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Response to the Justice Committee

Pre Budget Scrutiny 2020-21 Consultation

September 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

The Commission welcomes the opportunity to respond the Justice Committee’s pre-budget scrutiny of the Scottish Government’s Budget for 2020-21. This submission focuses on setting out some general points about human rights based budgeting and how the Committee could connect their pre-budget scrutiny to the human rights obligations of government and parliament.

**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 (with impact assessment) 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.**

Allocating resources in a way that enables a government to fulfil its human rights obligations requires consideration of that government’s specific human rights obligations as set out in the human rights treaties it has signed and ratified. Extensive guidance on how those commitments translate into policy objectives on the ground is then set out in a number of places, including fore example: General Comments and concluding observations and recommendations provided by the various UN Treaty Body Committees[[1]](#footnote-1) and reports from Special Rapporteur on specific issues.

Appendix 1 begins to set out the human rights framework obligations and recent UN Treaty Body conclusions and recommendations relating to prison conditions, over-crowding, staffing levels, non-custodial options, safety and security of staff and prisoners, health and mental health services, data availability and a variety of issues relating to children and young people in detention. These should be given consideration when developing budget allocation recommendations.

Having analysed the human rights concerns facing different groups within and across different social sectors and having assessed a country’s human rights international human rights obligations and commitments, resource allocations should:

* prioritise the fulfilment of basic levels of rights enjoyment for all (Minimum Core);
* be allocated in a way that reduces inequalities by meeting the needs of vulnerable and marginalised groups (Non-discrimination); and
* generally increase in line with increased revenue, and not be reduced unjustifiably (Progressive Realisation) .

The process of deciding on those allocations should also reflect the principles of participation, transparency and accountability.

# Human Rights Impact Assessments

A number of UN human rights committees have proposed the use of human rights impact assessments to support better policy making and fiscal decisions.[[2]](#footnote-2) As Ms Sepúlveda noted:

[Governments should] “*conduct human rights assessments of fiscal policy periodically and with broad public participation, including analysis of the distributional consequences and tax burden borne by different income sectors and disadvantaged groups*”.[[3]](#footnote-3)

In January 2019, Juan Pablo Bohoslavsky, the Independent Expert on foreign debt and human rights issued new [Guiding Principles on Human Rights Impact Assessments of Economic Reforms](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/57).[[4]](#footnote-4) Within the guidance he highlights that human rights need to be a central factor of good policymaking if economic reforms are to *“help advance societies, rather than hinder people’s lives”.*

He goes on to talk about the role of a State’s human rights obligations in economic policymaking as obligations that States simply cannot ignore. These decisions have consequences and those consequences must be identified before not after a policy has been implemented:

*"Any economic policy measures – whether fiscal austerity, structural adjustment reforms, privatisation of public services, deregulation of financial and labour markets, or changes in taxation – all have human rights consequences… Governments at all levels - including local and subnational governments - must properly take into account their human rights obligations when designing and formulating economic reforms. Human rights impact assessments are key to this process… such assessments should pay particular attention to potential and cumulative impacts of economic measures on specific individuals and groups, such as women and persons with disabilities.”[[5]](#footnote-5)*

Human rights impact assessments are not widely used, however, they should be standard practice in the preparation of budgets. Such assessments enable fair and transparent decision making and provide a practical method to support governments to avoid disproportionately affecting some groups more than others with their policy and budgetary decisions.

Good practice has been developed on Equality and Human Rights Impact Assessments (EQHRIAs) by the [Scottish Human Rights Commission (SHRC)](http://eqhria.scottishhumanrights.com/index.html)[[6]](#footnote-6) and [Equality and Human Rights Commission (EHRC)](http://www.equalityhumanrights.com/)[[7]](#footnote-7) – with a dedicated website which sets out:

* An explanation of the [added value of the human rights dimension.](http://eqhria.scottishhumanrights.com/eqhrialpaddedvalue.html)[[8]](#footnote-8)
* The [10 Good Practice Building Blocks for Assessing Impact.](http://eqhria.scottishhumanrights.com/eqhriagoodpractice.html)[[9]](#footnote-9)
* Information about [two pilot EQHRIAs in Renfrewshire and Fife Councils.](http://eqhria.scottishhumanrights.com/eqhriapilotstudies.html)[[10]](#footnote-10)
* [Basic background training materials.[[11]](#footnote-11)](http://eqhria.scottishhumanrights.com/eqhriatrainingresources.html)
* [Links to other resources.[[12]](#footnote-12)](http://eqhria.scottishhumanrights.com/eqhriaotherresources.html)

**Final remarks**

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.

