

ESRC

ESRC Seminar Series

Mapping the public policy landscape

Human rights, a tool for change





Foreword

Our concerns about human rights are usually associated with oppressed peoples abroad, but the Human Rights Act 1998 applies to all in the UK. It is intended to ensure that the lives of all people are led with dignity, that they are treated fairly and with respect, and that they are enabled to participate in matters that have an impact on their lives. Human rights are not just a legal or constitutional matter: Rights should be grasped, used and owned by all in society, including those who are vulnerable or excluded.

The Act is a potential tool for positive reforms in society and, along with individuals, voluntary and community organisations have a significant role to play in ensuring that human rights are standardised, protected and enhanced. The challenge for all is to determine how human rights can improve community engagement, foster social cohesion and ensure equality, while at the same time protecting our individual freedoms.

This publication is intended to make a positive contribution to the debate about social justice, and human rights and their role in improving public services. It draws on presentations given by Katie Ghose, director of the British Institute of Human Rights, and Professor Stuart Weir, director of the Democratic Audit, for the sixth, and final seminar, in a series of seminars entitled 'Engaging Citizens'.

The seminars are organised by the Economic and Social Research Council (ESRC) in collaboration with the National Council for Voluntary Organisations (NCVO). These events provide an opportunity for practitioners, academics and policymakers to examine how people are helping build a society that is both inclusive and cohesive, and to identify the ways in which positive differences are being made in communities.

Human rights, a tool for change is the last topic to feature in the ESRC's Public Policy Seminar Series, in which we present independent research and thinking in key policy areas to potential users in Government, politics, the media, and the private and voluntary sectors. We see such events as an opportunity to establish further dialogue with the users of our research, and we welcome any subsequent contact.

A handwritten signature in black ink, reading 'Ian Diamond'. The signature is fluid and cursive, with a large, sweeping flourish at the end.

Professor Ian Diamond AcSS
Chief Executive
Economic and Social Research Council
October 2007

Human rights, a tool for change

The presenters

KATIE GHOSE joined the British Institute of Human Rights (BIHR) in September 2005. She is a public affairs specialist and barrister with a background in human rights law and immigration. She has worked for several not-for-profit organisations including Age Concern England as well as in Parliament as an MP's researcher. She is an experienced trainer, who has developed and delivered seminars and courses on campaigns and lobbying for not-for-profit organisations and the legal profession. She is a Stonewall trustee and a Commissioner on the Independent Asylum Commission and has previously been the Chair of Trustees at Asylum Aid and Bail for Immigration Detainees. Katie was a member of the taskforce advising the Government on the Commission for Equality and Human Rights. Legal Action Group published Katie's first book, *Beyond the Courtroom: a lawyer's guide to campaigning*, in 2005. She advises organisations, writes and lectures on campaigning in the UK.

STUART WEIR is a professor at the University of Essex and is the director of Democratic Audit, a research body attached to the Human Rights Centre, also at the University of Essex. He is the author and editor of *Unequal Britain: Human Rights as a Route to Social Justice* (Politicos Publishing, 2006). Stuart gave evidence to the Joint Committee on Human Rights for its report on economic, social and cultural rights in the UK. He is joint author of three democratic audits of the UK, including *Democracy Under Blair* (Politicos Publishing, 2002) and of other audit books and reports, including *The Rules of the Game: terrorism, community and human rights*. Stuart was one of the authors of the *International IDEA Handbook on Democracy Assessment* and has acted as a consultant on democracy and human rights in India, Macedonia, Malawi, Namibia, Nigeria, Palestine and Zimbabwe. He is a former journalist and, as editor of the *New Statesman*, Stuart founded 'Charter88' in 1988 – the movement for democratic reform.



Executive Summary

Introduction

This country has a long reputation for fair play and tolerance. It has also been involved in the founding of modern democracy since the time of King John of England's commitment in 1215 to guarantee legal rights for subjects following his signing of the Magna Carta. It may, therefore, come as a surprise to many people that we lag behind other countries in our current full commitment to human rights.

Despite the UK having one of the largest economies in the world, it is not an uncommon sight to see, for example, homeless people sleeping in shop doorways at night, or to hear stories of elderly people being subjected to cruelty or abuse at the hands of staff in residential care homes; this is hardly fair play or tolerance. Human rights belong to everyone, including people in reduced circumstances, the vulnerable and those in society who 'fall below the radar'.

The Human Rights Act 1998 may protect people's political and civil rights and place legal obligations on public authorities to respect our human rights in all of their actions, but human rights are not merely a legal issue. In this publication the point is made that rights need to be clasped by all people in their everyday lives. They should also be used to strengthen participation in, and concern about, the decision-making processes that have such an impact on our lives and, particularly, those people who rarely have a voice.

While our political and civil rights may be enshrined in law, the realisation that our economic, social and cultural rights are far from fully taken into account by the Human Rights Act is of concern. The case is made for both sets, political and civil, and economic, social and cultural rights to be made part of our domestic law – as is the case in many other countries. After all, each is dependent on the other; and without them there are people in society who will continue to lack dignity and self-confidence in the way they are able to lead their lives. Can we, as citizens of a wealthy country, continue to turn a blind eye to the inadequacies in our society?

Grasping and insisting on our human rights will help secure improvements in public services and engender greater ties between people. However, we all need to fully understand our human rights and accept that we hold a responsibility for respecting each other's rights too.

