

## Reach for your Rights!

THE 1990 TRUST HUMAN RIGHTS PROGRAMME

*Justice for All*

Briefing paper no. 1



## FIRST STEP: The Human Rights Act

### Incorporation of the European Convention on Human Rights into UK Domestic Law and Black communities

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#### INTRODUCTION

It is an exciting time for human rights activists. The Government has taken the decisive step of incorporating the European Convention on Human Rights and Fundamental Freedoms (ECHR) into domestic law. The resulting legislation will be the Human Rights Act (assuming it is adopted). It is expected to receive Royal Assent in July 1998 and to take effect by 1 January 2000. The Act will extend to Northern Ireland and Scotland. The Act will allow individuals to raise Convention points throughout the court system, from tribunals to the House of Lords.

Until recently, the domestic human rights debates have been lacking in participation by Black people, though there is evidence to show that as a result of racism, Black people are routinely denied their human rights. This briefing paper aims to

provide background information on the European Convention on Human Rights and incorporation;

provide general information on the potential legal impact of the Human Rights Act with regards to key areas of injustice for Black communities;

draw attention to key questions and issues around incorporation, particularly with regards to anti-racism and race equality, and the responsibilities of Government, Parliament, and the public and voluntary sectors.

This work is underpinned by the principle that *racism is a violation of human rights*.

#### 2 BACKGROUND

In 1948 the United Nations adopted the Universal Declaration on Human Rights. The Declaration not only was a direct response to the atrocities of the Holocaust, but it was also a response to the historical inhumanity of slavery and colonial violence. Consequently, the spirit of the Declaration is rooted in protecting minority and vulnerable communities from abuse by those in power. The Declaration covers civil and political rights (e.g. the right to free speech) and economic, social and cultural rights (e.g. the right to healthcare). The European Convention on Human Rights was adopted

in Rome in 1950 by the Council of Europe. It developed out of the European interest in promoting and enforcing the principles of the Declaration, though it primarily covers civil and political rights. Under current UK law, individuals must take their complaints under the Convention to the European Court of Human Rights in Strasbourg, and only after they have exhausted all domestic remedies. This costly process normally takes about five years.

Technically, the rights in the Convention have belonged to people in the UK since it was signed. What will change with the new legislation is that individuals will no longer have to wait until they go to Strasbourg for judges and lawyers to assess their case under the Convention. Ideally, this will enable a larger proportion of the population to use the Convention to protect their rights. It is also the first time that "positive rights" will be enshrined in English law. As it stands, the law now tells people what they cannot do, rather than setting out standards of treatment to which everyone is entitled. Hopefully, this development also will encourage people to regard international human rights standards as relevant to their lives in the UK.

## 2. THE RIGHTS

### **The ECHR includes the following rights:**

The right to life

The right to freedom from slavery and indentured servitude

The right to liberty, and freedom from arbitrary arrest or detention

The right to freedom from, torture, inhuman or degrading treatment or punishment

The right to a fair and public hearing and to be presumed innocent until proven guilty

The right to freedom of expression, including freedom of the press

The right to respect for private and family life and the right to marry and found a family

The right to freedom of thought, conscience and religion

The right to freedom of assembly and associations, including the right to join a trade union

The right to participate in fair and free elections (First Protocol)

The right to property (First Protocol)

The right to education (First Protocol)

Article 14: The enjoyment of these rights shall be secured without discrimination on any ground, "such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property birth or other status".

There are protocols which extend the basic rights set out in the European Convention on Human Rights. The UK has ratified the First Protocol, but despite the lobbying of human rights activists has yet to ratify the others. These include the right to freedom of movement, the prohibition of the "collective expulsion of aliens", and the abolition of the death penalty.

All of the rights listed above can legitimately be limited under certain specified conditions under the Convention, provided that these limitations are "proportionate" to the end which is being sought and necessary in a democratic society. For example, it would not be a violation of the right to life (Article 2) if deprivation of life is the result of "the use of force which is no more than absolutely necessary...in order to effect the lawful arrest or to prevent the escape of a person lawfully detained".

### ***Possible Areas of Challenge***

The Human Rights Act *potentially* will extend the protection currently provided by the Race Relations Act, particularly in the areas of policing, immigration and religious discrimination. This section of the paper briefly outlines important areas of injustice for Black communities which *might* be addressed by incorporation:

#### ***Policing and Detention***

- Deaths in custody
- Use of excessive force
- Abuse of discretionary powers
- Treatment of prisoners and mental health patients

#### ***Immigration and Asylum***

- Immigration rules and decisions
- Return of asylum seekers to countries where their lives are at risk
- Detention of Asylum Seekers

#### ***Education***

- School Exclusions
- Denial of education rights to asylum seekers
- Discriminatory school administration policies

#### ***Religion and belief***

- Discrimination based on religion or belief in the above and other areas covered by the Convention
- The existing blasphemy law which protects only the Christian faith

Other important areas which might be affected by the Act are mental health and the disproportional compulsory detention of Black people in mental hospitals and equality of access to justice, particularly with reference to legal aid.

