

An emphasis on social rights: A boost for the UK's popular rights discourse?

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1. Introduction

Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, considered in his 2018 visit the UK context of poverty, human rights and 'austerity'.¹ He found clear links between government policy and poverty. In a particularly forthright end-of-mission statement, he pointed to the fact that the UK is the world's fifth largest economy, containing areas of immense wealth, yet 14 million people (a fifth of the population, he noted) live in poverty. Austerity measures, he stated, are intentionally designed to reduce the level of what the government is expected to provide. He urged that it was time to reimagine how the UK represents and how it protects its people, and that a key part of that process would be 'legislative recognition of social rights'.²

There is clear resistance to the notion of human rights from some quarters in the UK, with a negative human rights discourse put forward both by elements of the media,³ and by the UK Government.⁴ Therefore the rights framework does not at first appear to be the best avenue for attempts to counter poverty. To rely on the framework appears particularly challenging when there is also resistance to the notion that 'social rights'⁵ – those that include the rights to housing, health and education – could be incorporated via legislation. Some argue that to do this would be impossible, or that it would be undemocratic as it would result in courts deciding economic matters which should be the preserve of an elected government.⁶

In this chapter it will be argued, however, that there is evidence from domestic experience that social rights can be legally incorporated and adjudicated without violating the separation of powers doctrine. Not only is incorporation of social rights possible, research indicates that the UK population is, overall, very favourable to protections for social rights such as those relating to health and housing. These are the types of issues that really matter in the day to day of people's lives. It is likely that the almost exclusive focus of the Human

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¹ For a definition of 'austerity' in this context see Suzanne Konzelmann, 'The Economics of Austerity' (2012) CBR Research Programme on Corporate Governance

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2127567 accessed 2 February 2020.

² Philip Alston, 'Statement on visit to the United Kingdom' *United Nations Special Rapporteur on extreme poverty and human rights* (London, 16 November 2018)

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23881&LangID=E> accessed 21 January 2020.

³ Colm O'Coinneide, 'Arguing the Case for Human Rights' in Michelle Farrell, Eleanor Drywood and Edel Hughes, *Human Rights in the Media: Fear and Fetish* (Routledge, 2019).

⁴ Katie Boyle and Leanne Cochrane, 'The Complexities of Human Rights and Constitutional Reform in the United Kingdom Brexit and a Delayed Bill of Rights: Informing (on) the Process' (2018) 16 *Northwestern Journal of Human Rights* 22.

⁵ Paul Hunt, 'How to Advance Social Rights without Jeopardising the Human Rights Act 1998' (2019) 90 *The Political Quarterly* 393.

⁶ See such points considered for example in Joint Committee on Human Rights of the United Kingdom Parliament, *A Bill of Rights for the UK?* (2008), 5 <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf> accessed 16 Feb. 2020.

Rights Act on civil and political rights has left the potential for misinformation and negativity around the Act and the nature of human rights.

It is further argued in this chapter that support for human rights more broadly would likely be increased through a comprehensive consultation process with greater emphasis on social rights such as health and education, water and housing. It is proposed that emphasising social rights would therefore likely boost support for human rights more generally. Social rights will help to make the case for investment in public services and will likely reinforce an understanding of rights as having the potential to uphold communal values. This indicates that civil society and others should advocate strongly for the implementation potential, including the justiciability, of social rights.

This chapter first considers (in Section 2) methods of human rights implementation, and special attention is provided to the reluctance to legally incorporate social rights. Section 3 considers the image problem of human rights in the UK, and outlines how a greater emphasis on social rights would likely mitigate this problem. Section 4 considers some examples where social rights were expressed as of importance to ordinary people at local level. It is argued that there should be a focus on such campaigns in the UK and elsewhere, and that this would likely result in greater positivity surrounding human rights generally, as it will make clear to ordinary people the relevance of human rights to everyday life. Although this chapter focuses on lessons to be applied to the UK in particular,⁷ it is intended that these may be considered more broadly in relation to other jurisdictions.⁸

2. Implementation of international human rights law

As with all states, the UK has applicable law deriving from both national and international level which relate to implementing human rights; social rights included. At national level, the Child Poverty Act 2010 for example provided a statutory basis to the 1999 commitment made by the Labour Government to eradicate child poverty by 2020 (though this was formally abandoned in 2015⁹). The most pertinent human rights legislation at national level in the UK is the Human Rights Act 1998, which brings the European Convention on Human Rights into national law. The European Convention on Human Rights contains a number of – primarily civil and political – rights, such as the right to freedom from torture and the right to family life. Once applicants have taken all possible steps to have their claim resolved at domestic level, cases can be appealed to the European Court of Human Rights in Strasbourg.

