

Contribution to the EHRLR special issue on 'UDHR at 75'. Based on talk delivered at Leicester University in April 2023.

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Economic and Social Rights in the UK: Between Pessimism of the Intellect and Optimism of the Will

ABSTRACT

Economic and social rights are recognised in a number of treaties voluntarily signed and ratified by the UK. International human rights bodies have repeatedly issued recommendations urging the UK to incorporate international law on economic and social rights into the domestic legal framework. So far, the UK Government has maintained the position that economic and social rights are not directly justiciable. This has been the Government's position, with little public questioning of it, except in specialised circles. However, the politics and context of the debate appear to be shifting in recent years. This paper explores the reasons why this may be happening and reflects about why one might be hopeful, but cautious, about the prospects of seeing socio-economic rights enhanced in the UK.

1. Introduction

Since this special issue commemorates the 75th anniversary of the adoption of the 1948 Universal Declaration of Human Rights (UDHR), it makes sense to start from there. Article 22 UDHR proclaims:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”¹

Article 25 mentions specifically the rights to an adequate standard of living, the right to health and the right to social security.²

Economic and social rights are the material conditions of freedom recognised as human rights in key international treaties, particularly the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the UK and 170 other countries to this day.³ ICESCR proclaims, amongst others, the right to work and rights at work, the right to form and join a trade union, the right to social security, the right to protection and assistance to the family, the right to an adequate standard of living (including food and housing, inter alia), the right to health, the right to education, and the right to take part in cultural life and to benefit from science.

¹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

² UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

³ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3; OHCHR status of ratification dashboard: <https://indicators.ohchr.org/> [Accessed October 9, 2023].

As a matter of international law, States must perform their international treaty obligations in good faith, and they may not invoke their internal law as a justification or an excuse for their failure to abide by their international obligations.⁴ The UN Committee on Economic, Social and Cultural Rights requires States to recognise the rights contained in ICESCR appropriately in the domestic legal order, including means or redress, accountability and judicial remedy.⁵

In recent decades, the world has experienced a trend towards greater recognition of socio-economic rights domestically, in national constitutions or legislation. In 2013, at least 160 constitutions contained at least two socio-economic rights, 26 of them as aspirational rights, 75 justiciable, and 59 with a mixture of both. In 2016, environmental rights were present in 68 per cent of constitutions and were justiciable in 42 per cent, up from 53 per cent and 29 per cent respectively in 2000. In 2016, the right to health was judicially enforceable in 74 countries, 20 more than in 2000. The right to housing is present in 42 per cent of the constitutions. Child protection, education, health and social security appear in more than two thirds of the world's constitutions, and are justiciable in at least 40 per cent of them. The right to education is present in 81 per cent of constitutions and is justiciable in 59 per cent.⁶ This is why Rosevear, Hirschl and Jung conclude that economic and social rights “are not only more present in constitutions but they are also more likely to be justiciable than ever before.”⁷ Furthermore, international and comparative practice shows that, even when economic and social rights are not constitutionalised as directly enforceable rights in court, constitutional economic and social rights can provide an interpretive guidance for the application of domestic legislation.⁸

The UK is a State Party to ICESCR and other relevant treaties. However, as opposed to the civil and political rights recognised in the Human Rights Act 1998, there is no holistic domestic legal framework to give effect to socio-economic rights as human rights. In its latest Concluding Observations, from 2016, the UN Committee on Economic, Social and Cultural Rights recalled previous recommendations and urged the UK “to fully incorporate the Covenant rights into its domestic legal order and ensure that victims of violations of economic, social and cultural rights have full access to effective legal remedies”.⁹ Six years later, in 2022, the Government maintained the position they have taken for a very long time, namely, that there is no need to incorporate ICESCR into the domestic legal framework, adding that they are “confident that [the UK] is fully compliant with its UN treaty obligations including ensuring that there are effective remedies for any breaches”.¹⁰

That has been the standing position of the UK Government for a long time, with little public questioning of it, except in specialised circles. Yet, the context of the debate appears to be

⁴ Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p.331, Articles 26-27.

