Socioeconomic Rights in an Independent Scotland

SUMMARY REPORT

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COMMON WEAL

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Introduction

This paper will outline and contextualise the legal frameworks, international, regional and domestic, which are most relevant to the protection and promotion of human rights in Scotland. The report will then make a case for why human rights have the chance to be better advanced in an independent Scotland by taking the specific example of the progressive realisation of socioeconomic rights.

This report will advocate human rights as part of the ‘Common Weal’: the values which underpin this approach are broadly socialist, democratic and universalist. This report recognises top down legal reform as one strategy, which can be driven by both government and the grassroots, as a possible source of empowerment for people towards a fairer and more equal society.

Context

The report examines the general track record of both the UK and the Scottish governments with respect to the laws and legal frameworks that pertain to human rights:

• The UK has only incorporated one international human rights treaty into domestic law, the European Convention on Human Rights, which mainly protects civil and political rights.

• The UK has been slow to grant people the right to petition international human rights bodies where they believe their rights have been violated and have not received a domestic remedy.

• The British Bill of Rights, as proposed by the Conservative-Liberal Coalition Government in 2011 to replace the Human Rights Act, has been “emphatically rejected” by the Scottish Human Rights Commission; concern has also been expressed by the UN, the Council of Europe Commissioners for Human Rights and 80 domestic civil society organisations over the prospective erosion of human rights standards.

• In May 2014, the British state learned that it will be the first ever Western country to face a preliminary investigation by the International Criminal Court at The Hague, for alleged war crimes committed by British troops in Iraq. The Scottish government’s record on human rights also merits scrutiny, specifically in relation to prisons and prisoners:

• Since 1994, the European Committee for the Prevention of Torture has condemned slopping out, overcrowding and poor regime (being incarcerated within the cell for 23 hours per day) in HM Prison Barlinnie as amounting, in its view, to inhuman or degrading treatment or punishment, echoing the terms of Article 3 of the European Convention of Human Rights.

• The Scottish government displayed disregard for human rights when they did not extend the franchise to convicted persons if they are incarcerated at the time of the referendum on independence.

Relating more specifically to socioeconomic rights, in its inquiry on welfare reform, the UK Joint Committee on Human Rights criticised the British government for the lack of information on how it had assessed the human rights and equality impact of the Welfare Reform Act 2012. The Committee further raised concerns that the Welfare Reform Act risked breaching human rights in leading to destitution (engaging the prohibition of degrading treatment), discrimination and retrogression in the realisation of economic, social and cultural rights.

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The political culture of Westminster is “wilfully disconnected” from the reality of poverty and inequality in Britain, to the extent that widespread human rights criticism of its socioeconomic policies has been ignored with routine regularity. Persistent and rising levels of poverty and social exclusion have been criticised by the UN Committee on Economic, Social and Cultural Rights who called on the UK in 2009 to adopt human rights based anti-poverty strategies. The UK’s failure thus far to tackle child poverty was also recently highlighted as part of the 2012 Universal Periodic Review of the UK’s human rights obligations. The European Committee on Social Rights has repeatedly questioned the fairness of low wages and the wage conditions of young and older workers in Britain.

Socioeconomic Rights

Socioeconomic rights – to a stable home, food, education, health care, social security – have the same legal status as civil and political rights. However, for many reasons, the UK privileges civil and political over socioeconomic rights. An independent Scotland could be better placed than under the current devolved settlement to progress socioeconomic rights. Bringing socioeconomic rights into a Constitution or Bill of Rights has the potential to ensure protection, respect and government accountability for budgetary priorities.

There is widespread evidence that the Coalition Government’s Welfare Reform Act 2012 is having a negative impact on the progressive realisation of socioeconomic rights. Raquel Rolnik,
UN Special Rapporteur on housing, found on her visit to the UK that:

...some policies and practices which have resulted in the progressive realization of the right to adequate housing are being eroded, and that the structural shape of the housing sector has changed to the detriment of the most vulnerable. She expresses her concern that recent measures are contributing also to an increased vulnerability of those who, until a few years ago, were protected.

