



POLICY PAPERS

Workers' Rights are Human Rights

(Treatise on Economic and Social Rights)

By Carole Ewart

Carole Ewart is a public policy and human rights consultant

Summary

- Human rights have not realised their potential to protect individual rights e.g. respect for family life and collective rights e.g. to belong to a trade union.
- Successive governments, or part of them, have marginalised human rights which means that public support for human rights is worryingly low. Civil society, in particular unions, have an important role to play in reversing this view by identifying the relevance of human rights to workers' everyday lives and acknowledging their importance in delivering a fair Scotland and UK. For example using human rights arguments in the public procurement process.
- The UK Government seems to be adopting an anti-human rights position in respect of trade union rights eg voting thresholds and abolishing 'check off'. The Scottish Government, which must apply the HRA can be more proactive with legislation and subordinate legislation, guidance etc. to actively support human rights across devolved functions.
- Upholding our human rights, contradicts the free market economic philosophy of the UK government. However our Government has inherited an undertaking to the UN, that it will 'progressively deliver' to the 'maximum extent of available resources' defined economic and social rights eg the right to an adequate standard of living. Human rights compliance should, therefore, be central to the economic strategy in which businesses operate, underpinned by a philosophy that respecting rights equates with business

success. The UN's framework on business and human rights allows our government's economic strategy to fit a globally recognised model.

- For 'rights holders', there is a lot of catching up to do in terms of building the knowledge base and skill application. For example by changing the terminology from an "ask" to an assertion of specific rights to the duty bearer eg a local authority or health board. And an understanding by the duty bearer that they must act and if they choose not to, there is a reasonable expectation that the human right will be enforced.
- We need to be more astute in linking human rights with policy and legislative opportunities, eg in the forthcoming social justice consultation, the Community Empowerment Act 2015¹ and its implementation.

Recommendations

1. Civil society and trade unions should build the knowledge and skills of workers and empower them to assert and enforce their human rights. The current Scottish Government public information campaign to increase awareness of the benefits of human rights runs from 18th November until 10th December 2015 and the momentum should be maintained by unions and civil society after that.
2. Consideration should be given as to what can be achieved within the devolved settlement to expand human rights to include worker's rights as defined in the UN International Covenant on Economic, Social and Cultural Rights (ICESCR). This could begin immediately and cover the new powers via the Scotland Bill, and manifestos for the Holyrood elections in May 2016.
3. Working with the Human Rights Consortium Scotland (HRCS), unions have provided evidence to the UN in October 2015 on how workers do not equally enjoy economic and social rights which results in measurable disadvantage to them and their families. In advance of the formal hearing in June 2016 on the application of ICESCR in the UK, there is an opportunity to use the process to inform more people about human rights as well as gather evidence on how the UK government is failing to progressively realise to the maximum extent of its available resources, the equal enjoyment of rights.
4. Poverty is a menace which needs to be addressed by structural reforms in our economy and there is an opportunity to deliver that change by contributing to the Scottish Government's baseline research on 'business and human rights'.

Introduction

This paper sets out the case for treating human rights as workers' rights and urges the adoption of consistent definitions for those rights. It argues that human rights are a powerful tool for workers that, so far, has been under-utilised and recommends that workers need to know more about the detail as well as how to assert them.

Demonising human rights has been a successful government strategy which fulfils a distinct political purpose: human rights are presented as a problem rather than as the

¹ The Bill received the Royal Assent on 24th July 2015 and more information can be found on the Scottish Government website
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/77926.aspx>

potential solution to many current issues such as securing better pay and working conditions for workers via the public procurement process and tackling the blacklisting of workers by organisations. Human rights make us each powerful: we are rights holders and the state is the duty bearer to proactively deliver our rights. However poor awareness of rights and remedies lets the state, our governments, off the hook.

