



Irish Traveller Movement in Britain

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Commission on a Bill of Rights second consultation

Submission by the Irish Traveller Movement in Britain

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About ITMB: The Irish Traveller Movement in Britain (ITMB) was established in 1999 and is a leading national policy and voice charity, working to raise the capacity and social inclusion of the Traveller communities in Britain. ITMB act as a bridge builder bringing the Traveller communities, service providers and policy makers together, stimulating debate and promoting forward-looking strategies to promote increased race equality, civic engagement, inclusion, service provision and community cohesion. For further information about ITMB visit www.irishtraveller.org.uk

Question 1: What are the advantages and disadvantages of a Bill of Rights and of keeping or scrapping the Human Rights Act?

We question how we are supposed to deliver a list of pros and cons for a UK BOR, when there are no draft proposals on the table. Such an exercise requires being able to compare what we might have to what we already have in the HRA, yet this is clearly not possible without concrete suggestions.

ITMB would question the original motivations of those suggesting we repeal the HRA with a UK Bill of Rights. In the run up to the 2010 general election the Conservative green paper, *Open Source Planning*, declared their intention to repeal the Human Rights, in response to the Act, in their opinion, allowing Gypsies and Travellers to go ahead with unauthorised development:

*'The Human Rights Act affects all the planning, eviction and enforcement decisions made by all public authorities, including councils and the police. It has made it more difficult and expensive to evict trespassers from private and public property, and has overridden planning law by allowing travellers to go ahead with unauthorised development. **We will replace Labour's Human Rights Act with a new British Bill of Rights, which will help address these problems.**'¹*

ITMB don't agree that replacing the HRA with a UK Bill of Rights is the answer to the issue of unauthorised Traveller sites, as expressed by the Conservatives in green paper no. 14. We would like to refer to oral evidence given to members of the Commission on a Bill of Rights on 24th July 2012, where Marc Willers (Barrister representing many Gypsies and Travellers in cases using the HRA) stated that:

'The HRA hasn't led to the granting of more planning applications/success of more appeals, whilst it is of assistance in enforcement cases where the Article 8 rights of Gypsies and Travellers are at stake. The HRA should not be tinkered with as it is a valuable statute which protects our fundamental rights, there is no need for a Bill of Rights.'

The ITMB would like to express grave concern that Gypsies and Travellers have been used as a scapegoat by certain sections of the Government, who have provided no evidence to support their claims that these communities were successfully using (and apparently abusing) Article 8 of the HRA in order to carry out unauthorised development. We believe that the HRA is the basic minimum for the protection of our rights in the UK – both in terms of the rights it contains and the way it works. We oppose any suggestion that the HRA should be scrapped or replaced. We have serious concerns about the wider political reasons for having these debates right now and the use of Gypsies and Travellers as an example for justifying repeal of the HRA.

¹ 2010, Conservative Party, *Open Source Planning*, p. 18
<http://www.conservatives.com/~media/Files/Green%20Papers/planning-green-paper.ashx>

We think that the Commission should recommend to the Government that rather than tinkering with the law they should undertake an appropriate and effective programme of public education on human rights and the HRA. This would tackle the myths and mis-information that exist. It would ensure that everyone, including the Government and public authorities know, what their rights and duties are under the HRA.

Question 2: Should the European Convention on Human Rights remain incorporated in UK law?

We oppose any action to un-incorporate the ECHR from UK law. This would take human rights protection in the UK backwards. The UK would still remain within the ECHR (the Government has been clear about its commitment to this) but people would no longer be able to access their rights here at home.

Gypsies and Travellers experience the lowest life expectancy and lowest educational attainment of any group in the UK. This is evidenced in a recent report by the ministerial working on tackling inequalities experienced by Gypsies and Travellers which noted that 20 per cent of Gypsies and Travellers living in caravans were legally classified as homeless and these communities experience high levels of discrimination.² The HRA is a key means by which these groups can seek equality with wider society, and justice in the face of widespread racism and discrimination.

If the ECHR was un-incorporated from UK law, whilst public bodies would still have to have due regard to the ECHR, those seeking justice for alleged violations of convention rights would not have direct access to these rights in UK courts. This would leave those whose rights are at risk, often the most vulnerable and marginalised in our communities (including Gypsies and Travellers), with no way to seek justice except to take a case in the European Court of Human Rights. This is a complex and expensive process which many people will not be able to access and for many it will simply be too long and too late to stop the abuse of their rights.

