



Submission by Wild Law UK to the Commission on a Bill of Rights

Introduction

Wild Law UK¹ makes the following submission to the Commission on a Bill of Rights, setting out our views on the need for and possible content of a UK Bill of Rights. This submission aims to contribute to the Commission's inquiry into the issues raised by its Terms of Reference.

The common belief of those who are members of Wild Law UK is that governance systems, including law, must be rapidly reoriented so that they support, rather than undermine, the long term health and integrity of the Earth. This approach is known as Earth-centred governance, which recognises that humans are just one of the many species and ecosystems inhabiting the earth, and that human well-being depends on the integrity of the Earth's ecosystems. It seeks to rebalance humans' relationship with the Earth system, so that the relationship contributes to the wellbeing of all species now and in the future.² In particular, Wild Law UK aims to secure rights of nature in law.

Wild Law UK consists of more than 100 UK-based supporters from the private, public and voluntary sectors as well as from academia, including lawyers, environmental campaigners, artists, scientists and economists.

¹ See: www.wildlawuk.org.

² For seminal reading on Earth-centred governance see for example, Berry, Thomas., *The Great Work*, Bell Tower, 1999 (who developed 'Earth Jurisprudence'), Cullinan, Cormac., *Wild Law*, (Green Books, 2011) 2nd ed., Stone, Christopher., *Should Trees Have Standing* (OUP, 2010), 3rd ed., and *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, edited by Peter Burdon (Wakefield Press, 2011)..

Responses to the Questions for Public Consultation

Q1: What do you think would be the advantages or disadvantages of a UK Bill of Rights? Do you think that there are alternatives to either our existing arrangements or to a UK Bill of Rights that would achieve the same benefits? If you think that there are disadvantages to a UK Bill of Rights, do you think that the benefits outweigh them? Whether or not you favour a UK Bill of Rights, do you think that the Human Rights Act ought to be retained or repealed?

As we explained in our submission to the first consultation, Wild Law UK believes that the UK's existing system for the protection of Human *and Environmental* Rights should be strengthened and expanded in scope, rather than diluted. The group feels it can only support the adoption of a UK Bill of Rights, if that Bill leads to stronger and more widely applicable protection of Human and Environmental Rights in the UK. Importantly, any future UK Bill of Rights should move away from anthropocentrism towards ecocentrism, include strong provisions protecting rights of non-human species and ecosystems and clarify that enjoyment and use of human rights is limited by humans' responsibility to respect rights of non-human species. Provided these conditions are met, the group is inclined to believe that the advantages of an express UK Bill of Rights would outweigh the drawbacks. In the group's view, the main advantage of a UK Bill of Rights would be a UK rather than European 'label' for the protection of fundamental rights which should include the protection of both a human right to a healthy and life-enhancing environment and the rights of nature. The UK label would have symbolic value and contribute to increasing the public's confidence in the domestic protection of fundamental rights. In addition, a UK Bill of Rights could strengthen public awareness and respect for people's and nature's rights. The UK Bill of Rights should include and build on the existing Human Rights Act. Wild Law UK does not advocate the repeal of the Human Rights Act 1998.

Q2: In considering the arguments for and against a UK Bill of Rights, to what extent do you believe that the European Convention on Human Rights should or should not remain incorporated into our domestic law?

As our answer to Q 1 implies, we believe that the European Convention on Human Rights should remain incorporated in UK domestic law. In addition, in order to meet contemporary progressive standards of protection for Human Rights and to close what we believe are deplorable gaps in UK Human Rights Law, the UK should ratify the Fourth, the Seventh, and

the Twelfth Protocol to the European Convention on Human Rights and incorporate the rights set forth in these Protocols³ into its domestic law.

Q3: If there were to be a UK Bill of Rights, should it replace or sit alongside the Human Rights Act 1998?

Provided that the new UK Bill of Rights encompasses the present content of the Human Rights Act and meets the conditions set out in our answer to Q1, Wild Law UK believes that there is no need for a separate Human Rights statute to sit alongside the UK Bill of Rights.

Q4: Should the rights and freedoms in any UK Bill of Rights be expressed in the same or different language from that currently used in the Human Rights Act and the European Convention on Human Rights? If different, in what ways should the rights and freedoms be differently expressed?

