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Human rights and social welfare pathologies: civil society perspectives on contemporary practice across UK jurisdictions – critical analysis of third cycle UPR data

Paul Chaney 

Wales Institute of Social and Economic Research, Data and Methods (WISERD), Cardiff University, Cardiff, Wales, UK

ABSTRACT

This study uses discourse analysis of the critical views expressed in the corpus of United Nations' Universal Periodic Review (UPR) submissions by civil society organisations (CSOs), in order to explore how the UK, Welsh, Scottish and Northern Ireland governments are responding to their international human rights treaty obligations in the formulation and delivery of social policy. Developed from Hogwood and Peters' work on the pathology of public policy, the analytical framework investigates CSOs' critical framings of the disorders, progress and challenges related to social policy-making in the UK. The findings show a raft of shortcomings including a poor monitoring and enforcement, gaps in social protection and discrimination. The original contribution this study is threefold: 1. revealing the nature of prevailing rights violations in the UK; 2. outlining the territorial narratives and contrasts between jurisdictions in the wake of devolution; and 3. showing how the systemic nature of rights violations can be conceptualised using Hogwood and Peters' theory of public policy making pathologies.

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Introduction

This study uses discourse analysis of the critical views expressed in the corpus of fifty individual submissions by civil society organisations (CSOs) to the Third Cycle United Nations' Universal Periodic Review (UPR) covering the period 2012–17,¹ in order to explore how the UK, Welsh, Scottish and Northern Ireland governments are responding to their international human rights treaty obligations in the formulation and delivery of public policy.² This is supplemented with analysis of the submissions by national human rights institutions' (NHRIs) and the response from the UN Human Rights Council. Developed from Hogwood and Peters' (1985) work, the analytical framework investigates CSOs' critical framings of rights pathologies as well as areas of progress and challenges in the corpus of UPR submissions.³ Attention to civil society perspectives

CONTACT Paul Chaney  chaney@cardiff.ac.uk  Wales Institute of Social and Economic Research, Data and Methods (WISERD), Cardiff University, Cardiff CF10 3WT, Wales, UK

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matters; not only is it a core tenet of the UPR – the UN’s five-yearly monitoring procedure,⁴ it also provides needed criticality of state practices in a manner that resonates with classic accounts of civil society’s role as a democratic check on the actions of ruling elites.⁵ It is also increasingly important in the present era of ‘welfare pluralism’, whereby the ‘third’ – or not-for-profit sector is progressively drawn into the design and implementation of social policy.⁶ The present focus is also appropriate because extant policy studies suggest rights violations are an ongoing problem in the UK.⁷ This is illustrated by the fact that, despite being the world’s fifth largest economy, the United Nations Special Rapporteur on extreme poverty and human rights has highlighted that:

14 million people, a fifth of the population, live in poverty. Four million of these are more than 50 per cent below the poverty line, and 1.5 million are destitute, unable to afford basic essentials ... and [... various sources] predict child poverty rates of as high as 40 per cent. For almost one in every two children to be poor in twenty-first century Britain is not just a disgrace, but a social calamity and an economic disaster, all rolled into one.⁸

A further related concern is the impact of Brexit and the Westminster government’s proposed reforms that threaten the effectiveness and justiciability of human rights law in the UK.⁹ Despite these troubling developments, academic observers note ‘there has been a lack of discourse and negotiation around implementing international [human rights] standards within domestic systems’.¹⁰ This is a lacuna that the present study will address.

The current focus is inter-disciplinary in nature and spans the fundamental nexus between human rights and social welfare.¹¹ Both seek to embed normative principles – (including dignity, fairness, respect, equality and tolerance) in social relations and state practices. Social welfare (also known as ‘social policy’) refers to state interventions to coordinate and/or provide services designed to improve the general well-being of citizens and/or offer protection. This goal is captured in Article 22 of the Universal Declaration of Human Rights (UDHR).¹² As classic exponents of social welfare underline, the overarching goal is the pursuit of citizen well-being. According to William Beveridge and Richard Titmuss this is to be achieved by tackling the ‘giant evils’ of want, disease, ignorance, squalor and idleness¹³ and the pursuit of equality.¹⁴ More recently, this has been described as ‘spending to pool collective risks and to provide investment in human capital of all citizens’¹⁵ and, a concern with ‘how we take care of each other as human beings’.¹⁶ As the following discussion reveals, the scope of social welfare is broad and encompasses the breadth of policy areas that have collectively become associated with the ‘welfare state’ – including health, housing, education, social care, and criminal justice. Crucially, as the literature on public policy delivery analysis explains, law and social policy are not discrete entities; rather, they are intimately interwoven.¹⁷ This is as true of human rights as any other field. Thus, successive UN conventions and treaties are explicit in referring to the need to uphold human rights in government policy-making – as typified by the Convention on the Rights of Persons with Disabilities (the Preamble of which refers to ‘... the equalization of opportunities for persons with disabilities in influencing the promotion, formulation and evaluation of the *policies, plans, programmes and actions* at the national, regional and international levels to further equalize opportunities for persons with disabilities’).¹⁸

Accordingly, this study’s research aims are: 1. to explore the nature and type of policy pathologies in social policy-making practices across the UK and, to understand ‘issue-

salience' – or, CSOs' level of attention to – or prioritisation of – different pathologies in the third cycle UPR; and 2. At an individual polity-level (UK/England, Wales, Scotland and Northern Ireland), to present territorial policy narratives that summarise the issues and challenges in relation to rights implementation. The original contribution of this study is threefold: presenting original case study analysis of the nature of prevailing rights violations in the UK; outlining the territorial narratives and contrasts between jurisdictions in the wake of devolution; and revealing how the systemic nature of rights violations can be conceptualised using Hogwood and Peters' theory of public policy making pathologies.

Accordingly, the remainder of the paper is structured thus: following an outline of the research context, social theory, and the UPR – attention centres on the study methodology. This is followed by discussion of the study findings. These are first set out in the section entitled 'Pathologies in Social Policy-Making across the UK' which concentrates on analysing CSOs' UPR submissions. This is followed by 'Key issues and challenges in relation to rights implementation in England/UK-wide, Scotland, Wales and Northern Ireland' – which analyses CSOs' discourse and UN and NHRI reports in each polity. The study's implications, including a means for addressing the prevailing pathologies, are outlined in the conclusion.

Research context

The United Kingdom is a 'union state'¹⁹ comprised of the nations of England, Scotland and Wales – and the province of Northern Ireland. Over recent decades the UK has been subject to the global trend of state decentralisation (or 'devolution').²⁰ Following centuries of central government from Westminster, legislatures for the constituent nations and province were (re-)established in 1998/9. Their principal legislative powers relate to social policy.²¹ In relation to human rights, their founding statutes make it unlawful for them to act in ways incompatible with the Human Rights Act 1998. Importantly, they are also bound by the UK's state-wide obligations under UN human rights treaties.

Worryingly, reference to human rights is absent in a series of recent strategic reviews of UK policy-making practices.²² However, it is alluded to in two foundational reports that have shaped practice in the UK over the past two decades.²³ These note that the 'decision to introduce a Human Rights Act was a key part of the Government's constitutional reform programme launched after the 1997 election'. As part of the vision for what government describes as 'Professional Policy Making for the Twenty First Century' the stated goal is 'harness[ing] the energies and expertise of those outside groups that had been pressing for human rights legislation' and 'ensuring that policy makers take as full account as possible of the impact the policy will have on different groups'.²⁴

The move to devolved governance in the UK has seen the territorialisation of human rights;²⁵ the devolved legislatures have passed a raft of legislation that goes beyond the UK-wide requirements by incorporating elements of UN principles into domestic (Scottish, Welsh and Northern Irish) law.²⁶ This process of devolved governments shaping distinctive rights contexts is captured in 'A Plan for Scotland: The Scottish Government's Programme for Scotland 2016–17'. It states we will 'explore how to better reflect international human rights obligations in domestic law ... to give further and better effect to the economic, social and cultural rights set out in United Nations and other international treaties'.²⁷ The territorialisation of rights practice is also driven by a series of 'sub-state'

regulatory bodies with human rights remits (e.g. the Scottish and, Northern Irish Human Rights Commissions, the Equality and Human Rights Commission – covering Wales and, England; and the respective Commissioners for: Older People, Future Generations, the Welsh language and, Children – in Wales).²⁸

Social theory

The existing human rights literature underlines the importance of civil society to contemporary rights observance. Notably, Sally Engle Merry's seminal conception of vernacularisation shows how local actors are essential to the translation of international human rights principles in the everyday practices of associative life.²⁹ In a similar vein co-working with civil society organisations is also a core tenet of the international legal and policy framework on human rights.³⁰ The need to foster the engagement of civil society in human rights implementation is also supported by social theory on knowledge exchange and democracy. For example, complementarity theory³¹ emphasises how officials attempt to cope with complexity by using civil society networks to increase involvement in policy implementation, this strengthens both input legitimacy and policy efficacy through the pursuit of shared goals. It also has an epistemological dimension, as underlined in standpoint theory. Its provenance is the interpretive school of policy analysis³² and the literature on social constructivism.³³ It argues that first-hand experience of social phenomena – or 'situated knowledge', such as civil society knowledge of rights practices, can be qualitatively richer and more informed than bureaucratic interpretations of data.³⁴ It places emphasis on beliefs, values, interpretations and knowledge relevant to addressing a given policy issue.³⁵

The latter is also echoed in the deliberative democracy paradigm that is concerned with the shaping of public policy and law. As Jean Cohen explains, 'not simply a form of politics, democracy, on the deliberative view, is a framework of social and institutional conditions that facilitates free discussion among equal citizens – by providing favourable conditions for participation, association, and expression'.³⁶ Furthermore, Jürgen Habermas' Theory of Communicative Action, makes a further, powerful statement that validates the current attention to the deliberative input of civil society in relation to human rights:

... horizontal political will-formation ... An autonomous basis in civil society, a basis independent of public administration and market-mediated private commerce, is assumed as a precondition for the praxis of civic self-determination. This basis preserves political communication from being swallowed up by the government apparatus or assimilated to market structures.³⁷

In addition to the foregoing theorisations, this study's systemic approach to human rights implementation draws on theory in relation to policy pathologies. It is an original contribution that draws upon Hogwood and Peters' seminal work ('The Pathology of Public Policy') comparing the human body and the body politic using the language of medical pathology to investigate the disorders and challenges governments experience in making and implementing social policy. 'Pathologies' is a particularly apposite term for, as the following discussion outlines, rights-related failings in social policy-making have wider ramifications for the 'health' of liberal democratic systems – including, issues of trust, dignity, tolerance, discrimination, representation, legitimacy and accountability.

