

Scottish Parliament Committees' Perspective on Human Rights

A Glasgow Human Rights Network Report
for the Cross-Party Group on Human Rights

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Introduction

The Scottish Parliament Cross Party Group on Human Rights (CPGHR) invited the Glasgow Human Rights Network (GHRN), based at the University of Glasgow, to undertake a “short-term piece of evidence gathering research” that would assist the Cross Party Group in its exploration of the “need for a Human Rights Committee in the Scottish Parliament”. To this end, the GHRN was asked to compile a short report on the basis of the following specific terms of reference:

- To scrutinise the work of the Scottish Parliament’s Committees from a human rights perspective;
- To scrutinise the work of all Committees over the month of November 2011;
- To ascertain the degree of consideration given to human rights across all Committees and highlight where it has worked well;
- To ascertain where there has been a lack of consideration of human rights where it would have been appropriate to do so.

In the report below, the findings and analyses for individual committees are considered in turn, followed by a conclusion and recommendations.

Justice Committee

Expressing concern that the “Scottish Parliament is not adequately scrutinising” the compatibility of legislations with applicable human rights standards, the CPGHR indicated the need to entrench a robust protection of human rights into the system by increasing their profile in the Scottish Parliament. At the present, human rights sit within the mandate of the Justice Committee. In the terms of reference, the CPGHR notes that “human rights get left behind as the [Justice] Committee focuses on criminal justice legislation and inquiries; it also silos human rights into a justice issue rather than a cross-cutting issue”. A review of the official papers and reports of the Justice Committee for the period under review reveals a reductive and sceptical pattern of attitude towards human rights that comports with the CPGHR’s assessment. Although the applicable human rights regimes, such as the European Convention on Human Rights (ECHR), have their own normative and institutional frameworks, the committee employs neither such frameworks nor the vocabulary of human rights in dealing with issues of indisputable human rights character. In the few occasions the Committee made reference to these normative and institutional frameworks, it was in negative terms, alluding to the confining constraints posed by the Convention in the administration of criminal justice.

At the meeting held on 1st November 2011, there was one explicitly negative mention of human rights by an invited participant: “We sometimes face challenges from agents under the European Convention on Human Rights” (Cabinet Secretary for Justice Kenny MacAskill). There was also a discussion about the International Criminal Court (ICC) Darfur Arrest Warrant regarding whether this is a reserved matter or whether Scotland has the competence and should react to the warrant formally. The Committee did not discuss the subject within the broader framework of the international law of human rights applicable to the UK. The Committee also deliberated on such issues as the inclusivity of the justice system; legal aid; police force reform; and prison conditions. Although these are matters well within the remit of the Justice Committee, the absence of any reference to human rights in the Committee’s considerations of such quintessentially human rights matters is extremely concerning.

At the meeting on 8th November 2011, there were two explicit mentions of human rights - one positive and another negative. While the positive statement came from a Committee member asking the Cabinet Minister for Justice, Kenny MacAskill, whether the government would engage with human rights groups, the latter replied: “it sometimes seems that there is a mini industry in making human rights challenges in the Scottish courts”. The Committee discussed the Terrorism Prevention and Investigation Measures (TPIMs) Bill. When asked whether the government intends to discuss the content of the Bill with the Scottish Human Rights Commission and other human rights bodies “to ensure that TPIMs do not unduly restrict somebody’s civil liberties”, the Minister replied: “Consultation would not be on individual TPIMs but on the further powers that might be taken.” When another member of the Committee, John Finnie, asked the Justice Secretary a question that relates to search and seizure, the Minister expresses his suspicion of human rights groups in these terms:

However, highly paid lawyers who, unfortunately in some respects, have a human rights industry might challenge that. Although we preserve human rights—and I pay tribute to the people and organisations to whom Humza Yousaf referred—it sometimes seems that there is a mini industry in making human rights challenges in the Scottish courts.

The Committee did not ask the Minister to justify his position in the light of a human rights framework. Due to the significant human rights risks and concerns posed by these instruments, we observe that a human rights framework for understanding and articulating its ramifications would have allowed the Committee to discharge its mandate to exercise oversight over the government. A Human Rights Committee of the Scottish Parliament would have scrutinized this legislation in the light of all the applicable human rights norms and policy issues.

