

Navigating Devolution at the UPR – The Case of the United Kingdom

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[Devolution] brings a challenge for example for civil society in how we present a clear picture of UK progress on rights to the various UN-level rights monitoring mechanisms – giving them one UK picture where devolved developments are briefly mentioned as ‘the other’ is no longer effective. We need international scrutiny mechanisms to bring accountability of the devolved administrations as well as the UK Government.

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Introduction

Decentralisation is a global phenomenon. Many states now transfer legislative and administrative competence to the sub-national level, providing legal and political autonomy to different regions. Devolution is one way that this is practiced. This involves the transfer of powers by central government to regional bodies, usually through legislation that can in principle be revoked at a later date.³ Scholars have highlighted the possible implications of devolution for the promotion and protection of human rights,⁴ however work specifically on the UPR has been neglected. With this lacuna in mind, my Chapter investigates the range of opportunities and challenges that can arise for devolved governments and civil society when engaging with the UPR. These opportunities and challenges are understood to mean any factor

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² Mhairi Snowden, ‘Devolution and Human Rights in 2021’ (25 October 2021) <<https://justfair.org.uk/home/blog/guest-blog/devolution-and-human-rights-in-2021/>> accessed 5 November 2022.

³ Michael Keating, ‘Federalism and the Balance of Power in European States’ <<https://sigmaweb.org/publications/37890628.pdf>> accessed 3 December 2022.

⁴ E.g. on the UK, see Aidan O’Neill, “‘Stands Scotland Where It Did?’: Devolution, Human Rights and the Scottish Constitution Seven Years on Special Issue on Human Rights and Equality’ (2006) 57 Northern Ireland Legal Quarterly 102; Paul Chaney, ‘Education, Equality and Human Rights: Exploring the Impact of Devolution in the UK’ (2011) 31 Critical Social Policy 431; Ann Sherlock, ‘Human Rights in Post-Devolution Wales: For Wales, See Wales?’ (2006) 57 Northern Ireland Legal Quarterly 138; Katie Boyle and Nicole Busby, ‘Human Rights and Devolution: Devolution as a Vehicle for Human Rights Protection and Progress’ <<https://hrcscotland.org/wp-content/uploads/2021/09/Final-Devolution-and-Human-Rights-Dev-as-a-vehicle-for-HR-protection-and-progress-Sept-2021.pdf>> accessed 27 November 2022.

that has a bearing on the fulfilment of the mechanism's principles and objectives, as found in the Annex to HRC Resolution 5/1.⁵

A case study of devolution in the UK is used to explore this issue. Though a unitary state governed primarily by the UK Government (UKG) and Parliament (Westminster) in England, devolved legislatures and administrations operate in Wales, Scotland, and Northern Ireland.⁶ Though many states utilise devolution, the UK proves to be a useful case study. Primarily, because devolution in each region in the UK is unique, its case reveals a breadth of insights into the interplay between devolution and the UPR. This will contribute to our scholarly understanding of the UPR which, to date, has yet to be analysed through this distinct form of decentralisation.⁷ Placing the emphasis on the 'regional' rather than the 'national' reveals several opportunities and challenges for devolved institutions at the UPR. In turn, it is possible to identify avenues for improving the UPR to better review and improve human rights on the ground.

To inform the discussion around these issues, this piece draws upon empirical evidence from various documentation including that pertaining to the UK's four UPRs,⁸ policy documentation of the governments and legislatures in the UK, as well as existing scholarship on human rights and devolution. Evidence is analysed in light of the various theories of state compliance that purport to explain the UPR effectiveness, including acculturation,⁹ domestic actor mobilisation,¹⁰ and naming and shaming.¹¹ These theories enable me to identify and understand the implications of devolved engagement (or lack thereof) at each stage of the UPR

⁵ HRC, 'Annex to Resolution 5/1 Adopted by the Human Rights Council: Institution-Building of the United Nations Human Rights Council' (2007) UN Doc A/HRC/5/1.

⁶ Referred to collectively throughout as the 'devolved governments'.

⁷ Though, on federal states, see UPR Info, 'Good Practices from Federal States in the UPR Process' (2021) <<https://www.upr-info.org/sites/default/files/general-document/2022-04/research-en.pdf>> accessed 22 November 2022.

⁸ As found at OHCHR, 'Universal Periodic Review - United Kingdom of Great Britain and Northern Ireland' (2023) <<https://www.ohchr.org/en/hr-bodies/upr/gb-index>> accessed 25 January 2023.

⁹ Damian Etone, 'Theoretical Challenges to Understanding the Potential Impact of the Universal Periodic Review Mechanism: Revisiting Theoretical Approaches to State Human Rights Compliance' (2019) 18 Journal of Human Rights 36..

¹⁰ Michael Lane, 'The Universal Periodic Review: A Catalyst for Domestic Mobilisation' [2023] Nordic Journal of Human Rights <doi.org/10.1080/18918131.2022.2139076>.

¹¹ Elvira Domínguez-Redondo, 'The Universal Periodic Review — Is There Life Beyond Naming and Shaming in Human Rights Implementation?' (2012) 2012 New Zealand Law Review 673.

process. In doing so, my work contributes to the growing base of empirical international legal scholarship which is concerned with theorising the conditions under which international law does or does not have effects in different contexts.¹² In this case, the ‘law’ is that which underpins and is created by the UPR process;¹³ the effect under examination is the UPR’s impact; and the ‘context’ is devolution in the UK.

To these ends, I proceed as follows. In part one, I provide an overview and analysis of the present devolution arrangements in the UK. This is necessary to appreciate the present political and legal relationship between the regions of the UK, and to synthesise our existing understanding of the implications these arrangements have for human rights. In part two, I explore each of the UPR’s four stages, highlighting the opportunities and challenges for the devolved governments and civil society in these regions.

Devolution in the United Kingdom

The United Kingdom is a unitary state comprising the Union between England, Wales, Scotland, and Northern Ireland. In spite of their unification, the religious, cultural, and political diversity of the four nations means that each have always retained some distinct identity.¹⁴ In large part because of these differences that devolution – the partial transfer of power from Westminster to administrations in the regions – has been feature of the UK constitution in the last century. It has meant a flux in each regions’ legal developments, including in the area human rights. So much so, the Union and devolution are key themes of the UK’s reviews before international human rights mechanisms, such as the UPR.¹⁵ In order to fully appreciate the interplay between devolution in the UK and the mechanism, a preliminary discussion of the arrangements in each nation is necessary. The focus here is primarily on the legal framework

¹² Gregory Shaffer and Tom Ginsburg, ‘The Empirical Turn in International Legal Scholarship’ (2012) 106 *American Journal of International Law* 1.

¹³ [Make reference to previous chapters in this collection e.g. the introductory Chapter and Fred Cowell’s chapter].

