



STUC submission to the Universal Periodic Review

Scottish Trades Union
Congress

About the STUC

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens. The STUC represents over 570,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, black members, LGBT members, and members with a disability, as well as retired and unemployed workers.

Summary

- 1) For an advanced, wealthy democracy the UK has a poor record on ratification, incorporation, compliance and effective remedy.
- 2) Membership of the EU and compliance with EU obligations has combined with reluctant observance of ECtHR rulings to enhance the human rights of UK citizens
- 3) Secession from the EU, repeal of the Human Rights Act and the risk of future withdrawal from the ECHR create an unprecedented threat to UK compliance with the treaties of the UN and, consequently, the human rights of UK citizens
- 4) The UPR provides a vital opportunity to highlight the role of EU and ECHR obligations in promoting compliance with UN obligations and to seek commitments from the UK Government and devolved governments to maintain human rights standards and guard against retrograde measures.
- 5) In particular, the Scottish Government should address its binding obligation to advance UN obligations such as incorporation, compliance and effective remedy within its devolved competence in order to mitigate against the deregulatory zeal of the UK government.

Introduction

- 6) On the 23 June 2016 people in the UK voted to leave the European Union. The UK is now set to leave the structures of EU law and treaty compliance that have existed for over 40 years. The effect of this change on the legislative basis of the UK could be significant. For example, much of the UK's employment law is shaped by the European system and it is clear that the EU provided a useful basis upon which to defend workers rights, promote dignity and equality within the workplace and ultimately to pursue the aim of providing decent work and an adequate standard of living to all workers in the UK. The future of these rights, however, is now unclear.

Commitment to the European Convention

- 7) It is important to note that the primary basis for Human Rights legislation in the UK is the European Convention on Human Rights. The UK is currently a member of the Council of Europe, signatory to the Convention and subject to the jurisprudence of the European Court of Human Rights. Through the Human Rights Act (1998) effective remedy is offered through UK domestic courts, with many Human Rights cases now resolved at the national level. The Human Rights Act is therefore an important vehicle for ensuring that people in the UK can defend their Human Rights, and challenge potential Human Rights breaches. Despite this, however, there are still questions around access to justice and too few people in the UK have any real understanding of Human Rights and the role that it could play in their everyday lives. There remains a clear role for the NHRIs in the UK to increase understanding and improve access to justice.

- 8) The UK Government has stated their intention to repeal the Human Rights Act and replace it with a British Bill of Rights. The driving purpose behind this change, as stated by the Government, is to alter the status of the European Court of Human Rights and to limit the effect of Court judgements on British law. To this end the UK Government have stated that the British Bill of Rights would see the ECtHR's judgements as advisory rather than binding and therefore it would be the UK court system, and the UK Supreme Court in particular, which would decide how Human Rights principles are implemented, with reference to the legislative structure put down by the UK Government. The desire of the UK to repeal the Human Rights Act and to undermine the legitimacy of ECtHR suggests a negative direction of travel within the UK which is incompatible with the need to progressively realise Human Rights. It is also clear that some of the reasons for this change are driven by ECtHR rulings relating to the treatment of terrorist suspects and prisoners. If the UK is making these changes in order to dilute a commitment to Human Rights obligations, for example the absolute prohibition on the use of torture, then this cannot be seen as anything but a retrograde step. Equally the UK's actions, serve to undermine the legitimacy of Human Rights at a global level and act as a justification for others to also systemically pursue breaches of their international obligations.

- 9) In addition, while the UK Government has, to date, maintained a commitment to the ECHR, it is possible that this commitment will not be maintained in the future. A key barrier to any withdrawal from the Convention was the UK's membership of the EU. With the European Court of Justice in essence accepting the jurisprudence of the ECtHR, even if such a withdrawal had occurred while in membership of the EU, its effect would have been softened. The current UK Prime Minister is on record in stating her view that a full withdrawal from the Convention would be favourable, and while this position is not the formal policy of the UK Government, at present, it remains a possibility that such an approach may be pursued, in tandem with or following withdrawal from the EU. If this were the case it would create a severe reduction in rights for people living in the UK as the loss of the EU legal structure, the potential repeal and dilution of the Human Rights Act and a lack of effective remedy for any wider UN treaty would leave people in the UK with rights on paper that mean little in practice.
- 10) While withdrawal from the Convention remains a 'worst case scenario' the direction of travel within the UK is still of concern. The stated aim of the repeal of the Human Rights Act and replacement with a British Bill of Rights, and the debates which accompany this at a political level serve to undermine basic Human Rights concepts, in particular the universality of these rights. Equally the consistent undermining of the ECtHR and the persistent questioning of the legitimacy of supranational structures is creating a stumbling block to continued and meaningful engagement with these structures in the future.

The loss of the EU's legal structure

- 11) The European Convention, while an important and essential piece of Human Rights infrastructure in the UK, is still limited in its effect, most notably because it does not contain wider economic, social and cultural rights and while the UK is a signatory to ICESCR, there is no effective remedy for its provisions within the UK legal system. This means that people living in the UK struggle to realise their economic and social rights in any meaningful sense. Through the EU, however, certain elements of this treaty were given legal force. The ECJ made important rulings on freedom of assembly, for example, which gave foundation to the rights of UK workers to join trade unions and have their union protect their rights at work and take action on their behalf. The recent Trade Union Act, passed by

the UK Government is a clear challenge to provisions within Article 11, ICESCR and ILO protocols. For example, the provision which counts non-voters as 'voting against' a strike action is in clear breach of ILO standards. Despite this the Trade Union Act sits on the statute books and will begin to limit the rights of workers when the necessary statutory instruments are passed by UK Ministers.