#### ***Examples of specific injustices which might be addressed by the Human Rights Act***

The husband of a pregnant woman is being deported to Bangladesh. His wife, who is a citizen of the UK, is left to choose between giving birth in the UK on her own or going with her husband to Bangladesh. *This is potentially*

going with her husband to Bangladesh. This is potentially a violation of the right to respect for private and family life, Article 8 of the Convention.

An incident of racial violence is reported to the police and the police arrest the victim. *This is potentially a violation of the right to be free from arbitrary arrest or detention, Article 5 of the Convention.*

A Muslim schoolteacher is dismissed by the local education authority due to his insistence that he be allowed to attend at the Mosque during teaching hours. *This is potentially a violation of the right to respect for Freedom of religion, Article 9 of the Convention.*

### **The Limitations and Possibilities..**

It is important to be realistic about the scope of Human Rights Act with regards to protection from racism and racial discrimination. The European Convention is not very strong in this area. Article 14, which provides for protection from discrimination, can only be used when linked to another right in the Convention. That is, it is not enough to show that you've been discriminated against, you have to show the discrimination somehow prevented you from enjoying one of the rights in the Convention. *The question is, despite this limitation, what are the possibilities? For example, is it possible to extend the protection from racism offered by the Convention through different interpretations of what is meant by the rights themselves?*

Judges will play a major role in interpreting the Act and determining its impact on racism and racial discrimination. The European Commission on Human Rights, for example, has in the past stated that certain forms of racism, including in immigration policies and the treatment of prisoners, can be considered inherently degrading and therefore in violation of Article 3, the right to be free from degrading treatment. This interpretation widens the scope of protection from racism and racial discrimination necessarily thought to be available under the Convention.

It will be important, therefore, that strategic cases to set precedents are brought before judges. This means that the legal impact of the Act will be partly determined by the extent to which people understand their rights and have access to legal advice and assistance, as well as the extent to which lawyers apply themselves to being creative with the law.

*To what extent will judges and lawyers in the UK push the traditional boundaries of the Convention, in an effort to expand protection from racism and racial discrimination?*

It will be important for Black communities to have access to the necessary networks to push the Human Rights Act beyond its usual limits. At the same time, the limitations of the Human Rights Act mean that the debates on creating a stronger legislative framework for protecting people from racism and racial discrimination in the UK need to continue with rigour. *Can the language of human rights and a "human rights culture" help move these debates forward?*

### **3. Beyond Litigation**

The possibility of individuals being able to take new types of cases to court is only one aspect of the Human Rights Act. How will incorporation affect the practices of Government and Parliament as well as public (and at times private) bodies? How will the voluntary sector be able to use the principles of the Human Rights Act to strengthen its work in race equality and challenging racism, in terms of legislation, public policy and public attitudes?

### **Government and Parliament**

There is no current obligation on the Government and Parliament to have regard to the Race Relations Act, when new legislation is proposed. This has enabled Parliament to approve both statutes and regulations which conflict with the Race Relations Act, implicitly undermining the Act's force. In contrast, the Human Rights Act will require a Government Minister, before introducing a Bill, to state that a proposed Bill is compatible with the rights guaranteed in the Act. If the Bill is not compatible, the Minister will have to declare that despite incompatibility, the Government wishes to proceed with the Bill. To the extent that civil servants are involved in advising ministers or drafting legislation or carrying out governmental functions they will need to have a full understanding and appreciation of the Human Rights Act.

*Injecting awareness of racism as a violation of human rights into the parliamentary drafting process requires a new consciousness in terms of both race equality and human rights. How can this best be achieved?*

### **Public Sector**

The bodies accountable under the Human Rights Act include the judiciary, local authorities, education authorities, public healthcare providers, prisons, the police, and the immigration service. For example, methods for detaining prisoners will need to be examined for the compliance with the right to be free from inhuman and degrading treatment. The Government has set aside over four million pounds for the training of the judiciary on the European Convention, but appears to have made no plans for the training of other public authorities.

It is important also to note that the Convention sets out basic rights which public authorities not only should comply with, but also have a duty to protect. In this context, the 1990 Trust believes that under the Act, public authorities should be obligated to act where they have the power and resources to prevent or stop a violation by a private individual (e.g. in the case of repeated racial harassment of a family in a housing estate, which potentially violates the right to private and family life).

