



Do we need a UK Bill of Rights?

28 September 2011

Understanding and supporting
women and their organisations

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About the Women’s Resource Centre

WRC is a unique charity which supports women’s organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women’s not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

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Introduction

The Commission on a Bill of Rights is an independent Commission established by the Government on 18 March 2011. It has been set up to investigate the possibility of establishing a UK 'Bill of Rights' that will establish a specific set of rights and freedoms enshrined in a single Bill under UK law. At present, The Human Rights Act 1998 is the most comprehensive document containing the rights of British citizens. . The Human Rights Act serves to enshrine the rights contained in the European Convention on Human Rights into domestic law. Rights and freedoms are also contained within several other international treaties signed by the UK, as well as other domestic laws

The terms of reference (agreed principles that they will work under) for the commission are as follows:

"To investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extends our liberties.

"To examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties.

"To provide advice to the Government on the ongoing Interlaken process to reform the Strasbourg court ahead of and following the UK's Chairmanship of the Council of Europe.

"To consult, including with the public, judiciary and devolved administrations and legislatures, and aim to report no later than by the end of 2012."

The commission is consulting with the public on the following four issues:

(1) Do you think we need a UK Bill of Rights?

If so,

(2) what do you think a UK Bill of Rights should contain?

(3) how do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

(4) having regard to our terms of reference, are there any other views which you would like to put forward at this stage?

The deadline for responses is 11 November 2011.

The consultation document, which includes further background information, can be found here:

<http://www.justice.gov.uk/about/cbr/index.htm>

Background

The UK constitution

Unlike many other countries, the UK does not have a written constitution, or any other sort of document that sets out the fundamental rights of its citizens and defines the limits of Governmental power. Such a document would be superior to other laws, and could be amended only in special circumstances, through a procedure that would be different to the usual way of making laws. This does not mean that there are no fundamental rights of the British Citizen that are protected, there are many laws, powers and conventions that make up the rights of the citizen. However, it does mean that there is no set of British rights that can be pointed to and afforded special protection.

The Human Rights Act and European Convention

On the other hand, the Human Rights Act contains a set of rights that protect citizens and have special status in that no legislation can be brought into force that is incompatible with the Human Rights Act. The Act, however, is a piece of legislation that could be repealed like any other, there is no special procedure. The rights contained within the Act are derived from the European Convention on Human Rights and, as such, the Government argues, they are not 'British'. The Government wishes to investigate the possibility of producing a Bill of Rights that responds to the needs of British Citizens and that has special legal status.

The European Convention on Human Rights was developed by the Council of Europe, which was formed in 1949 after the second world war. The Council came together to develop ways to protect rights and freedoms such that dictators would no longer be able to rise to power and to avoid another European war. They therefore decided to draft a Convention of Rights for Europe – the European Convention on Human Rights – which is still in force today. Britain was instrumental in developing the Convention.

The convention did NOT arise out of the European Union! However, there is also an EU Charter of Fundamental Rights, which sets out a number of social, economic and political rights and principles that do not appear in the Convention. This charter only has effect in relation to European Law.

The rights set out in the Convention are as follows¹:

20. The Convention identifies the following human rights and freedoms:

- Right to life (Article 2);
- Prohibition of torture or inhuman or degrading treatment or punishment (Article 3);
- Prohibition of slavery or servitude, or forced or compulsory labour (Article 4);

¹ http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf

- Right to liberty and security (Article 5);
- Right to a fair trial (Article 6);
- No punishment without law (Article 7);
- Right to respect for private and family life, home and correspondence (Article 8);
- Freedom of thought, conscience and religion (Article 9);
- Freedom of expression (Article 10);
- Freedom of peaceful assembly and association (Article 11);
- Right to marry (Article 12);
- Right to an effective remedy (Article 13);
- Prohibition of discrimination (Article 14).

21. Protocol No. 1 includes the following:

- Protection of property (Article 1);
- Right to education (Article 2);
- Right to free elections (Article 3).

Giving effect to the Convention in UK law

The Strasbourg Court has jurisdiction to hear cases regarding both states and citizens where these rights have been violated. All domestic remedies must have been exhausted before a case can go to Strasbourg. The remedies available in Strasbourg are limited. In effect, the Court will give the opportunity to remedy the matter before making a final judgement. There is discretion to consider cultural factors in the country in question. Most recently, the Strasbourg court have decided in relation to the UK that not allowing prisoners the right to vote is incompatible with the Convention. Such a judgement is hard for the signatories of the Convention to ignore and they would need to denounce the convention (for which they must give six months notice) or abide by the Court's judgement.

The Convention states that States must give effect to the Convention in their own domestic laws. The main way in which the Convention is given effect in Britain is through the Human Rights Act 1998². The Act requires that legislation in the UK is interpreted in a way that is compatible with Convention rights, where this is not possible the court can make a 'declaration of incompatibility'. This does not change the law that has been found to be incompatible, however, it does put pressure on Parliament to rectify this. The Human Rights Act 1998 also sets out the rights of the citizen, in line with the Convention (see above). A person may therefore enforce their Human Rights under UK law and the court can grant appropriate remedies, although this would very rarely be financial in nature.

