

Universal Periodic Review: Opportunities for Parliamentary Involvement

The recent publication of the Scottish Government's response to the recommendations made by the UPR in 2017 is helpful and outlines a number of initiatives which have the potential to further children and young people's human rights¹.

However, we agree with the findings of the Commission on Parliamentary Reform² which suggest that the Scottish Parliament has a significant role to play in ensuring that the picture the Human Rights Council receives as part of the UPR reporting process is a full one, and one which adequately reflects both progress made, and distance still to travel.

We therefore welcome the Committee's invitation to explore the ways in which the Scottish Parliament could play a more active role in the Universal Periodic Review. We are also content to share our own experiences of participating in the last Review cycle.

What is the Universal Periodic Review?

The Universal Periodic Review is a peer-led review, conducted via the Human Rights Council, which allows the UK's performance against human rights standards to be measured. It takes place approximately every 5 years³.

Why Involve Parliaments in the UPR Process?

The Human Rights Council has in recent years made a series of resolutions⁴ indicating the Council's commitment to increasing the involvement of Parliamentarians in the Universal Periodic Review (UPR) process. This is in recognition of the important role that legislatures can play in holding the executive to account in relation to their human rights record.

At a panel discussion on the contribution of parliaments to the work of the Human Rights Council in June 2016, Adam Abdelmoula, Director of the Human Rights Council and Treaty-Mechanisms Division, stated that there was '*growing international consensus about the importance of the role of parliaments in the promotion and protection of human rights.*'⁵ He went on to acknowledge that '*no less than 60-70% of UPR recommendations require or involve parliamentary action.*'⁶

There is therefore a clear imperative for Parliamentarians to take to take a lead in the scrutiny of human rights performance in Scotland. At the same time, Parliamentarians

¹ <http://www.gov.scot/Resource/0052/00528654.pdf>

² <https://test123582.files.wordpress.com/2016/10/commissiononparliamentaryreformreport-june20171.pdf>

³ Child Rights Connect has produced a factsheet for NGOs which sets out the different stages of the UPR process (https://www.upr-info.org/sites/default/files/general-document/pdf/upr_factsheet_1_the_upr_e.pdf)

⁴ https://www.law.ox.ac.uk/sites/files/oxlaw/unhrcares3014_0.pdf

⁵ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

⁶ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

can do so in the knowledge that this is something that the Human Rights Council will warmly welcome.

According to Martin Chungong, Secretary-General of the Inter-Parliamentary Union, the global organisation which seeks peaceful, democratic cooperation between national parliaments, parliaments can *'not only help promote public debate on human rights and seek input from all segments of society; moreover they can lend democratic legitimacy to the outcome of that debate and galvanize public support for implementation'*⁷. Martin Chungong goes on to say that *'most of the UPR recommendations require legislative and budgetary action'*⁸ highlighting that Parliaments have a clear role in moving a UPR recommendation from aspiration to reality.

When the UK last undertook the Universal Periodic Review in 2017, there were 227 recommendations from UN members, but the UK Government only supported 42% of these. Supporting a recommendation signals a clear intention by the Government to remedy the issue identified by the UPR. The remaining UK recommendations were 'noted'. That is, the Government either did not recognise the issue identified by the Human Rights Council or had no intention of remedying it. The global average for supporting recommendations is approximately 75%. The participation of Members of the Scottish Parliament in the UPR reporting process is therefore vital, as many of the recommendations 'noted' by the UK Government are areas in which Scotland is planning to legislate.

The Human Rights Council also acknowledges the importance of mainstreaming human rights into the day to day work of the Parliament⁹, to ensure Parliamentarians act compatibly with human rights standards, and apply those standards to any legislation they create.

As part of their panel discussion on the role of national parliaments within the UPR in June 2016, the Human Rights Council was clear that a dedicated human rights parliamentary committee was key to the successful involvement of Parliamentarians in human rights processes¹⁰.

The expansion of the remit of the Equal Opportunities Committee to become the Equalities and Human Rights Committee in October 2016 has already made a significant difference, not least in signalling the Scottish Parliament's commitment to taking a human rights based approach towards its work. The announcement of the Equalities and Human Rights Committee's Inquiry into Human Rights is also most welcome.

⁷ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

⁸ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

⁹ <https://undocs.org/en/a/hrc/35/16>

¹⁰ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

Reporting Processes

Although human rights are devolved to the Scottish Parliament, the ratification of human rights treaties sits at a UK Government level. Therefore, it is the UK Government who leads the reporting process and who is ultimately accountable to the Human Rights Council.

In practice, however, devolved governments do provide a significant input into the process, although the overall ownership of the UK report sits with Westminster. State reports are often limited in length, e.g. 30 pages, and this can mean it is difficult for devolved governments to be truly visible in the process. They may have to negotiate strongly for their own materials to be included in the State report. This can be particularly challenging when, for example, one country has a different legal system, as in Scotland, or a different approach is being taken towards human rights more generally, as there can be limited opportunity to explain what those differences are and the reasons behind them. It is important, therefore, that Parliamentarians in Scotland seek out other ways to maximise their human rights presence.