By feeding into UK and Scottish obligations on human rights, there are opportunities for action particularly by unions. For example, as the UK Government reports to the UN on progress in delivering economic and social rights “to the maximum extent of its available resources”², there is an opportunity to influence the debate about what compliance action the UK government must take. This paper also sets out how industrial democracy can be developed within the UK, and Scottish Governments’ work on the UN’s global business and human rights agenda, so that our companies comply with internationally agreed human rights standards both at home and abroad.

The report concludes that respecting, protecting and promoting human rights is part of the solution in Scotland and the UK, and stakeholders need to get involved in generating a better understanding of the detail of rights and for their consistent implementation across the UK and Scotland eg laws, policies and funding priorities. This requires developing and supporting partnership working with a range of people and agencies and seizing current domestic and international opportunities, and in particular ensuring Scotland’s National Action Plan on Human Rights has impact.

1. What are human rights?

- i. UK politicians have been successful in demonising human rights portraying them as friend only to the prisoner, terrorist and generally undeserving. That is odd as, according to international law, human rights are to be equally enjoyed and are the foundation of freedom, justice and peace in the world. We are each entitled to basic rights as we are human and these rights derive from the inherent dignity of the individual.³ So we need to reflect on what is the political gain in marginalising an asset, and making it a liability.
- ii. Under international law, the UK State holds the responsibility for respecting, protecting and fulfilling human rights so the onus is on the state to act when there are abuses of human rights. In a UK context, the state is headed by the elected government but in practice the obligations fall on public agencies such as the Home Office, the DWP, health boards, local authorities and housing associations. In a Scottish context there are over 10,000 public authorities.
- iii. The Human Rights Act 1998 (HRA) incorporated into domestic law the European Convention on Human Rights (ECHR)⁴. Not all rights are incorporated eg Article 13 the right to an effective remedy. Section 6 of the HRA requires all public authorities, and those delivering services of a public nature, to comply with the ECHR. This duty covers thousands of public

² Article 2 of ICESCR

³ See preamble to the Universal Declaration of Human Rights and Fundamental Freedoms 1948 <http://www.un.org/en/documents/udhr/>

⁴ The ECHR can be found at http://www.echr.coe.int/Documents/Convention_ENG.pdf

authorities such as the UK Border Agency, providers of education and care services and regulators such as Audit Scotland. The rights are defined in the original ECHR and in protocols including: an absolute ban on inhuman and degrading treatment (Article 3); the right to a fair process in determination of civil rights and obligations (Article 6); the right to respect for private and family life, home and correspondence (Article 8); freedom of expression including the right to receive and impart information (Article 10); the right to peaceful enjoyment of possessions (Protocol 1); and Article 11 “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”

- iv. Human rights are broader than the often narrow list of civil and political rights which we hear so much about, eg the right to a fair trial, under the ECHR. Incidentally this right translates into all sorts of situations as it is about a fair process and can be used imaginatively eg can include administrative decisions made by public bodies, which are not courts or tribunals, which determine civil rights or obligations eg in some planning cases.
- v. The UK is a member of the UN Security Council and is a big hitter in global politics. The UK is also an elected member of the UN Human Rights Council which sits in judgement on the performance of all nations in respect of fundamental human rights. The process, the Universal Periodic Review (UPR), is a major part of ensuring that countries which do abuse human rights are held to account by their peers. Overall the UK’s diplomatic strength comes from global respect. That respect can however be diminished if, during the examination of its compliance with key human rights treaties, its performance is viewed as inadequate and it is telling other nations to do that which it is not doing itself.
- vi. The UK has ratified a range of important treaties and ratification means that all laws and policies should comply. In respect of the UN, ratified treaties include:
 - International Covenant on Civil and Political Rights (ICCPR)
 - Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW)
 - Convention on the Rights of the Child (UNCRC)
 - Convention on Economic, Social and Cultural Rights (CESCR)
 - Convention Against Torture (CAT)
 - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
 - UN Convention on the Rights of Persons with Disabilities (UNCRPD)
- vii. On the face of it, the most relevant treaty is ICESCR but don’t be fooled as the UN believes we need to enjoy all of our economic, social, cultural and civil and political rights in order to enjoy our human rights eg your right to vote in free and fair elections may mean nothing if there is no food in the cupboard. Other UN treaties cover economic and social rights too. For example the UNCRC which, under Article 4, obliges our government to act to ensure

children's rights are respected, protected & fulfilled and Article 27 is the right to an 'adequate standard of living for physical & social development'.