The Universal Periodic Review

In 2006, UN General Assembly resolution 60/251 created the Human Rights Council and mandated it to:

Undertake a Universal Periodic Review, based on objective and reliable information, of the fulfilment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs.³⁸

The first UPR session was held in April 2008.³⁹ It is a mechanism designed to improve human rights in each of the 193 UN member states. All are reviewed every five years (forty-two states are assessed each year during three Working Group sessions, each focussing on 14 states). The UPR has evolved over time and is currently comprised of three key stages:

- (1) *The Preparation for the Review*. Notably, this includes pre-sessions designed to offer civil society organisations an international platform to directly advocate to state delegations ahead of the UPR session. It also allows diplomatic delegations time to gather information on countries' human rights practices.⁴⁰
- (2) *Review of the human rights situation of the State under Review (SuR)*⁴¹ *by the UPR Working Group*. The latter is composed of the 47 members of the Human Rights Council. The Review is based on three documentary sources: a. the National Report by the SuR; b. an OHCHR Compilation Report covering views of treaty bodies, special procedures and other relevant UN documents; and c. a summary of Additional Information provided by other relevant stakeholders – crucially, including CSOs. All recommendations are then included in the Working Group Report (WGR) and are part of the outcome that SuRs must address.⁴² Under Human Rights Council resolution A/HRC/RES/5/1,⁴³ States have a period of months to prepare their response to the WGR. In this they can either 'support' or 'note' recommendations (but they cannot reject them). Moreover, responses to each recommendation must be explained in writing in the Addendum, which must be submitted to the Human Rights Council in advance of the adoption of the final SuR report at a plenary of the Council.
- (3) *Implementation of Recommendations and reporting at mid-term*. The latter is a key, if voluntary, component of the UPR process involving the SuR's assessment of implementation as well as CSOs' reports.⁴⁴

To date the UK has completed three UPR reviews. Extant work shows it to be a useful mechanism. As Leanne Cochrane and Kathryn McNeilly's insightful account of the first cycle review notes: it serves to highlight many of the concerns that are of contemporaneous interest to human rights groups and the public and, it allows significant stakeholder engagement in the preparation of the UK government's UPR report to the UN.⁴⁵ Yet, as the following analysis reveals, key challenges presciently identified in relation to the first review hold true today: namely, the speed and extent to which government addresses earlier UPR recommendations.

Methods

In methodological terms, the present analysis offers a transferable discourse-based approach to studying human rights implementation. To this end, CSO submissions to the third cycle UN Universal Periodic Review constitute a rich and unique dataset. As noted, the UPR allows for non-governmental – or, civil society organisations to submit formal written submissions to the Human Rights Council. This matters to understanding and addressing the multiple and inter-connected issues facing human rights compliance in social policy.

The discourse analysis was operationalised by examining 50 reports on the UK submitted by civil society organisations for the third cycle UPR 2012–17 (see Appendix), as well as the submissions by national human rights institutions' (NHRIs) and the response from the UNUPR Working Group. The aforementioned number of CSO submissions under-reports the breadth of UK civil society input into the UPR for many are joint submissions authored by broad coalitions of standalone organisations (one, for example is comprised of 163 individual CSOs, another of 173). In order to provide an analytical framework (Figure 1) a formative exploratory reading was undertaken of the submissions to the UPR. Subsequently, the general classes of pathologies identified in Hogwood and Peters' (1985) 'Pathology of Public Policy' (Figure 1 – Column A) were applied to the CSO discourse on human rights implementation (Figure 1 – Column B). Given the present study's focus, CSOs' references to human rights issues falling outside the realm of social policy (health, social housing, welfare, education and so on) – such as policy and practice in UK overseas territories or human rights in the armed forces – were discounted in the analysis.

A hypothetico-deductive – or grounded theory approach was used in the coding process.⁴⁶ To increase rigour, this combined inductive and deductive coding techniques.⁴⁷ Specifically, the initial (formative) policy pathology codes were applied to the texts of the UPR submissions. During the course of the second-stage of coding, additional types of human rights pathology emerged from the data and were added to the framework. The coding was operationalised by using content analysis⁴⁸ in order to examine 'issue-salience'. In addition to identifying the breadth of pathologies at play, this aspect of the analysis gave an added dimension. It revealed the incidence, and thus, the level of CSO attention/ prioritisation to different policy pathologies in the third cycle UPR corpus. Using appropriate software,⁴⁹ the UPR reports were divided into 'quasi-sentences' (or, 'an argument which is the verbal expression of one political term, idea or issue').⁵⁰ Sub-dividing sentences in this manner controlled for long sentences that contained multiple policy ideas related to policy pathologies.⁵¹ To ensure accuracy the coding was repeated by a research assistant. In the small minority of cases where coding differed⁵² such instances were re-checked and a final coding agreed. All incidences were logged into a database that, *inter alia*, allows for disaggregation/ analysis by pathology and policy area.

In terms of the geographical frame of analysis, the study aim of exploring human rights implementation at both a UK and devolved level was apposite because, as noted, in the UK's devolved polities the majority of social policy areas are determined by the Welsh, Scottish and Northern Irish governments and legislatures, backed by separate legal systems. However, this was methodologically challenging for, in their third cycle UPR submissions, some CSOs make general criticisms of the 'UK government's policy' or, refer in general terms to aspects of social policy (such as social care) 'in the UK' – when in reality

General Class of Pathology* (A)		Application to HR implementation – Specific Pathologies (B)	
Congenital	A ‘disease’ or policy problem built into or inherent in the design of institutions. These are ‘time bombs’ will emerge over time.	Conflicting organisational objectives/ aims that result in conflict	Independence/ accountability - E.g. Government administration of national human rights institutions’ (NHRIs) may undermine independence/capacity
		Enforceability	Failure to incorporate UN HR principles into domestic law
Organisational	As with biological systems, there is a need for healthy systemic functioning and coordination	Lack of capacity	Effective HR practice requires appropriate resources
		Negative outcomes of professional practice	Adverse HR impact from the delivery of policy/ services
		Lack of strategy/ leadership	Incremental policies need to be strategically coordinated to secure HR outcomes
		Implementation gap	Government failure to enforce existing policy/ law
Informational	The analogy here is with the nervous system and brain. To survive and be effective, like the body, organisations need good information flows	Faulty receptors	(In)adequate base data
		Failure to convey appropriate data to decision- makers	Inadequate monitoring of policy and practice
		Public awareness raising	Need for government to provide HR information to the public
		The need for critical and impartial information//evidence-based policy	Inadequate exogenous participation/ consultation
Budgeting	The body needs nutrition and in like-manner organisations need adequate human and financial capital	Resource adequacy	(In)adequate funding of social policy Negative consequences of public spending cuts/ austerity
Treatment	The need for timely ‘treatment’/ prevention	Failure to act/ respond to indicators	Failure to adequately set policy targets/ timeframes; failure to respond to earlier court judgements on HR
			Lack of anticipatory approach to policy-making e.g. HRIAs
		A ‘declaratory’ approach to policy – i.e. a failure to implement what is promised by government	
	Policy reversals	Negative impacts on HR when policies/ programmes are discontinued by government	
	Iatrogenic illnesses – those caused by a medication or physician	Negative/ unintended consequences of public policy	HR breaches due to framing of current public policy/ law
			Negative HR impacts of framing of current policy/ practice
Modification/ discontinuation of existing policies without cognizance of negative HR consequences			
Lack of joined-up policy/ strategic approach	Discrimination	Gaps in social protection breaching HR	

Figure 1. Analytical framework: pathologies affecting human rights advancement in social policy (*adapted from Hogwood and Peters, 1985).

these are devolved matters. Accordingly, the following section of this paper presents aggregate analysis of the issue-salience of different policy pathologies across the whole of the UK. This is consistent with the legal position whereby the UK is a single ‘state party’ to UN treaties and the overall unit of analysis for the UPR.

In turn, in order to build in a more sophisticated mode of analysis attuned to the realities of multi-level governance, the subsequent section presents territorial policy narratives of the UK’s devolved polities, as well as England/ UK-wide developments. The methodological practice adopted here was that CSOs’ observations on human rights in the devolved nations were only logged as such when they *specifically referred to practice*

in Wales, Scotland and Northern Ireland. All other instances were logged as observations against social policy practices in ‘England/ UK-wide’. The appropriateness of the latter category was confirmed by caveats in many of the UPR submissions, as typified by this example: ‘please note this submission relates primarily to our experience in England’.⁵³ The failure of some CSOs to state precisely which geographical context they were referring to, and the complexity of the UK’s constitutional law (with areas of shared social policy responsibility between Westminster and the devolved governments – such as social security, refugees and asylum etc.), means that, nevertheless, some of the CSOs’ criticisms of ‘UK’ social policy may also implicitly apply to practice Wales, Scotland and Northern Ireland. Methodologically, given the foregoing challenges, the approach adopted is the most rigorous possible that captures UK issues, progress and challenges – whilst also giving insight into developments at the ‘national sub-state’ level.

Pathologies in social policy-making across the UK

The discourse analysis at an aggregate UK level reveals civil society organisations’ concerns with a broad range of policy pathologies associated with international human rights obligations. The lead pathology was the ‘negative human rights implications of inadequate funding of social policy’ (13 per cent of quasi-sentences). The official state advisory body, the Office of Budget Responsibility (OBR) explains the prominence of this pathology:

If welfare spending follows this path [OBR projections], by 2020–21 it will have fallen as a share of GDP for an unprecedented eight consecutive years. The 2.1 per cent of GDP drop since 2010–11 would be the biggest on record across two consecutive Parliaments, similar in size to that seen during the late-1980s economic boom ... spending in support of children and working-age people would be at its lowest share of GDP since 1990–91.⁵⁴

The discourse on inadequate state funding was framed in terms of a raft of rights violations, including Article 25 (the right to social security and to an adequate standard of living). As a nascent literature underlines, human rights budgeting techniques provide a potential solution to this pathology. As one academic account notes, ‘in the aftermath of the recent economic crisis scholars and human rights activists have often reminded that human rights should be adequately taken into account in public budgets’.⁵⁵ However, the CSO discourse suggests that the UK is a long way from adopting this proactive, redistributive approach to public finances. The CSO UPR discourse is typified by the following submission, ‘underfunding poses a real threat to older people’s right to dignity ... [Arts. 1, 22] ... There are still 1.6 million (14 per cent) pensioners living in poverty (with incomes of less than 60 per cent of typical household income after housing costs) of whom 900,000 are in severe poverty (incomes less than half of typical household income)’.⁵⁶

A significant strand of the discourse related to the pathologies associated with the impact of cuts in public spending in the wake of the 2008 global recession, often dubbed ‘austerity’ in the UK (these are coded separately in [Table 1](#), if included under the ‘inadequate funding’ heading, the total for this pathology rises to 15.1 per cent of quasi-sentences). Thus, the present analysis shows the UK to be part of a wider, international trend for, as a recent account notes, ‘austerity measures have led to the denial of social rights and widespread socio-economic malaise across Europe’.⁵⁷ The UPR discourse is typified by:

Table 1. Issue-salience of human rights policy pathologies in UK CSOs' 3rd Cycle UPR submissions ($N = 5084$).

