specific allocated funding for the commitment to take forward a Taskforce for Human Rights Leadership, despite the fact that budget documentation made mention of it.

**A National Action Plan for Human Rights**

Since the Vienna Declaration in 1993, the UN has encouraged and supported countries to develop National Action Plans for human rights, stressing their importance in identifying gaps in human rights protection, clarifying the responsibilities of States, and establishing monitoring systems so that progress made in promoting and fulfilling human rights protection can be measured over time. The Council of Europe in 2009 also [recommended](https://wcd.coe.int/ViewDoc.jsp?id=1408617)[[3]](#footnote-3) that Action Plans be used to systematically implement human rights at the national level.

Scotland’s first National Action Plan for Human Rights, launched in 2013, was evidence-based and developed and implemented with participative support from the public and private sectors, civil society and people with lived experience of human rights violations. The independent evaluation of SNAP concluded that whilst SNAP had improved outcomes for people and communities in specific instances, as well as garnering strong cross-sectoral support, it did not have adequate resource to implement all of its commitments.[[4]](#footnote-4)

The evaluation noted specifically that:

* SNAP is under-resourced by the State compared with National Action Plans globally. State investment could address many of the issues outlined here.
* For a National Action Plan to have significant traction in Scotland, the most senior members of the Scottish Government should be committed and empowered to support and resource actions.
* Growing support from the First Minister and the Scottish Parliament generally for human rights has been notable in recent years. This must continue and be reflected in the support made available to SNAP to put commitments into practice.
* Further connections should be drawn between SNAP and the National Performance Framework. In particular, indicators for the human rights outcome should reference SNAP.

If the Scottish Government is to fully realise its human rights ambition, consideration should be given as to how SNAP can be resourced over its next cycle.

**National Human Rights Institution**

It is also worth noting that the importance of independent and adequately resourced national human rights institutions (NHRIs) has been reaffirmed by the UN General Assembly and the Human Rights Council in various resolutions. The Paris Principles, which are broadly accepted as the test of an institution’s legitimacy and credibility require adequate funding for an NHRI to be accredited.

The Scottish Human Rights Commission is funded through the Scottish Parliament and is accredited with A status under the Paris Principles. However it was noted by the accreditation committee both in 2010 and 2015 that the Commission “faces limitation in terms of its staffing and allocation of resources”. The First Minster’s Advisory Group and the EHRiC Committee Inquiry Report Getting Rights Right both acknowledged that SHRC requires more resources to advance their mandate in the current context.

The Commission requests that government and Parliament give careful consideration to the need to further resources for SHRC in light of the current context.

Transparent, comparable and accessible data

Project work carried out by the Commission has found that determining whether the level of public sector funding is sufficient to deliver national priorities and better outcomes for people and communities, is difficult for two main reasons:

* the difficulty in accessing transparent, comparable and accessible data on resource allocation and related expenditure;
* the lack of connectivity between and read across from the national outcomes and the budget.

Budget tools are available on the Scottish Parliament website which currently provide the most accessible and comparable data tool. They have, however, got a number of a limitations:

* In the downloadable datasets from the budget tools - it is only ever possible to **compare two concurrent financial years**. This can conceal problems – for many lines there may show no change with little descriptive explanation as to why. However, no change is **always** a change in real terms. Cumulative ‘No Change’ in the total budget allocation over the 5 years from 2015/16 to 2019/20 is equivalent to an 8% decrease in real terms.
* Each budget line carries a descriptive explanation for change– however it varies in **degrees of depth of explanation** – a positive change usually means good detail is provided. When there is no change or disinvestment, explanations can be limited and opaque.
* ‘**Other under £2 million**’ - this is a common category which often includes entire budgets for human rights and equalities-focused areas, which are not possible to explore. As all the programmes are grouped together there is no way to determine scope, scale or change over time.
* It is not possible to always drill down to a meaningful level and to understand if funding is adequate. **Further breakdown is necessary,** e.g. ‘Mental Health’ as a budget line doesn’t help the reader to understand if there is any difference in, for example: adult and child services; or the type of services / therapies that are receiving the investment/ disinvestment.
* **Changing portfolios** multiple times within a single parliamentary term means that budget lines move around and across many areas of the budget. This makes following resource allocation over time complex. In attempting to compare 2015/16 to 2019/20 somewhere in the region of 50% of the budget lines have moved. This makes doing meaningful analysis neither quick, nor simple, if indeed possible at all.

In addition, what is allocated at the national level and how money is then reallocated and spent at the local level is critical in determining whether national priorities are realised. There is currently no way of systematically tracking allocations from the budget through the local authority and/or heath board to make this determination.