- viii. So what rights are included in ICESCR? Article 2 obliges our government to progressively realise to the maximum extent of available resources the rights contained in ICESCR including:
- **Article 3** our Government must ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
 - **Article 6 (1)** our Government recognises the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
 - **Article 9 our Government recognises** the right of everyone to social security, including social insurance.
 - **Article 10 (1) our Government recognises** that: the widest possible protection and assistance should be accorded to the family ...,"
 - **Article 11 (1)** "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right ..."
 - **Article 12** "the right to enjoy the highest attainable standard of physical and mental health".⁵
- ix. Understanding that these are rights which we should currently enjoy changes our language as we move from "asking" for something to "asserting" a specific right. This realisation changes our expectations too. We can draw on UN recommendations on ICESCR when framing the case for reform: for example "to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights."⁶
- x. ICESCR can serve as the framework to address pernicious problems caused by insufficient state action. For example how the duty bearer, the Scottish and UK governments, should deal with blacklisting in a way that complies with our human rights. The Select Committee on Scottish Affairs at Westminster has published a report which makes a series of recommendations, and acknowledged that blacklisting is not confined to one industry:

"Despite the progress and positive steps which have been taken during the course of our inquiry, in this final report we have identified that many questions in relation to the practice of blacklisting remain unanswered. We are specifically concerned as to whether the extent and breadth of the practice is

⁵ Full list of the articles can be found at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁶ "Concluding observations of the Committee on Economic, Social and Cultural Rights on United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories" pub by the UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Paras 11 and 13 pub 12th June 2009 E/C.12/GBR/CO/5

fully known, ... We recommend that the Government take immediate steps to launch such an inquiry as a matter of priority in the new Parliament.”⁷

- xi. Internationally we can operationalise ICESCR as the UN involves civil society in the reviews of UK compliance with ratified treaties. There is an immediate opportunity as the process on ICESCR has already begun. The Human Rights Consortium Scotland (HRCS) gathered evidence from members and organisations including the STUC, Unite and UNISON and submitted a report to the UN Committee on Economic, Social and Cultural Rights in August 2015. In October, a delegation went to Geneva to persuade the Committee’s working group to include key concerns in its “list of issues for the UK”. The evidence made an impact and the list includes the impact of the Trade Union Bill on ICESCR rights and blacklisting of workers⁸. Now, the UK government must work on its response to the 32 issues listed, as does civil society and our two National Human Rights Institutions (NHRIs) – the Scottish Human Rights Commission and the GB Equality and Human Rights Commission. A full hearing on the UK will be held by the Committee at the UN in Geneva in the summer of 2016.
- xii. The great irony is that the globally recognised, independent force that stands up for workers’ rights ie trade unions, are under attack just when their influence is needed by both individual workers, and the UK State, if pay is to rise as the Chancellor has recently called for.
- xiii. Union recognition, collective consultation, collective bargaining and industrial action, sectoral bargaining and co-determination need to be part of the conversation with the UN as a specific roadmap on how to deliver ICESCR in Scotland and the UK, and be ambitious about how to ensure our economy stops creating poverty. The process of participating in the ICESCR review in Scotland is an opportunity to assert rights, build consensus around economic and social reforms and feed that into related opportunities eg the Scottish Government’s work on ‘business and human rights’, its current public information campaign on human rights #FlyTheFlag⁹ and the Scottish Human Rights Commission’s lead role in delivering Scotland’s National Action Plan on Human Rights (SNAP).