ITMB would also like to note that un-incorporating the ECHR from UK law would make convention rights even harder to access in the context of the ongoing backlog of 152,000 cases at the European Court of Human Rights.³

Question 3: If there were to be a UK Bill of Rights, should it replace or sit alongside the Human Rights Act 1998?

If better protection of our human rights is what is on the table then there is no need to repeal the HRA. We would like to refer to oral evidence given to members of the Commission on a Bill of Rights on 24th July 2012, where Martin Howe (Howe & Co Solicitors, ITMB Trustee) gave examples of the HRA giving Irish Travellers and Gypsies remedies in a number of cases:

² <http://www.communities.gov.uk/documents/planningandbuilding/pdf/2124046.pdf>

³ <http://www.bbc.co.uk/news/uk-politics-17762341>

'Unlawful raids by the Met police on caravan sites (Lynton Close) where homes were smashed and guns put in the faces of children (engaging Articles 3 & 8), a suicide by

an Irish Traveller in prison (Article 2), cases against the media for stereotyping the GRT community giving rise to privacy claims (Article 8 and Article 3 both with Article 14), barring Travellers from pubs – although under the Equality Act this is an example of attacks on dignity (in appropriate circumstances gives rise to Article 14 & 3/8 cases).'

Martin went on to question the Commission as to how the courts would deal with competing and conflicting judgments under two sets of rights legislation? (the ECHR and a BOR) He stated it would breed confusion.

ITMB believe that if a UK BOR were to be introduced, which seeks to build on the way rights are currently protected in law, it should simply sit alongside the HRA, as happens in other countries. It would be unprecedented for the UK to repeal a human rights law in order to bring in stronger protections. This leads us to ask questions about why repeal of the HRA is being suggested, and starkly reminds us that the political context of the Commission's work cannot be ignored. In reality we are not starting from a point where human rights, and the law which protects them, are viewed as a positive which can be built on. The Commission was created because there are fundamental disagreements within Government about whether we should keep or scrap the HRA, and about whether the legal protections currently in place have gone too far. We believe that the HRA represents the basic minimum for the protection of our human rights in the UK – both in the rights and the ways they are protected.

Question 4&5: Should the rights and freedoms in any UK Bill of Rights be expressed differently from the HRA and the ECHR?

ITMB do not think that the rights in the HRA or the ECHR should be re-written. The whole point of the HRA was to "bring home" the rights in the ECHR, making them part of our law and accessible and enforceable in the UK either through the duty on public authorities or as a last resort through our own courts. Re-writing the rights risks confusion. To support this we would like to refer to oral evidence given to members of the Commission on a Bill of Rights on 24th July 2012, where Martin Howe (Howe & Co Solicitors, ITMB Trustee) commented that:

'The convention rights are a set of living rights and are constantly being developed by our own common law judges. There is no need to further codify them, however what is needed is education, if people are educated about their rights the HRA will be an even greater part of our fabric.'

In the same meeting Marc Willers (Human rights Barrister) advised that:

'In the event of proposing any changes to the HRA, the Commission would have to ensure it remained in line with the rights laid out in the European Convention, otherwise it could lead to the HRA being diluted and confused.'

ITMB believe that uncertainty about new wording would lead to unnecessary court cases to go over old ground. This would be expensive and complex for people whose rights are at risk and would use up resources of public authorities having to appear in court. If re-writing is being suggested because there is an assumption that people do not understand or like the rights as they are currently written, we would suggest the Government invest its limited resources in promoting greater understanding of the HRA and ECHR.

Question 6&7: Do you think any UK Bill of Rights should include additional rights and what would be the advantages and disadvantages of additional rights?

ITMB are concerned that calls for additional rights will be taken as evidence of the failings of the HRA and calls for a new BOR. Part of upholding human rights is seeking to reach the highest possible standard of protection, and this will mean there are always new heights which can be reached, this includes striving for comprehensive protection of all our human rights, as set out in international law. **ITMB believe that whilst UK human rights can be strengthened to incorporate international conventions and covenants, for the purposes of this consultation any recommendations should not be interpreted as justification for replacing the HRA with a BOR.**

In the context of strengthening human rights in the UK we would like to refer to oral evidence given to members of the Commission on a Bill of Rights on 24th July 2012 by Siobhan Spencer (Derbyshire Gypsy Liaison Group) and Marc Willers:

‘(in the context of Article 14 and Article 8 of the HRA) there is the need for Gypsies and Travellers to have particular protection with regard to hereditary and cultural rights. The ECtHR case of Chapman v UK in support of cultural rights mentioned that the case of Gibb had been wrongly interpreted with regard to traditional Gypsies and Travellers, however emphasised it was okay as a benchmark for other Travellers.’