⁵ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9: The domestic application of the Covenant*, UN doc E/C.12/1998/24 (1998), para.2-3.

⁶ Facts and figures: E. Rosevear, R. Hirschl and C. Jung, “Justiciable and Aspirational Economic and Social Rights in National Constitutions” in K.G. Young, *The Future of Economic and Social Rights* (Cambridge University Press, 2019).

⁷ E. Rosevear, R. Hirschl and C. Jung, “Justiciable and Aspirational Economic and Social Rights in National Constitutions” in K.G. Young, *The Future of Economic and Social Rights* (Cambridge University Press, 2019), p.40.

⁸ J. King, “Social rights in comparative constitutional theory” in G. Jacobssohn and M. Schor (ed), *Comparative Constitutional Theory* (Edward Elgar, 2018), p.166.

⁹ UN Committee on Economic, Social and Cultural Rights, Concluding Observations: UK, E/C.12/GBR/CO/6 (2016) para.6.

¹⁰ UK Government, Seventh periodic report to UN Committee on Economic, Social and Cultural Rights, E/C.12/GBR/7 (2022) para.2.

shifting significantly enough in recent years. In this paper I will explore why this may be happening, reflecting on reasons to be controlled and reasons to be hopeful about the prospects of seeing the legal status of socio-economic rights enhanced in the UK. I do not claim to present a comprehensive list of factors. Instead, I focus on four supportive arguments for the pessimist, and four for the optimist side.

This brief analysis is based on my observations as a scholar working on socio-economic rights in the UK since 2016, as well as my past experience as a campaigner and researcher, and my current role as the project lead of Human Rights Local, a project of the Human Rights Centre of the University of Essex to make human rights locally relevant in England. Over the years, I have discussed law and policy issues pertaining to socio-economic rights with local government officials, law practitioners, members of Parliament, party officials, campaigners, community activists and people with lived experience of poverty. What should we expect to happen to socio-economic rights in the years ahead? Will the UK finally bring Article 22 UDHR home? The following words by Antonio Gramsci written in prison some 95 years ago capture *to some extent* how I feel about these questions: “My own state of mind synthesizes these two feelings and transcends them: my mind is pessimistic, but my will is optimistic. Since I never build up illusions, I am seldom disappointed.”¹¹ The quote partly reflects my state of mind, but not entirely. I admit from the outset that I lean to one of the sides, and my inclination is given away by the structure of the paper: I start with pessimism, and I end with optimism, letting it have the last word. That is how I tend to tackle difficult questions: Use the intellect to understand challenges as well as possible, and use the will to seize opportunities as much as possible.

2. Incorporation of socio-economic rights and pessimism of the intellect

The first obstacle facing those advocating for the legal recognition of socio-economic rights as human rights is one of strategic communications: Human rights have been under heavy attack by right-wing commentators, media and politicians at least since the Conservative Party returned to power in 2010. Opinion polls suggest that most people support socio-economic rights.¹² However, over the years, substantial segments of the British public have been exposed to a narrative that portrays human rights as an antidemocratic tool that only protects terrorists, migrants and prisoners. Sometimes openly, sometimes covertly, influential voices close to power or from within power have urged to “overhaul” the Human Rights Act, to borrow ministers’ language,¹³ or to withdraw from the European Convention on Human Rights entirely.¹⁴ This may very well be part of the Conservative manifesto for the 2024 general election. Against this background of hostility, considering the negative publicity given to the frame “human rights” over the years, even if a politician in opposition was genuinely willing to protect and fulfil housing, health or social security, they would understandably think twice about using human rights law and discourse to make their case.

¹¹ A. Gramsci, *Letters from Prison*, selected and translated by Lynn Lawner (Harper and Row, 1973), p.159.

