

UNITED KINGDOM

SDGs and Economic and Social Rights under the Brexit Uncertainty

Koldo Casla¹

Just Fair²

“While the Sustainable Development Goals themselves are not framed explicitly in the language of human rights, virtually all of the Goals correspond to the contents of key economic, social and cultural rights.”—UN Secretary-General, December 2016³

This report examines the progressive realization of the Sustainable Development Goals (SDGs) and economic and social rights in the UK. Specifically, it focuses on three issues: a) the impact of welfare reforms on the right to an adequate standard of living; b) substantive equality; and c) human rights-based accountability for the implementation of the SDGs.

The present and future of economic and social rights in the UK will depend considerably on the legal and policy consequences of the UK’s withdrawal from the European Union. In March, the UK communicated formally its intention to leave the EU, and the negotiations only began in late June. What follows will therefore frame economic and social rights in the context of the uncertainty derived from Brexit.

The right to an adequate standard of living: Have welfare reforms been fair and effective?

Ending poverty in all of its forms is the first Sustainable Development Goal, SDG 1. Ending hunger and achieving food security and improved nutrition is the second, SDG 2. And promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all is the eighth, SDG 8. Judging by the available evidence about the impact of the recent welfare reforms in the UK, the country is not headed in the right direction to achieve these goals.

In recent years, the UK has introduced significant changes to its welfare state with the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016. The reforms were justified on two grounds: deficit reduction and ending welfare dependency by facilitating access to work.

Regarding the first ground, deficit reduction, the UK has indeed made remarkable savings at the expense of welfare expenditure. According to official data, welfare reforms introduced since 2010 will save around £26 billion by the end of this year, roughly 10 percent of what welfare spending might otherwise have been; the greatest savings are from tax credits, £4 billion lower, and child benefits, 22 percent lower.⁴ Welfare savings have been accompanied by substantial tax reforms (corporation tax, inheritance tax, capital gains tax and bank levy) that will lose the Treasury some £70 billion between April 2016 and April 2022.⁵

1 Koldo Casla is a human rights law and policy analyst, and Policy, Research and Training Manager in Just Fair.

2 Just Fair monitors and advocates economic and social rights in the UK. On behalf of a consortium of more than 70 national and local groups, Just Fair monitored the 2014-16 UN CESCR review of the UK, and informed the UN’s analysis with a parallel report and a response to the list of issues of the Committee in 2016.

3 UN Secretary-General, Question of the realization in all countries of economic, social and cultural rights, December 2016, UN doc. A/HRC/34/25, para. 8.

4 House of Commons Library, Welfare savings 2010-11 to 2020-21, July 2016.

5 Full Fact, “Have the Conservatives brought in £70 billion worth of tax cuts?”, March 2017.

The wealthiest 10 percent benefited from nearly half of the combined effects of tax and welfare rewards introduced in April 2017.⁶

As regards the second ground for reform, namely ending welfare dependency, in the national report to the 3rd UN Universal Periodic Review, the government defended the measures in order to encourage, “including through benefit sanctions where appropriate, those who can work to find and keep work and to increase their earnings rather than relying on benefits”.⁷

However, several studies have provided strong **evidence that the reforms are not delivering the promised outcomes**, whilst a large number of households are seeing their **level of enjoyment of the rights to social security and adequate standard of living diminished**.

In 2015, there were 7.4 million working poor people living in the UK (2 million more than in 2005), that is, people who live below the poverty line in spite of belonging to working families.⁸ It has been estimated that 3 million working families will no longer be entitled to any in-work support; and a further 1.2 million are set to receive the so-called *universal credit*, but they will actually be an average of £41 per week worse off.⁹

In November 2016, the National Audit Office criticized the government for not doing enough to assess the impact that benefit sanctions have on people who are already on low incomes.¹⁰

Delays and welfare benefit sanctions are two of the biggest causes of social exclusion and referral to food banks.¹¹ The number of food banks has increased

substantially in recent years.¹² Church Action on Poverty estimated in 2013 that over 500,000 people were reliant on food aid.¹³ The number of three-day emergency food supplies given by the Trussell Trust exceeded 1.2 million in 2016-2017, up from 26,000 in 2008-2009.¹⁴