Wild Law UK believes that the scope of application of the actual Convention rights and freedoms (i.e. those which are in the European Convention on Human Rights and have been incorporated by virtue of the Human Rights Act) should not be expressed in different language. However, it is the group's opinion that the enjoyment and use of Human Rights ought to be limited by a duty to respect not just the Human Rights of others but also the rights of non-human species and ecosystems.

Q5: What advantages or disadvantages do you think there would be, if any, if the rights and freedoms in any UK Bill of Rights were expressed in different language from that used in the European Convention on Human Rights and the Human Rights Act 1998?

With a view to increasing the symbolic appeal of the future UK Bill of Rights, Wild Law UK believes that it should set out the actual rights in the operative clauses of the Act rather than in a Schedule to the Act.

³ The Fourth Protocol to the European Convention on Human Rights:

- Guarantees the right to liberty of movement and freedom to choose their residence to anyone lawfully within a State Party's territory;
- Prohibits the expulsion of a State Party's own nationals;
- Prohibits collective expulsion of aliens from a State Party's territory.

The Seventh Protocol to the European Convention on Human Rights provides for:

- Procedural safeguards relating to the expulsion of aliens;
- The right of appeal in criminal matters;
- The right to compensation for wrongful conviction;
- The right not to be prosecuted or punished twice for the same offence;
- Equality of rights and responsibilities between spouses.

The Twelfth Protocol to the European Convention on Human Rights provides that the enjoyment of any right set forth by law shall be secured without discrimination on any grounds such as sex, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. See <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=3&CM=7&CL=ENG>

Q6: Do you think any UK Bill of Rights should include additional rights and, if so, which? Do you have views on the possible wording of such additional rights as you believe should be included in any UK Bill of Rights?

1. Environmental Rights and Rights of Nature

As we explained in our submission to the first consultation, Wild Law UK advocates the inclusion of environmental and nature's rights in any UK Bill of Rights.

a) Adoption of a specific right to a healthy and sustainable environment

Wild Law UK would support the Joint Committee on Human Rights proposal to adopt a specific right to a healthy and sustainable environment.⁴ Wild Law UK believes that, as a minimum, the UK should adopt express provisions about Environmental Rights and Duties, such as those considered for inclusion in a proposed Bill of Rights for Northern Ireland.⁵ More specifically, the UK should enact provisions to ensure that:

1. Everyone has the right to an environment that is not harmful to their health or well-being; and to have the environment protected so as to foster the health and well-being of present and future generations, while promoting ecologically justifiable economic and social development.
2. Public authorities must adopt and enforce legislative and other measures to:
 - a) limit pollution and ecological degradation;
 - b) promote conservation and biodiversity; and
 - c) secure that any development is ecologically justifiable within environmental limits/planetary boundaries⁶.
3. Everyone has the duty to protect and improve the natural environment.

However, Wild Law UK's view is that the right to a healthy environment should be developed further, to recognise the *rights of Nature* to a healthy/ecologically balanced environment. We discuss this further in the subsequent section.

⁴In its 2008 report, *A Bill of Rights for the UK?*, the Joint Committee on Human Rights ("JCHR") specifically proposed a right to a "healthy and sustainable environment", see JCHR, *A Bill of Rights for the UK*, HL Paper 165-I, HC 150-I, p. 59, <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf>.

⁵ See NIHRC, *Advice on a Bill of Rights for Northern Ireland*, p. 50, and the explanation p. 126, http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf.

⁶ See Draft Declaration on Planetary Boundaries: Peter Roderick: <http://planetaryboundariesinitiative.org>

b) Recognising the rights of Nature

Wild Law UK believes that the UK should recognise that the most basic of human rights (i.e. a right to air, to water and to food) are intrinsically linked to *nature's* rights and without recognition of the intrinsic value of nature and the right of *all beings* to exist, to have a habitat and to fulfil their natural roles, the long term sustainability of humans (and all life) is at risk.

Provisions should be adopted to ensure that:

1. the rights of all ecosystems and species: to life, health, habitat and fulfilment of their ecological role, are recognised; and
2. potential conflicts between human rights and the rights of ecosystems and species are resolved in a way that maintains the integrity, balance and long term health of *all beings* involved.

