



HUMAN RIGHTS: WHO NEEDS THEM?

USING HUMAN RIGHTS IN THE VOLUNTARY SECTOR

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The ippr

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Executive summary

Britain enjoys a mature democracy, a healthy economy and a vibrant civil society. Despite those advantages, poverty and social exclusion endure, and are an abiding concern for social progressives. Political will and the application of resources and commitment are required if the goal of equality and social justice is to be achieved. There are several mechanisms that exist for that purpose such as provision under the welfare state, initiatives to relieve poverty and laws targeting discrimination against particular groups. But socio-economic deprivation is also typically accompanied by inadequate public services, poor treatment and discrimination. As a result, disadvantaged people can experience lack of respect, disregard for their dignity and powerlessness. What can human rights contribute to remedying these deficiencies?

The Human Rights Act provides a legal basis for protecting certain rights that civilised countries take for granted. These include the right to life, liberty, fair hearing, private and family life, freedom of conscience, religion, expression and association and freedom from degrading treatment and discrimination. These rights are founded on the universal principles of equality, dignity and respect and the desire for social progress. They, like the mechanisms already referred to, have a part to play in achieving greater social justice. Human rights principles on their own cannot relieve poverty and social exclusion but they can be used to reduce the degradation and discrimination that accompany them. They therefore complement other social justice strategies such as socio-economic policies, equality rights and rights to fair treatment.

The rights provided for under the Human Rights Act are guaranteed to everyone, but there are people in our society who have particular need of human rights protection. These include those who are vulnerable, such as the elderly, the young and those with disabilities and health problems, particularly when they are resident in institutions. There are also many people who cannot access services or support and find themselves marginalised and discriminated against: homeless people; victims of crime; disabled people; lesbian, gay and bisexual people; black and minority ethnic people; transgendered people; refugees and asylum-seekers; and travellers and gypsies. Human rights principles, particularly the rights to life, to respect for private and family life and freedom from degrading treatment, are needed because they provide an enforceable system for protecting people when they experience maltreatment and discrimination.

The purpose of the human rights legislation, however, is not only to remedy injustices when they have occurred but also to act preventatively.

By providing a set of basic standards and requiring a positive approach from public authorities, the Act has the potential to transform the design and delivery of public services. It is intended do this by instilling a culture of respect for human rights within institutions providing such services and providing accountability when the standards are not met. The result should be an improvement in the quality of service provision and the benefits will accrue, not only to disadvantaged groups, but also to everyone who uses public services.

The focus so far has been on public authorities and how they approach their human rights responsibilities. Scant attention has been paid to empowering the largely forgotten beneficiaries to use the Human Rights Act to seek improvements in public services. The emphasis has been on the duty to provide rather than the right to receive. This is a missed opportunity because changes in society do not only happen from the top down.

How can individuals access their human rights effectively? Voluntary and community organisations exist to advance the interests of people experiencing disadvantage and discrimination: they could use human rights principles to negotiate changes in policy, practice and procedure. But our evidence reveals that many voluntary organisations working in the social justice field either do not see the relevance of the Act or have difficulty in using it in practice.

Two political developments in 2004, which stand in counterpoint to each other, provide a context for this report. In May, the Government published its proposals for establishing a Commission for Equality and Human Rights in 2007. The new Commission is designed to fill the gap in understanding and application of human rights principles to wider equality and social concerns and should achieve this in partnership with the voluntary and community sector. But the Human Rights Act is also now under political attack for allegedly contributing to a 'compensation culture' and benefiting the 'wrong people.' In August 2004, the Conservative Party announced that it has set up a commission to investigate the workings of the Act with a view to amending or repealing it. The question of how to apply the Human Rights Act more effectively for social justice purposes has now become urgent.

There are several reasons why the Human Rights Act is difficult for voluntary organisations working on social justice issues to use. The Act is based on the European Convention on Human Rights and neither is easy to understand nor to apply. Because the legislation also has an important function in realigning the constitutional relationship between the individual and the state, people have regarded its sole purpose as a legal tool to protect civil liberties. They also think that the Act can only be used in court cases and that, because of its poor reputation within the media and elsewhere as a last resort for unworthy causes, to use it would be counter-productive to the interests they seek to promote. The fact that the Human

Rights Act has been conflated with stories about ‘ambulance-chasing’ and that political capital can be made of this, demonstrates the lack of a common understanding of the positive contribution that human rights can make.

