



CAJ

**Committee on the
Administration of Justice**

CAJ's submission to the

**Joint Committee on Human Rights –
Call for supplementary evidence following publication of the
government's Green Paper on "Rights and Responsibilities:
Developing our Constitutional Framework"**

July 2009

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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, Human Rights First (formerly 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, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

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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Promoting Justice / Protecting Rights

Winner of the Council of Europe Human Rights Prize



Joint Committee on Human Rights - Call for supplementary evidence following publication of the government's Green Paper on "Rights and Responsibilities: Developing our Constitutional Framework"

**Submission from the Committee on the Administration of Justice (CAJ)
6th July 2009**

The Committee on the Administration of Justice (CAJ) has been an advocate of a Bill of Rights for Northern Ireland since its inception in 1981, and has been actively engaged in the various stages of consultation and debate that have occurred, particularly post the commitment to a Bill of Rights for Northern Ireland in the Belfast/Good Friday Agreement of 1998.

CAJ would like to emphasise at the outset our view that the green paper on a UK Bill of Rights and Responsibilities should not in any way undermine the rigorous and in depth work that has taken place on a Bill of Rights for Northern Ireland (as outlined in our previous submission to the Committee on this matter in August 2008). Nor should it impede the progression of the strong advice on a Bill of Rights for Northern Ireland provided by the Northern Ireland Human Rights Commission to the Secretary of State for Northern Ireland in December 2008, on which consultation is awaited.

The UK Bill of Rights and a Bill of Rights for Northern Ireland:

In the Green Paper, CAJ was heartened to read that:

"Importantly, the Government does not wish the public debate around a UK instrument to detract from the process relating to a potential Bill relating to the particular circumstances of Northern Ireland." (page 60)

However, in a letter received by CAJ on 3rd July 2009 from the Secretary of State for Northern Ireland, we were concerned to read that he was considering the implications of any new rights for the rest of the UK. The advice provided to the Secretary of State by the NI Human Rights Commission is in fulfilment of their statutory role to advise on "rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland" [our emphasis]. The advice is not concerned with rights for the rest of the UK, and nor does it proclaim to be. There is no need, therefore, for the Secretary of State to consider the implication of any rights for the rest of the UK, since they are not intended to apply in the rest of the UK.

As such, we agree with the analysis of the Joint Committee's conclusion in its report on "A Bill of Rights for the UK?" in July 2008 that:

“Provided the hierarchy between these levels is clear, there is a positive virtue in the broadly defined rights in the international standards being fleshed out into more concrete norms and standards at the regional, national and sub-national level. Each Bill of Rights, from the global through the regional to the national and sub-national levels, becomes more specific and detailed in its provisions, and is free to be more generous but must not fall below the minimum floor of the higher level of protection.” (page 32)

We would not however, wish to see concern about rights in the rest of the UK act as an impediment to the important commitment to a Bill of Rights for Northern Ireland as mandated under the Good Friday/Belfast Agreement.

Furthermore, in a letter received by CAJ from the leader of the Conservative Party on 16th June 2009, we were most concerned to read that:

“I believe that the requirement to consider the need for a Bill of Rights for Northern Ireland can best be realized as a sub-section to a UK-wide Bill of Rights and Responsibilities. We intend to create a UK Bill of Rights and we would then like to see devolved government in Northern Ireland adopt the UK Bill.”

The Good Friday/Belfast Agreement was an international treaty signed by the UK and Irish governments, and as such both governments are bound by its contents. The commitment to a Bill of Rights for Northern Ireland was contained within that treaty.

Once again, CAJ expresses its concern that attempts might be made via the debate about a UK Bill of Rights and Responsibilities to undermine the Bill of Rights for Northern Ireland. We believe this is entirely unacceptable and in breach of the international treaty that was signed by the two governments in relation to the Agreement.