At its meeting on 22nd November 2011, the committee considered “The Offensive Behaviour at Football and Threatening Communications (Scotland) Bill”. During this meeting, the Committee extensively discussed the compatibility of the Bill with the human rights to freedom of speech. Although the Committee considered the matter from a criminal justice point of view and noted that it is not “sufficient to throw a catch-all section into the bill and leave the definition of behaviour that will or will not be prosecuted” - prosecutability being a guiding principle - it was Roseanna Cunningham, Minister for Community Safety and Legal Affairs, that situated the debate within the framework of the European Convention for Human Rights: “The fact is that any

legislation that is put before the Scottish Parliament must comply with the European Convention on Human Rights”.

At its meeting on 29 November 2011, the Committee discussed the “Carloway Review of Criminal Law and Practice in Scotland”. In the course of the deliberation, there were five explicit references to human rights by the author of the report. Two of these were general references: one noted that “We are talking about cases in which other people’s human rights are at risk” and the other referred to “Scottish human rights” as preventing the state from keeping people in custody “from a Thursday to a Monday night” without court approval. The three references to human rights explicitly invoked the European Convention system, again by the author of the report. The Carloway Review raises issues that, while substantively well within the remit of the Justice Committee, are informed and underpinned by a range of human rights issues. These are:

- Changing rules of corroboration
- Impact of changing rules on conviction rates in sexual assault cases
- Abolition of the right of under-16s to waive their right to legal representation
- Rights of children in Scottish courts - particularly in relation to the UN Convention on the Rights of the Child (UNCRC)
- Right to delay all, or any part of, a suspect’s right of access to a lawyer or to withhold all, or any part of, that right
- Potential reintroduction of Saturday courts

To sum up, in our exploration of the Justice Committee - a committee, it bears repeating, with a remit over human rights - we found a highly concerning pattern of sidelining the human rights framework as something that threatens, rather than informs and reinforces, the administration of justice. Given that the Justice Committee is the only forum within the Scottish Parliament charged with human rights issues, the committee does not seem to take human rights very seriously. The evidence suggests that the Justice Committee is not adequately discharging its responsibilities for human rights, thereby reducing them to the edifice of criminal justice. Parliament needs to rethink this current arrangement.

Equal Opportunities Committee

In its effort to embed human rights in the works of the various committees and thereby enhance their profile, the CPGHR noted in its terms of reference for this study an earlier proposal to move human rights from the Justice Committee to the Equal Opportunities Committee. Although this is one possible scenario, given the broader scope of issues that fall within the ambit of human rights - equal opportunities included - it does not seem logically coherent to subsume human rights within a committee that deals within a particular aspect of human rights. Our findings suggests that instead of bringing human rights under the remit of this committee, it *is* logically coherent and beneficial for the overall system to replace the Equal Opportunities Committee with a Human Rights Committee with a competence over issues of equal opportunities. Alternatively, in the event that Parliament favours the independent existence of a body dealing with equal opportunities, it is less costly and more efficient to establish sub-committee of the Human Rights Committee with a remit over matters of equal opportunities since the latter is, both conceptually and analytically, a subset of the former. However, we also recognize the potential interpretive tension between human rights and equal opportunities that might justify the continued existence of the Equal Opportunities Committee.

Although the committee met three times over the course of November 2011, it produced only one report to the Parliament in which it has discussed issues of “Homelessness and Young People”. The report identifies homelessness of young people as a particularly concerning issue in Scotland. We observed that the Committee is favourably disposed to human rights and employed a human rights framework during its discussion. Indeed, it was noted by one invited participant that “the Scottish Government is going to implement the United Nations Convention on the Rights of the Child” and asked “how [this] might be used to help services and change the way in which we are dealing with young people?” Another witnessed commented: “The fact that the UNCRC will be enshrined in statute is fantastic for services and young people, but we need to ensure that young people are aware of those rights and of how to have them realised, so there is a bigger debate to be had about advocacy”. The homelessness of young people is not a singular issue that can be addressed in

isolation. It is a more complex issue with a direct bearing on such matters as education, housing, health, and other economic and social rights of children. Instead of being an equal opportunities question alone, homeless young people brings into being a more complex, multidimensional and “cross-cutting issue” that demands the attention of a wide variety of committees working in tandem. A Human Rights Committee can serve as key contact point over these matters. Indeed, the implementation by Scotland of the UNCRC makes a Human Rights Committee more urgent.

