



Do we need a UK Bill of Rights?

TUC Response to the Discussion Paper

Introduction

The Trades Union Congress (TUC) welcomes the opportunity to participate in the on-going debate on a UK Bill of Rights.

The TUC has in membership 58 affiliated unions representing more than 6 million members who work in the public, private and voluntary sectors and in a wide range of industries and occupations.

The TUC works with affiliates in the UK and with our European and international counterparts to promote human rights and to ensure they are enjoyed by citizens in the UK, the EU and internationally. Particular issues of interest include the right not to be subjected to torture; the right to privacy and family life; the right to protest and participate in democratic processes; the right to equality; the right to work and to just conditions at work; the right to fair remuneration; and the right to freedom of association, including the right for all individuals to join and be represented by a trade union without the fear of victimisation or blacklisting, and the rights for trade unions to organise, to bargain collectively and to strike.

The TUC believes that one of the primary responsibilities of the Government is to promote and respect human rights. This includes civil and political rights; social and economic rights. These rights underpin the democratic and social contract between the State and citizens. It is therefore incumbent on the Executive, Parliament, the judiciary and wider public bodies not to act in a manner which violates these rights. It is also essential that effective mechanisms are in place to ensure that such rights are enforceable. Human rights, by their very nature, have universal application. The TUC therefore also believes that human rights standards should cover migrant workers, refugees and asylum seekers.

The current human rights landscape was first established following the Second World War. The international and European community recognised that the promotion and respect for human rights was vital for the promotion of peace and democracy and for the prevention of war. Human rights standards and jurisprudence have also evolved overtime in response to emerging civil, social and democratic developments.

This human rights landscape covers civil, political and social and economic rights. The discussion document refers to the 1948 UN Declaration of Human Rights, the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights which were both adopted in 1966. However it is a matter of regret to the TUC that the discussion document omits any reference to other international and European human rights treaties and conventions, including the European Social Charter 1961, the Convention on the Rights of the Child 1989 and ILO Conventions. This is particularly surprising given that the UK has often played an instrumental role in the drafting of these standards; was one of the first States to ratify them and continues to play an important role in promoting these standards in the international arena.

Responses to the questions raised by the Commission

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

The TUC would support the creation of a UK Bill of Rights if it reflected the range of human rights standards, including civil and political and social and economic rights, which the UK Government has ratified and has an obligation to comply with.

Unlike most other democratic countries, the UK does not have written constitution or a constitutional charter of fundamental rights. The closest that the UK comes to this is the Human Rights Act (HRA) which was implemented in 2000 and which seeks to give effect to rights contained in the European Convention on Human Rights in UK law. The TUC supports the retention of the HRA, although for reasons outlined throughout this response we believe its scope should be extended and that the mechanisms for enforcing Convention rights should be strengthened.

2) If so, what do you think that a UK Bill of Rights should contain?

It is very welcome that in its terms of reference, the Commission has been tasked to ‘investigate the creation of a UK Bill of Rights *that incorporates and builds on all our obligations under the European Convention on Human Rights, ensure that these rights continue to be enshrined in UK law*’.

It is essential that the first building block of a UK Bill of Rights must be the Convention Rights. A UK Bill of Rights to contain a range of broad principles which fully adhere to Convention Rights and which enable the document to evolve.

A UK Bill of Rights should also clarify what rights are covered by the Convention. In particular the TUC believes that a UK Bill of Rights should expressly state that Article 11 Rights on Freedom of Association cover core labour rights, including the right for trade unions to organise, to bargain collectively and the right to strike.

This approach would bring the UK into the line with the practice of most other industrialised countries. For example, the vast majority of EU Member States, including the new A10 countries, have specific constitutional rights safeguarding the right to strike. France, Italy, Spain, Greece, Portugal, Finland and Sweden have an express constitutional right to strike; while in Germany and the Netherlands, the right to strike is has been read into the constitutional arrangements by the courts. A specific reference to the right to bargain collective and to strike would also be consistent with the decisions of the European Court of Human Rights in the *Demir and Baykara v. Turkey* and *Enerji Yapı-Yol Sen v. Turkey* cases.

