



A CHARITY REGISTERED IN ENGLAND NO. 1048335  
A COMPANY LIMITED BY GUARANTEE: REGISTERED IN ENGLAND NO. 2489161

13b Hillgate Place  
London SW12 9ES  
Tel: (+44) 020 8772 9161

Fax: (+44) 020 8772 9162  
e-mail: [birw@birw.org](mailto:birw@birw.org)

SPONSORS: Kader Asmal MP  
Michael Mansfield QC  
Baroness Kennedy of the Shaws QC

WEBSITE: <http://www.birw.org>  
REGISTERED OFFICE 52-58 Tabernacle Street London EC2A 4NJ

Andrea Wright  
Secretary  
Secretariat for the Commission on a Bill of Rights  
Postpoint 9:55  
102 Petty France  
London  
SW1H 9AJ.

31<sup>st</sup> October 2011

Dear Ms Wright,

**Re: Do we need a UK Bill of Rights?**

British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.

We are responding to the Questions for Public Consultation asked in the Commission on a Bill Rights Discussion Paper "Do we need a UK Bill of Rights?"

At the outset we note our concern regarding the members of the Commission: they lack diversity. Commission member Lord Lester QC has spoken publically on this matter referring to the dispiriting number of white, senior, QCs on the Panel.<sup>1</sup>

---

<sup>1</sup> Lord Lester was speaking at the annual Public Law Conference on 13<sup>th</sup> October 2011

Whilst the Commission did not appoint itself, once it became clear that its composition lacked balance, it should have made representations to the government in order to ensure that it was more representative. The Commission is certainly responsible for the inadequate form that the consultation process has taken in that it consists entirely of a posting on the Ministry of Justice website which, as barrister Tom Hickman has pointed out, is likely to provoke response from the "usual suspects" of already engaged lawyers, academics and NGOs.<sup>2</sup> Furthermore, the list of only four questions posed by the consultation demonstrates a degree of contempt for both that informed audience and the wider public. The introduction of a Bill of Rights for the UK would represent a major constitutional development and deserves to be treated with rather more gravitas than this brief list of vague questions indicates. The Commission's consultation cannot be said to be applying the principles of good consultation and falls even further short of what is required if it is to be held up as part of the civic engagement that ought to proceed the enactment of Bill of Rights.

Further, we also note with alarm that Professor Michael Pinto-Duschinsky, has argued in a Policy Exchange pamphlet that Britain should cut its ties with the Strasbourg-based European Court of Human Rights, as in his opinion it has "virtually no democratic legitimacy".<sup>3</sup> Such a view goes to the heart of the debate about a Bill of Rights for the UK and we consider Professor Pinto-Duschinsky's position on the Panel untenable since he cannot be considered to have an open mind on the question.

In response to the four questions asked in the Discussion Paper we respond briefly thus:

1. Do you think we need a UK Bill of Rights?

Yes. BIRW has advocated for a Bill of Rights for Northern Ireland since long before the commitments made in the Belfast/Good Friday Agreement. We see no legitimate obstacle to the proposals presented to the UK government by the Northern Ireland Human Rights Commission (NIHRC) in its Advice on Bill of Rights for Northern Ireland being applied accordingly to the rest of the UK, whilst providing safeguards for the particular circumstances of Northern Ireland as per the Agreement. As an important coda we note the importance of uncoupling the notion of rights from citizenship (as if certain non-citizens do not merit having rights) and from responsibilities which we argue should not and can not be legislated for. All

---

<sup>2</sup> <http://ukconstitutionalaw.org/2011/10/18/tom-hickman-the-bill-of-rights-commission-and-the-how-question/>

<sup>3</sup> <http://www.policyexchange.org.uk/publications/publication.cgi?id=225>

criminals are by definition irresponsible, but this does not mean that they should be denied the right to a fair trial.

