



Putting the justice into social justice: How international human rights can deliver progressive change for Scotland

Innovation Forum, 9 December 2015
Our Dynamic Earth, Edinburgh

Welcome from Professor Alan Miller, Chair, Scottish Human Rights Commission

A warm welcome to everyone who has joined us at this event today. This conference marks a very real opportunity for Scotland's National Action Plan, about to enter its third year, to advance our vision of a country where everyone lives with dignity. We will hear from the First Minister and international guests about the importance of economic and social rights. We will also hear about the experiences from other countries on how they have advanced the right to an adequate standard of living, or to the highest attainable standard of health, by taking international human rights laws into the fold of their domestic laws and through implementation in practice. We hope that this conference will be the start of a conversation about how we can do better in Scotland in the years to come.

Welcome from Sarah Davidson, Director General Communities, Scottish Government

The Scottish Government is delighted to support today's Innovation Forum. Taking action to respect, protect and realise human rights is one of the principal duties of any government. It is an obligation that Scottish Ministers take very seriously. That commitment goes beyond compliance with the law. Ensuring that human rights are fully acknowledged in everything we do is integral not only to the work of central government, but to the entire Scottish public sector. There is already much to be proud of in our collective efforts to make human rights real; but there is also much to learn. By combining insights from international experts with input from domestic practitioners, today's event offers a welcome opportunity to explore how we can all take action to give further and better effect to internationally recognised human rights and build a Scotland where everyone can live a life of human dignity.

PROGRAMME

9.00am	Arrival
9.30am	<p>Welcome</p> <p>Professor Alan Miller, Chair of the Scottish Human Rights Commission. Including video address by Nils Muižnieks, Council of Europe Commissioner for Human Rights.</p>
9.45am	Keynote Address – First Minister Nicola Sturgeon
10.05am	The view from the United Nations: Principles and practices for incorporating UN human rights treaties – Christian Courtis, Office of the High Commissioner for Human Rights.
10.30am	The perspective from Finland: Economic and Social Rights in Finland's constitution, the approaches taken and lessons learned – Eeva Nykänen, senior researcher, National Institute for Health and Welfare.
11.00am	Coffee break
11.30am	<p>What can we do in Scotland?</p> <p>Chaired by James Wolffe QC, Dean of the Faculty of Advocates. Leading Scottish legal figures will debate the pros and cons of further incorporation in Scotland. Presentations from Shelagh McCall QC and Douglas Ross, Advocate, followed by questions from the audience.</p>
12.30pm	The perspective from Germany: Constitutionalising the right to dignity – Michael Windfuhr, Deputy Director, German Institute for Human Rights.
1.00pm	Lunch break
2.00pm	<p>Breakout session 1</p> <p>Responding to austerity and welfare reform: how can economic and social rights be implemented?</p> <p>Breakout session 2</p> <p>Case studies: how international human rights have shaped responses in practice, law and policy.</p> <p>Breakout session 3</p> <p>Models of incorporation: current perspectives and next steps.</p> <p>Breakout session 4</p> <p>Implementation and incorporation models: the UNCRC, UNCRPD and CEDAW.</p>
3.30pm	Coffee break
3.45pm	<p>Plenary feedback and discussion</p> <p>Co-chaired by Professor Alan Miller and Sarah Davidson, Director General Communities, Scottish Government.</p>



What are human rights?

Human rights are universal, indivisible, interrelated and interdependent, without any conditions attached for their enjoyment. Both **economic, social and cultural rights**, and **civil and political rights** are essential for the effective protection of human dignity. Together, they constitute the cornerstone of a civilised society. All rights are required to be treated in a fair and equal manner, on the same footing and with the same emphasis. It is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights for everyone, regardless of differences such as ethnic origin, sex, disability, sexual orientation or religious beliefs etc.

What about the human rights framework?

