



CAJ's submission to the

**Northern Ireland Affairs Committee on a
Bill of Rights for Northern Ireland**

April 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

30th April 2009

Dear Northern Ireland Affairs Committee

Please find enclosed a series of papers and articles relevant to the Northern Ireland Affairs Committee request for evidence on the Bill of Rights for NI. CAJ would like to clearly state our disappointment that the Secretary of State for Northern Ireland has been so dismissive of the Northern Ireland Human Rights Commission's advice and ruled so much out of contention before the consultation has even begun. Such an approach raises the question as to whether the government was ever intending to fulfill its commitments as laid out in the Good Friday Agreement.

'The new Northern Ireland Human Rights Commission... will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland.'

CAJ has been working towards the creation of a Bill of Rights for NI since the mid-1980's and has done so with the belief that a Bill of Rights specifically for Northern Ireland will form part of a process for ensuring that the human rights abuses committed in the past will not be repeated. As such, a Northern Ireland Bill of Rights is a fundamental building block for peace, hope and security in an area tainted by conflict.

CAJ has sought international expertise on this issue in recent years and has invited many eminent scholars and politicians from around the world to discuss the benefits of this such as Professor Kader Asmal as a member of Parliament for the South African National Assembly, Mary Robinson in her capacity as UN High Commissioner for Human Rights, Justice Albie Sachs of the Constitutional Court of South Africa and Chief Justice Beverly McLachlin of the Canadian Supreme Court, along with many other politicians, academics and activists who have voiced clear support for such a Bill, noting in particular the contribution such a document would play in helping to contribute to peace and stability.

CAJ has also met regularly with local politicians and government ministers in NI and beyond to discuss and encourage debate on a Northern Ireland Bill of Rights. As such we are well placed to deliver accurate and well researched evidence to the Northern Ireland Affairs Committee and hope that this evidence is given due regard in this light. We have also delivered extensive training and awareness raising exercises to community groups and civil society. **The overwhelming response to this work, from all backgrounds in Northern Ireland has been in support for a strong Bill of Rights for Northern Ireland that reflects protected and enforceable social and economic rights.** It can not (and should not) be underestimated the feelings of alienation and neglect that ordinary people in Northern Ireland still feel who have suffered long-term from the conflict and as a direct consequence of this conflict, joblessness, poor housing, poor schooling, poor healthcare and both physical and mental impairments. This is an opportunity for the government to rectify these problems. To implement real and meaningful change. To lead in the process of securing rights for the most vulnerable in our communities.

Attached are a series of papers which we believe the NIAC will find useful:

1) Particular circumstances, October 2007

This paper was produced for the Bill of Rights Forum and outlines the clear meaning of the term as depicted in The Declaration of Support in the Good Friday Agreement:

‘The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of

reconciliation, tolerance, and mutual trust, *and to the protection and vindication of the human rights of all.*' (emphasis added)

2) CAJ's response to the NIHRC's advice, March 2009:

This outlines CAJ's position on the NIHRC's Bill of Rights advice. Overall CAJ found that the proposals were strong and robust and particularly welcomed the inclusion of justiciable social and economic rights and strong equality protections. Overall CAJ was impressed with the advice produced by the Commission, and particularly their foundation in international human rights standards which the government is already obliged to protect. **We now call on the government to respond to this advice in a comprehensive and timely fashion and allow time and resources for people in Northern Ireland to properly absorb and respond to the consultation. We particularly urge them to use the Commission's recommendations as a base upon which to build, rather than a point from which to roll back.**

3) Best Bill of Rights Guide, June 2008:

This paper spells out the absolute minimum that would be acceptable in a Bill of Rights for Northern Ireland, making anything less a futile and pointless exercise.

In conclusion, civil society has made inexhaustible attempts to redress discrimination and protect rights in NI and overwhelmingly supports a Bill of Rights for Northern Ireland. This strong and vibrant civil society work should be welcomed by the government and every attempt should be made to ensure that the people of Northern Ireland, as they have clearly stated, get what they deserve - a Bill of Rights to be proud of.

Please do not hesitate to contact us for any further information or explanation with regards your request for evidence on a Bill of Rights for Northern Ireland.

Yours sincerely

Mike Ritchie
Director

CAJ response to the NIHRC advice on the Bill of Rights

On 10th December 2008, the Northern Ireland Human Rights Commission (NIHRC) presented its long-awaited advice to the Secretary of State on a Bill of Rights for Northern Ireland. Coverage of this event was marred by a focus on the extent to which the all of the Commissioners were in agreement, which meant there was no real analysis or debate on the content of the proposals and the important impact they could have on the everyday lives of ordinary people.

A Bill of Rights must be a forward looking and impactful document - therefore it must positively promote and advance the protection of rights, not merely adopt a lowest common denominator approach. Based on this, and using international human rights standards as a starting point, CAJ developed last year a number of benchmarks against which it would measure any proposals for a Bill of Rights. This article will provide a brief analysis of the advice presented by the Commission against these benchmarks.