¹⁴ The Federal Trust For Education And Research, ‘Written Evidence to the House of Lords Constitution Committee (UDE0018)’ <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/the-union-and-devolution/written/21887.html>> accessed 1 December 2022. The Trust claims that ‘[t]he proposition that there are any ‘principles’ underlying the Union is open to question’, para 8.

¹⁵ See ‘Devolution and Human Rights’ below.

in place since the passing of legislation by Westminster in 1998,¹⁶ and the relevance of human rights within this.

Devolution since 1998

Wales and Scotland have had devolved administrations since the Scotland and Government of Wales Acts 1998. These Acts followed referenda in the regions, as promised by the new Labour Party Government elected in 1997. Subsequent amendments¹⁷ to this legislation means that Wales and Scotland now have their own respective parliaments and governments. In terms of competence, these institutions operate on a ‘reserved powers’ model. This entails that law cannot be made by these bodies on any the ‘reserved matters’ set out in the devolution legislation.¹⁸ Common areas reserved across both regions include those relating to the constitution,¹⁹ foreign affairs,²⁰ and certain home affairs matters.²¹ There are, however, various differences in competence between the two regions: Scotland, for instance, has more freedom to legislate in areas such as social security and justice.²²

The Northern Ireland Act 1998 and subsequent legislation²³ provides for similar arrangements in that region, though the events that preceded this are somewhat more complex. Devolution has operated in Northern Ireland since the Government of Ireland Act 1920 which provided for separate parliaments and governments in Southern and Northern Ireland. Southern

¹⁶ For more on the Union before 1998, see House of Lords Constitution Committee, *The Union and Devolution* (2015-16, HL 149); Gwyn Williams, *The Welsh in Their History* (1st edn, Routledge 2022); James G Kellas, *The Scottish Political System* (Cambridge University Press 1989); Brice Dickson, ‘Devolution in Northern Ireland’ in Jeffrey Jowell and Colm O’Cinneide (eds), *The Changing Constitution* (9th edn, OUP 2019); Aileen McHarg, ‘Devolution in Scotland’ in Jeffrey Jowell and Colm O’Cinneide (eds), *The Changing Constitution* (9th edn, OUP 2019).

¹⁷ Most notably, for Wales: the Government of Wales Act 2006, Wales Act 2014, Wales Act 2017; and for Scotland: the Scotland Acts 2012 and 2016.

¹⁸ Government of Wales Act 2006, sch. 7A; for Scotland see Scotland Act 1998, sch. 5.

¹⁹ Scotland Act 1998, sch. 5, pt. 1, paras. 1-5; Government of Wales Act 2006, sch. 7A, pt. 1, paras. 1-4.

²⁰ Scotland Act 1998, sch. 5, pt 1, para 7; Government of Wales Act 2006, sch. 7A, pt 1, para 10.

²¹ E.g. elections to the House of Commons, Scotland Act 1998, sch. 5, pt 2, para B3; Government of Wales Act 2006, sch. 7A, pt 2, para 20.

²² For a fuller outline of the areas reserved across the regions see David Torrance, ‘Commons Research Briefing: Introduction to Devolution in the United Kingdom’ (2022) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8599/>> accessed 10 January 2023.

²³ Notably the Northern Ireland (St Andrews Agreement) Act 2006.

Ireland, soon to be known as the 'Irish Free State', would no longer be a part of the UK. It would instead operate as an autonomous dominion of the British Commonwealth until 1949 upon which it became (and remains) the Republic of Ireland, independent of the UK.²⁴ The six counties comprising Northern Ireland continued to govern under the arrangements of the 1920 Act. However, conflict prevailed in the region between unionists, in favour of Northern Ireland's place in the UK, and nationalists who sought to break free of the Union. The political breakthrough came in 1998 with the Belfast Agreement struck between the United Kingdom and the Republic of Ireland. Subsequent to the Agreement, the Northern Ireland Act 1998 was passed. The Act provides for the Northern Ireland Assembly and a 'power sharing' executive whereby the First Minister and deputy First Minister, drawn from the two largest parties following the election, are the joint heads of the executive.²⁵ This is with the aim of bringing together both unionist and nationalist representatives in order to maintain stability in the region. Where a minister refuses to participate in the power-sharing government, then the Assembly may be suspended and 'direct rule' may be imposed from Westminster.²⁶ As with the legislation for Wales and Scotland, the Northern Ireland Act operates on a reserved powers model. The exception is that there are also 'excepted matters' which, unlike their reserved counterparts, cannot be altered via executive order.²⁷

In addition to these legislative measures, it is important to emphasise the various policies in place for maintaining intergovernmental cooperation and relations. Of note is the Memorandum of Understanding between the four UK governments that, *inter alia*, provides a framework for communication and cooperation. This was previously achieved through the Joint Ministerial Committee, comprised of ministers from each government to periodically consider matters of mutual interest.²⁸ However, the Committee has been superseded by various structures

²⁴ For more on the period from 1920, see Dickson (n 16).

²⁵ Northern Ireland Act 1998, s 16A.

²⁶ This has happened on four occasions since 1998 and requires new primary legislation to be passed. See David Torrance, 'House of Commons Briefing Paper, Northern Ireland: Direct Rule' (2022) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8638/>> accessed 25 January 2023.

²⁷ Northern Ireland Act 1998, s 4(1)-(2).

²⁸ Published initially in 1999, the Memorandum has been subsequently revised. The most up to date version can be found at: UK Cabinet Office, 'Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee' (2012) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316157/MoU_between_the_UK_and_the_Devolved_Administrations.pdf> accessed 25 January 2023.

following the ‘Review of Intergovernmental Relations’ in 2022.²⁹ There now operates a three-tier structure comprising ‘portfolio engagement at official and ministerial level; engagement on cross-cutting issues, including an Interministerial Standing Committee; the Prime Minister and Heads of Devolved Governments Council’.³⁰ In addition to these formal arrangements, informal, ad-hoc communication between governments is common.³¹

Devolution and Human Rights

Though distinct in many ways, a commonality and foundation of these arrangements is human rights. The European Convention on Human Rights (the Convention) is both incorporated into UK law through the Human Rights Act 1998 (HRA 1998) and is contained in each of the devolution statutes. On the latter, none of the devolved legislatures can pass law contrary to the rights under the Convention.³² This differs from the position of the UK Parliament which, by virtue of parliamentary sovereignty, is not legally prevented from passing human rights-incompatible legislation.³³ Within the UK, therefore, there exists two different ‘constitutional models’ of human rights protection – one for the UK, and another for Wales, Scotland, and Northern Ireland.³⁴ It also means that human rights are inextricably linked and intertwined with devolution – they are a central pillar of the Union.³⁵ Such has been noted by the UK at each of its UPR reviews.³⁶

The nature of the devolution, however, means that responsibility for engagement at each stage of the process falls to different levels of governance. Matters concerning ‘international relations’, including the signing and ratifying of treaties, and the UK’s relations with

²⁹ UK Cabinet Office, ‘Review of Intergovernmental Relations’ (2022) <<https://www.gov.uk/government/publications/the-review-of-intergovernmental-relations/review-of-intergovernmental-relations-html>> accessed 25 January 2023.