In order for a thorough assessment to be made as to whether sufficient public sector funding is both allocated and spent in ways that support the delivery of national priorities and outcomes, there is a need to for the government to publish data in such a way as to facilitate this scrutiny. The Commission has undertaken an Open Budget Survey Index review of the Scottish Government’s budget process and draft findings indicate relatively poor transparency scores in comparison to our European counterparts.[[5]](#footnote-5) This is mainly due to a lack of publications from the Scottish Government by way of Pre-budget, In-Year, Mid-Year reports and citizens’ versions of all key reports. In years when citizens’ versions of the budget (once published, so not in time to inform budget participation of citizens) have been produced, these are more accessible than the main budget. However, because the main budget is not fiscally transparent, the citizens’ version is no clearer.

Others have made similar recommendations. For example, the Fraser of Allander Institute’s recent work on child poverty[[6]](#footnote-6) and the analysis of the budget through a poverty lens by the Poverty and Inequality Commission,[[7]](#footnote-7) both highlight an inability to fully interrogate the budget due to a lack of available, accessible transparent data.

The Scottish Government ‘Open Government Action Plan 2018-20’[[8]](#footnote-8) has committed the government to improving financial and performance transparency. This includes a commitment to explore how to make Scotland’s public finances more transparent and accessible in order to promote public discussion, debate and participation in financial and policy decision making. The commitment does set out its key actions, one of which is making key links between budgets and outcomes, however it talks mostly of connecting budget narrative and outcomes. What is required are much clearer connections between government policy commitments, the efforts they intend to employ to fulfil those commitments, including the allocated resource and the expected outcomes.

The use of human rights based indicators would help to make the connections between law and policy, resourced action and outcomes more explicit, something both the Commission and the FM Advisory Group on human rights leadership have recommended. Best practice explains that such indicators help to measure progress across three levels, namely: having the right structures in place with regards to law and policy, ensuring that the correct processes can support effective implementation and outcome.  Together they address the essential aspects of human rights implementation, namely: commitment, effort and result.

The focus on commitment and effort, as opposed to only measuring result outcome, is one of the areas which makes human rights indicators distinct. Outcome indicators look backwards at results, whereas Structure and Process indicators help governments to look forward and make more progress, e.g. by removing barriers to better outcomes such as systemic discrimination as a result of law or policy, whether intended or unintended; or underfunding of an otherwise effective policy option.  Process indicators also strengthen evidence-based policymaking by assisting governments in determining whether their interventions actually lead to improved outcomes or whether they need to be adjusted. The use of human rights based indicators would help to monitor the impact on equalities and human rights outcomes from public sector funding to the third sector as well as measuring the impact of budgetary decisions more broadly.

Where it is possible to explore specific areas of the budget over time, it is possible to begin to explore impact. This is especially important to help identify if outcomes are not being realised due to poor law and policy, poor implementation and/or insufficient resourcing.

An illustrative example is one of the Scottish Government’s key social care policies: Self-Directed Support. This was an example of what was intended as rights-based legislation. The legislation aimed to support independent living by placing a duty on local authority social work departments to offer people who are eligible for social care a range of choices over how they receive their support. Disabled people have, however, raised concerns that the reality falls a long way short of the positive intentions behind the introduction of SDS. Disabled people have highlighted that the availability of support is patchy and in many cases, is not sufficient to enable people to enjoy their Article 19 right to independent living under the CRPD.[[9]](#footnote-9) The change in funding in real terms from 2015/16 until 2019/20 shows that the policy’s funding has been cut by a third.

**Table 1:** **Variation in funding for SDS: Cash vs Real % change 2015/16-2019/20[[10]](#footnote-10)**

However, for many areas it is simply not possible to identify a distinct policy area with its relevant resource allocation. It is even harder to decipher whether the allocation has been spent as intended.

Addressing all of these concerns will better support the government and public bodies to respect, protect and fulfil human rights (including by undertaking human rights based budgeting). It will also be of general benefit for democratic accountability.

**Key questions the above raise for the Commission are follows:**

How is financial spend on national priorities scrutinised at the local level?

What is the government doing to make more fiscal information (including enabling the connection of allocation to spend) a. available, b. accessible, c. meaningful and d. transparent?

What is the government doing to connect the national outcomes to the budget, beyond a narrative?

Can the government explain how its allocations meet the achievements of basic levels of rights for all?

Do budget allocations prioritise closing the gaps in human rights enjoyment between different groups (indeed, have they any means of making this assessment?)