Process

Benchmarks

- While deadlines are useful in giving the process impetus, we have only one opportunity to get this right. Therefore, let us not draft something in haste that we repent on at leisure. Take the time to get the Bill right.
- Those who need rights most, are those who need to know their rights and need to have access to those rights. It is imperative that the language of the text, discussions around it and the outreach conducted on the Bill of Rights are accessible to everyone.

Comments

Perhaps inevitably, the document produced by the Commission is quite long and much of the language used in it is technical and inaccessible in nature. However, the Commission are now in the process of producing an accessible version of the proposals, which is a welcome move.

Form

Benchmarks

- A Bill of Rights should be a concise expression of our fundamental rights. It should be broad, robust and open to interpretation in line with changing times. Changing its interpretation can make it continually relevant in society.
- The Bill of Rights should not be easily amended; it is intended to provide a strong human rights framework in the face of any change.
- In order to promote coherence, accessibility and impact, CAJ advocate mainstreaming the rights of vulnerable groups where possible. This does not preclude separate additional rights for particular groups, for example, children and young people.
- In order to avoid undermining the Human Rights Act, CAJ advocates maintaining it as it is, and supplementing it with rights that are 'particular' to Northern Ireland. Similarly, the ECHR cannot be rewritten unilaterally; however it is possible to strengthen the rights it contains by adding to them.
- The implementation of a Bill of Rights is as crucial as its provisions - it is incumbent upon government to support and resource a programme of activities that will ensure the rights contained in the Bill of Rights are made accessible and available to all.

Comments

There are sections of the document that we believe are overly long and detailed, and where the document in our view strays into the realm of policy recommendations that belong more appropriately in the realm of politics or other legislation. So, for example, recommendations that would make elections subject to proportional representation as a right and that would establish an independent electoral authority do not in our view belong properly in a Bill of Rights.

CAJ was particularly disappointed by the section on implementation. Many of the excellent recommendations of the Bill of Rights Forum - which recognised explicitly the primary and fundamental responsibility for implementation lying with the government, particularly in terms of funding - have disappeared and the Commission instead recommends the establishment of a taskforce. There was total agreement by all the

political parties and civil society representatives on the Bill of Rights Forum on crucial implementation measures such as accessibility and the provision of litigation support through specific legal aid funding which we believe the Commission should have endorsed and supported.

Substance

Benchmarks

- It is imperative that the Bill of Rights makes provision for, or at least does not undermine the existing operation of, equality and fair discrimination in Northern Ireland.
- CAJ also believes that the Bill of Rights should not undermine the existing level of international protection for minorities by equating the term ‘communities’ with the term ‘minorities’. In the same vein, provision for members of a community to choose or not choose to be treated as such, represents a distortion of the Framework Convention.
- Fully justiciable social and economic rights are an essential element of a Bill of Rights for Northern Ireland. Those rights should be concise, strong and robust.
- Even the strongest rights can be undermined by weak enforcement mechanisms; all rights in the Bill of Rights need to be fully enforceable.
- The establishment of a Human Rights Court would send a clear symbolic message about the importance of human rights and the Bill of Rights. Similarly, however, it is important that all levels of the judicial system are involved in enforcing rights.
- All aspects of government activity - devolved, reserved and excepted - must be subject to the provisions of the Bill of Rights.

Comments

Overall CAJ found that the proposals were strong and robust and particularly welcomes the inclusion of justiciable social and economic rights and strong equality protections. However, there are a number of areas where we question whether the recommendation meets international human rights standards, or delivers on the particular circumstances of Northern Ireland.

The section on language rights is very limited, conferring very few stand alone rights to the use of and respect for language and referring instead to the obligations that already exist under the European Charter for Regional and Minority languages.

As regards victims' rights, there is a differentiation between victims of crime, who are offered some protection, and victims of the conflict whose rights are to be addressed in separate legislation. There can be little doubt that victims are a particular circumstance of Northern Ireland and as such it is disappointing not to see proposals to name and address their rights on the face of a Bill of Rights

As highlighted above, we welcome the inclusion of justiciable socio-economic rights in the proposals but do have some concerns as regards the level of protection, and particularly whether the language used regarding 'taking appropriate measures' meets the international standard.

The International Covenant on Economic, Social and Cultural rights obliges governments to "take steps...to the maximum of its available resources with a view to achieving progressively the full realization of the rights," a formulation that we believe should have been reiterated requiring as it does under international law evidence of proactive and positive steps towards realisation of the economic right in question. The Commission's formulation talks of taking "all appropriate measures" which does not impose the same level of obligation of continual improvement. In the Commission's defence, this was a formulation adopted by the Bill of Rights Forum, about which we also expressed concern.

In terms of specific social and economic rights, the proposed supplementary rights in relation to education fall significantly short of the standards set by the International Covenant on Economic, Social and Cultural Rights. Similarly, the recommendation put forward under the right to an adequate standard of living that "no one shall be allowed to fall into destitution" seems a more negative formulation than the international obligation of "continuous improvement of living conditions."