2. Political Context to human rights and economic and social rights

- i. Human rights empower people at home, in their relationships with the State and at work. Consequently, the UK Government is hostile to human rights and has decided to abolish the HRA and replace it with a British Bill of Rights. The Government promised a public consultation in September 2015 and then changed the timescale to ‘autumn’ due to opposition within its own party and the complicated consequences for the devolved settlements. A cross party

⁷ ‘Blacklisting in Employment Final Report’ pub by Scottish Affairs Committee 27th March 2015 para 61. See House of Commons website: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/news/blacklisting-final-report-published/>

⁸ Issue 13, For more information see report on HRCS website www.hrcscotland.co.uk

⁹ For more information see the Scottish Government News Release <http://news.scotland.gov.uk/News/Fly-the-flag-for-human-rights-1f5a.aspx>

coalition in support of the HRA is possible amongst MPs including the 58 out of 59 MPs representing Scottish constituencies who support the HRA.

- ii. It is important to note that the last Labour Government was criticised by MPs for not delivering on the very Act it introduced: ‘The Government is, of course, to be commended for introducing the Human Rights Act; but too often subsequently there has been a lack of leadership to use the Act to its full potential, ensure that public bodies promote human rights as well as do the minimum necessary to comply with the legislation...’¹⁰
- iii. The UK Government believes that attacking human rights is a vote winner and not a vote loser. Polling on human rights shows they may be right as there is not as much public support as you might imagine. The Equality and Diversity Forum (EDF) found those who are pro human rights make up 22% of the population; those who are conflicted are 41%, uninterested 11% and anti 26%. The sample size from Scotland, although small, confirms similar views in Scotland.¹¹ Research commissioned by the Scottish Government on “people’s awareness of human rights in Scotland shows that one in five Scots believe human rights are for minority groups only and two in five Scots saying they have no bearing on their everyday life, two thirds of people agree they are a positive thing, and that they’d take action if they felt their rights had been violated.”¹² As unions are made up of the public, their members will have similar views to the polling. So unions have a role in restoring the reputation of human rights by making them relevant to the lives of their members.
- iv. The Scottish Parliament debated and passed a motion on 11th November 2014 which anticipated a UK Conservative Government and declared “its confidence in, and support for, the Human Rights Act 1998 as a successful and effective implementation of the convention in domestic law, and believes that the principles and values that inform the convention, the rights and freedoms that it enumerates and the Acts that incorporate it into law, should be a source of unity and consensus across the whole of society and should enjoy the unequivocal backing of all who are committed to upholding human rights, democracy and the rule of law.”
- v. The same Scottish Parliament motion explicitly integrated government policy with human rights delivery “the Parliament re-affirms and re-asserts, on behalf of all of the people of the community of Scotland, the inalienable human rights and fundamental freedoms that are the common inheritance of all members of humanity; recalls the particular importance to the Parliament, through its founding statute, its founding principles and in all aspects of its day-to-day work, of human rights in general and of the European Convention on Human Rights in particular; acknowledges the constitutional responsibility of the Parliament to uphold the principles and values expressed in the convention

¹⁰ House of Commons House of Lords Joint Committee on Human Rights Paragraph 20, Report 2010

¹¹ <http://www.equally-ours.org.uk/>

¹² The research was carried out by YouGov Plc during 30 October – 03 November 2015 and a total of 1,026 interviews were carried out online. The figures have been weighted and are representative of all adults in Scotland (aged 18+). For more information see Scottish Government website <http://news.scotland.gov.uk/News/Fly-the-flag-for-human-rights-1f5a.aspx>

and to respect, protect and realise the rights and freedoms that it enumerates...”. So the challenge is to ensure human rights are mainstreamed across the work of the Scottish Government, and the public sector that it funds, in the design, delivery and funding of public services.