There is also recognition of the need not only for equal rights, but also for a differential treatment when it comes to meeting the needs of young people. It was noted by one participant that “The young people have the same rights as everyone else, but they are dealt with differently and that seems to have been effective, certainly in Newcastle, which I have looked at in detail recently”. The language of rights is used here and had there been a Human Rights Committee with a broader remit over issues of human rights, it would have the authority to weave together the more complex and multifaceted relationship between children’s rights under the various conventions and other rights that would have led to a more comprehensive solution.

The Scotland Bill Committee

The Scotland Bill Committee was established by the Parliament as an ad hoc committee with the mandate to “examine the UK Government’s Scotland Bill and its implications for Scotland”. This Committee technically falls outside our terms of reference; however, the considerable attention it has given to human rights in its examination of key human rights issues means that it warrants some scrutiny. It has considered matters of constitutional significance for Scotland such as the relationship between the Scottish criminal justice system, the Scotland Act, the UK Human Rights Act, the European Convention and the UK Supreme Court and the conditions under which the latter exercises an appellate jurisdiction over Scottish matters. Although the Committee fully engaged with and used a human rights framework in its examination of the various powers and competencies of public authorities, its ad hoc character denies the Parliament the tools and expertise with which it exercises oversight over matters of such significance for citizens. In our view, this is a responsibility befitting a permanent parliamentary body with prerogatives to oversee such matters. We think that this is the kind of function that falls clearly within the competence of a human rights committee.

Education and Culture Committee

In four of its five meetings held during the period under review, the Education and Culture Committee has taken evidence under agenda item: “Educational Attainment of Looked-after Children”. A common thread of all four meetings is the idea of “getting it right for every child”, a policy framework “designed to help children and young people achieve their full potential”. Although there are several mentions of the right of the child, this is not framed in terms of the child’s human right to education. Participants emphasized the contradictory nature of Additional Support for Learning (ASL) legislations often biased “more towards parental rights—the rights of pushy parents, for want of a better expression—than towards the rights of looked-after children.”¹ Emphasis has been given to two upcoming legislations—the Children’s Rights Bill and Children’s Services Bill as offering Scotland “a more cohesive, simple and up-to-date approach” in all matters concerning children. In assuring the Committee of the government’s overall strategy, Angela Constance, Minister for Children and Young People, said, “With regard to our overall strategy, I am very keen that with the Children’s Rights Bill we as a government start by setting a standard and placing on ourselves the expectation that we will lead by example in having regard to the United Nations Convention on the Rights of the Child. That will be done in advance of the children’s services bill to ensure that we can say that we have tried to put our own house in order before we seek improvements from our local government and health partners”.

Although there has been much discussion about looked-after children and their rights under the various statutes, including references to the expected implementation of the Convention on the Rights of the Child, there is no visible invocation and use of the human rights framework to justify and explain the basis of the child’s right and the state’s duty to provide.²

¹ Education and Culture Committee, Meeting of 15 November 2011, at 426.

² At its meeting on 29 November 2011, tuition fees funding was discussed. Insofar as tuition fees could touch up on questions of affordability and access, this might entail the need for a human rights framework. However, as with other issues, this is not directly obvious, and most likely that this committee would still deal with such issues.