This would be in line with the core operative clauses of the Universal Declaration of Rights of Mother Earth⁷ which is being considered on the international level,⁸ and whose adoption has the support of numerous NGOs.⁹ It would build on the recent recognition by the 'Rio + 20' Summit of the need for humans to live in harmony with nature.¹⁰ Furthermore, it would put the UK in step with legal developments abroad, e.g. the Rights of Nature provisions in the new Constitution of Ecuador,¹¹ the proposed Bolivian Law of the Rights of Mother Earth,¹² and local ordinances adopted by several municipalities in the U.S.¹³ In addition, it would reflect state-of-the-art ecology which considers the Earth as a single system in which all

⁷See Universal Declaration of the Rights of Mother Earth, Art.1(7), Art.2(1), 2(2), <http://therightsofnature.org/universal-declaration/>.

⁸ See UN Economic and Social Council, Study on the need to recognize and respect the rights of Mother Earth, 15th January 2010, <http://www.un.org/esa/socdev/unpfii/documents/E.C.19.2010.4%20EN.pdf>; UN General Assembly Resolution 65/164 on Harmony with Nature, <http://www.un.org/en/ga/president/65/initiatives/Harmony%20with%20Nature/A-RES-65-164.pdf>; Submission by the Plurinational State of Bolivia to the Ad-Hoc Working Group on Long-Term Cooperative Action at the 16th Conference of the Parties to the UNFCCC, http://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/bolivia_awglca10.pdf.

⁹ Including the Global Alliance for the Rights of Nature: <http://therightsofnature.org/founding-organizations/>

¹⁰ See UN Conference on Sustainable Development, The Future We Want, Paragraph 39, <http://www.uncsd2012.org/thefuturewewant.html>.

¹¹See the English translation, <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>.

¹² See John Vidal, *Bolivia enshrines natural world's rights with equal status for Mother Earth*, The Guardian, 10/04/2011, <http://www.guardian.co.uk/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>; for the proposal made by the Bolivian social movements, see <http://www.cambioclimatico.org.bo/derechosmt/082012/cartillaLME.pdf>.

¹³ See, e.g. the Pittsburgh ordinance, <http://www.celdf.org/downloads/Ordinance%20-%20Pittsburgh%20Protection%20from%20Gas%20Drilling.pdf>; for more examples, see <http://www.wildlawuk.org/rights-of-nature.html>

parts, including human beings, are almost as closely interrelated and as interdependent as the cells of the human body.¹⁴

2. Social Rights

Wild Law UK is inclined to advocate the inclusion of social rights in respect of access to housing, healthcare, education and access to affordable basic services along the lines set out in the International Covenant on Economic, Social and Cultural Rights. These rights should be enforceable in that public authorities should have an ironclad duty to make an assessment of the impact any draft primary or secondary legislation may have on peoples' enjoyment of these rights. Failure to prepare such an assessment should inevitably be a ground for suspending the application of primary legislation and for quashing secondary legislation.

3. Aarhus Rights

To enable effective enforcement of environmental law, the strengthened version of the HRA should incorporate and expand the 'Aarhus Rights' in regard of access to justice and the UK should take on board the Commission's concerns regarding the standards for reviewing the substantive legality of environmental decisions.

Art.9(2) of the Aarhus Convention,¹⁵ read in combination with Art.6(1)(a), (b) of the Aarhus Convention, requires Parties to provide access to judicial procedures for environmental NGOs and for members of the public with a sufficient interest to challenge the legality of any decision, act or omission relating to activities likely to have significant effects on the environment. These procedures must provide for adequate and effective remedies, and be fair, equitable, timely, effective and not prohibitively expensive. In implementing this proposal, due regard should be had to the findings and recommendations of the Aarhus Compliance Committee with regard to the Port of Tyne communication.¹⁶

The Committee has expressly raised concerns regarding the availability of appropriate judicial or administrative procedures in which the substantive legality of decisions, acts or omissions within the scope of the Convention can be subjected to review under the law of England and Wales. The UK narrowly avoided an express finding of non-compliance in regard of the standards for reviewing the substantive legality of environmental decisions. However, the Committee did reach the conclusion that the UK's legal costs regime breached

¹⁴ James Lovelock, *Gaia: A New Look at Life on Earth* (OUP, 2000).