Of course, there are also international treaties which states ratify and agreed to abide by which relate to social rights. Hunt outlines that ‘social rights’ are the rights to an adequate standard of living, adequate housing and food; the right to the highest attainable standard of health; and the rights to education and social security. He references articles 25 and 26 of the UDHR, which then became enshrined into articles 9–14 of the 1966 International Covenant on Economic, Social and Cultural Rights. The rights to equality and non-discrimination, he points out, are applicable to all human rights, including social rights.¹⁰

⁷ Of course it must be noted that the UK is comprised of different countries and in particular Wales and Scotland have arguably progressed significantly ahead of England as regards human rights in recent years. Hunt, n5, 394.

⁸ Just because a method of implementation of social rights functions relatively successfully in one state this does not mean that it will transfer well to another, however.

⁹ HM Government, *Government to Strengthen Child Poverty Measure* (1 July 2015) <https://www.gov.uk/government/news/government-to-strengthen-child-poverty-measure> accessed 11 February 2020.

¹⁰ Hunt, n5, 394. Hunt argues persuasively that it is important to step away from the term ‘socio-economic rights’ in order to properly focus on social rights as opposed to economic (that is, workers’) rights.

2.1 State discretion in implementing human rights

States have a great deal of discretion, however, as to what measures they take to ensure full implementation of obligations under human rights treaties. How treaties are given legal effect is very much dependent on the legal and constitutional systems of specific states, and particularly whether they are monist (whereby incorporation occurs on ratification) or dualist (whereby enacting legislation is necessary). Furthermore, there are a number of different means of implementation, which can be categorised as legal ('hard') incorporation; intermediate measures (such as 'due regard' duties); and 'soft' (extra-legal) measures.¹¹ Research indicates that due to the various political, social, legal and other factors at play there are no certainties that what works in one jurisdiction will necessarily work in another. It is unsurprising then that a smart mix of methods – legal incorporation; policies, and education for example – are together necessary to adequately implement a particular right. None works on its own.¹²

Governments are not expected to implement social rights immediately, but instead to 'progressively realise' these rights, which means to work gradually towards their realisation in line with the resources available to the state.¹³ Social rights are often considered to be 'second generation' rights because of this qualification, and have been referred to as the 'Cinderella' group of rights¹⁴ because of their neglect and the lack of attention traditionally given to their implementation. Nevertheless every social right has, however, a minimum core which is not subject to progressive realisation, although efforts as regards defining the content of this minimum core of each social right are ongoing.¹⁵

There are a number of arguments proposed to justify reluctance to implement social rights, particularly to implement them legally.¹⁶ For example some opine that they are written in terms that are too vague to enshrine into law. There is also an argument that to incorporate social rights would enable courts to allocate finite state resources. This would be undemocratic, the argument goes, as decisions about economics should be made by an elected government. It would violate the separation of powers doctrine, which ensures that the three branches of government (executive, legislative, and judicial) remain separate so there is not undue power in one branch.¹⁷ The Labour government in 2004 for example stated that: 'Incorporation of [economic, social and cultural] rights into the UK legislation would take decision-making on the basic policy agenda and priorities away from an elected

¹¹ Aoife Daly, Yvonne McDermott Rees and Joshua Curtis, *Enhancing the Status of UN Treaty Rights in Domestic Settings* (University of Liverpool, 2018)

<https://www.liverpool.ac.uk/media/livacuk/law/2-research/ilhru/EHRC,Enhancing,the,Status,of,UN,Treaty,Rights.pdf> accessed 3 February 2020.

¹² *Ibid.*

¹³ See for example Article 2(1), ICESCR; Article 4, CRC. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (Maastricht, Netherlands, 22–26 January 1997) enshrines the obligation that states 'respect, protect, and fulfill' the economic, social, and cultural rights of those within their jurisdictions.

¹⁴ Paul O'Connell, *Vindicating Socio-Economic Rights: International Standards and Comparative Experiences* (Routledge, 2012).

¹⁵ Hunt, n5, 394. See also below at 2.2. the consideration of the Columbia experience of establishing understanding of the minimum core.

¹⁶ See for example UK Government Response to Twenty-first Report of Session 2003-04 of Joint Committee On Human Rights, on The International Covenant on Economic, Social and Cultural Rights <https://publications.parliament.uk/pa/jt200506/jtselect/jtrights/104/10404.htm> accessed 25 Feb 2020.