³⁰ *ibid.*

³¹ E.g. between 2002 and 2007, the Joint Ministerial Committee was never convened, in part owing to the imposition of direct rule in Northern Ireland.

³² Government of Wales Act 2006 s 81; Scotland Act 1998 s 29(2); Northern Ireland Act 1998 s 6(2).

³³ For more on the interplay between parliamentary sovereignty and the Human Rights Act 1998, see Alison Young, *Parliamentary Sovereignty and the Human Rights Act* (Hart Publishing 2009).

³⁴ O’Neill (n 4) 105–106.

³⁵ Boyle and Busby ‘Human Rights and Devolution’ (n 4).

³⁶ See reference to devolution in each of the UK’s four National Reports, OHCHR, ‘UK UPR Webpage’ (n 8).

international organisations such as the UN, are not devolved.³⁷ Thus, preparations for UK's UPR, and representation in Geneva, is the responsibility of Whitehall through the Ministry of Justice. However, when it comes to implementing human rights – that is, giving practical effect to international obligations under the Convention, other treaties to which the UK is party, and the outcomes of international mechanisms such as the UPR – this is the devolved responsibility of each region.³⁸ To complicate matters further, *international* responsibility for implementation, though, remains with the UK state, and therefore the UKG, not the devolved administrations.

Together, these arrangements entail that engagement with international monitoring mechanisms is undertaken by a myriad of political actors, each of whom have varied responsibilities at different points of the reporting process. These complex interfaces have been explored in the context of the UN treaty bodies, revealing a range of risks and gains for human rights protections.³⁹ And, federal states at the UPR have received some attention.⁴⁰ But focus has yet to be turned to devolution and the UPR specifically. As a different mechanism operating through distinct modalities and principles, there is value in satisfying this gap in the scholarship.

To this end, my aim in the forthcoming sections is to set out the opportunities and challenges for Wales, Scotland, and Northern Ireland at the UPR. These have been identified and analysed by drawing on the various theories of state compliance employed in the UPR literature. This includes acculturation which emphasises the social or cognitive pressures which can shape the behaviour of states.⁴¹ Ryan Goodman and Derek Jinks' theory of acculturation has received considerable attention in the UPR scholarship and has been argued to be the most appropriate explanation for the mechanism's impact.⁴² Elsewhere, scholars have noted the role that 'naming and shaming' might play.⁴³ As an inter-state mechanism, the UPR is potentially an opportunity for states to condemn and shame the actions of one another for poor human

³⁷ Scotland Act 1998, sch 5, para 7; Govt Wales Act 2006, sch 7A, para 10; NI Act, sch 2, para 3.

³⁸ *ibid.*

³⁹ Simon Hoffman, 'The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales' (2019) 23 *The International Journal of Human Rights* 374.

⁴⁰ UPR Info, 'Good Practices from Federal States in the UPR Process' (n 7).

⁴¹ Ryan Goodman and Derek Jinks, *Socializing States* (OUP 2013).

⁴² Etone 'Theoretical Challenges' (n 9).

⁴³ Rochelle Terman and Erik Voeten, 'The Relational Politics of Shame: Evidence from the Universal Periodic Review' (2018) 13 *Review of International Organizations* 1.

rights practices. In my own work, I've pursued the view that no single theory alone appears best placed to explain the UPR's impact. Nevertheless, my analysis of existing empirical research has led me to conclude that the mobilisation of domestic stakeholders is at least significant.⁴⁴ Dialogue between actors, the holding to account of governments, and the coordinated implementation of recommendations are all identified as important factors in this regard. With these theoretical lenses in mind, the following sections highlight the challenges and opportunities that have arisen for the devolved governments and regional civil society at the four stages of the UPR.

Devolution at the UPR

Pre-Review

The pre-review phase of the UPR involves the preparation of the documentation that will inform a state's review: the National Report, UN Compilation, and stakeholder summary. Information in these documents serves primarily to inform states in making relevant and specific recommendations on the state under review's human rights situation. But they also bring enhanced transparency to states human rights practices for other actors. Scholars have demonstrated on numerous occasions that the provision of information in this way can improve human rights on the ground.⁴⁵ As Creamer and Simmons elaborate 'most theories of compliance with international law rely explicitly or implicitly on the availability of information about government activities and legal obligations'.⁴⁶ Alone, this stage of UPR therefore has the potential to act as a driver of states' compliance. Several opportunities and challenges arise here.

⁴⁴ Lane 'Catalyst for Domestic Mobilisation' (n 10).

⁴⁵ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press 1995); Ronald B Mitchell, 'Sources of Transparency: Information Systems in International Regimes' (1998) 42 *International Studies Quarterly* 109; Laurence R Helfer and Anne-Marie Slaughter, 'Why States Create International Tribunals: A Response to Professors Posner and Yoo' (2005) 93 *California Law Review* 899; Cosette Creamer and Beth A Simmons, 'Transparency at Home: How Well Do Governments Share Human Rights Information with Citizens?' in Andrea Bianchi and Anne Peters (eds), *Transparency in International Law* (Cambridge University Press 2010).

⁴⁶ Creamer and Simmons 'Transparency at Home' (n 45) 242.

National Reporting and Consultations

The first concerns the national report, specifically the ‘broad consultation with all relevant stakeholders’.⁴⁷ In the UK, coordination of these consultations has been primarily undertaken by the UKG Ministry of Justice. However, all the UK’s national reports are claimed to have been drafted with the involvement of the devolved administrations, each of which conduct consultations in their respective regions.⁴⁸ The presentation of the national report, which reserves separate paragraphs for the relevant human rights developments in each nation, further demonstrates this.⁴⁹ In doing so, the voice and experiences of the devolved administrations are opened to international exposure and scrutiny. The UPR can also be understood as providing an opening for dialogue between the nations. This is important, as some scholars have noted that inter-government communication in the UK hasn’t always been forthcoming.⁵⁰ By requiring the state to consult broadly, the UPR therefore has the potential to strengthen the relationship between the UK nations through dialogue and collaboration. It is also pertinent at this point to note the practice of the Scottish Government in publishing separate position statements in advance of the UK’s reviews. This is not required by the UPR process, though Edinburgh claim that these documents help ‘interested parties in engaging with treaty reporting processes and in scrutinising the Scottish Government’s human rights record’.⁵¹ The UPR may therefore encourage the development of best practice.

However, challenges have arisen because the extent of these regional UPR consultations varies. The Northern Ireland Executive, especially, appears to have engaged stakeholders to differing degrees across the four cycles. For the first cycle, two NI-focused organisations raised

⁴⁷ HRC, ‘Annex to Resolution 5/1’ (n 5) para 15(a).

⁴⁸ See the UK’s four national reports to date, OHCHR, ‘UK UPR Webpage’ (n 8).