¹⁵ See *infra*, fn. 18.

¹⁶ See Aarhus Convention Compliance Committee, Findings and Recommendations with regard to communication ACCC/C/2008/33, http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-29/ece.mp.pp.c.1.2010.6.add.3.as_submitted.pdf, paras 125 et seq., 136.

the obligation to ensure that procedures are not prohibitively expensive. The issues raised by the Committee's findings should be addressed as a matter of urgency.

4. Children's Rights

Wild Law UK is in favour of inclusion of the rights of children in a UK Bill of Rights. This should follow the provisions of the UN Convention on the Rights of the Child¹⁷ and, additionally, should recognise and make provision for the rights of future generations. Children and future generations require a healthy environment in which to flourish and this requires respect for all species living within an ecosystem. Wild Law UK therefore also advocates for recognition of the rights of future generations of all species.

5. Rights for Victims

Wild Law UK supports the recognition of the rights of victims of crime and encourages the use of restorative justice processes which amplify the voices of the victims and focus on healing the harm caused. In addition, Wild Law UK recommends widening the concept of "victim" to include species and ecosystems affected by environmental damage.

Q7: What in your view would be the advantages, disadvantages or challenges of the inclusion of such additional rights?

1. Environmental rights

a) Right to a healthy and life-enhancing environment

On closer examination, the inclusion of a right to a healthy and life-enhancing environment in any future UK Bill of Rights is not an overly radical step. By becoming a party to the 1998 Aarhus Convention, the UK expressly '[r]ecognis[ed] that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations'.¹⁸ We are aware that upon ratification of the Aarhus Convention the UK made a reservation to the effect that in the UK's understanding the recognition of this 'right' expressed an aspiration and that the legal rights each party undertook to guarantee were limited to access to information, public participation and access

¹⁷ See <http://www2.ohchr.org/english/law/crc.htm>.

¹⁸ Aarhus Convention, Preamble, cl. 7; see also Art.1 of the Convention which emphasizes that it is the objective of the Convention's operative provisions 'to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'; <http://www.unece.org/env/pp/treatytext.html>.

to justice in accordance with the provisions of the Convention.¹⁹ However, we believe that the inclusion of an expressly guaranteed right to a healthy environment in any future Bill would simply be an explicit recognition of the UK's *current aspirations*. Further, it would be in line with recent constitutional developments in major Commonwealth jurisdictions, i.e. in India²⁰ and South Africa,²¹ as well as with recent developments in Spain,²², Brazil,²³, Turkey,²⁴ and Russia.²⁵

b) Rights of Nature

Although the proposal to expressly recognize rights of nature may be considered radical, it brings about the overdue paradigm shift towards an ecocentric approach to environmental protection which was supported at a UN level as early as in 1982. During that year, the General Assembly of the UN adopted the World Charter for Nature²⁶ which acknowledged that mankind is a part of nature and that life depends on the functioning of natural systems.²⁷

¹⁹ Declaration made upon signature and reaffirmed upon ratification of the Aarhus Convention: “The United Kingdom understands the reference in article 1 and the seventh preambular paragraph of this Convention to the ‘right’ of every person ‘to live in an environment to his or her health and well-being’ to express an aspiration which motivated the negotiation of this Convention and which is shared fully by the United Kingdom. The legal rights which each party undertakes to guarantee are limited to the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention.” See

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&lang=en#EndDec.

²⁰ Arts.48A, 51A(g), 74 of the Indian Constitution.

²¹ S.24 of the Constitution of the Republic of South Africa, Act 108 of 1996.

²² Art.45 of the Spanish Constitution provides for a ‘right to enjoy an environment suitable for the development of the person as well as the duty to preserve it’

²³ Art.225 of the Brazilian Constitution declares that everyone has ‘the right to an ecologically balanced environment which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.’

²⁴ Art.56 of the Turkish Constitution sets forth a ‘right to live in a healthy, balanced environment. It shall be the duty of the State and the citizens to improve and preserve the environment and to prevent environmental pollution.’

²⁵ Art.42 of the 1993 Russian Constitution declares that everyone has ‘the right to a favourable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.’

²⁶ UN General Assembly Resolution 37/7 on the World Charter for Nature, <http://www.un.org/documents/ga/res/37/a37r007.htm>.

