

**SUBMISSION TO THE COMMISSION ON PARLIAMENTARY REFORM
FEBRUARY 2017**

The Scottish Human Rights Commission was established by The Scottish Commission for Human Rights Act 2006. 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 protect human rights for everyone in Scotland.

SUMMARY OF RECOMMENDATIONS

The Commission believes that the Scottish Parliament should:

- i. Further embed a rights based approach in structures and processes to strengthen its effectiveness to deliver the best outcomes for the lives of people in Scotland.
- ii. Work with international partners to ensure that Scotland learns from developing good practice.
- iii. Build MSP and staff capacity in relation to human rights to ensure that the Parliament is able to act as a human rights guarantor.
- iv. Work together with the Commission in accordance with the Belgrade Principles to ensure the promotion and protection of human rights.

In relation to its structures the Scottish Parliament should:

- v. Have adequate internal structures to ensure that it can fulfil its responsibility to protect and realise human rights. These structures should ensure rigorous, regular and systematic monitoring of the Scottish Government's performance of its responsibilities to secure human rights in areas of devolved competence.
- vi. Follow the international guidelines on specialist human rights committees.
- vii. Undertake an assessment of resources available to the Equality and Human Rights Committee (EHRC) to ensure that they are sufficient to deliver on its mandate.
- viii. Ensure that Concluding Observations from treaty monitoring bodies and recommendations from other international human rights bodies provide a framework for its work.
- ix. Consider appointing Human Rights Rapporteurs for each Committee to ensure mainstreaming of human rights and a consistency of approach to human rights scrutiny.

In relation to processes the Scottish Parliament should:

- x. Make public the advice provided to the Presiding Officer on the human rights aspects of legislative competence to better inform the Parliament and allow the public to engage with the human rights issues at stake.
- xi. Require a broader statement of compliance from the Presiding Officer and the member in charge of legislation covering all applicable international obligations.

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- xii. Introduce additional checks for human rights compliance for amendments and subordinate legislation.
- xiii. Require effective and transparent Human Rights Impact Assessments of primary and secondary legislation.
- xiv. Ensure that expert analysis of human rights issues is available to MSPs for all aspects of their Parliamentary work.

In relation to the scrutiny of compliance with and implementation of international human rights obligations the Scottish Parliament should:

- xv. Develop a strategy for systematically following up the recommendations made by international human rights mechanisms including treaty bodies, and other expert bodies.
- xvi. Require the Scottish Government to submit human rights treaty reports to the Parliament for scrutiny.
- xvii. Directly engage with treaty bodies by sending any relevant reports and, where appropriate, representatives.
- xviii. Monitor the Scottish Government's response to the Concluding Observations of the UN treaty bodies.
- xix. Hold plenary debates in relation to Universal Periodic Review reports.

In relation to the scrutiny of responses to human rights judgments of both domestic and international courts the Scottish Parliament should:

- xx. Undertake systematic scrutiny of the Scottish Government's response to court judgments against it concerning human rights.
- xxi. Require the Scottish Government to report at least annually to Parliament on its responses to human rights judgments.

In relation to budget the Scottish Parliament should:

- xxii. Take a human rights based approach to its scrutiny of the Scottish budget.

In relation to building capacity and evaluating effectiveness the Scottish Parliament should:

- xxiii. Develop training on human rights for MSPs and staff based on international developing practice.

In relation to Participation the Scottish Parliament should:

- xxiv. Strengthen meaningful participation of people with direct lived experience of the issues being addressed, ensuring a rights centric consideration of the issues being addressed.