In 2016, the UN Committee on Economic, Social and Cultural Rights called on the UK to “restore the link between the rates of State benefits and the costs of living and guarantee that all social benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to health care, adequate housing and food”; the UN Committee also expressed concerns about the overreliance on food banks and recommended that the government should “develop a comprehensive national strategy for the protection and promotion of the right to adequate food”.¹⁵ The Committee on the Rights of the Child also requested the UK collect data on malnutrition and other issues and assess the effectiveness of its policies.¹⁶

The UN Special Rapporteurs on Housing, the Rights of Persons with Disabilities, Extreme Poverty, and the Right to Food, sent a joint letter to the government which highlighted five areas of concern: a) the lowering of the household benefit cap; b) the freeze on certain benefits; c) the reduction of child tax credits; d) the lowering of the employment support allowance; and e) the repeal of the Child Poverty Act 2010 and abolition of income-based poverty targets.¹⁷

6 David Finch, “The government’s £1bn tax and benefit giveaway will leave poorer households worse off”, Resolution Foundation, April 2017.

7 UK Government Ministry of Justice, National report to the UN Universal Periodic Review, February 2017, para. 50.

8 Joseph Rowntree Foundation, Monitoring poverty and social exclusion 2016, December 2016.

9 Resolution Foundation, Universal Challenge: making a success of Universal Credit, May 2016.

10 National Audit Office, Benefit sanctions, November 2016.

11 Rachel Loopstra et al, “The impact of benefit sanctioning on food insecurity: a dynamic cross-area study of food bank usage in the UK”, University of Oxford Sociology Working Papers, October 2016.

12 House of Commons Library, Food Banks and food poverty, April 2014.

13 Church Action on Poverty, Walking the Breadline, May 2013.

14 The Trussell Trust, “UK foodbank use continues to rise”, April 2017.

15 UN Committee on Economic, Social and Cultural Rights, Concluding Observations: UK, July 2016, UN doc: E/C.12/GBR/CO/6, para. 41 and 53-54.

16 UN Committee on the Rights of the Child, Concluding Observations: UK, July 2016, UN doc: CRC/C/GBR/CO/5, para. 66-67.

17 UN Special Rapporteurs on Housing, on Rights of Persons with Disabilities, on Extreme Poverty, and on the Right to Food, “Joint letter to the UK Government”, UN doc. AL GBR 1/2016, April 2016.

In 2015-16, the UN Committee on the Rights of Persons with Disabilities conducted an inquiry into the impact of austerity-led welfare policies on disabled people, the first report of its kind. In October 2016, the Committee concluded that the reforms had led to “grave and systematic” violations of the 2006 UN Convention on the Rights of Persons with Disabilities.¹⁸

In November 2016, the Supreme Court ruled that disabled adults who cannot share a room with another person should not have their spare room subsidy removed, as the government intended with the so-called bedroom tax. The Court also established that treating children and adults differently would breach Articles 8 and 14 of the European Convention on Human Rights, on private and family life and non-discrimination.¹⁹

Some welfare cuts, such as those to tax credits for families with children, only took effect in April 2017. It is too early to evaluate their impact, but several organizations have projected that they will result in a quarter of a million more children living in poverty by 2021.²⁰

Material inequality is a matter of human rights (and an SDG)

The UK is one of the most unequal countries in Europe, according to the OECD²¹ Decreasing unemployment rates, longer working hours and low inflation reduced income inequality in 2016.²² However, this was mainly the result of low levels of income growth since the beginning of the financial crisis in 2007/08.²³

¹⁸ UN Committee on the Rights of Persons with Disabilities, Inquiry concerning the UK, UN doc. CRPD/C/15/R.2/Rev.1, October 2016.

¹⁹ Supreme Court, R (Carmichael and Rourke) v. Secretary of State for Work and Pensions [2016] UKSC 58, 9 November 2016.

²⁰ Institute for Fiscal Studies, Living standards, poverty and inequality in the UK: 2016-2017 to 2021-22, March 2017; Policy in Practice, The impact of the two-child limit to tax credits, April 2017.

²¹ OECD Centre for Opportunity and Policy.

²² Office for National Statistics, Household disposable income and inequality in the UK: financial year ending 2016, January 2017; Institute for Fiscal Studies, Living standards, poverty and inequality in the UK: 2016, July 2016.

²³ Matthew Whittaker, “Inequality has reached a 30-year low. So should we still care?” Resolution Foundation, January 2017.

