

Written evidence submitted by Dr Sean Molloy (INR0042)

Summary

- This personal submission highlights the issue of human rights diplomacy in the context of UK foreign policy. Taking interactive dialogues at the human rights council as a case study, this submission demonstrates that the UK tends to prioritise certain civil and political rights over others. Brexit and the broader context of populism and the rise of less liberal states requires the UK to widen the scope of its human rights diplomatic efforts and priorities.

Introduction

1. Human rights diplomacy refers to the activities that a state, organisation or individual undertakes to advance the promotion and implementation of human rights provisions. It is emerging as a distinct field within international diplomacy. Beyond promoting compliance with international human rights law, through human rights diplomatic efforts, states are also attempting to promote democracy, rule of law.

2. Human rights diplomacy is taking on particular salience, as populism spreads and less liberal states are emerging as contenders in international relations. The UK, as a forerunner in promoting human rights, must ensure that it continues to exert its influence in order to ensure that all human rights continue to be promoted abroad. This is particularly important as the UK departs from the European Union. As Richard Gowan states:

More conservative EU members – including Hungary, Malta, and Poland – may take the opening provided by Brexit to rein in what they see as the egregiously progressive norms on issues such as gender and sexuality pushed by more liberal members, sowing more dissension in the bloc. At a minimum, these conservatives have the potential to stop the EU establishing new progressive positions at the UN as a bloc – at a time when other Western UN members, such as Canada and Norway, are loudly promoting liberal positions.¹

3. This submission draws on a recent research project conducted by my colleagues and I on the UK's involvement in interactive dialogues with special procedures at the UN Human Rights Council (HRC).² This project demonstrates that the UK has tended to promote certain civil and political rights while omitting to engage with collective rights, group rights, other civil and political rights and economic, social and cultural rights. It has also tended to rely on the EU promoting these additional issues. However, following Brexit and as populism continues to take hold, the UK must begin to promote a wider range of human rights globally. This submission briefly outlines the methodology and findings of the project before offering a number of recommendations.

¹ Gowan, B., 'With China ascendant, Britain's ability to shape human rights at the UN now looks uncertain (10th May 2018)', London School of Economics Blogpost, <https://blogs.lse.ac.uk/brexit/2018/05/10/with-china-ascendant-britains-ability-to-shape-human-rights-at-the-un-now-looks-uncertain/> (accessed, May 29, 2019).

² Smith, R., Mallory, C., and Molloy, S. (2020) 'Brexit and human rights diplomacy at the United Nations Human Rights Council: opportunity or cause for concern?', *The International Journal of Human Rights*, Volume 24 Issue 4.

Interactive Dialogues at the HRC

4. Special Procedures are a core independent mechanism appointed by the HRC with mandates to report, monitor and advise on human rights from a thematic or country-specific perspective. Resolution 60/251, which replaced the former UN Commission on Human Rights with the HRC retained and built on the interactive dialogues process with these special mandate holders. Through interactive dialogues, the UN HRC annually sets aside time for each mandate to report orally, speaking to its latest submitted and published report. Thereafter states, multilateral institutions and civil society organisations can make recommendations, requests and responses or raise questions.

