

Audrey Nicoll, Convener
Criminal Justice Committee
The Scottish Parliament
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21 October 2022

Dear Ms Nicoll,

Criminal Justice Pre-Budget scrutiny: 2023-2024

The Scottish Human Rights Commission is the National Human Rights Institution (NHRI) for Scotland and has a general duty to promote human rights for everyone in Scotland.

We regret that current staffing restraints preclude us from providing a full submission to the Committee's scrutiny exercise. However, we are concerned at the potential human rights implications of a real-terms cut in criminal justice funding.

As set out more fully in our [2019 submission](#), we consider that the tools of human rights based budgeting provide a valuable means of connecting pre-budget scrutiny to the human rights obligations of government and parliament.

Human rights budgeting can enhance the social impact of economic policy by ensuring that budgetary decisions benefit those most in need. Allocating resources in a way that enables a government to fulfil its human rights obligations, requires consideration of that government's specific obligations as set out in the human rights treaties it has signed

and ratified. In the context of cutbacks in public spending, it can help guard against regression in the fulfilment of fundamental rights.

The appended document sets out some of the key human rights framework obligations relevant to Scotland. These obligations must inform budgeting decisions, including those relating to:

- places of detention (including prison conditions, over-crowding, staffing levels, non-custodial options, rehabilitation, safety and security of staff and prisoners, health and mental health services);
- access to justice (including the provision of advice and representation);
- the investigation and prosecution of offences (especially those where prosecution or conviction rates are disproportionately low);
- the efficient and timely management and disposal of court business.

Decisions of this sort should be underpinned by robust and transparent analysis of the impact on fulfilment of the rights in play. We note that international best practice supports the use of human rights impact assessments to enable fair and transparent decision making. They provide a practical method to support governments to avoid disproportionately affecting some groups more than others with their policy and budgetary decisions.

Ultimately, applying a human rights analysis will help Parliament ask the right questions and support effective, transparent, fair and accountable use of national resources.

Yours faithfully,

Ian Duddy
Chair, Scottish Human Rights Commission

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Appendix: Human Rights Framework relevant to the areas of Justice Committee Pre-Budget Scrutiny

Human Rights Framework and international obligations relating to issues of justice and 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, 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, ECHR).

- **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** (article 7, ICCPR; articles 1-6 CEDAW; 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)

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