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Commission on a Bill of Rights
Postpoint 9.55102,
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Dear Commissioners,

JUST WEST YORKSHIRE'S RESPONSE TO THE CONSULTATION ON A UK BILL OF RIGHTS

JUST West Yorkshire is a racial justice, civil liberties and human rights organisation that has been working in the region since 2003. Human rights are important to us because they provide a legal framework that ensures that **everyone** has a right to live their life in dignity. Critically the Act has proven to be a powerful tool that organisations have been able to use to hold public services and the UK government to account, especially at a time when the austerity budget and the diminution of civil liberties are eroding our fundamental rights as humans and citizens.

In the face of continued evidence of human rights abuse by the UK government (see below), it is critical that the Act is retained in its present form, as a universal benchmark of our performance against other signatories. Given the propensity of governments to accrue power to themselves, it is our view that the HRA offers the best protection for individuals as it is free from executive interference and the vagaries of political ideology.

GROUNDNS FOR JUST WEST YORKSHIRE'S CONCERNS

1. JUST West Yorkshire is concerned about the lack of public knowledge about this consultation. With all the myths and spin about the Human Rights Act we are worried that it

will be the human rights sceptics and the misinformed whose voices will be heard. We think that as a key human rights organisation it is important that we register with you our concerns about this issue.

2. We are extremely concerned that the call to replace the Human Rights Act with a Bill of Rights will undermine the legal protection of human rights in the UK, and it will set a dangerous precedent internationally by legitimising attempts by despotic regime to opt-out of this 'universal' framework. Professor [Francesca Klug](#) OBE stated in The Guardian: "***We would be the first democracy in the world to introduce a bill of rights on the back of scrapping one already on the statute book. The UK would sit alongside Belarus as virtually the only country in Europe not to have incorporated the ECHR into domestic law.***"
3. We believe that the Coalition government's suggestion that a new British Bill of Rights would not necessarily replace the existing Human Rights Act but would recalibrate the rights and responsibilities for the UK begs the question why the HRA should be tampered with at all. If the idea is to enhance individual rights then our view is that this should constitute a framework that is an **adjunct** to the HRA. The Human Rights Act enshrines the notion of individual rights as indivisible and absolute. The UK Bill of Rights however co-locates the individual rights with the notion of individual responsibility, and in so doing gives politicians the power to define responsibilities in a way that legitimises the diminution of individual rights.
4. The Human Rights Act has an illustrious record of protecting us **ALL** from an arbitrary and over-reaching powers of the State. The vital constitutional checks and balances provided by the Human Rights Act together with a plethora of other UK legislation offer clear safeguards against those who abuse the rights enshrined within it. The denigration of the Act by some sections of the media and political classes on the basis that it is a charter for 'bogus immigrants, terrorists and extremists' carries with a real danger that the proposed alternative – the Bill of Rights – will create a framework that is exclusionary in practice, as it creates a hierarchy of rights in which some humans i.e. UK citizens are accorded superior rights over non-citizens. This would mean less protection for the vulnerable against injustice.
5. The **xenophobic** intent of the proposed Bill of Rights is clear from Cameron's pledge to replace the HRA with "a clear articulation of **citizen's rights** that **British people** can use in **British courts.**" JUST is concerned that Cameron's reference to 'British People' claiming

“citizens rights” in “British courts” appears to extend rights only to some *people* unlike the universal scope of the HRA. Cast in a rhetoric that has clear echoes of the language used by the British tabloid accusing ‘foreigners’ of using ‘foreign rights’ in ‘our’ domestic courts, JUST is concerned that the Bill of Rights proposal has been framed to appease the gallery of tabloid opinion, whom political parties of all hues depend on to deliver electoral victory.

6. We are also concerned that the proposal for a Bill of Rights is **politically motivated** in response to growing pressure from within the Tory party and its rank and file for the party to distance itself from Europe. We consider the warning from the president of the European Court to be apposite in this context i.e. he believes that the Conservative proposal for a Bill of Rights would create a complicated legal situation and threaten the protection currently offered by European human rights law if UK judges had exclusive oversight over its implementation.