¹² Daily Mail, “Half of Britons are worried about being able to pay for FOOD in cost-of-living crisis and 44% are anxious about rent and mortgage payments, shock new poll finds” (November 16, 2022) <https://www.dailymail.co.uk/news/article-11430533/Half-Britons-worried-able-pay-FOOD-cost-living-crisis-new-poll.html> [Accessed December 7, 2023].

¹³ “Explainer: Liberty’s guide to the government’s plan to ‘overhaul’ the human rights act” (March 2022) <https://www.libertyhumanrights.org.uk/issue/explainer-libertys-guide-to-the-governments-plan-to-overhaul-the-human-rights-act-2/> [Accessed December 7, 2023].

¹⁴ The Guardian, “UK would be outlier with Russia if it left ECHR, Law Society says” (August 9, 2023) <https://www.theguardian.com/world/2023/aug/09/uk-could-leave-european-convention-on-human-rights-to-stop-channel-migrant-boats> [Accessed December 7, 2023].

The second hurdle is structural. In the UK, the parliamentary power represented in Westminster is supreme. This does not apply to the devolved administrations, to which I shall return shortly. But in principle Westminster can legislate about any topic, no parliament is meant to tie the hands of a future parliament, and the validity of an Act of Parliament cannot be questioned in court. Certain Acts are considered to have quasi-constitutional weight, and the Human Rights Act 1998 is one of them. However, the power of judges under the Human Rights Act is limited, as is well known, since they cannot strike down and invalidate legislation that they may deem contrary to the Human Rights Act. They can only declare it incompatible with the Human Rights Act,¹⁵ and it shall be up to Parliament to consider the question and make the necessary amendments or not. Parliamentary sovereignty does not feature in neighbouring countries. The majority of States have a written constitution and an independent judicial body – and/or a constitutional court – that can determine the compatibility between the national constitution and a piece of legislation passed in parliament. However, the UK is different in that regard, and any sort of UK-wide legal recognition of socio-economic rights would need to live with parliamentary sovereignty in the way the Human Rights Act does.¹⁶

The third challenge is political, like the first one, only that this one comes from the left. Socio-economic rights concern fair taxation, distributive policies, public healthcare, social security entitlements, the private rental sector... They are at the core of the traditional right-left divide, more conspicuously than civil and political rights, which are widely seen as foundational in a liberal society. The Conservative Party has been in Downing Street uninterruptedly since 2010 (until 2015 in coalition with Liberal Democrats, and under a confidence and supply agreement with the unionists of Northern Ireland between 2017 and 2019). Conservatives have been in power for 50 of the last 80 years. Rather than changing laws, many on the left crave winning a general election for a change. “We don’t need legal rights; we just need to vote for Clement Attlee again,” as one Labour campaigner put to me once. Furthermore, a not insignificant group are sceptical of human rights as an ideal; some because of the supposedly Marxist critique of the individualism of human rights,¹⁷ others because they see the establishment of the European human rights regime after World War Two primarily as a conservative project.¹⁸ In this context, persuading the left that human rights have something meaningful to offer to egalitarianism and social justice is not an easy task.

The fourth difficulty is more contingent than the other three. Much of the movement around socio-economic rights comes from Scotland and Wales. As we will see in the next section, policy and legal debates taking place there are being inspiring for advocates and researchers living in England. At the same time, since the resignation of Nicola Sturgeon as First Minister in February 2023, Scotland appears to be going through a period of political turmoil. In the current parliament, all Scottish parties except the Conservatives are formally committed to incorporating international human rights standards into Scots Law. That includes the Greens, currently in government, but also Labour and Liberal Democrats, in opposition. However, the UK Government’s referral of the Scottish Bill to incorporate the UN Convention on the Rights

¹⁵ Human Rights Act 1998, s.4.

¹⁶ On the challenges to the judicial enforceability in the UK legal context, see generally: K. Boyle, *Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication* (Routledge, 2020), particularly chapters 3-5.

