



September 2018

Submission to the Joint Committee on Human Rights

'The Human Rights Act 20 years later' Inquiry

Introduction

1. This submission has been written by Just Fair and is supported by Women's Budget Group, Inclusion London, Sustain, The Equality Trust, Child Poverty Action Group, Doctors of the World, York Human Rights City Network, Friends Families and Travellers, Generation Rent, Mind, Runnymede Trust, British Institute of Human Rights and Amnesty International UK. Just Fair works to realise a fairer and more just society in the UK by monitoring and advocating for the protection of economic and social rights.

2. Two decades after its adoption we must celebrate the Human Rights Act (HRA). The HRA has been shown to be effective in securing human rights by allowing judges to apply the European Convention on Human Rights directly and requiring public bodies to act in accordance with it. In particular, the duty on public authorities not

to act in a way that is incompatible with the Convention (Section 6) has transformed the development of policy and the delivery of public services, securing positive changes for people without recourse to the court.¹ Endorsing the opinion expressed in other submissions, the aforementioned signatories believe that the HRA should remain intact and with no regression either in terms of the mechanisms of the Act or the rights protected.

3. The Joint Committee also [wants to know](#) about “future challenges” (Question No. 4), and specifically how the HRA could be improved with possible changes to primary or secondary legislation (Question No. 3). This submission focuses on these two questions only.

Not all human rights were brought home with the Human Rights Act

4. The UK has signed and ratified a number of international human rights treaties that have not been incorporated into the national legal system. This is the case with the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), as well as the European Social Charter under the umbrella of the Council of Europe.
5. All these treaties are binding for the UK in accordance with international law but there is no direct mechanism in place for individuals and groups to hold public authorities accountable for the violation of these rights and to seek appropriate remedies.
6. Moreover, while the EU Withdrawal Act 2018 retains nearly all EU law as directly applicable in the UK following the departure from the EU, the Act makes clear that “the Charter of Fundamental Rights is not part of domestic law on or after exit day” (Section 5(4)). The Charter covers a number of rights that are not included in the HRA, including economic and social rights. The impact of this omission is significant because there is no other constitutional mechanism by which courts can invalidate laws that fail to meet basic human rights standards.

British people care deeply about economic and social rights

7. Year after year, the Social Attitudes Survey shows a general concern for public services that are essential for the fulfilment of economic and social rights. A majority of the public believe employers should pay wages that cover the cost of living; they also support a national minimum wage increase and wage top-ups for low-earning single parents and working couples without children.² A growing majority believe in fairer taxation and greater redistribution of income, favouring also public spending on disability benefits.³

¹ See submission by the British Institute of Human Rights (Human Rights Alliance).

² NatCen, [British Social Attitudes Survey No. 35](#), 2018.

³ NatCen, [British Social Attitudes Survey No. 34](#), 2017.

8. Research by the Children’s Rights Alliance for England shows that the academic distinction between civil and political rights on the one hand, and economic and social rights on the other, is not easily understood by children experiencing homelessness; their lived experience demonstrates that the enjoyment of education, family life and adequate housing absolutely depend on each other.⁴ This was observed by the European Court of Human Rights nearly four decades ago, when the Court said that “there is no water-tight division separating” the different categories of human rights.⁵ Similarly, the Joint Committee on Human Rights pointed out in 2004 that the sets of rights “are not distinct and should not be divided”.⁶
9. The people of York chose education, housing, decent standard of living, health and social care, and equality and non-discrimination as the five human rights issues the York Human Rights City Network should focus on.⁷ When they are informed about them, people care deeply about economic and social rights, but it is essential to widen the general knowledge about these rights. A recent study by Ipsos Mori has shown that between 65 and 80% of the people in the UK do not know that the rights to an adequate standard of living, to education, to health and to work are part of the Universal Declaration of Human Rights.⁸

Enhancing economic and social rights would make a real difference to policy and people’s lives

10. In 2016, the UN Committee on Economic, Social and Cultural Rights, which monitors implementation of the ICESCR, made 60 recommendations to the UK, most of which have not yet been considered by the government.⁹ In one of these recommendations the UN Committee urged the UK to “fully incorporate the (rights proclaimed in the ICESCR) into its domestic legal order and ensure that victims of violations of economic, social and cultural rights have full access to effective legal remedies”.
11. Enhancing the status of internationally recognised economic and social rights would change policy and would have a positive impact on people’s lives.
12. The ICESCR requires State Parties to take steps to the maximum of their available resources to achieve progressively the right to social security (Articles 2(1) and 9) and other socio-economic rights. To comply with human rights standards, policy adjustments in times of economic crisis must be temporary, meet the thresholds of necessity, proportionality and non-discrimination, mitigate inequalities and ensure that the rights of the most disadvantaged people are not disproportionately

⁴ CRAE, [Change It: Children speak out on homelessness](#), June 2018.