7. There is also clear evidence that the Bill of Rights will be used as **an immigration and state security instrument** rather than as a framework enshrining rights per se. This is evident in article that Cameron wrote in the Sunday Times.
“It is time to replace the Human Rights Act with a British bill of rights that will enable ministers to act within the law to protect our society. If M15 tells the government that a foreign national is...a danger to national security, then the home secretary should be free to balance the rights of the suspect with the rights of society...and proceed with the deportation if necessary.”
We believe that there are **clear safeguards within current immigration, criminal justice and anti-terror legislation** to safeguard national security.

8. We are also extremely concerned that the safeguards enshrined under the present HRA upholding the rights of every individual to freedom from torture, inhumane and degrading treatment, will be compromised under the proposals for a domestic Bill of Rights, as it will provide **no get out clause from the absolute prohibition on torture**.

9. It was clear in Cameron’s speeches and the rhetoric of Tory Euro-sceptics that a British Bill of Rights will give politicians (and so Parliament) greater freedom to strike a different balance between individuals’ rights in the public interest. JUST believes that by increasing the power of the executive arm of the government it can potentially **undermine the role of the**

judiciary as the final ‘neutral’ arbiter in these matters, thereby removing a critical layer of checks and balances that has hitherto held governments to account.

10. JUST considers the arguments for a Bill of Rights promoted by the Conservative Party to be disingenuous based on the following observations made by established figures across the political spectrum:

- ***"I fundamentally disagree with him (Cameron) when he talks about the Convention being a foreign set of rights. This was largely drafted by British lawyers and surely it represents the things that are British values. The right to fair trial, freedom of speech, freedom of association - which of these is David Cameron going to junk?"*** (Attorney General, Lord Goldsmith speaking to Radio 4's World This Weekend)
- ***"The problem is striking the right balance ... You don't rewrite basic human rights because they seem inconvenient."*** (Lord Falconer, the Lord Chancellor)
- ***"European law would override it and we would be back where we are now, but in a bigger muddle perhaps."*** (Lord Tebbitt, interview with Sunday AM)

JUST's CONCERNS ABOUT THE UK BILL OF RIGHTS COMMISSION

Further to our concerns about replacing the HRA with the UK Bill of Rights, we also have grave concerns about the creation of the UK Bill of Rights Commission on the following grounds:

1. The Commission's terms of reference are extremely wide and appear to conflate three very separate lines of Inquiry which include:
 - a. advising on reform of the Strasbourg Court
 - b. investigating the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties
 - c. examining the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties

We do not believe that the Commission can undertake an objective consultation as there is already a presumption that the operation of the Strasbourg court needs 'reform.'

2. It has been reported that the Conservative Party may undertake a policy review separate from that to be conducted by the Bill of Rights Commission—presumably with a view to bringing forward, for the 2015 election, proposals more radical than those that would be

possible under the Commission's terms of reference. We believe that the Conservative Party's position on the matter effectively undermines the present process and represents a potential waste of taxpayer monies. We consider it appropriate that the Liberal Democrats obtain an undertaking that the Commission's findings will be upheld by the Conservative Party.

3. The public consultation on whether we need a Bill of Rights launched by the UK Bill of Rights Commission provides a non-controversial summary of rights, protections as they currently exist within the UK constitutional structure. However, JUST is concerned that the consultation process is skewed as it does not provide any information about what a "bill of rights" might involve or how such rights work in other countries. In contrast the Equality and Human Rights Commission provides a more detailed document produced in 2010.
4. We are concerned that the 9 people comprising the Bill of Rights Commission of mostly Queen's Counsel are not all human rights experts. We are concerned that a number of the members on the Commission have made clear that they want to reduce the essential protections this legislation currently provides. We believe this represents a conflict of interest and should be subjected to a review.
5. Lords Phillips and Hope – respectively the president and deputy president of the UK Supreme Court – have both argued recently that protections under the European Convention on Human Rights may have attained "constitutional" status. This means that if human rights were taken out of UK law, the courts may be able to apply them anyway, even if Parliament did not want them to. We believe that this issue needs urgent clarification as the consultation exercise could potentially be a red herring.

BRITAIN'S HUMAN RIGHTS RECORD

JUST believes that on the basis of the evidence outlined below, the HRA needs to be upheld because it has provided an effective framework to hold potential abuses by the UK government to account over the years. These have include the following:

1. In 2005 the Independent published an article '***Britain in the dock for human rights failures after more than 100 'guilty' judgments filed***'. The article described Britain as having one of the worst human rights records in Europe. The allegations concerned violations of the rights of mental health patients to the failure to protect children from unlawful corporal

punishment in the home. The article reported that of the 47 signatories to the European Convention on Human Rights, Britain had 107 guilty judgments - the sixth highest number - issued by the European Court of Human Rights in Strasbourg.