Since the Act came into force in 2000, the Government has failed to recognise the role that the voluntary and community sector could play in connecting human rights principles with social justice issues. Instead the emphasis has been on the liability that the Act could impose on voluntary organisations that provide public services on behalf of the statutory sector. Consequently, developments like the Compact between Government and the voluntary sector are not underpinned by human rights thinking.

What can the Human Rights Act add to existing strategies to advance the interests of their client groups? Most voluntary organisations consulted during this project stated a preference for using a rights-based approach to advance their clients’ interests because of the opportunities it offers for empowerment and autonomy. These organisations recognised the conceptual link between the values that are fundamental to their work and human rights principles but are struggling to bridge the gap between theory and practice. Our research revealed that organisations are keen to explore practical ways that they could use the rights guaranteed by the Act to enhance what they are already doing, and to share these experiences with each other.

This report proposes a human rights framework that could be adopted and used by voluntary organisations. It amalgamates the principles of dignity, respect, equality, empowerment, participation and autonomy that underpin voluntary activity with the specific legal rights provided by the Human Rights Act. The framework is only a starting point because each organisation will have to consider its own priorities and seek relevant information about the legal rights applicable to its own concerns. The report does not attempt to provide such specialist information but has outlined some basic guidance on the rights protected by the Human Rights Act and recommended sources of further information in the appendices.

The proposition is that voluntary organisations should be able to use the Human Rights Act to hold government and other public authorities accountable for their obligations without having to resort to legal action. The Government forecast that the Act would provide the ‘language you need to speak to win an argument’ and this publication explores what happens or could happen when voluntary organisations use human rights language. There are a number of factors that create a favourable climate for voluntary sector engagement with human rights and these should constitute mechanisms of accountability. For example, it is helpful that the Human Rights Act tends to require public authorities to act positively to protect rights rather than merely negatively to avoid a breach because this allows room for preventative strategies. It is also helpful that the Audit

Commission and other inspectorates are increasingly using human rights principles to measure good practice within public authorities. Also, the Commission on Equality and Human Rights, when established, will be available to offer guidance and support to the voluntary and community sector in using human rights principles to achieve improvements in public services.

The consensus among voluntary organisations consulted during the project was to concentrate efforts on using human rights language with government and other public authorities. Not only do they have legal responsibilities under the Act but their approach to compliance should be in terms of institutional change. Large and specialist campaigning organisations operating nationally, however, report mixed experiences of using a human rights approach in their policy and campaigning work. The report refers to some of these experiences in relation to negotiation with government officials, briefings to parliament and public campaigns. The Government needs to adopt a more consistent approach both to its own compliance with the Human Rights Act and to implementing the United Nations and other human rights instruments as required by international law.

A majority of voluntary organisations operate at the local level and there is potential for many organisations, both large and small, to introduce human rights concepts into their work with regional and local public authorities. Many voluntary and community organisations, through advocacy and advice work, seek changes from social services departments, health trusts, housing authorities and schools on behalf of individuals. The Human Rights Act can be used to challenge practices and patterns of behaviour that adversely affect people using services but it can also be used to improve the quality of decisions as they are made. Development work done in collaboration with the public sector can influence procedure to prevent problems occurring in the first place as well as sorting them out when they have occurred. The report describes ways in which voluntary organisations have used and could use a human rights approach to improve procedure and practice within public authorities.

This publication concludes that the potential contribution that the Human Rights Act and its underlying principles could make to social justice is waiting to be realised. It argues that the voluntary and community sector, as a frequent intermediary between individuals using services and public authorities providing them, is in a prime position for using human rights as an agent of change. The publication therefore constitutes a call for action by the voluntary sector and its membership bodies. But first, voluntary and community organisations need practical and accessible information on what human rights are and what value they can add to their work on behalf of people experiencing disadvantage and discrimination. The report intends to invigorate that process and although it highlights the challenges involved, it also points to the way forward.

What else needs to be done? The Government passed the Human Rights Act but left unfinished the job of explaining what it was for and what it could do. The plan is for the new Commission on Equality and Human Rights to take on this work but it will not get going until seven years after the law came into effect. Progress needs to be made in the meantime. The Government has a responsibility to provide leadership and vision in promoting a common understanding of the association between the Human Rights Act and social justice questions. It needs also to provide practical guidance and support to voluntary and community organisations on what human rights are and what they can contribute to action on behalf of socially excluded and vulnerable people. If voluntary organisations receive useful information and substantial support on the applicability of the Human Rights Act, they will then be more able to implement a human rights approach in their policy and development work. If through using human rights language, voluntary organisations go on to find that they are able to effect improvements in the design of policy and procedure and changes in day-to-day practice, then the question of who needs human rights will have been answered.