Support for a Bill of Rights for Northern Ireland

CAJ would like to bring the Committee’s attention to the overwhelming public support that exists in Northern Ireland for a separate Bill of Rights. Polling conducted in May 2009 found that 83% of people in Northern Ireland feel it is quite/very important that Northern Ireland has its own Bill of Rights (81% of Protestants and 85% of Catholics supported this view).¹

Furthermore, in its examination of the UK government in May 2009, the United Nations Committee on Economic, Social and Cultural Rights noted *“the draft Bill of Rights for Northern Ireland, which includes economic, social and cultural rights which are justiciable and calls for its enactment without delay.”*²

Comments on the Green Paper

¹ Research conducted by Millward Browne Ulster on behalf of the Human Rights Consortium - see http://www.billofrightsnri.org/news_and_events/article/commons_committee_told_support_rising_for_northern_ireland_bill_of_rights_n/

² Concluding Observations of the UN Committee on Economic, Social Cultural Rights, 22nd May 2009. See <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

While our remit pertains to Northern Ireland alone, based on our experience of the Bill of Rights debate here we offer some very brief comments on the Green Paper in the hope they are of some use. In general, CAJ was surprised to see such a lack of reference to basic human rights standards that the UK government has signed up to internationally, and would suggest that it seems unusual to debate a Bill of Rights without contextualizing the human rights commitments that the government already holds. As regards the specific questions asked by the Committee in this call for evidence:

Whether "responsibilities" should be included in any UK Bill of Rights?

CAJ wholeheartedly agrees with the conclusion of the Joint Committee in its July 2008 report on a UK Bill of Rights that:

"We cannot see what purpose is served by articulating a responsibility as general as the responsibility to obey the law, nor do we believe that a Bill of Rights is the place to set out legal responsibilities which are already legally binding on the individual. We do not accept that educating people about their legal responsibilities is an appropriate function of a Bill of Rights.

The main international human rights covenants, including the UDHR, do not refer to responsibilities and certainly not to the responsibilities of the citizens to the State; but instead look at the responsibilities the state has to protect the rights and freedoms of all while acknowledging that we all have a role to play in promoting respect for rights. The prominence given to responsibilities in the Green Paper risks the document becoming not a Bill of Rights, but more a treatise on how people should behave in relation to the state. It is therefore misleading to frame this in the context of a Bill of Rights as commonly understood.

Whether social and economic rights should be included in a UK Bill of Rights?

Under the UK government's commitments to the International Covenant on Economic, Social and Cultural Rights, the government is obliged to afford domestic protection to social and economic rights, as noted by the UN Committee in its most recent examination of the government on this issue:

*"The Committee urges the State party to ensure that the Covenant is given full legal effect in its domestic law, that the Covenant rights are made justiciable, and that effective remedies are available for victims of all violations of economic, social and cultural rights. The Committee reiterates its recommendation that, irrespective of the system through which international law is incorporated in the domestic legal order (monism or dualism), following ratification of an international instrument, the State party is under a legal obligation to comply with such an instrument and to give it full effect in its domestic legal order."*³

³ <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

A Bill of Rights for the UK would be the most obvious way of doing this. However, in CAJ's view, the proposals in the Green Paper fall far short of what is required by international standards.

What the role of the courts should be in relation to such rights?

CAJ is of the view that social and economic rights should be fully enforceable through the courts. As experience in other jurisdictions has shown, this would not mean that the judges would begin to frame policy but rather, the courts would moderate decision-making (as they do in other areas) and ensure that the government arrives at its decisions in a human rights compliant manner. We note with interest the recommendations of the Joint Committee in its July 2008 report, and particularly the emphasis given to the role to be played by Government and Parliament. This is of the utmost importance in ensuring that human rights are mainstreamed throughout law and policy making, and if properly adopted and implemented, should mean that very few issues would actually reach the stage of requiring mediation by the courts.

What should be the process for arriving at a UK Bill of Rights?

CAJ approaches the Bill of Rights process in the same way as that articulated by the Joint Committee in its July 2008 report:

“members of the public need to feel that any Bill of Rights is not a remote document, imposed on them by Government, but something they have helped create and which reflects their values.”

In our previous submission to the Committee we outlined the extensive consultation that has taken place on a Bill of Rights for Northern Ireland. Based on this experience, we would advise that any process of debate about a Bill of Rights:

- ❖ must reach the most vulnerable and marginalised on society who are in most need of rights protection;
- ❖ must be given sufficient time and be properly resourced in order to reach these groups and individuals; and
- ❖ must contain proper education on what human rights are, in an accessible format.

Regrettably, we do not believe the Green Paper is sufficiently accessible, or explanatory of what human rights are, to engender such a “bottom-up” debate.