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Public Petitions Committee

The remit of the Public Petitions Committee is “to consider public petitions addressed to the Parliament” and determine the proper course of action “upon an admissible public petition”. At its meeting on 1st November 2011, the Committee deliberated on “Access to Justice (Environment) (PE1372)” and decided to refer the matter to Equal Opportunities Committee. A matter of significant importance for human rights was discussed at its meeting of 29 November 2011 under the Agenda Item “Institutional Child Abuse (Victims’ Forum and Compensation) (PE1351)”. During this meeting, the Committee received evidence from Roseanna Cunningham (Minister for Community Safety and Legal Affairs), Michael Matheson (Minister for Public Health) and Duncan Wilson (Scottish Human Rights Commission). In his evidence, Duncan Wilson not only situated his overall argument within international law, but also emphasized the need for employing that framework for understanding and articulating issues concerning the best interest of the child. He said: “The human rights framework is based on international law, best practice, survivors’ views and the views of experts with experience of similar processes elsewhere in the world”. In emphasizing the importance of historical justice for victims of child sexual abuse, he called for an investigation that gets to “the bottom of the issue” and identifies the extent of responsibilities by all those involved. In making this case, Wilson situated the whole debate squarely within the framework of the international law of human rights. He said: “International human rights law is clear that the ultimate responsibility lies with the state, so it is for the state to demonstrate leadership by committing to a process like that and by not only contributing in kind but by taking steps to address the barriers to justice that continue to exist.” In the discussion that followed with the two ministers, the Committee paid particular attention to “the framework of the Scottish Human Rights Commission”. This is suggestive of the fact that the Committee does not use a human rights framework similar to that used by the Commission.

Since the competence of this Committee is limited to receiving petitions and referring it to the relevant body, as it for example did in the case of the “Access to Justice

(Environment) (PE1372)” petition to the Equal Opportunities Committee, there seems to be no Committee in the Parliament that expressly uses the human rights framework to which it can refer important petitions. If this Committee receives a petition anchored in international human rights laws applicable to Scotland, there is a risk that it will not receive the proper consideration if it is sent to the Justice Committee or any other committees.

Health & Sport Committee

In the period under review, the Health and Sports Committee met eight times to consider matters ranging from the Welfare Reform Bill to Draft Budget and Spending Review. As the Welfare Reform Bill was central to the committee's deliberation, several issues of considerable interest for human rights emerged and were discussed. In particular, the Committee considered the repercussions of the proposed reform on vulnerable people and persons with disability. This includes, but is not limited to;

- The impact of the proposed cuts to benefits, especially concerning disability benefits, which remains a reserved power. The discussion included the proposal to replace the Disability Living Allowance (DLA) with a new Personal Independence Payment (PIP).
- The Bill's proposal to downscale disabled housing solutions to one-bedroom houses. The committee raised the issue that this could increase homelessness as Scotland has a severe shortage of one-bedroom houses.
- Concerns were raised regarding the effect of benefit cuts to mental health patients. The Committee was apprehensive that the proposed Bill would regard many mental health patients as unqualified to receive benefits due to the "inconsistency of their disability", leaving vulnerable people facing further hardship.
- Direct mention of the human rights of disabled persons regarding the right to independent living, dignity, and respect.
- The Welfare Reform Bill was considered by the committee to require continued scrutiny from a single committee (which was subsequently established in January 2012) to allow sustained attention to the rights of vulnerable persons and persons with disability.

Although the subject matter covered by the Reform Bill squarely touches on fundamental human rights such as the right to freedom from discrimination as per Article 14 of the Human Rights Act, the committee refrained from using a human rights

framework, both national and international, within which to understand and ground its views.³

One of the recurring themes throughout the discussion on the Reform Bill was the idea of independent living, dignity, and respect - “giving disabled people freedom, choice, dignity, and control”. However, none of the committee members or the other participants invoked the human rights framework to justify their invocation of the principle of independent living, dignity and respect for people with disability. For example, Keith Robertson of the Scottish Disability Equality Forum said, “The effect [of the Reform Bill] on disabled people will be devastating. For many, it will mean isolation, depression, anxiety, a life without dignity and respect and, most important, a life without independence. We are going back to denying disabled people the very basic human rights that Abraham Maslow identified in his hierarchy of needs.”⁴ Other participants referred to a statement called: “Independent Living - A Shared Vision” to justify the demand for a dignified life, to support and authenticate their contention that the state is duty bound to respect and ensure respect for the dignity and choice of disabled and vulnerable people.⁵

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Although the human rights regimes applicable in Scotland provides an adequate normative framework and a vocabulary within which to understand and articulate the issues under discussion, the evidence shows missed opportunities that could have allowed the committee to contribute towards entrenching a human rights culture in the system. We think that the committee’s failure to use a human rights framework—the Human Rights Act (1998) or any other applicable international human rights instrument—on matters that affect the right to independent living, dignity, and respect for disabled and vulnerable persons, is worrying and missed opportunity that makes a human rights committee all the more urgent.