The welfare provisions of the British government have also attracted criticism from the Council of Europe in Strasbourg. In a 2014 report analysing compliance to the Council’s European social charter, the level of UK benefits paid in pensions, jobseeker’s allowance and incapacity benefit is described as “manifestly inadequate” because it falls below 40% of the median income of European states.

In a devolved Scotland some socioeconomic rights have regressed in part due to policy conflict with Westminster.

In a devolved Scotland some socioeconomic rights have regressed, despite improvements to legal protections. This is due in part to policy conflict with Westminster. The Homelessness Act passed by the Scottish Parliament in 2003 enhanced legal obligations with regard the right to housing and was praised by the Office of the High Commissioner for Human Rights as an international model of best practice. The Scottish government claimed that it provided a fully justiciable right to housing. In 2012, the Institute for Housing, Urban and Real Estate Research, Heriot-Watt University, the Centre for Housing Policy, University of York and Crisis produced a study entitled ‘The homelessness monitor: Scotland 2012’. With respect to the changes in homelessness law, the report commented:

This [law] alongside a preventative approach is making a real difference [in Scotland] and despite the challenging economic climate, levels of homelessness are going down, contrary to the trend in England which has seen a dramatic rise across the board.

In other words, improving the law is simply not enough. The reality illustrated by this research group is that despite having some of the most progressive homelessness law in the world, without control over law and welfare policy, the Scottish government cannot facilitate the progressive realisation of human rights for the people of Scotland, and furthermore, it cannot be held properly accountable for its budgetary priorities.

The UK government is currently failing to meet its international obligations with respect to socioeconomic rights, and therefore an independent Scotland would provide a chance to ingrain these rights at birth through a written constitution or a Bill of Rights. Scotland’s constitutional framework should extend to economic, social and cultural rights, the rights of the child, of disabled people, women and others protected in international human rights treaties.

In concert with a Common Weal future, human rights, in a constitutional framework, can act to rebalance power – limiting sovereignty of Parliament and the power of the executive – and empowering people as right holders to hold duty bearers accountable.

As Dr Katie Boyle argues with reference to Ireland, “The Constitution is the only place where human rights can be protected from legislation that is incompatible with human rights, from the future repeal of legislation that specifically protects human rights, or from retrogressive measures taken by the state to dismantle existing good practice in relation to human rights (such as disproportionately punitive austerity measures). This is because the court can only step in to declare actions of the state or legislation unlawful if they are unconstitutional.”

In addition to thinking about a Constitution, the Scottish Human Rights Commission proposed the following specific recommendations in the event of Scottish independence:

1. Scotland should immediately adopt the existing international human rights obligations from treaties signed by the UK
2. Should build on its obligations under Paragraph 7(2)(a) of Schedule 5 of the Scotland Act 1998, which provides that the Scottish government and Parliament “observe and implement international obligations”

3. Should consider ratifying those key international human rights instruments that the UK has not signed

Conclusion

This report has offered an example of a human rights issue which is important to the people of Scotland – socioeconomic rights – and argued that independence offers an opportunity to improve human rights by strengthening legal protections, and coalescing policy and law. Firstly, it has been argued that there is a political will, and societal support, to pioneer improvements in this area in Scotland. Secondly, it has been argued that the current devolution arrangement is a significant barrier to improvement, as Scottish and British law and policy conflict, to the detriment of human rights. To that end, the report has contrasted our international human rights obligations, specifically those contained in the International Covenant on Economic, Social and Cultural Rights, and the Welfare Reform Act. It is argued that the Act is responsible for retrogression on human rights standards for poor and marginalised people in Scotland; as such it runs counter to international and Scottish standards of policy and law.

There is a political will, and societal support, to pioneer improvements in this area in Scotland.

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