²⁷ The Preamble to the World Charter for Nature (Fn. 26) acknowledges that:

- Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients;
- Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity and for rest and recreation;
- Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action; and that
- Man can alter nature and exhaust natural resources by his action or its consequences, and, therefore, must fully recognize the urgency of maintaining the stability and quality of nature and of conserving its resources

The World Charter implicitly recognised the Rights of Nature in its provisions: the respect for every form of life, ensuring genetic viability on earth is not compromised, that Nature's right to habitat is protected and that humans' "utilization" of ecosystems and organisms should not compromise the overall integrity of life on earth.²⁸

Given the UK's limited compliance with the standards set out in the Charter and with our obligations under other legal instruments, Wild Law UK believes that expressly recognising the inherent rights of ecosystems and all life on Earth is necessary if we are to shift our values and behaviour to address the urgent ecological and social crises that we are currently facing.

2. Social Rights

We believe that there is an inextricable link between justice for nature and justice for people, which can best be addressed by including both rights of nature and social rights for people in any future UK Bill. We are aware that judicial enforceability of social rights raises important issues in relation to separation of powers and Parliament's budgetary powers. However, we believe that our proposal for limited enforceability strikes a reasonable balance between the rule of law and separation of powers.

3. Children's Rights

Including the rights of children and future generations would encourage citizens and government to take a more long term approach to decision-making and actions. Widening the consideration to include the future generations of all species would help to ensure a healthy environment for both current and future generations.

4. Rights for Victims

Broadening the understanding of "victim" would lead to greater respect for the rights of nature. It would also be in line with the proposed international crime of Ecocide as the fifth Crime against Peace. Ecocide is defined as "the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an

²⁸ Cl. 1 – 4 of the World Charter for Nature (Fn. 26), provide that:

- 'Nature shall be respected and its essential processes shall not be impaired.
- The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded.
- All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.
- Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.'

extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished”.

5. Other rights

Wild Law UK favours the inclusion of a right for communities (e.g. neighbourhoods, local councils) to manage their own affairs within the limits of the law, free from undue government or corporate influence, and in a way which observes environmental limits and allows ecosystems and natural communities to exist and flourish. This would reflect ideas originating in the U.S.A. where there is an emerging movement for Community Bill of Rights ordinances,²⁹ as well as the European Charter on Local Self-Government. The latter is an international treaty which was negotiated under the auspices of the Council of Europe and entered into force for the UK on 1st August 1998.

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? If so, in what way?

We note that this question specifically relates to ‘Convention rights’, i.e. to those rights which are in the European Convention on Human Rights and have been incorporated by virtue of the HRA 1998. We further note that the ECtHR applies proportionality where there is a clash between competing Convention rights. According to our submission to the first consultation, Strasbourg case-law should become binding. Beyond this, we do not see a need for statutory guidance.

Q9: Presuming any UK Bill of Rights contained a duty on public authorities similar to that in section 6 of the Human Rights Act 1998, is there a need to amend the definition of ‘public authority’? If so, how?

As stated in our first submission, Wild Law UK believes that the provisions in the HRA regarding what constitutes a ‘public authority’ should be expanded to include those entities that have assumed responsibility in the public interest. In addition, Wild Law UK advocates that s.6(5) of the Human Rights Act should be amended to ensure that any conduct in the execution of a person’s public function will invariably be regarded as having a public nature.³⁰

²⁹<http://www.celdf.org/section.php?id=39>.

³⁰ A new cl.2 should be added to s.6(5) as follows: ‘Any action taken in the execution of such an authority’s public function is invariably of a public nature.’

Q10: 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?

Wild Law UK believes that any UK Bill of Rights should provide for human rights to be exercised in accordance with humans' responsibilities to nature. More specifically, it should include provisions to the effect that:

- Every human is responsible for respecting and living in harmony with nature;
- Human beings and all public and private institutions must ensure that the pursuit of human wellbeing contributes to the wellbeing of nature now and in the future.