In the post-World War II period, international consensus crystallised around the need to identify the fundamental rights and freedoms which all governments should respect, protect and fulfil. A number of international treaties have been drawn up since that time, which combine to make up the international human rights framework:

- ◆ Universal Declaration of Human Rights
- ◆ International Covenant on Economic Social and Cultural Rights
- ◆ International Covenant on Civil and Political Rights
- ◆ Convention on the Rights of the Child
- ◆ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ◆ International Convention on the Elimination of All Forms of Racial Discrimination
- ◆ Convention on the Elimination of All Forms of Discrimination Against Women
- ◆ Convention on the Rights of Persons with Disabilities

What about international law?

When states sign treaties and accept obligations it is then recommended by overseeing United Nations treaty bodies that governments incorporate those standards and obligations into domestic law so that they can be enforced through courts where necessary.

The UK has ratified all of the international human rights treaties listed above and accepted the resulting international obligations. However, it has not incorporated the broader range of human rights into its domestic legal systems, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

At present, only the human rights contained in the European Convention on Human Rights are incorporated into the law of Scotland (through the Scotland Act 1998 and Human Rights Act 1998). This includes the right to freedom from torture and degrading treatment, and freedom of expression. It does not include rights such as those to an adequate standard of living, and to the highest attainable standard of health. It also does not include specific human rights standards relating to women, children, minority ethnic communities or disabled people.

What about economic, social and cultural rights?

Economic, social and cultural rights relate to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education. However, it is wrong to assume that the enjoyment of rights in relation to these areas of life can be separated from civil and political rights. Economic, social and cultural rights and civil and political rights are interdependent and indivisible. For example, the right to vote and participate in public affairs will be weakened if an individual is denied an adequate standard of living or deprived of the right to an education. The right to freedom from inhuman and degrading treatment will be compromised by a lack of adequate housing and access to health care.

What is incorporation?

Incorporation is the inclusion of a treaty in national law in order to make the content of the treaty enforceable. The method of incorporation of international treaty obligations into domestic law is not always the same. In some countries, international treaties automatically become part of domestic law when they are ratified, like in France. These are known as “monist” legal systems. In other countries, like the UK, international treaties are not automatically incorporated when they are ratified. In these countries – known as “dualist” legal systems – domestic law needs to be developed or amended to specifically bring an international treaty into the country’s domestic legal system. This can be done through a written constitution or by ordinary Acts of Parliament. In federal or devolved contexts, this can happen at either national or devolved level.



BREAKOUT SESSION 1

Responding to austerity and welfare reform: how can ESC rights be implemented?

Experience shows us that incorporation of international rights can make a real, practical difference to the decisions made by governments and public bodies and to people's lives. However, even without economic, social and cultural (ESC) rights enshrined in domestic law other mechanisms and processes can be used to ensure they are implemented in practice. This session will explore the benefits, barriers and opportunities to embed ESC rights in accountability processes.

CHAIR: Professor Alan Miller, Chair, Scottish Human Rights Commission

SPEAKER 1: Rachel Moon, Senior Solicitor, Govanhill Law Centre

The challenges and barriers in tackling housing and other social justice issues using human rights law and the potential benefits of incorporation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

SPEAKER 2: Kavita Chetty, Head of Strategy and Legal, SHRC

The relevance and importance of the underlying principles of ESC rights and how they might be applied and implemented through non-legal mechanisms and processes.

SPEAKER 3: Caro Cowan, Head of Tackling Poverty Team, Scottish Government

The development of the Scottish Government's Social Justice Action Plan and its connection to the realisation of ESC rights.

Discussion will consider the benefits, challenges and opportunities to embed economic and social rights to achieve social justice by mitigating retrogression and targeting resources to achieve progressive realisation of rights.

