

## **CAJ's submission no. S399**

# **CAJ's submission to the UK Bill of Rights Commission – A Second Consultation**

**September 2012**

### ***What is the CAJ?***

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organization 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 organization has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

## **‘A Second Consultation’ – Further points of clarification for the UK Bill of Rights Commission<sup>1</sup>**

CAJ has been working towards the creation of a Bill of Rights for Northern Ireland since the mid-1980’s. We have done so in the belief that a Bill of Rights specifically for Northern Ireland is a fundamental building block for peace and will form part of a process for ensuring that the human rights abuses committed in the past will not be repeated. CAJ welcomed the opportunity to share our expertise from the ongoing Northern Ireland Bill of Rights process with the Commission through both the engagement event in Northern Ireland<sup>2</sup> and our detailed written response with regards to same, in light of the UK Bill of Rights Consultation process.<sup>3</sup>

Indeed we believe that it was clear from the Commission’s engagement event in Belfast along with the majority of submissions from Northern Ireland, why the Bill of Rights for Northern Ireland, provided for in the 1998 Belfast/Good Friday Agreement is an ongoing separate process to this broader ‘national’ discussion. And indeed is also separate, and should be considered in this light, to the status and approach in relation to Scotland and Wales.

As we note that the Commission has requested respondents not to reiterate points already submitted in the first consultation we will keep our comments brief and Northern Ireland specific, thus not responding to each individual question.

## **No regression on Human Rights Act or the European Convention on Human Rights**

CAJ has no objections in principle to human rights protections being strengthened across the UK and would anticipate that any new UK Bill of Rights would seek to expand upon the rights already provided for in the Human Rights Act (HRA).

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<sup>1</sup> This response should be read in conjunction with our detailed response to the first consultation exercise see CAJ’s submission no. S367, CAJ’s submission to the UK Bill of Rights Commission – Discussion Paper: ‘Do we need a UK Bill of Rights?’ November 2011 at [www.caj.org.uk](http://www.caj.org.uk)

<sup>2</sup> Human Rights Consortium Roundtable meeting with UK Bill of Rights Commission, Unison Offices, Belfast, November, 2011

<sup>3</sup> Fn 1.

We are, however, concerned with the wording and tone of some of the questions<sup>4</sup> and the commentary, which suggests that the Commission is considering as a viable option the ‘repeal’ of the Human Rights Act (HRA). Similarly, we are of the opinion that some of the other questions, particularly question 2,<sup>5</sup> seem to stray into the realm of considering amending or ‘un’ incorporating the European Convention on Human Rights (ECHR) which we consider to be outside the remit of the Terms of Reference of the Commission. The ToR in fact state:

“The Commission will investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, and ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties.

It will examine the operation and implementation of these obligations, and consider ways to promote better understanding of the true scope of these obligations and liberties.”<sup>6</sup>

A considerate reading of this suggests that there is to be no clawing back but only ‘building’ on existing rights.

In Northern Ireland undisputedly human rights are at the heart of the Belfast/Good Friday Agreement, an international peace treaty.<sup>7</sup> The Agreement provides for a separate Bill of Rights for Northern Ireland (discussed below) and also commits the UK to incorporate the European Convention on Human Rights (ECHR) in Northern Ireland. These commitments were given effect in domestic law through both the Human Rights Act 1998 and the relevant provisions of the devolution statute (Northern Ireland Act 1998). Any regression through changes to either the Human Rights or Northern Ireland Acts, which do not meet human rights commitments in the Agreement, would be incompatible with this international treaty.

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<sup>4</sup> In particular questions Q1: What do you think would be the advantage or disadvantages of a UK Bill of Rights? Do you think that there are alternatives to either our existing arrangements or to the UK Bill of Rights that would achieve the same benefits? If you think that there are disadvantages to a UK Bill of Rights, do you think that the benefits outweigh them? Whether or not you favour a UK Bill of Rights, do you think that the Human Rights Act ought to be retained or repealed? and Q3: If there were a UK Bill of Rights, should it replace or sit alongside the Human Rights Act 1998?

<sup>5</sup> Q2: In considering the arguments for and against UK Bill of Rights, to what extent do you believe that the European Convention on Human Rights should or should not remain incorporated into our domestic law?

<sup>6</sup> See Commission on a Bill of Rights, *Terms of Reference* at <http://www.justice.gov.uk/about/cbr> (emphasis added)

<sup>7</sup> Treaty Series No. 50 (2000) Cm4705; the Agreement consisted of the British-Irish Agreement between the two sovereign states and the Multi-Party Agreement between participant political parties. The British-Irish Agreement (Article 2) affirms the solemn commitment of the UK government to support and implement the sections of the Multi-Party Agreement which correspond to it.

CAJ advises the Commission to keep this in mind when considering responses to these consultation questions.

### **The Northern Ireland Bill of Rights Process: Background Summary and Current Status**

CAJ has discussed this issue in detail in our first consultation response so our comments on are based loosely on questions 13 – 15.<sup>8</sup>

The constitutional and political circumstances in Northern Ireland should be a major factor for consideration by the Commission regarding a UK Bill of Rights. The Commission suggested two possible models for a UK Bill of Rights.<sup>9</sup> By not setting out the treaty based obligations and ongoing Northern Ireland Bill of Rights process, CAJ is concerned that the Commission has misunderstood or simply overlooked the constitutional and political circumstances in relation to Northern Ireland.

