

## **JOINT COMMITTEE ON HUMAN RIGHTS**

### **WORK OF THE EQUALITY AND HUMAN RIGHTS COMMISSION – CALL FOR EVIDENCE**

1. The British Institute of Human Rights (BIHR) is an independent national human rights charity. We focus on the value of human rights ideas, laws and practice to tackle inequality and promote social justice. We have three main aims: (i) to lead the development of a fresh and ambitious vision of human rights that encompasses the full range of internationally recognised rights and is relevant to everyone in the UK, especially the most marginalised people; (ii) to build the capacity of other organisations to develop their own human rights practice that helps them deliver more effective services and campaigns; and (iii) to influence people with power to make this broader vision of human rights an integral part of their policies and plans. We do a range of policy, research and influencing activities and we develop and deliver practical human rights supports (including information, consultancy and training) for voluntary, community and public sector organisations. BIHR is a member of the Equality and Diversity Forum (EDF) and the following comments supplement the evidence submitted by the EDF.

#### **BIHR and the EHRC**

2. In 2002 BIHR produced a seminal research report titled “Something for Everyone: The Impact of the Human Rights Act and the Need for a Human Rights Commission”<sup>1</sup> which called for the creation of an independent body capable of effectively promoting and protecting human rights. We therefore strongly supported the creation of the Equality and Human Rights Commission (EHRC)<sup>2</sup> and since it opened have worked hard to help the organisation find practical ways to move forward its human rights agenda. We have received funds from the EHRC both under its interim grants scheme and currently receive funds in relation to other projects. BIHR believes that a Commission which uses its powers and duties to the full has huge potential to protect and promote the human rights of everyone in Britain, and particularly those who are in vulnerable situations, are marginalised or disadvantaged. We will continue to challenge and support the EHRC to ensure that it realises this potential.
3. BIHR believes that human rights offer ‘something for everyone’, but are of particular value to those in vulnerable situations. Human rights enable all of us to challenge discrimination or poor treatment without recourse to legal action, which only becomes necessary as a last resort. We specialise therefore in working ‘beyond the courtroom’ in seeking the realisation of human rights for everyone. We work at a range of levels, involving those responsible for designing and delivering services, policies and laws and individuals and

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<sup>1</sup> Available from [http://www.bihhr.org.uk/sites/default/files/something\\_for\\_everyone\\_sum.pdf](http://www.bihhr.org.uk/sites/default/files/something_for_everyone_sum.pdf) Jenny Watson was commissioned to research and write this report, funded by Comic Relief.

<sup>2</sup> The Equality Act 2005

groups who use and are affected by these. As the principles and frameworks of the Human Rights Act (HRA) bed down we are beginning to see evidence emerge of the positive differences human rights can make to the lives of individuals and benefits to organisational approaches. BIHR has been at the forefront of much of this practice, the main catalyst for the practical application of human rights by individuals and voluntary and public bodies in service delivery and design, in influencing and campaigning. As the pioneers of human rights practice in Britain, BIHR welcomed the EHRC Human Rights Inquiry (HRI) report which gave some examples of how people and public services are beginning to use human rights and the Human Rights Act to demand better treatment and improve policies and practice.<sup>3</sup> It is vital that the EHRC uses the momentum of the report to further develop and improve its approach to and work on human rights. It should as a top priority to develop and adopt a robust methodology for putting human rights principles into practice ('human rights based approaches') which can be used inside and outside the EHRC. Below we set out some key ways in which this work can be taken forward.

### **Human rights as the EHRC's underpinning framework**

4. Section 9 of the Equality Act 2005 provides for human rights principles to underpin all of the Commission's work and gives the EHRC distinctive duties in relation to human rights. It is vital that the EHRC takes a human rights approach to equality, ensuring that the potential of a human rights framework is utilised and is not seen as an additional "strand". Human rights provides the scaffolding to bring together the separate equality strands. In particular, human rights provide an effective and practical way forward for dealing with conflicts that may arise between different groups. For example, through an anti-discrimination lens, gay people and people with certain religious views have the right not to be discriminated against, but there is little guidance on how the rights of both can be resolved in a situation where they may be seen to be competing. Human rights already has a ready made mechanism for coming to a solution that enables us to live alongside each other. The concept of proportionality (i.e. 'not using a sledgehammer to crack a nut') helps to ensure a fair process for balancing those rights.
5. This will be particularly important with the forthcoming Single Equality Duty under the current Equality Bill, which creates a positive equality duty across all equality strands. This brings important opportunities for the EHRC to demonstrate its commitment to considering human rights as its underpinning framework. For example, adopting for the inclusion of a human rights framework in the Single Equality Duty as the Equality Bill passes through Parliament, and importantly, ensuring that a human rights framework is advocated as tool throughout the guidance it has to produce on how to implement the provisions of the Equality Bill when it passes into law.
6. BIHR has consistently called on the EHRC to identify human rights as its underpinning framework, for example we noted in the EHRC's recent consultation on its strategic priorities that it was essential for the strategic plan to explicitly acknowledge human rights as cutting across all the strategic priorities and to develop a comprehensive human rights strategy to set make this clear. We therefore welcome the expected publication of the EHRC's human rights strategy on the 10 November 2009, and the opportunities this will provide to increase the EHRC's work on and engagement with human rights.