- vi. In the budget of July 2015, the Chancellor made a big noise about protecting hard working families and increasing the minimum wage for the poorest. You would think, therefore, that this is a very good time to bolster unions, and respect for them, so that workers can organise and campaign for better wages and conditions. However the UK Government is also determined to pass a law requiring 50% of workers in a workplace to vote for strike action before it is legitimate. The Trade Unions Bill would make it illegal to hold strike action unless there is at least a 50% turnout and 40% or more of the people eligible to vote back such action within “core public services”. The Bill will also include abolition of the “check off” process for union subscriptions where public sector workers who are union members have their subscriptions taken directly from their salary, administered by their employer. On 10th November the Trade Union Bill received its third reading at the House of Commons and the UK Parliament’s Joint Committee on Human Rights announced pre-legislative scrutiny of the Bill as “some significant human rights issues may arise”.¹³
- vii. The economic ideology is exposed due to inconsistencies in how ‘democracy’ operates in the UK. Our government was elected on just 24% of eligible votes on 7th May 2015. 66.1% of the electorate voted giving the government 36.9% of the votes cast¹⁴. This is an inconsistent approach to elections and in determining legitimacy from voting outcomes. This double standard suggests that the Government thinks the conduct of business is more important than the conduct of democracy.
- viii. Capitalising on the demonisation of human rights generally, successive governments have been content to allow people to remain entirely unaware that economic and social rights are designed to ensure society is fairer, that families should not live in poverty and the relationship between employers and employees should be respectful and equitable. We have rights which our government has promised the international community that we enjoy and now we have various opportunities to define and assert those rights specifically in a Scottish and UK context, so we begin to enjoy them in practice.
- ix. At a UK political level, human rights are politically linked to ant-EU sentiments and the forthcoming referendum on EU memberships. However in Scotland the situation is quite different. The EU Charter on Fundamental Rights and in various EU directives could be used by the Scottish Parliament to restore safeguards on health and safety removed by the UK Government.

3. The Human Rights Act and Public Procurement

¹³ See Committee website <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news-parliament-2015/legislative-scrutiny-launch/>

- i. When public authorities undertake procurement, they should uphold their duties under the HRA. Human rights have a legal basis, defined in UK domestic and international law. Ways in which human rights can feature in public procurement include: the public contract itself may contain terms which stipulate human rights standards which are to be complied with when providing goods and/ or services; European and UK law permits the inclusion of social criteria, including human rights considerations.¹⁵
- ii. The Scottish Human Rights Commission (SHRC) has addressed the matter on numerous occasions including in a submission proposing amendments to the Procurement Reform (Scotland) Bill and stated “Legislation should make clear that both human rights legal obligations and equality laws apply to public procurement and are a general duty for a contracting authority in the course of purchasing activities.” Specifically the SHRC pointed out that human rights can be protected in the public procurement process in the advertisement stage, technical specifications, selection stage, award stage and in contract clauses.¹⁶
- iii. The impact of existing guidance on human rights in public procurement in Scotland needs to be assessed. For example the Scottish Government and COSLA procurement of care and support services guidance describes ... a human rights based approach to the procurement of care and support services in Scotland and defines a set of Guiding Principles which should govern the procurement of such services.¹⁷ It is useful to note that the Procurement Reform (Scotland) Act 2014 requires the Scottish Government to “publish guidance on the carrying out of regulated procurements relating to contracts for health or social care services and contracting authorities must have regard to any guidance”¹⁸ There needs to be systems in place that ensures such guidance is followed, consistently and the impact evaluated.
- i. The Scottish Government has published statutory guidance on the issue of fair work practices in public procurement under the Procurement Reform (Scotland) Act 2014. It includes guidance to public bodies on how to evaluate fair work practices, including the Living Wage when selecting tenderers and awarding contracts. “The guidance makes clear that the Scottish Government considers payment of the Living Wage to be a significant indicator of an employer’s commitment to fair work practices and that the payment of the Living Wage is one of the clearest ways that an employer can demonstrate that it takes a positive approach to its workforce.” However it “emphasises that whilst failure to pay the Living Wage would be a strong negative indicator it does not mean that the employer’s approach automatically fails to meet fair work standards” and rather oddly states “Public bodies must now consider, before undertaking a procurement exercise,