⁴⁹ E.g. in the UK’s 2022 report, each human rights theme begins with a discussion of the UK position, and then that of each devolved government, HRC, ‘National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21: United Kingdom of Great Britain and Northern Ireland’ (2022) UN Doc A/HRC/WG.6/41/GBR/1.

⁵⁰ E.g. Philip Norton, *Governing Britain: Parliament, Ministers and Our Ambiguous Constitution* (Manchester University Press 2020) 178. Norton notes that communication between the nations has been largely through informal channels, relying heavily on individual relationships.

⁵¹ Scottish Government: Equality, Inclusion and Human Rights Directorate, ‘Universal Periodic Review 2022: Scottish Government Position Statement’ (2022) <<http://www.gov.scot/publications/universal-periodic-review-2022-scottish-government-position-statement/>> accessed 9 December 2022.

concerns over the lack of prior consultation.⁵² And, for the third, the NI-based NGO Human Rights Consortium argued the NIE had ‘no clear plans for consultation with civil society’.⁵³ That devolved administrations may take different (and possibly less effective) approaches to the national report consultation is to the detriment of civil society that may not have their views been fully represented at the UPR. Subsequently, the information provided to the HRC on the UK’s human rights situation is at risk of being inaccurate or incomplete. This is problematic because information serves a critical purpose in the context of state compliance. Scholars have demonstrated on numerous occasions that the provision of information in this way can improve human rights on the ground.⁵⁴

In part, these divergent practices may be the result of the various periods, during which the NIE was suspended and the UKG assumed responsibility for governance in the region. This includes the period of suspension between 2016 and 2020 during which the UK’s third UPR cycle began. Though the particular devolution arrangements in Northern Ireland are unique, these issues nevertheless serve to illustrate the impact that domestic (regional) politics can have on a state’s engagement with the UPR.⁵⁵ It is also pertinent to note, though, that very little guidance is given by the HRC as to what role regional governments should play at this stage of the process. Although the national report consultations have been interpreted by the OHCHR to include local and regional governments,⁵⁶ neither the annex to HRC Resolution 5/1, nor the

⁵² British Irish Rights Watch, ‘Submission To The United Nations Human Rights Council’s Universal Periodic Review Mechanism Concerning The United Kingdom’ (2007) <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUnitedKingdomStakeholdersInfoS1.aspx>> accessed 17 February 2021; Northern Ireland Human Rights Commission, ‘Submission by the Northern Ireland Human Rights Commission to the UN Human Rights Council’s Universal Periodic Review’ (2007) <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUnitedKingdomStakeholdersInfoS1.aspx>> accessed 21 July 2020..

⁵³ Human Rights Consortium, ‘Submission from the Human Rights Consortium to the Third Universal Periodic Review of the United Kingdom’ (2016) para 19 <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRRGBStakeholdersInfoS27.aspx>> accessed 21 January 2021.

⁵⁴ Chayes and Chayes ‘The New Sovereignty’ (n 45); Mitchell ‘Sources of Transparency’ (n 45); Helfer and Slaughter ‘Why States Create’ (n 45); Creamer and Simmons ‘Transparency at Home’ (n 45).

⁵⁵ Lane ‘Catalyst for Domestic Mobilisation’ (n 10).

⁵⁶ E.g. see the most recent ‘Guidance Note’ for national reports in advance of the fourth UPR cycle, OHCHR, ‘4th Cycle Universal Periodic Review National Report - Guidance Note’ (2022) <<https://www.ohchr.org/sites/default/files/2022-01/4thCycle-Guidance-Note-National-Report-EN.pdf>> accessed 28 November 2022.

general guidelines for the preparation of reports for the UPR,⁵⁷ give any specific guidance on devolution. The case of Northern Ireland indicates that there may be benefit in adopting more specific guidelines to clarify the expectations of sub-national governments.

UN Documentation

Another challenge relates to the stakeholder and UN compilations. It is notable that, unlike the UK's national reports, these documents bundle nation-wide and regional issues together, sometimes to the detriment of the latter. The way that the information in these reports is presented may be considered a peripheral issue, but this appears to affect the inclusion of regional issues at the UPR. The most recent stakeholder summary for the UK's fourth cycle review offers numerous examples of this. As an illustration, on equality and non-discrimination in the UK, the Report notes with clarity various issues across the UK, but on Northern Ireland it makes vague reference to 'the situation for young people' without any further elaboration.⁵⁸ Similar observations can be made on the presentation of issues concerning hate crime in Scotland,⁵⁹ worker permits in Northern Ireland,⁶⁰ LGBTQ+ rights in Scotland,⁶¹ and mental health in Northern Ireland.⁶² It is also notable that human rights in Wales received almost no attention issues in the region being highlighted in 32 individual stakeholder reports.⁶³ The omission of possibly important details means that human rights issues specific to some regions go unraised. Recalling the importance of information for driving state compliance, these omissions could be to the detriment of the UPR's impact. Recommending states will also find

⁵⁷ As set out in HRC, 'Decision 6/102 Adopted by the Human Rights Council on Follow-Up to Human Rights Council Resolution 5/1' (2007) UN Doc A/HRC/DEC/6/102.

⁵⁸ HRC, 'Summary of Stakeholders' Submissions on the United Kingdom of Great Britain and Northern Ireland' (2022) para 32 UN Doc A/HRC/WG.6/41/GBR/3.

⁵⁹ *ibid* para 33.

⁶⁰ *ibid* 52.

⁶¹ *ibid* 76.

⁶² *ibid* 58.

⁶³ *ibid*, Wales is cited on only five occasions whilst 32 of the 74 individual stakeholder reports submitted noted specific issues in the region, see OHCHR, 'Contributions for the Summary of Stakeholder's Information' (2022) <<https://www.ohchr.org/en/hr-bodies/upr/gb-stakeholders-info-s41>> accessed 25 January 2023. See *ibid* the reports by the Equality and Human Rights Commission; Scottish Human Rights Commission; National Secular Society; Race Equality First; Council of Europe; JS19; JS17; JS11; JS9; JS7; JS6; JS5; JS4; JS3; JS1; The Howard League; United Sikhs; REDRESS; Organization for Defending Victims of Violence; Northern Ireland Women's European Platform; Liberation; Humanists UK; For Women Scotland; Fair Play For Women; Global Partnership to End Violence Against Children; Don't Screen Us Out; European Centre for Law and Justice; The Child Rights International Network; and ADF International.

it difficult to draft meaningful region-specific recommendations. This raises questions over the suitability of the process for drafting UPR reports.⁶⁴ These problems are perhaps a result of the strict word and page limits for these documents. In the case of states with devolution, these restrictions create an almost impossible task for the drafters. The different levels of competence across regions entails varying human rights practices and, subsequently, a greater breadth of issues to be collated in the summary report. It may be that the length or at least the presentation of these reports needs to be rethought in order to give these issues adequate recognition.