Key insights and implications

- Human rights should not be seen exclusively as a legal issue (eg a tool for litigation, or check on the abuse of state power), or of relevance only to countries overseas. Katie Ghose urges that human rights should play a role in the lives of all in the UK, enabling people to lead lives to the full. They should be assisting in the challenges faced in tackling discrimination and poverty, and be placed at the centre of the drive to reinvigorate democracy – especially among people in society whose voices are rarely heard.
- A culture of respect for human rights is not yet in place in the UK. Providers of public services lack confidence in them and the human rights issues that do arise are often quickly passed to legal departments. In addition, voluntary and community organisations have not fully embraced them either, despite wanting to learn more about them. Public awareness is low and the tabloid press has blamed the Human Rights Act for failures in the provision of law and order and immigration controls.
- Katie and the British Institute of Human Rights (BIHR) call for a new discourse about human rights that emphasises their importance in improving public services and empowering people to participate fully in society. Although examples of how human rights have helped transform individuals' lives are encouraging and are helping inform opinions, they alone are insufficient to bring about a complete culture of respect for human rights in the UK. This will only come about when there is a change at both the individual level, and the *organisational level* too.
- The requirement under the Human Rights Act for state and public bodies to be accountable for the treatment of individuals and the development of society as a whole can be used to great effect by communities. An example is a project in Ireland (north and south) that has involved working with people living in rundown housing. It has empowered the residents to monitor changes that will ensure their rights, and required housing officials and policymakers to declare what actions they are taking to meet international human rights standards.
- As a matter of priority, BIHR believes human rights practice needs to be developed in the UK. To this end, it is pioneering (with others) the use of human rights based approaches. A particular feature of the approach is that process is as important as outcome (eg a high priority is placed on how policy is made, services are provided and resources are allocated).
- BIHR supports human rights based approaches in a number of different sectors, including health, social care and education. The key to the initiatives is the involvement and empowerment of service providers and users in identifying for themselves how human rights can make a difference to their work and lives.
- Katie points out that the introduction of the new Equality and Human Rights Commission has at last integrated equality and human rights. This is long overdue, as equality has been recognised as a fundamental human right in all major international human rights treaties. Issues that were identified during a recent BIHR conference for tackling in an integrated fashion included: access to services, participation and representation, income inequalities, segregation and lack of social harmony, and prejudice.
- Using human rights as a tool for improving public services, improving participation, reviving democracy and promoting social cohesion has not yet been achieved in the UK. However, by harnessing the inbuilt participative nature of human rights, BIHR is beginning to see 'green shoots' appearing in projects that are being undertaken.
- Stuart Weir warns that, even though the courts play a major role in protecting us from capricious or unfair state actions, we should recognise that citizens' civil and political rights may not be the main priority for government if they appear to be in conflict with its agenda. He also makes the point that this can apply equally to private interests. Examples include detention of people suspected of terrorist involvement, and major corporations attempting to stifle legitimate public protest.



- Stuart points out that the Human Rights Act 1998 primarily protects civil and political rights, but plays a limited and secondary role in protecting our economic, social and cultural rights. In addition, legal decisions mean that currently it only protects people against abuse by public bodies, but not necessarily by private or voluntary organisations carrying out public functions or providing public services (eg privately run care homes).
- Poverty, poor education, unemployment, low pay, homelessness and social isolation all violate basic human rights. They either preclude, or hinder, people from using their civil and political rights to improve their lives and from participating effectively in Britain's democratic processes. Civil and political, and economic, social and cultural rights are all intertwined. Assuring all of these for all people would ensure equitable participation in decisions that have an impact on people's lives.
- Stuart suggests that powerlessness is at the root of the unsatisfactory quality of many public services. Recent work carried out by Democratic Audit found that the middle class put education, health and other services under pressure to perform better because they are 'self-confident clients'. Government alone should not be relied on to improve public services. Enacting socio-economic rights would empower all citizens, regardless of background, to initiate and share in decision-making in the public sphere.
- Turning to the potential benefits of parity between civil, political, economic, social and cultural rights, Stuart outlines the position if the introduction of an enforceable right to housing was in place. It would require authorities and courts to take into account the plight of homeless people, and enable them and their advocates to put pressure, if necessary through the courts, on the state and housing authorities to provide sufficient housing to meet the need.
- Although there is opposition to enforceable economic, social and cultural rights among politicians and judges, they would increase ordinary citizens' ability to participate in society. The courts would be required to respond to the needs and demands of citizens and non-citizens in asserting their rights, and Government would be obliged to give marginalised and excluded people a voice in decision-making, and to open its policies to scrutiny.





Bringing human rights home: rhetoric or reality for people in the UK?

The Human Rights Act 1998 came into force in 2000. At this time, the Government made clear its ambition that the Act would have its greatest impact outside the courts in the wider community – in the hands of providers and users of public services. To fulfil this potential as a tool for improving public services, Katie Ghose argues that human rights need to shed their exclusively legal image and be put into practice in the day-to-day lives of all people in the UK. But she also highlights the need for human rights to be placed centre stage in the broader drive to reinvigorate our democracy and especially to enhance the participation of those people whose voices are traditionally not heard. Currently, this role for human rights in democratic renewal remains undeveloped in the UK.