¹⁵ Scottish Human Rights Journal Issue 44 February 2009 - Public Procurement and Human Rights, Part II, Jamie McRorie, McGrigors LLP, Public Law pub 1st January 2009
<http://www.scottishhumanrights.com/resources/journal/issue44articleprocurement2>

¹⁶ Submission to [Infrastructure and Capital Investment](#) Committee, Scottish Parliament Procurement Reform (Scotland) Bill by the SHRC 29 November 2013

¹⁷ <http://www.jitscotland.org.uk/action-areas/commissioning/procurement/>

¹⁸ Section 13, <http://www.legislation.gov.uk/asp/2014/12/contents>

whether it is relevant and proportionate to include a question on fair work practices as part of the competition.”¹⁹ More optimistically the guidance states “We expect contractors who deliver public contracts to adopt policies which demonstrate how they comply with relevant employment, equality and health and safety law, human rights standards and adhere to relevant collective agreements”.²⁰

- ii. So from 1 November 2015, public bodies will be required to consider addressing fairwork practices in public contracts. The SHRC has recommended that public bodies might want to enquire on contractor’s policies on trade union recognition and their health and safety policies to protect the right to life. Public bodies eg local authorities should make decisions based on these responses. Complying with human rights is still part of the duties of a public sector body procuring services, under the HRA, and that needs to be better understood by all stakeholders.
- iii. The Procurement Reform (Scotland) Act 2014 sits alongside the existing the Public Contracts (Scotland) Regulations 2012. The 2014 Act places new statutory duties on contracting authorities including a ‘sustainable procurement duty’, aimed at improving economic, social and environmental wellbeing.²¹
- iv. It is useful to note that the relationship between procurement and human rights is under active consideration in other parts of the UK and we can apply the lessons to the Scottish Government. For example we could take on board the recommendations from the Northern Ireland Human Rights Commission report of 2015 that stated it *would “engage government departments’ other relevant public authorities and private companies to address their human rights obligations and also to promote awareness of the important relationship between human rights and business in Northern Ireland.”*²² We could also adapt the report recommendations and:
 - The Scottish Government should establish sanctions for companies responsible for breaches of human rights domestically.
 - The Scottish Government should ensure that departments identify public services delivered privately within their respective policy areas. This should be followed by an evaluation of human rights risks associated with such services, and the implementation of appropriate measures to mitigate such risks, in line with the UNGPs.²³ (See section 6)

¹⁹ For more information see Scottish Government website <http://www.gov.scot/Publications/2015/10/2086>

²⁰ Para 4, *ibid*.

²¹ See more at: <http://www.burnesspaull.com/blog/2014/07/procurement-update-procurement-reform-scotland-act-2014-receives-royal-assent#sthash.cllfzYpn.dpuf>

²² News Release “NI Human Rights Commission to launch report on Public Procurement and Human Rights” pub 28th February 2015 <http://www.nihrc.org/news/detail/ni-human-rights-commission-to-launch-report-on-public-procurement-and-human>

²³ “Public Procurement and Human Rights in Northern Ireland” pub by NI Human Rights Commission pg 5 <http://www.nihrc.org/uploads/documents/NIHRC%20Public%20Procurement%20and%20Human%20Rights.pdf>