The following are some initial suggestions for how the Equalities and Human Rights Committee may want to engage more closely with the UPR reporting process:

Submit an Alternative Report

At a panel Discussion in June 2017, Hakim Benchamach of Morocco suggested that parliamentary participation should be enshrined within the UPR process to oblige Parliaments to submit alternative reports¹¹.

These form an important part of the reporting process and are often submitted to the Human Rights Council by National Human Rights Institutions and wider civil society. Their purpose is to provide a different perspective to that provided by the Government. Perhaps unsurprisingly, Governments' reports tend to focus on the positive and highlight where progress has already been made.

Alternative reports, in contrast, focus instead on any gaps and highlight opportunities for progress still to be made. They often include examples of real-life difficulties being experienced. This alternative perspective can provide a very useful steer to the Council when they are formulating their recommendations. They can therefore provide helpful leverage for change, as recommendations from the previous UPR cycle are often used as a starting point for the next cycle. Submitting an alternative report would also allow a uniquely Scottish approach to be highlighted to the Human Rights Council, and may also allow for Scotland-specific recommendations to be made.

¹¹ <https://undocs.org/en/a/hrc/35/16>

Our own alternative report for the 2017 UPR can be viewed online here:
https://www.upr-info.org/sites/default/files/document/united_kingdom/session_27_-_may_2017/cypcs_upr27_gbr_e_main.pdf.

Extend an Invitation to a Special Rapporteur

Human Rights Council and UN Committees will often organise country visits by Special Rapporteurs to help inform reporting processes. These visits are independent of government and often facilitated by National Human Rights Institutions (NHRIs) or members of civil society (although equally they could be facilitated by the Scottish Parliament).

To provide an example of a recent visit to Scotland, ahead of the UK's State Examination by the UN Committee on the Rights of the Child in 2016, the Children and Young People's Commissioner Scotland, Together (Scottish Alliance for Children's Rights) and the Scottish Youth Parliament invited Amal Aldoseri, a member of the UN Committee on the Rights of the Child to visit a range of projects working with children and young people across Scotland. These included hearing from children and young people in the youth justice system, young parents, looked after young people and BME children.

The visit allowed the Special Rapporteur to gain an understanding of some of the key issues affecting children and young people and to hear directly from them. It also allowed her to gain a clearer understanding of the political system in Scotland.

Some of the young people participating in the Special Rapporteur's visit also attended the State Examination in Geneva (where the UK Government and representatives from the devolved governments answer questions on their human rights record posed by the UN Committee on the Rights of the Child). The young people also met with UN Committee members and were able to directly challenge some of the Government's assertions from a Scottish perspective.

Murray Hunt, legal adviser to the Joint Committee on Human Rights in Westminster recommended in June 2017 that the Human Rights Council should take *'proactive steps by creating a new mandate for a special rapporteur to increase parliamentary involvement and mainstreaming, and by involving key parliamentarians in its proceedings'*.¹²

Be Part of a Delegation

Martin Chungong, Secretary-General of the Inter-Parliamentary Union (IPU) stated in 2016 that an increasing number of Parliaments were being consulted when state reports were being drafted and that at least 10% of delegations included at least one MP¹³. Therefore, there may be an opportunity for a Member of the Scottish Parliament to fulfil

¹² <https://undocs.org/en/a/hrc/35/16>

¹³ <https://www.upr-info.org/en/news/the-role-of-national-parliaments-within-the-upr-discussed-at-the-hrc>

that role in future, or for the Scottish Parliament to form a separate delegation which meets with the Human Rights Council.

In addition to submitting an alternative report, the Scottish Parliament could require the Scottish Government to lay a copy of any draft report they produce (e.g. for the Universal Periodic Review or other human rights reporting mechanisms) in order for the Parliament to scrutinise it ahead of its submission.

Partnership Working

More broadly, it may be worth exploring closer links to the Inter-Parliamentary Union, if these are not already in place. A seminar in Manila in 2015, co-organised by the IPU and the Office of the High Commissioner for Human Rights stressed that Parliaments wishing to take a human rights based approach should share information bi-laterally about best practices in addressing human rights violations.¹⁴ Consideration should be made of which partners the Scottish Parliament may wish to forge links with, whether that be those Parliaments already taking a human rights based approach, and/or other Parliaments currently working towards such an approach.

Engaging with Stakeholders

In a June 2017 Human Rights Council panel discussion, Hakim Benchamach from Morocco stated the importance of Parliamentarians consulting with human rights organisations and civil society organisations in order to inform human rights reporting.¹⁵

The Equalities and Human Rights Committee already engages with a wide range of stakeholders, including our own office, the Scottish Human Rights Commission, the Equality and Human Rights Commission Scotland, amongst many others. However, we would be keen to see the Committee pro-actively engaging with harder to reach groups who might not otherwise have a say, perhaps by initiating a mapping process to establish whose voices are currently heard in the Scottish Parliament and whose are missing.