The recommendations in relation to children's rights again in many places seem weaker than the standards set by the UN Convention on the Rights of the Child, in particular imposing programmatic obligations on what are stand alone rights in the Convention, such as the right to play

and the right of children to be informed of their rights and have their views respected.

An extremely important recommendation made by the Bill of Rights Forum, on which there was again total agreement and support from all members, was in relation to the harmonisation with and non-diminution of international human rights obligations. The formulation of the Forum spoke of nothing in the Bill of Rights “adversely affecting” other rights and freedoms conferred by common law, statute, EU law or international law and agreements to which the UK is a party. The Commission’s formulation however lowers the standard to ‘not denying the existence’ of these obligations. While the Commission was of course free to take its own mind on the proposals put forward by the Forum, it is of concern that in doing so, some of these proposals which had total support have been weakened.

Conclusion

Overall CAJ was impressed with the advice produced by the Commission, and particularly their foundation in international human rights standards which the government is already obliged to protect. We now call on the government to respond to this advice in a comprehensive and timely fashion and allow time and resources for people in Northern Ireland to properly absorb and respond to the consultation. We particularly urge them to use the Commission’s recommendations as a base upon which to build, rather than a point from which to roll back.

Submission to the Bill of Rights Forum on the “particular circumstances of Northern Ireland”

Committee on the Administration of Justice (CAJ)

October 2007

There has long been a consensus on the need for a Bill of Rights for Northern Ireland. All the political parties, and many other organisations, have consistently expressed support for the idea. While the current Bill of Rights process springs from the Agreement, the idea long pre-dates it. It is widely accepted that a Bill of Rights is something which Northern Ireland should have.

The terms of reference given to the Forum flow from the Good Friday Agreement. The clear emphasis in the Agreement is on new beginnings and a fresh start. The Declaration of Support states:

‘The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, *and to the protection and vindication of the human rights of all.*’ (emphasis added)

Reference to the Bill of Rights is included in the section on ‘Rights, Safeguards and Equality of Opportunity’ and is mirrored in the terms of reference of the Forum

‘The new Northern Ireland Human Rights Commission... will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

This section of the Agreement structures the current debate. As argued, CAJ contends that this section must be approached as part

of the overall emphasis on a fresh start and the fundamental importance of the protection of the human rights of all. While it is clearly essential to justify the adoption of rights within the terms of the Agreement, an equally important issue in this debate must be which rights a modern Bill of Rights should contain, given comparative experience and international developments. There are several factors which support this reasoning.

The reference to the “human rights of all” has already been mentioned. The Agreement refers to rights supplementary to the European Convention on Human Rights, and the importance of drawing when appropriate on international instruments and experience. The instrument must ‘reflect’ the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities and parity of esteem. The two listed elements are among the matters for consideration. In CAJ’s view, the best way to ensure that the identity and ethos of both communities is respected, given the particular circumstances of Northern Ireland, is the creation of an inclusive Bill of Rights dedicated to the protection and vindication of the human rights of all.

The Agreement clearly envisaged the Bill of Rights as a building block in the process of resolving conflict in Northern Ireland. In our view, the Bill of Rights should be an attempt to identify the basic values that we are all committed to. This is particularly important in the context of a radically divided society like Northern Ireland. Recognising a common set of rights in a document that all can commit to is thus an important element in building a new society, providing the possibility of common identification by all with the basic document.

For this reason, it is important that the rights identified should not be too narrow in their focus. The narrower the range identified, the less likely it is that individuals will identify with the bulk of rights on the list. In particular, the more the rights specified are seen to appeal across the communities, the more likely it will be that rights can be seen as something that binds the communities together rather than divides them. There is now extensive international experience of this function of a Bill of Rights.

For this reason, we believe it could be misguided to focus a Northern Ireland Bill of Rights only on those rights that address specifically

Northern Ireland concerns in a narrow way. Such a Bill of Rights would focus on issues of language, discrimination, minority rights, and so on. Such a Bill of Rights, rather than providing a vision that unites across the communities, reinforces the idea that human rights are narrowly concerned as part of a trade-off between those communities. It separates rather than offering a vision of shared common values. Paradoxically, therefore, the broader the definition of protected rights, the more it addresses specifically Northern Ireland concerns successfully.

To put this in the language of the terms of reference: the more that the Bill of Rights reflects a broad-based view of what rights are protected, one that appeals across communities, the more the Bill of Rights will “reflect the principle of mutual respect for the identity and ethos of both communities and parity of esteem.” In doing that, it will address “the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience.” Too often, in the past, rights have been thought to generate antagonism and division. We miss something valuable, however, if we do not take advantage of the opportunity for rights to encourage trust and co-operation between groups that have previously been enemies. By setting out a common vision, a shared set of ideals in a Bill of Rights, we enable ownership of an important element of the Agreement across communities.