

**The Committee on the Administration of Justice (CAJ)
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Winner of the Council of Europe Human Rights Prize

CAJ's summary of

“Making a Bill of Rights for Northern Ireland”

September 2001

**Submission No. S.117
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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.



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**CAJ summary of
"Making a Bill of Rights for Northern Ireland" –
A consultation by the NI Human Rights Commission**

September 2001

Since March 2000, the NI Human Rights Commission¹ has been consulting with people on what a Bill of Rights for Northern Ireland could contain. It has recently published its initial recommendations entitled "Making a Bill of Rights for Northern Ireland". The document contains a possible list of rights, along with explanations and questions on which the Commission would particularly welcome views. To facilitate discussion at a local level, the Committee on the Administration of Justice (CAJ) has produced an extremely short summary of the main NIHRC recommendations and has highlighted some of the questions asked. This is by no means an exhaustive summary of everything covered in the Commission's document², and nor is it a commentary on that document. CAJ will develop its detailed response in due course.

Preamble: Most Bills of Rights have an opening statement bringing together key values which underpin the detailed text. Principles of equality, impartiality etc are included in the Commission's draft. Readers are asked to comment on the draft proposed, or suggest alternative versions.

Democratic Rights: The proposals relate to the extension of the proportional voting system, the participation of women and giving votes to 17 years olds. No additional rights are proposed covering the political rights of aliens and views are invited on whether, and if so how, "accountable and transparent" government could be written into law.

Identity & Community: The Commission explains that it was difficult to formulate a right to "parity of esteem" (as they are requested to do by the Good Friday Agreement). Instead, they developed a series of rights which, if respected, they feel would ensure parity of esteem: rights to national identity, to enjoyment of one's culture, to be nomadic or sedentary, to government measures to ensure equality for NI's different communities in all areas of economic, social, cultural and political life, and measures which would

¹ Hereafter referred to as 'the Commission' or 'the NIHRC'.

² The European Convention on Human Rights (ECHR) was incorporated into NI law in October 2000 in the form of the Human Rights Act. This commentary focuses on issues that the NIHRC has proposed in addition to the ECHR, and which it thinks reflect the particular circumstances of Northern Ireland. Copies of the 155 page document and the 28 page summary produced by the Commission can be obtained from the NIHRC at Temple Court, 39 North Street, Belfast, BT1 1NA; tel: 02890 243987; website: www.nihrc.org

encourage mutual respect and parity of esteem of both communities. The Commission attempted in its formulations to respect the GFA language which refers to “both” communities *and* to the “civil rights and religious liberties of everyone in the community”. It also proposes a right not to be treated as a member of a particular community. It seeks views as to whether this is the right approach or how ‘parity of esteem’ might be expressly guaranteed.

Equality: The Commission draws heavily on international best practice in this area to propose the prohibition of direct and indirect discrimination, harassment, victimisation and more positively to state a general equality provision, the importance particularly of equality between men and women, and positive action. The Commission looks for advice as to the categories to be mentioned explicitly in the non-discrimination clause and wonders if positive action should be required or merely permitted.

Women: The Commission proposes references to equality between men and women, reproductive healthcare, freedom from violence and the promotion of fair, full and effective participation. Its preliminary proposal is to integrate these rights at relevant points in the text, rather than as a separate gender-related chapter, but it is eager to get reactions to this approach.

Right to life & physical integrity: The Commission proposes stricter protections on the right to life. While the proposed clauses will prohibit torture and slavery, there is no explicit reference in this section to personal or physical integrity – the Commission asks, should there be?

Criminal Justice: The Commission proposes including specific provisions from the European Convention on Human Rights. It also proposes further protection in regard to people detained (for example, those of ‘unsound mind’), limiting the power of search and seizure, early access to legal advice, limits to incommunicado detention, adequate conditions of detention, audio and video recording of interviews, interpretation, the right to remain silent, rights upon arrest, protections for defence lawyers, and the right to appeal. As well as the ECHR right to a fair trial, the Commission proposes limits to the period of custody, and jury trials. It also proposes rights in the field of administrative justice. All of these proposals are matters for consultation, but the Commission explicitly asks for advice on jury trials and the problem of double jeopardy (the rule which states that a person cannot be tried for the same crime twice).

Victims: The Commission makes a distinction between past victims (“victims of the conflict”), and future victims. They propose that the former be entitled to acknowledgement both of their loss and suffering, and of the responsibility of the perpetrators, and the right to the necessary social care and support. As regards the latter, they suggest the right to be treated with compassion, to restitution, to investigation, to be informed of the progress of the investigation and assistance during the trial of any person charged. They propose that the definition of victim be limited to victims of crime and seek views on whether this is the right approach.

