



## **BIHR response to the UK Government's draft 5<sup>th</sup> periodic report under the ICESCR to the UN Committee on Economic, Social and Cultural Rights**

The British Institute of Human Rights (BIHR) warmly welcomes this opportunity to comment on the UK Government's draft 5<sup>th</sup> periodic report under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to the UN Committee on Economic, Social and Cultural Rights (the Committee).

BIHR is an independent charity with a UK-wide remit. Our focus is on the value of human rights ideas, laws and practice to tackle inequality and promote social justice. Our mission is to bring human rights to life by producing and shaping human rights tools, public policy and practices that empower people to improve their own lives and the lives of others.

We take this work forward by:

- Providing a range of information and other resources (including briefings and toolkits)
- Developing and delivering training and consultancy for the voluntary and community and public sectors on both human rights practice and policy
- Leading and/or collaborating on demonstration and pilot projects across the voluntary and community and public sectors
- Undertaking research and policy analysis
- Advising and making representations to national government and Parliament, conducting media activity and campaigns and occasional strategic legal interventions

It is on the basis of this work that we make the following general comments on the draft report.

### **Non-justiciability of the ICESCR in the UK**

The Committee has repeatedly lamented the failure of the UK Government to incorporate the rights protected by the ICESCR into domestic law. BIHR shares the views of the Committee that the Government should 're-examine' this issue as a matter of priority. In our extensive experience of delivering human rights supports including training to a wide

range of public sector and voluntary and community sector organisations, economic, social and cultural rights have a very strong resonance for people in Britain. During the human rights training sessions we provide, people from a range of backgrounds refer very frequently to rights such as the right to health and an adequate standard of living when asked what human rights are and what they ‘mean’ to them. They typically react with surprise and disappointment when they learn that the UK’s Human Rights Act does not protect these rights (with some exceptions such as the right to education) and that the UK has not otherwise ‘brought these rights home’ by making them part of domestic law. Grassroots consultation in relation to a Northern Ireland Bill of Rights has likewise confirmed the popular attachment to economic, social and cultural rights. It is our firm view that the incorporation of economic, social and cultural rights is an essential step in efforts to galvanise popular support for the human rights protection system in the UK.

In addition, it is our view that making economic, social and cultural rights justiciable is an important precondition if human rights based approaches to tackling poverty and social exclusion in the UK are to be effective. In essence, a human rights based approach is the process by which human rights are made meaningful or real in people’s lives. They have the following features:

1. Putting human rights principles and standards at the heart of policy and planning
2. Empowering stakeholders with the knowledge and skills to put human rights into practice
3. Involvement and participation of all key stakeholders
4. Clear accountability
5. Non-discrimination and attention to vulnerable groups

Human rights based approaches recognise the existence and interdependence of the full set of civil, political, economic, social and cultural rights, and also the responsibility of the state to respect, protect and fulfil all of these rights in a manner that acknowledges human dignity, empowers people, and ensures accountability. The legal enforceability of economic, social and cultural rights in the UK is crucial if human rights based approaches are to fulfil their potential as an anti-poverty tool. In the welfare field, for example, the fact that a person is entitled to a service such as domestic violence support or housing because this is a *human right* protected by law expresses a measure of dignity and respect for that person. This translates, in turn, into a powerful tool which can be used effectively in all sorts of distinctly *non-legal* ways.

Our recent report *The Human Rights Act – Changing Lives* showcases the ways in which the legal enforceability of the rights protected by the Human Rights Act (drawn from the European Convention on Human Rights) has empowered people to use these rights to effect real change ‘beyond the courtroom’. The publicity that justiciability brings to human rights, and the knowledge within public authorities that there is a legal duty to respect them are crucial preconditions for people to claim them effectively without needing to consult a lawyer. This leads to a stronger sense of empowerment among service users, better public services and a broader culture of respect for human rights in the UK. It is our view that the rights protected by the ICESCR should be made enforceable in domestic law so that economic, social and cultural rights can be used successfully in these ways, while at the same time bringing our legal system into line with the international recognition that human rights are indivisible and interdependent.

Clearly, making economic, social and cultural rights justiciable in the UK will also promote accountability. If necessary, individuals would be able to raise concerns or challenge poor treatment or decisions with an independent body, such as an ombudsman or a court, as well as with the entity that is directly responsible for any violation. Instead of undermining the democratic process, this would almost certainly enhance it by bringing into the public domain for proper legal scrutiny poor decisions by public authorities affecting economic, social and cultural rights.

We are therefore disappointed that the Government remains ‘unconvinced that it can incorporate the rights contained in the ICESCR in a meaningful way within the British legal system’ despite the compelling arguments in favour of incorporation which it notes in the report, and its interest in ‘the evolving Constitutional practice of other countries, particularly South Africa’. BIHR was fortunate to host Justice Albie Sachs of the Constitutional Court of South Africa at our recent conference *Human rights visions of equality* (18 June 2007). Justice Sachs delivered the key note address at the conference and spoke powerfully about the ways in which South African courts have applied constitutional protections of economic and social rights in spite of the sorts of concerns raised by the UK Government in the current draft report, including their ‘vague’ definition and perceived interference by the judiciary in ‘governmental economic policy’, particularly in a context of ‘limited budgetary resources’.