“Who after all is the ‘outsider’ in any debate about human rights? Black, white, male, female, elderly, young: we are all human beings – there should be no outsiders”
Mary Robinson, Former Human Rights Commissioner for the United Nations

As a society we think about human rights through a very narrow lens. Our tendency is to think of rights as a litigation tool for individuals and not as a force for broader social change. We focus on a few civil and political rights, ignoring the full set of human rights that also encompasses economic, social and cultural rights. In addition, we think about human rights in their ‘negative’ sense only – as a check on the abuse of state power, forgetting that they also have an important ‘positive’ dimension, empowering people to reach their potential and live life to the full. Perhaps most damagingly, human rights are often seen as relevant only overseas, in countries where systematic torture, extra-judicial killings and other ‘hard-edged’ human rights abuses are a regular blight. One consequence of this is a failure to understand that human rights are centrally relevant to many challenges we face at home, including discrimination, poverty and increasing political disengagement from formal political processes.

Three key features of human rights

- They belong to everyone – because we are human. Human rights focus on what unites us, rather than what divides us.
- They are principally about the relationships between people and the state. They are not only about protecting us from the abuses of state power, but are also about the state having positive duties to promote and help fulfil people’s rights. But human rights can also help to create binding ties between people through the notion that everyone has a responsibility to respect each other’s rights.
- They are a ‘floor’, but are not a ‘ceiling’: they are the entitlements that we should all have to flourish as human beings.

Human rights standards and commitments have been a key feature of international life for half a century now, and the UK has been at the forefront of their promotion. However, our domestic system is still at a relatively early stage of development. Our key domestic law, the Human Rights Act, is still very new and far from embedded, as unchallenged attacks on the Act recently by some politicians and parts of the media demonstrate. There are high hopes that the new Equality and Human Rights Commission, launched on 1 October 2007, will be a turning point in the evolution of human rights in Britain, stimulating a new discourse about human rights that emphasises their role in positive social change, promoting the development of human rights practice, and joining up work on human rights and equality.

Human Rights Act

The Human Rights Act makes part of domestic UK law the rights that are set out in the European Convention on Human Rights (see following). It does not create or grant human rights as such. Instead it protects rights that belong to everyone because we are all *human beings*.

The lynchpin of the Act is a statutory obligation placed on all public authorities to ensure they respect human rights in all they do. This obligation is buttressed by a number of other special provisions designed to ensure that our legal system overall respects human rights. The courts are placed under a duty to interpret, so far as possible, all other legislation in a way that makes it compatible with human rights.

Where this is not possible, for instance because Parliament clearly intended to override human rights, the courts must issue a 'declaration of incompatibility' which is a signal to Parliament that it must amend the legislation, or risk further (embarrassing) litigation before the European Court of Human Rights in Strasbourg. Ministers proposing new Bills must also certify that they are human rights compliant, or explain why not. This compulsory 'impact assessment' at the legislative stage requires Government Departments to pay acute attention to human rights when planning new laws.

The Act protects the following human rights:

- Right to life
- Freedom from torture, inhuman and degrading treatment and punishment
- Freedom from slavery or forced labour
- Right to liberty
- Right to a fair trial
- Right to no punishment without law
- Right to respect for private and family life, home and correspondence
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry and start a family
- Freedom from discrimination in relation to the rights contained in the European Convention
- Right to peaceful enjoyment of possessions
- Right to education
- Right to free elections

Clearly the Human Rights Act privileges civil and political rights. With some exceptions (for example the right to education), economic, social and cultural rights are neglected despite the fact that the UK has signed up to them internationally. Many organisations and individuals have long called for these rights to be protected by domestic law.

It is important to remember that the rights protected by the Human Rights Act are designed to give expression to the core values that are often cited by British people as holding deep importance for them. These include:

- Fairness
- Respect
- Equality
- Dignity
- Autonomy

Human rights in the UK – what needs to be done?

The Human Rights Act was always intended to do more than give individuals the right to pursue human rights cases in our own courts, rather than take the longer route to the European Court of Human Rights in Strasbourg. It sought to stimulate a wider 'culture of respect for human rights' in which individuals would have positive entitlements to fair and equal treatment and public bodies would make respect for people's fundamental rights their 'core business'. Ministers spoke of the potential for human rights to shift the balance of power from the state to the people; and of the new language human rights would provide for 'ordinary' people seeking to negotiate or claim access to improved services – all on the basis of entitlement, not privilege.

Much more needs to be done. A 'culture of respect for human rights' has not yet taken root in the UK, despite recent plain English guidance from the Government. Service providers continue to lack confidence in relation to human rights, and frontline staff and managers continue to push such issues straight to the legal department. Nor have human rights been mainstreamed in the work of voluntary and community organisations, as campaigners or service providers, despite an eagerness to learn more. However, a recent human rights roundtable event for voluntary and community sector leaders (organised by BIHR and the National Council for Voluntary Organisations in late 2006) led to calls for practical tools to enable the sector to integrate human rights into both its service delivery and campaigning roles.

General public awareness of human rights remains appallingly low. Although the Government has in recent years engaged very actively with public bodies, providing information and promoting the Act, there was no government-sponsored awareness campaign at the time of its introduction. In spite of these positive efforts and achievements, too often the only information available to the wider public is perverse stories peddled by the tabloid press blaming the Human Rights Act for the 'breakdown' in both law and order and immigration controls.