About 70 percent of families had a flat or falling income between 2005 and 2014,²⁴ and real wages fell by 10.4 percent between 2007 and 2015, one of the worst rates in the OECD.²⁵ Furthermore, income inequality is likely to rise again in 2017-18, when the abovementioned social security cuts and a weaker Sterling (which has lost 15% of its value since the Brexit referendum of June 2016) take direct effect on low-income working families.

Income inequality may have receded temporarily, but **the UK is heading towards even greater wealth inequality.** The richest 10 percent of the population owns over half of the country’s total wealth, and the richest 1 percent owns over 20 times more wealth than the poorest 20 percent of the population.²⁶ Falling or stagnant incomes, rising house prices and the consequent fall in homeownership, and policies implemented in the last decade have also increased the intergenerational gap.²⁷

Income and wealth inequality are a significant problem in the UK, and unless there is a major shift in policy, they are likely to remain so in the future.

Material inequality is a matter of human rights and socio-economic status is one of the forbidden grounds of discrimination.²⁸ Inequality puts economic and social rights at risk by hampering their progressive realization and limiting access to adequate social protection for those at the lower end of the scale. Empirical research shows that inequality can be a cause and a consequence of human rights violations, and that inequalities, political capture and the exercise of civil and political rights are closely connected.²⁹

²⁴ McKinsey Global Institute, Poorer than their parents? A new perspective on income inequality, July 2016.

²⁵ Trades Union Congress, “UK workers experienced sharpest wage fall of any leading economy”, July 2016.

²⁶ Oxfam GB, “How to Close Great Britain’s Great Divide”, September 2016.

²⁷ Institute for Fiscal Studies, Inheritances and inequality across and within generations, January 2017.

²⁸ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, 2009, UN doc: E/C.12/GC/20, para. 35.

²⁹ UN Special Rapporteur on extreme poverty and human rights, Report on extreme poverty and inequality, 2015, UN doc: A/HRC/29/31; UN

Public authorities bear the responsibility to prove with actual evidence that their policies are suitable for the purpose of respecting, protecting and fulfilling economic and social rights.

As noted by the UN Secretary-General in December 2016:

One major shift from the Millennium Development Goals to the Sustainable Development Goals is the inclusion of Goal 10, a new cross-cutting and stand-alone goal on reducing inequalities within and between countries. Rising inequalities across the world have become the defining challenge of modern times. [...] [Goal 10] is crucial for achieving a whole host of the other goals and targets. For instance, extreme income inequality slows poverty reduction; eradicating extreme poverty (Goal 1) will therefore be impossible without tackling economic inequality. Economic inequality has been shown to have a number of detrimental human rights effects, perpetuating social exclusion and creating stark disparities in access to health, education, housing and other services essential to the enjoyment of economic, social and cultural rights.³⁰

The exit from the European Union will pose a potential risk to equalities legislation and policies in the UK, which in part derive from EU treaties, the 2000 EU Charter of Fundamental Rights, EU directives and the European Court of Justice. In this respect, earlier this year the House of Commons Women and Equalities Committee recommended “the Government [...] to take active steps to embed equality into domestic law and policy [and] ensure that the same laws and rules apply after the UK is no longer a member of the EU as before it leaves”.³¹ The same Parliamentary Committee also expressed serious concerns because the government has not given details about how it plans to achieve gender

Independent Expert on the effects of foreign debt and other related international financial obligations on human rights, Report on income and wealth inequality and financial crises, 2016, UN doc: A/HRC/31/60.

30 UN Secretary General, Question of the realization in all countries of economic, social and cultural rights, December 2016, UN doc. A/HRC/34/25, para. 16-17.

31 House of Commons Women and Equalities Committee, Ensuring strong equalities legislation after the EU exit, February 2017, p. 3.

equality (SDG No. 5).³²

Section 1 of the Equality Act 2010 sets out the duty of certain public authorities to “have due regard to the desirability of exercising [their functions] in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”. However, in spite of being adopted seven years ago, this government and the previous ones have so far refused to bring the socio-economic duty into force. Just Fair is campaigning together with The Equality Trust to demand the government change course and bring the socio-economic equality duty to life.

Accountability is a “litmus test for the human rights-based implementation” of the SDGs (or why economic and social rights must be brought home)

The SDGs are not only about outcomes or outputs, but also about processes; hence, the importance of a human rights-based approach to their progressive realization.