¹⁷ For an excellent interrogation into whether Marx was truly against human rights, or simply insufficiently interested, see: P. O’Connell, “On the Human Rights Question” (2018) 40(4) *Human Rights Quarterly* 962.

¹⁸ M. Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press, 2017).

of the Child (CRC) to the UK Supreme Court muddled the waters about what a future Scottish bill including socio-economic rights could actually deliver. The haziness only got thicker when the Supreme Court ruled that some of the provisions of the CRC Bill exceeded the powers of the Scottish Parliament.¹⁹ In the second half of 2023, the Scottish Government consulted publicly on what a future Scottish Bill of Rights should look like, and the text is expected for mid-2024.²⁰ However, at this point, the remit and ambition of such a future Bill, and the priority it will be given in the political agenda, remain uncertain.

3. Incorporation of socio-economic rights and optimism of the will

The other side of the coin of the last paragraph of the previous section is that Scotland and Wales are showing remarkable leadership in relation to socio-economic rights. Both devolved executives made use of their powers to bring to life the socio-economic duty, a legal provision of the Equality Act 2010 that requires public authorities to have due regard to the desirability of reducing inequalities of outcome.²¹ The then First Minister of Scotland, Nicola Sturgeon, set up the advisory group on human rights leadership, which presented its conclusions on 10 December 2018.²² Following on their recommendations, the Scottish Government announced a process to incorporate all international human rights instruments into Scots Law. While such a commitment has progressed much more slowly than advocates and campaigners would have desired, as indicated earlier, a consultation was made public in June 2023, and it is expected that the Bill will be submitted to Parliament in mid-2024, assuming the timeline is respected. In addition, in 2018, the Scottish Parliament passed the Social Security (Scotland) Act, which declares as one of its foundational principles that “social security is itself a human right and essential to the realisation of other human rights”.²³ Like their Scottish counterparts, the Welsh Government has been very critical of the UK Government’s threats to repeal or replace the Human Rights Act. They have also declared they are “committed to a detailed plan of action which will explore incorporating UN Conventions into Welsh law which could potentially lead to a Welsh Bill of Rights”.²⁴ At the same time, in 2023 the Local Government and Housing Committee of the Welsh Parliament (Senedd) debated the added value of the right to adequate housing for Wales,²⁵ and the Welsh Government issued a consultation on future legislation on fair rents and affordability of housing, inspired partly by international human rights law standards.²⁶ These initiatives are providing an opportunity for civil society and academics to engage with concrete law and policy proposals, setting up an example of what could be possible in England and in the UK as a whole for non-devolved matters.

¹⁹ Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [2021] UKSC 42.

²⁰ A Human Rights Bill for Scotland: consultation (June 2023): <https://www.gov.scot/publications/human-rights-bill-scotland-consultation/> [Accessed December 7, 2023].

²¹ Equality Act 2010, s.1. In the case of Scotland, it was implemented in 2017 and the duty acquired the name ‘Fairer Scotland Duty’. In Wales, the duty was commenced in 2021.

²² Read about the advisory group’s work and recommendations on their website: <https://humanrightsleadership.scot/> [Accessed December 7, 2023].

²³ Social Security (Scotland) Act 2018, s.1(b); C. O’Cinneide, “The Social Security (Scotland) Act 2018 – A Rights-Based Approach to Social Security?” (2019) 23(1) Edinburgh Law Review 117.

²⁴ Minister for Social Justice of the Welsh Government, “The United Nations is right, what the UK Government is doing will lead to serious human rights violations” (May 3, 2022) <https://www.gov.wales/united-nations-right-what-uk-government-doing-will-lead-serious-human-rights-violations> [Accessed December 7, 2023].

²⁵ Welsh Parliament – Local Government and Housing Committee, *The Right to Adequate Housing* (July 2023) <https://business.senedd.wales/mgIssueHistoryHome.aspx?Iid=40832> [Accessed December 7, 2023].

²⁶ Welsh Government, “Securing a path towards adequate housing including fair rents and affordability: consultation” (June 2023): <https://www.gov.wales/securing-path-towards-adequate-housing-including-fair-rents-and-affordability> [Accessed December 7, 2023].