1. BACKGROUND

- 1.1. The Scotland Act 1998 placed the European Convention of Human Rights (ECHR) at the heart of the Scottish Parliament by linking legislative competence to Convention rights drawn from the ECHR and also transferred responsibility for the implementation of all other international human rights obligations within devolved competence. These include the core United Nations treaties along with the regional human rights treaties of the Council of Europe and the European Union. Parliamentary activity as a whole: legislating, adopting the budget and overseeing the Scottish Government covers the entire spectrum of civil, cultural, economic, political, and social rights and thus has an immediate impact on the enjoyment of these rights.
- 1.2. The four key principles of the Scottish Parliament are Power Sharing, Accountability, Accessibility and Equal Opportunities. These principles seek to make the whole legislative process a rational, effective and inclusive process, leading to 'better legislation'. They aim to provide an open, accessible and above all participative Parliament, which takes a proactive approach to engaging with the Scottish people – in particular those groups traditionally excluded from the democratic process. These principles accord strongly with the underpinning principles of a human rights based approach of Participation, Accountability, Non-discrimination, Empowerment and Legality (the PANEL principles). The Commission believes that by further embedding a rights based approach in the structures and processes of the Scottish Parliament it will strengthen its effectiveness to deliver the best outcomes for the lives of people in Scotland.
- 1.3. 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 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. *The Commission highlights the value of working with international partners to ensure that Scotland learns from developing good practice.*

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.

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

- 1.4. 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 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 for human rights issues. *The Commission recommends that MSPs build their capacity in relation to human rights.*
- 1.5. In addition to the developing understanding of the role of the parliaments as human rights guarantors, significant work has been undertaken to set out guidance on how parliaments should interact and cooperate with National Human Rights Institutions. This includes in relation to legislation, reporting and engaging with international human rights mechanisms, raising awareness of human rights and monitoring the execution of human rights judgments. The Belgrade Principles which were adopted in 2012 highlight the important partnership between NHRIs and Parliaments.⁵ *The Commission would welcome further discussion with the Scottish Parliament on how they can work together in accordance with the Belgrade Principles.*

2. PARLIAMENTARY STRUCTURES

- 2.1. *The Commission considers that the Scottish Parliament should have adequate internal structures to ensure that it can fulfil its responsibility to protect and realise human rights. These structures should ensure rigorous, regular and systematic monitoring of the Scottish Government's performance of its responsibilities to secure all human rights.*

Specialised Human Rights Committee

- 2.2. Traditionally the Scottish Parliament has mainstreamed human rights across its committees, but in 2016 it amended the remit of the Equal Opportunities Committee to specifically include human rights. The Scottish Human Rights Commission considers that the reformed Equality and Human Rights Committee (EHRiC) is a positive step in ensuring that human rights feature prominently and regularly on Parliament's agenda. The creation of EHRiC also sends an important signal both within and outwith Parliament that human rights are being taken seriously. It is important that the EHRiC does not work in isolation, and the Commission welcomes EHRiC's work to establish effective working relationships within and outwith Parliament.
- 2.3. There is significant international evidence about the effectiveness of specialist committees,⁶ which has led to the following guidelines, which the Commission considers that the Parliament should follow:⁷
- 2.4. In accordance with these guidelines specialist committees should be based on the following core Principles:

⁵ See Annex 1

⁶ See: Council of Europe, Background memorandum on the role of parliaments in implementing ECHR standards: overview of existing structures and mechanisms.

⁷ Principles and Guidelines on the Role of Parliaments in the Protection and realisation of the Rule of Law and Human Rights.

- Have remits that are broadly defined, focused on human rights in the domestic context, and allows the committee to take into account all relevant sources of human rights standards in both national and international law;
 - Have powers that enable it to carry out its work effectively; and
 - Be supported by specialised staff with expertise in human rights law and policy, and who are independent from government and NGOs.
- 2.5. The function of the specialised parliamentary human rights committee should be to inform parliamentary debate about human rights issues, including the following:
- Legislative scrutiny;
 - Scrutiny of executive response to human rights judgements of courts;
 - Scrutiny of compliance with and implementation of international human rights obligations;
 - Inquiries into topical human rights issues;
 - Scrutiny of government policy generally for human rights compatibility; and
 - Monitoring the adequacy of the national system for the protection of human rights.
- 2.6. (If resources permit, the specialised parliamentary human rights committee could also perform the following functions:
- Pre-legislative scrutiny
 - Post-legislative scrutiny
 - Scrutiny of secondary legislation.
- 2.7. The specialised parliamentary human rights committee should adopt appropriate working methods, which are published and kept under regular review in the light of practical experience. These working methods should include:
- A priority policy and work programme;
 - Decisions by consensus;
 - Transparency;
 - Civil society input;
 - Regular reporting; and
 - Follow up.
- 2.8. The guidelines also suggests that Committee should be set up and run in a transparent process which commands public trust and confidence in the independence of the Committee; that members of the Committee should have a proven expertise and interest in human rights; and that the Chair should be elected by members of Parliament.
- 2.9. The Commission welcomes the fact that EHRiC is already broadly in line with the guidelines. Experience from other countries with specialist committees shows that one of the key challenges is ensuring that the committee has the proper resources for the broad functions it is undertaking, particularly by having an adequate number of staff with expertise in human rights law and policy supporting the Committee, in the parliamentary legal service, and in the parliamentary research service.⁸ *The Commission recommends that the Parliament should make do an assessment of resources available to EHRiC to establish how effectively they can deliver in accordance with the Guidelines outlined above and ensure that they are sufficient to deliver on its mandate.*