Need for a human rights dialogue

BIHR believes that a new discourse about human rights is urgently needed, one that reasserts the importance of human rights in improving public services and in empowering people to participate in all aspects of society. Important groundwork is now being laid. In April 2007, BIHR published a report *The Human Rights Act – Changing Lives* that showcased the ways in which people are using the Act 'beyond the courtroom', in their everyday lives, and also by service providers keen to improve their services.

Examples include:

- A married disabled woman successfully invoked her right to respect for private and family life to challenge a decision by her occupational therapy department to provide her with a single 'profile' bed only, despite her willingness to pay the extra cost so that she could share a double bed with her husband.
- A social worker from a domestic violence team at a local authority realised during a BIHR training session that human rights, including the right to be protected from inhuman and degrading treatment, could be used to secure new accommodation for a woman and her children at risk of serious harm from a violent ex-partner.

These and other examples are beginning to be used by politicians and others to change the public debate about human rights. BIHR strongly supports this development while at the same time arguing that these changes at the individual level are not enough to secure a culture of respect for human rights in the UK. Change at the organisational level is also essential, as the Government recognised when it introduced the Human Rights Act.

Example of a BIHR project aimed at achieving organisation-level change by using human rights based approaches

A fascinating dimension of human rights that is yet to be properly exploited in the UK is their huge potential to deepen people's engagement and participation in decisions affecting their own lives and their communities. For example, without hearing the voices of people and communities themselves, how can we know whether human rights values, and respect for and protection of human rights, are part of people's lived experience? In addition, the Human Rights Act (and a range of international human rights treaties) are clear in their requirement for the state and its public bodies to be accountable against a clear set of human rights standards for both the treatment of individuals and the development of society as a whole.

This accountability can be used to great effect in practice by both individuals and groups – including those who have traditionally had limited power and influence in policy and practice change. A good example of this is the pioneering work of the 'Participation and the Practice of Rights Project' in the Republic of Ireland and Northern Ireland which has, among other things, worked with deprived communities in the rundown tower blocks of Belfast. The project has worked with residents to link their day-to-day housing problems, such as lack of play facilities and poor living conditions, to recognised international human rights standards. This has empowered residents to set indicators for changes required in order for their human rights to be realised. The project is now calling on the relevant housing officials and policymakers to demonstrate how they intend to address their failure to meet these standards.

Low levels of voter turnout, limited community participation and over reliance on a few of 'the usual suspects' to determine courses of action on behalf of local communities are all examples of issues that should be considered in terms of human rights. However, although we have the Human Rights Act, and human rights are inherently participative we are making scant use of its potential in this area.

Human rights also have great potential to bring together diverse groups and to foster improved relations between them based on a shared set of basic values and agreed ground rules. A new discourse about human rights must recognise and embrace this.

British Institute of Human Rights

The British Institute of Human Rights (BIHR) is an organisation with a mission to strengthen human rights policy and support its implementation in practice. It is committed to developing understanding of human rights and human rights based approaches to combat inequality and injustice in everyday life in the UK.

BIHR achieves its ambitions in three ways:

Changing the face of human rights

To lead the development of a fresh and broader vision of human rights in the UK that encompasses the full range of internationally recognised rights (civil, social, economic, cultural and political) and is understood as relevant to us all, including those people who are currently excluded or marginalised from society.

Putting principles into practice

To build the capacity of those working to tackle social injustice and inequality to use human rights based approaches in their work.

Mainstreaming human rights into public policy

To increase the use of human rights standards in the development of relevant areas of public policy that seek to tackle social exclusion and inequality.

Its activities include:

- Providing a range of information and other resources (including briefings and toolkits).
- Developing and delivering consultancy and training for the voluntary and community, and public sectors on both practice and policy.
- Leading on, and/or collaborating in, demonstration and pilot projects across the voluntary and community, and public sectors.
- Undertaking policy analysis and research.
- Lobbying national Government and Parliament, carrying out media work and making occasional strategic legal interventions.
- Organising a range of events that stimulate debate on topical human rights issues.

Further information about BIHR is available at: <http://www.bihar.org.uk>



Developing human rights practice: human rights based approaches

In addition to a new, more positive discourse about human rights, BIHR believes that human rights practice urgently needs to be developed in the UK. As discussed previously, human rights tend to be viewed here in strictly legal terms. This is one of the biggest impediments to developing a widespread 'culture of respect for human rights'. Drawing on ideas developed at the international level by the UN in the context of its development and anti-poverty work, BIHR is working in partnership with others to pioneer the use of 'human rights based approaches' in this country.

Human rights based approaches are, in essence, a process of putting human rights into practice. They have internationally agreed human rights standards at their heart but add to this an emphasis on methods that promote participation and involvement, accountability, empowerment and attention to the needs of the most disadvantaged and excluded people. A particular feature of human rights based approaches is that process is as important as outcome. For example, high priority is placed on the ways in which policies are formulated, services are provided, and resources are allocated to different groups in society.

Key features of human rights based approaches

Application of the principles and standards of human rights

Human rights principles and standards must be placed at the heart of policy and practice. Among other things, this requires issues to be 'reframed' in human rights terms. For example, violence or bullying should be understood as a potential violation of the right not to be treated in an inhuman or degrading way; and poverty should be considered as an infringement of the right to a minimum standard of living. Strategies for combating these problems should be developed accordingly.

Accountability

Once goals are set for ensuring human rights are respected, protected and fulfilled, a clear mechanism needs to be created so that people can hold to account those responsible for ensuring these goals are achieved.