⁵ [Airey v Ireland](#) 32 Eur Ct HR Ser A (1979): [1979] 2 EHRR 305, para. 26.

⁶ JCHR, [The International Covenant on Economic, Social and Cultural Rights](#), HL Paper 183, HC 1188, October 2004, para. 163.

⁷ [York Human Rights City Network](#).

⁸ Ipsos Mori, [Human Rights: A Global Advisor Survey](#), July 2018, pp. 22-24.

⁹ CESCR, [Concluding Observations: UK](#), July 2016, UN doc: E/C.12/GBR/CO/6. See also EHRC’s update report: EHRC, [Progress on socio-economic rights in Great Britain](#), March 2018.

affected.¹⁰ Abundant research shows that welfare reforms since 2012 have not complied with these requirements.¹¹ In fact, four UN Special Rapporteurs, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of Persons with Disabilities, and the European Committee of Social Rights have expressed serious doubts about the compatibility of welfare reforms with the UK's international human rights obligations.¹² In 2011, the Joint Committee on Human Rights was also "disappointed by the Government's failure to carry out any detailed analysis of the compatibility of (the Welfare Reform Bill) with the UK's obligations under the UNCRC, the ICESCR and the UNCRDP".¹³ If economic and social rights were enhanced, among other things the government would have to: a) review the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016 to restore the link between social security entitlements and the costs of living; b) design and implement a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty; and c) extend the analysis of the distributional impact of tax and public spending to look at the aggregate impact in light of the protected characteristics under the Equality Act 2010 as well as income and wealth disparities.

13. The right to adequate housing is recognised in the ICESCR (Article 11). Security of tenure is an essential ingredient of the right to adequate housing "notwithstanding the type of tenure".¹⁴ In accordance with international human rights law, national legislation on evictions must respect the principles of reasonableness and proportionality; this means that tenants must be able to object or lodge an appeal so that the judge might consider the consequences of the eviction and its compatibility with the ICESCR.¹⁵ Currently English law does not protect tenants if a landlord fails to maintain a property in a standard that is fit for human habitation. Tenants expose themselves to the risk of eviction if they take legal action because Section 21 of the Housing Act 1988 permits landlords to evict tenants with no fault and without giving a reason. According to the National Audit Office, the ending of private sector tenancies is the biggest single driver of statutory homelessness in England.¹⁶ More than 80% of private sector evictions in 2015 were no-fault

¹⁰ CESCR, *Letter by the Chairperson of the CESCR to States parties to the ICESCR*, May 2012; CESCR, *Public debt, austerity measures and the ICESCR: Statement by the CESCR*, June 2016, UN doc: E/C.12/2016/1, para. 4.

¹¹ Just Fair and 14 other groups, *Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights in advance of his official mission*, September 2018.

¹² UN Special Rapporteurs on Housing, on Rights of Persons with Disabilities, on Extreme Poverty, and on the Right to Food, "[Joint letter to the UK Government](#)", UN doc. AL GBR 1/2016, April 2016, p. 12; CRC, *Concluding Observations: UK*, July 2016, UN doc. CRC/C/GBR/CO/5, para. 66 and 69-70; CESCR, *Concluding Observations: UK*, July 2016, UN doc: E/C.12/GBR/CO/6; para. 40-42 and 47-48; CRPD, *Inquiry concerning the UK*, 2016, UN doc. CRPD/C/15/R.2/Rev.1; ECSR, *Conclusions XXI-2 (2017) United Kingdom*, January 2018.

¹³ JCHR, *Legislative Scrutiny: Welfare Reform Bill*, HL Paper 233, HC 1704, December 2011, para. 1.35.

¹⁴ CESCR, *General Comment No. 4: The Right to Adequate Housing*, 1991, UN doc: E/1992/23, para. 8.a.

¹⁵ CESCR, *General Comment No. 7: The Right to Adequate Housing and Forced Evictions*, 1997, UN doc: E/1998/22, para. 11; CESCR, *Views with regard to communication 5/2015, MBD et al v. Spain*, 2017, UN doc: E/C.12/61/D/5/2015, para. 13.4 and 21.a.

