



Consultation response

'UK Bill of Rights: A Second
Consultation'

Consultation by Commission on a Bill of Rights

25 September 2012

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

Women Resource Centre welcomes a second opportunity to respond to the Commission's proposals for a UK Bill of Rights. The Commission has requested that groups who responded to the previous consultation do not submit another response if their views have not changed. However, many of the concerns we raised in our first consultation response have not been addressed. Therefore, we believe it is appropriate to raise these points again and emphasise their importance in order to protect human rights legislation in the UK.

The law in the UK already contains a comprehensive set of rights and responsibilities that are established through legal and policy mechanisms. The Human Rights Act 1998 (HRA) already sets out the fundamental rights of people in the UK. We believe that any new rights legislation that is introduced should build on the HRA's powers, not replace it.

The Commission's second consultation contains questions that assume the UK Bill of Rights as a foregone conclusion and seems to be seeking views on the finer details of what the Bill will look like. We find the Commission's repeated requests for only new responses or views particularly troubling. We are also very concerned by the admission in the consultation's foreword that even if the Commission recommends that a UK Bill of Rights is not introduced, the Government may decide to ignore this and introduce one anyway.

Women's Resource Centre opposes the introduction of a UK Bill of Rights and supports the arguments within the consultation document for keeping the HRA

and making it stronger. As we argued in our previous consultation response, the HRA already sets out the fundamental rights of UK citizens. We do not accept or believe it appropriate that a distinction can or should be drawn between the European Convention on Human Rights and 'British' rights. Our initial concerns that a UK Bill of Rights would diminish the power of the Human Rights Act have been reinforced by the questions asked in the second consultation on what could be included or removed from a potential Bill.

Response

Question 1: What do you think would be the advantages or disadvantages of a UK Bill of Rights? Do you think that there are alternatives to either our existing arrangements or to a UK Bill of Rights that would achieve the same benefits? If you think that there are disadvantages to a UK Bill of Rights, do you think that the benefits outweigh them? Whether or not you favour a Bill of Rights, do you think that the Human Rights Act ought to be retained or repealed?

As we have argued previously – alongside almost half of respondents to the first consultation – we are strongly opposed to the introduction of a UK Bill of Rights. We believe that if it replaces the Human Rights Act, the Bill will diminish the strength of the hard-won rights and freedoms that we currently enjoy. We also believe that it is important for the Commission to acknowledge the political climate within which this consultation is taking place. Many ministers within government want to roll back the human rights within the HRA and this must be considered before recommendations are made.

We cannot see any advantages to introducing a UK Bill of Rights that could not be better achieved by strengthening the HRA with additional rights and more legal backing. We particularly believe that a desire for less 'European' rights is not a strong enough argument for the upheaval and resources that introducing a new UK Bill of Rights would require.

Question 2: In considering the arguments for and against a UK Bill of Rights, to what extent do you believe that the European Convention on Human Rights should or should not remain incorporated into our domestic law?

We believe that the European Convention must remain incorporated into UK law. If the UK Bill of Rights is supposed to build on our existing rights in the UK, then it should continue to support an easily accessible process to seeking a remedy for a breach of those rights. Un-incorporating the European Convention on Human Rights from UK law would remove the obligation for public bodies to respect our rights and people would be unable to use UK courts to seek justice when they've been treated unfairly.

Women's organisations and the women, families and communities they support would be unable to use this human rights legislation and the possibility of court action to influence public bodies and push for adequate service provision in their area, or challenge unfair decisions in their community. This question implies that

the UK Bill of Rights would be markedly different from the European Convention and HRA, which would be a very regressive step.

Question 3: If there were to be a UK Bill of Rights, should it replace or sit alongside the Human Rights Act 1998?

We are highly concerned at the suggestion of potentially removing the Human Rights Act from UK legislation completely. If the coalition government and Commission were truly aiming to build on the human rights legislation we already have, they would propose adding the UK Bill of Rights to work alongside the HRA, not replace it. This proposal, in our view, justifies our previous concerns that the UK Bill of Rights is a politically motivated attempt to diminish the power of the Convention and dilute human rights protection, rather than improving the legislation that we already have.

Rebranding the HRA as a UK Bill of Rights will not solve the lack of understanding and objections to human rights legislation. Supporting organisations such as the Equality and Human Rights Commission to promote human rights and demonstrate how it improves our everyday lives would be a more effective use of the resources that would go into drafting and promoting a UK Bill of Rights.

Question 4. Should the rights and freedoms in any UK Bill of Rights be expressed in the same or different language from that currently used in the Human Rights Act and the European Convention on Human Rights? If different, in what ways should the rights and freedoms be differently expressed?