Case Study example: Comments of UN Special Rapporteur on housing

In September 2013, UN Special Rapporteur on housing, Raquel Rolnik, expressed serious concern about a marked deterioration in the enjoyment of the right to adequate housing in the UK. Ms Rolnik pointed to austerity measures such as the bedroom tax and argued they had been taken "without the human component in mind", to a point where the UK had regressed from a country that once led the way on housing to a country where instability and high housing costs were commonplace. Of key importance was her acknowledgement that times of economic crisis allow for difficult policy decisions to be made. However, with that she delivered the clear message that international human rights standards call on governments to avoid jeopardizing the protection of the most vulnerable in the face of fiscal pressures.

Although there are UN reporting mechanisms in place, including the opportunity to relay concerns to Committees and Special Rapporteurs, those affected by policies such as the bedroom tax are unable to rely directly on their right to an adequate standard of living (Article 11 ICESCR) in a Scottish court in challenging decisions. This session will explore how to increase visibility and accountability for ESC rights.

BREAKOUT SESSION 2

Case studies: how international human rights have shaped responses in practice, law and policy

PART ONE: Housing Rights in Practice

CHAIR: Chloe Trew, Participation Officer, Scottish Human Rights Commission (SHRC)

Dessie Donnelly, Director, Participation and the Practice of Rights (PPR) • Clare MacGillivray, Development Coordinator, Edinburgh Tenants Federation • Heather Ford, Resident at West Cromwell Street, Leith, Treasurer of W.P.C. Residents Association

Background

In Belfast, Northern Ireland, the Seven Towers Residents Group, supported by PPR, took a human rights based approach to hold the local housing authority to account and bring about improvements in their living conditions. The conditions experienced by the residents violated a number of international human rights, in particular the right to adequate housing (Article 11 ICESCR). The poor housing was also impacting on the ability of the residents to realise other rights, such as the right to education and the right to health.

PPR supported the residents to identify priorities for change and to understand and articulate the problems they were experiencing in terms of human rights. Residents held the Northern Ireland Housing Executive to account by: collecting evidence demonstrating how the conditions failed to meet international human rights standards as well as local housing standards; setting timescales for change; monitoring progress; and holding regular meetings with Ministers and civil servants. Significant improvements were achieved using this approach. The Edinburgh Tenants Federation and SHRC, supported by PPR, are now working with residents in Leith to carry out a similar project. The residents are currently at the evidence gathering stage.

PART TWO: Panel Debate on Land Reform

CHAIR: Alison Elliot, Chair of the Land Reform Review Group (2012-2014)

PANELISTS: Peter Peacock, Policy Director, Community Land Scotland • Megan MacInnes, Technical Adviser, Global Witness • Kirsteen Shields, Lecturer, University of Dundee, School of Law • Christopher Nicholson, Chairman, Scottish Tenant Farmers Association

Background

Land reform in Scotland is a debate which has, in the past, focused largely on property rights, with landowners often asserting their right to property under Article 1 of Protocol 1 to the ECHR. In response to the Scottish Government's proposals on land reform, the SHRC has sought to broaden the debate to highlight that, rather than being a tool to stop land reform or to polarise the debate, human rights should be seen as a framework for constructive dialogue between landowners and communities. For example, the Commission highlighted that the International Covenant on Economic, Social and Cultural Rights places a duty on the Scottish Ministers to use the maximum available resources to ensure the progressive realisation of rights such as the right to housing, food and employment. When viewed through this broader human rights lens, land should be seen as a national asset with key questions arising of how to strike the most appropriate balance between the legitimate rights of landowners and the wider public interest.



BREAKOUT SESSION 3

Models of incorporation: current perspectives and next steps

International human rights already play an important role in Scotland, however there are opportunities to strengthen their reach and impact. The purpose of this session is to explore the current realities, consider different potential models of incorporation of international human rights treaties, and learn from other jurisdictions to consider the benefits that incorporation could bring.

