



Commission on a Bill of Rights

Migration Watch Response to Public Consultation

The coalition government is committed to introducing a Bill of Rights, presumably to replace the present European Convention on Human Rights, though the government's precise intentions in this regard have not been made clear. Pursuant to this commitment the government has set up a new quango, the Commission on a Bill of Rights, which has recently published a Discussion Paper, inviting public comment on the subject. The paragraphs which follow are extracts from the response to the Paper submitted to the Commission by Migration Watch.

Extracts from Migration Watch Response

- 1 We are surprised that the discussion paper merely sets out a summary of the present UK law on human rights and asks whether a UK Bill of Rights is needed and if so, what it should contain. Taking into account the panel of distinguished human rights lawyers and others who make up the Commission, we would have expected that the paper might at least have put forward a few ideas for discussion, while not inhibiting the advancement of different ideas from the public.
- 2 On the basis of the experience since October 2000 of the operation of the Human Rights Act 1998 in decisions and appeals on immigration and asylum cases, MW is unequivocally opposed to the proposal that the UK should have its own national Bill of Rights, whether instead of or in addition to the European Convention on Human Rights (ECHR). It is now notorious that the making of the ECHR justiciable in the courts of the UK has made it much more difficult to remove people who ought to be removed. A recent Supreme Court case, *ZH (Tanzania) v. Secretary of State for the Home Department* [2011] UKSC 4 exemplifies this. The Court, overruling a previous decision by the Court of Appeal, ruled that a woman who in the Court's own words had "an appalling immigration record", including the making of several fraudulent asylum applications, could not be removed to Tanzania because this would have meant separating her from her children, contrary to the provisions of Article 8 of the ECHR which confers a right to respect for family life. [For a more detailed discussion on this case see Legal [Briefing Paper 8.50](#).]
- 3 The 1951 Convention relating to the Status of Refugees contains provisions which deny its protection to people who have committed serious crimes. Article 1F excludes any person with respect to whom there are serious reasons for considering that he has *inter alia* committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside the country of refuge. Article 33.1 prohibits the refoulement of a refugee to the frontiers of territories where his life or liberty would be at risk for a Convention reason, but Article 33.2 denies this benefit to a refugee if there are reasonable grounds for regarding him as a danger to the security of the country in which he is or if he has been convicted of a serious crime and constitutes a danger to the community of that country. In practice these very valuable exclusions have been in large measure nullified by the operation of the ECHR. There have been plenty of cases in which the removal of convicted criminals who would otherwise be caught by the operation of Article 33.2 could not be effected because they had acquired family ties in the UK and were able to claim

the protection of Article 8 of the ECHR. being very limited.

4 Another case of the baleful effects of the Human Rights Act 1998 on immigration control is the decision of the Court of Appeal in *Baiai* [2007] EWCA Civ. 478 followed by a decision of the House of Lords [2008] UKHL 53, which found that section 19 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was incompatible with Article 12 (right to marry) of the ECHR. Section 19 required the approval of the Home Secretary to any marriage to which one of the parties was a person subject to immigration control, but this was held to be incompatible because it applied to civil marriages only and not to Anglican church marriages. It was therefore discriminatory, and Article 14 of ECHR prohibits such discrimination. By this means the laudable attempt by the government and Parliament to defeat the pernicious evil of sham marriage, resorted to as a fraudulent means of securing entry into the UK for otherwise unentitled persons, was frustrated. [For an explanation of the current legal position relating to sham marriage, see legal [briefing paper 8.49](#).]

5 We feel very strongly that the government should be concentrating its efforts on mitigating and if possible removing the undesirable effects of the 1998 Act on proper immigration control, a subject discussed in the following paragraph. In more general terms, after the recent horrific riots in English cities, this is certainly not the time to be thinking about creating new rights. There is a manifest need for emphasising responsibilities rather than rights.

6 Paragraphs 25 and 26 of the Discussion Paper draw attention to the fact that the effective remedies which signatory states of the ECHR are required by Article 13 to provide are to be found in common law and statute law. This is a welcome assurance and immediately raises the question, why is there any need for a separate Bill of Rights. No doubt lawyers with tidy minds might find it attractive to have all basic rights neatly codified in a single document, but the experience of the operation of the Human Rights Act gives a very strong message that the enactment of a new Bill of Rights could lead to a continuation and indeed intensification of the kind of problems in immigration control and other areas, which cannot at the moment be foreseen and which should at all costs be avoided.

Harry Mitchell QC
Honorary Legal Adviser
Migration Watch UK
16 August 2011