Question 5. What advantages or disadvantages do you think there would be, if any, if the rights and freedoms in any UK Bill of Rights were expressed in different language from that used in the European Convention on Human Rights and the Human Rights Act 1998?

We are concerned at the lack of clarification on what is meant by a desire to write the UK Bill of Rights 'in a way that reflects... national circumstances and heritage'. We believe that the language used in the HRA is perfectly adequate for the UK and does not need to be changed.

As one of the founding states of the Council of Europe and the European Convention, it is disingenuous to claim that the UK is on a par with Malta or Gibraltar in terms of its cultural distance from the contents and language of the Human Rights Act. We are concerned that if the language of any future legislation is too far removed from the European Convention it could lead to legal uncertainty and confusion. This would lead to new court cases to clarify new wording, which would be time-consuming, expensive and ultimately could put individuals' human rights at risk.

Question 6: Do you think any Bill of Rights should include additional rights and if so, which? Do you have views on the possible wording of such additional rights as you believe should be included in any UK Bill of Rights?

Question 7: What, in your view would be the advantages, disadvantages or challenges of the inclusion of such additional rights?

Although we welcome the opportunity to add new areas to our human rights legislations, we are concerned that this may be used as an opportunity to rewrite existing legislation within the HRA. We believe that any new rights should be added to the HRA, not used as a way to restrict the rights we already have.

We are particularly concerned that women's rights, as outlined in the Convention on the Elimination of Discrimination Against Women (CEDAW) has not been proposed as one of the potential areas to be added to human rights legislation.

As a signatory to CEDAW, the UK government must implement its articles to ensure its practical realisation of women's equality in this country. We believe that introducing CEDAW's articles as part of national law would act as a signal to the rest of CEDAW signatories and the Committee on CEDAW that the UK government takes its commitments to women's rights seriously.

We have responded to the proposed new rights that are most relevant to our work and those of our members.

A Right to equality

Although we would argue for any rights legislation to include a right to equality that prohibits discrimination against any group, we are extremely concerned at the suggested impact of this on existing legislation. We believe that the suggested consequences of including a right to equality in this way indicate a move towards an individualistic model of equality that doesn't recognise systemic discrimination. This is a reflection of the conservative approach to rights, which would be ineffective in tackling the root causes of discrimination and equality.

The Equality Act, which has already been diluted after reforms in 2010, must be strengthened by any new rights legislation. The women's sector depends on the exceptions in the Equality Act to protect women-only service provision. Many organisations are already having to argue the case for women-only services with public bodies when provisions for exceptions are explicitly written into the law. If this were to be removed or replaced with an ambiguous phrase like the one suggested, the consequences would be devastating for the women's sector.

We believe that the best course of action for introducing this right to UK law would be to also amend the Equality Act so that it is a stronger piece of legislation. An amended Act would accommodate the new protected characteristics and a number of agreed exceptions, such as the provision of women-only services.

A Right to Trial by Jury and civil and criminal justice

It is important for those accused of crime to have their rights protected during the prosecution process. However, we believe that it is vital for the Commission to be aware of the possible conflict with the rights of victims that may be caused by enshrining the right to confront one's accuser and witnesses in court before making recommendations about these rights.

This would have a significant impact on cases involving rape, sexual assault and other forms of violence against women and girls. Women who have experienced these forms of violence find the court process and testifying against the perpetrator, who was often known to the victim before the crime took place, a very traumatic experience. Facing the perpetrator in court forces the victim to relive the crime perpetrated against them mentally and emotionally. Knowing that they may have to go through this already dissuades many women from coming forward to report the violence or press charges against the perpetrator. Enshrining the right to confront one's accuser in law would undermine the work being carried out by government and the women's sector to address the very low conviction rates for rape and other forms of violence against women.

We urge the Commission to consult further with women's organisations who work on violence against women and girls, to ascertain the potential impact of recommending that the government add laws on this issue to the UK's human rights legislation.

Rights for victims

We believe that victims should be protected within the UK's current human rights legislation. As well as establishing procedural rights for victims through a Victims Personal Statement, we would also argue that the Bill must include a commitment from the State to provide adequate physical and emotional support for those who have become victims of crime, particularly as they go through the process of prosecuting the perpetrator. This would be particularly beneficial for women who are victims of violence, who often find it difficult to report crime and prosecute the perpetrators without extensive support, whether from a women's organisation or an independent domestic or sexual violence advisor.