Pathology	No.	%
Negative HR implications of inadequate funding of social policy	661	13.0
Failure to monitor/ enforce policy and practice	612	12.0
Discrimination	528	10.4
Lack of a participatory approach /Failure to consult on policy	520	10.2
Inadequate data/ reporting	473	9.3
Issues of independence/ accountability in policy-making	439	8.6
Failure to set adequate policy targets/ timeframes	394	7.7
Implementation gap	372	7.3
Framing of policy/ practice	364	7.2
Modification/ discontinuation of existing policies and programmes	190	3.7
Government failure to respond to earlier legal HR judgement/ UPR recommendations	159	3.1
Lack of joined-up policy/ strategic approach	130	2.6
Austerity/ cuts ^a	109	2.1
Information deficit/ need for awareness raising	80	1.6
Failure of pro-action/ anticipatory approach to policy	53	1.0
		100.0

^aThese are specific references to the impact to cuts in public spending in the wake of the 2008 global recession – popularly dubbed 'austerity' in the UK.

austerity – disabled people's right to an adequate standard of living is seriously in regression – due to welfare benefit reforms and cuts in social care and support Disabled people are experiencing a marked regression in rights to a standard of living adequate for the health and well-being under Article 25 UNDHR.⁵⁸

A further example alluded to, 'much good work along these lines [tuition] was being done by specialist Traveller Education Services, but most have now been abolished due to the lack of funding'⁵⁹ (Arts.2 and 26 violations – 'discrimination' and the right to education). Whilst the UK experience of this persistent pathology talks to the wider international social policy literature on the negative rights impact of post-2008 cuts,⁶⁰ in theoretical terms, post-2008 austerity funding issues also form part of wider political debates associated with the rise of welfare pluralism whereby, over recent decades, collectivism or state provision has increasingly been replaced by the commodification of welfare and/or voluntary provision.⁶¹

'Failure to monitor/ enforce policy and practice' was the second most salient policy pathology in the CSO discourse (12 per cent of quasi-sentences). Again, this resonates with the wider international literature on the centrality of monitoring procedures to securing effective rights outcomes.⁶² Not only does this pathology apply to the implementation of policy programmes, but to new regulatory posts and legal duties as well. For example, in the former case, one CSO noted, 'while the establishment of this role is welcome, the mandate of the UK's [Anti-Slavery] Commissioner does not extend to independent monitoring of the government's performance'.⁶³

As a classic 1970s paper on the anti-discriminatory aims of UDHR Article 2 notes, 'the internationalization of the search for equality has startling potential implications. The very fact of internationalization denies that the sovereign state is the ultimate unit within which questions of equality are to be considered. The unit is now mankind'.⁶⁴ Whilst this may be the normative position, the present study of national practices suggests outcomes are still wedded to territorial structures of governance. In the UK discrimination is the third most cited policy pathology (*inter alia*, signalling a breach of Article 2 rights, 'Everyone is

entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'). Many aspects of discrimination can be traced back to shortcomings in state policy-making practices; *inter alia*, poor framing of policy, the absence of a strategic view by government, and funding cuts. For example, several CSOs highlighted failings in citizens' access to judicial proceedings. One noted:

The Legal Aid, Sentencing and Punishment of Offenders Act (2012), introduced changes so legal aid is harder to access for disabled people ... There has been a 77 per cent shortfall in the predicted take-up of discrimination cases since these restrictions were introduced. Only small numbers of Disabled people are accessing legal aid for discrimination claims in the fields of employment, and goods and services. There has been a regression in Disabled people's rights under Article 7 UNDRH.⁶⁵

A 'lack of a participatory approach/failure to consult on policy' is the fourth pathology (10.2 per cent of quasi-sentences). Its prevalence is a key concern for, as Jo Ferrie and Alison Hosie cogently observe,⁶⁶

A collaborative, participatory qualitative process is much stronger than indicators in realising rights; firstly, because then form/change is built into the process; it is produced at the time that violations are shared. And, secondly, because a hidden voice that needs change is revealed through the marginalised experiences of rights holders.

The CSO discourse is typified by the observations of a CSO that noted, 'mechanisms should be in place at all levels of statutory services to ensure that people with dementia and their carers can meaningfully participate in the decisions that affect them, whether directly or indirectly'.⁶⁷

As a broad literature attests, 'information patterns and measurement issues have important implications for understanding the dynamics of human rights'.⁶⁸ Whilst, from an international perspective 'documentation of governments' human rights practices in recent decades has increased dramatically in quantity and quality',⁶⁹ the present analysis still finds major shortcomings in contemporary practice in the UK, for 'inadequate data/reporting' was the fifth-ranked pathology noted by CSOs in the third-cycle UPR (9.3 per cent of quasi-sentences). This is a significant concern as the absence of data makes it hard to assess the nature and extent of rights violations. For example, one CSO complained, 'there is (*sic*) no data on Roma unemployment'.⁷⁰ The dearth of data with which to embed human rights considerations in social policy is particularly concerning in the UK's devolved nations and province. For example, a coalition of CSOs complained,

There have been consistent failures in the United Kingdom's approach to reporting on the human rights, particularly with regard to devolved regions ... often an inadequate amount of disaggregated data is available in relation to ... Wales, Scotland and particularly Northern Ireland and in some cases no data is (*sic*) available on particular devolved regions at all.⁷¹

However, against the backdrop of this malaise there is some evidence of good practice. For example, the Scottish Human Rights Commission has undertaken an invaluable benchmark study of human rights data in Scotland.⁷² Yet, worryingly, as Jo Ferrie and Alison Hosie observe,⁷³ whilst there are ongoing systematic plans for a continuation of this data gathering: 'the same resources will not be available again, nor will the time taken [in the first study

be replicated]. Repeating a project of this scale will not be feasible'. The problem is particularly pressing for there are no baseline studies in Wales and Northern Ireland.

Extant scholarly accounts underline how accountability and redress in human rights practices are shaped by a complex array of factors including, from a neo-institutionalist perspective, the way that NHRIs are configured and positioned in relation to government.⁷⁴ The present data show the salience of these issues to the UK for, in the UPR CSO discourse, 'independence/ accountability in policy-making' was the sixth pathology (8.6 per cent of quasi-sentences). Here the issues are not only related to mechanisms for citizen redress, but also the independence of NHRIs from government. The CSO discourse is typified by calls for 'the Children's Commissioners [in the constituent polities of the UK] to be responsible to the legislature rather than the executive to ensure full independence from government'.⁷⁵

Underlining their importance in the realisation of rights, as Sakiko Fukuda-Parr observes,⁷⁶ 'targets and indicators are a technology of governance in the promotion of human rights that often reduce a complex and multi-dimensional reality into a single number'. She continues, they:

Exert influence in two ways: by setting performance standards against which progress can be monitored, rewarded or penalized ... Performance standards create incentives for behaviour change on the part of policy-makers, opinion-makers, civil society groups, businesses and the public. Knowledge effects can redefine the purpose of development, the key constraints and the means to address them.⁷⁷

However, notwithstanding their importance, the present analysis reveals that failure to set adequate policy targets/ timeframes is the seventh most-cited pathology (7.7 per cent of quasi-sentences). For example, 'repeal of the Child Poverty Act 2010 ... there are no longer statutory targets or a duty to report'⁷⁸ and; 'the Government should set targets for the continued reduction and eventual abolition of pensioner poverty'.⁷⁹

A broad literature sets out the negative consequences of policy implementation gaps when governments promise programme delivery which is then unfulfilled.⁸⁰ It is the eighth pathology in the CSO discourse (7.3 per cent of quasi-sentences). The reasons for implementation gaps are diverse. As one account underlines,

We can 'attribute gaps between human rights principles and practices to wilful disobedience, self-interested defection, and ineffective enforcement ... [As well as] state capacity in particular— [this map onto] bureaucratic efficacy; noncompliance is often inadvertent and conditioned by a state's ability to implement treaty terms'.⁸¹

These factors resonate in the UK third cycle discourse. For example, one CSO observed,

It cannot be concluded that UK and devolved governments have taken "all measures necessary to fully implement the Convention of the Rights of the Child (CRC)". The plethora of issues raised in recent CRC reporting shows that much action is needed before the CRC is fully implemented across GB.⁸²

Amongst a plethora of similar observations, another CSO underlined that the UK government should 'amend the March 2016 National Violence against Women Strategy to ensure that it is implemented in a way that addresses the issues faced by women with disabilities'.⁸³

Extant international work underlines that the way policy is framed plays a key role in rights outcomes (*inter alia*, its scope, relationship to other policy interventions, targeted

groups, and duration).⁸⁴ The present analysis shows significant negative human rights consequences stemming from the contemporary framing of policy in the UK. It is the ninth most-cited pathology in the CSO discourse (7.2 per cent of quasi-sentences). Mental health policy illustrates the nature of this pathology. Over recent years, as Jill Stavert and Rebecca McGregor note,⁸⁵ there has been ‘a shift in focus away from inappropriate compulsion and towards providing resources and services to support good mental health which could enable the realisation of the right to mental health at the national level’. However, the present analysis of CSO discourse suggests that further work is needed. For example, one CSO observed, our concern is, ‘that legal protections for people with mental capacity issues are not sufficient, including that the Mental Capacity Act and the Deprivation of Liberty Safeguards in England and Wales are no longer fit for purpose’.⁸⁶ In the case of immigration policy, another CSO complained that,

Failed asylum seekers’ are expected to leave UK within 21 days. Those without accompanying children are evicted from asylum accommodation and the limited (‘Section 95’)⁸⁷ benefits granted during the claim process are withdrawn. Prohibited from working and denied all statutory support, failed asylum seekers without accompanying children are rendered cashless and street homeless, deprived of the minimum material necessities of human existence: shelter, food, heating [and] clothing.⁸⁸

Modification/ discontinuation of existing policies and programmes was the tenth pathology (3.7 per cent of quasi-sentences). This is part of the wider problem of what is sometimes dubbed ‘joined-up policy-making’.⁸⁹ Here the challenge is to locate individual policy interventions into the overarching framework of government programmes in an integrated and cohesive manner. Often governments fail to achieve this for it sometimes conflicts with the need to adapt policies mid-course in response to a range of factors (including election cycles and party-politicking). As a result negative rights consequences frequently follow when government changes aspects of existing programmes without studying their wider impact. It is typified by the observations of the following CSO:

For a number of years up to 2011 a programme of integration support (including advice on benefits, housing, and accommodation) was provided by the Refugee Integration and Employment Service (RIES).⁹⁰ Though time-limited and underfunded, its abolition marked the end of government statutory funding in support of refugee integration.⁹¹

A recent critical academic account explained a shortcoming in the UPR process:

While treaty bodies make recommendations to states examined under the state reporting procedures and have instituted some follow-up procedures, these bodies do not systematically monitor implementation. Even more importantly, there is no formal acceptance of treaty body recommendations by the state concerned and thus the element of self-binding force is totally absent.⁹²

The present analysis shows this to resonate with the UK experience, for the failure of government to respond to earlier UPR recommendations and domestic human rights judgments was the next most-cited pathology (3.1 per cent of quasi-sentences). For example, one CSO said it:

... does not believe the UK Government is following the 2012 UPR recommendations to strengthen measures aimed at reducing serious inequalities in access to education and

employment, which still exist despite the adoption of the Equality Act [nor] adopt a strategy so that children of vulnerable groups are not excluded from the education system.⁹³

In another case, a CSO called on the UK Government to ‘take specific measures, in accordance with the UPR recommendation 110.61 to the UK from the second cycle, and the CERD General Recommendation 29, to eliminate this form of [caste-based] discrimination ... The UK Government has yet to publish the results of its feasibility study undertaken in 2014’.⁹⁴

Amongst the remaining pathologies was a ‘lack of a strategic approach’ to policy-making by government (2.6 per cent of quasi-sentences). This not only featured in the CSO discourse, but also in the UPR Working Group commentary on the UK. For example, the latter noted that, the ‘United Nations recommends the adoption of a National Action Plan for Human Rights that are evidence based, developed in an inclusive way and independently monitored’.⁹⁵ As Nils Muižnieks cogently notes, a strategic approach to policy is integral to rights realisation:⁹⁶ ‘systematic work for implementing human rights at the national level [involves ...] systematic human rights work, including creating a baseline study, National Action Plans, mainstreaming a rights-based approach and human rights indicators’. Whilst, as he observes, ‘this process was mirrored in the creation of the Scottish National Action Plan’, in a UK context the present analysis shows it to be an isolated example.

The lowly rankings of the last two pathologies belies their key importance to rights realisation. ‘Failure of pro-action/ anticipatory approach to policy’ (1 per cent of quasi-sentences) is considered in the concluding section of this paper (see below); whilst the existence of an ‘information deficit/ need for awareness raising’ was the penultimate pathology (1.6 per cent of quasi-sentences). It is typified by a CSO’s call for ‘better legal recognition and respect for economic and social rights, and enhancing public and civil society awareness of economic and social rights, via capacity building sessions, social media, conventional media and university events’.⁹⁷ The importance of addressing this pathology is explained in John Love and Rory Lynch’s account.⁹⁸ They underline that it is pivotal to rights realisation for there is a need to address:

A general lack of awareness of human rights *per se*. Human rights exist as moral entitlements in virtue of our common humanity. They exist independently of legal instrument or institution. However although common appreciation of notions of dignity, freedom, respect and fairness is widespread, there is less awareness that these are human rights principles and even less appreciation that they are entitlements with the force of law behind them. Indeed, in some countries, like the UK, there is a dissonance between awareness and support for the principles and values of human rights and the legislation.

Having considered the principal pathologies in relation to human rights across UK social policy-making attention now turns to the territorial policy narratives of the union state’s constituent polities (Table 2).

Key issues and challenges in relation to rights implementation in England/ UK-wide, Scotland, Wales and Northern Ireland

(1) England/ UK-wide

Aside from budgetary restraints, the most frequently cited policy pathologies were human rights breaches stemming from the framing of existing policy and practice, the UK’s

Table 2. Territorial policy narratives: examples of key issues and pathologies in the UPR discourse in the UK's polities.

Polity	Policy area	Issue	Pathologies	(Potential) Rights violation (UDHR and allied UN treaties)
England/ UK-wide	Welfare	Welfare cuts	1, 2	Articles 2, 8, 9, 22, 25
		Food security	1, 2	Articles 2, 22, 25
	Education	Attainment Gypsy/Roma pupils	1, 2, 4	Articles 2, 26, CERD
		Children's involvement in policy making	3, 2	Article 21, CRC
		Proposed reform of HR law	6	Article – generic/ all
	Criminal justice	No national action plan on HR	2,4,5	
		Overcrowded prison cells/ decline in prisoner safety, etc.	1, 2	Article 5
		Violence against women	1, 2	Articles 2, 5, CEDAW
	Immigration	Cuts to legal aid	1, 2, 6	Articles 5, 6, 7, 8, 25
		Use of detention in asylum system/ poverty faced by both asylum seekers, etc.	2, 5	Articles 5, 22, 25, CERD
Scotland	Health/ criminal justice	Legal protections – people with mental capacity issues insufficient	2, 5	Articles 5, 25
	Generic	Further work needed to ensure citizens' participation in public decision-making	3	Article 21
	Generic	Better enforcement needed of equality duties	7	Article 2, CERD
Wales	Generic	Absence of a national human rights strategy	4, 8	Article – generic/ all
		Government capacity for human rights implementation	4, 8	
	Children	Wales is without a Youth Parliament	2, 3	Article 2, 21
	Generic	The provision of public services in the Welsh language	9	Article 2, DNERLM ^a
Northern Ireland	Generic	Weak consultation with civil society	3, 4	Article 21
	Criminal justice	Sectarian parades – peaceful assembly problematic	2, 4	Article 2, 20
	Criminal justice	Same sex marriage unlawful	2, 4	Articles 2, 16
	Health	Abortion mostly unlawful	2, 4	Articles 2, 5

^aDeclaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Adopted by General Assembly resolution 47/135 of 18 December 1992. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx> See also <https://webarchive.nationalarchives.gov.uk/20120920045137/>; <https://www.communities.gov.uk/documents/communities/pdf/152275.pdf> (accessed March 5, 2018).

Key – Pathologies:

1. Inadequate funding of social policy/ austerity.
2. Framing of current policy/ practice.
3. Inadequate exogenous participation/ consultation.
4. Lack of joined-up policy/ strategic approach.
5. Failure to adequately set policy targets/ timeframes; failure to respond to earlier court judgements on HR.
6. Modification/ discontinuation of existing policies without cognisance of negative HR consequences.
7. Government failure to enforce existing policy/ law.
8. Lack of government capacity.
9. Discrimination.

government's failure to respond to second cycle UPR recommendations and, implementation gaps. Much of the CSO discourse centres on alleged breaches of Articles 22, 23 and 25. As with the UK-wide discourse, a significant part of civil society organisations' UPR discourse relates to the negative human rights impact of austerity. The CSO discourse is typified by:

In the last UPR cycle, the UK received two recommendations... to make sure that the national welfare system is well equipped to tackle poverty and unemployment, especially among most vulnerable groups... empirical research shows the UK has not met these

recommendations ... [we call on government to ...] ensure that the welfare system is adequately funded and structured to protect the human right to social security and all other human rights, particularly for most vulnerable groups.⁹⁹

Allied to the foregoing, a consistent strand of the discourse centred on Art 25. breaches in relation to food poverty. This is a growing problem. Recent work highlighted that in England the 'provision of food parcels to children by charitable foodbanks has grown considerably since the impacts of austerity, welfare reform and rising costs of living ... since 2013 there has been 'an increase of 266 per cent in the average number of children served per foodbank'.¹⁰⁰ The CSO discourse is typified by the complaint that,

The United Kingdom Government is failing to be proactive in eliminating food insecurity. From a policy perspective it is clear that social protection measures have failed to address issues associated with increased poverty ... government should enact such legislation as is necessary to protect citizens against food insecurity [and ...] Incorporate where necessary the provisions of relevant human rights conventions.¹⁰¹

In the words of another CSO, government should 'draw up a National Right to Food Strategy and Action Plan, including an assessment of the impact of past and current policies and of the level of enjoyment of this right'.¹⁰²

Other CSOs were critical of proposed reform of human rights law in the UK. As one put it, proposed 'changes to the Human Rights Act and changes to the judicial review and immigration appeals processes [... combine, such that] a trend limiting access to justice for human rights violations in the UK appears to be emerging'.¹⁰³ Several CSOs argued that, in part, the deteriorating human rights climate stems from government failure to implement Section 1 of the Equality Act 2010 in England.¹⁰⁴ Covering all aspects of policy-making, this places an (unimplemented) duty on ministers and public service providers to mitigate socio-economic inequalities. It was placed on the statute book by the 2005–2010 Left-of-centre Labour Party Government but subsequent Right-of-centre Conservative UK governments have refused to enact it.¹⁰⁵

The discourse also highlighted rights violations associated with shortcomings in framing of current policy and practice in state healthcare. For example, one noted that,

Disabled [people] continue to experience health inequalities ... One in three of the 100,000 people with 'avoidable deaths' every year have a mental health support need. 28 per cent of people, who have had a stroke and have schizophrenia die, compared with 12 per cent of people without schizophrenia ... Disabled people's equal right to medical care under Article 25 UNDHR is being breached.¹⁰⁶

In a similar vein, another also highlighted Article 25 violations ('Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control') owing to 'the underfunding of mental health services, resulting in just 25 per cent of people receiving help. In England, funding for mental health trusts has dropped in real terms by 8.25 per cent since 2010'.¹⁰⁷

Against the backdrop of rising immigration in the UK,¹⁰⁸ breaches to the rights of immigrants, refugees and asylum seekers were also highlighted repeatedly in the CSO discourse. For example, one noted that 'important shortcomings persist in the UK's approach

to statelessness'.¹⁰⁹ The alleged rights breaches (inter alia, Arts. 5 and 11) include the detention of asylum seekers (e.g. 'recent reports on pre-trial detention raise continuing concerns ... average length of pre-trial detention recorded as the highest per capita prison rate in the EU'),¹¹⁰ and the detention of children (e.g. UPR second cycle recommendation 110.115 is not met, and is at risk in relation to children ... Despite a commitment made by the UK Government in 2010 to end the detention of children for immigration purposes, 228 children were detained in 2013, 128 in 2014 and 128 in 2015').¹¹¹ Others pointed to Article 5 ('No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment') breaches associated with a surge in anti-immigrant hate crimes.¹¹²

Further breaches (Arts. 5, 11: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' and 'Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence') stemming from the framing of current criminal justice policy were also highlighted. The issues included: overcrowded prison cells (affecting 22,272 inmates), a decline in safety in prison custody (e.g. in 2015 there were 15,511 prisoner-on-prisoner assaults and eight homicides), the imprisonment of more people with indeterminate sentences ('Imprisonment for Public Protection' affecting a total of 11,505 people, more than in the other 46 countries of the Council of Europe) and, the use of solitary confinement in prisons.¹¹³

A further core strand of the CSO discourse was concerned with potential Article 2, ('Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'), 8 ('Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law'), 9 ('No one shall be subjected to arbitrary arrest, detention or exile') and 11 ('Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence') breaches in relation to access to a fair trial. For example, one CSO captured the wider view stating that 'there is widespread concern that cuts to legal aid have impacted on the most disadvantaged groups in society, deterring potentially successful legal cases and challenges, and removing sources of advice and support. There is a disproportionate impact on women, children, BME communities, disabled people and people living in poverty'.¹¹⁴