* ***The Commission also recommends that the government follow through with the FM’s Advisory Group Recommendation on taking a HRBA to the National Performance Framework, including the introduction of human rights based indicators.***

Question 5: Are there public funding challenges for the third sector; if so what would be the implications for delivering equalities and human rights outcomes?

The Declaration on Human Rights Defenders[[11]](#footnote-11) sets out that both individuals and civil society organisations have the right to participate in rights based work and activities and “individually and in association with others… submit to governmental bodies and agencies and organizations concerned with public affairs, criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”

Human rights inherently look to provide a constructive challenge to duty bearers. Funding provided to civil society by the same public authorities who should be held to account for human rights places civil society in a difficult position with respect to their independence and ability to provide a critique from a human rights perspective. At present, there are very limited ways for civil society in receipt of public funding to challenge public sector funders where and when their activities are of concern.

Public authorities have clear duties under human rights law to respect, protect and fulfil human rights. Civil society is uniquely positioned to understand the rights challenges which people are facing, whether these relate to poverty, inequality and discrimination, community empowerment or social inclusion. A robust civil society is core to advocating for the rights and interests of people who may need support.

The Commission is and remains deeply concerned that current models of funding, taken together with the impact of Brexit, may threaten the independence and autonomy of civil society organisations and diminish their ability to hold public authorities to account, while also meaning that they have fewer resources available for people who need support.

A further, well-recognised constraint on the third sector derives from the culture of short term cycles of funding which place unnecessary limited constraints on the potential working practices of many third sector organisations.

Question 7: What changes could be made to improve accountability for national priorities being delivered by the public sector in partnership with the third sector?

The promotion of accountability for meeting obligations is continuous in a human rights based approach. Accountability means monitoring, review and oversight of what is actually going on. A human rights compliant fiscal framework requires accountability mechanisms that are both proactive and reactive. Proactive mechanisms allow participation at the point of design and reactive measures enable aggrieved parties to raise their concerns regarding budgetary decisions. Judicial and non-judicial remedies are critical to accountability and these are only useful if people know they can use them, and have effective access to them.

Fiscal policies are perceived to be inaccessible to most people. However, public participation can contribute to a more open relationship between government and civil society and lead to both a more balanced distribution of public resources and greater accountability for national priorities being delivered by the public sector in partnership with the third sector.

The Commission also believes that the development of a publicly accessible human-rights tracker tool which incorporates the outstanding recommendations made by UN Treaty Bodies alongside our commitments in SNAP, the National Performance Framework and delivery of the Sustainable Development Goals would add greatly to accountability mechanisms in this area.

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The Commission welcomes any questions the Committee may have about the content of this submission and would welcome the opportunity to discuss further through oral evidence.

Ends

Scottish Human Rights Commission

1. Sources included: Getting it Right? A comprehensive research report into human rights in Scotland; United Nations human rights treaty body recommendations relating to Scotland; Sustainable Development Goals, Outputs from a National Participation Process that took place in 2017 and other sources as appropriate to each theme. [↑](#footnote-ref-1)
2. For further details of SNAP please visit the SNAP website: <http://www.snaprights.info/> [↑](#footnote-ref-2)
3. See <https://rm.coe.int/16806da952> [↑](#footnote-ref-3)
4. See <http://www.snaprights.info/wp-content/uploads/2019/07/SNAP-Evaluation-vFinal-16-July-2019.docx> [↑](#footnote-ref-4)
5. This work is due for publication next spring when the 2019 global results are published. More information on the OBI can be found here: <https://www.internationalbudget.org/open-budget-survey/open-budget-index-rankings/> [↑](#footnote-ref-5)
6. See <https://fraserofallander.org/scottish-economy/budget/how-does-the-scottish-government-assess-the-impact-of-its-budget-on-tackling-child-poverty/> [↑](#footnote-ref-6)
7. See <https://povertyinequality.scot/wp-content/uploads/2019/05/Poverty-and-Inequality-Commissions-response-to-the-Scottish-Budget.pdf> [↑](#footnote-ref-7)
8. See <https://www.gov.scot/publications/scotlands-open-government-action-plan-2018-20/pages/2/> [↑](#footnote-ref-8)
9. See <http://www.scottishhumanrights.com/media/1569/shrc_uprfactsheet5_social_care.pdf> [↑](#footnote-ref-9)
10. Data sources accessed here: <https://www.parliament.scot/parliamentarybusiness/82102.aspx> [↑](#footnote-ref-10)
11. <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> [↑](#footnote-ref-11)