4. Cases arising from the ECHR

- i. There is a lot of misinformation about the work of the European Court of Human Rights (ECtHR) and its impact in the UK. The impact of the ECtHR is positive because human rights are independently assessed and judged against agreed standards. It is a separate issue to consider if ECtHR decisions are effectively delivered by the UK government and there are a variety of organisations say they are ineffectively delivered. Contrary to a popular myth, there is no tidal wave but a trickle of case decisions: for example, the ECtHR dealt with 1,997 applications concerning the UK in 2014, 1,970 were declared inadmissible and it delivered 14 judgments (concerning 27 applications), only four of which found a violation of the ECHR²⁴.
- ii. Cases are heard at the ECtHR in Strasbourg which considers cases from 47 Member States in which 820 million individuals live. There is a real problem of the ECtHR being swamped with cases and Lord Woolf's review in 2008 recommended that countries do more to remedy the cases domestically so that fewer cases end up at Strasbourg. The HRA of course serves that function, providing domestic redress within the UK and enabling the ECtHR to direct its expertise to cases from other countries such as Russia.
- iii. All cases are relevant to us in Scotland as even if they relate to another country they define how the ECHR should be delivered within member states. This back catalogue of cases can be particularly useful if the ECtHR ever becomes timid for fear of upsetting governments. Relevant cases include those on Article 11 of the ECHR which is "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."
- iv. In *Wilson, National Union of Journalists and Others v. the United Kingdom* (2002) the applicants complained that they had to either sign personal contracts and surrender their trade union rights or accept a smaller salary increase. The ECtHR concluded that permitting employers to use financial incentives to induce employees to surrender important union rights amounted to a violation of Article 11, as regards both the applicant trade unions and the individual applicants. "It is the role of the State to ensure that trade union members are not prevented or restrained from using their union to regulate their relations with their employers" (§ 46).²⁵
- v. In the case of *Demir and Baykara v. Turkey* (2008), the Grand Chamber ruled that the right to conclude a collective agreement is "one of the principal means – even the foremost of such means – for trade unionists to protect their interests."²⁶
- vi. *Tüm Haber Sen and Cinar v. Turkey* (2006) concerned the dissolution of a union of public-sector workers on the ground that civil servants could not form trade unions. The ECtHR ruled there had been a violation of Article 11: The

“State as employer” must respect trade union freedom and guarantee its effective exercise.²⁷

- vii. The case of *Enerji Yapi-Yol Sen v. Turkey* (2009) concerned disciplinary measures taken against public-sector workers who had participated in a one-day national strike for the recognition of their right to a collective agreement. It was ruled there had been a violation of Article 11.²⁸

- viii. The case of *Heinisch v. Germany* (2011) concerned the dismissal of a geriatric nurse after having brought a criminal complaint against her employer alleging deficiencies in the care provided. The ECtHR ruled there had been a violation of Article 10 (freedom of expression) of the ECHR, finding that the applicant’s dismissal without notice had been disproportionate and the domestic courts had failed to strike a fair balance between the need to protect the employer’s reputation and the need to protect the applicant’s right to freedom of expression.²⁹

- ix. Hitherto the successful tactic of highlighting and promoting several ECtHR cases as unpopular, eg agreeing rules on voting for convicted prisoners, serves a political and ideological purpose to undermine the entire ECHR framework. Of course not all ECHR cases are successful and we have deliberately chosen some wins to inspire readers. We need to use existing case decisions to progress economic and social rights in the workplace. Asserting specific human rights standards should be used as a way to progress fairness in public procurement³⁰ and in equalising and empowering relationships within the workplace. ECtHR decisions will not always be progressive but neither are they all regressive. A culture of respect for human rights needs to be generated in the UK so that ECtHR decisions are delivered and, if they are not, governments are held to account.

5. Industrial democracy within the Business and Human Rights

- i. The relevance of the UN’s international human rights framework to the activities of business has led to the adoption and endorsement of the “Guiding Principles on Business and Human Rights” in 2011 (the ‘Ruggie’ principles, or the UNGPs). UN members, such as the UK are now expected to give these effect.³¹ For example UNGP 6 provides that States should promote respect for human rights by business enterprises with which they conduct commercial transactions. Delivery of the UNGPs is via the “respect, protect and remedy” framework.