## 2. What do you think a UK Bill of Rights should contain?

BIRW is broadly in favour of the majority of proposals provided in the Advice to government by the NIHRC. We strongly endorse what we have called a 'Convention plus' (or what the Parliamentary Joint Committee on Human Rights (JCHR) called 'ECHR plus')<sup>4</sup> UK Bill of Rights, meaning all those rights with the European Convention on Human Rights (the Convention) augmented by the panoply of fully justiciable social and economic rights provided in international covenants, conventions and treaties including the EU Charter of Fundamental Rights<sup>5</sup>. As we have stated in the past there are three guiding principles:

- a. that the recommendations should not simply replicate what is contained in the ECHR (and by implication in the Human Rights Act 1998);
- b. that they must not reduce the level of protection provided by the ECHR (and the Human Rights Act 1998); and
- c. that they should add to protection, not simply provide an alternative wording to ECHR provisions.<sup>6</sup>

The JCHR supplemented these principles in its Report on a Bill of Rights for the UK under the title "non-negotiables":

- "The guiding principles are that any modern UK Bill of Rights must:
- Build on the HRA without weakening its mechanisms in any way
  - Supplement the protections in the ECHR
  - Be in accordance with universal human rights standards
  - Protect the weak and vulnerable against the strong and powerful
  - Be aspirational and forward-looking
  - Apply to the whole of the UK geographically
  - Apply to all people within the UK
  - Provide strong legal protection for human rights
  - Enhance the role of Parliament in the protection of human rights."<sup>7</sup>

---

<sup>4</sup> <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtright/165/165i.pdf>

<sup>5</sup> <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:303:SOM:en:HTML>

<sup>6</sup> BIRW Final Response to the Forum on a Bill of Rights for Northern Ireland, June 2008

We believe this provides a robust, coherent, comprehensive and practical framework for any Bill of Rights in any democracy, especially a developed democracy such as that which exists in the UK.

3. How do you think it should apply to the UK as whole?

This question has been clearly addressed by the JCHR in its 2008 Report at paragraphs 14-20 of its recommendations. We agree with the statement of the JCHR at paragraph 17 of its recommendations:

“We accept that a Bill of Rights for this country should include indigenous rights, not in the sense of rights which can only be claimed by British citizens, but in the sense of rights and freedoms which have attained a status of fundamental importance in this country's traditions and which therefore merit inclusion in any catalogue of the rights, freedoms and values which are considered to be constitutive of this country's identity.”<sup>8</sup>

4. Are there any other views?

Yes. There are several important questions missing in this Discussion Paper. First and foremost, it should have asked: How do you think a Bill of Rights should be introduced? One of the flaws in the enactment of the Human Rights Act 1998 was that it was introduced by the legal and political elite through the ordinary Parliamentary process attesting to the supremacy of the Westminster Parliament which is not appropriate when enacting a Bill of Rights. A Bill of Rights is a national project requiring a national undertaking. The Advice on a Bill of Rights for Northern Ireland was produced after extensive consultation with the people of Northern Ireland. The same process must be undertaken when undertaking a proposed UK Bill of Rights and not left to the executive and legislature of Westminster.

Secondly, the consultation should have asked how a Bill of Rights would be enforced. Unless rights are justiciable, they are meaningless.

---

<sup>7</sup> op cit  
<http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf>  
page 91

<sup>8</sup> ibid

Thirdly, and crucially during a time of economic recession, views should have been sought on the resource implications of a Bill of Rights.

In conclusion, this is an inadequate consultation exercise conducted on the basis of two false premises (that rights vest only in citizens, and that rights are inextricably linked with responsibilities). If the Commission wishes to be taken seriously, it needs to take a leaf out of the Northern Ireland Human Rights Commission's book and take as its starting points existing human rights standards and norms and the aspirations and needs of all the people living in the UK. If the Commission is truly independent, it will reject the retrograde impulses of those who appointed the Commission who believe that we have "too many rights" already, and want to retreat from standards set in common with our European neighbours. There was a time when the UK was the standard-bearer for human rights, taking a leading role in drafting the Universal Declaration of Human Rights and many of the international human rights instruments which aspired to put an end to totalitarianism and oppression. There is opportunity here to add to that tradition and to the progress already achieved in the form of the Human Rights Act. We hope that the Commission will embrace that opportunity.

Yours sincerely,

Christopher Stanley  
Research and Casework Manager