Given this CAJ would like to reiterate in summary (deferring to our first consultation response for the detail) the constitutional/legal and political circumstances with regards to fulfillment of our separate Bill of Rights process as one of the outstanding requirements of the peace settlement in this jurisdiction:

- The Northern Ireland Bill of Rights process is a separate and distinct process with origins in an international peace treaty, emanating from a conflict, as a mechanism to build a stable and peaceful future for all citizens.<sup>10</sup> The purpose of this Bill of Rights is to build on the ECHR and reflect the particular circumstances of Northern Ireland.<sup>11</sup>
- The Northern Ireland Human Rights Commission (NIHRC) was given the job of consulting and advising on the scope for defining, in Westminster legislation, rights that would constitute a Bill of Rights for Northern Ireland.<sup>12</sup>

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<sup>8</sup> Q13: To what extent should current constitutional and political circumstances in Northern Ireland, Scotland, Wales and/or the UK as a whole be a factor in deciding whether (i) to maintain existing arrangements on the protection of human rights in the UK, or (ii) to introduce a UK Bill of Rights in some form?

Q14: What are your views on the possible models outlined in paragraphs 80-81 above for a UK Bill of Rights?

Q15: Do you have any other views on whether, and if so, how any UK Bill of Rights should be formulated to take account of the position in Northern Ireland, Scotland or Wales?

<sup>9</sup> Para 80&81, Commission on a Bill of Rights, *A Second Consultation* at <http://www.justice.gov.uk/about/cbr>

<sup>10</sup> Strand 1 of the Agreement paragraphs 5(b-c) and 26 (a) respectively

<sup>11</sup> Rights, safeguards and equality of opportunity, paragraph 2.

<sup>12</sup> Rights, safeguards and equality of opportunity, paragraph 4; this was further supplemented in the Joint Declaration by the British and Irish Governments, April 2003, Annex 3, paragraph 2.

- The Agreement also reaffirmed the rights of all, recognizing the plurality of British-Irish nationality in Northern Ireland (both in terms of citizenship and national identity),<sup>13</sup> and was affirmed by referendum by the people of Northern Ireland and the Republic of Ireland.
- While the formulation around the Bill of Rights in the Agreement is complex, there is no doubt that a Bill of Rights for Northern Ireland was the objective. This was further supported in 2003 where the UK and Ireland stated in a joint declaration that once the NIHRC had given its advice the British Government is committed to bringing forward legislation at Westminster.<sup>14</sup> There was then widespread consultation on the Bill of Rights, a process providing input from the 'bottom-up' by rights holders themselves. As well as this, following the UK-Ireland St Andrews Agreement 2006, a further commitment to moving the process forward led to the convening of a Bill of Rights Forum to report to the NIHRC.<sup>15</sup>
- On December 10<sup>th</sup>, 2008 the Northern Ireland Human Rights Commission submitted its advice on a Bill of Rights for Northern Ireland to the Secretary of State.<sup>16</sup>
- On November 30<sup>th</sup> 2009 the Northern Ireland Office (NIO) issued a consultation document, *A Bill of Rights for Northern Ireland: Next Steps* which was to take into consideration the commitments made under the Agreement and the NIHRC advice.<sup>17</sup> The NIO published consultation responses, but has yet to make clear how it is to take forward finalization of the Northern Ireland Bill of Rights process.

CAJ strongly advises the Commission that the Northern Ireland Bill of Rights process is still ongoing with the NIO responsible for setting the next steps of this process in train. While the NIO have suggested on occasion that political consensus is required from the Northern Ireland Assembly on any Bill of Rights for Northern Ireland, such an approach would be incompatible with the Belfast/Good Friday Agreement as well as other treaty-based human rights principles, as we outlined in our first consultation response.

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<sup>13</sup> Part of Treaty Series No. 50 (2000) Cm 4705 which consists the British Irish Agreement Article 1 (vi) which includes this reference, as well as the Multi-Party Agreement between participant political parties: For All Island Referendum details see <http://www.ark.ac.uk/elections/fref98.htm>

<sup>14</sup> Joint Declaration by the British and Irish governments, April 2003, Annex 3, paragraph 2.

<sup>15</sup> See Bill of Rights Forum, Final Report, *Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland*, 2008 at [http://www.billofrightsforum.org/borf\\_final\\_report.pdf](http://www.billofrightsforum.org/borf_final_report.pdf)

<sup>16</sup> See Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland Advice to Secretary of State*, 2008 at <http://www.nihrc.org/documents/bill%20of%20rights/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf>

<sup>17</sup> See Northern Ireland Office, Consultation Paper *A Bill of Rights for Northern Ireland: Next Steps*, 2009 at [http://www.nio.gov.uk/consultation\\_paper\\_-\\_a\\_bill\\_of\\_rights\\_for\\_northern\\_ireland\\_next\\_steps.pdf](http://www.nio.gov.uk/consultation_paper_-_a_bill_of_rights_for_northern_ireland_next_steps.pdf)

In this regard CAJ welcomes the statement made last week by the First Minister, Peter Robinson MLA, which further clarifies this point of ambiguity, stating that the “responsibility of a Bill of Rights lies with the UK Government.”<sup>18</sup>

### **Moving Forward**

CAJ hopes that this submission assists the Commission in its consideration of the constitutional and political circumstances in Northern Ireland in relation to the Belfast/Good Friday Agreement and the stipulations of the other bilateral accords for the peace settlement. This in particular with regards to the Northern Ireland Bill of Rights process which has a very different genesis from the UK Bill of Rights discussion.

In addition we hope that it is clear that the Belfast/Good Friday Agreement guarantees incorporation of the European Convention on Human Rights into Northern Ireland law, and any regression in this regard would also be in breach of the Agreement.

We also suggest that the Commission in their final report recommend that the Northern Ireland Office and UK Government proceed with finalizing the Bill of Rights for Northern Ireland.

Committee on the Administration of Justice  
September 2012

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<sup>18</sup> Official Report (Hansard) Northern Ireland Assembly, Oral Answers, Peter Robinson MLA (AQO 2416/11-15 17 September 2012)