- 12) The EU used to offer a clear counterpoint to the lack of effect for wider UN treaties. It provided a route for trade unions, civil society and others to challenge UK law and failures by the UK Government. Many important provisions found their beginnings from the EU, for example equal pay legislation, the agency workers directive, maternity rights, non-discrimination laws, rights for negotiation and consultation and rights to paid time off and a limit to working hours. The EU provided a legal foundation and the right to challenge poor practice in the UK. While withdrawal from the EU does not mean the automatic withdrawal of these rights, it opens up the possibility that they will be eroded in future. To date the current UK Government has been happy to make changes to employment rights where there have been no European minimums to protect workers. Changes to date include:

- an increase in time that a worker can be employed before unfair dismissal rights apply,
- the introduction of employment tribunal fees,
- the removal of the statutory questionnaire for equality cases,
- the removal of provisions from the Equality Act that relate to third party harassment, and
- the changing of rules around consultation rights in cases of redundancy.

In this respect withdrawal from the EU draws into sharp focus the absence of any other legal recourse for UK citizens and the absence of any legal remedy for breaches in wider UN treaties is now of greater concern.

- 13) For many in the UK the growth of insecure work, coupled with the punitive and degrading nature of the benefit system, wider cuts to public services and increasing housing costs, mean that poverty and uncertainty are a growing feature of daily life. The effect of austerity politics is great and the pursuit of policies that deregulate the labour market further will ultimately lead to an increase in exploitative contracts and a reduction in the prevalence of decent work. Brexit comes at a time when the direction of travel in the UK is already negative and will place a greater strain on an already

fragile economic and social model. Inevitably any economic pain will fall most greatly on those least able to manage it, with results for BME workers, disabled workers, young workers and women likely to be particularly negative.

Commitments to Refugees

- 14) Equally the UK's response to the refugee crisis and proposals such as the security wall in Calais and third country processing within the asylum system, call into question the UK's commitment to provisions of the Geneva Convention. Currently there are clear and identifiable breaches of the Dublin provisions, with failure to apply family reunification protocols for refugees in the Calais camp and deliberate delays within the system serving to undermine the legitimacy and the functioning of these provisions. This coupled with restrictions on family reunification for unaccompanied minors within the UK, the continued use of detention within the asylum system and the high levels of poverty faced by both asylum seekers and refugees raise serious questions around the UK's approach to this issue. When coupled with the extremely low number of grants of asylum in the UK when compared with the extent of the global crisis, the level of failure by the UK can be considered severe.
- 15) The UK's response to the refugee crisis and its relationship with France will also be shaped by future Brexit negotiations. It is a clear area of concern that refugees seeking protection may find their interests marginalised by wider political disputes and the UK must provide assurances that this will not be the case.

Conclusion

- 16) In short Brexit acts as a challenge to the UK Government to better meet its international obligations and to seek to protect the rights of its own people. The direction of travel in the UK to date has been increasingly negative with the ongoing effects of austerity, a continued commitment to deregulation of the labour market and an increasing suspicion of supranational institutions, including the European Court of Human Rights. It would therefore be useful to consider how the Universal Periodic Review offers an opportunity to:

- scope, in broad terms, the extent to which the UK relies on EU membership to honour international obligations and commitments,
- to recognise the human rights challenges presented by secession,
- to acknowledge the importance of maintaining human rights compliance during secession negotiations and in the post-EU paradigm,
- to re-visit issues of partial ratification, incorporation and effective remedy to minimise the detrimental effect of secession; and,
- to adopt practical measures at the international and state level to improve monitoring, reporting and compliance during the process of significant legal and constitutional change.

- 17) The Scottish Government, too, has a role to play in this regard with its own duties to comply with Human Rights obligations and to progressively realise these rights for people in Scotland. Austerity continues to play too great a role in the lives of Scottish people, and more needs to be done to ensure that decent work and an adequate standard of living is available to everyone in Scotland. With increased devolution, the Scottish Government now has more direct power, particularly around social security and while these powers are not exhaustive it is incumbent on the Scottish Government to ensure that they use every tool at their disposal to produce better outcomes particularly for disabled workers, young workers and BME workers, who in many respects face systematic and structural barriers within the labour market.
- 18) The Scottish Government must also seek to ensure that it provides a system for people in Scotland to find legal remedy for their treaty rights. In this respect the Scottish Human Rights Commission are keen to offer guidance on how ICESCR can be given greater force in Scottish law and the STUC supports this approach. Equally as the true effect of Brexit becomes clear there may be a greater role for the Scottish Government to act as a protector and facilitator of rights for people in Scotland.
- 19) With the future uncertain, trade unions could face considerable challenges in our pursuit of decent work and our aim of securing the rights of workers in the UK. It is imperative that the UK

Government acknowledges the failings of the current system and aims to create a better foundation for the rights of UK workers.

STUC,
September 2016