¹⁶ National Audit Office, *Homelessness*, 2017, p. 6.

evictions,¹⁷ and Generation Rent has found a tight correlation between homelessness and Section 21 evictions: 92% in London and 88% outside of London.¹⁸ The Landlord and Tenant Act 1985 should be amended to require that residential rented dwellings in England are fit for human habitation, and no-fault evictions regulated in Section 21 of the Housing Act 1988 should be abolished to comply with international human rights law.¹⁹

14. Article 12 ICESCR proclaims the right to the highest attainable standard of health. The UK must guarantee this right is exercised without discrimination of any kind, in particular between men and women (Articles 2(2) and 3). A Memorandum of Understanding (MOU) between NHS Digital, the Home Office and the Department of Health came into effect in January 2017.²⁰ The intention of this MOU was to formalise and facilitate the access to NHS patients' non-clinical information, including their home address, by Home Office Immigration Enforcement authorities. In May, the Government amended the MOU so that data-sharing across agencies would only be lawful in the case of "serious criminality", but there has been no clarification around the precise definition of this threshold. Under review since then, the MOU violates not only the rights to private and family life and non-discrimination recognised in the HRA (Articles 8 and 14 of the European Convention on Human Rights), but ICESCR as well. The transfer of non-clinical personal data between the NHS and immigration authorities seriously impairs the enjoyment of the right to the highest attainable standard of health for thousands of people living in the UK.²¹

There are ways to enhance the status of economic and social rights domestically

15. Scotland and Wales have explored and implemented interesting mechanisms to give effect to economic and social rights. The Social Security (Scotland) Act 2018 starts from the principle that "social security is itself a human right and essential to the realisation of other human rights" (Section 1(b)). The Scottish Parliament considered incorporating in this Act the duty to have due regard to ICESCR and to the authoritative interpretation of the right to social security by the UN Committee on Economic, Social and Cultural Rights, but the amendment was not carried at the end.²² Featured in the Scottish government's programme, civil society is debating a Good Food Nation Bill/Programme that could incorporate the human right to food into Scots law.²³ The socio-economic duty (Section 1 of the Equality Act 2010) has been in force in Scotland since April 2018, where it is known as the 'Fairer Scotland Duty'.²⁴ In the exercise of their functions, Welsh ministers must have due regard to the UN Convention on the Rights of the Child, and the Wellbeing of Future

¹⁷ Joseph Rowntree Foundation and Cambridge Centre for Housing and Planning Research, [Poverty, Evictions and Forced Moves](#), 2017.

¹⁸ Generation Rent, [No-fault evictions drive up homelessness](#), August 2018.

¹⁹ Just Fair and Generation Rent, [No-fault evictions violate human rights: Section 21 must end](#), September 2018.

²⁰ Home Office, Department of Health and NHS Digital, [Memorandum of Understanding](#), November 2016.

²¹ Just Fair and Doctors of the World, [Right to Health for All](#), June 2017.

²² Scottish Human Rights Commission, [Social Security \(Scotland\) Bill – Stage 2 Briefing Amendments – The right to social security](#), January 2018.

²³ Nourish Scotland: [Campaigning for a Good Food Nation Bill](#).

²⁴ Scottish Government, [Fairer Scotland Duty - Interim Guidance for Public Bodies](#), March 2018.

Generations (Wales) Act 2015 incorporates a duty that closely resembles the uncommenced socio-economic duty of the Equality Act.

16. Examples from other jurisdictions should also be examined in detail. The South African constitution establishes certain requirements to respect, protect and fulfil economic and social rights, including the right not to be evicted without a fair procedure, the non-derogable status of children's rights, and the expectation of adoption of reasonable measures to progressively realise the rights to housing, health and food. The Finnish constitution presumes parliament will legislate in favour of socio-economic rights, and there is a hybrid model of ex ante parliamentary scrutiny and ex post judicial review. Canadian courts have the power to strike down legislation that contravenes the constitutional bill of rights, but parliament has the power to override compliance and courts often allow parliament a period to comply with judgments where a human rights breach has been identified in a piece of law.²⁵ The Spanish Constitution establishes that the constitutional bill of rights must be interpreted in accordance with international human rights law, which is part of the domestic legal order.²⁶

Conclusion and recommendation

17. We must **celebrate the very significant contribution of the Human Rights Act**. Two decades after its adoption it is time to make sure all human rights are brought home, for which it will be necessary to make changes to primary legislation while **keeping the Human Rights Act untouched**. We urge the Joint Committee on Human Rights to recommend **enhancing the status of the International Covenant on Economic, Social and Cultural Rights and other international human rights treaties in the national legal system**.

²⁵ Katie Boyle and Edel Hughes, [Identifying routes to remedy for violations of economic, social and cultural rights](#), *International Journal of Human Rights* 22:1, 2018, pp. 43-69, at 53-54 and 57.

²⁶ Koldo Casla, [Supreme Court of Spain: UN Treaty Body individual decisions are legally binding](#), *EJIL Talk*, August 2018.