**Appendix 1: Human Rights Framework and UN Treaty Body Conclusions and Recommendations relevant to the areas of Justice Committee Pre-Budget Scrutiny**

This appendix sets out the human rights framework obligations and recent UN Treaty Body conclusions and recommendations most relevant to the focus of the Justice Committee’s pre-budget scrutiny. This includes relevant general recommendations, and those related to the themes of Health and Justice & Safety. These should be given consideration when developing budget allocation recommendations.

**1. General recommendations made regarding enhancing the ability of public, private and voluntary bodies to put human rights in practice is key to the delivery of all human rights.**

Among other relevant recommendations, international human rights bodies have called on the UK:

* ***Prioritisation and policy making****:* Introduce human rights based impact assessment and budget analysis (CEDAW 2009; CERD 2011, 2016; CESCR 2009, 2016; CRC 2008, 2016; UPR 2017).
* ***Human rights based approach****:* Adoption of a human rights based approach to (aspects of) public service (CESCR 2016; CRC 2000, 2002, 2008, 2016).
* ***Human rights training:*** Develop and implement human rights training programmes for prison staff (CAT 2019).

**2. Health**

### Human Rights Framework and international obligations relating to Health. Among the internationally recognised rights engaged are**:**

* **The right to the highest attainable standard of physical and mental health**, including the underlying determinants of health and available, accessible, acceptable and quality health care (article 12, ICESCR; article 11, ESC; article 25, UDHR; UN Special Rapporteur on the Right to Health: Report on the right to mental health (2017); Report on the right to health and Agenda 2030 (2016); Report to the Human Rights Council (main focus: right to health of adolescents)(2016); **particularly of women** (article 12, CEDAW); **children** [article 24, CRC) and **people with disabilities** (article 25, CRPD)
* **Right to life** (article 3, UDHR; article6, ICCPR; article 2, ECHR/HRA; article. 11, ESC), **particularly of women** (article 12, CEDAW) and **children** (article 6, CRC) and **people with disabilities** (article 10, CRPD)
* **Right to protection from degrading treatment which include positive duties of prevention, protection and remedy.** This may include to prevent someone being left in degrading circumstances and to promptly investigate preventable death or ill-treatment in custodial settings (3 of the ECHR/HRA, CAT).
* **The right to respect for private and family life**, home and correspondence including physical and mental integrity, quality of life, well-being, autonomy and the right to take part in decisions (article 8, ECHR/HRA).
* **The best interests of the child** to be a primary consideration in all actions concerning a child (article 3, CRC)

Within recent UN Treaty reviews – on recommendations with regard to health in detention, international human rights bodies have called on the UK to:

* Improving access to health care and services for prisoners (CAT 2019; CEDAW 2019; CRC 2016; ICCPR 2016)
* Access to health services, including mental health services, is insufficient for children in custody (CRC 2016)
* Take robust measures to prevent self-inflicted deaths (suicides), including suicides and self-harm in custody, including improve risk assessments, early prevention strategies, adequate training to prison officials, appropriate mental health, combating bullying in custody, independent and thorough investigations in the event of a suicide, and give due consideration to the Harris Review report and to implementing its recommendations (ICCPR 2015)
* Improve mental health care services in prisons, taking into account the particular needs of women and the disproportionate rate of self-harm and suicide among women (CEDAW 2019)
* Allocate sufficient resources to the mental health sector, to ensure the accessibility, availability and quality of mental health care for all, including persons in detention (CAT 2019; CESCR 2016; CEDAW 2019; CERD 2016; CRC 2016).
* Implement the outstanding recommendations of the Equality and Human Rights Commission inquiry into deaths in detention of adults with mental health conditions, aimed at enhancing art. 2 of the European Convention on Human Rights (CRPD 2017)

**3. Justice and Safety**

### Human Rights Framework and international obligations relating to issues of Justice & Safety. Among the internationally recognised rights engaged are**:**