The Working Group

At the working group, the 47 states of the Human Rights Council conduct the review. The format of this forum is an interactive dialogue which gives states the opportunity to make comments and recommendations to the state under review who can in turn respond. This discursive process reflects the UPR's principles of cooperation and the sharing of best practices. Its importance is twofold. First, it is an opportunity for the state under review to enter into conversation with the international community on the promotion and protection of human rights in the state. The public and high-level nature of the UPR means that the proceedings are watched closely by civil society who can in turn mobilise on the back of their government's comments. These interactions may also affect socialisation between the state under review and its peers. Exposure to the views and practices of other states acts as a social pressure which might in itself lead to changes and improvements in human rights on the ground.⁶⁵ Second, and owing to the universal nature of the UPR, the recommendations made by states can relate to any area of human rights. Where these echo the concerns identified by stakeholders, civil society can again use these as a means to legitimise their calls for changes in law and practice on the ground. As with the pre-review stage of the UPR, however, the usefulness of the working group depends in part on the extent that it is inclusive of the human rights issues across a state's regions. A reflection on the UK's engagement reveals some notable devolution-related opportunities challenges. These relate to the UK's participation during the interactive dialogue, and the nature of the recommendations received.

⁶⁴ For more on the issues with the preparation of these documents, see Alice Storey, 'Challenges and Opportunities for the United Nations' Universal Periodic Review: A Case Study on Capital Punishment in the USA' (2020) 90 UMKC Law Review 129.

⁶⁵ Etone 'Theoretical Challenges' (n 9).

Interactive Dialogue

Consider, first, the delegation of the UK and its participation in the dialogue. Across its four reviews, the UK's delegations have always been led by a representative from the UKG's Ministry of Justice and included representatives from the devolved administrations. The sending of Justice ministers, as opposed to, say, ministers of foreign affairs or senior civil servant, sends a strong signal to the international community that the UK views the UPR as a useful process for improving rights at home.⁶⁶ Equally, the inclusion of devolved representatives signals a commitment to inter-governmental cooperation.

For all four reviews, however, the entire dialogue has been led solely by the UKG minister. On one hand, it might be said that owing to the UK's standing in the international arena the delegation is best led 'centrally' by a minister that can engage authoritatively with the UK's peers.⁶⁷ Equally, because international responsibility for the UK's human rights obligations lies with the UK state, it is only logical that a minister from Whitehall heads proceedings. However, this does lead to some questionable outcomes. First, when faced with questions or recommendations pertaining specifically to devolved matters, it is illogical for a UKG minister to respond given neither them nor their colleagues will have any domestic responsibility in these areas. In these cases, it would surely be more appropriate for a regional representative to take the floor.⁶⁸ Second, there are instances where the UKG minister has made statements that are contradictory to the position of the other governments. For the fourth review in November 2022, the Under-secretary of State for Justice Mike Freer underscored the UK's commitment to human rights by reflecting on plans to replace the Human Rights Act 1998 with

⁶⁶ For more on state delegations and their composition at the UPR, see Allehone Mulugeta Abebe, 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council' (2009) 9 Human Rights Law Review 1, 23; Rosa Freedman, 'New Mechanisms of the Un Human Rights Council' (2011) 29 Netherlands Quarterly of Human Rights 289, 305–6.

⁶⁷ See House of Lords Constitution Committee 'The Union and Devolution' (n 16) 21. The Committee considered the UK's representation by central government meant the state could act 'with more influence than any individual nation in the Union'.

⁶⁸ E.g. for Thailand's third UPR, various Government ministers took the floor throughout the dialogue to respond to questions that pertained to their portfolios. See UN Web TV, 'Thailand Review - 39th Session of Universal Periodic Review' (2021) <<https://media.un.org/en/asset/k1n/k1nvjjctwz>> accessed 9 December 2022.

the ‘Bill of Rights Bill’.⁶⁹ Yet, neither the Welsh⁷⁰ nor Scottish Governments⁷¹ are in favour of the Bill, taking the view that it is more likely to reduce human rights protections. Having central government lead the entirety of the interactive dialogue therefore risks neglecting regional voices and presenting a skewed picture to the international community as to the state of human rights in the UK. To reiterate the concerns of Mhairi Snowden, ‘giving them one UK picture where devolved developments are briefly mentioned as “the other” is no longer effective’.⁷² This reveals challenges for the UPR in realising its principles of cooperation based on objective and reliable evidence;⁷³ and the full involvement of the country under review.⁷⁴

Recommendations

Another challenge concerns the recommendations made to the UK. Although there is no requirement for recommendations to be region-specific, UPR Info⁷⁵ and others strongly encourage states to adopt the ‘SMART’ method to make recommendations that are specific, measurable, achievable, realistic, and time bound. This is to facilitate implementation and to enable closer and more accurate monitoring of progress. It is notable, however, that this has not led to the making of region-specific recommendations in the UK: Only a small percentage of the total recommendations received by the UK at each review specify a region (see table 1, below). This may have implications for the impact of the UPR. Foremost, it may cause difficulties for the devolved governments in determining their respective roles during implementation. The bespoke arrangement for each government means that responsibility for implementation of a given recommendations may not be immediately clear. Of note are the six

⁶⁹ Human Rights Council, ‘Draft Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland’ (2022) UN Doc A/HRC/WG.6/41/L.7 para 6.

⁷⁰ Welsh Government: Equality planning and strategy, ‘Human Rights Act Reform: A Modern Bill of Rights’ (2022) <<https://gov.wales/human-rights-act-reform-modern-bill-rights>> accessed 9 December 2022.

⁷¹ Scottish Government: Equality, Inclusion and Human Rights Directorate, ‘Human Rights Act Reform Consultation: Scottish Government Response’ (2022) <<http://www.gov.scot/publications/human-rights-act-reform-consultation-scottish-government-response/>> accessed 9 December 2022.

⁷² Snowden ‘Devolution and Human Rights’ (n 2).

⁷³ HRC, ‘Annex to Resolution 5/1’ (n 5) para 3(b).

⁷⁴ *ibid* para 3(e).

⁷⁵ UPR.Info, ‘For Impact on the Ground the UPR Needs SMART Recommendations’ (2015) <<https://upr-info.org/en/news/impact-ground-upr-needs-smart-recommendations>> accessed 9 December 2022.

recommendations made to the UK to incorporate international treaties into domestic law.⁷⁶ The plan by Edinburgh to achieve this in Scots law is not without difficulty, as legal incorporation of some treaties risks spilling over into reserved matters. The incorporation of CEDAW is a prime example. Katie Boyle and Nicole Busby note that this

will rely on an interpretation that the reserved matter of ‘equal opportunities’ should be treated as a floor rather than a ceiling, meaning that advancing substantive intersectional equality is within devolved competence.⁷⁷

By extension, this also creates difficulty for civil society and the international community to observe and assess implementation progress.