- ii. The UK Government has developed an action plan to do so, which was launched in 2013. “Good Business: Implementing the UN Guiding Principles on Business and Human Rights”³² was described by the then Foreign Secretary William Hague as making “clear the Government’s duty to protect

³¹ Guiding Principles on Business and Human Rights pub by Office of UN High Commissioner on Human Rights http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.df

³² <https://www.gov.uk/government/publications/bhr-action-plan>

and promote human rights in the business context, outline our commitments to encourage good business practice by UK companies both domestically and internationally, and provide advice to UK companies to help them understand and manage human rights risk as part of their commercial activities.”³³

- iii. The EU Strategic Framework and Action Plan on Human Rights and Democracy, encouraged Member States to implement the UNGPs by 2013. A further action plan is being proposed covering five strategic areas of action from 2015-2019.³⁴
- iv. The Scottish Government has commissioned a baseline assessment on the implementation of business and human rights standards in Scotland. The aim is to produce an evidence base that will inform and underpin the development of an action plan on business and human rights. which includes
 - How we are currently giving effect to the UNGPs within the devolved context;
 - What levers we have under the current devolved settlement to make policy choices to implement the UNGPs;
 - What mechanisms exist for individuals and groups to seek remedy in the event of alleged adverse human rights impacts connected to the activities of businesses based or operating in Scotland, and how effective and accessible are these mechanisms; and
 - What good practice exists within the business community in relation to respecting human rights in line with the UNGPs.
- v. The report is expected by 31st March 2016 and its evidence base will inform “further collective steps (through Government, public bodies, and business and third sector organisations) within to better give effect to the UNGPs.” The baseline research should be informed by stakeholders such as trade unionist and poverty campaigners. Also, there needs to be sustained interest, post publication, to ensure that human rights standards are applied to the operations of business within Scotland and their activities overseas.
- vi. Scotland’s National Action Plan on Human Rights (SNAP) has three strands including “Better World - Scotland gives effect to its international obligations at home and internationally.” This strand of work includes a commitment that “The Scottish and UK Governments, Scottish businesses and the Scottish Human Rights Commission will pursue the development of an action plan to implement the UN Guiding Principles on Business and Human Rights by Scotland and raise awareness among Scottish companies of their human rights responsibilities.” Key stakeholders such as anti-poverty groups and trade unionists should be involved in informing and delivering this undertaking.³⁵

³³ Speech to the House of Commons on 4th September 2013

<https://www.gov.uk/government/speeches/uk-action-plan-on-business-and-human-rights>

³⁴ For more information see” EU proposes new Joint Action Plan on Human Rights and Democracy” European Commission - Press release 29th April 2015 http://europa.eu/rapid/press-release_IP-15-4893_en.htm

³⁵For further information on SNAP go to <http://www.scottishhumanrights.com/actionplan/betterworld>

- vii. Specific action is required to better utilise existing government obligations and commitments on human rights to promote industrial democracy in the UK. For example operationalising the UN Guiding Principles on HR and Business and enable the Scottish Government to make judgements on matters such as trade union recognition within workplaces to influence the receipt of government grants.

Conclusions

This paper is designed to build awareness of economic and social rights in Scotland and encourage people to act and assert those rights now that they know about them. In order for human rights to improve working lives and provide an effective remedy, rights need to be mainstreamed across our political, constitutional and procurement processes. Several opportunities exist to begin that process: the 2016 hearing at the United Nations on UK compliance with the International Covenant on Economic, Social and Cultural Rights, roll out of SNAP and the current baseline study on business and human rights which is being undertaken for the Scottish Government. In seizing those opportunities, it is important to adopt a strategy that is realistic about the current, and too often dominant, political and cultural environment that equally demonises human rights and union rights.

The Reid Foundation.

Director: Gregor Gall

<http://reidfoundation.org/>

Contact:

G.Gall@bradford.ac.uk or bthomson741@btinternet.com

Published July 2015 and revised in November 2015