Another core aspect of the discourse centred on children's rights. For example, one CSO noted that '45 per cent of the children in custody are black and minority ethnic (BME)'.¹¹⁵ Whilst another highlighted that Gypsy, Roma and Traveller of Irish Heritage pupils are the lowest performing ethnic groups. For example, 'in 2014, just 29 per cent of Gypsy/Roma pupils and 38 per cent of Traveller of Irish Heritage pupils reached or exceeded the expected level in Reading, Writing and Mathematics, compared to the national average of 79 per cent'.¹¹⁶ Attention also centred on Article 21 breaches ('everyone has the right to take part in the government of his country, directly or through freely chosen representatives'). For example, one CSO noted that the 'UK government should ensure permanent structures to facilitate the systematic participation and involvement of children in national and local policy making and scrutiny'.¹¹⁷

In addition to civil society submissions to the UPR, further insight comes from UK NHRIs' UPR submissions. In these, criticisms of the lack of a joined-up policy/ strategic approach to rights were to the fore. For example, the Equality and Human Rights Commission called for 'the establishment of a UK national action plan on human rights, learning from Scotland's National Action Plan for Human Rights'.¹¹⁸ In addition, the Commission implored the Westminster government to 'ensure proposals for a Bill of Rights do not reduce the protections or access to redress in the Human Rights Act',¹¹⁹ and to 'enhance the status of all seven ratified human rights conventions in domestic law'.¹²⁰ The Equality and Human Rights Commission (EHRC) made 57 recommendations to the third cycle UPR, all of which align with the present study's 'policy pathologies' analytical framework. For example,

Social security reforms have had a particularly disproportionate, cumulative impact on the rights to independent living and an adequate standard of living for disabled people. Recommendation: UK Government should: Extend monitoring and analysis of spending decisions to include the cumulative impact on individuals with protected characteristics.¹²¹

Moreover, government should 'establish clear accountability mechanisms for eradicating child poverty, including binding targets, with a set timeframe and measurable indicators'.¹²²

In response to the CSO and NHRI submissions, whilst noting progress, the Human Rights Council 'regretted that the Government had not given ample attention to some of the recommendations from the previous cycles'.¹²³ Notably, it called for 'serious consideration of the rights of the child in the policymaking process. Children should be able to have recourse to the Committee on the Rights of the Child'.¹²⁴ The Human Rights Council was also 'concerned about the impact that the exit by the United Kingdom from the European Union would have on its human rights legislative framework'.¹²⁵ The UN summarised its principal concerns:

ensuring the ongoing protection of equality and human rights as the United Kingdom left the European Union; a desire for the Government to focus on strengthening its approach to international treaties; a keen interest in the impact of changes to welfare benefits, particularly in relation to vulnerable people, and also access to justice changes, including legal aid and employment tribunal fees; a desire to see continued monitoring of those changes and also for Government to look at the cumulative impact of such reforms; the continued importance of tackling modern slavery and human trafficking, improving safety in prisons, and issues around immigration detention.¹²⁶

(2) Scotland

The CSO discourse reveals the way that territorial politics in the UK is shaping rights practice. In contrast to the ascendancy of the Right-of-centre Conservative Party administrations seen at Westminster over the past decade, the devolved nations have been governed by Left-of-centre civic nationalist and socialist parties¹²⁷ (and, a consociationalist power-sharing arrangement between the two major parties in Northern Ireland). This has seen CSOs call for the devolved administrations to use their legislative and policy powers to counteract the neo-liberal, rights-sceptic actions of post-2010 Westminster governments. For example, one asserted that,

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' ... 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.¹²⁸

In the UPR discourse CSOs generally acknowledged Scottish Government support for upholding rights. In one case reference was made to the fact that,

Public policy has progressed considerably in recent years to drive this shift towards a rights-based approach ... including [... the] Charter of Rights for People¹²⁹ with Dementia ... The Scottish Government has recently consulted on a new delivery plan for meeting its obligations under the United Nations Convention on the Rights of People with Disabilities (UNCRPD). As part of this, the Scottish Government has committed to approaching policy and legislation in a way which underpins supported decision-making and moves away from substitute decision-making, in line with the principles of Article 12 of the United Nations Convention on the Rights of People with Disabilities (Equal Recognition before the Law).¹³⁰

Notwithstanding such gains, the CSO discourse also highlights a broad range of violations and failings. A number of submissions referred to Article 25 breaches and expressed a concern 'that legal protections for people with mental capacity issues are not sufficient ... [And, that the] Incapacity Act in Scotland is not compatible with human rights standards'.¹³¹ Further concern centred on pathologies in the right to participate in public decision making (Article 21) and the need for public awareness of human rights.

These themes were echoed by the NHRI, 'the human rights of older people may be protected and promoted ... to better effect the latter, a human rights-based approach to working with older people is required'.¹³² If such measures can be addressed, a scholarly assessment concluded, 'the establishment of a society in which older people can live independently and with dignity is a realistic possibility'.¹³³

As elsewhere in the UK, enforcement is an enduring policy pathology. For example, one CSO alluded to the fact that equality duties on ethnicity 'are not well enforced and that, while public authorities may publish information, it is often not detailed and many organisations often neglect to publish all the required information'.¹³⁴ For its part the Scottish Human Rights Commission noted the failure of the Scottish Government to act on earlier UPR recommendations.¹³⁵ *Inter alia*, it highlighted that it 'has not [wholly] incorporated any of the UN human rights treaties into Scottish law. During evidence to the Scottish Parliament on the Children and Young People Bill, the Scottish Government stated that it was not supportive of wholesale incorporation, citing lack of evidence as to the value of incorporation'.¹³⁶ The Scottish Human Rights Commission also called for 'a rights based approach to be taken to policy-making and spending decisions that affect vulnerable groups, including cumulative and participatory budget and impact assessments'.¹³⁷

A number of points stand out from these CSO interventions. First, policy pathologies are not discrete but inter-related; thereby underling the need for the present approach of analysing international treaty compliance through an holistic, systemic view of the policy process. In the case of the enforcement of the 'race' equality duties, these are connected to pathologies on 'independence/ accountability' – in this instance, NHRIs' independence from government. It is also related to the pathology of inadequate funding of policy programmes by government. This extends to government funding of NHRIs (these have been

subject to a narrowing of their remits and significant cuts undermining their effectiveness).¹³⁸ In turn, as noted, the latter CSO's reference to 'participatory budget and impact assessments' links to the wider literature on planning public spending in a manner set out in Nancy Fraser's classic work.¹³⁹ Conceptually, this requires government to move beyond recognition of equalities and human rights, to redistribution of resources to address inequality, oppression and marginalisation. The process of planning and assessing budgets for their likely impact on rights comes from initial work on gender-budgeting that developed in the wake of the Convention on the Elimination of Discrimination against Women (CEDAW).¹⁴⁰ As the CSO discourse makes clear, there has been a failure by government to plan budget allocations (the funding of social policy programmes) that adequately predicts negative gender rights impacts (and take measures to negate them) – and, to extend the focus to incorporate the impact of spending decisions on other identities and characteristics as set out in UDHR Article 2.¹⁴¹

In contrast, as noted, an area of progress that stands out in the CSO discourse is the fact that, in contrast to the other UK nations, Scotland has an overarching human rights strategy, the Scottish National Action Plan (SNAP).¹⁴² Whilst acknowledging this positive development, the CSO discourse is cautious. It is echoed by the NHRI which noted that, 'for the ambition of SNAP to be realised, it is important that the Scottish Government demonstrate sustained commitment and provide adequate resources to support the full implementation of the SNAP commitments [... accompanied by] systematic monitoring and reporting of progress towards the full realisation of human rights embedded into national monitoring frameworks'.¹⁴³ As leading analysis concludes,¹⁴⁴ the desired change requires political will and attitudinal change in government and the public sector:

Reform around rights realisations will only happen if the state and duty bearers are committed to this change. Further, ring-fenced resources, critical to trigger a cultural shift, ideally should be available and extensive to fully engage in producing a participatory baseline ... Scotland is in the process now of maintaining these spaces of negotiation and the challenge of measuring a qualitative process in a way that allows progress to be evidenced. Though still a 'work in progress', there is much to learn about the investment required to realise rights across a nation.

In response, the Human Rights Council commended the strategic approach of the Scottish Government and pointed to the fact that the other UK polities could be 'learning from Scotland's National Action Plan for Human Rights'.¹⁴⁵ The wider point here is the benefits of rights practice in devolved or decentralised systems whereby good practice in one polity can be used to 'level-up' practice and address shortcomings in other polities in unitary states.¹⁴⁶

A broad literature underlines the centrality of effective monitoring mechanisms in securing compliance with international treaty obligations in domestic practice. This resonates with the Scottish experience.¹⁴⁷ A number of CSOs highlighted shortcomings in policy monitoring as a significant pathology. It was a point echoed by the NHRI that observed that, for example, the 'Scottish government should: Monitor the effectiveness of anti-trafficking legislation and amend it to address any weaknesses' and, in terms of criminal justice, 'the Scottish Government should collect data on the use of restraint and solitary confinement in its youth justice secure estate'.¹⁴⁸

(3) Wales

A number of CSOs highlighted the comparatively more favourable political climate for human rights promotion in Wales and Scotland. For example, one referred to how ‘the rhetoric in the devolved nations is more positive, with the Scottish Government and Welsh Government pledging support for the Human Rights Act [HRA]’. It proceeded to note that, ‘repealing the HRA would pose procedural problems for the devolved nations, since the rights are entrenched in devolution settlements’.¹⁴⁹ The CSO discourse also highlighted a raft of progressive measures taken in Wales on the rights of children, including the UK’s first Commissioner for Children’s Rights and, the Children and Families Wales Measure (2010) that places a judicable duty on ministers to uphold the CRC. Another CSO noted the ‘positive legislative steps in Wales include the Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015’.¹⁵⁰

The foremost policy pathology was the lack of joined-up policy/ strategic approach; most notably, the absence of a national human rights strategy. CSOs highlighted a further range of shortcomings and concerns. Issues of accountability were to the fore. For example, one underlined a pathology in relation to NHRI independence/ accountability. It ‘called for new ‘powers to enable the [Children’s] Commissioner to respond to any matter affecting a child and to be accountable to the National Assembly [latterly, the Welsh Parliament] rather than the Welsh Government’.¹⁵¹ Another pathology related to institutional capacity to effect change. Thus, one CSO alluded to the fact that ‘there is only a small team responsible for coordinating CRC implementation across Welsh Government’. In addition, another complained that ‘Wales is without a Youth Parliament. The Welsh Government should ‘ensure there are permanent structures to facilitate the systematic participation and involvement of children in national and local policy making and scrutiny’.¹⁵²