This would bring the UK in line with provisions of the Draft Universal Declaration of the Rights of Mother Earth³¹ about human beings' responsibilities towards nature. In addition, this proposal reflects and builds on the recognition by the UK on ratifying the Aarhus Convention that 'adequate protection of the environment is essential for the enjoyment of basic human rights', and that 'every person has [...] the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations'.³²

Q11: Should the duty on courts to take relevant Strasbourg case law 'into account' be maintained or modified? If modified, how and with what aim?

As pointed out in our first submission, S.2 of the Human Rights Act should be amended to dictate that the jurisprudence of the ECtHR is binding on the UK domestic courts. This would ensure that the commitments arising from cl. 4.c) of the Interlaken Action Plan is fully implemented.

Q12: Should any UK Bill of Rights seek to change the balance currently set out under the Human Rights Act between the courts and Parliament?

We believe that the balance which the Human Rights Act currently strikes between the courts' and Parliament's powers should be changed. At present s. 4 of the Human Rights Act 1998 authorizes courts to make a declaration of incompatibility where they find that an Act of Parliament breaches a Convention right. As a result, the incriminated Act of Parliament

³¹ See *supra* at footnote 7 et seq.

³² Aarhus Convention, *supra* footnote 18, Preamble, cl. 6 and 7: "[The parties to this Convention ...] Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself, Recognizing also that every person has [...] the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations, [...] have agreed as follows.

remains enforceable, including in the case in dispute in the course of which the declaration of incompatibility was made. It is then a matter for the Government and / or Parliament to decide whether to let the incriminated Act stand or to amend it with a view to removing the incompatibility.

The original justification for this arrangement was that it should be for the elected bodies to deal with the consequences of any judicially ascertained clash between an Act of Parliament and a Convention Right. However, in view of the fact that under the first-past-the-post electoral system Governments are routinely formed by parties which lack the support of a majority of voters,³³ Wild Law UK is inclined to doubt whether any UK government ever has a strong democratic mandate. In addition, Governments – unlike independent judges – tend to make decisions with a view to safeguarding their own reputation. When it comes to protection of people’s and nature’s rights, Wild Law UK is inclined to put greater trust in independent judges than in politicians. For this reason and with a view to strengthening the rule of law, Wild Law advocates a discretionary power for Courts to suspend the enforceability of any Act of Parliament which has been found to breach rights guaranteed by any future Bill of Rights. The suspension should be temporary until there has been a decision by the Government or Parliament as to what to do about the incompatibility. There should be a presumption in favour of suspending the Act in cases where there has been a particularly severe infringement.

In addition, we advocate judicial bodies of first instance, including county courts and tribunals, to be given authority to make a request to the Supreme Court (or its equivalent in the devolved nations) for a ruling on whether a piece of secondary legislation or a measure taken by a public authority breaches any rights guaranteed by a future UK Bill of Rights. At present, a person who believes that their rights have been infringed will frequently need to litigate their case all the way up to at least the Court of Appeal, or even the Supreme Court – a process which is costly and time-consuming. In addition, some strong cases of rights having been infringed, which are made in tribunals or county courts, may go unnoticed / unsanctioned. This may happen because courts of first instance and tribunals are bound by outdated precedents which were decided prior to the entry into force of the HRA or any future Bill of Rights, and because complainants frequently will lack the time and resources to

³³ For instance, in 1979 Margaret Thatcher came to power with the support of just 43.9% of the electorate. Even at the height of her power, just having led Britain to victory in the war for the Falklands, she did not win more than 42.4% of the votes cast in the 1983 general election. Similarly, Labour regained power in 1997, despite winning only 43.2% of the votes cast, see <http://www.politicsresources.net/area/uk/uktable.htm>.

appeal. In view of these issues and so as to strengthen the rule of law, there should be a system of preliminary reference to the Supreme Court modelled on article 267 TFEU.

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?

We are by and large in favour of the model set out in paragraph 80 of the consultation document. Any UK Bill of Rights should set a nationwide minimum standard, i.e. that its substantive content should have effect:

- In relation to matters affecting England only;
- Against UK institutions in regard of reserved matters;
- Against the devolved institutions in respect of devolved matters.

The UK Bill of Rights should include a statement that acknowledges the competence of the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales to enact legislation conferring additional rights to meet the particular needs of those countries. Any additional rights passed by the devolved legislatures would, by virtue of the existing devolution statutes, relate to devolved matters only.

Reading, 30/09/2012,

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