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<sup>3</sup> BIHR submitted a response to the EHRC call for evidence for the HRI (July 2008). BIHR was also commissioned by the EHRC to hold a consultation event with frontline third sector organisations to gather evidence for the HRI (July 2008). A report of the findings was produced and submitted to the EHRC. For further information visit <http://www.bih.org.uk/policy/bihr%E2%80%99s-work-on-the-equality-and-human-rights-commission>

## **Building a new vision of equality**

7. The EHRC has a key role in informing, educating and leading the debate on the relationship between human rights and equality. Historically in the UK work on equality and human rights has developed on largely separate tracks, and often the relationship between the two is not well understood and sometimes seen as controversial. This is at odds with many other countries in the world, and in the international frameworks, where equality and human rights are seen as ‘two sides of the same coin’ and as a unified framework. In recent years work in the UK on equality and human rights has begun to be integrated, and we welcome for example the fact that the EHRC's recently launched Equalities Measurement Framework draws on a set of core capabilities based on international human rights standards, spanning the full set of civil, political, economic, social and cultural rights.
8. The EHRC must continue to develop this work, using a human rights approach to equality which is broad and ambitious and goes beyond anti-discrimination to encompass fairness of treatment, dignity, respect and access to all the fundamental rights which enable people to play their part in our democracy. In practical terms this means looking at equalities issues through a ‘human rights lens’, asking which human rights principles and standards are relevant to a situation and then how they can be practically applied. For example, the right to be protected from inhuman or degrading treatment clearly applies to an older person suffering from malnutrition on a hospital ward.
9. What matters is how a human rights approach to equality translates into action ‘on the ground’. There is a risk of organisations paying lip service to human rights, for example, by talking the language of dignity and respect without developing robust approaches (as have developed over decades in equalities) which draw on the power of human rights to deliver real accountability in hospitals, schools or other public places. Importantly, human rights has a significant “legal bite” outside of the courtroom, enabling all of us to challenge discrimination or poor treatment, to change policy and practice, without recourse to legal action,<sup>4</sup> which only becomes necessary as a last resort. Where a group of people are routinely stigmatised and receive unequal access to or poorer services (for example black men with mental health problems), we need to look at which rights are engaged and whether action can then be taken to radically reform the services they are offered. These are the kinds of lessons that need to be communicated by the EHRC through its powers to develop statutory and non-statutory guidance, advice and information, and its broader promotion powers to communicate what this vision or approach to equality looks like and the real and practical benefits it can bring.

## **Robust advocate for human rights**

10. It is vital that as a national human rights body, the EHRC is a robust advocate for human right. This is all the more important in the current climate where there has been a lack of widespread public education on human rights, negative, often hostile and inaccurate reporting of human rights in some sections of the media and a politicisation of human rights. The EHRC must be a strong advocate for and defender of human rights both at home and abroad. Weakening the UK's domestic protection will not only damage our domestic situation; its effects will reverberate around the world. The knock-on effects will be felt first in Europe and on the European framework – a regional treaty globally aspired

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<sup>4</sup> See for example BIHR's unique publication “The Human Rights Act: Changing Live” (2008), now in its second edition, which contains more than 30 case studies showing how ordinary people going about their day-to-day lives are benefiting from the Human Rights Act without resorting to the courts. Available here: <http://www.bih.org.uk/policy/the-human-rights-act-%E2%80%93-changing-lives>

to. If other European countries with poor human rights records see the UK reducing its protection, there is no reason for them to take the European Convention on Human Rights (ECHR) or other parts of the European human rights system seriously. The dangers are particularly acute in the context of European enlargement, sending a signal to new and potential member states that whilst signing up to the ECHR is a requirement of membership that these rights can be “opted out” of in domestic realities. This could have a detrimental impact on the rights of groups and individuals that are considered “unpopular” and/or marginalised, such as LGBT communities and women. In the UK and elsewhere, disadvantaged groups far too rarely enter public discourse, and are least likely to see the inside of a courtroom. Yet these are the groups most at risk of human rights abuses and infringements if national and international human rights protection systems are damaged.