Empowerment

Rights holders and duty bearers must be empowered to ensure that human rights are respected, protected, and fulfilled. Rights can be meaningless if people are not aware that they have them or lack the ability to claim them. Similarly, those with responsibility to prevent or respond to breaches in people's rights (eg public officials) cannot reasonably be expected to undertake this role if they are not supported to understand and apply human rights.

Participation

People have a right to participate in decisions that affect their lives. Change is more effective if all relevant stakeholders are engaged in decision-making – especially those who should benefit most.

Non-discrimination

Human rights approaches are non-discriminatory and should involve the prioritisation of marginalised or vulnerable groups. Some people and groups in society face discrimination in the enjoyment of their human rights, at different times and in different circumstances. This requires targeted action is required to address these inequalities.

BIHR supports the use of human rights based approaches in different sectors, such as health and social care and education, and in relation to different issues such as tackling low human rights capacity in the voluntary and community sector and poverty in the UK. Examples include:

- A Ministry of Justice/BIHR 'Human Rights in Schools' project, which fits within a wider Ministry of Justice human rights programme. The project is working with teachers, pupils and other education stakeholders to produce a human rights teaching resource to be used as part of the citizenship curriculum, and accompanying whole school human rights based approach guidelines to support the use of human rights values and standards in wider school management.
- A 'Human Rights in Healthcare' project in conjunction with the Department of Health and NHS organisations, which aims to assist NHS organisations to use human rights based approaches to help improve service design and delivery. This project has produced a practical policy and practice tool, *Human Rights in Healthcare – a framework for local action*.
- 'From Principles to Practice' – a strategic capacity building programme for the voluntary and community sector, focusing on organisations working to tackle inequality, poverty and social exclusion in the UK (see: <http://www.bihr.org.uk/development/vcs.html>).

The key to all of these initiatives has been the involvement and empowerment of service providers and users in identifying *for themselves* how human rights can make a difference in their work and lives.



Human rights and equality – uniting these long lost siblings

Human rights and equality have traditionally been seen as quite separate in Britain. This is anomalous internationally – equality is recognised as a fundamental human right in all of the major human rights treaties, and work on human rights and equality has long been integrated in other countries. The artificial separation of human rights and equality in Britain has finally come to a close with the launch of a new Equality and Human Rights Commission.


Equality and Human Rights Commission

The Equality and Human Rights Commission was launched on 1 October 2007. It is the first independent statutory body tasked with promoting and protecting human rights in England, Scotland and Wales (the Northern Ireland Human Rights Commission was established in 1999). The Commission is responsible for promoting understanding of the importance of human rights; promoting awareness, understanding and protection of human rights; and encouraging both good practice in relation to human rights and compliance with the Human Rights Act.

The Commission also takes over the responsibilities of the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission in relation to race, gender and disability equality, and has new responsibilities in relation to age, sexual orientation, and religion and belief. It is also responsible for promoting good relations between groups.

The legislation which established the Commission makes it clear that human rights must be taken into account in its work on equality and good relations, thus recognising the importance of human rights as an underpinning framework for action in these areas. By emphasising human rights, the Commission sends a powerful signal that equality is an issue for everyone in Britain, and not just minorities.

Further information about the Commission is available at:
<http://www.equalityhumanrights.com>



BIHR has long argued that human rights and equality are inextricably linked and that human rights based approaches are powerful tools for tackling inequality in society. In June 2007, we hosted a major conference 'Human rights visions of equality' that brought together equality practitioners from a wide range of backgrounds to debate the relationship between human rights and equality in the run-up to the launch of the new Commission. Issues that practitioners and those experiencing inequality and poverty felt could be addressed using human rights included:

Access to services

There is inequality of access to quality public services in health, education and housing – despite the good work and efforts of service providers. The Human Rights Act was intended to help transform the quality of public services and has given people concrete rights in relation to public bodies but, despite the passage of time since its introduction, gross inequalities still remain.

Participation and representation

Many people in society have little opportunity to voice their views or be heard. Clearly, our institutions are not representative of the diverse communities they serve, even though it is widely accepted that efforts to tackle inequalities would be more effective if steps were taken to represent and empower all members of the community. Elsewhere in the world, but not yet in the UK, participation is recognised as being at the heart of human rights.

Income inequalities

It is self-evident that substantial gaps in income exist between different groups in society. This is both a cause and consequence of other inequalities. The Human Rights Act is mainly concerned with civil and political rights, but the UK is also signed up to international treaties that address social and economic rights. These treaties should be used to enable people who have the least resources, and therefore the least power, to have a greater say on issues such as poverty reduction, low pay and homelessness.

Segregation and lack of social harmony

We know that living separately or poor relationships between groups in society can reflect inequalities, and also entrench or exacerbate them. Human rights are readymade tools being used elsewhere in the world to bring people together and build harmonious relationships between disparate groups. This could be mirrored and adapted for the distinctive challenges we face in the UK.

Prejudice

Prejudice remains a major barrier in tackling discrimination and inequality. As already highlighted, human rights belong to everyone. This can make them a powerful instrument in overcoming suspicions that particular groups in society receive special privileges, assuaging feelings that some people are less equal than others, and dispelling perceptions that equality is only about the interests of minorities.