¹⁷ See such points considered for example in Joint Committee on Human Rights of the United Kingdom Parliament, *A Bill of Rights for the UK?* (2008), 5 <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf> accessed 4 January 2020.

government, counter to the fundamental principles of our democracy.¹⁸ Yet the interrelationship of the two categories of rights is far more complex than the traditional dichotomy of civil and political versus economic, social and cultural rights implies. Take for example fair trial rights, traditionally considered part of the ‘civil rights’ category. To enjoy this right, it is necessary to expend resources on complex court systems, trained staff and specialist procedures.

2.2 Legal incorporation of social rights

Although there are many different ways of implementing human rights, many have argued that formal legal incorporation is a crucial part of ensuring a human right is effectively enjoyed.¹⁹ As noted above, in 2018 Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, in his end-of-mission statement after an examination of austerity and poverty, urged the UK that ‘legislative recognition of social rights should be a central part’ of a rethink of how the UK protects its people.²⁰

Legislative change, although not necessarily the only way to implement human rights, will likely be a key factor in creating a human rights culture, and normalising a particular human rights principle. Research indicates that those in the fields of campaigning and communication believe that social change, for example around attitudes to homosexuality, race and disability, etc., have been assisted or even driven by legislative change.²¹

There are various options for legislative recognition of social rights.²² Amending the Human Rights Act to include social rights would be the obvious option. The Act incorporates civil and political rights using judicial review,²³ whereby the courts make declarations of incompatibility if they find that legislation breaches rights. This does not invalidate the law, rather it places strong expectations on Parliament to amend the legislation. It is considered very effective from the perspective that Parliament has almost always changed the legislation in response where courts have found incompatibilities in legislation with the HRA. The Gender Recognition Act was enacted in 2004, for example, in the aftermath of the ECHR case of *Goodwin v. UK*, to allow trans people to apply to change their legal gender. It is thought that much of the success of the Human Rights Act relates to accompanying activity, including extensive initial training given to judges and civil servants on how to operationalise the Act. Reinforcing work is also conducted by the Parliamentary Joint Committee on Human Rights, which consists of members from both Houses of Parliament, and examines matters relating to human rights within the UK, including scrutinising every Government Bill for its compatibility with human rights.

Amending the Human Rights Act to include additional rights has long been suggested, for example by the Joint Committee on Human Rights in 2008. The Committee considered a limited option – a degree of judicial involvement in extreme cases (e.g. of unjustifiable omission of provision for the needs of a particular vulnerable group).²⁴ Of course the

¹⁸ UK Government Response to Twenty-first Report of Session 2003-04 of Joint Committee On Human Rights, n 16, para 10.

¹⁹ Daly, McDermott Rees and Curtis, n 11.

²⁰ Alston, n2.

²¹ Karen Bell and Sarah Cemlyn, ‘Developing Public Support for Human Rights in the United Kingdom: Reasserting the Importance of Socio-Economic Rights’ (2014) 18 *International Journal of Human Rights* 822, 833.

²² Hunt, n5.

²³ For detail on this comparison see generally, Kris Gledhill, *Human Rights Acts: The Mechanisms Compared* (Hart, 2015).

²⁴ Joint Committee on Human Rights (2008) *A Bill of Rights for the UK? Twenty-ninth Report of Session 2007-08* <https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf> accessed 2 Feb 2020

argument that including social rights involves judicial overreach²⁵ would make such a move difficult. Evidence from other states which have incorporated social rights, however, demonstrates that undue judicial overreach is not inevitable.

South Africa is one strong example of this. In the aftermath of apartheid there was much public debate in advance of the new constitution about how best to tackle inequality.²⁶ Social rights were incorporated directly into Articles 26-29 of the new South African constitution in 1996 as justiciable guarantees. They were to be individual entitlements enforceable by the courts, as was the case with civil and political rights. They were to be subject to available resources and progressive realisation to enable courts to strike a balance between constitutional commitments and political and economic realities.

This constitutional provision has produced a well-known series of cases by the South African Constitutional Court; cases which have met with broad approval in terms of the reasoning of the courts in respect of social rights.²⁷ There were promising indications from early case law that the courts would take a progressive approach to social rights. In *Khosa v Minister of Social Development*²⁸ for example, it was held that it would be discriminatory to fail to facilitate access to education to permanent residents in South Africa who are not national citizens. In *Government of the Republic of South Africa and Others v Grootboom*²⁹ it was held that the state has an obligation to provide housing to families where parents cannot provide for this themselves.