⁸ B Chang and G Renshaw, Strengthening Parliamentary Capacity for the Protection and Realisation of Human Rights: Synthesis Report (Westminster Foundation for Democracy 2016)

Other Committees

- 2.10. In addition to the important role that EHRiC plays, it is important that human rights are fully mainstreamed into all of the Parliament's work. The creation of EHRiC will help facilitate the adoption of a human rights approach for the Parliament, but there are other strategies to promote the systematic consideration of human rights in Parliament's work. Within its area of competence, each parliamentary committee should consistently take human rights into consideration in both its legislative scrutiny and broader thematic work.
- 2.11. In 2009 the Commission on Scottish Devolution reported that there had originally been concerns about the possibility of executive dominance in the context of the unicameral nature of the Parliament. It considered that this necessitated the counterweight of a powerful committee system. The Report raised concerns that despite the focus early on in the process on consultation and an evidence-based approach, the later amending stages are often rushed, giving outside interests insufficient opportunity to make representations. A related concern is that new provisions are sometimes introduced late in the process, shortly before the legislation is passed, thereby bypassing detailed scrutiny in committee.
- 2.12. The Commission notes some good examples of Committees engaging with human rights considerations on issues such as on policing, prison monitoring, mental health, and land reform, but the Commission considers that the challenge is to make this systematic so that a robust human rights analysis is embedded into the Parliament's processes and structures.
- 2.13. *The Commission welcomes the growing recognition of the value of the Concluding Observations from treaty monitoring bodies and recommendations from other international human rights bodies. Scottish Parliament Committees could be supported to use such recommendations as a framework for their work.*
- 2.14. In previous evidence to Parliament the Commission has suggested that the broader mainstreaming of human rights could be improved by a member of each committee being designated as a Human Rights Rapporteur. 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. *The Commission considers that the Scottish Parliament should explore the value of Human Rights Rapporteurs for each Committee.*

3. PARLIAMENTARY PROCESSES

- 3.1. Those drafting the Scotland Act 1998 and setting in place its procedures understood the importance of including a variety of mechanisms by which the competence of an Act of the Scottish Parliament could be tested. Given the potentially serious consequences of an Act being found to have breached the Parliament's legislative competence, a number of provisions are included in the Scotland Act which allow testing of legislative competence. However they have some significant limitations in terms of ensuring that the Parliament is able to fulfil its human rights mandate to protect, respect and fulfil human rights throughout all of the Parliaments functions. *The Commission considers that the Scottish Parliament should review its processes to ensure that it properly fulfils its mandate a human rights guarantor.*