2. The European Convention on Human Rights in its third article, outlaws "torture and inhuman or degrading treatment or punishment." Yet, in the pursuit of the "War on Terror", the UK government has repeatedly violated and breached these principles. Suspected terrorists have been placed under indefinite house arrest in the form of "control orders", without trial and without charge, sometimes for years at a time. We have been complicit in the acts of torture and inhuman treatment perpetrated by the United States government at Guantánamo Bay.
3. A report by Amnesty International in 2010 criticised over use of control orders against terror and it condemned the UK government for taking part in so-called diplomatic assurance deals whereby it extradited people to countries such as Algeria or Jordan where they were likely to face torture.
4. On **6th October 2011** the Guardian reported that Sami al-Saadi (a Libyan dissident) had issued legal action against the British government for the years of torture he suffered as result of British involvement in his rendition to one of Gaddafi's jails. A number of Whitehall officials told the Guardian the renditions were the result of "ministerially authorised government policy". The case currently relies upon a number of documents that Human Rights Watch, the New York-based NGO, found last month in the abandoned office of Gaddafi's former intelligence chief, Moussa Koussa. Among them is a fax the CIA sent to Koussa in March 2004, which shows that the agency was eager to join in the Saadi rendition operation after learning that MI6 and Gaddafi's government were about to embark upon it. Saadi's wife and children were released after two months of being subjected to what he describes as "psychological torture". Saadi was held for six years and says he was repeatedly beaten, subjected to electric shocks and threatened with death. According to his claim against the British government, he was interrogated about Libyans living in the UK, shown photographs of a number of them, and on one occasion questioned by two British intelligence officers while one of his Libyan interrogators was present.
5. Saadi is not the only Libyan dissident to have found himself in one of Gaddafi's jails as a result of MI6's actions. On **5th September 2011**, the Daily Mail Online reported that, secret files and letters found in Libya appeared to show that British Intelligence services provided

information which led to the 'rendition' of a Libyan dissident, Abdel Hakim Belhadj. The letter in question appears to take credit for Britain's role: "I congratulate you on the safe arrival of Abu 'Abd Allah Sadiq," it said. "This was the least we could do for you and Libya to demonstrate the remarkable relationship we have built over recent years. Belhadj claims he was horrifically tortured and that he wasn't allowed to bath for three years and was hung from a wall and kept me in an isolation cell.

CONCLUSION

In the UK, we have long professed our commitment to upholding the fundamental liberties of all people. The right of *habeas corpus*, the right to a fair trial before a jury of one's peers, and the right to be presumed innocent until proven guilty are among the traditional foundations of our justice system. Therefore when considering the argument that we need to make rights more 'British' we must not forget that these rights were in the main drafted by British Lawyers with core British values. UK was one of the original signatories to the European Convention on Human Rights, and one of the first countries to ratify it (in 1951). Clearly this is already a very British document.

In September 2011 a Liberty/ComRes poll showed mass support (93%) for a law that protects rights and freedoms in Britain. 96% of respondents believed the right to a fair trial is vital or important, 90% believed the right not to be tortured or degraded is vital or important and 95% believed that respect for privacy and family life is vital or important. Yet less than a tenth of respondents (9%) remember ever having received or seen information from the Government explaining the Human Rights Act.

Equally, the European Convention on Human Rights and Fundamental Freedoms is the most important instrument of international law to emanate from the Council of Europe. Both the Council and the Convention itself were developments in reaction to the past horrific experiences of the Second World War.

Britain is intrinsically interwoven into the fabric of Europe, historically, diplomatically and economically and risks undermining and damaging the contribution of many countries, and most cultures, to the human rights values universally recognised throughout the world today if it ignores and turns its back on the international human rights treaties which virtually every modern bill of rights is based on.

A large number of key civil liberties and human rights organisations have voiced their concerns collectively regarding the proposed UK Bill of Rights. We must consider that no country anywhere has proposed to withdraw the human rights treaty from its legal framework so that it can introduce a Bill of Rights. We consider the Bill of Rights to be a retrogressive step and call on all politicians across the political spectrum to uphold the current Human Rights Act.

Submitted by Ratna Lachman, JUST West Yorkshire