Some subsequent judgments however indicated a less progressive approach. For example in *Mazibuko*³⁰ it was held that the right of access to water does not require that the state provide 'upon demand every person with sufficient water'. Instead, the right required the state to take 'reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water, within available resources.' The reasonableness standard has been heralded as having great potential to hold authorities to account for meeting social rights obligations while also respecting the position of executive and legislative decision-makers.³¹ Murray notes however that whilst the previous decisions of the Court around social rights demonstrated a willingness to be progressive, the *Mazibuko* judgment displayed a high level of deference to the executive.³² There have also been concerns about implementation of judgments. These issues demonstrate that courts are only one part of the struggle to implement rights.³³

What the South African experience also demonstrates, however, is that social rights can be enshrined in legislation and adjudicated by the courts in a way which need not 'undermine political constitutionalism'³⁴ through judicial overreach. The Court indicated in *Port Elizabeth Municipality*³⁵ that it perceives its role as a managerial one, that it is possible and

²⁵ See this issue considered in Richard Bellamy, 'Political Constitutionalism and the Human Rights Act' (2011) 9 *Icon* 86, 86.

²⁶ O'Connell, n14, 50.

²⁷ Anashry Pillay and Murray Wesson, 'Recession, Recovery and Service Delivery: Political and Judicial Responses to the Financial and Economic Crisis in South Africa' in Aoife Nolan (ed) *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press, 2014), 344.

²⁸ 2004(6) BCLR 569 (CC).

²⁹ 2001 (1) SA 46 (CC).

³⁰ See e.g. *Mazibuko v Johannesburg* (CCT 39/09) [2009] ZACC 28.

³¹ Pillay and Wesson, n27, 363.

³² Murray Wesson, 'Reasonableness in Retreat? The Judgment of the South African Constitutional Court in *Mazibuko v City of Johannesburg*' (2011) 11 *Human Rights Law Review* 390.

³³ Pillay and Wesson, n27, 345.

³⁴ Bellamy, n25, 86.

³⁵ *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA 217 (CC), para 39.

appropriate to implement creative judicial remedies; whilst remaining informed by the goals of participatory democracy.

In Columbia, the Constitutional Court has as one of its core principles a judicial review model that emphasises the minimum core of social rights. This principle has resulted in the Court engaging in a robust review of austerity measures, and particularly on preventing harm to the poorest through a focus on the core minimum, with Landau suggesting that this model could be adopted in other states to ensure effective but sustainable review of austerity measures.³⁶ Daly *et al.* point to other examples at domestic level which similarly indicate that there are ways to legislate for social rights without threatening democratic processes, for example in Kenya and India.³⁷

In any case, incorporating social rights need not invoke the Human Rights Act. Hunt provides a response to Alston's recommendation for the 'legislative recognition of social rights' which Hunt emphasises is realistic in the current climate of a threat to the Human Rights Act. He advocates an administrative law approach; that is, implementing social rights one by one, (for example introducing a right to housing) and sector by sector (for example ensuring a rights basis in the housing sector) rather than by legal incorporation via example the Human Rights Act. He points for example to the possibility (proposed in the Labour Party manifesto in advance of the 2019 General Election) that the right to health could be explicit in the UK's National Health Service.³⁸ He also suggests inserting an explicit right to education into existing education legislation, accompanied by statutory guidance on the right to education.³⁹

There are a number of options, therefore, for implementing and incorporating social rights. Unfortunately in the current climate of post-Brexit UK, where the Human Rights Act itself is under threat,⁴⁰ achieving a legislative basis for such rights via, for example, modification to the Act appears unlikely. Increasing support for human rights requires that ordinary people understand what they are, and how they relate to their lives. There are indications that it is social rights which would best portray this message.

3. The UK's human rights perception problem

The UK has a contested human rights framework which has come under significant pressure at times, particularly between 2010 and 2020.⁴¹ There has been a lengthy period of 'austerity' rule by the Conservative Party leading to significant financial hardship for many.

There are elements of the UK media which misrepresent the Human Rights Act as 'un-British', and as a piece of legislation which only benefits terrorists and criminals rather than themselves.⁴² The Labour government, which introduced the Human Rights Act in 1998, had intended that this would not only change the legal landscape but in fact increase understanding and awareness of human rights in the UK. This was not to be, however, not least because the attacks on September 11th 2001 brought a particular hatred to the fore, directed at those suspected or accused of terror-related crimes.⁴³ The Conservative Party

³⁶ David Landau, 'The Promise of a Minimum Core Approach: The Colombian Model for Judicial Review of Austerity Measures' in Aoife Nolan (ed) *Economic and Social Rights after the Global Financial Crisis* (Cambridge University Press, 2014), 268.

³⁷ Daly, McDermott Rees and Curtis, n 11, 9.

³⁸ Hunt, n5, 398.

³⁹ *Ibid*, 399.

⁴⁰ O'Conneide, n3.