Table 1: UK UPR Recommendations that are region specific ⁷⁸			
UPR I	UPR II	UPR III	UPR IV
0	3 ⁷⁹	11 ⁸⁰	10 ⁸¹

What accounts for the low number of region-specific recommendations? It may be because of recommending states’ lack of familiarity with devolution. Certainly, the UK’s arrangements are unique. And not all states operate some form of decentralisation, so delegations may not have the respective familiarity with the concept more generally. Yet, of the seventeen different states that have made region-specific recommendations the UK, only seven are either federalised or operate some form of devolution themselves.⁸² It is doubtful, then, whether a lack of familiarity with decentralisation is the answer. More likely, the shortage

⁷⁶ For the second cycle, see the recommendation by Slovakia on the Convention on the Rights of the Child, HRC, ‘Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland’ (2012) UN Doc A/HRC/21/9.; and, for the third cycle, see recommendations by Slovakia, Greece, Uganda, China, Kyrgyzstan, HRC, ‘Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland’ (2017) UN Doc A/HRC/36/9.

⁷⁷ Boyle and Busby ‘Human Rights and Devolution’ (n 4) 17.

⁷⁸ ‘Region specific’ in this case constitutes any recommendation that references any of the UK nations or the terms ‘devolution’ or ‘devolved’.

⁷⁹ HRC, ‘Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland’ (2012) UN Doc A/HRC/21/9. See recommendations by Finland and the United States.

⁸⁰ HRC, ‘UK Third Cycle Working Group Report’ (n 77). Recommendations by Switzerland, Ireland, Botswana, Canada, Iceland, Sweden, Maldives, Finland, Venezuela, and Liechtenstein.

⁸¹ HRC, ‘UK Fourth Cycle Working Group Report’ (n 70). Bahamas, Belarus, Denmark, Finland, Iceland, Republic of Ireland, Lithuania, Malawi, South Sudan, Switzerland.

⁸² Finland, United States, Switzerland, Canada, Sweden, Venezuela, and Denmark.

of regional recommendations reflects the more general lack of specificity with which states make recommendations.⁸³

These points also serve to inform the debate around the limits of state-led processes like the UPR.⁸⁴ Foremost, state delegations are not experts. It is questionable whether we should expect them to be able to fully grasp the UK's intricate devolution arrangements and the regional differences in human rights law and practices. Certainly, expert-led mechanisms such as the special procedures appear much more suited to be able to address these: Recent reports by special rapporteurs on the UK, for instance, make more targeted, cogent observations and recommendations on issues in different nations.⁸⁵ This might be because other UN mechanisms glean some of their evidence from state visits and can better appreciate the differences in practices across the state.⁸⁶ Nevertheless, to expect the same of the UPR might be unreasonable given its lack of expert element. This is likely to continue to be a barrier for devolved administrations.

Post-Review

The primary task for the state following its review is to accept or note each recommendations. This may be done when the UPR working group adopts the state's report approx. 48 hours after the review, or a state may defer its decisions until the end of the UPR session when the HRC plenary adopts all states reports from the preceding session. Requiring this from states has a several effects. Primarily, a state's responses reveal its receptivity to the

⁸³ According to UPR Info, at the time of writing around a third of recommendations to date are found to reference a 'specific action', see UPR Info, 'Statistics of Recommendations' (2022) <<https://upr-info-database.uwazi.io/en/page/32leoe3uc9>> accessed 10 December 2022.

⁸⁴ For more on the debate around state v expert led mechanisms, see Olivier de Frouville, 'Building a Universal System for the Protection of Human Rights' in William Schabas and Mahmoud Bassiouni (eds), *New Challenges for the Un Human Rights Machinery: What Future for the Un Treaty Body System and the Human Rights Council Procedures?* (Intersentia Ltd 2011).

⁸⁵ E.g. the 2019 Report of the Special Rapporteur on contemporary forms of racism makes references to specific issues in Wales (on housing for gypsy communities), Scotland (on ethnic minority pupils experiences in schools), and Northern Ireland (on the impact of immigration and border enforcement policies). See UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, 'Visit to the United Kingdom of Great Britain and Northern Ireland' (2019) UN Doc A/HRC/41/54/Add.2.

⁸⁶ *Devolution in the UK and International Law: Human Rights and Devolution (Session 2)* (Directed by Durham University, 2021) <<https://www.youtube.com/watch?v=4-yoKrt48ms>> accessed 10 December 2022. See presentation at 22:30 by Prof. Brice Dickson.

content of each recommendation and, subsequently, the likelihood that it will pursue implementation. These international commitments can be quickly seized by domestic audiences who can push for the translation of these into improved domestic practices.⁸⁷ The percentage of recommendations accepted also presents a signal to the international community as to how much importance the state under review places upon the improvement of human rights. Low rates of acceptance can lead to criticism and shaming by international and domestic actors.⁸⁸

For the UK's first three reviews, the UKG claimed to have consulted with the devolved governments, civil society, and the National Human Rights Institutions.⁸⁹ This is further demonstrated by the provision of 'detailed responses to recommendations' which the UK submits as an annex to its responses. These set out both the reasoning of the UKG and (in most cases) devolved administrations.⁹⁰ Therefore, as a state progresses through the process, the UPR may continue to drive cooperation and dialogue between national and devolved governments.

However, a problem arises because the UPR requires states to submit a single response for each recommendation. Whilst regional governments may produce their own position statements,⁹¹ these do not form part of the UPR process, and there does not appear to be any scope for them to express views at the HRC plenary. At the UK's UPRs this has led to the position and views of devolved administrations, who might be more or less receptive to certain recommendations than the UKG, to be overlooked. This can be demonstrated by referring to the previous example of reform to the HRA 1998. For the third cycle, eight recommendations

⁸⁷ See the 'spiral model' of human rights change, Thomas Risse, Stephen Ropp and Kathryn Sikkink (eds), *The Power of Human Rights International Norms and Domestic Change* (Cambridge University Press 2007).

⁸⁸ E.g. the UK's acceptance of 41% of third cycle recommendations was criticised at the HRC plenary during the adoption of working group reports, see HRC, 'Report of the Human Rights Council on Its Thirty-Sixth Session' (2018) UN Doc A/HRC/36/2 paras 668–693.

⁸⁹ See the adoption reports for each of the UK's reviews: HRC, 'Report of the Human Rights Council on Its Eighth Session' (2008) UN Doc A/HRC/8/52 para 392; HRC, 'Report of the Human Rights Council on Its Twenty-First Session' (2015) UN Doc A/HRC/21/2 para 495; HRC, 'Report of the Human Rights Council on Its Thirty-Sixth Session' (n 89) para 663. The post-review adoption report of the HRC for the UK's fourth cycle is not available at the time of writing.

⁹⁰ UK Government, 'Annex to the Report of the Working Group on the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland: Addendum' (2017) <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session27/GB/A_HRC_36_9_Add.1_UK_-_Annex.doc> accessed 11 December 2022.

⁹¹ See the example of Scotland, above, at n 51.

called for protections under the Act to be maintained.⁹² Despite clear support from the devolved administrations,⁹³ these views were not included in the UK's detailed responses, and the recommendations were not accepted. This provides mixed messages to the international community who may be led to believe that reform of the HRA 1998 is widely endorsed.