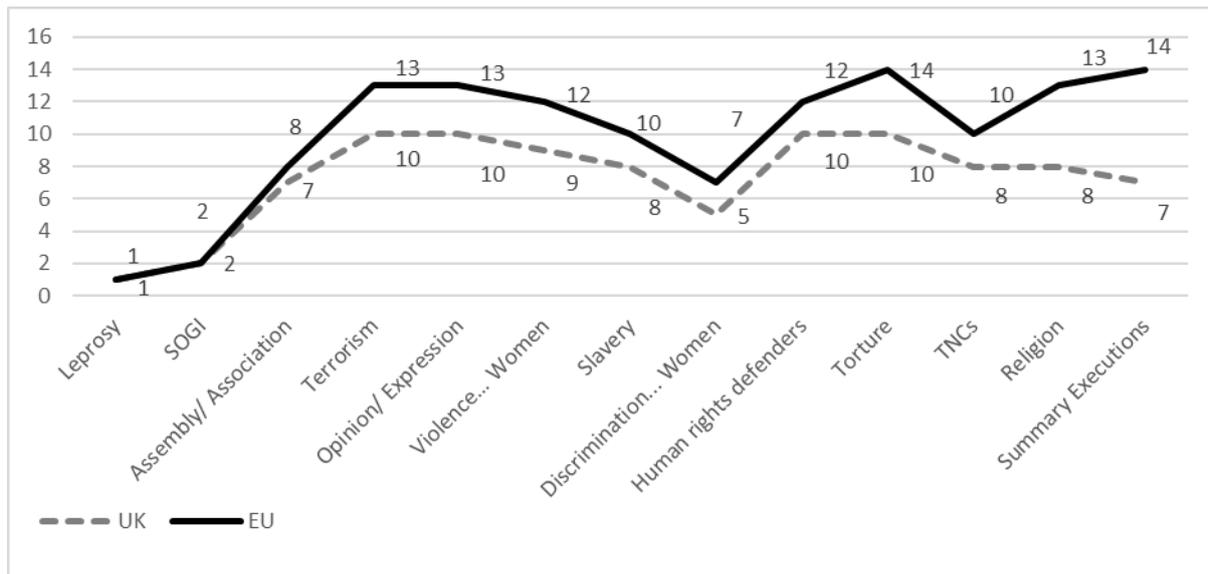
5. Part of the importance and appeal of the interactive dialogues stems from that fact that they allow participants to contribute to the development of human rights as well as to the general 'building blocks' of society for those territories with country mandates. They provide an opportunity for states and non-state actors to help define the future direction of human rights. Interactive dialogues are therefore a unique and creative mechanism for advancing human rights. It is thus to be expected that Council members and those states evincing a strong human rights ethos would contribute fully and willingly to these dialogues. As such, these dialogues provide a mechanism with which to ascertain what human rights issues countries are promoting and those which it is playing less of a proactive role.

Methodology

6. In order to understand the human rights issues that the UK is promoting, a comprehensive analysis of both UK and EU contributions in interactive dialogue sessions at the HRC was undertaken. This data enabled a calculation of both EU and UK participation as a percentage of overall IDs on each specific theme that had occurred between sessions 30 and 38.

Findings: High UK Participation Rates

7. Across the 38 sessions at the HRC, there are a number of themes with which the UK regularly and actively participates.



These break down as follows:

- IDs with mandate holders on Leprosy, and Sexual Orientation and Gender Identity show a UK participation rate of 100%.
- Over 80% with IDs relating to terrorism and freedom of expression and association.
- Such issues as contemporary forms of slavery, human rights defenders, and torture evidence a UK participation rate of 70% or more.
- While less prevalent, religion and Transnational Corporations fall within the bracket of 60% participation, despite freedom of religion or belief being a longstanding priority area, with summary executions consisting of 50% or more.

8. In the main, the IDs with which the UK tends to engage the most pertain to issues that are of a civil and political rights nature, illustrated through high UK participation rates on such issues as torture, religion and summary executions.

9. Two caveats in particular must be offered at this stage. First, in some cases, UK participation merely supports the position adopted by the EU.⁷⁵ This suggests that it is necessary to be cautious when identifying high UK participation rates. For instance, at the 23rd HRC Session with the Clustered Interactive Dialogue with Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the ‘United Kingdom support the points made on behalf of the European Union.’ Similarly, during the ID with the Special Rapporteur on the Islamic Republic of Iran, the UK endorsed the statement of the EU.³

10. Secondly, despite the high levels of engagement on the part of the UK in IDs with certain thematic mandate holders, there are notable differences between the overall rate of UK and EU participation. In some cases, the EU participates in between one and two IDs more than the UK. Examples include IDs on freedom of assembly and association, contemporary forms of slavery, discrimination against women, human rights defenders, and TNCs. In other cases,

³ UK, Human Rights Council – 23rd Session, *Clustered Interactive Dialogue with Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Dr Christof Heyns and Special Rapporteur on Internally Displaced People, Dr Chaloka Beyani* (29 May 2013).