Pre-legislative Scrutiny

Statement of Competence by the Presiding Officer

- 3.2. Section 31(2) of the Scotland Act sets out a requirement to make a statement as to whether the provisions of a Bill would be within the legislative competence of the Parliament.⁹ The Presiding Officer is not obliged to seek any advice before making the statement, but in practice parliamentary lawyers provide advice, seeking counsel's opinion when necessary. The legal advice informing the statement is never disclosed and is protected under the exemption for legal advice under Freedom of Information legislation.¹⁰ *The Commission considers that the advice provided to the Presiding Officer to inform his decision should be made public to better inform both the Parliamentary consideration of the issues, but also to better allow the public to engage with the issues at stake.*
- 3.3. 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.¹¹ Along with the ECHR rights contained in Human Rights Act, the Parliament is also the guarantor of all human rights obligations in devolved areas, such as those contained in the relevant core UN treaties:
- 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)
 - Convention on the Elimination of Discrimination against Women (CEDAW)
 - Convention on the Rights of the Child (CRC)
 - Convention on the Rights of Persons with Disabilities (CRPD)
- 3.4. Given important rights contained in the broader obligations *the Commission considers that there would be value in a broader statement of compliance covering all of the international obligations.*
- 3.5. There is no restriction on the Parliament passing a bill in a situation where the Presiding Officer is of the view that it is not compliant. Equally, there is no guarantee that a bill that receives a statement of competence will not be challenged and perhaps be found to be outwith the competence of the Parliament. However, the Presiding Officer's statement is an essential check on the exercise of power by the Government and there have been examples where, following an indication that competence may be at question, that the Government has amended a bill prior to introduction.¹²
- 3.6. While the Presiding Officer's statement is useful, there may be a risk that it offers a false sense of security to MSPs who may rely on the statement of competence, without having the benefit of seeing the legal advice which will have identified potential risks.

⁹ This is reflected in Rule 9.3.1 of the Standing Orders of the Scottish Parliament

¹⁰ Freedom of Information (Scotland) Act 2002, s 30.

¹¹ Para 7(2) of sched 5 to the Scotland Act 1998.

¹² Convention Rights Proceedings (Amendment) (Scotland) Bill

3.7. There is also an issue in that there is no procedural mechanism which permits or requires the Presiding Officer to re-evaluate the decision on competence at later stages of the bill. There is no procedure whereby the Presiding Officer could consider the competence of an amendment to a bill, or in relation to subordinate legislation. Given the significant number of amendments to the Bills and the wide ranging impact of subordinate legislation, the lack of this procedural check is an issue. *The Commission considers that additional checks for human rights compliance should be put in place for amendments and subordinate legislation.*

Statement of Competence by the Person in Charge of the Bill

3.8. Section 31(1) of the Scotland Act 1998 as amended by the Scotland Act 2012 provides that the person in charge of the bill must make a statement that he or she considers the bill to be within the competence of the Parliament, but as with the statement of the Presiding Officer, the legal advice supporting the statement does not need to be disclosed and similar statements are not required for amendments.

3.9. The Standing Orders of the Parliament reflect this at Rule 9.3, providing that a person in charge of a bill must provide not only a statement of compliance, but also a policy memorandum which includes an assessment of the effects, if any, of the bill on human rights and other matters.¹³ This policy memorandum may be significant in assessing the compatibility of legislation with Convention rights, particularly in applying the test of proportionality.¹⁴ However, these policy memoranda are often limited in their scope. *The Scottish Human Rights Commission considers that effective and transparent Human Rights Impact Assessments¹⁵ are necessary to ensure that human rights and a culture of human rights can be systematically mainstreamed and embedded into the law, as well as policies, practices, procedures and priorities of government, public and private bodies.¹⁶*

The Legislative Process

3.10. The Scotland Act provides minimum requirements for the process to be followed by the Parliament in passing bills. Section 36(1) requires there to be at least three distinct stages of scrutiny for bills: a stage when members can debate and vote on the general principles of the bill; a stage when they can consider and vote on its details; and a final stage when the bill can be passed or rejected.

3.11. Given the short amount of time available for plenary consideration, the vast bulk of scrutiny takes place in Committees. As set out above the Committee structure should be further developed to ensure robust human rights scrutiny and informed debate on the human rights implications of legislative measures. *The Commission considers that in order for this scrutiny to be effective, MSPs must have access to expert analysis of the human rights issues. In addition, for the public to have confidence in the decisions of MSP, there needs to be an increased level of transparency through publically available committee papers, and through robust debate of the issues on the public record.*

¹³ This is compulsory for Government and Members' Bills, but optional for Committee Bills.