Together, these observations across the pre-review, working group, and post-review stages reveal a common difficulty for devolved governments and civil society. Namely, regional voices appear shut out or at least dampened at the UPR. This might be because of defects at the international level, as with the drafting of stakeholder summaries, or be self-imposed by devolved governments, as with the national report consultations by the NIE. The UKG may also play a part by failing to include regional voices at the interactive dialogue and in responding to recommendations. In any case, this is problematic – it creates a significant disconnect between the picture presented to the international community and the reality on the ground. Transparency, stakeholder inclusivity, and cooperation suffer as a result, meaning the UPR is failing to meet its key principles and objectives. There is certainly scope for the HRC to consider how it might better amplify regional voices in states with devolution. This could be through more specific guidance to states under review and their devolved governments as to how greater inclusivity might be achieved throughout the process.

Implementation

The time between the HRC's adoption of a state's UPR and the next review some four years later can be understood as the implementation period. Throughout this time, states are required to implement their recommendations, that is, the 'process of putting international commitments into practice'.⁹⁴ There is also the opportunity for states and stakeholders to submit voluntary mid-term reports with the view of informing the Human Rights Council and wider civil society about progress toward implementation. Scholarship on the UPR has highlighted this phase as especially important. Namely, because it is through the translation of

⁹² HRC, 'UK Third Cycle Working Group Report' (n 77). See recommendations by Belarus, Kenya, Mexico, Namibia, Ukraine, Thailand, Switzerland, and Portugal.

⁹³ Notably, in Scotland, see Scottish Government: Equality, Inclusion and Human Rights Directorate, 'Human Rights in the UK: Universal Periodic Review, 2017 – Scottish Government Position' (2017).

⁹⁴ Kal Raustiala and Anne-Marie Slaughter, 'International Law, International Relations and Compliance' in Walter Carlneas, Thomas Risse and Beth A Simmons (eds), *The Handbook of International Relations* (Sage 2002) 539.

recommendations into practice that enables the improvement of rights on the ground, a central aim of the mechanism.⁹⁵ It is also important to emphasise that implementation often requires the contribution of numerous domestic actors, not just the national government.⁹⁶ In the case of states with devolution, the work of regional actors will also be necessary.

The primary challenge that arises here is that devolved administrations can, within their respective areas of competence, provide for different levels of human rights protections. In the UPR context, the implementation of UPR recommendations might therefore be observed in some nations but not in others. On the former, consider the incorporation of treaties in Scotland. Recommendations concerning ‘international instruments’ have consistently been the most prominent at the UK’s reviews.⁹⁷ Among these are those calling for the incorporation of international law, including the core UN treaties, into domestic law. At its last review in 2017, there were five recommendations on this matter.⁹⁸ Although the UKG have expressed their opinion that incorporation is unnecessary, Edinburgh have been significantly more receptive. As noted, the UNCRC Bill, pending amendment, would bring the CRC into Scots law, making it unlawful for public bodies, in an area of legislative competence of the Scottish Parliament,⁹⁹ to act incompatibly with the UNCRC.¹⁰⁰ It is hoped that the remaining six UN human rights treaties ratified by the UK will also be domesticated in the same way. This would mean that the above recommendations would be fully implemented in one nation, but not in the others. The opposite, whereby one nation is resistant to implementation, can also occur. Recommendations concerning access to reproductive healthcare for women is a prime example. Four were made on this issue at the UK’s third review.¹⁰¹ However, the lack of implementation of these in

⁹⁵ HRC, ‘Annex to Resolution 5/1’ (n 5) para 4(a).

⁹⁶ Lane ‘Catalyst for Domestic Mobilisation’ (n 10).

⁹⁷ According to UPR Info, there have been 132 recommendations on this across the UK’s first three reviews, see UPR Info, ‘Database’ (2022) <<https://upr-info-database.uwazi.io/en/>> accessed 25 January 2023.

⁹⁸ n 76.

⁹⁹ Reference by the Attorney General and the Advocate General for Scotland – United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill [2021] UKSC 42. S 6 of the Bill, as drafted, was considered to be outside the legislative competence of the Scottish Parliament. S 6 would only be lawful if it were to be confined in scope ‘to matters falling within the legislative competence of the Scottish Parliament’, see [59].

¹⁰⁰ United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill (2021) asp 80B, s 6.

¹⁰¹ See recommendations by Sweden, Canada, Iceland, and Myanmar, HRC, ‘UK Third Cycle Working Group Report’ (n 77).

Northern Ireland has been observed by stakeholders¹⁰² and by states at the UK's subsequent fourth review.¹⁰³

What can one make of this fragmentation? On one hand, the situation is inequitable and leads to, in effect, a human rights 'postcode lottery' whereby citizens receive different protection depending on where they live in the UK. This is the stance of Sir Jeffrey Jowell, among others, who has suggested '[i]t is surely unacceptable that fundamental rights can be treated differently in different parts of the United Kingdom'.¹⁰⁴ A possible consequence of this discriminatory treatment is the subsequent 'loss of solidarity and common identity' across the Union.¹⁰⁵ These views emphasise the importance equality of treatment across regions and thinking of the UK as a union. Similar perspectives can be gleaned from international arena. The UK is a sovereign state and international responsibility for implementation falls to national rather than regional governments. Hence, UN treaty bodies take the view, regardless of what entities are domestically responsible for implementation, national governments are expected to take measures to ensure rights are secured without discrimination across the state's jurisdiction.¹⁰⁶ Similarly, the UPR is underpinned by notions of fairness, such as the

¹⁰² Northern Ireland Human Rights Commission, 'Submission by NIHRC to the UN Human Rights Council's Universal Periodic Review of the UK' (2022) paras 48-50 <<https://www.ohchr.org/en/hr-bodies/upr/gb-stakeholders-info-s41>> accessed 25 January 2023.

¹⁰³ See recommendations by India, Denmark, Finland, and Iceland HRC, 'UK Fourth Cycle Working Group Report' (n 70).

¹⁰⁴ Jowell, Jeffrey (Sir), 'Written Evidence to the House of Lords Constitution Committee (UDE0053)'

<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/constitution-committee/the-union-and-devolution/written/22560.html>> accessed 28 November 2022.

¹⁰⁵ House of Lords Constitution Committee 'The Union and Devolution' (n 16) 39.

¹⁰⁶ See e.g. UN Committee on the Rights of the Child, 'General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para. 6)' (2003) UN Doc CRC/GC/2003/5. At para 41, the Committee states 'that in all circumstances the State which ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities do have the necessary financial, human and other resources effectively to discharge responsibilities for the implementation of the Convention. The Governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all children within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination in the enjoyment of rights by children in different regions'.

universality of human rights and equal treatment.¹⁰⁷ It is in part for these reasons that the UN calls on states to establish ‘National Mechanisms for Reporting and Follow-up’ (or NMRFs). These governmental processes ensure coordinated working across the state on the reporting and implementation of UN recommendations.¹⁰⁸ At present the UK does not have an NMRF but is under pressure following its fourth UPR to establish one.¹⁰⁹ With greater coordination from the centre, it is possible that divergence in human rights practices across the UK would be less likely.