The Equality and Human Rights Commission (EHRC) has monitoring and advisory powers in relation to both equalities and human rights legislation. The EHRC may intervene in legal proceedings to protect people's rights.

² <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Arguments against adopting a Bill of Rights

It is reassuring that the terms of reference state that the rights contained in the European will be incorporated and built upon. However, there is a high level of concern that the development of a British Bill of Rights will in fact lead to an erosion of current human rights laws. There is particular concern that there has been no mention of the Human Rights Act in the terms of reference.

There are a number of myths and misunderstandings surrounding the Human Rights Act concerning who it protects and the nature of that protection, which suggests that public education about the Act would be desirable.³ The Human Rights Act protects everybody from injustice and abuse of power and has been an effective tool in protecting citizen's rights. It promotes fairness, dignity and respect. The Human Rights Act 1998 is already effectively a UK Bill of Rights. We are concerned that the Government does not appear to recognise the huge contribution the Act has made to British society. It would not be acceptable if the rights contained within the Act were watered down or eroded and we hope to be reassured by the Government that the Bill would enhance and build on the provisions of the Act.

In the absence of this reassurance, we are concerned about the risks associated with watering down the Human Rights Act. We are particularly concerned that there is a risk the Government will add qualifications and limitations to people's rights or limit the scope of protection so that not everyone within the UK's jurisdiction is protected. We are also concerned about how different rights will be balanced, to avoid over-privileging of one right over another – one example being the balance of freedom of expression and the right to privacy, which has recently affected the media.

Overall, there is a risk that the UK Government will draft a Bill of Rights that protects its current concerns but that risks eroding the rights of citizens in the longer term. Further, it would send out a dangerous message to the international community if the Government rejects internationally agreed standards in favour of their own, weaker standards. Britain must be exemplary in upholding people's rights if we are to have good relations with other countries, and in order to influence those countries that choose to violate rights.

Finally, under no circumstances should these rights be linked to any notion of 'responsibility'. It is our belief that rights and responsibilities are necessarily intertwined. However, people's rights derive from the fact that they are human, this is the fundamental notion that underpins the development of human rights. These rights should not be contingent on anything, even fulfilment of 'responsibilities'. We must avoid a situation where only those that the Government believes to be deserving are able to access their rights. There are several mechanisms within the law and culture that seek to ensure that people live up to their responsibilities.

³ See Liberty, 'Human Rights Act Myths', online <http://www.liberty-human-rights.org.uk/human-rights/human-rights/the-human-rights-act/human-rights-act-myths/index.php>

Arguments in favour of adopting a Bill of Rights

The overall aim of gathering rights into a single document that has privileged status in law is a welcome one. If existing rights are preserved and strengthened, this could be an opportunity to strengthen women's rights.

Introducing a Bill of Rights could also be an opportunity to review people's access to rights and enforceability of rights laws. We would like to see better education about people's rights, more opportunities to gain advice and exercise these rights, and better access to enforcement mechanisms.

Incorporating CEDAW

If a new Bill of Rights were introduced, we see this as an opportunity to strengthen legislation in respect of the rights of women. The rights that arose out of the European Convention were focussed on citizen rights that had been abused during the Second World War. They were not focussed on women's rights, and did not seek to address the particular circumstances of women. Some commentators have argued that Human Rights have a masculine focus and are biased. This could be an opportunity to redress that balance.

WRC advocates using the language of CEDAW (the Convention on the Elimination of All Forms of Violence Against Women⁴) and enshrining this in UK law. We would particularly like to see the first five articles adopted:

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

⁴ For further information see http://www.wrc.org.uk/resources/tools_to_engage_and_influence/working_internationally/default.aspx

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Conclusion

UK law already contains a comprehensive set of rights and responsibilities for the citizen that are established through legal, policy and cultural mechanisms. The Human Rights Act 1998 is already a document that sets out the fundamental rights of the UK citizen. However, as it is derived from the European Convention on Human Rights, it appears the the Government wishes to develop something that is based on 'British' rights. We do not accept that such a distinction needs to be drawn, nor that it would be appropriate to draw this distinction. Human Rights, are, and should be, universal. The UK should be exemplary in upholding these rights and working with the international community to build consensus on what the rights of citizens should be.

Regardless of whether a Bill of Rights is introduced, we underline the need for education relating to human rights and to the positive impact of human rights legislation. We would also hope to see better access to rights for the British citizen and more effective remedies.

We are concerned that introducing a Bill of Rights will lead to a watering down of current Human Rights legislation, limiting the scope, power and access to rights. We are also concerned that a notion of 'responsibility' will be introduced that will undermine the fundamental principle that human rights are afforded to an individual because of the fact they are human, as opposed to being earned.

However, if a Bill of Rights were to be introduced, we would see this as an opportunity to develop a stronger conception of women's rights, which have arguably been neglected in the development of human rights laws, and to adopt the language of CEDAW so that it is directly incorporated into UK law.