³ Reference could have been made by the committee to the Human Rights Act 1998 (HRA). The proposed changes from DLA to PIP could be viewed as unlawful if they denied individuals the right to quality of life. Furthermore, the disability right cited in the HRA Article 14; ‘The right to freedom from discrimination’, can be extended to discrimination within the benefit system as can First Protocol, Article 1; ‘The right to protection of property’ (the definition of property can apply to benefits). Such references to UK legislation were absent from the committees meetings.

⁴ See Official Report, Health and Sports Committee, Tuesday 22 November 2011, p 618.

⁵ Pam Duncan from Inclusion Scotland said, “Let me start with the principles of independent living and giving disabled people freedom, choice, dignity and control. In signing up to the independent living vision, the Scottish Government recognised the need for disabled people to be supported in participating in the community.”

Subordinate Legislation Committee

The Subordinate Legislation Committee is tasked with scrutinising “subordinate legislation which is laid before the Parliament” and “any Scottish Statutory Instrument not laid before the Parliament” . . . “to determine whether the attention of Parliament should be drawn to it. As such, its mandate extends to a wide range of legislation with significant human rights implications. At its meeting on 22nd November 2011, it considered the Act of Sederunt (Contempt of Court in Civil Proceedings) 2011 (SSI 2011/388) and expressed concern about the meaning of the phrase “differently constituted court” stipulated under Rule 4(1) and suggested that “presiding judges and sheriffs will have to interpret it in a way that is compatible with the rights of the person accused under articles 5 and 6 of the European Convention on Human Rights.”

At its meeting on 29th November 2011, it considered the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill as amended at Stage 2 and raised many points pertinent to human rights. Firstly, it examined the power detailed in section 4A enabling Scottish ministers to modify Section 1 - that is, to “add, remove or vary a description of behaviour” that will be treated as offensive. These currently include “colour, race, nationality, ethnic or national origins, sexual orientation, transgender identity and disability”. Section 4A gives Scottish ministers the power to both alter this list and determine the definitions of the terms used. Secondly, the Committee considered a report of the Justice Committee, which proposed a widening of the list of offensive behaviours to include age or gender – something which could be achieved using powers given in section 4A. Lastly, the committee goes on to consider the Justice Committee’s concern that the “catch-all” test for offensive behaviour in section 1(2)(e) of the Bill might be in conflict with the ECHR, particularly regarding freedom of expression.

While the Committee’s approach to the Offensive Behaviour at Football and Threatening Communications Bill was rooted in the framework of the ECHR, and this is one area where human rights considerations seems to have worked well, the breadth of its mandate calls for at least a rapporteur that scrutinizes subsidiary legislations from a human rights perspective.

Public Audit Committee

The remit of the Public Audit Committee is to scrutinise reports by the Auditor General for Scotland into the expenditure and performance of Scottish Government departments and most other public spending bodies. At its meeting on 9th November 2011, the Committee considered “The role of Community Planning Partnerships (CPPs) in Economic Development” in the presence of MSPs, representatives from Audit Scotland and public institutions such as the Scottish Prison Service. Although Community Planning Partnerships cover “a wide area of activity, including, for example, community safety, homelessness, lifelong learning and tackling antisocial behaviour”, this particular report focuses on “CPPs’ roles in economic development”. Although the Committee sees provision of public services as central to the Scottish government’s overall objective of economic growth, it does not situate them within the framework of human rights.

At its meeting on 23rd November 2011, the committee considered Agenda Item: “Section 23 Report: “An overview of Scotland’s criminal justice system”. The committee recognised the need to balance the public interest with the rights of the victims and the accused. Without couching them with a vocabulary of human rights and situating them within a human rights framework, the committee deliberated various issues with an obvious human rights dimension: prisoners’ rights and their rehabilitation process, the right to fair trial, length of trials, rights of victims, and particular issues surrounding female prisoners. Access to justice was deemed a “priority” at all times, even in times of financial constraints. These rights are in line not only with the UK’s international human rights obligations such as the ICCPR, ECHR, CEDAW, etc, but also with the UK Human Rights Act. Nevertheless, the Committee refrained from taking due account of any of these applicable rules. A Human Rights Committee with a proper mandate could have given due consideration for all the relevant human rights laws and treaties applicable in Scotland.