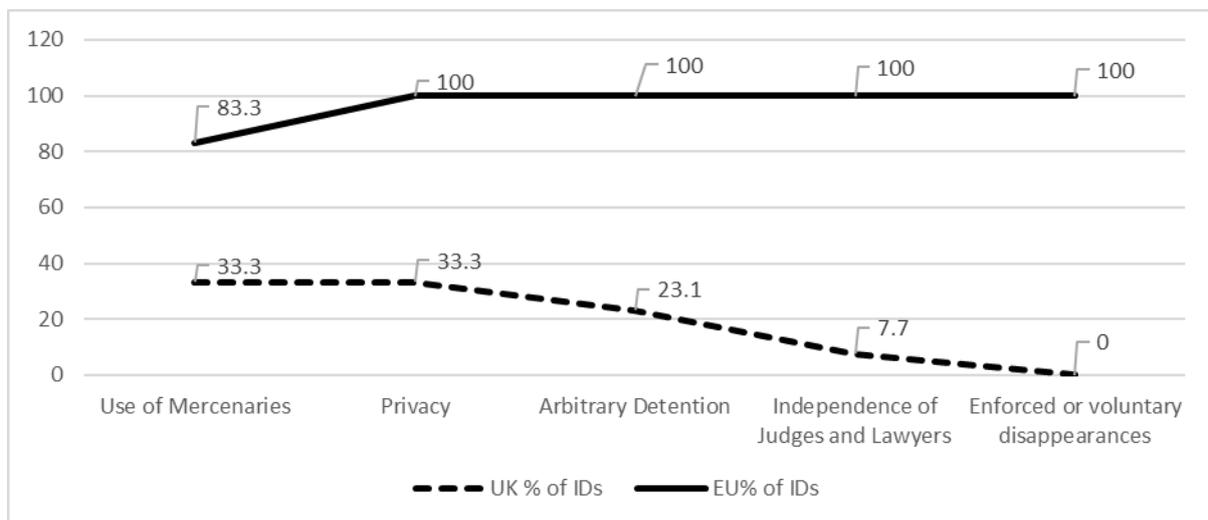
the EU participates in between 3 and 5 more IDs than the UK. This suggests that notwithstanding the fact that UK participation rate is over 50% of IDs on specific issues, it is still often lower than EU participation. Approached from the perspective of asking how Brexit might affect UK participation at the HRC, it is notable then that in a number of cases, despite high participation rates, the UK still lags behind the EU.

Findings: Low UK Participation Rates

11. The second broad category that emerges from the data includes IDs in respect to which UK participation is both below 50% and/or where significant disparities exist between UK and EU participation. Category 2 highlights those themes where the UK appears less likely to engage and where Brexit might affect the extent to which the UK’s perspective is voiced.

Certain Civil and Political Rights

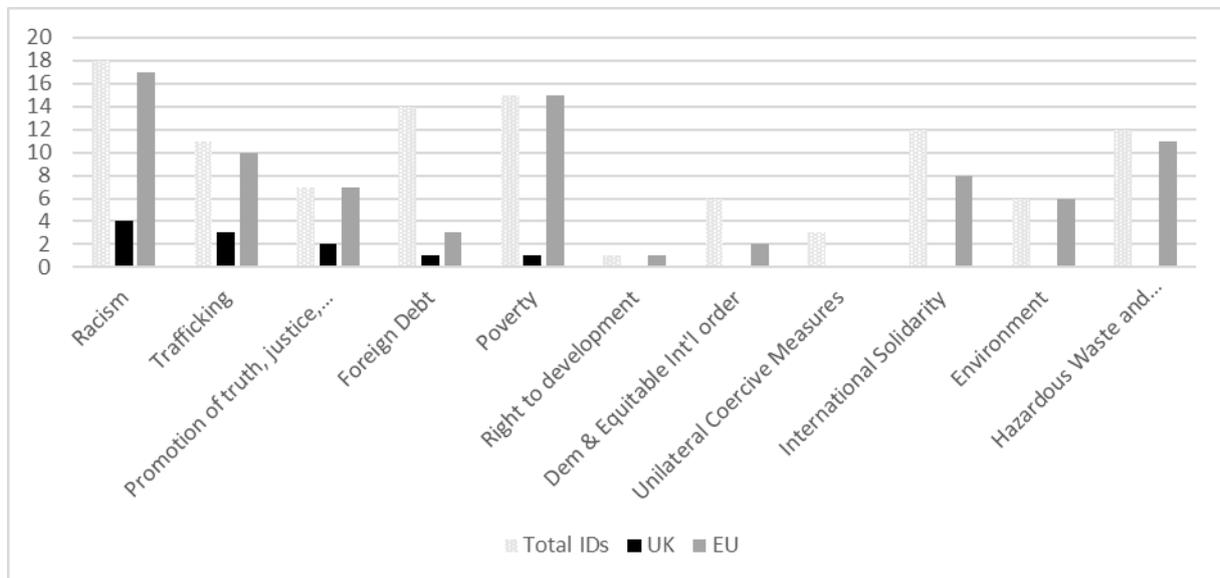
12. Although the UK tends to participate in IDs addressing civil and political issues, there are a number of exceptions. Included in the current grouping are IDs on such issues as privacy, arbitrary detention, independence of judges and lawyers, use of mercenaries and enforced or arbitrary detention. Of the 54 IDs across these 5 issues, the UK participated in just 8 (16.7%). The EU, by contrast, participated in 52/54 with a participation rate of approximately 92%.