*How will this change the relationship between Black communities and public authorities? What mechanisms are public authorities in your locality putting into place to scrutinise their compliance with the Act? Given the absence of a Government programme for training in the public sector beyond the judiciary, what alternative action can be taken to promote good practice? How can accountability of public authorities under the Human Rights Act assist in tackling racism and discrimination by private individuals?*

### **Voluntary Sector**

The voluntary sector will play an important role in working in promoting the rights and principles of the Human Rights Act, and in providing an infrastructure for taking cases under the Act. Partnerships will be essential for maximising the impact of the Act. The 1990 Trust hopes that for many anti-racism and race equality organisations, incorporation will provide a compelling reason for taking a new, or perhaps greater, interest in the domestic human rights agenda.

*What are the new partnerships Black and anti-racism/race equality organisations need to forge to become active in human rights forums? What are the possible resource implications for Black organisations wishing to add a human rights dimension to their work? How can resources be maximised by pooling together knowledge, strategies and efforts? Though the Human Rights Act is limited in this area, will the human rights agenda prioritise anti-racism and race equality as a leading area of work?*

### **A Cultural Shift?**

Human rights activists believe that the introduction of "positive rights" is a major step forward culturally and symbolically as well as legally. People in the UK will be able to expect and demand a certain standard of treatment as a right. Under the Act, public authorities and private bodies when they are carrying out public functions will be responsible for guaranteeing the rights in the Convention. There is talk in human rights forums of a "human rights culture" and a "culture of rights and responsibilities" developing in which individuals recognise that in claiming their own rights they have a responsibility not to violate -- and even to protect-- the rights of others.

*Will this cultural change increase the opportunity to demonstrate that challenging racism in all its forms is the responsibility of society as a whole and not merely of Black communities? Will "a human rights culture" encourage people to view anti-racism measures not as special treatment but necessary tools to enforce basic human rights?*

## **4 HUMAN RIGHTS COMMISSION**

The Human Rights Bill, at the time of publication of this paper, does not provide for a Human Rights Commission. This means there is no central mechanism for promoting the Human Rights Act, a "culture of human rights", and good practice, nor for assisting individuals to understand and take cases under the Convention. Debates will continue to take place about proposals for a Human Rights Commission. It is important that Black communities take an active interest in, and contribute to, these discussions. *For more details on the proposals for a Human Rights Commission, please obtain the Institute for Public Policy Research (IPPR) paper "A Human Rights Commission: the Options for Britain and Northern Ireland."*

## **5. FIRST STEP**

This paper is called *First Step*, as are the regional meetings accompanying it, for two main reasons.

- ⌘ Incorporation of the European Convention on Human Rights is a significant *first step* towards a comprehensive Bill of Rights in the United Kingdom based on a range of international human rights standards. Other countries, including India, Pakistan and South Africa have drawn from a number of international human rights treaties to create their Bills of Rights. These include the International Covenant on Civil and Political Rights, the Convention for the Elimination of All Forms of Racial Discrimination, and the Convention on Economic, Social and Cultural Rights. Most recently, as part of the peace agreement, a Human Rights Commission is being set up in Northern Ireland. As part of its remit, the Commission will be looking at the development of a Bill of Rights tailored for the situation in Northern Ireland and similarly based upon a range of international human rights standards.
- ⌘ Although Black communities and anti-racism activists have perhaps always understood racism as a violation of human rights, they have not necessarily taken an active role in contributing to the human rights agenda. The 1990 Trust

views this paper and regional meetings as a means to encouraging these organisations take the *first step* towards developing an awareness in their communities about the relevance of human rights to challenging racism and racial discrimination in the UK.

### ***Developing a Black Human Rights Network***

The next step towards increasing participation by Black communities in international and domestic human rights forums is setting up a sustainable national Black Human Rights Network which can regularly monitor human rights in the UK with respect particularly to Asian, African and Caribbean communities. Such a network would play a key role in making people more aware that racism is a violation of human rights and keeping race equality on the human rights agenda.

## **6 CONCLUSION**

The 1990 Trust hopes this paper not only provides useful information but is also a tool for discussion, particularly within Black and anti-racism/race equality organisations. The last page of this paper provides the contact details for some human rights and race equality organisations which can provide a wide range of information on human rights standards and practice. The Trust encourages you to contact them to learn more of their work, and to let them know of your own. In the long term, the Trust envisages a network of Black and anti-racism organisations which is composed of national and regional bodies and ensures that information is disseminated at local levels. Neither the Human Rights Act nor a "full-blown" Bill of Rights will end racism, but they could help. What is most important is that Black communities take a leading role in the important human rights activities which will take place over the next few years in the UK.