CHAIR: Susan Kemp, Commissioner, Scottish Human Rights Commission

Relevance of Human Rights to the work of the Scottish Government Legal Directorate

SPEAKER 1: Alison Coull, Divisional Solicitor/Deputy Director, Constitutional and Civil Law Division, Scottish Government Legal Directorate

Under the Scotland Act 1998, the Scottish Parliament must legislate in compliance with the European Convention on Human Rights (ECHR). As such, human rights are of vital importance to the work of the Scottish Government Legal Directorate. Alison Coull will explain the relevance of international human rights to the day-to-day work of Government, giving an insight into the current landscape.

Models of incorporation

SPEAKER 2: James Wolffe QC, Dean of the Faculty of Advocates

There are a number of ways in which international human rights – over and above those found in the European Convention on Human Rights – could be incorporated into Scots Law. Three models, highlighted in a paper by Dean of the Faculty of Advocates, James Wolffe QC, have been identified as possibilities: Constitutionalisation; The Human Rights Act Model; and Welsh & Scottish UNCRC model. James Wolffe will explain these potential avenues and explore the risks and benefits of each model.

Lessons from other jurisdictions and the benefits of incorporation

SPEAKER 3: Dr Katie Boyle, Senior Lecturer, Roehampton Law School

A number of jurisdictions have incorporated economic, social and cultural rights into their national law. Dr Katie Boyle will outline the legal frameworks in selected countries and will share thoughts on the various practical benefits of incorporation, considering the relevance to the Scottish context.

BREAKOUT SESSION 4

Implementation and incorporation models: UNCRC, UNCRPD and CEDAW

There are a couple of examples where international human rights instruments have been explicitly referenced in Scots law. The Children and Young People (Scotland) Act 2014 set up the duties of Scottish Ministers and public authorities in relation to the UN Convention on the Rights of the Child (CRC). In Wales, the National Assembly placed a duty on all Welsh Ministers to have due regard to the substantive rights and obligations within the CRC and its optional protocols. The purpose of this workshop is to discuss the lessons emerging from the CRC, Convention on the Rights of Persons with Disabilities (CRPD) and Convention on the Elimination of Discrimination Against Women (CEDAW) processes in the UK. Discussions will look at how to transfer lessons for future incorporation or implementation of other international human rights treaties.

CHAIR: Diego Quiroz, Policy Officer, Scottish Human Rights Commission

The Convention on the Rights of the Child

SPEAKER 1: Juliet Harris, Director of Together

The UK ratified the UNCRC in 1991 but has never fully incorporated it into domestic law. The Scottish Alliance for Children's Rights will discuss the current efforts to incorporate the CRC in Scotland culminating with the Children and Young People (Scotland) Act 2014. Juliet will consider potential lessons for Scotland at a time of key policy change.

SPEAKER 2: Elin Gwynedd, Head of Empowering Children and Young People, Welsh Government

Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011 states: "From the beginning of May 2014, the Welsh Ministers must, when exercising any of their functions, have due regard to the UNCRC requirements." Section 2 requires the Ministers to have a scheme setting out how they intend to fulfil that obligation. Elin will discuss the benefits and challenges of implementing this legislation in Wales.

The Convention on the Rights of Persons with Disabilities (CRPD)

SPEAKER 3: Ian Glover, Equality Unit, Scottish Government

The Scottish Government's Draft Delivery Plan 2016-2020 sets out how it will implement UNCRPD. The plan, which sits within Scotland's National Action Plan for Human Rights, contains over 50 commitments to taking practical actions across all areas of Government. Ian Glover will discuss the lessons from this process and future actions.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

SPEAKER 4: Dr Marsha Scott, Chief Executive, Scottish Women's Aid, Member of the Scottish Women's Budget Group, Engender Board Member

The UK ratified CEDAW in April 1986 but it has not been incorporated into domestic law, and is not therefore binding on the Scottish courts. Marsha Scott will discuss the challenge of implementation of CEDAW when it is not incorporated into domestic law, and potential solutions to ensure the enjoyment of women's human rights in Scotland.