A repeated concern in the CSO UPR submissions from the devolved nations is typified by the following example: ‘state party reports for these international monitoring mechanisms tend to focus predominantly on England, to the detriment of the devolved regions ... The continual failure to provide proper reflection ... is a serious flaw in the UK’s current reporting process and represents a failure in its human rights responsibilities for the devolved regions of the UK and at the United Nations’.¹⁵³ Another CSO added that ‘every consultation event and a number of submissions highlighted the lack of visibility of devolved differences in UK Government reporting, particularly on good practice’.¹⁵⁴

CSOs also highlighted Article 2 (discrimination) breaches. As one academic account notes, ‘linguistic human rights advocacy over the last two decades has been committed to the struggle for the promotion, preservation and protection of language minority communities, that is, maintaining language diversity and securing the right to communicate in a specific language’.¹⁵⁵ Wales is no exception. The analysis shows that CSOs’ UPR discourse gave particular attention to the provision of public services in Welsh. For example, one stated ‘the need for and quality of Welsh language support [in the criminal justice system] should be evaluated and data collected improved’.¹⁵⁶ From an NHRI perspective, there was acknowledgement of progress since the second cycle UPR. It noted that the ‘Welsh Government ha[s] enhanced the status of the Convention on the Rights of the Child in national law’. However, it called for this approach to international treaty obligations to be extended; namely ‘to give effect to all Convention provisions’.¹⁵⁷

In response to the UPR submissions, as the Report of the Working Group on the Universal Periodic Review noted, ‘tackling child poverty was a priority for the [Welsh] Government, and it recognized that the root causes were not just financial and that it was necessary to go beyond the safety net provided by welfare’.¹⁵⁸ It also commended the 2010 Children and Families (Wales) Measure, which it said would ‘help to tackle child poverty’. Furthermore, it ‘welcome[d] the adoption of legislative and policy measures ... the design of which organizations of persons with disabilities were involved, such as ... the Social Services and Well-being (Wales) Act 2014, which provides a framework for social services and health’.¹⁵⁹ Notwithstanding these gains, the Committee on the Rights of the Child was concerned that ‘the powers of the Children’s Commissioner for Wales ... were still limited’. As noted, it recommended strengthening their independence and allocating the necessary human and financial resources to the Commissioners in all jurisdictions’.¹⁶⁰

(4) Northern Ireland

The civil society UPR submissions from Northern Ireland were dominated by the collective response of the Human Rights Consortium made up of 163 CSOs. Notwithstanding this strong level of civic engagement with the UN, CSOs pointed to a key pathology (and potential Article 21 violation, ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives’) by stating that ‘the devolved government in Northern Ireland’s ... consultation with civil society is weak’.¹⁶¹ Two pathologies stemming from the framing of current law and practice were prominent in the CSO discourse: abortion and same-sex marriage. This CSO submission captures the wider civil society view:

The law governing abortion in Northern Ireland is among the most restrictive in Europe, both in law and in practice [it is ...] is incompatible with human rights obligations [Arts. 2 and 3] ... there has been no progress since the last review [UPR].¹⁶²

In the case of same-sex marriage, the CSO discourse is typified by the complaint that ‘same-sex couples in Northern Ireland are not entitled to marry unlike in other parts of the UK, thereby continuing to discriminate against such couples’.¹⁶³

The failure of government to respond to earlier legal human rights judgements and recommendations underpinned a further strand of the UPR discourse. For example, in 2009 the UN Committee on Economic, Social and Cultural Rights recommended to the UK administrations that they consult with civil society and adopt a national human rights plan of action to promote the realisation of economic, social, and cultural rights.¹⁶⁴ However, almost a decade on, CSOs condemned the lack of progress:

The Programme for Government [in Northern Ireland] is an ideal opportunity to map out plans for the mainstreaming of human rights. Unfortunately, in the 2011–2015 Programme for Government, human rights and equality were not mainstreamed and the same can be said of the draft Programme for Government 2016–21 ... [Moreover,] it contained no reference to older people [...and] a gender perspective has not been mainstreamed within the Programme.¹⁶⁵

In a further example, the CSO discourse also noted a lack of progress since the Universal Periodic Review Second Cycle recommendation that government in the province,

‘continue to ensure that human rights principles are integrated in domestic laws’. In response, they highlighted what they saw as another missed opportunity. One asserted, ‘a Bill of Rights for Northern Ireland based on a model advised by the Northern Ireland Human Rights Commission would have provided a practical mechanism for the realisation of many of the rights contained within international treaties of which the UK is a signatory’.¹⁶⁶

In addition to the CSO discourse, the NHRI in the province – the Northern Ireland Human Rights Commission (NIHRC) expressed its ‘concern that the continuing reservations to the ICESCR mean that the Convention’s social, economic and cultural rights continue to be regarded as largely non-justiciable’. It proceeded to call for ‘a National Action Plan on human rights, with a focus on the implementation of the ICESCR’.¹⁶⁷ Budgetary pathologies, as well as issues of human rights monitoring, independence and accountability were also to the fore. Thus the NIHRC further noted its concern ‘at the reduction in its [own] cash budget from £1,702,000 in 2009/10 to £1,149,000 in 2016/17, with an annual decrease by £25,000 each year until 2019–20’. In highlighting this threat to its organisational effectiveness the Commission alluded to the earlier recommendation of the UN, ‘the UN Human Rights Committee has recommended that budget reduction should not inhibit the NIHRC from carrying out all of its current functions independently of Government’.¹⁶⁸

Other policy shortcomings criticised by the NHRI include: ‘the high number of children held in pre-trial detention in Northern Ireland’, the NI Executive Disability Strategy (‘it has been heavily criticised by disability organisations ... the NIHRC recommends that a successor strategy be developed modelled upon the CRPD’); and ‘the adverse impact of some social security reforms on disadvantaged and marginalised individuals’. Attention also centred on failings in data-gathering. Specifically, ‘that criminal justice agencies in NI do not collect and disaggregate data based on race and community background’.¹⁶⁹

In response, in her report to the Human Rights Council the UN Special Rapporteur also pointed to criminal justice failings and potential Article 20 (‘Everyone has the right to freedom of peaceful assembly and association’) breaches by,

Call[ing] on the competent authorities to ensure that blatant and provocative violations of the determinations of the Northern Ireland Parades Commission are prosecuted and provide political resolution to the issues that still make the enjoyment of freedom of peaceful assembly problematic in Northern Ireland.¹⁷⁰

It was also concerned that in Northern Ireland, segregation of schools by religion persisted and that ‘a Bill of Rights for Northern Ireland had not yet been adopted’.¹⁷¹ On abortion, it recommended ‘that the State party revise its legislation in Northern Ireland to ensure that it afforded protection to women on an equal footing with other women in the state party’s administrations’.¹⁷²

As the foregoing discussion reveals, across the UK jurisdictions, the Human Rights Council Working Group on the (Third Cycle) Universal Periodic Review expressed a range of concerns about policy and practice in the UK. These may be summarised as follows. First, there was evident frustration that full attention had not been given to addressing all of the Second Cycle recommendations.¹⁷³ There was also concern that the interests of groups targeted by human rights conventions were not always taken into consideration in the way that the four governments made policy.¹⁷⁴ The Working

Group also highlighted the impact of changes to welfare benefits, particularly in relation to vulnerable people, and also access to justice, including legal aid and employment tribunal fees.¹⁷⁵ In addition, fears were also expressed about the impact that the United Kingdom's exit from the European Union will have on human rights.¹⁷⁶

Discussion

Whilst a leading human rights index ranks the UK sixth out of 159 countries in terms of human freedom (understood as the absence of coercive constraint)¹⁷⁷ and the Human Rights Council's third cycle UPR report concluded that, the UK is 'committed to complying with its international human rights obligations'¹⁷⁸ and that 'progress had been made since its last Universal Periodic Review in 2012, in several areas';¹⁷⁹ the present analytical framework reveals manifold failings in the way human rights are addressed in the policy process. The significance and uniqueness of the findings lies in the fact that this is the only extant case study to take a systemic view of the nature of human rights violations and social policy-making across polities in a devolved UK. Furthermore, it is singular in providing an interdisciplinary perspective that spans the neglected nexus between social policy and legal studies. It also makes a theoretical contribution by demonstrating the utility of the 'policy pathologies' framework of Brian Hogwood and Guy Peters.¹⁸⁰ In addition, the discussion below offers a recommendation on how attention to human rights in public policy-making can be improved in light of the current analysis.

As the earlier discussion reveals, the utility of the 'policy pathologies' framework to understanding contemporary human rights practice is its 'wide lens'; it reveals how failings emanate from all stages of the policy process. In the parlance of Hogwood and Peters' medical metaphor, the problems in UK and 'devolved' policy-making are revealed to be 'congenital', 'organisational', 'informational', 'budgeting' and 'iatrogenic' (or, caused by the way policy is designed and implemented). In short, the identified shortcomings are systemic to the body politic. In making this assessment we have relied on the exogenous voices of civil society organisations as well as NHRIs. This adds needed criticality founded on the 'situated knowledge' of the everyday experience of CSOs working in the field. The richness of the civil society discourse complements arguably narrower assessments stemming from legal judgements, states' self-reporting and quantitative indicators.

It is also germane to reflect on how the present study adds to our understanding of the Universal Periodic Review as a mechanism for assessing progress and shortcomings in contemporary human rights practice. First, although it should be noted based solely on the specific evidence of the UK's third cycle review, it tends to support claims that the advent of the UPR has made some progress in addressing the credibility and selectivity issues that beset the former UN Commission on Human Rights.¹⁸¹ Not least because it requires all states, including those with a reputation for relatively good rights practice, to be assessed on an equal basis with those with a record of persistent violations.¹⁸² More importantly, as Lawrence Moss's cogent assessment asserts:

Some of the most significant opportunities [for advancing human rights] lie not in the proceedings in the Human Rights Council in Geneva, but internally in societies around the world. NGOs can engage in a continuous cycle of advocacy built around UPR: advocating for national consultations, special procedure visits, and ratification of human rights treaties;

submitting information to treaty monitoring bodies and in the UPR process itself; advocating for the acceptance of recommendations made in UPR and then for implementation of those recommendations.¹⁸³

Notwithstanding this, there is a prevailing concern in extant work that, ‘without concerted efforts by the Human Rights Council, states and civil society alike to keep the [UPR] process focused on its intended purposes and goals, there is real danger that it will degenerate into mere ritualism for many, if not most, states once the UPR becomes routine’.¹⁸⁴ Such a worry has also been expressed in terms of ‘performativity and legitimation’; meaning states engage with the UPR as a means of shaping public perceptions of their seemingly *bona fide* standpoint on promoting human rights, when in fact it conceals or dissimulates poor practice and/or ongoing rights violations.¹⁸⁵ Such concerns are a particular worry in the context of states that seek to weaken the extent to which human rights principles are embedded in domestic law. This is a particular fear in the UK, given the Westminster government’s proposal to reform the Human Rights Act.¹⁸⁶

A further flaw in the current modalities of the UPR is the absence of an effective, impartial and international UN enforcement mechanism. This plays into the hands of countries that seek to undermine the status and justiciability of human rights in the domestic legal code. In this context, the present study supports earlier work (that itself is grounded in the classic work of Alexis de Tocqueville),¹⁸⁷ that concludes that ‘improvement in human rights is typically more likely the more democratic the country ... [In short,] ratification[of human rights treaties] is more beneficial the stronger a country’s civil society is’.¹⁸⁸ In this regard, the broad-based engagement of UK civil society organisations in the UPR would seem to bode well. Although they would do well to heed earlier work emphasising that:

NGOs [need] to understand the value as well as the limitations of the UPR in order to engage strategically and effectively. While the formalised structure and inherently political nature of the UPR process creates some challenges for NGO engagement, it also provides opportunities for engaging in new and different tactics. Such engagement will allow NGOs to play an increasingly valuable role in enhancing the effectiveness of UN human rights mechanisms and contributing to the implementation of international human rights obligations by states.¹⁸⁹

This is particularly salient in the UK. The present analysis suggests that, in the light of Westminster retrenchment on human rights and the more progressive stance seen in Scotland and Wales, CSOs need to adopt sophisticated modes of working across the UK’s quasi-federal governance structures in order to ensure policy gains and good practice are transferred between polities in the union state.