Socio-economic rights

We believe that incorporating socio-economic rights in to current UK legislation could be a great opportunity to act as a leading example to the countries who have not already done so. Furthermore, the fact that many other countries have incorporated these rights into their national legislation implies that it can be done effectively and implemented in a practical way.

Children's rights

Children's rights should be protected within UK law, and we would argue for these rights to be added to the Human Rights Act. Furthermore, we would argue that it is vital that as the primary caregiver to children in the majority of cases, the rights of women are also enshrined into UK law. We are very concerned that the rights from

the Convention on the Elimination of Discrimination Against Women have not been proposed in this consultation for addition to the UK Bill of Rights, which – along with the other rights put forward for inclusion – have been ratified by the UK but not been incorporated into UK law.

Question 9: Presuming any UK Bill of Rights contained a duty on public authorities similar to that in section 6 of the Human Rights Act 1998, is there a need to amend the definition of ‘public authority’? If so, how?

The government’s localism policies and reforms to the provision of public services has meant that the variety of providers of public services has expanded rapidly. Now, voluntary and community organisations, social enterprises, statutory bodies and private companies all compete to provide ‘public functions’.

The Human Rights Act was introduced before this became the norm for public service provision. Therefore, we believe that it would be important to clarify that anyone who provides a public service should be classed as a public authority. This would protect service users by ensuring minimum standards for all public services. Furthermore, we believe that it is vital to dedicate resources to educating public bodies about their obligations under the HRA and to support the public, particularly women’s organisations. To hold their local public bodies to account.

Question 10: Should there be a role for responsibilities in any UK Bill of Rights? If so, in which of the ways set out above might it be included?

We are shocked and incredibly concerned that allowing individuals to exercise their rights should be contingent on ‘good behaviour’ has been considered as a legitimate proposal. This implies a complete misunderstanding of what human rights are really for and demonstrates the urgent need for human rights to be promoted more widely. Human rights are universal, by attaching conditions to them based on behaviour, they change from rights to privileges that can easily be revoked.

‘Good’ or ‘bad’ behaviour could easily be misinterpreted and abused to make a political point, which goes against a primary aim of human rights – to protect citizens from intimidation by the State. We would also agree with further points made in the consultation that ‘responsibilities’ already exist in criminal and civil law and do not need to be included in a UK Bill of Rights. For instance, the law allows for most human rights to be limited to protect the interests of others, for example, limiting a violent criminal’s freedom through imprisonment to protect further potential victims of crime.

Q13: To what extent should current constitutional and political circumstances in Northern Ireland, Scotland, Wales and/or the UK as a whole be a factor in deciding whether (i) to maintain existing arrangements on the protection of human rights in the UK, or (ii) introduce a UK Bill of Rights in some form?

Q14: What are your views on the possible models outlined in paragraphs 80-81 for a UK Bill of Rights?

Q15: Do you have any other views on whether, and if so, how any UK Bill of Rights should be formulated to take account of the position in Northern Ireland, Scotland and Wales?

We believe that having the full backing of Northern Ireland, Scotland and Wales would be vital to introducing this legislation – without it, it can't really be called an UK Bill of Rights. We believe that the reaction to the lack of support from the first consultation – suggesting ways to go ahead with a UK Bill without the support of the devolved nations – is indicative of the approach of the government towards this consultation and the overwhelming response from stakeholders that there is no need for a UK Bill of Rights.

Conclusion

Introducing a UK Bill of Rights would have important ramifications for everyone in British society. As an organisation that is a part of a historical movement for women's equality in the UK, we are very concerned at the proposed changes to current human rights legislation within this consultation document. We are strongly opposed to the introduction of a new Bill of Rights and support the calls for the current Human Rights Act to be strengthened and for a public information drive to be implemented that promotes and informs the general public about their rights.

A further dilution of the Equality Act and European Convention rights, as well as the potential removal of the Human Rights Act altogether would restrict the options available to women for redress when the rights they are entitled to have been breached. We are also very disappointed that articles from CEDAW have not been proposed as a group of rights that could be added to the UK's rights legislation.

Summary of recommendations

We recommend that the Commission on a Bill of Rights:

- Recommends that the government does not introduce a Bill of Rights that replaces the Human Rights Act
- Requests that the government allocates more resources to promoting and educating the public on the Human Rights Act
- Includes women's rights (as proposed in CEDAW) within the new rights proposed by the Commission to be added to current legislation
- Recommends that the government strengthens the Equality Act to ensure that all groups have a right to equality.
- Conducts further more specific consultations with women's organisations, and other equalities groups, on the potential impacts of proposed changes and additions to current human rights legislation.