‘The Commission could propose the introduction of a right to respect for the traditional way of life of Gypsies and Travellers. However, Article 8 has already been interpreted in caselaw in both the UK and Strasbourg (Chapman) as encapsulating such a right. The Commission should advise the government to ratify and adopt other international conventions and covenants - e.g. Protocol 14 of the ECHR and the Optional protocol of the ICCPR’

ITMB would support the strengthening and development of human rights in the UK, with the guarantee that the Government would not use such information to take regressive steps, such as replacing the HRA with a BOR and/or un-incorporating the ECHR.

Q8: Should any UK Bill of Rights seek to give guidance to our courts on the balance to be struck between qualified and competing Convention rights?

ITMB believe that the Human Rights Act (HRA) already strikes an appropriate balance between qualified and competing rights, based on the principle of proportionality.

Question 9: Presuming any UK Bill of Rights contained a duty on public authorities similar to that in s.6 HRA 1998, is there a need to amend the definition of ‘public authority’ ?

The section 6 duty in the HRA is essential to ensure that human rights in the UK are not simply a paper promise or something that is only relevant in the court rooms. The HRA defines “public authorities” as including courts or any person performing a public function. Parliament made this broad to take account of the fact that a large number of private bodies, such as companies or charities perform public functions that used to be carried out by public authorities (like providing health and social care).

ITMB acknowledge that the law currently leaves immense uncertainty as to whether or not semi-state bodies such as Network Rail and the National Trust are or are not classified as public authorities. As highlighted in the submission by the Community Law Partnership, ITMB believe that this issue could be addressed in separate legislation and does not require a BOR to deal with it.

Aside from the discussion regarding the introduction of a BOR, ITMB believe that rather than tinkering more with the law what is needed is better education among public authorities to ensure that they know they are covered by the Human Rights Act.

Question 10: Should there be a role for responsibilities in any UK Bill of Rights? If so, in which of the ways set out above might it be included?

We would like to highlight that too often Gypsies and Travellers are inaccurately portrayed by politicians and the media as abusing their rights and not taking aboard their responsibilities. This very argument is used in the Conservative Party *Open Source Planning green paper* to justify replacing the HRA with a BOR. In the context of balancing rights and responsibilities, we would like to refer to oral evidence given to members of the Commission on a Bill of Rights on 24th July 2012 by Matthew Brindley (ITMB):

‘We would like to highlight that Gypsies and Travellers, as with the majority of society, have a healthy respect for both responsibilities and rights. Responsibilities are already built into the HRA and they don’t need to make specific reference to them. Certain sections of the media and politicians have a large appetite for representing Gypsies and Travellers as irresponsible. ITMB believe this is discussion created by the media and politics, not one based evidence and practice.’

Q11: Should the duty on courts to take relevant Strasbourg case law ‘into account’ be maintained or modified?

ITMB believe the law as it currently stands is sufficient and should not be changed. It is vital that UK courts can take into account rulings of the European Court, to ensure consistency in the understanding and application of human rights in countries signed up to the ECHR.

Gypsies, Roma and Travellers face high levels of discrimination across the 46 member states of the Council of Europe. ITMB believe it is crucial that UK courts

take 'into account' relevant case law (whether it is specific to judgments on Gypsies, Roma and Travellers or other relevant cases) to ensure a basic minimum standard of justice across countries, but also enabling UK courts to develop stronger protection of rights in the UK than the European Court may have given.

Question 12: Should any UK Bill of Rights seek to change the balance currently set out under the Human Rights Act between the courts and Parliament?

Our elected representatives have agreed a framework, based on universal rights – the Human Rights Act (HRA) - which the courts use when they are presented with individual cases. The HRA doesn't give judges the power to invalidate/strike down primary laws (Acts of Parliaments). This is because of an important principle called parliamentary sovereignty which means only parliament can make and end laws.

The HRA gives us a good compromise. The highest courts can issue a declaration which says a law is not compatible with the HRA and ECHR (there have been less than 30 in the 12 years the HRA has been around). Under this "democratic dialogue" it is then up to Parliament to decide whether to change the law and make it compatible. The courts can't force Parliament to change the law.

ITMB believe that the Human Rights Act strikes an appropriate balance between Parliament and the Courts and one which respects the constitutional principle of parliamentary sovereignty.

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?

ITMB is not in a position to comment in detail on questions relating to the devolved Governments.