The Committee may also wish to link in with young people performing inspection roles, who may be ex-service-users and who may be aware of issues that might otherwise not be highlighted. The Care Inspectorate, for example, has recruited a number of young people aged 18-26 years to act as Care Inspection volunteers¹⁶.

Mainstreaming Human Rights into Parliamentary Processes

If the Scottish Parliament is committed to taking a human rights based approach towards its work, then the Equalities and Human Rights Committee has a role to play in

¹⁴ <https://undocs.org/en/a/hrc/35/16>

¹⁵ <https://undocs.org/en/a/hrc/35/16>

¹⁶ <http://www.careinspectorate.com/images/documents/1098/Becoming%20a%20young%20inspection%20volunteer.pdf>

ensuring that Parliamentarians (and staff) are fully aware of and understand their human rights obligations.

The Committee may also wish to consider an audit of existing Parliamentary processes to establish where there are opportunities to further human rights. The Human Rights Council panel discussion in June 2017 identified, for example, that budgetary scrutiny could also be an opportunity to look at how a State was fulfilling their human rights obligations.¹⁷

It is important to stress that the Human Rights Council views Parliamentary involvement in the UPR as being much more than participation in reporting processes. Rather, there is an expectation that Parliaments will play an ongoing monitoring role in relation to human rights scrutiny, for example in assessing progress against recommendations and Concluding Observations.

The Equalities and Human Rights Committee may wish to consider having a designated person in each Parliamentary committee with responsibility for ensuring human rights are taken into account in the committee's work. This person could then liaise with the Equalities and Human Rights Committee to ensure they are made aware of how human rights are being progressed across the Scottish Parliament.

We understand that the Equalities and Human Rights Committee's initial focus is on the Universal Periodic Review. However, mechanisms put in place to facilitate monitoring and reporting for the UPR should also be designed to apply to the monitoring of other treaty obligations, for example, the UN Convention on the Rights of the Child or the Convention on the Elimination of all Discrimination Against Women.

Another example would be to look at the information that Committees receive when they first begin consideration of draft legislation. Given that Scots Law requires compatibility with the European Convention on Human Rights¹⁸, then it would be helpful for the Committee to be able to view the advice the Scottish Government has received in respect of this. This would provide the Committee with the information they need to form an informed view of the key human rights issues they should be aware of, and would also potentially change the tone/direction of questioning in evidence sessions.

One other option would be for the Parliament to have a role in scrutinising the assessments accompanying a Bill, for example, Child Rights and Wellbeing Impact Assessments. At present, these assessments are regularly produced, but the Scottish Government is rarely challenged on their contents.

¹⁷ <https://undocs.org/en/a/hrc/35/16>

¹⁸ Section 29(2)(d), Scotland Act 1998 (<http://www.legislation.gov.uk/ukpga/1998/46/section/29>)

Child and Young People's Participation in Human Rights Processes

In 2011, the Inter-Parliamentary Union and Unicef produced a 'Handbook on Child Participation in Parliament', recognising the role that children and young people had to play 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*'.¹⁹

The handbook states that involving children and young people in the work of the Parliament should be sustainable and long-term, allowing relationships to be built, rather than taking the form of a one-off event or consultation²⁰. 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 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 people²¹.

The handbook provides examples of international good practice. For example, the Brazilian National Congress has a Little Plenary, through which schools select legislative proposals written by pupils and submit them to Congress²².

Another example cited is the South African Parliament's work on their national children's bill. In order to involve children and young people in the process, the Children's Institute at the University of Cape Town worked with groups of children and young people to improve their 'legislative literacy'²³. 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.*'²⁴ The handbook goes on to recommend all of the Parliament's committees should be represented on the caucus in order to '*bring a child perspective to their respective committee work*'.²⁵

¹⁹<http://archive.ipu.org/PDF/publications/child-parl-e.pdf>

²⁰<http://archive.ipu.org/PDF/publications/child-parl-e.pdf>

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

²²<http://archive.ipu.org/PDF/publications/child-parl-e.pdf>

²³<http://archive.ipu.org/PDF/publications/child-parl-e.pdf>

²⁴<http://archive.ipu.org/PDF/publications/child-parl-e.pdf>

²⁵<http://archive.ipu.org/PDF/publications/child-parl-e.pdf>



The Scottish Parliament as a Human Rights Guarantor

One of our key areas of work for the next 2 years will be exploring the Scottish Parliament's role as a Human Rights Guarantor for children and young people. Alongside that work, we will be working with children and young people to explore their own role as 'Human Rights Defenders'.

This paper represents the starting point of what we hope will be a long and constructive dialogue between the Equalities and Human Rights Committee, the Scottish Parliament and others seeking to promote and safeguard children's human rights in Scotland.

We have provided some initial suggestions of how the Committee may wish to engage in the Universal Periodic Review, however, these are not exhaustive and there are many more options available to the Committee.

As the Committee considers the scope of its Human Rights Inquiry, and looks more broadly at the role of the Scottish Parliament as a Human Rights Guarantor, we would be happy to offer any assistance we can to facilitate this area of work.

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