After describing a landmark judgment of his Court applying the right to adequate housing to a family left destitute by heavy winter rains, Justice Sachs explained:

*It has been discussed as an example of how it is possible for courts, applying concepts of fundamental rights related to deep notions of human dignity, to be involved in an area that will have budgetary implications that does touch on policy questions, but without overreaching itself and without trying to become a substitute for government. We don't know much about housing, we don't know much about financing, we don't know much about laying on water, electricity, the priorities of organising who gets first access. But when we see people sleeping out in the open with their children, the rains pouring down, we know about human rights, we know about human dignity, and the interrelationship between the two.*

### **Low awareness of the ICESCR across Government**

BIHR is also concerned that, partly because the ICESCR has not been incorporated into domestic law, awareness of the UK's obligations under it are poorly understood across Government. In its most recent concluding observations in relation to the UK, the Committee noted that ‘human rights education provided in the [UK] to... government officials, civil servants and other actors responsible for the implementation of the Covenant does not give adequate attention to economic, social and cultural rights’. It has also called upon the Government to review and strengthen institutional arrangements designed to ensure that its obligations under the ICESCR ‘are taken into account, at an early stage, in the Government's formulation of national legislation and policy on issues such as poverty reduction, social welfare, housing, health and education’.

While the draft report highlights a range of programmes and other initiatives that it claims fulfil the UK's obligations under the ICESCR, we are worried that the majority of staff designing and delivering such initiatives do not appreciate the relevance of economic, social

and cultural rights to their work. In our experience, economic, social and cultural rights are rarely discussed as such by public servants, or referenced in domestic policies or programmes. For example, human rights are not mentioned at all in major strategies profiled in the draft report such as the Government's *Ten Year Childcare Strategy*, the *Sustainable Communities Plan* or the *NHS Improvement Plan – Putting People at the Heart of Public Services*. Moreover, BIHR is not aware that economic, social and cultural rights figure in promotional initiatives such as the network of human rights contacts in Government Departments and human rights training for civil servants described in section 4 of the draft report. If key policies, programmes and initiatives affecting economic, social and cultural rights do not make reference to these rights, what sort of signal does this send to people whose rights are at stake?

### **Failure to link Government work on poverty and social exclusion with human rights**

In its most recent concluding observations, the Committee places emphasis on efforts to combat poverty and social exclusion in the UK and implores the Government to take economic, social and cultural rights into account when legislation and policy in this area are being formulated. Specifically, the UK is urged to 'give the most careful attention' to the Committee's statement on the ICESCR and poverty. BIHR specialises in the interface between human rights and equality and is among the 'vanguard' of organisations pioneering human rights based approaches to tackling poverty and social exclusion in the UK. We are continually struck by the general failure to consider human rights in national policies and programmes on poverty and social exclusion. For example, *Reaching Out: An Action Plan on Social Exclusion*, profiled in the draft report, speaks not about human rights (or economic, social and cultural rights in particular) but instead about the need to be clear that 'alongside rights come responsibilities'. 'Rights' are nowhere defined in the action plan to make clear that they include *human* rights as recognised and protected in international, regional and domestic law.

The neglect of human rights in UK domestic policies on poverty and social exclusion contrasts strongly with policy and practice in the developing world, and in the United Nations which has for a long time now promoted human rights based approaches to poverty.

There are some good signs however. The CEHR will bring together work on human rights and equality and it is hoped by many that this will stimulate an explicit focus on human rights in national efforts to tackle poverty and social exclusion. For example, at our recent conference *Human rights visions of equality* (referenced above), a CEHR Commissioner was asked directly by a conference participant whether the CEHR would define poverty as a human rights issue and contribute actively to anti-poverty work on this basis. Our own *Principles to Practice* programme includes a focus on building the capacity of the voluntary and community sector to use human rights based approaches in their work to tackle inequality, poverty and social exclusion.

### **Insufficient attention given to the CEHR's ability to use economic, social and cultural rights in its work**

Section 9 (2) (b) of the Equality Act makes clear that the new Commission for Equality and Human Rights (CEHR) is not limited in its human rights work to the rights protected by the

Human Rights Act. Although it is required by s 9 (3) to have 'particular regard' to the rights protected by the Human Rights Act, it is able to employ other rights, including economic, social and cultural rights in its work. We believe that the Government should draw more attention to this opportunity in its report to the Committee and that it should actively encourage the CEHR to explore the potential of this in its work on human rights. In our view the references in paragraph 73 of the draft report to the CEHR's 'broad remit' are not sufficiently explicit on this point.

### **Insufficient participation in the preparation of the draft report**

In its most recent concluding observations, the Committee encourages the UK Government to involve non-governmental organisations and other members of civil society in the preparation of its 5<sup>th</sup> periodic report. We welcome the efforts of the Government to engage a range of human rights, equality and other organisations in the process of preparing the report, but we consider that the range of targeted organisations is too limited. For example, many of the organisations who contributed to the *Joint NGO Report to the United Nations Committee on Economic Social and Cultural Rights* (April 2002) were not consulted, according to the list provided in the draft report at paragraph 162. Specifically, we would have liked to have seen the Government make a genuine effort to involve people experiencing poverty and social exclusion by supporting a consultation exercise led by voluntary and community organisations that have access to the most excluded groups. BIHR strongly recommends that over the next period to be reported on, these groups and others are engaged meaningfully at an earlier stage by the UK Government.

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Contact:

Sonya Sceats  
Policy and Research Officer  
020 7848 1817  
[ssceats@bihr.org.uk](mailto:ssceats@bihr.org.uk)