



Unite the Union submission to the Joint Committee for Human Rights Call for Evidence on 22 May 2007 for their Inquiry into a British Bill of Rights

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. Our members work in a range of sectors including manufacturing, financial services, print, media, construction, local government, education and not for profit.

Executive Summary

1. Unite the Union considers that any Bill of Rights must contain fundamental rights of a collective nature, such as ILO Conventions 87 and 98 and those in the 1961 European Social Charter. Freedom of Association (including for trade unions and employers' associations), the right to organise effectively and the right to free collective bargaining are basic essential human rights.
2. This issue is fundamental to response to the basic question of whether there should be a British Bill of Rights. A Bill of Rights that favours property and trade rights over collective or individual rights is worse for those who live in Britain than no Bill of Rights.
3. Further, a Bill of Rights that only contains rights for the individual is considerably less effective without such rights. In June the Supreme Court of Canada recognised and expressed this, saying: "Recognizing that workers have the right to bargain collectively as part of their freedom to associate reaffirms the values of dignity, personal autonomy, equality and democracy that are inherent in the *[Canadian] Charter [of Rights]*." See below paragraph 14.
4. Although the focus of this submission is on collective rights, Unite the Union supports individual rights such as the right to be treated fairly and with dignity, free health care and like rights such as those included in the European Social Charter. We also emphasise the need to be able to pursue collective rights over those of the individual and the need to pursue rights to dignity and health, for example, over property rights and to free trade. Only by this means can we expect to redress the imbalance of power between the governments and corporations on the one hand and people on the other.
5. Unite the Union endorses the submission from TULO and commends it to the Committee.

The need for collective rights

6. The Joseph Rowntree Foundation published a report into poverty on 17 July 2007 showing that inequality between rich and poor has now reached levels not seen in Britain for 40 years. A second report, published simultaneously, found that the public thinks the gap between rich and poor is too large. This is an issue relevant to trade union freedom. Unions are a force for good in dealing with such inequality and unionised workers are generally not those who suffer most from low pay.
7. It is no coincidence that inequality has grown in Britain at a time of restrictive anti trade union laws found to be in breach of fundamental human rights.
8. The DTI survey of trade union activity in 2006 confirmed that union members earn 17.6 per cent more than non-union members. Securing fairness at work demands freedom for trade unions.
9. At the EU Summit in June 2007, it was agreed that the Charter of Fundamental Rights will be legally binding in the Union, but the UK alone insisted on an opt out. Twenty six countries agree that fundamental rights are just that – they are prepared to be subject to scrutiny. Gordon Brown insisted on 10 July 2007 that further developments towards a new Treaty should reflect every aspect of the deal secured by Tony Blair at the summit the previous month.
10. Yet, as the Joint Committee is aware, the UK Government is told repeatedly of violations particularly about laws that tie up trade unions. Repeatedly the response of the UK Government is that fundamental human rights are merely aspirational in this context. (See, for example the most recent European Social Rights Committee Report 2004).
11. In *ASLEF v UK* the European Court of Human Rights stated that "under Article 11 unions must remain free to decide, in accordance with union rules, questions concerning admission to and expulsion from the union" (Application no. 11002/05: paragraph 39). Although the Government accepts that the UK law must be changed, the proposals for change are too limited for the Trade Union and Labour Relations (Consolidation) Act 1992 to comply with Article 11.
12. David Cameron's Conservative Party has gone further. Although he talks of the need for a Bill of Rights, he agrees with those in his party that the UK should withdraw from the Social Chapter altogether. We disagree.
13. It is inevitable that Unite the Union must be concerned that a British Bill of Rights would not reflect the need for effective collective rights.
14. This is in spite of increased recognition of collective human rights everywhere else in the world. Modern Constitutions and Bills of Rights, as in South Africa include such rights. On the 8 June 2007 the Canadian Supreme Court recognised collective bargaining as a fundamental right - reversing its earlier position. (See *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27).
15. In the "Laval" case before the European Court of Justice the Advocate General's opinion dated 23 May 2007 says this: "...the right to resort to collective action to defend trade union members' interests is a fundamental right. It is therefore not merely a 'general principle of labour law', ...but rather a general principle of Community law, within the meaning of Article 6(2) EU. That right must therefore be protected in the Community." (Case C-341/05).
16. In the 21st Century and in a globalised economy, everyone needs effective collective rights. For reference to the comparative position in other countries we refer the Committee to the TULO submission.

The questions raised by the Joint Committee for Human Rights

1. Is a British Bill of Rights needed?

- **Do you think there should be a British Bill of Rights? Please explain the reasons for your view.**
 - **What would be the purpose of a British Bill of Rights?**
 - **What would a British Bill of Rights add to the protection for human rights already provided by the Human Rights Act?**
17. A Bill of Rights could be positive, but one that favours property and trade rights over collective and or individual rights is worse for those who live in Britain than no Bill of Rights.
18. Purpose of a British Bill of Rights is to protect the people who live in Britain from abuse of power by the state and business. An integral part of that are collective rights. We refer to our comments elsewhere in this submission, including on page 2.
19. The Human Rights Act does not constitute an effective Bill of Rights, but whether a British Bill of Rights will add to the protection provided by the Human Rights Act depends on what is in the Bill of Rights and how it is framed.

2. What should be in a British Bill of Rights?

- **If there were to be a British Bill of Rights, what rights and freedoms should it contain?**
 - **Should it include any rights currently recognised as common law rights and freedoms, and if so which?**
 - **Should it include any rights and freedoms currently contained only in legislation, such as rights not to be discriminated against, of data protection and freedom of information, and if so which?**
 - **Should it include social and economic rights, such as health and education, and if so which?**
 - **Should it include rights and freedoms currently contained in international treaties but not yet part of our law, and if so which?**
 - **Should it include rights and freedoms contained in other countries' bills of rights and if so which?**
 - **Should it include responsibilities as well as rights and freedoms, and if so, what sorts?**
20. We have expressed above the need for effective collective rights to be included in a any modern Bill of Rights. We agree that there should also be rights such as those contained in the European Social Charter. The right to health protection in a British Bill of Rights should be for free health care. There should be a right to dignity and fair and equal treatment.
21. Such rights should be enforceable. Limitations and restrictions, including in relation to collective rights, should only apply where necessary and proportionate. Otherwise a Bill of Rights is illusory.

3. What should be the relationship with the Human Rights Act and international human rights obligations?

- **What should be the relationship between a British Bill of Rights and the Human Rights Act?**
- **What should be the relationship between a British Bill of Rights and the ECHR/other international human rights treaties?**
- **Are there any other relevant issues not covered by the above questions?**

22. Again much depends on the content and framework of any proposed Bill of Rights. We also refer to the words of the Advocate General in the “Laval” case (see paragraph 15 above). The UK should now comply with existing international human rights obligations.

4. What should be the impact of a British Bill of Rights on the relationship between the executive, Parliament and the courts?

23. We repeat that all is contingent on the content and framework of any proposed Bill of Rights. We hope we have made our position clear and established a just case for effective collective rights. Should there be developments as to a proposed British Bill of Rights we would welcome the opportunity to comment further on such matters.

Conclusion

24. Unite the Union believes that any Committee *for* Human Rights cannot fail to agree that clear and effective collective rights must be included in any modern Bill of Rights

25. We would be happy to assist the work of the Committee further in relation to a British Bill of Rights.

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