Infrastructure and Capital Investment Committee

This committee scrutinises the policies and expenditure of the Scottish Government in relation to housing, transport, capital investment, digital infrastructure and broadband, fuel poverty and energy assistance, Scottish Water and public procurement. Alongside MSPs from all parties, representatives from local authorities and prominent civil society organisations, such as CBI Scotland, contributed to the committee meetings in November 2011. In three of its meetings during the period under consideration, the Committee deliberated on transportation⁶ (the link between transport and social and economic concerns), housing⁷, fuel poverty⁸ and broadband.

Given the significance of the tasks that fall within its mandate, the Committee's powers could affect the human rights of people in Scotland and thereby should be subject to scrutiny by a Human Rights Committee.

⁶ The 7th committee meeting discussed the link between transport and social and economic concerns (7th, p.247, p.261) but the issue was predominantly viewed through its cost and relationship to economic growth and not as a human rights issue. Universal access, such as through the concessionary fare scheme, could, therefore, be under threat through this current approach, impacting on a range of human rights concerns such as the right to work and access to health care.

⁷ The 8th committee also viewed this issue through an economic cost framework, not as a universal rights issue. Input was received from Shelter prior to the 8th meeting and the Government claimed to be very close to providing the money outlined by the charity as necessary to complete 6,000 houses for social housing (8th p.315). The Government also say that they should be judged not on how much the social housing project will cost but by how many houses they build (p.316). The housing money is 'ring fenced' (page 319, 8th O.R.) and thus a priority. However the language of human rights is absent from the discussion.

⁸ At the 8th meeting it was stated that the funding for fuel poverty assistance and the warm homes fund was allocated through savings made from the Forth replacement crossing contract (p.312), thus there is the issue of contingency here. Energy Action Scotland were consulted prior to the 8th meeting but the language of human rights is absent.

Finance Committee

As part of its mandate to scrutinise draft budget, the Finance Committee met five times during the period under review to receive evidence and deliberate on issues of significant importance for human rights. At its meeting on the 2nd of November 2011, the Committee considered agenda item “Draft Budget 2012-13 and Spending Review 2011 Scrutiny” and deliberated on a range of issues that come under the domain of preventive spending including the prioritisation of resources. The committee heard evidence from Catriona Renfrew (NHS Greater Glasgow and Clyde) on “early intervention and prevention to stop neglected children from becoming future prisoners or kids who fail in education”. Although there were several references to local authorities calibrating their resources to meet statutory requirements, which according to the evidence “tend[s] to be reactive and responsive”, rather than being preventive, neither the committee nor the participants invoked a human rights framework as a normative tool for understanding and analysing what the Convener referred to as a “better . . . outcomes for young children”. In the three meetings that followed, the committee looked at major issues of paramount importance for human rights - free education, living wages, pensions and fuel poverty, wellbeing, income distribution and inequality, and budget for looked after children. Although these are pivotal issues where the committee could have employed a human rights approach, there is no mention of human rights at all. Part of the problem seems to be that, despite their best effort to engage the public through inquiries and evidences received from civil society organisations, their perspective is constrained by a plethora of factors immediate to their mandate.

Committees Not Included

The following committees did not discuss any issue relevant to human rights during the month under review:

Standards, Procedures and Public Appointments Committee

Local Government and Regeneration Committee

Rural Affairs, Climate Change, and Environmental Committee

Economy, Energy and Tourism Committee

European and External Relations Committee

Conclusion

There is an increasing acceptance today that Parliament bears the primary responsibility for entrenching a human rights culture across all institutions of government. The establishment of various committees within the Scottish Parliament dealing with particular human rights issues, such as the Justice Committee, the Equal Opportunities Committee, the Scotland Bill Committee, and Public Petitions Committee is a reflection of this acceptance. Although we are limited by the terms of reference to a single calendar month, the evidence for the period reveals a widespread disregard of the normative and institutional framework for conceptualizing and analyzing human rights issues. Although there is no evidence to suggest that this is deliberate, most Committees did not seize the opportunity to imbue human rights in their respective field of activities.