The current evidence of rights violations in the UK also begs the question – how can the identified pathologies be addressed? There is not a single panacea. The individual pathologies suggest their own remedies – *inter alia*, better baseline data gathering, monitoring and enforcement and so on. However, there is a key call that emerges from the civil society discourse; namely the need for ‘a [human rights] impact assessment [HRIA] duty on public authorities’.¹⁹⁰ Widely used in relation to equalities legislation (equalities impact assessments or EIAs), and part of the broader family of social impact assessments,¹⁹¹ HRIAs are an holistic, proactive policy tool designed to predict the human rights impact of social policy. Their strength is that they consider all stages of policy-

making, making use of baseline data, attention to process, allocation of resources, likely impacts and necessary mitigating factors. Crucially, they are predicated on the participation of civil society. HRIAs are not a one-off action, but incorporate the need for ongoing monitoring and evaluation.¹⁹² Aside from English, Scottish and Welsh laws linked to the CRC, they are not a statutory requirement in the UK (in addition, the Westminster government has discontinued the use of EIAs – as part of a ‘war on red tape’, or what was seen as ‘excessive bureaucracy’).¹⁹³ This is disappointing given the reference to ‘considering the effect of policies on different groups formally through impact assessment techniques’ alluded to in ‘Professional Policy-making for the Twenty-First Century’ published by the UK government almost two decades ago.¹⁹⁴ Even in the case of the CRC legislation the third cycle UPR discourse notes, ‘implementation is inadequate’.¹⁹⁵ At a UN level, as Deanna Kemp and Frank Vanclay observe,¹⁹⁶ ‘historically, impact assessment practice has not explicitly considered human rights’. Over the last few years the UN has embraced their use (e.g. on trade and investment agreements,¹⁹⁷ business,¹⁹⁸ children’s rights¹⁹⁹ and foreign debt and related international financial obligations).²⁰⁰ The present study provides empirical evidence that HRIAs *are* needed in the UK and internationally, as their systemic approach is suited to avoiding the pathologies that currently afflict contemporary policy-making.

In the adoption of HRIAs civil society has a key role to play in advancing critical perspectives on states’ response to their international human rights obligations. Again, this point was acknowledged by the UK government almost two decades ago:

The relationship between Government and NGOs working in human rights and civil liberties is traditionally uneasy, with some ... pressing policy positions which would give a greater role to judicial and international supervision of domestic political decisions than has been found acceptable ... Although NGOs have long been consulted about human rights matters, the nature and extent of the disclosure and access involved was ... at times, difficult to handle. The key to success lay in mutual recognition, respect for differing perspectives and being as open as was possible.²⁰¹

However, securing the adoption of HRIAs by the UK government is unlikely to be easy, for as a leading account notes, presently in the UK there is ‘an anti-human rights agenda’; one in which:

The [UK] government wanted to ‘send a political signal’ on human rights through the marginalisation of the [... principal compliance body] the Equality and Human Rights Commission (EHRC). The EHRC has long been operating in a largely unfavourable public climate towards human rights, with human rights often seen as driving unnecessary ‘political correctness’, wasting public money on bureaucratic and legalistic processes seen to contravene common sense.²⁰²

Thus, the Conservative and Unionist Party currently governing at Westminster has committed to fundamentally revising human rights law (though not without significant disagreement within the Party).²⁰³ In 2014 it noted that: ‘we will shortly publish a draft British Bill of Rights and Responsibilities ... The European Court of Human Rights has developed ‘mission creep’ ... There is mounting concern at Strasbourg’s attempts to overrule decisions of our democratically elected Parliament and overturn the UK courts’ careful applications of Convention rights’.²⁰⁴ Subsequently, in its 2017 election manifesto the Party stated: ‘we will not bring the European Union’s Charter of Fundamental Rights

into UK law ... we will consider our human rights legal framework when the process of leaving the EU concludes'.²⁰⁵ In its 2019 manifesto it reaffirmed 'We will update the Human Rights Act'.²⁰⁶ In response, the EHRC has noted that, 'it is vital that the UK continues to show international leadership on human rights and uphold the highest standards at home and abroad. This is the basis of the UK's membership of the UN Human Rights Council'.²⁰⁷ Whilst in a similar vein, the High Commissioner for Human Rights stated he was 'troubled about the proposal to scrap the Human Rights Act and its impact in the United Kingdom and other countries'.²⁰⁸

Reflecting the focus of this study, the Commissioner has underlined the key role that civil society can play in the future development of human rights law:

I encourage the United Kingdom to ensure that ... any legislative modification does not lead to decreased levels of human rights protection ... *This may be obtained, inter alia, through meaningful and broad public consultations with civil society and the inclusion of all stakeholders in particular women, minorities and vulnerable groups – on the proposal to revise its human rights legislation.*²⁰⁹

This study underlines that the experience of the UK speaks to the wider international situation. There are two key lessons that emerge from it: human rights violations need to be viewed in the context of pathologies in the policy process and, (particularly when legal reform threatens to undermine the domestic legal code), civil society participation is essential in holding states to account with regard to their international human rights obligations.

Notes

1. *Nota bene*: this study analyses all of the original UPR submissions by CSOs, not the summary report produced by OHCHR.
2. The UK has signed and ratified seven UN treaties: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), Convention on the Rights of the Child (CRC) and, Convention on the Rights of Persons with Disabilities (CRPD).
3. Brian Hogwood and Guy Peters, *The Pathology of Public Policy* (London: Oxford University Press, 1985).
4. Although it should be noted the UN also uses other regular and *ad hoc* monitoring procedures – outwith the present study focus.
5. Compare Alexis De Tocqueville, *Democracy in America*, trans. and ed. Harvey Mansfield and Delba Winthrop (Chicago: University of Chicago Press, [1835] 2000).
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7. Richard Davies, 'Children Locked Away from Human Rights in the UK', *The Lancet* 361 (March 8, 2003): 872; Clare Dyer, 'Treatment of Man with Mental Illness at UK Detention Centre Breached Human Rights', *British Medical Journal* (2011): 343; Clare Dyer, 'A Review of the Impact of the Human Rights in Healthcare Programme in England and Wales', *Health and Human Rights* 17, no. 2 (2015): 111–22; Geraldine Boyle, 'Social Policy for People with Dementia in England: Promoting Human Rights?' *Health and Social Care in the Community* 18, no. 5 (2010): 511–19; Pragna Patel, 'Faith in the State? Asian Women's Struggles for Human Rights in the UK', *Feminist Legal Studies* 16 (2008): 9–36;

- Noel Whitty, 'Human Rights as Risk: UK Prisons and the Management of Risk and Rights', *Punishment & Society* 13, no. 2 (2011): 123–48.
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 9. Dominic Grieve, 'An Unnecessary Change: Scrapping the Human Rights Act Will Damage the UK's Reputation and Undermine the Most Effective Tool in History for Promoting Human Rights', *Prospect* 234 (September 2015): 44–46.
 10. Jo Ferrie, Rebecca Wallace, and Elaine Webster, 'Realising International Human Rights: Scotland on the Global Stage', *The International Journal of Human Rights* 22, no. 1 (2018): 1–4, 3.
 11. Ann Nevile, *Human Rights and Social Policy a Comparative Analysis of Values and Citizenship in OECD Countries* (Cheltenham; Northampton, Mass: Edward Elgar, 2010); Carole B. Cox, *Social Policy for an Aging Society: A Human Rights Perspective* (New York: Springer Publishing Company, 2015); Deidre Flanigan and Alison Hosie, 'Human Rights and Equality' Chapter 5, in *The Student's Companion to Social Policy*, ed. Pete Alcock, Tina Haux, Margaret May, and Sharon Wright (Chichester, England: Wiley-Blackwell, 5th ed., 2016), 34–40.
 12. '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 [sic] personality'.
 13. William Beveridge, *The Pillars of Security* (London: Allen & Unwin, 1943).
 14. Richard Titmuss, *Essays on the Welfare State* (London: Allen & Unwin, 1958).
 15. Andrew Gamble, *Can the Welfare State Survive?* (Malden, MA: Polity Press, 2016).
 16. Peter Beresford, *All Our Welfare* (Bristol: Polity Press, 2016), 3.
 17. See for example Wayne Parsons, *Public Policy* (Cheltenham: Edward Elgar, 1996); Christopher Hood, *Administrative Analysis: An Introduction to Rules, Enforcement and Organizations* (Brighton: Wheatsheaf Books, 1986).
 18. See also CERD, Article 2 (inter alia, 'Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists'); CEDAW, Article 7 ('the right to To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government'); ICESCR, Art 6 ('The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual').
 19. Adrian Kay, 'Territorial Justice and Devolution', *British Journal of Politics and International Relations* 7 (2005): 544–60.
 20. Daniel Treisman, *The Architecture of Government: Rethinking Political Decentralization* (Cambridge: Cambridge University Press, 2007).
 21. Powers vary between polities.
 22. H.M. Civil Service, *Twelve Actions to Professionalise Policy Making: A report by the Policy Profession Board* (London: H.M. Civil Service, 2013); H.M. Civil Service, *Civil Service Reform: The Capabilities Plan* (London: H.M. Civil Service, 2014); Government Office for Science, *The Futures Toolkit: Tools for Futures Thinking and Foresight Across UK Government* (London: Government Office for Science, 2018).
 23. Cabinet Office, *Professional Policy Making For the Twenty First Century* (London: Cabinet Office, 1999); Cabinet Office/ Centre for Management and Policy Studies, *Better Policy Making* (London, Cabinet Office/ CMPS, 2001).