On the other hand, these arguments perhaps miss the point, as the very purpose of devolution is to provide the regions with the necessary competence to make different choices to the rest of the UK. It might even be said that it is precisely *because of* devolution that implementation in some areas has been observed. Taking again the example of treaty incorporation in Scotland: Without devolved autonomy in Edinburgh it is possible that this may never have occurred if the decision was left reserved to Westminster. Hence, devolution can be reoriented as a vehicle for human rights change, rather than a challenge.¹¹⁰ This also serves to suggest that, were there to be attempts by the UKG to coordinate implementation or create policy consistency across nations, this may actually be counterproductive.

It is also important to highlight the positive effect that this fragmentation may have over time. There is the possibility that, where implementation is being realised in one region, this may prompt others to follow. Existing research on the CRC found that where implementation is observed in some states’ regions, this ‘played an important role in encouraging good practice elsewhere’.¹¹¹ This could be conceived as a form of rivalry whereby administrations compete in an attempt to better one another. Certainly, in the UK some parallels can be drawn here. The

¹⁰⁷ HRC, ‘Annex to Resolution 5/1’ (n 5) para 3.

¹⁰⁸ See OHCHR, ‘National Mechanisms for Reporting and Follow-up: A Study of State Engagement with International Human Rights Mechanisms’ (2016) UN Doc HR/PUB/16/1/Add.1; Jeremy Sarkin, ‘The Role of National Human Rights Mechanisms for Reporting and Follow-Up (Nmrf): Understanding These New Global Domestic Processes Using the Cases of Georgia And Portugal As A Focus’ (2019) 113 Teisé 168.

¹⁰⁹ Just Fair, ‘Joint Statement of UK Civil Society Organisations Following the Universal Periodic Review of the United Kingdom of Great Britain and Northern Ireland’ (2022) <<https://justfair.org.uk/wp-content/uploads/2022/11/Joint-Statement-of-CSOs-UK-UPR-FINAL.pdf>> accessed 30 November 2022.

¹¹⁰ Boyle and Busby ‘Human Rights and Devolution’ (n 4).

¹¹¹ Laura Lundy and others, ‘A Report on Implementation of the UNCRC in 12 Countries’ (Unicef UK, 2012) 102 <<https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>> accessed 28 November 2022.

decision in Scotland to incorporate the CRC into domestic law is in part a response to the adoption in Wales of the duty on Ministers to give ‘due regard’ to the CRC in policymaking.¹¹² More recently, Scotland’s ‘National Action Plan’ for human rights (SNAP), which was informed by the recommendations from international human rights mechanisms such as the UPR, is increasingly used as an example at the UN to call upon the UKG to adopt a nation-wide plan.¹¹³ These developments can in part be explained by acculturation, a theory which emphasises the role of social and cognitive pressures in affecting states’ conformity with international human rights.¹¹⁴ A feature of this theory is that these effects can operate at different strata – not just on the international level, but also regionally and locally.¹¹⁵ This appropriately explains why improvements in one nation might generate similar changes in another. This is important in the context of the UPR because the mechanism is thought to facilitate the process of peer-pressure through acculturation.¹¹⁶ Perhaps acculturation, which has at present only been applied to inter-state interactions at the UPR, also plays a role *within* states between devolved administrations. Further empirical work would be needed to evidence this, but it may be that the UPR’s potential to harness acculturation may in turn further expose devolved administrations to peer-pressure and in turn drive implementation. For these reasons, it should not be assumed that the patchwork fashion in which human rights are protected is a drawback. In fact, the UPR may be suited to make use of these differences in order to promote intra-governmental peer pressure and incrementally improve rights over time.

Conclusion

Observing the UK’s engagement with the UPR through the lens of devolution has identified some notable themes. First, it is evident that the mechanism can encourage dialogue

¹¹² Scottish Government, ‘Consultation on Incorporating the United Nations Convention on the Rights of the Child into Our Domestic Law in Scotland: Analysis Report’ (2019) <<https://www.gov.scot/publications/uncrc-consultation-analysis-report/documents/>> accessed 30 November 2022. See throughout the consultation the various references to the Welsh ‘due regard’ measure by respondents.

¹¹³ See recommendations made by Equality and Human Rights Commission, ‘The United Kingdom’s Third Universal Periodic Review: Equality and Human Rights Commission – Individual UPR Submission – 22 September 2016’ (2016) <<https://www.equalityhumanrights.com/sites/default/files/protecting-human-rights-uk-third-universal-periodic-review-december-2016.pdf>> accessed 30 November 2022; Just Fair (n 110).

¹¹⁴ Goodman and Jinks ‘Socializing States’ (n 41).

¹¹⁵ *ibid* 68-73.

¹¹⁶ Etone (n 38); Lukas Glušac, ‘Universal Periodic Review and Policy Change : The Case of National Human Rights Institutions’ [2022] *Journal of Human Rights Practice* <<https://doi.org/10.1093/jhuman/huab055>> accessed 11 January 2023.

and cooperation between levels of government and civil society. Evidence from other states suggests this, alone, may have the potential to affect human rights changes.¹¹⁷ Second, the UPR's potential to harness acculturation means that the regions with higher levels of human rights protection could operate as a peer-pressure on the other administrations. Of note are the good practices seen in Scotland with its human rights action plan and incorporation of human rights treaties. These have also been routinely used by other domestic actors as a basis from which to hold the UKG to account. In these respects, the UPR may be an opportunity for cooperation and the sharing of best practices between the regions.

However, it would appear that the UPR also provides significant challenges. The most common is that regional voices can be shut out of the process, with the focus of the UPR being firmly on the UK as a unitary state. This is most salient at the working group where the picture presented by the UK minister fails to reveal the disputes between the regions over issues such as the future of the HRA 1998. It is thus appropriate to reiterate the concerns of Mhairi Snowden, elaborated at the outset of this Chapter, that devolved issues are underreported on the international stage. In these respects, there is doubt as to whether, in cases such as the UK, the UPR can fulfil its underlying principles, namely cooperation, transparency, and the full involvement of the country under review. Of course, there is some onus on the state to ensure these principles are met. Certainly, in the UK the establishment of a NMRF would go some way in bringing the regions together for the purpose of UN reporting and implementation. But there is also scope for the UPR to be improved to achieve greater inclusivity of devolved voices. A good start would be the issuing of more specific guidance to states on how to engage regional administrations and civil society through the process. Changes to the drafting of UPR documentation, such as the stakeholder and UN compilations, could also ensure the inclusion of information pertaining to the regions.

¹¹⁷ Lane 'Catalyst for Domestic Mobilisation' (n 10).