More concerning is the perspective of the Justice Committee on human rights. As the only committee with the sole competence over general human rights issues, the Committee should have insisted and pushed government departments to take into account the human rights framework in their proposed legislation and in the implementation of their policies. Whenever the Committee scrutinizes legislations for issues that are of equal importance for human rights and the administration of criminal justice, the logic that informs and inspires its particular action or inaction seems to be rooted, more often than not, in the discourses of criminal justice than human rights. A typical account of this is the discussion on 22 November 2011 on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill where the Committee expressed concern over what it described as “a catch-all phrase” in terms of prosecutability. The Committee was reminded by representative of an executive branch present at the meeting that “any legislation that is put before the Scottish Parliament must comply with the European Convention on Human Rights”. It is the responsibility of a parliamentary body within whose remit sits human rights to exercise legislative oversight and demand accountability from government, not vice versa. Given the depth and breadth of the remit of the Justice Committee, if the current arrangement is not changed, we think there is a serious risk that human rights might be trapped in the

penumbra of justice, reduced to the narrower terrain of criminal justice, and lose their vibrant, transformative and dynamic normative force.

Although creating a Human Rights Rapporteur within all the committees or requesting all the committees to include human rights considerations in their annual report could go a long way in alleviating some of these problems, we do not take the view that this arrangement, by itself, can play an instrumental role in increasing the “profile of human rights in parliament”. The proposal to move human rights to the Equal Opportunities Committee is practically sensible. However, if the Committee is to exercise legislative oversight over the entire enterprise of human rights, it appears logically incoherent to call the Committee the Equal Opportunities Committee. To the extent that the subject matter of equal opportunities is closely linked to the right to equality, one of the most fundamental human rights, a Human Rights Committee can take over the mandate of the Equal Opportunities Committee. In considering this proposal, we envisaged a potential framework of interpretation under which a discourse on human rights refuses to sit well with a discourse on equal opportunities, making tension between the two possible but not inevitable. If Parliament or the CPG deems Equal Opportunities a norm separate from human rights and worthy of ongoing scrutiny by special parliamentary body, Equal Opportunities can either continue as an independent Committee or restructured as a semi-independent sub-committee of the Human Rights Committee. If Parliament is to play a pivotal role in entrenching a culture of human rights in institutions of Scottish Government, it needs a Human Rights Committee with a robust mandate that takes due account of the international human rights obligations of Scotland. This would be even more compelling in an independent Scotland which would have to periodically report to multiple international monitoring bodies.

Recommendations

On the basis of its findings, the GHRN makes the following observations and recommendations:

A Human Rights Committee can use human rights as a uniting value between various Committees with special competence over specific areas of human rights or any committee dealing with issues of secondary importance to human rights. A permanent Human Rights Committee serves as the vanguard of the human rights of the Scottish people. These are values so fundamental that only parliament can take responsibility for their continued entrenchment in the system. We think that this is one of the most basic of parliamentary oversights directly tied to the advancement of human dignity. A human rights committee has a direct responsibility and opportunity to take a proactive role in promoting and protecting human rights not only by ensuring the compliance of legislations, old and new, with basic international human rights standards but also through coordination with a broader array of local, national and international stakeholders.

By establishing a Human Rights Committee in the Scottish Parliament, the latter can:

- entrench a culture of human rights in Scotland
- thoroughly scrutinise the compatibility of legislations with the UK Human Rights Act and other international human rights instruments to which the UK is a party
- ensure that secondary legislations delegated to various departments and other soft law instruments such as declarations, resolutions, memorandums, and statements of the Scottish government comply with the UK's and Scotland's international human rights commitments
- remain engaged with human rights groups and stakeholders at all levels
- monitor the effectiveness of various national human rights mechanisms in implementing human rights commitments of the government
- ensure that human rights are streamlined and guide policy making of the Scottish Government
- scrutinize various concluding observations of international human rights monitoring bodies when its interest so demands

- ensure it has a key device that brings together various committees and non-parliamentary agencies working to improve the protection of human rights, such as the Justice Department, Scottish Human Rights Commission, Scottish Public Services Ombudsman, NHS, prosecution service, police, and courts