

**Submission 53**  
**Des Browne MP, Northern Ireland Office**

**‘MAKING A BILL OF RIGHTS FOR NORTHERN IRELAND’**

In accordance with the Good Friday Agreement, the Government invited the Human Rights Commission to advise on the scope of a Bill of Rights for Northern Ireland. As you know, the Government has periodically, since the publication of ‘Making a Bill of Rights for Northern Ireland’, been asked to set out its position on the various issues in the document. It has always been our position that we will await final advice from the Commission before responding. That remains the case.

However, it is important that the Government’s silence is not interpreted as signaling approval. I thought, therefore, that I should set out some initial comments on issues of principle raised by the consultation paper. These are preliminary and are not intended to be exhaustive.

The consultation paper is impressive in its scope. It is clearly the product of an immense amount of work by a number of people, both within the Commission and those who participated in the working groups. I welcome the fact that the Commission is consulting widely on its proposals before submitting its advice formally.

Reconciliation and rapprochement

In the Belfast Agreement the two Governments and the parties committed themselves to ‘strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements.’ A key test which the Government will need to apply in considering proposals from the Commission for a Bill of Rights is the contribution they will make towards that process. While no group shall be allowed a veto in the area of fundamental rights, proposals which are highly contested or might tend to polarise opinion would need to be particularly compelling. I am sure that the Commission is right to seek to build the maximum possible measure of consensus on both sides of the community.

Policy recommendation vs rights

The Commission understandably has cast its net widely in making its recommendation. However, the effect of this is that there are many issues which appear to be policy recommendation to Government or the Executive, rather than rights, for example.

- issues relating to election, particularly change to the voting system and the franchise;
- limits on time to be spent on remand;
- a truth and reconciliation commission;
- procedural issues relating to education and health.

Decisions on matters like these are for democratically elected politicians to take, not the courts. It seems to me that it would be wrong to seek to tie the hands of Government Ministers or Ministers in the Executive in this way through a Bill of Rights made at

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Westminster. Indeed, given the absence of locally elected governance in Northern Ireland over the past 30 years, it could be argued that the ‘particular circumstances’ of Northern Ireland make it even more important for decisions to be taken by the Executive rather than by the courts on foot of Westminster legislation.

Of course, none of this precludes the Commission from pursuing such policy objectives outside the Bill of Rights process by making recommendation to the Government or the Executive.

#### Amendments to the ECHR/Human Rights Act

As officials have signaled to the Commission at earlier stages, departures from the ECHR or amendments to the Human Rights Act would raise fundamental issues of principle for the Government. We would need to be convinced that amending provisions which provide a uniform framework of rights, safeguards and enforcement mechanisms throughout the United Kingdom was necessary to enshrine rights which reflected the unique circumstances of Northern Ireland and which could not otherwise be ensured. This is a very high hurdle indeed and I do not believe that the consultation document takes sufficient account of the difficulty of amending these foundational texts.

#### Rights to reflect the particular circumstances of Northern Ireland

The consultation document rightly makes the point that the Agreement said that any supplementary rights were to reflect the particular circumstances of Northern Ireland. However, there are a number of areas where proposals appear to be made without reference to this test. For example:

- the recommendations on elections;
- the question of a right to accountable and transparent government;
- the proposed rights in respect of access to data;
- the recommendations relating to the rights of children;
- the recommendations in respect of social and economic rights.

#### Enforcement

There are a number of rights which in my view would be difficult to make justifiable, for example:

- ‘everyone is entitled to an adequate standard of living sufficient for that person and those dependent on him or her’;
- people being entitled to the ‘highest attainable standard of physical and mental health and well-being’;
- who will define ‘loving’ and ‘stable’ in your proposed 10(c)2. dealing with family life?;
- ‘all languages, dialects and other forms of communication are entitled to respect’;
- what constitutes “reasonable support” for witnesses/judges etc?

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- ‘material provision for each person should be sufficient to ensure esteem for his or her health and dignity’.

If such rights were included in a Bill of Rights, would a two-tier system in effect be created? It seems to me that the Bill of Rights as a whole could be damaged if all elements did not have equal status.

The Commission also asked whether any interested individual or body should be able to take a case. In my view it would be wrong to move away from the model adopted by the Human Rights Act in respect of the ECHR, since consistency of approach helps individuals better understand the way in which they can access their rights. The restriction of access to victims, rather than other interested parties, was clearly an important principle in framing the Convention. It is right that denials or abuses of rights are dealt with at the level at which they are most felt – the level of the individual.

I found the consultation paper persuasive on the disadvantages of a separate Human Rights Court. If we are genuinely to create a culture based on human rights, it seems important that these considerations should continue to be mainstreamed into all thinking.

The Commission also asked whether there should be a general qualification on the non-Convention rights in a Bill of Rights, rather than individual qualification. I favour the latter, since the former risks either over-qualifying some rights that might not merit it or, on the other hand, under-qualifying rights that should properly be qualified or restricted in some way. Public authorities, including the courts, would benefit from clarity on that score: I hope the Commission’s final advice will reflect that.

#### Entrenchment and amendment

The consultation paper identifies three possible methods, which might or might not be combined, by which the Bill of Rights might be amended or developed in the future. It is important that the role of Westminster is fully recognised here: the Agreement itself envisaged any additional rights being defined in Westminster legislation.

I hope that these comments are helpful. A discussion between the Commission and my officials – in the first instance – would be useful when the Commission has had the opportunity to consider these and other reaction to the consultation document.

**DES BROWNE MP**  
**Parliamentary Under-Secretary of State for Northern Ireland**