Conclusion: sign of green shoots

Human rights are a powerful tool for social change. However, despite the passage of the Human Rights Act in 1998, the potential of human rights as a tool for improving public services, bolstering participation and renewing our democracy, and promoting a stronger, more cohesive society – remains unrealised in the UK.

BIHR is working with a wide range of organisations and individuals to reverse this by, among other things, promoting:

- A new positive discourse about human rights that recovers their social and political power.
- Innovative human rights practice tailored to the unique conditions of our society.
- New joined-up policy and practice in relation to human rights and equality.

Above all, we want to see the inherently participative power of human rights bear fruit – especially to achieve the genuine engagement and involvement in decision-making of those people whose voices are quietest and whose views are least likely to be heard. The first 'green shoots' are already visible in these and other areas and BIHR looks forward to pioneering further work in partnership with a wide range of organisations.

Further reading

Audit Commission (2003) *Human rights – Improving public service delivery*.

BIHR (2007) *Human rights in Healthcare – A Framework for Local Action*.

BIHR (2007) *Human rights visions of equality – Report from BIHR's conference 18 June 2007*.

BIHR (2007) *The Human Rights Act – Changing Lives*.

Butler, F. (2005) *Improving Public Services Using a Human Rights Approach*, IPPR.

Clements, L. (ed.) (2005) *Human Rights Act: A Success Story?*, Blackwell.

Drabble, Maurici and Buley (2004) *Local Authorities and Human Rights*, OUP.

Harvey, C. (ed.) (2005) *Human Rights in the Community: Rights as agents for change*, Hart Publishing.

Ministry of Justice (2006) *Human rights: human lives – a handbook for public authorities*.

NCVO/BIHR (2006) *Report of NCVO/BIHR Roundtable: Human Rights and the VCS, 7th November 2006*.

Wadham, Mountfield, Edmundson, and Gallagher (2007) *Blackstone's Guide to the Human Rights Act 1998*, OUP.

Unequal Britain: need for economic, social and cultural rights

Stuart Weir points out that the Human Rights Act 1998 primarily protects civil and political rights, but plays a limited and secondary role in protecting our economic, social and cultural rights. It is one of the founding principles of human rights protection that both sets of rights are interdependent and he argues that civil and political rights on their own are an insufficient basis for citizenship in a modern democracy. He makes the case for both sets of rights being enshrined in a British Bill of Rights or provided for in some other way. With guarantees of civil, political, economic, social and cultural rights, all UK citizens would achieve the dignity and self-confidence necessary for leading full and fulfilling lives.

“My vision of Britain is of a nation where no-one is left out or left behind, and where power, wealth and opportunity are in the hands of the many, not the few.”

Tony Blair, 2000

I entirely agree with Katie Ghose that there is too much emphasis on the role of the courts in debate about the Human Rights Act 1998. Much of it has been very sensational, and not just from tabloid newspapers, as the politicians' response to the recent Learco Chindamo case has shown (Italian-born Learco is near the end of a life sentence for the murder of head teacher Philip Lawrence in 1995 and the courts have ruled that he should be allowed to remain in the UK once released).

First, it is salutary to hear Katie's emphasis on the importance of the Act and of human rights, for enabling the participation of ordinary citizens in matters that deeply concern their lives and human dignity. Second, I welcome her emphasis on what can be and is being done in practice *outside* the courts to assert people's basic rights to decent and fair treatment in the health service and public services generally, making use of the 1998 Act's provisions, such as the right to family life. At this point, I think it important to mention in passing the importance of European law and social provisions (which also played a role in the Chindamo case) to the protection and enhancement of human rights in the UK.



Democratic Audit

Democratic Audit is a non-governmental organisation that is attached to the Human Rights Centre at the University of Essex. The Joseph Rowntree Charitable Trust, in conjunction with two partners, Charter88 and the Human Rights Centre, set up the organisation in 1991. It is made up of a consortium of scholars, lawyers, journalists and others. Scholars from the University of Essex make a major contribution to its projects, but scholars and experts from all over Britain and the world also work with the organisation.

The organisation conducts original research into the quality of democracy and political freedom in the UK and countries around the world. It regularly monitors democracy and freedom in Britain through a series of assessments, reports and commissions, and through evidence to Parliament and official bodies. In conjunction with the Rowntree Reform Trust, it continuously checks public opinion on democracy issues as they arise.

One of the Democratic Audit's most important contributions has been the development of a methodology for assessing the quality of democracy in the UK (or any other country). In 1991, it published a paper setting out a first draft of the methodology for criticism and improvement; it has subsequently been developed for universal use through the International IDEA (the Institute for Democracy and Electoral Assistance), an inter-governmental body based in Stockholm. For the organisation's 1996 audit of civil and political rights in the UK, a Human Rights Index was also developed. This was based on the European Convention on Human Rights and other international human rights instruments, and their jurisprudence.

Further details are available at: <http://www.democraticaudit.com/>

Human Rights Centre at the University of Essex

The Human Rights Centre is a multi-disciplinary teaching centre for graduates and undergraduates from the UK and all over the world. It has an international reputation for innovation and excellence, and for the contributions its staff members make to securing and promoting human rights. This is achieved through the provision of direct legal assistance, training, research and the publication of human rights manuals.

Further details are available at: http://www2.sx.ac.uk/human_rights_centre/

Not to be taken for granted

Of course, the courts do have a significant role to play in enforcing human rights protections and acting against arbitrary or oppressive state action. But we should not overestimate their ability to do so, or assume that they will necessarily put citizens' civil and political rights first (the rights that the Human Rights Act seeks primarily to protect) in considering cases where state or private interests are in conflict with human rights.