- The UK has participated in only 4 out of 12 IDs (33%) on the use of mercenaries, and 1 out of a potential 3 IDs (33%) on privacy.
- IDs on arbitrary detention and independence of judges and lawyers is even less standing at 23.1% (3/13) and 7.7% (1/13) participation rate
- Further still, the UK has failed to participate in a single ID on enforced or voluntary disappearances. This is especially curious when death penalty abolition and torture prevention are priority areas, both being inextricably linked to enforced disappearances.

- Only in one case (use of mercenaries) is EU participation below 100%. Across civil and political rights, the EU consistently engages with mandate holders.

Collective rights

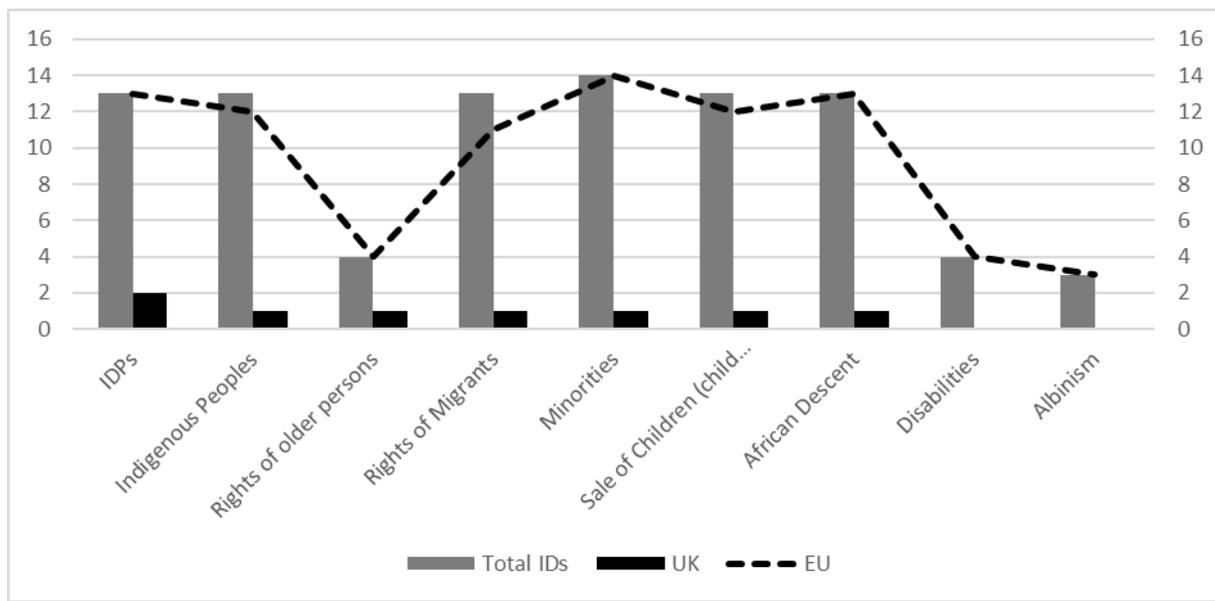


13. The second sub-category identified relates to collective rights. While similar to group rights discussed below, collective rights and issues refer to mandates that do not necessarily target a specific group but address collective issues. IDs that fall within this category are racism, trafficking, truth, justice and reparations, foreign debt, poverty, right to development, environment, hazardous waste and substances, international solidarity, unilateral coercive measure, and democratic and international order.