Family and Private Life: The Commission feels that most rights in this area are adequately protected in law under the ECHR, and carries them across into the draft Bill of Rights relatively unchanged, but adds new data protection provisions. The Commission argues that there be explicit recognition of the right to terminate a marriage, and that provision be made to legitimise partnerships between same-sex partners, and between co-habitees.

Children: The Commission offers three models for protecting the rights of children and young people – direct incorporation of the text of the UN Convention on the Rights of the Child, a number of separately formulated rights, or a combined approach. It asks whether the rights of children should be in a special chapter, or integrated throughout the text. A number of general principles are outlined, such as that the best interests of the child shall be of paramount importance, and then a series of rights are proposed – participation, stable family life, freedom from violence, protection when in conflict with the law (including the raising of the age of criminal responsibility from 10 to 12 years), the enjoyment of an independent and fulfilling life regardless of one's disability, play, adequate healthcare, education, and freedom from economic exploitation. The Commission asks a number of questions relating to these specific rights, such as how best to formulate the need for state support to allow children to grow up in a stable, safe and loving environment.

Education: The education rights proposed by the Commission are fairly non-contentious including the right to choose one's education, non-discrimination, and the value of an education that promotes human rights, human dignity and tolerance. The Commission asks specifically about the impact of admissions criteria on the right to an effective education and whether the religious/political exemption for teachers should be retained.

Thought, Expression, Information and Association: The Commission believes that most of these rights are already adequately protected by the ECHR but asks whether the rights to freedom of expression and to receive and impart information need to be further supplemented.

Language: The NIHRC seeks to combine respect for the linguistic diversity of Northern Ireland (including ethnic minority languages, sign language etc.), and special recognition for Irish and Ulster Scots. The Commission rejected the approach of defining "official" "national" and "second" or "other" languages, but argued that all forms of communication are entitled to respect. The government is placed under an obligation to introduce legislation in relation to the Irish and Ulster-Scots to implement the commitments made in the Belfast/Good Friday Agreement and to reflect best international practice. Where there is "sufficient demand", the Commission proposes that all linguistic communities have the right to use their language in dealings with public bodies, the right to use one's own name, display signs & local street and place names, and the right to learn and be educated in the medium concerned. The Commission asks whether people agree with this approach, and if not, what protection they would support?

Socio-economic rights: The Commission notes the very high level of public support for the inclusion in the Bill of Rights for protections in respect of health, housing and employment. At the same time, they suggest that there are legal difficulties involved. The proposals suggest including a statement of socio-economic principles against which government action (or inaction) can be adjudged, a general clause on the protection of socio-economic rights, and specific provisions on the peaceful enjoyment of property, healthcare, an adequate standard of living, and rights to housing, to the economic and social life of society (including access to work and just and favourable conditions of work), as well as the right to a healthy and sustainable environment. They ask whether the statement of principles is an effective way of protecting social and economic rights?

Interpretation: To assist judges in later interpreting the intention of the agreed text or, in due course, in addressing internal inconsistencies, the Commission proposes a general interpretative clause largely drawn on the South African model. This clause lays out principles such as promoting the spirit, purpose and objectives of the Bill of Rights and its preamble (see p.1).

Limitations: Since few, if any, rights are absolute, limitations need to be specified. In general there are two possible approaches – a single limiting clause, or a reference after each right to specific limitations. The Commission asks for views on which is preferable.

Emergencies: There are quite different approaches that could be taken to the risk posed to human rights at times of emergency and political instability. Either one can draft a specific clause to indicate in what circumstances the authorities may introduce emergency powers, or one can reject the option of a “catch-all” emergency powers clause and rely on a narrowly drawn limitations clause (see above). The Commission has opted for the first approach.

Enforcement: The Commission asks if the Bill of Rights requires the establishment of a new (Human Rights or Constitutional) Court. Questions are also asked about effective remedies, whether there should be a referral process to higher courts, who can take cases, and whether there should be a referral mechanism to measure proposed legislation against the Bill of Rights.

Entrenchment and Amendments: A Bill of Rights needs particular protection against constant amendment, but must also be amenable to change over time. The Commission recommends that amendments require a cross-community Assembly vote. They do not discuss what would happen if the Assembly were in suspension or was replaced by Direct Rule. They discuss and seek advice on whether or not to incorporate the provisions in a new British Irish Treaty; what, if any, external guarantors would be needed, and the value of referenda and how this could be done.

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*Extra copies of this document can be obtained from the above address
A publications catalogue and details of CAJ membership
are also available on request from the above address*