While the Conservative Party toys with the idea of scrapping the Human Rights Act and denouncing the European Convention on Human Rights, other parties are formally endorsing and considering how to recognise socio-economic rights. These moves give reason for moderate optimism. We covered in the previous paragraphs the initiatives set in motion by the SNP-Greens Scottish executive and the Labour-led Welsh executive. Part of the Green Party's set of policies are the recognition of the "universal human right to shelter" (meaning housing, since that is the chapter under which this commitment is contained), the right to food and water, workers' rights in line with the International Labour Organization and ICESCR, and incorporation of the UN Convention on the Rights of the Child.²⁷ At a party conference level, the Liberal Democrats also supported the incorporation of the right to food.²⁸ So did Labour in 2021 in relation to the right to food and the right to housing,²⁹ while in 2023 former Prime Minister Gordon Brown's Commission on the UK's Future recommended the Labour Party to advocate for "constitutionally protected social rights".³⁰ Whether all or any of these commitments will be included in the manifestoes of these parties ahead of the next general election remains to be seen, but the mere fact that these policy positions are being considered speaks to the shift in public and political discourse.

This brings us to the third reason for optimism. After 13 years in power, polls currently suggest that Conservatives may be evicted from Downing Street at the next general election, expected at some point in 2024. Time will tell if Labour wins outright or if it will need to form a coalition or seek support from other parties in Parliament. One should not take for granted that a future Labour government would incorporate international standards on socio-economic rights, either with a single overarching legal instrument like the Human Rights Act, or right by right (say, Right to Housing Act, Right to Social Security Act, etc).³¹ At this moment, there is little indication that Labour would walk towards that goal if they get to power. However, one can be certain it would not happen while Conservatives remain in control. In fact, the Conservative Party might well run on a so-called culture war to withdraw from the European Convention on Human Rights and to repeal the Human Rights Act.³² Therefore, the potential change of government in 2024 is another reason to be less than pessimistic about the prospects for socio-economic rights, and human rights in general.

If this or any future government implements laws and policies in line with internationally recognised human rights, it will be because they are moved to do so by the public and organised civil society. And there is an observable change in the extent to which civil society groups are speaking about social rights openly, this being the fourth cause for vigilant enthusiasm. Scottish and Welsh organisations have been following closely the processes in their respective nations,

²⁷ Green Party Policies HO300, SW101, WR432 and RR405: <https://policy.greenparty.org.uk/our-policies/> [Accessed December 7, 2023].

²⁸ Sustain, "Liberal Democrats support incorporation of the Right to Food in UK law" (September 14, 2019) https://www.sustainweb.org/news/sep19_lib_dem_right_to_food/ [Accessed December 7, 2023].

²⁹ Labour Campaign for Human Rights, "Labour Party Conference 2021 – the Right to Food and Housing" https://www.lchr.org.uk/labour_party_conference_2021_the_right_to_food_and_housing [Accessed December 7, 2023].

³⁰ Commission on the UK's Future, *A New Britain: Renewing our Democracy and Rebuilding our Economy* (2023), p.12. <https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf> [Accessed December 7, 2023].

³¹ About the virtues of each option, see P. Hunt, "How to advance Social Rights without Jeopardising the Human Rights Act 1998" (2019) 90(3) *The Political Quarterly* 90(3) p.393.