For example, though the courts have intervened against the detention and house arrest of 'terrorists suspects', most of those suspects who were originally incarcerated are still in custody. Although the Human Rights Act protects rights to free assembly and of movement, private and public institutions have successfully used the Protection from Harassment Act 1997 (originally enacted to protect people against stalkers) to restrict protests, mainly by animal rights and anti-weapons groups.

During the summer of 2007, British Airports Authority over-reached itself in seeking an absurdly far-reaching injunction under the Protection from Harassment Act. As will be recalled, the injunction sought to restrain the climate change protest, but was rebuffed more by the protests from civil society than by the High Court. However, the trend in the use of injunctions under the 1997 Act will continue; and, in addition, the police made inappropriate use of the Terrorism Act 2000 to harass legitimate protest at the camp.

A shoddy build

Returning to the Human Rights Act and the theme of social justice, I would like you to imagine the Act as a house, but a house that has imperfect foundations and one that is only half-built – and a house that has been badly marketed.

First, the incomplete foundations: Broadly, the Human Rights Act protects citizens against abuse by public bodies, but not by private or voluntary organisations carrying out public functions or providing public services. This means, for example, that the Act does not protect people who live in privately run care homes from violations of their basic civil and political rights.

Second, and this is my main point, the house is only half-built. That is to say, the Human Rights Act primarily protects civil and political rights, and only secondarily protects economic, social and cultural rights – though such rights do have some protection under European provisions. As Katie has outlined, it is possible to use the Act to give vulnerable citizens protection, but this protection is very limited.



Need for economic, social and cultural rights

If the UK is fully to protect the human rights of its citizens, it has to introduce economic, social and cultural rights into British law. For the fact is that civil and political, and economic, social and cultural rights, are interdependent; and we require *both* sets of human rights if we are to give citizens in this country the human dignity and self-confidence necessary to lead full and fulfilled lives.

It is widely accepted that civil and political rights are integral to modern democracy – even if not entirely by the tabloid press and the country's loyal opposition. But people must have the means and the confidence to use those rights. Poverty, poor education, unemployment or insecure and badly paid work, homelessness, social and economic isolation; conditions like these not only make life a misery for untold numbers of citizens in the UK, they also violate basic human rights and prevent or inhibit people from exercising their civil and political rights to improve their lot. They prevent them from participating in British society and democracy and, in my view, contribute to a great deal of the social malaise and violence of a fractured society.

This powerlessness is at the root of the poor quality of many public services. Education, health and other services work well when they are under pressure to do so from self-confident clients. The middle class have long benefited more from state services than the poor – revealed by recent work carried out by Democratic Audit for the Carnegie UK Trust on power and participation in Britain. People talk a lot about 'social capital' as one of the strengths of civil society, but this is a largely middle-class phenomenon from which the middle-class participants benefit most. It is the middle classes who make most use of, and benefit most from, channels of participation. By giving all citizens social and economic rights we would give them 'handles on power' and opportunities to equalise participation.

Unequal Britain: Human Rights as a Route to Social Justice

Britain is a divided society and inequality is growing every day. In his book *Unequal Britain* Stuart Weir and his collaborators set out an analysis of a country tearing itself apart. Weir offers a radical blueprint for change. He argues that the political retreat from the post-war welfare state by the Conservative Party and New Labour Government makes it necessary to create a new form of protection for social and economic well-being. By giving people economic, social and political rights, a new Bill of Rights would not only create the foundations for social justice, it would put instruments for asserting and gaining those rights into the hands of ordinary citizens.

Writing in the introduction, Stuart said:

“Giving people in Britain basic socio-economic rights would empower them to seek justice in most aspects of their everyday lives. But Government ministers and officials, jealous of their political prerogatives, are unwilling to recognise these rights in law at home, though they pay lip service to them abroad. They fear that giving people such rights would give judges the power to adjudicate upon their policies and substitute their own priorities for those of Government. For them socio-economic rights belong in the realm of political policy: they are the stuff of public policies and programmes determined as they see fit by Governments put in place democratically at general elections.”

Unequal Britain was written and edited by Stuart Weir, with contributions from seven other authors. It is available in paperback from Politico's Publishing and was published in August 2006: ISBN-10: 1-84275-091-7.

Further details are available at: <http://www.politicospublishing.co.uk>

It is important to recognise that New Labour Governments have been trying very hard, in some areas at least, to improve most public services. But we need to move beyond what the Government can do for people and start to give them the chance to do things for themselves, to give people and communities a real opportunity to improve their lives. We can do this by giving them enforceable rights to the basics of modern life: economic, social and cultural rights.

UN International Covenant

What are these economic and social rights? The United Nations International Covenant on Economic, Social and Cultural Rights expects states such as Britain to protect:

- Equality between men and women.
- The right to work.
- The right to form and join trade unions.
- The rights to food, clothing, housing, social security, health and education.

The UK has signed up to the UN Covenant but we do not live up to it. Obviously civil and political rights can and do play a part in securing economic and social well-being, as some of the British Institute of Human Rights work on health has shown, but they only have a very limited effect. To make them effective across the board, they have to be complemented by economic, social and cultural rights.