* **The right to dignified and humane conditions of detention** (article 10, ICCPR);
* **The right to appropriate conditions of detention of children** (article 37, CRC);
* **The absolute prohibition of cruel, inhuman or degrading treatment or punishment including positive obligations of prevention, protection and remedy** (article 3 HRA, ECHR; article 2, CAT)
* **Education and training on the prohibition against torture** is provided to all public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment (article 10, CAT)
* **Systematic review arrangements for the custody and treatment** of persons subjected to any form of arrest, detention or imprisonment, with a view to preventing any cases of torture (article 11, CAT)
* **The right to prompt and impartial investigation**, wherever there is reasonable ground to believe that an act of torture has been committed (article 12, CAT)
* **The right to complain**, to have a case promptly and impartially examined and insurance that witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given (article 13, CAT)
* **Right of children and young persons to protection** (article 7, ESC)
* **The right to respect for private and family life**, home and correspondence, including physical and mental integrity. This includes positive duties of prevention, protection and remedy of violence and abuse (article 8, HRA).
* **The best interests of the child** to be a primary consideration in all actions concerning a child (article 3, CRC)
* **Protection of children from all forms of violence**, injury or abuse, neglect, maltreatment or exploitation, sexual abuse (articles 19 & 37, CRC),
* **Elimination of violence against women and girls** (articles 3 & 5, UDHR; article 7, ICCPR; articles 1-6 CEDAW; articles 1-4, DEVAW; articles 24(3)& 35, CRC; Istanbul Convention on preventing and combating violence against women and domestic violence)
* **Right of disabled people to freedom from exploitation, violence and abuse** (article 16, CRPD)
* **The duty to eradicate incitement to discrimination or violence aggravated by prejudice** (article 4, CERD; article 16, CRPD; case law of ECtHR)
* **The right to liberty** (article 5, ECHR)
* **The right to a fair trial and a fair hearing** (Article 6, ECHR)
* **The right to an effective remedy, including access to justice and reparation** (satisfaction, restitution, rehabilitation, compensation and guarantees of non-repetition) (Article 13, ECHR)

Within recent UN Treaty reviews –recommendations with regard to justice & safety, international human rights bodies have raised the following issues with the UK to resolve:

**Children**

* Protection of children from all forms of violence (CRC 2016; CAT 2019);
* Take into account the best interests of the child as a primary consideration when sentencing parents, avoiding, as far as possible, sentences for parents that lead to their being separated from their children (CRC 2016)
* With regard to the detention of children - establish the statutory principle that detention should be used as a measure of last resort (CRC 2016) and ensure that child detainees are separated from adults in all detention settings (CAT 2019)
* Access to education and health services, including mental health services, is insufficient for children in custody (CRC 2016)
* With reports about children, men and women being inappropriately transported together in the same prison vehicles - Prohibit the transport of prisoners in any way that subjects them to unnecessary physical risk of abuse in violation of the Convention (CAT 2019)
* Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, and ban the use of any technique designed to inflict pain on children (CAT 2019; CRC 2016)
* In accordance with rules 63 and 64 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113, annex) - Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort (CAT 2019; CRC 2016); for children and young persons with disabilities (CRPD 2017).
* Immediately remove all children from solitary confinement, prohibit the use of solitary confinement in all circumstances and regularly inspect the use of segregation and isolation in child detention facilities (CAT 2019; CRC 2016)

**Conditions of detention, including overcrowding and safety:**

* Continue to improve conditions of detention and alleviate overcrowding, including through the application of non-custodial measures (CAT 2019; UPR 2017); with attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (CAT 2019)
* Adherence to international standards for respect for detainees’ rights and the conditions of detention (UPR 2017)
* Improve prisoner safety; Initiate a prison reform plan to improve the deteriorating conditions in prisons, including addressing the increase in homicides and assaults (UPR 2017)
* Investigate all incidents of violence in places of detention and ensure that prison officials are held accountable in cases where they fail to take reasonable measures to prevent and respond to such violence. (CAT 2019)

**Reducing prison population and alternatives to custody:**

* Take concrete measures to reduce the current and future prison population (UPR 2017)
* Develop alternative sentencing and custodial strategies, including community interventions and services, for women convicted of minor offences (CEDAW 2019)
* Introduced and allocate sufficient resources to effectively implement a female offender strategy (CEDAW 2019)

**Restraint**

* Electric discharge weapons should not form part of the equipment of custodial staff in prisons or any other place of deprivation of liberty, including mental health settings (CAT 2019)
* Concern over continued use and lack of unified State party strategy to review the use of physical, mechanical and chemical restraint, including the use of Taser guns and similar weapons on persons with disabilities that affects persons with psychosocial disabilities, in prisons, the youth justice system (CRPD 2017)