⁴¹ Boyle and Cochrane, n4.

⁴² Hunt, n5, 394.

⁴³ Bell and Cemlyn, n21, 825-6. The complexities of how 'undeserving' groups are most in need of access to these rights is considered by O'Conneide, n3.

(2010 to date) has made its repeal, and possible withdrawal from the ECHR, part of their electoral platform.⁴⁴ Another issue is the association of the Human Rights Act with the imposition of a perceived European integration project on the UK by ‘Brussels’ (that is, the European Union), though of course the European Court of Human Rights is an organ of the Council of Europe, not the European Union.⁴⁵ Framing matters in terms of rights, Hopgood argues, is unlikely then to attract mass support, as for many, rights have come to represent ‘a cosmopolitan luxury for a metropolitan elite... or a conspiracy to erode national values and destroy national identity.’⁴⁶ The fact that rights are not a popular framework is an obvious problem which appears, at least on the face of it, to incline against arguments for legislating for social rights.⁴⁷

In spite of the fact that there is a problematic attitude to human rights in the UK, however, it seems that this inclines *in favour* of an emphasis on social rights, rather than against. In fact the failure to legislate for (or otherwise implement) social rights may well be part of the problematic attitudes to human rights generally. There is no doubt that individuals are more favourable to rights which they deem more relevant to themselves, and that rights such as freedom from torture and slavery seem less relevant ‘do not seem relevant to their current problems’.⁴⁸ In a climate of austerity it is *social rights* which are arguably most obviously under threat and ignored, as pointed out forcefully by for example Alston, who listed in his report the social consequences of austerity, noting that “[f]ood banks have proliferated; homelessness and rough sleeping have increased greatly; tens of thousands of poor families must live in accommodation far from their schools, jobs and community networks...”⁴⁹

Severe austerity measures introduced in the UK by the Conservative Party since 2010 have included cuts to welfare, to public services, and to wages. The consequences of this have been felt everywhere from the legal profession (note the ‘savage’ cuts to legal aid⁵⁰), to schools, to those experiencing homelessness. It is unsurprising then that in the modern UK it is housing, health and social care provision which people report as being of primary concern to them.⁵¹ Prominent figures in public life in the UK call for greater priority for values that are responsive to economic needs and to the community.⁵² As social rights are perceived as being more relevant to the substance of people’s everyday lives,⁵³ this leads Bell and Cemlyn to argue that raising the profile of social rights would ‘win over even more hearts and minds.’ This is because these rights, they argue, have more concrete meaning for people than civil

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 826.

⁴⁶ Stephen Hopgood, ‘Brexit and Human Rights: Winter is Coming’ *OpenDemocracy*, 29 June 2016 www.opendemocracy.net/openglobalrights/stephen-hopgood/brexit-and-human-rights-winter-is-coming accessed 5 December 2019.

⁴⁷ O’Cinneide argues that the push-back by experts against misinformation about the Human Rights Act has mitigated this somewhat. O’Cinneide, n3, 235.

⁴⁸ Bell and Cemlyn, n21, 829.

⁴⁹ Report of the Special Rapporteur on extreme poverty and human rights on his visit to the United Kingdom of Great Britain and Northern Ireland, *Human Rights Council 41st session*, A/HRC/41/39/Add.1 (23 April 2019), 1 <https://undocs.org/A/HRC/41/39/Add.1> accessed 21 January 2020.

⁵⁰ Rosemary Hunter, ‘Doing Violence to Family Law’ (2011) 33 *Journal of Social Welfare and Family Law* 343.

⁵¹ Boyle and Cochrane, n 4, 43.

⁵² Boyle and Cochrane, *ibid.*, cite Justin Welby, *Reimagining Britain: Foundations for Hope* (Bloomsbury Continuum, 2018), 58. See also Rowena Mason ‘Jess Phillips: people would pay more tax for decent social care’ *The Guardian* (10 January 2020)

www.theguardian.com/politics/2020/jan/10/jess-phillips-people-would-pay-more-tax-for-decent-social-care accessed 15 February 2020.

⁵³ Joint Committee, n17.

and political rights and can therefore help to build greater support for human rights law more generally.⁵⁴

In spite of the huge potential for social rights campaigns, the UK human rights community has largely failed to adequately engage with many of the issues most relevant to those who live in poverty.⁵⁵ Hunt points out that there are no major institutions or interest groups, in England and Wales at least, consistently acting as proponents of social rights.⁵⁶

4. Acknowledging the potential for social rights work

This failure to focus on social rights seems all the more unfortunate considering the fact that there are indications that when the public is consulted about what human rights are important to them, it is social rights that are emphasised.