24. Cabinet Office, *Professional Policy Making For the Twenty First Century* (London, Cabinet Office, 1999), 44, para 8.1.
25. P. Chaney, 'Education, Equality and Human Rights: Exploring the Impact of Devolution in the UK', *Critical Social Policy* 31, no. 3 (2011): 431–453.
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27. Scottish Government, *A Plan for Scotland: The Scottish Government's Programme for Scotland 2016–17* (Edinburgh, SG, 2016), 77.
28. P. Chaney, *Equality and Public Policy* (Cardiff: University of Wales Press, 2011).
29. Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006).
30. UDHR, Article 21.
31. Erik Klijn and C. Chris Skelcher, 'Democracy and Governance Networks: Compatible or Not?' *Public Administration* 85, no. 3 (2007): 587–608.
32. Dvora Yanow, *Conducting Interpretive Policy Analysis* (Thousand Oaks, CA: SAGE, 2011).
33. Andrea Kukla, *Social Constructivism and the Philosophy of Science* (London: Routledge, 2000).
34. Marcel Stoetzler and Nira Yuval-Davis, 'Standpoint Theory, Situated Knowledge & the Situated Imagination', *Feminist Theory* 3, no. 3 (2002): 315–33.
35. Colin Eden and Fran Ackermann, 'Cognitive Mapping Expert Views for Policy Analysis in the Public Sector', *European Journal of Operational Research* 152, no. 1 (2004): 615–30.
36. Jean Cohen, 'Procedure and Substance in Deliberative Democracy' Chapter 3, in *Deliberative democracy: Essays on reason and politics*, ed. Jon Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), 124–39.
37. Jurgen Habermas, *The Theory of Communicative Action, Volume 2: Lifeworld and System: A Critique of Functionalist Reason* (NY: Beacon Press, 1994), 7.
38. United Nations General Assembly, Resolution adopted by the General Assembly – 60/251. Human Rights Council, UN: Geneva, A/60/L.48 3 April 2006.
39. Human Rights Council, *5/1. Institution-building of the United Nations Human Rights Council* (Geneva: UN, 18 June 2007), Under resolution 5/1 (A/HRC/RES/5/1).
40. United Nations Pre-sessions information, Geneva: UN, (web pages only), <https://www.upr-info.org/en/upr-process/pre-sessions> (accessed April 28, 2020).
41. For a discussion of the Review process see United Nations Pre-sessions information, Geneva: UN (web pages only), <https://www.upr-info.org/en/upr-process/what-is-it/qa-on-the-modalities-of-the-upr-process> (accessed April 28, 2020).
42. United Nations Pre-sessions information, Geneva: UN (web pages only), https://www.upr-info.org/sites/default/files/general-document/pdf/upr_technicalguidelines3rdcycle_submissions.pdf (accessed April 28, 2020).
43. See note 39 above.
44. UN UPR Info, *UPR Mid-term Reporting Optimising Sustainable Implementation: Good Practices for UPR Stakeholders* (Geneva: UPR Info, 2018).
45. Leanne Cochrane and Kathryn McNeilly, 'The United Kingdom, the United Nations Human Rights Council and the First Cycle of the Universal Periodic Review', *The International Journal of Human Rights* 17, no. 1 (2013): 152–77.
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48. Karl Krippendorff and Marcus Bock, *The Content Analysis Reader* (Thousand Oaks: Sage, 2008).
49. UAM Corpus Tool 3.
50. Andrea Volkens, 'Quantifying the Election Programmes: Coding Procedures & Controls', in *Mapping Policy Preferences: Parties, Electors & Governments*, ed. Ian Budge (Oxford: Oxford University Press, 2001), 96.
51. A worked example: 'the Westminster Mental Health Strategy 2015–21 has been beset by numerous problems: poorly framed (inter alia, it failed to consider the needs of migrants and asylum seekers), it was weakened by the Ministerial decision in 2017 to end the drop-in centre programme, and thorough-going data on the Support Worker Scheme have not been available since early 2016'. This sentence would be coded under the following pathologies (negative human rights implications of ...) 'Framing of policy/ practice', 'Modification/ discontinuation of existing policies and programmes' and 'Failure to monitor/ enforce policy and practice'.
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54. Office for Budget Responsibility, *Welfare Trends Report, Presented to Parliament by the Economic Secretary to the Treasury by Command of Her Majesty*, Cm 9341 (London: Her Majesty's Stationery Office, 2016), 5.
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57. Margot Salomon, 'Of Austerity, Human Rights and International Institutions', *European Law Journal*, no. 4 (2015): 521–45, 521.
58. Inclusion London, *Submission to the Third Cycle UPR* (NY: UN, 2016), 8.
59. Friends, Families and Travellers – Leeds GATE, Community Law Partnership et al., *Joint Submission to the Third Cycle UPR* (NY: UN, 2016), 9.
60. Peter Taylor-Gooby, Benjamin Leruth, and Heejung Chung, eds., *After Austerity: Welfare State Transformation in Europe After the Great Recession* (Oxford, Oxford University Press, 2017).
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62. See for example, Philip Alston and James Crawford, *The Future of UN Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press 2000).
63. Anti-Slavery International and Kalayaan, *Joint Submission to the Third Cycle UPR* (NY: UN, 2016), 5.
64. Vernon Van Dyke, 'Human Rights Without Discrimination', *American Political Science Review* 67, no. 4 (1973): 1267–74, 1271.
65. Inclusion London, *Submission to the third cycle*, 2016, 7.
66. Jo Ferrie and Alison Hosie, 'Methodological Challenges in Developing an Evidence Base, and Realising Rights', *The International Journal of Human Rights* 22, no. 1 (2018): 5–21, 18.
67. Alzheimer Scotland, *Submission to the Third Cycle UPR* (NY: UN, 2016), 5.
68. Ann Marie Clark and Kathryn Sikkink, 'Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures?' *Human Rights Quarterly* 35, no. 3 (2013): 539–68, 539.
69. Ibid.
70. National Federation of Gypsy Liaison Groups, *Submission to the Third Cycle UPR* (NY: UN, 2016), 9.
71. Human Rights Consortium, *Submission to the third cycle*, 2016, 12.
72. Scottish Human Rights Commission, *Submission to the UN Human Rights Council – NHRI Report on the United Kingdom's Universal Periodic Review* (Edinburgh: SHRC, 2016), 3.
73. Jo Ferrie and Alison Hosie, 'Methodological Challenges in Developing an Evidence Base, and Realising Rights', *The International Journal of Human Rights* 22, no. 1 (2018): 5–21, 20.

74. Moira Katherine Lynch 'A Theory of Human Rights Accountability and Emergency Law: Bringing in Historical Institutionalism', *Journal of Human Rights* 14, no. 4 (2015): 504–24.
75. UNICEF UK, *Submission to the Third Cycle UPR* (NY: UN, 2016), 4.
76. Sakiko Fukuda-Parr, 'Global Goals as a Policy Tool: Intended and Unintended Consequences', *Journal of Human Development and Capabilities* 15, no. 2–3 (2014): 118–31, 118.
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88. United for Change – Asylum Link Merseyside, Rainbow Haven et al., *Joint Submission to the third cycle UPR* (NY: UN, 2016), 9.
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Notes on contributor

Paul Chaney is Professor of Politics and Policy at Cardiff University. He is Co-Director of Wales Institute of Social, Economic Research and Data (WISERD). He has authored and edited 14 books and written over sixty papers in international peer-reviewed journals. His research and teaching interests include: territorial politics, public policy-making, civil society, and equality and human rights.

ORCID

Paul Chaney  <http://orcid.org/0000-0002-2110-0436>

Appendix – List of CSOs

ACAT-UK – Action by Christians Against Torture – United Kingdom, Access Now – Access Now, ADF International – ADF International, Age UK – Age UK, AI – Amnesty International, AS – Alzheimer Scotland, BHA – British Humanist Association, CFoIS – Campaign for Freedom of Information in Scotland, CGNK – Center for Global Nonkilling, CRER – Coalition for Racial Equality and Rights, CRIN – The Child Rights International Network, DA – Detention Action UK, FFF – Four Freedoms Forum, FOE EWNl – Friends of the Earth (EWNl), GG – The Good Group, IL – Inclusion London, Just Fair – Just Fair, MRG – Minority Rights Group International, NFGLG – National Federation of Gypsy Liaison Groups, Nourish Scotland – Nourish Scotland, ODVV – Organization for Defending Victim of Violence, OHR – Oceania Human Rights, RCUK – CCJO René Cassin, Release – Release, RRDP – Refugee Rights Data Project, RSF-RWB – Reporters Without Borders International, RWUK – Rights Watch, SCID – Scottish Campaign against Irresponsible Drivers, STUC – Scottish Trades Union Congress, The Howard League – The Howard League for Penal Reform, UNA-UK – United Nations Association – UK, Unicef UK – Unicef UK; JS1 – Joint Submission 1 (Friends, Families and Travellers – Leeds GATE, Community Law Partnership et al.); JS2 – Joint Submission 2 (United for Change – Asylum Link Merseyside, Rainbow Haven et al.); JS3 – Joint Submission 3 (Human Rights Consortium – Action for Community Transformation, Action on Elder Abuse Northern Ireland, Action on Medical Negligence et al.); JS4 – Joint Submission 4 (Campaign to End Migrant Detention); JS5 – Joint Submission 5 (Dalit Solidarity Network UK/ International Dalit Solidarity Network); JS6 – Joint Submission 6 (Sisters of Frida – Disabled Women/ Women Enabled); JS7 – Joint Submission 7 (RECOVERY); JS8 – Joint Submission 8 (Migrants Resource Centre, University of Liverpool Law Clinic, European Network on Statelessness, and Institute on Statelessness and Inclusion); JS9 – Joint Submission 9 (Center for Constitutional Rights, Eva Joly Institute, National Lawyers Guild et al.); JS10 – Joint Submission 10 (British Institute of Human Rights – Age Cymru, Age UK, AIRE Centre, Anti-Slavery International et al.); JS11 – Joint Submission (Children’s Rights Alliance for England, Together (Scottish Alliance for Children’s Rights), and the Wales UNCRC Monitoring Group); JS12 – Joint Submission 12 (Edmund Rice International, Westcourt Centre, Belfast, Northern Ireland, Council for the Homelessness Northern Ireland, Revive, Tree of Life, Wythenshawe); JS13 – Joint Submission 13 (Anti-Slavery International and Kalayaan); JS14 – Joint Submission 14 (HIV Scotland, National AIDS Trust, Terrance Higgins Trust UK, Waverley Care); JS15 – Joint Submission 15 (The Right to Education Project (RTE), Child Rights International Network (CRIN), The Global Campaign for Education (GCE) et al.); JS16 – Joint Submission 16 (English PEN); Impetus – Brighton and Hove Impetus, WAE – We’re All Equal, YTCE – Young Transgender Centre of Excellence.