**Staff training requirements**

* Adopt appropriate measures [including training] to eradicate the use of restraint for reasons related to disability within all settings, and prevent the use of Taser guns against persons with disabilities, as well as practices of segregation and isolation that may amount to torture or inhuman or degrading treatment (CRPD 2017)
* Providing adequate training to prison officials on prevention of suicide and self-harm (ICCPR 2015)
* Recruit and train a sufficient number of prison personnel to improve security, reduce violence and ensure the adequate treatment of detainees (CAT 2019; UPR 2017)
* Lack of information on evaluations of the impact of human rights training programmes for… prison staff (CAT 2019)
* Further develop mandatory training programmes to ensure that all public officials are well acquainted with the provisions of the Convention (CAT 2019)
* Ensure that all relevant staff are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Istanbul Protocol) (CAT 2019)
* Improve the training of prison personnel to include statutory training into the identification of potential victims of human trafficking and modern slavery, and continue developing specialized training programmes for support workers and those providing foster care (CAT 2019)

**Data**

* Compile detailed data on suicides among persons deprived of their liberty and assess the effectiveness of prevention and risk identification strategies and programmes (CAT 2019)
* Provide comprehensive information about criminal investigations and prosecutions of State officials into allegations of misconduct, the sentences imposed on offenders, or an indication of whether the alleged perpetrators of those acts were removed from public service (arts. 2, 12, 13 and 16). (CAT 2019)
* Routinely to compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of torture or ill-treatment (CAT 2019).
* Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in custody settings (CRC 2016).
* In line with Goal 17 of the Sustainable Development Goals, increase significantly the availability of high-quality, timely and reliable data disaggregated by, among others, income, sex, age, gender, race, ethnic origin, migratory asylum-seeking and refugee status, disability, geographic location and other characteristics relevant in national contexts, including in all general population surveys and censuses (CRPD 2017)

The Commission welcomes any questions the Committee may have about the content of this submission.

Ends

Scottish Human Rights Commission

1. For other examples see CESCR General Comment No. 4: [The Right to Adequate Housing (Art. 11 (1) of the Covenant);](https://www.refworld.org/pdfid/47a7079a1.pdf) CESCR General Comment No. 13: [The Right to Education (Art. 13)](https://www.refworld.org/pdfid/4538838c22.pdf) ; CESCR General Comment No. 14: [The Right to the Highest Attainable Standard of Health (Art. 12)](https://www.refworld.org/pdfid/4538838d0.pdf); CESCR General Comment No. 19: [The right to social security (art. 9)](https://www.refworld.org/docid/47b17b5b39c.html) [↑](#footnote-ref-1)
2. Committee on Economic, Social and Cultural Rights, General Comment 2, International technical assistance measures (Fourth session, 1990), U.N. Doc. E/1990/23, annex III at 86 (1990) & Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties' obligations (Fifth session, 1990), U.N. Doc. E/1991/23, annex III at 86 (1991) & Committee on Economic, Social and Cultural Rights, General Comment 15, The right to water (Twenty-ninth session, 2003), U.N. Doc. E/C.12/2002/11 (2002) &Committee on Economic, Social and Cultural Rights, General Comment 17, the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (article 15, paragraph 1 (c), of the Covenant), U.N. Doc. E/C.12/GC/17 (2006) & Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) U.N. Doc. E/C.12/GC/20 (2009) & Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a)), U.N. Doc. E/C.12/GC/21 (2009) & General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) pg 21 “Implement rights-based budget monitoring and analysis, as well as child impact assessments on how investments, particularly in the health sector, may serve the best interests of the child”. [↑](#footnote-ref-2)
3. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona see here, <http://www.justiciafiscal.org/wp-content/uploads/2014/06/A_HRC_26_28_ENG.pdf> [↑](#footnote-ref-3)
4. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/443/52/PDF/G1844352.pdf?OpenElement> [↑](#footnote-ref-4)
5. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24090&LangID=E> [↑](#footnote-ref-5)
6. <http://eqhria.scottishhumanrights.com/index.html> [↑](#footnote-ref-6)
7. <http://www.equalityhumanrights.com/> [↑](#footnote-ref-7)
8. <http://eqhria.scottishhumanrights.com/eqhrialpaddedvalue.html> [↑](#footnote-ref-8)
9. <http://eqhria.scottishhumanrights.com/eqhriagoodpractice.html> [↑](#footnote-ref-9)
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11. <http://eqhria.scottishhumanrights.com/eqhriatrainingresources.html> [↑](#footnote-ref-11)
12. <http://eqhria.scottishhumanrights.com/eqhriaotherresources.html> [↑](#footnote-ref-12)