4.1 The UK, public opinion and social rights

Bell and Cemlyn carried out a systematic review of data (2003–2012) relating to UK public attitudes to human rights. They point to a wealth of research which appears to demonstrate broad support for social rights. In government research, a very high proportion of respondents, when asked what rights they should have, said that those who need it should have free health care if they need it (93% in 2006); and that children should have access to free education (91% in 2006).⁵⁷ In workshops where people were encouraged to deliberate about human rights, the ‘most important rights’ were perceived to be education, health, free speech and equality.⁵⁸

Another example highlighting the importance of social rights to ordinary people in the UK is an initiative which is underway at the time of writing to make York a ‘human rights city’.⁵⁹ In York’s efforts in this regard, a declaration has been made highlighting ‘a commitment to use human rights to address local, everyday priorities.’ This has involved extensive surveys to establish the types of rights most relevant to those in York in order to create a set of human rights indicators. A large number of surveys (453) were completed whereby members of the public were to choose from a non-exhaustive long list of right to establish which they perceived to be most relevant to them. The five rights selected most frequently were education, health and social care, housing, an adequate standard of living, and non-discrimination and equality. Those from local non-governmental organisations were also interviewed, and they supported these findings. The majority either chose an adequate standard of living, or non-discrimination and equality, as their priority rights.⁶⁰

The rights chosen therefore were essentially entirely social rights in nature (and non-discrimination/equality applies to social rights in the sense that there should be equality of

⁵⁴ Bell and Cemlyn, n21, 836

⁵⁵ Hunt, n5. O’Cinneide, n3, 250, considers efforts by organisations such as Liberty to make clear the value of the Human Rights Act (in its current form) to ordinary people in accessing justice.

⁵⁶ Hunt, n5, 396. Organisations such as the Baring Foundation and others however are working to support the taking of human rights-based approaches on various grass roots issues. See Crowther, Neil ‘Effective Use of the Law and Human Rights by the Voluntary Sector’ (The Baring Foundation, 2015) <https://baringfoundation.org.uk/resource/better-use-of-the-law-and-human-rights-by-the-voluntary-sector/> accessed 2 February 2020.

⁵⁷ Chris Attwood *et al.*, *Home Office Citizenship Survey* (Home Office, 2001) <http://www.urbanlab.org/articles/citizen%20survey%20of%20families%20and%20networks.pdf> accessed 21 January 2020.

⁵⁸ Kully Kaur-Ballagan *et al.*, *Public Perceptions of Human Rights* (Ipsos MORI Social Research Institute/Human Rights Commission, 2009).

⁵⁹ Paul Gready and Liz Lockey, ‘Rethinking Human Rights in York as a Human Rights City’ (2019) 90 *The Political Quarterly* 384, 386.

⁶⁰ Gready and Lockey, *ibid.*, 386.

access to social rights). This fact led those leading the initiative to conclude that, in order to increase support for human rights in the UK, attention should be given to the ordinary everyday concerns of citizens, particularly social rights in an austerity-dominated context. A human rights lens is being utilised on selected issues in York, and this is reportedly resulting in some new approaches; for example engaging the participation of young people themselves in issues concerning educational rights.⁶¹ Many challenges remain however. For example, York has been ranked as the ninth most unequal UK city. However the York initiative demonstrates how cities can be sites of social rights progress, particularly where local authorities are inclined in favour of a human rights-based approach.⁶² It also shows the potential for engaging international human rights law standards in a participatory, locally-informed, way which is related to everyday concerns.⁶³ These everyday concerns are, predictably primarily related to social rights.

This openness on the part of the UK public to social rights was also evident in the reaction to Alston's report on poverty in the UK. Alston's direct, often combative criticism of current government policy was in some ways an attempt to convince not just the government but the general public in the UK that poverty is a human rights issue and that government has a responsibility to uphold social rights. Alston's approach was to conduct part of his research publically, visiting food banks and other venues at the coalface of austerity-driven emergency assistance. He held public meetings with people living with poverty as well as with volunteers and staff at various locations throughout the UK. It seems that his attempt to publicise poverty as a rights issue was well received if not by the Government,⁶⁴ by the public and civil society. Alston received 300 written submissions from civil society organisations and individuals (compared to 50 submissions in the US for a similar visit the previous year).⁶⁵ He stated that he had never received this level of engagement as part of a country visit and that 'it indicates a real appetite for a discussion about poverty and human rights in the UK.'⁶⁶

There are also indications of support on the part of City Councils and other civil society groups across the UK. Several Councils passed motions requesting to be included in his tour.⁶⁷ In the aftermath of the research four local authorities in the North West region alone passed motions to support 'social rights related activities' in line with Alston's findings.⁶⁸ This indicates that at least some elements of the general public, civil society organisations and local authorities are enthusiastic about tackling poverty by implementing social rights.