The TUC believes that any future UK Bill of Rights should be broader in scope than the European Convention on Human Rights. In our view a Bill of Rights should also reflect the UK Government’s obligations under other treaties including the European Social Charter and ILO Conventions. For example, the

TUC believes that a UK Bill of Rights should incorporate a free standing right to equality, including on grounds of sex, marital status race, sexual orientation, disability, age and religion and belief. It should also incorporate a right to just conditions at work. These safeguards should apply to all working people, including the most vulnerable. To this end, the TUC also continues to call on the UK Government to ratify the recently adopted ILO Convention on Domestic Workers and to give it full effect in UK law.

The TUC also believes that effective mechanisms should be established for enforcing all standards contained in a Bill of Rights. While the UK courts and tribunals should principally enforce these rights, the UK Government should also sign and ratify the 1995 Protocol to the European Social Charter Providing for a System of Collective Complaints. This would enable representative groups to complain to the European Social Rights Committee in the Council of Europe if they believe that the rights contained in the European Social Charter are not being adhered to within the UK.

The UK Equality and Human Rights Commission should also continue to play a central role in promoting human rights standards. The Commission should retain the right to intervene and bring legal challenges where it considers that rights contained within the Bill of Rights are not being observed.

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

The TUC formally represents trade unions in England and Wales, although many of our affiliates also have members who work in Scotland and Northern Ireland.

The TUC believes that a common floor of fundamental rights should apply throughout the United Kingdom. However we also believe that as part of the devolution settlement Scotland, Wales and Northern Ireland should have the power to adopt standards which exceed a UK Bill of Rights.

4) Having regard to the Commission's terms of reference, are there any other views which you would like to put forward at this stage?

The TUC would like to raise a number of issues relating to compliance with and enforcement of human rights standards and on the need for a more informed debate on the role of human rights within the UK.

Firstly in relation to compliance, the TUC hopes that the current debate on a Bill of Rights will focus a spotlight on the extent to which the UK currently complies or fails to comply with its human rights obligations. The TUC is concerned that UK law and practice falls well short of international human rights standards in relation to labour law. For example, in its latest supervisory cycle in December 2010, the European Social Rights Committee concluded that the UK failed to comply with 10 out of 13 of its obligations under the European Social Charter relating to labour rights.

Before adopting and implementing a Bill of Rights, the TUC believes the UK Government should carry out an audit and should amend UK law to ensure it

complies with human rights standards. A good starting point for the audit would be the decisions of the supervisory agencies, including the UN Committee on Economic, Social and Cultural Rights, the ILO Committee of Experts and the European Social Rights Committee.

Secondly, there is a case for introducing more effective enforcement to ensure that Convention rights are given effect in UK law. The TUC continues to respect the central role of Parliament in safeguarding human rights and in ensuring that Convention rights are adhered to. However, we believe that there is a case for strengthening the guidance for the Judiciary on the importance of taking the decisions of the European Court of Human Rights into account when applying Convention rights. On occasions, it appears that UK courts have failed fully to reflect the jurisprudence of the Strasbourg Court and in some instances have deviated from it. The decision of the Court of Appeal in the *Metrobus* case ([2010] 1 ICR 173) is arguably one such case. Where UK Courts fail to apply Strasbourg jurisprudence, individuals' only recourse is then to the Strasbourg court. This contributes to the backlog of cases before the European Court. It also means UK citizens can wait for years before they are able to benefit from their Convention rights.

This proposal is consistent with the Commission's own conclusions that primary responsibility for enforcing Convention Rights should sit with domestic courts with the Strasbourg Court acting as the court of last resort.

The TUC agrees that the current backlog of cases before the Strasbourg Court and the delay in decision making is unhelpful. However we are seriously concerned by suggestions that the powers of the European Court of Human Rights should be weakened. The TUC believes that it is essential to retain the European Court of Human Rights as an independent supervisory court of last resort. The Court helps to establish normative standards within the Council of Europe and to keep national Governments to account in relation to their Convention obligations. In our view the powers and resources available to the Court should be enhanced and not undermined.

Finally, the TUC recognises that there is a need for a more informed and rational debate on the role of human rights in the UK. The TUC hopes that the Commission on a Bill of Rights will work closely with the Equality and Humans Rights Commission and with the media to promote the role of human rights. The TUC looks forward to contributing to this debate.