- Of the 105 IDs across these themes, the UK participated in 11 (approx. 10.5% participation rate). The EU, by contrast, contributed to 80/105 (approx. 77% participation rate). In all cases, UK participation is less than 33% of overall IDs.
- Three IDs demonstrate a rate of UK participation between 20 and 30% (racism 4/18 (22.2%), trafficking 3/11 (27.3%), and truth, justice and reparations 2/7 (28.6%)), this despite modern slavery being a UK priority area.
- In two cases, namely IDs on foreign debt and poverty, UK participation rate is 7.1% and 6.7%, respectively. Given the forthcoming addendum on the UK mission by the Special Rapporteur on poverty, this may change.
- Beyond these examples, the UK has not opted to participate in IDs on such issues as the right to development, democratic and equitable international order; unilateral coercive measure; international solidarity; environment, and hazardous waste and substances. With the UK one of the countries meeting the 0.7% ODA of the UN Sustainable Development Goals (SDGs), the lack of engagement on development is perhaps the most surprising. It is also notable that the UK has hosted the SR on hazardous waste and substances.

14. By contrast, in the vast majority of cases, EU participation is between 90% and 100%. As with civil and political rights, the EU appears to embrace engagement with SPs regardless of topic. In three instances, namely IDs on foreign debt, democratic & equitable international order, and unilateral coercive measures, EU participation is less than 33%. With these three exceptions, it is evident that the UK is currently less likely than the EU to engage on IDs addressing collective issues.

Groups and group rights



15. While similar to collective rights, groups and group rights refer to mandate holders whose remit focuses on a specific and definable group. IDs that fall within this category are IDPs, indigenous peoples, older persons, migrants, children (sale of children and child pornography), people of African descent, people with disabilities and the Albino community. As noted above, LGBTI and persons with leprosy have experienced high engagement from the UK.

- Of the 90 IDs across these issues, the UK participated in just eight (8.9%). The EU, by contrast, participated in 86/90 (participation rate of approximately 96%). In all instances examined, UK participation is less than 25% of the scheduled IDs. Once again, it appears that the UK currently benefits from its membership of the EU in that as part of the EU it engages consistently in IDs with mandate holders.

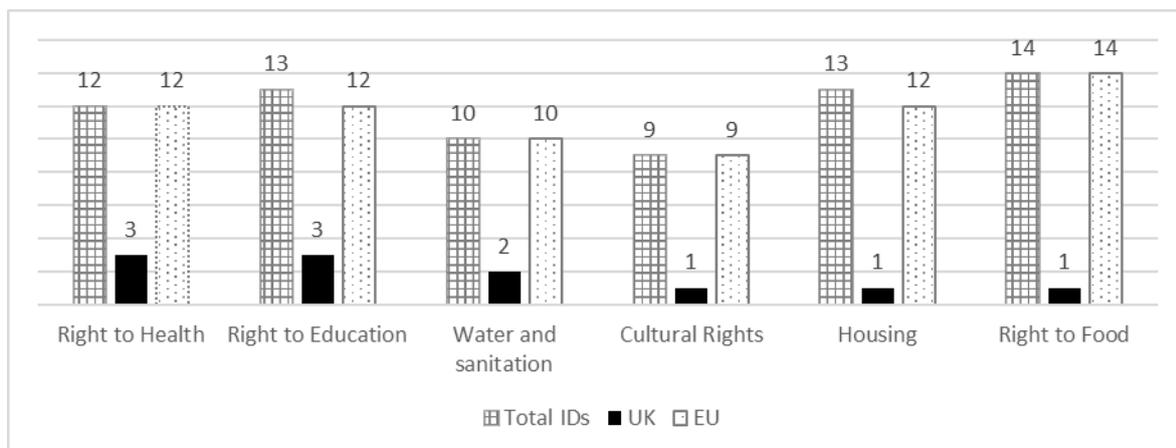
The extent of the UK's absence is best demonstrated by reference to IDs with certain mandate holders.

- Examples include IDs on IDPs, where UK participation was 2/13 (15.4%), indigenous peoples, which returned a rate of 1/13 (7.7%), as did IDs with mandate holders on the rights of migrants, sale of children and people of African descent. The lack of engagement with the SR rights of persons with disabilities is particularly striking given that the UK has been a strong proponent of those rights and was an early

adopter of laws on disability discrimination. This is a comparatively new and popular mandate with both the UK and the EU being party to the salient Convention.

Economic, social and cultural rights

16. The final sub-category is that of economic, social and cultural rights. The data suggests that the UK rarely engages in IDs addressing rights of this nature. For instance, of 71 IDs included within this grouping, the UK has participated in just 11 (15.5% participation rate). The EU, in comparison, has participated in 69/71 (approx. 97%). IDs that fall within this category include the right to health, right to education, right to water and sanitation, cultural rights, right to housing and the right to food.