4.2 The New Zealand National Action Plan and social rights

⁶¹ Gready and Lockey, *ibid.*, 388.

⁶² See also the participation of Liverpool City Council in a project which applied human rights to the interests of kinship care families. Kinship Carers Liverpool/Aoife Daly, *Progressing Kinship Care through Law and Human Rights: Kinship Counts! Project* (Kinship Carers Liverpool, 2019). https://www.liverpool.ac.uk/media/livacuk/law/2-research/ecru/FINAL_report_HRBA_KC_May_2019.pdf accessed 2 February 2020.

⁶³ Gready and Lockey, n59, 387.

⁶⁴ Peter Walker, 'Amber Rudd Condemns UN Poverty Report in Combative Return to Frontline Politics'. *The Guardian* (London, 19 November 2018) <https://www.theguardian.com/politics/2018/nov/19/amber-rudd-un-poverty-report-return-frontline-politics> accessed 2 February 2020.

⁶⁵ Aditya Chakraborty, 'It Took a UN Envoy to Hear how Austerity is Destroying Lives'. *The Guardian* (London, 14 November 2018) <https://www.theguardian.com/commentisfree/2018/nov/14/un-austerity-destroying-lives-philip-alston-poverty-uk> accessed 2 February 2020.

⁶⁶ National Survivor User Network (2018) 'UN Special Rapporteur for Extreme Poverty and Human Rights tours UK' <https://www.nsun.org.uk/news/un-special-rapporteur-for-extreme-poverty-and-human-rights-tours-uk> accessed 2 February 2020.

⁶⁷ Chakraborty, n65.

⁶⁸ Just Fair (2019) 'Council Motions' <http://justfair.org.uk/north-east/council-motions/> accessed 2 February 2020.

The importance of social rights to the general public is also to be seen in New Zealand, where we also find a case study in how support for social rights can be maximised through consultation at grassroots level.⁶⁹

As part of the development of a first National Action Plan on Human Rights in the 2000s, the Human Rights Commission embarked on a large scale consultation process with people across the country on what they perceived to be their human rights priorities; giving them the opportunity to express what human rights meant to them.⁷⁰ Over 5,000 individuals, groups and organisations made submissions and participated in the nationwide consultations and public opinion research.⁷¹ The results of a comprehensive survey demonstrated that the most pressing issues to emerge were those relating to: poverty and abuse experienced by many children and young people; barriers for disabled people; abuse of those in institutions; the impact of poverty on realisation of the most basic human rights; and the economic and social inequalities between Maori and Pacific people as opposed to other New Zealanders.⁷²

Social rights were, therefore, very prominent in the responses to the consultation by ordinary people. It is reported by a former Human Rights Commissioner, who was part of conducting the consultation process, that the process changed how human rights were perceived in New Zealand. Human rights became framed as a discourse relating to economic situations and to communities.⁷³ It seemed that, as with the UK, the focus to that point in New Zealand had been on civil and political rights, and this had created a sense amongst the public that human rights were 'for criminals'.⁷⁴ This consultation created instead a sense of positivity around human rights, and a perception that human rights were for ordinary people.⁷⁵ This positivity had the knock-on effect of persuading the New Zealand Government of the time of a democratic mandate as regards human rights. The willingness of the Government to consequently adopt the Action Plan was therefore significantly enhanced.⁷⁶

Social rights, though important to everyone, are especially vital to those in poverty, as other economic groups are more capable of buying services such as health and housing.⁷⁷ To increase support for human rights therefore, the obvious step would be to frame human rights in a way that ensures it is made clear that social rights benefit all, and in particular the most deprived groups. In fact the difficulties posed by austerity could increase the possibility for using human rights as a tool for both the political left and the economically disadvantaged alike;⁷⁸ to build enthusiastic endorsement of human rights discourse as well as cross-linking campaigns and social movements.⁷⁹

5. Conclusion

⁶⁹ Daly, McDermott Rees and Curtis, n 11, 17.

⁷⁰ New Zealand Human Rights Commission, *The New Zealand Action Plan for Human Rights: Priorities for Action: 2005-2010* (2004) https://www.ohchr.org/Documents/Issues/NHRA/New_Zealand.pdf accessed 21 Jan 2020.

⁷¹ *Ibid.*, 3.

⁷² *Ibid.*, 4.

⁷³ Daly, McDermott Rees and Curtis, n 11.