³² The Observer, "We risk being seen as the 'nasty party' again, warn senior Conservatives" (August 13, 2023) <https://www.theguardian.com/politics/2023/aug/13/we-risk-being-seen-as-the-nasty-party-again-warn-senior-conservatives> [Accessed December 7, 2023].

advocating decisively for the recognition of socio-economic rights. A growing number of NGOs in all four nations are shadowing the 7th review in front of the UN Committee on Economic, Social and Cultural Rights in 2022-25, including community groups of people with live experience of poverty. The number and quality of submissions had already increased notably in the 6th review of 2014-16.³³ Larger NGOs are also steering in that direction. The international human rights NGO Human Rights Watch has produced reports on the situation in Britain, focusing on council housing, food and universal credit.³⁴ Amnesty International published a report on homelessness,³⁵ and the UK Section has become gradually more open to highlighting socio-economic rights in their public communications. Even Liberty, which since the 1930s has focused on civil liberties and civil and political rights, is debating what contribution they can make to socio-economic rights. In hindsight, I have no doubt that the mission to the UK by the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, in November 2018, made a real difference in helping to connect the realities of disadvantage, hardship and social injustice with internationally recognised human rights.³⁶ The social rights NGO Just Fair launched the Social Rights Alliance of the North East soon after Alston's visit to Newcastle, project that later became the Social Rights Alliance of England. Following these steps, in 2020, Just Fair, Amnesty International, the Human Rights Centre of the University of Essex, ATD Fourth World and various community groups joined forces to form GRIPP ("Growing Rights Instead of Poverty Partnership"), an initiative that brings together people with lived and learnt experiences of poverty.³⁷ The tide is changing towards greater engagement with socio-economic rights by community groups, mainstream human rights organisations and British civil society in general.

4. Concluding remarks

There are reasons to be optimistic, albeit cautiously so, about the potential for socio-economic rights in the UK. It is important to choose the right frame for this cause, connecting human rights with local realities and grievances as much as possible. Advocates in England (not in Wales or Scotland) should be mindful that the category 'international' is not persuasive in and by itself and that in fact many are put off by it. Socio-economic rights can satisfy the material conditions of freedom so individuals can become citizens and make meaningful contributions to the community they are part of. Following Marshall, we can see socio-economic rights as essential ingredients of social citizenship, the foundation of a more egalitarian society that cares for the wellbeing and freedom of all its members, irrespective of migration status or any other condition, focusing particularly on the situation of those at greater risk of disadvantage.³⁸ It is

³³ OHCHR Reporting status for the UK:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=GBR&Lang=EN [Accessed December 7, 2023].

³⁴ Human Rights Watch, United Kingdom <https://www.hrw.org/europe/central-asia/united-kingdom> [Accessed December 7, 2023].

³⁵ Amnesty International, *An Obstacle Course: Homelessness Assistance and the Right to Housing in England* (2022) <https://www.amnesty.org/en/documents/eur03/5343/2022/en/> [Accessed December 7, 2023].

³⁶ K. Casla and D. Willis, "Philip Alston's austerity report must be a turning point for social justice in Britain", Huffington Post (May 22, 2019) https://www.huffingtonpost.co.uk/entry/philip-alston-austerity_uk_5ce4f0c5e4b0d513447c7276 [Accessed December 7, 2023]; K. Casla and W. Wyporska, "Poverty in the UK: The world is listening, but is the government?", Open Democracy (July 5, 2019) <https://www.opendemocracy.net/en/opendemocracynk/poverty-uk-world-listening-government/> [Accessed December 7, 2023]; UN Special Rapporteur on Extreme Poverty and Human Rights, Report after visit to UK, A/HRC/41/39/Add.1 (2019).

³⁷ Human Rights Local <https://www.essex.ac.uk/research-projects/human-rights-local> [Accessed December 7, 2023]; GRIPP <http://staging.gripp.org.uk/> [Accessed December 7, 2023].

³⁸ T. H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge University Press, 1950).

also essential to choose the right moment, the window of opportunity, and to choose between a constitution-type grand agenda or a more granular approach sector by sector, policy by policy, right by right. One way or another, legislators would need to adjust international human rights standards to the UK's constitutional setting and legal traditions, including parliamentary supremacy. At the same time, campaigners and scholars working on socio-economic rights should be clear and realistic about what human rights can offer to social justice, managing expectations without pretending that the legal recognition of rights is a panacea that will change Britain overnight. Policy makers and officials would need clarity about what specifically would need to change to adapt the domestic legal framework to international standards on socio-economic rights. They would also crave arguments that speak to their language and concerns in relation to cost-effectiveness and evidence-based policy making.