Potential benefits of economic, social and cultural rights

Let me give one example of the difference that this could make (and many more could be cited). At present, the Human Rights Act only rarely assists homeless people, even those with children and in the most desperate need. This is because the courts are reluctant to interfere in the decisions that housing authorities take in such cases being, as they are, aware of the extreme shortage of affordable housing. A right to housing would oblige authorities and the courts to give weight to the needs of homeless people in allocating housing; and would, over time bring pressure to bear on the state and housing authorities to provide sufficient housing.

The public believe that the right of homeless people to be re-housed should be in a British Bill of Rights. Large majorities in successive polls say that this and economic and social rights should take their place alongside civil and political rights; they ranked some socio-economic rights as high, or even higher, than civil and political rights. People saw economic and social well-being as an important part of our democracy.



Participating in policymaking and services

If people in Britain were given enforceable economic and social rights, governments would also be obliged to give them effective means of redress or remedy when their rights were violated. It follows that this would in effect give ordinary people a grasp on policymaking and service delivery. People would possess real influence in making public policy; they would have opportunities to express preferences; and they would be empowered to influence the delivery and quality of the public services on which they rely.

The power to participate in the framing and delivery of people's socio-economic rights is a recognised human right in itself under the UN International Covenant. Policies on housing, education, health, social security, equality, and in a number of other areas across the socio-economic spectrum, would have to be framed transparently, with in-built participation. The Government would also be obliged to give marginal or excluded people and their communities the capacity to participate effectively. Additional transparency would also give civil society and interested non-governmental organisations the space to monitor, assess policies and keep them under scrutiny alongside Parliament.

Rights lead to reforms

The Government would not be expected immediately to realise, say, a right to housing for all. The Covenant envisages that such rights involving major questions of public resources would be 'progressively realised'; and that the Government would be obliged to demonstrate that it was on course to do so. If necessary, the courts would undertake a broad form of judicial review to assess whether or not the Government's policies were on course, and appropriate resources were available. But as experience of the Human Rights Act has shown, the very existence of rights produces reform in public services and entitlements through collective action outside the courtroom.

Citizens asserting power

There is considerable opposition to the idea of enforceable economic and social rights among the political class and judiciary. The main complaint is that they would give unwanted power to un-elected judges over elected politicians. In fact, they would empower ordinary citizens and greatly expand their ability to participate in, and perhaps shape, the major political decisions and policies that affect their lives. Ultimately the courts would have a role, but they would be responding to the needs and demands of ordinary citizens who would have something they could grasp to assert the principled power of rights against shifting political considerations.

Footnote to the shoddy build

Finally, marketing: ministers failed to explain the purposes of the Human Rights Act 1998 and the balance it contains between basic rights and responsibilities and the secular ethic it provides for a modern citizenship.



Further reading

Joint Committee on Human Rights, (2004) *The International Covenant on Economic, Social and Cultural Rights*, 21st Report, HLI 83/HCI 128, Session 2003-04. (Pragmatic political appraisal of the UK's attitude towards its obligations under the International Covenant.)

Toynbee, P. and Walker, D. (2005) *Better or Worse? Has Labour Delivered?*, Bloomsbury. (Detailed analysis of Labour Government's record on social and economic policies, becoming outdated.)

Pearce, N. and Paxton, W. (eds.) (2005) *Social Justice: Building a Fairer Britain*, ippr/Politico's. (Useful collection of contributions on the 'Anglo-Social' route to social justice.)

Wright, T. and Ngan, P. (2004) *A New Social Contract: from Targets to Rights in Public Services*, Fabian Society. (Tony Wright and his researcher Pauline Ngan outline one avenue of reform and empowerment.)

Dunleavy, P., Margetts, H., Smith, T. and Weir, S. (2005) *Voices of the People: Popular Attitudes to Democratic Renewal in Britain*, 2nd edition, Politico's. (Collection of poll findings that includes responses to questions on human rights.)

Report of BIHR conference. *Human rights visions of equality*, download from BIHR website at http://www.bih.org/downloads/BIHR_Conference_Report.pdf. (This report contains a speech by Justice Albie Sachs on the South African experience of enforceable economic and social rights.)

Brand, D. and Heyns, C. (eds.) (2005) *Socio-Economic Rights in South Africa*, Pretoria University Law Press. (Detailed lawyerly study of the impact of economic and social rights across policy areas.)

Northern Ireland Human Rights Commission, (2001 and 2004) *Making a Bill of Rights for Northern Ireland*, and *Progressing a Bill of Rights for Northern Ireland; an Update*, NIHRC. (NIHRC proposal for a Bill of Rights in the province includes social-economic rights.)

Craven, M. (1995) *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, Oxford University Press. (Pioneering and lucid perspective on the International Covenant.)

Beetham, D., et al, *International IDEA Handbook on Democracy Assessment*, International IDEA/Kluwer Law International, 2001. Places economic and social rights in a democratic setting.

The National Council for Voluntary Organisations

The National Council for Voluntary Organisations (NCVO) is the umbrella body for the voluntary sector in England. It works to support the voluntary sector and to create an environment in which voluntary organisations can flourish. It represents the views of the voluntary sector to policymakers and Government and consults with the sector to inform policy positions on issues generic to the sector. It also carries out in-depth research to promote a better understanding of the sector and its activities. NCVO has a growing membership of over 5,200 voluntary organisations, ranging from large national charities to small local community groups.

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