¹⁴ *A v Scottish Ministers* 2002 SC(PC) 63 at 66, 2001 SLT 1331 at 1334m, per Lord Hope of Craighead.

¹⁵ Human Rights Impact Assessment: Review of Practice and Guidance for Future Assessments see: www.scottishhumanrights.com

¹⁶ Belgrade Principle 31.

4. SCRUTINY OF COMPLIANCE WITH AND IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

- 4.1. In the preamble to the 2013 United Nations Human Rights Council resolution on the role of Parliaments, the Council
“acknowledged the crucial role that parliaments play, inter alia, 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.”¹⁷
- 4.2. Under the Belgrade Principles, Parliaments and NHRIs are encouraged to jointly develop a strategy to follow up systematically the recommendations made by regional and international human rights mechanisms.

Scrutiny of State’s Compliance with Existing International Human Rights Treaties

- 4.3. Committees of the Scottish Parliament could play an increased role in relation to the periodic reports made by the Scottish Government as part of the UK Governments reporting to the UN treaty bodies. The UK is a signatory to a number of human rights treaties including seven of the nine core UN human rights treaties¹⁸, each of which requires a periodic report to a UN committee of experts.
- 4.4. While the UK is the State Party to human rights treaties, the UN treaties bodies have increasingly recognised the importance of addressing devolved issues distinctly and they routinely make concluding observations in relation to Scotland.¹⁹ The Scottish Government is increasingly playing a role in relation to reporting, often producing reports on implementation of human rights obligations within devolved competence.²⁰ *The Commission considers that these reports should be submitted to the Parliament for scrutiny by relevant Committees.* Such scrutiny at the domestic level could usefully inform the internationally scrutiny process.
- 4.5. The Commission also recommends that *Committees should also consider directly engaging with treaty bodies by sending any relevant reports, and could in appropriate cases consider sending a representative of the Committee to attend any relevant hearing before the monitoring bodies.*
- 4.6. Following its consideration the treaty body issues a number of recommendations to the State in the form of concluding observations. *The Commission considers that Committees would find value in monitoring the Scottish Government’s response to the Concluding Observations of the UN treaty bodies and seeking opportunities to follow up the most significant of the recommendations contained in those Observations.*

¹⁷ UN Human Rights Council Resolution 22/15 (2013).

¹⁸ <http://www.scottishhumanrights.com/international/international-treaty-monitoring/>

¹⁹ See: <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/GBIndex.aspx>

²⁰ See: <https://beta.gov.scot/policies/human-rights/our-international-obligations/>

Scrutiny of State's Compliance through the Universal Periodic Review

- 4.7. Along with the regular examination by treaty bodies, the UN's Human Rights Council undertakes a regular review of every State's compliance with all human rights obligations. Parliaments are increasingly being seen as crucial to the effectiveness of the Universal Periodic Review.²¹
- 4.8. Parliamentarians are now often included as members of national delegations to the UPR and at other stages of the process (see Human Rights Council Resolution 26/29 (2014)).
- 4.9. *The Commission considers that given the broad nature of the UPR process, there should be involvement across the Committees with the process and that Scottish UPR reports should be debated by the Parliament as a whole.*

5. SCRUTINY OF SCOTTISH GOVERNMENT RESPONSE TO HUMAN RIGHTS JUDGMENTS OF COURTS

- 5.1. The Joint Committee on Human Rights receives a regular report on human rights judgments against the UK, but there is not a systemic process of reporting in relation to Scottish judgments.
- 5.2. While there is merit in various Committees considering judgments that fall within their remits, *the Commission considers that it would also be useful for EHRiC to undertake regular scrutiny of the Scottish Government's response to domestic and international court judgments concerning human rights in devolved matters, with a view to reporting to Parliament on the promptness and adequacy of the Scottish Government's response.*
- 5.3. To facilitate such scrutiny, *the Parliament could consider a requirement that the Scottish Government to report at least annually to Parliament on its responses to human rights judgments.*