11. The EHRC is a National Human Rights Institution recently accredited with the United Nations and it now needs to demonstrate how it will fully match up to this acknowledgement. BIHR was pleased to participate in the EHRC ‘parallel event’ at a recent session of the UK Human Rights Council, entitled ‘Putting People First: the story of Human Rights in Britain’, which gave the opportunity to discuss and share the findings from their Human Rights Inquiry report with an international audience. Internationally, the EHRC therefore has a key role as an advocate for human rights, both in promoting good practice from the UK and in translating lessons from other countries and international standards into its work in the UK.
12. Within the UK the EHRC has a vital role in rebutting widespread myths and misconceptions about the Human Rights Act showing how human rights can change society for the better. Demonstrating how human rights are relevant to people’s lives will help them to take ownership of the Human Rights Act and understand how it relates not only to individuals’ lives but can be a positive force for wider change in our institutions and society. The EHRC should therefore ensure that its communications, information provision, media and public affairs work, seeks to place the EHRC as a key leader in human debates.

## **Stakeholder engagement**

13. BIHR believes that stakeholder engagement is a key area where adopting a human rights approach can have an important, demonstrable and positive impact both on the work of the EHRC and on the way it is seen to work externally. As a provider of human rights services and support to a range of voluntary and community sector organisations, we know that many stakeholders do not feel significantly engaged with the EHRC, particularly around policy development. However, we also know that human rights is both a practical way of engaging these groups on the whole of the EHRC’s remit and that there is interest and enthusiasm for such an approach.<sup>5</sup> A human rights approach, which emphasises empowerment and participation, including recognising the most marginalised, is a more substantive process than current Cabinet Office guidelines on consultation. By using a human rights approach the EHRC can increase opportunities to meaningfully engage with organisations and individuals, drawing on the expertise of those working in the VCS and individuals who are “experts by experience”. For example, the Care Quality Commission has taken a human rights approach to its stakeholder engagement strategy “Voices into Action”, which sets out how it will involve the people who use care services in everything

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<sup>5</sup> This has been demonstrated, for example, in the national needs-scoping consultation we conducted with over 150 third sector organisations as part of our Principles to Practice programme, supported under the EHRC’s interim grants scheme, which works to build the ability and skills of a range of third sector organisations to use human rights and the Human Rights Act in their everyday work.

they do and ensure that care services respond to what people tell them.<sup>6</sup> Again, this is an area where the EHRC could enliven its engagement strategy by drawing on human rights and human rights approaches, which strongly emphasise participation.

## Supporting practical work on human rights

14. BIHR believes it is important that, in taking forward the work of the Human Rights Inquiry (HRI) the EHRC needs to take the pockets of good practice on implementing human rights and commit to scaling them up. Public authorities and voluntary and community organisations are beginning to pioneer the practical use of human rights in new and existing projects, stimulated in most cases by BIHR's initiative, support or formal partnership. Many of these were highlighted in the HRI report, such as the Department of Health and BIHR's 'Human Rights in Healthcare' project.<sup>7</sup> There is a clear role for the EHRC to map, support and scale up further work on putting human rights into practice. This kind of work needs to be promoted and taken forward by the EHRC, to demonstrate how human rights can add practical value to work on equalities and encourage others to build their own good practice. It is also key evidence for the EHRC to be able to explicitly and robustly speak out about the value and relevance of human rights for people in everyday life (see paragraph 12).

## Internal capacity

15. Whilst there will always be need for technical expertise on human rights (and we note, for example the vital work of the EHRC legal / legal policy team) for human rights to truly be the underpinning framework, the EHRC needs to ensure that staff across the whole organisation understand what human rights are and why and how they are relevant to their work. This is vital to ensuring human rights is not seen as a separate strand but rather as a cross-cutting issue and framework across the entire organisation's policies, working methods, strategies and action plans, practices, services and its external affairs work. This is an opportunity for the EHRC to put into practice the message that human rights are for everyone and that you do not need to be a human rights specialist to be able to put rights into practice. In BIHR's experience of working with a range of organisations, we have come across widespread enthusiasm for using a human rights approach as a unifying way to bring staff together internally. This approach enhances the idea that human rights are for everyone, staff, clients and service users alike. This could therefore have significant internal benefits, particularly as the EHRC is still a relatively new body, working on a newly combined and extended mandate as compared to the legacy Commissions.

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November 2009

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<sup>6</sup> Available here: [www.cqc.org.uk/getinvolved/involvingthepublic.cfm](http://www.cqc.org.uk/getinvolved/involvingthepublic.cfm)

<sup>7</sup> For more information on the 'Human rights in Healthcare' Project see [www.bihr.org/development/health.html](http://www.bihr.org/development/health.html)