In each case, UK participation is less than 25% of the overall number of IDs. By contrast, there only two exceptions to the EU's 100% participation record (right to education and right to housing). Both those areas are subject to EU regulation especially for migrant workers.

17. In sum, the data suggests that the UK does not necessarily prioritise all civil and political rights but rather certain civil and political rights. More explicitly, it suggests three sub-categories of with which the UK rarely engages in this public forum: group rights, collective rights and economic, social and cultural rights. One notable exception to group rights is the UK's participation in issues on the rights of women. In contrast to the intermittent engagement with these issues by the UK, the EU regularly participates in IDs irrespective of mandate. This further suggests that not only is there a number of areas where the UK does not participate but that significant differences exist between UK and EU participation.

Recommendations

Continue to align with the EU

18. The first potential response would be for the UK to continue to act in alignment its European counterparts. The UK has been at the forefront of pushing for such issues as women's rights and has been instrumental in pushing forward a relatively liberal EU human rights agenda. Understanding the influence of the UK in the EU is important and it is acknowledged that the UK might continue to align with the EU on certain issues. Their

shared historic focus on perceived democracy rights (including freedoms of expression, religion, assembly and association) is but one example.

Broaden human rights priorities

19. In order to determine how the UK might widen those areas with which it opts to participate, it is necessary to consider why the UK currently restricts its contributions to specific IDs in the first place. This can be understood by contrasting the internal urges within the EU with those within the UK. As a collective of states endeavouring to represent a unified position, the EU must attempt to reconcile and converge the individual interests and priorities of states. The result of combining individual state priorities tends to be a broader spectrum of issues that the EU identifies as priorities, itself an exercise in, and an example of, diplomacy and accommodation within a supranational institution. This, alongside a staunch commitment to promoting and protecting human rights more generally, helps to explain the more extensive participation of the EU across the vast majority of IDs. In other words, the broad range of priorities helps to explain the broad participation of EU at IDs. The EU's involvement in so many IDs therefore stems from the multiplicity of priorities that emerge from individual states with individual priorities coming together collectively.

20. The same logic applies when approached from the perspective of the UK. UK participation in IDs is both a manifestation and result of the political priorities it sets. This suggests therefore that in order to play a more proactive role in IDs, and thus to advance a broader range of issues, the UK must alter its policy on human rights priorities. This becomes apparent when comparing UK participation in IDs with UK priorities. Thus, the extent to which the UK participates in IDs, themselves a mechanism for helping shape the international human rights project, appears to stem primarily from national human rights priorities. To this end, Brexit presents a potential opportunity for the UK to reappraise its priorities.

Invest more in human rights diplomacy

21. A follow on from the above point is that any conscious political decision to be more proactive across all IDs should be supported by targeting resources to support more extensive human rights diplomacy. Greater awareness of all human rights and indeed their interdependence, interrelatedness and indivisibility should advance UK engagement across all areas. The Department for International Development should also reflect the expanded, more holistic priorities cutting across rights and freedoms whether individual or collective. As noted above, the HLPF offers an early post scheduled-Brexit to display the UK's commitment across such a spectrum of rights and freedoms. One recent development in this regard is the appointment of Rita French by UK Foreign Secretary Jeremy Hunt on 20 May 2019 as International Ambassador for Human Rights. The purpose of this role is to champion human rights across the globe.

22. Within the UK itself, more work remains to be done in terms of human rights education and awareness-raising. The negative reactions amongst parliamentarians and many sectors of media to the recent UK mission by the UN Special Rapporteur on extreme poverty, Professor Philip Alston, is symptomatic of the problem. The UK itself is not immune to

human rights infringements and it can share experiences with states in interactive dialogues. Training, not least in accordance with the commitments on the World Programme of Human Rights Education, would perhaps help capture the negativity and release a more positive constructive approach.

23. Working with a wide range of civil society actors in the UK as well as across the world could evolve into a global engagement on all human rights issues, rather than the current focus on a narrower range of priority areas. More funding may be required and more training. Changing priorities will also require other constituents lobbying UK government to do their priorities. This could involve, for instance, civil society actors working on such issues as economic, social and cultural rights.

May 2020