In late 2016, the UN Secretary-General recalled:

Accountability is a cornerstone of the human rights framework and a litmus test for the human rights-based implementation of the 2030 Agenda. The human rights framework defines who is responsible for what and towards whom, and clarifies the nature of obligations – to take steps to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights – as well as those that are of an immediate nature, notably to remove discriminatory laws, policies and other measures, and to assure minimum essential levels of each of the rights to assist those left furthest behind. It then establishes the conditions to hold duty-bearers answerable to rights holders for their decisions and omissions, and provides mechanisms through which people can endorse their rights, monitor progress transparently, sanction poor

32 House of Commons Women and Equalities Committee, Implementation of Sustainable Development Goal 5 in the UK, March 2017.

performance and seek redress for human rights violations. [...] An accountability framework for the implementation of the 2030 Agenda must therefore be strengthened at the global, regional and national levels and linked with relevant accountability mechanisms for human rights and other international norms and standards.³³

At the time of this writing (late June), the government will soon be introducing what has come to be known as the Great Repeal Bill.³⁴ Following its adoption by Parliament, the Bill (then Act) would enter into force as soon as the UK leaves the EU. At first, it would automatically incorporate all EU legislation into domestic law. From that point onwards, however, Parliament (and in some instances the government alone, bypassing legislative scrutiny) would be free to retain, amend or derogate laws that were born under the EU framework and currently apply directly in the UK.

When the UK ceases to be an EU Member State, presumably in March 2019, nothing would prevent a government from getting rid of labour and gender equality legislation that originated in the EU, such as the Working Time Directive 2003, the Temporary Agency Work Directive 2008, the Pregnant Workers Directive 1992, the Part-Time Workers Directive 1997 or the Parental Leave Directive 2010.

In this regard, the Parliamentary Joint Committee on Human Rights insisted that “the Government must resist the temptation” to repeal laws relating to human rights, including workers’ rights, by executive secondary legislation.³⁵

The UK must apply the highest standards of accountability in relation to economic and social rights and the SDGs. Apart from ensuring the Parliament’s involvement, people living in the UK should be entitled to the highest level of protection of their economic and

social rights. To enable this, **the UK must afford domestic recognition to the rights contained in the ICESCR and other relevant international human rights treaties**, “ensuring that victims of violations of economic, social and cultural rights have full access to effective legal remedies”.³⁶

The Brexit referendum utterly divided society along geographic, generational and class lines.³⁷ The disturbing paradox is that the people who voted to leave the EU are the ones who will suffer the consequences the most. While a 51.9 percent majority voted in favour of exiting the EU, it is not the will of the people to eliminate the minimum social floor and adequate standards of living. The only way to guarantee that economic and social rights are adequately protected on a day-to-day basis after Brexit is to provide them with the necessary legal protection at the national level.

As a result of the reforms introduced in recent years, the UK welfare system does not ensure an adequate standard of living for everyone. The number of working poor families has increased significantly, and so has the child poverty rate, with gloomy projections for the coming years. Unless bold decisions are made, it will be very hard for the UK to meet SDGs 1 (poverty), 2 (hunger) and 8 (decent work) by 2030.

The UK government, but also the authorities in Scotland, Wales and Northern Ireland, as well as local councils, must align efforts to tackle the income and wealth gap in society. The government must bring to life Section 1 of the Equality Act as a stepping-stone towards the achievement of Goal 10. Brexit must not result in a backdoor regression in the protection of economic and social rights. Now more than ever the UK must incorporate the international standards on economic and social rights into domestic law.

33 UN Secretary General, Question of the realization in all countries of economic, social and cultural rights, December 2016, UN doc. A/HRC/34/25, para. 21-22.

34 UK Government Department for Exiting the European Union, The Great Repeal Bill: White Paper, March 2017.

35 Joint Committee on Human Rights, The Human Rights Implications of Brexit, December 2016, para. 76 and 92.

36 UN Committee on Economic, Social and Cultural Rights, Concluding Observations: UK, July 2016, UN doc: E/C.12/GBR/CO/6, para. 6.

37 John Rennie Short, “The geography of Brexit: what the vote reveals about the Disunited Kingdom”, The Conversation, June 2016; Sara Hobolt, “The Brexit vote: a divided nation, a divided continent”, Journal of European Public Policy, Vol. 23, No. 9, 2016.