6. BUDGET

- 6.1. National budgets have a significant and direct bearing on which human rights are realised and for whom. Guaranteeing enjoyment of human rights by all requires the allocation of resources. To facilitate the implementation of civil, cultural, economic, political and social rights nationwide it is important for Scotland's budgetary efforts to be aligned with its human rights obligations. The Scottish Parliament has an important role in the determination of budgetary allocations and should seek to use

²¹ UNHRC Resolution 30/14 'Contribution of parliaments to the work of the Human Rights Council and its universal periodic review' (1 October 2015); Opening Statement by Deputy High Commissioner for Human Rights Flavia Pansieri at the Side Event on the role of Parliaments in the work of the HRC, in particular the UPR (22 June 2015).

all appropriate opportunities to ensure that due priority is given in the setting of the budgets to the fulfilment of the State's human rights obligations.

- 6.2. A rights-based approach to the budget demands that policy choices be made on the basis of transparency, accountability, non-discrimination and participation. These principles should be applied at all levels of the budgetary process, from the drafting stage, which should be linked to the national development plans made through broad consultation, through approval by parliament, which in turn must have proper amendment powers and time for a thorough evaluation of proposals, implementation and monitoring.
- 6.3. Budget analysis is a critical tool for monitoring gaps between policies and action, for ensuring the progressive realisation of human rights, for advocating alternative policy choices and prioritisation, and ultimately for strengthening the accountability of dutybearers for the fulfilment of their obligations.
- 6.4. Then, 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 indicators can help to better understand existing gaps and challenges and make the budget cycle more amenable to stakeholder engagement, transparency, objectivity and accountability.
- 6.5. *The Commission recommends that the Scottish Parliament takes a human rights based approach to its scrutiny of the Scottish budget.*

7. BUILDING CAPACITY – AND EVALUATING EFFECTIVENESS

- 7.1. It is essential that MSPs have a broad understanding of human rights and their role as human rights guarantors. The Commission has already begun discussions with the Parliament around how the Parliament can best support training of members. The Commission notes the particularly the following handbooks:

Human Rights Handbook for Parliamentarians N° 26 - United Nations and the Inter-Parliamentary Union 2016.²²

Human Rights And Parliaments: Handbook For Members And Staff - International Bar Association and the Westminster Consortium 2011.²³

- 7.2. It is also important that the Scottish Parliament is able to be able to rely on expert advice from staff trained in human rights. The United Nations Declaration on Human Rights Education and Training requires States to ensure that both officials and civil servants have adequate training in human rights.²⁴

²² <http://www.ipu.org/PDF/publications/hrights-en.pdf>

²³

http://www.ibanet.org/Human_Rights_Institute/About_the_HRI/HRI_Activities/Parliamentary_Strengthening.aspx

²⁴ Article 7 United Nations Declaration on Human Rights Education and Training, General Assembly resolution 66/137.

7.3. *The Commission recommends that the Scottish Parliament develop training on human rights for MSPs and staff based on international developing practice.*

8. PARTICIPATION

- 8.1. A parliament that truly represents the full diversity in society and that has the means at its disposal to represent the views of its constituents and hold the executive to account is a very powerful tool to avoid conflict, overcome divisions in society and uphold human rights. The Commission welcomes the fact that the Scottish Parliament has accessibility and power sharing as core principles and is committed to representative of all segments of society and promote an inclusive decision-making model. There are numerous examples of Parliament and its Committees taking steps to increase participation, but the Commission considers that more could be done to improve participation.
- 8.2. Fundamentally, human rights require that the voices of people whose rights are at stake are central to the processes of law and decision making. Embedded and meaningful participation can ensure that laws and policies are responsive to the particular needs of disadvantaged groups. A failure to include mechanisms to satisfy these procedural requirements of participation, access to information and transparency and due process in decision making may in some circumstances amount to violations of these international obligations.²⁵
- 8.3. Human rights protections therefore give weight to participation, involvement and transparency in public service provision and models of co- production being adopted.²⁶
- 8.4. *The Commission believes that there is an opportunity for the Parliament structures, in particular the Committees, to strengthen meaningful participation of people with direct lived experience of the issues being addressed.*

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²⁵ Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights; 8 June 2009; E/2009/90; para 33

²⁶The 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).