⁷⁴ *Ibid.*

⁷⁵ Daly, McDermott Rees and Curtis, n 11, 17

⁷⁶ *Ibid.*

⁷⁷ See Hunt, n5.

⁷⁸ Bell and Cemlyn, n21, 823.

⁷⁹ *Ibid.*, 831.

Human rights must be locally relevant if ordinary people are to perceive them as a resource in struggles against injustice.⁸⁰ There must be a two-way effort to educate ordinary people about their human rights, and also for those people to transmit to those in power what they see as most important to them in terms of human rights. It seems that there are many examples, as outlined above, whereby people report that, of all the human rights, it is primarily social rights which they perceive to be of greatest relevance to them.

Creating a positive rights culture⁸¹ is clearly crucial to the successful implementation of international human rights standards. It seems that, because social rights better reflect everyday concerns, shifting to a greater emphasis on social rights would increase support for human rights in the UK. This is of particular importance in the current austerity climate which Alston pointed out is causing deep injustice, with 'great misery has been inflicted unnecessarily.'⁸²

The more people know about human rights, the more they can assert them, and in turn, the more favourably they perceive them.⁸³ It is eminently possible for consultation and/or education campaign of the likes seen in New Zealand, emphasising that social rights are to the benefit of all. Boyle and Cochrane argue that, given the influence which state authorities have in directing the public mood, the UK Government has a significant role to play in providing accurate information in any post-Brexit human rights reform process.⁸⁴ However it is unlikely that the current Conservative government will seek to amend the Human Rights Act to include social rights. In fact it seems more likely of course that they would seek to dismantle the Act as they have sought to do for some time.

Therefore it will be primarily left to civil society to achieve greater emphasis on social rights. Daly *et al.* point to the importance of a strong civil society sector in enhancing human rights, referencing the Swedish success in implementing the Convention for the Elimination of Discrimination against Women, and campaigns to tackle gender violence in Latin America.⁸⁵ There is also evidence that a mobilised civil society movement is key to whether social rights are relied upon where there are possibilities to litigate them. Cases such as *Garissa*⁸⁶ in which social rights were upheld in Kenya, are frequently taken as a result of strategic litigation by civil society actors.⁸⁷ The willingness of civil society to litigate these cases, will therefore dictate whether social rights are ultimately applied in court.⁸⁸ This will be the case whether social rights are explicitly incorporated into law or whether they must be accessed indirectly through relevant legal provisions which happen to relate to social rights. Local authorities must also take responsibility for tackling the worst effects of austerity, and both Alston's process, as well as the City of York example, demonstrate that there is the will to do this.

Human rights are facing increasing threats in the UK. As well as the distrust of the Human Rights Act, a rise in populism is resulting in the prioritisation of religion and race over the prioritisation of globalism. There are at present calls for the UK to progressively re-imagine

⁸⁰ Tine Destrooper, 'Localization "Light": The Travel and Transformation of Non-empowering Human Rights Norms'. In Tine Destrooper and Sally Merry (eds), *Human Rights Transformation in Practice* (University of Pennsylvania Press, 2018).

⁸¹ Diane Sisely, 'Inspired by the Human Rights Act: The Victorian Charter of Human Rights and Responsibilities', in Nicolas Kang-Riou *et al.* (eds), *Confronting the Human Rights Act: Contemporary Themes and Perspectives* (Routledge, 2012), 95.

⁸² Report of the Special Rapporteur, n49, para. 9.

⁸³ Bell and Cemlyn, n21, 832.

⁸⁴ Boyle and Cochrane, n 4, 43.

⁸⁵ Daly, McDermott Rees and Curtis, n 11.

⁸⁶ Constitutional Petition No. 2 of 2011 (Garissa).

⁸⁷ See e.g. Commission on the Status of Women, *Interactive Expert Panel: Commemorating 30 years of CEDAW, Upholding Women's Right through Litigation*, 54th session, (1-12 March 2010).

⁸⁸ Daly, McDermott Rees and Curtis, n 11, 8

human rights structures.⁸⁹ It has become more important than ever to understand human rights in practice – the ways in which ideas promoted by human rights are manifested in everyday life around the world.⁹⁰ A crucial part of understanding human rights in the UK will be to move beyond tired truisms about social rights being undemocratic and nonjusticiable. There is strong evidence that popular support exists for social rights, and there is great potential for actively trying to work with people to progress these rights. Proper emphasis on housing, education and health, for example, as rights, will very likely assist ordinary people in understanding the relevance of rights to their lives and therefore boost the popularity of the human rights framework more broadly.

⁸⁹ Boyle and Cochrane, n4.

⁹⁰ Destrooper and Merry, n80.