While parliamentary sovereignty is a particular feature of the UK's legal tradition, the so-called democratic critique of socio-economic rights is not at all unique to the UK. Champions of this critique contend that giving judges too much power to adjudicate on socio-economic rights presents a fundamental conflict with the separation of powers in a democratic society. In their opinion, judicial review of social rights is "democratically illegitimate" as the substance of rights should be determined by elected and accountable bodies; the legislature – and potentially the executive with a mandate derived from the people directly or indirectly through parliament – would be best placed to resolve substantive disputes and conflicts of interest in society.³⁹ However, contrary to the so-called democratic critique, constitutionalising social rights does not take the authority away from the people or from democratically elected bodies. Quite the reverse, the fulfilment of social rights requires the involvement of all powers of the State, not only the judiciary. Countries exploring new forms of legal or constitutional enhancement of socio-economic rights should be encouraged to apply an incrementalist approach to judicial adjudication, so as all powers have the chance to enter into a form of dialogue over the merits and limits of judicial review of social rights. Such an incrementalist approach requires caution and restraint from legal operators, particularly at the beginning, and sincere collaboration between judiciary, executive and legislature.⁴⁰

Finally, fairness ought to be at the centre of the process. Policy-makers, but also campaigners, researchers and scholars must strive to bring people along. In particular, they should seek to involve people with lived experience of poverty as co-participants. The UN Committee on Economic, Social and Cultural Rights defined poverty "as a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living" and other human rights.⁴¹ Poverty is about lack of resources and public services, but it is also about lack of choices. People in poverty regularly report experiences of stigma and blame, the feeling of being ignored, the entrapment of over-indebtedness, isolation, and lack of recognition of unpaid labour, particularly for women.⁴² One should pay attention not only to what is being said in policy development, but who says it as well. As a matter of human rights, the voices of people with lived experience of poverty must be heard in the development of policies that affect

³⁹ J. Waldron, "The Core of the Case Against Judicial Review" (2006) 115 Yale Law Journal, p.1346.

⁴⁰ J. King, "The Future of Social Rights: Social Rights as Capstone" in K.G. Young, *The Future of Economic and Social Rights* (Cambridge University Press, 2019), p.317.

⁴¹ UN Committee on Economic, Social and Cultural Rights, Statement on Poverty and ICESCR, UN doc. E/C.12/2001/10 (2001), para.8.

⁴² R. Bray, M. de Laat, X. Godinot, A. Ugarte and R. Walker, *The Hidden Dimensions of Poverty* (International Movement ATD Fourth World, 2019).

their lives.⁴³ Merging lived and learnt experiences adequately requires a sort of practice that respects the “epistemic agency” of people with lived experience of poverty, meaning, their capacity “to think and to act in this world.”⁴⁴ Human rights should aim higher than simply giving voice to people in poverty. Public policy should aim at ending poverty. However, the path to that end must include actively listening to the grievances and the recommendations made by people who live or have lived the consequences of poverty and inequality. People with the relevant lived experience should be invited to engage in the production of knowledge in a participatory process. From this perspective, research and practice on poverty and socio-economic rights is not something done *to* people with lived experience of poverty, it is not even something done *for* them; inasmuch as possible, it must be done *with* them and *by* them. Both lived and learnt experience bring unique knowledge to the table. In the dilemma between pessimism of the intellect and optimism of the will, this is a critically important challenge for academics, researchers and campaigners for human rights and socio-economic rights in particular.

⁴³ UN Committee on Economic, Social and Cultural Rights, Statement on Poverty and ICESCR, UN doc. E/C.12/2001/10 (2001), para.12.

⁴⁴ W. Mignolo, “On subalterns and other agencies” (2005) 8(4) Postcolonial Studies, p.381, at 396.