### **The 1990 Trust**

The 1990 Trust is a national Black organisation set up out of the National Black Caucus as an information and policy unit and a registered charity. The Trust's objective is to increase the participation of Black communities in the political process and to combat racism in all its forms. The Trust's policy work covers education, immigration, criminal justice, health and employment and it regularly consults widely with Black communities throughout the UK, publishing periodic briefing papers on key issues of the day. The Trust is a member of the UK Race and Europe Network. With assistance from the National Lotteries Charities Board the Trust has set up an Information Technology programme which includes a Black Information Network website, BLINK (<http://www.blink.org.uk>). A primary aim of the programme is to assist Black organisations with computer literacy. The 1990 Trust also supports individuals and families who have suffered from racism in areas of life such as employment, healthcare, and criminal justice or who have lost family members to racial attacks. The Trust's work is widely disseminated through our quarterly newsletter *Black to Black* which has over 3000 subscribers.

### **The Human Rights Programme**

After working closely with Liberty (formerly National Council for Civil Liberties) and other non-governmental organisations to send a delegation to the United Nations Committee for the Elimination of Racial Discrimination meeting in spring 1996, The 1990 Trust began to recognise the significance of looking at our race equality and anti-racism work in the context of international human rights standards. Consequently, that year the Trust conceived the project *Testimony for the Millennium*, a series of regional public

hearings on racism as a violation of human rights. With a commitment in May 1997, from the new Government, to incorporate the European Convention on Human Rights into domestic law, the Trust saw the need for, and in June 1997 began developing, a full Human Rights Programme.

With the Human Rights Programme, The 1990 Trust aims to

- ⌘ Raise awareness and collect evidence about racism as a violation of human rights;
- ⌘ Inform Black communities about human rights law and how to work with the relevant domestic and international human rights organisations and political institutions;
- ⌘ Lay the foundation for Black organisations throughout the UK to develop sustainable networks which facilitate their participation in human rights forums.

Details of the Programme's work can be found in the Human Rights Section on BLINK (<http://www.blink.org.uk>).

### Contact Information

Amnesty International - UK Office  
Tel. 0171 814 6200  
<http://www.oneworld.org/amnesty>

Association of Black Probation Officers  
Tel. 0181 682 9322  
Email: [abpo@gn.apc.org](mailto:abpo@gn.apc.org)

British Sikh Federation  
Tel. 01452 652 131

Charter 88  
Tel. 0171 833 1988  
<http://www.Charter88.org.uk>

Commission for Racial Equality  
Tel. 0171 828 7022  
<http://www.open.gov.uk/cre/crehome.htm>

Council for the Administration of Justice  
(Northern Ireland)  
Tel. 01232 232 394  
<http://martin@caj1.demon.co.uk>

Council of Europe  
Tel. 0033 38841 2000  
<http://www.coe.fr>

Discrimination Law Association  
Tel. 01933 225552  
Email: [DisclawA@aol.com](mailto:DisclawA@aol.com)

Human Rights Watch – UK  
Tel. 0171 713 1995  
<http://www.hrw.org>

Institute for Public Policy Research  
Human Rights Programme  
Tel. 0171 470 6100  
<http://ippr@easynet.co.uk>

Immigration Lawyers Practitioners'  
Association  
Tel. 0171 251 8383  
Email: [ilpa@mcr1.poptel.org.uk](mailto:ilpa@mcr1.poptel.org.uk)

Joint Council for the Welfare of  
Immigrants  
Tel. 0171 251 8708 (admin)  
0171 251 8706 (advice)  
Email: [jcwi@mcr1.poptel.org.uk](mailto:jcwi@mcr1.poptel.org.uk)

Liberty  
Tel. 0171 403 3888  
Email: [liberty@gn.apc.org](mailto:liberty@gn.apc.org)

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Tel. 0171 403 3888  
Email: [liberty@gn.apc.org](mailto:liberty@gn.apc.org)

Minority Rights Group  
Tel. 0171 978 9498  
<http://www.minorityrights.org>

The Runnymede Trust  
Tel. 0171 600 9666  
Email: [Run1@btinternet.com](mailto:Run1@btinternet.com)

Scottish Human Rights Centre  
Tel. 0141 332 5960  
Email: [shrc@dial.pipex.com](mailto:shrc@dial.pipex.com)

Society of Black Lawyers  
Criminal Justice and Human Rights Sub-  
Committee  
Tel. 0171 735 6591 (advice)  
Tel. 0171 735 6592 (admin)  
Email: [sbl@gn.apc.org](mailto:sbl@gn.apc.org)

Statewatch UK  
Tel. 0181 802 1882  
Email: Statewatch-  
off@geo2.poptel.org.uk

United Nations Information Office  
Tel. 0171 630 1981  
<http://www.unhchr.ch>

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