

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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The Rt. Hon. David Cameron
Prime Minister
10 Downing Street
London, United Kingdom SW1A 2AA

Dear Prime Minister Cameron:

I write on behalf of the New York City Bar Association to convey serious concerns over recent proposals by the government of the United Kingdom to repeal the Human Rights Act 1998 and suggestions that the government might even withdraw from the European Convention on Human Rights altogether. If implemented, these actions not only would weaken domestic human rights protections within the United Kingdom but also would threaten the effectiveness of the European Convention system—a critical set of institutions that have secured human rights for individuals across Europe and have been a model for regional human rights protection throughout the world. We strongly urge your government not to proceed with these ill-advised proposals.

The Association is an independent nongovernmental organization of over 24,000 lawyers, judges, law professors, and government officials from the United States and over 50 other countries. Throughout its 145-year history, the Association has consistently maintained that respect for the rule of law is essential in all jurisdictions and has a long history of investigating and reporting on human rights concerns around the world, including within the United States, through the work of its International Human Rights Committee.

Passed with overwhelming, multi-party support in 1998, the Human Rights Act is a landmark statute that incorporates into domestic law the protections set forth in the European Convention on Human Rights, including fundamental rights such as the protection against torture and inhuman treatment, the right to free speech and peaceful protest, the right to a fair trial, and the presumption of innocence in criminal proceedings. Notwithstanding suggestions to the contrary by government officials and other critics, these rights are by no means foreign to the United Kingdom. To the contrary, the rights protected by the Human Rights Act have long been enshrined in UK domestic law and other international treaties to which the United Kingdom is a party, such as the International Covenant on Civil and Political Rights.

It has been widely reported that the government of the United Kingdom plans to “scrap” the Human Rights Act, ostensibly to limit the effect of judgments by the European Court of Human

Rights within the United Kingdom. However, the premises underlying this proposal are unfounded. While the Human Rights Act obliges domestic courts to “take into account” judgments of the European Court, it does not require UK courts to enforce the European Court’s judgments. If there is a conflict between UK domestic law and the European Court, domestic courts must note that “incompatibility” to Parliament—but, ultimately, Parliament retains its sovereignty and is the only body that may decide whether the law in question should be changed.

Moreover, another claim that has been advanced by government officials and other critics—that the Human Rights Act shields alleged terrorists from deportation—is both overstated and misleading. The Human Rights Act does not prevent the United Kingdom from deporting all foreign criminals or foreign terrorism suspects. To the contrary, this *nonrefoulement* obligation only arises if the individual is genuinely at risk, if deported, of facing the death penalty or being subjected to torture or inhuman treatment. Indeed, it bears emphasis that the United Kingdom is also a party to both the International Covenant on Civil and Political Rights and the UN Convention Against Torture—each of which includes a similar *nonrefoulement* obligation. Accordingly, repeal of the Human Rights Act would not alter the United Kingdom’s legal obligations concerning deportation of terrorism suspects who face a risk of the death penalty or inhuman treatment in the country of destination.

The Human Rights Act provides a critical avenue to assert claims in support of human rights in domestic courts within the United Kingdom. The Act’s very existence demonstrates that the United Kingdom considers certain universal principles of human decency to be fundamental obligations worthy of protection. In deeming itself accountable for these fundamental rights, the United Kingdom also sets an important example for other nations around the world. For these reasons, the Association is greatly troubled by recent proposals to replace the Human Rights Act with a “British Bill of Rights.” In theory, the new statute could be designed to strengthen existing human rights protections. However, given the nature of the government’s criticisms of the Human Rights Act, it seems more likely that the contemplated “British Bill of Rights” would weaken current legal standards and represent a step backwards in the protection of human rights.

Finally, regardless of what any replacement Bill of Rights might look like, a decision to repeal the Human Rights Act could trigger a variety of negative consequences internationally, and particularly in Europe. If the government were to repeal the Human Rights Act and to dispense with the Act’s obligations to consider the judgments of the European Court of Human Rights, other countries—such as Russia, Turkey, Hungary, Azerbaijan and Ukraine, whose citizens and residents greatly benefit from the role of the European Court—may follow suit in refusing to afford respect to the European Court’s judgments. Accordingly, the United Kingdom’s effective withdrawal from the European human rights regime would not only undermine the international reputation of the United Kingdom and its domestic human rights standards, but also could undermine the well-being of individuals across Europe who rely on the European Convention and European Court for protection.

The government’s proposals to scrap the Human Rights Act are particularly disappointing given the important role that the United Kingdom and its citizens have played in promoting respect for human rights in Europe and around the world during the post-World War II era. Indeed, British lawyers played an active role in the framing of the European Convention itself, to which the United Kingdom acceded in 1951. Especially given the potential for backtracking from this longstanding leadership role on human rights issues, we concur with the recent observations by

the U.N. High Commissioner for Human Rights and the U.N. Special Rapporteur on Torture, respectively, that the government's threats to withdraw from and distance itself from the European human rights regime are both "profoundly regrettable"¹ and "dangerous and pernicious."²

The Association urges the government of the United Kingdom neither to scrap nor to weaken the Human Rights Act, but rather to preserve and build upon the longstanding record that the United Kingdom and its citizens have played in promoting adherence to human rights obligations at home, in Europe, and around the world—a record that the Human Rights Act itself represents and embodies.

Respectfully,



Debra L. Raskin

cc: His Excellency Matthew Rycroft
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¹ Owen Bowcott, *Senior UN Official Warns Against UK Plans to Scrap Human Rights Act*, GUARDIAN, Oct. 12, 2015, <http://www.theguardian.com/law/2015/oct/12/un-official-warns-against-uk-plans-scrap-human-rights-act>.

² Mark Townsend, *UN Torture Investigator Says UK Plan to scrap Human Rights Act is "Dangerous,"* GUARDIAN, Oct. 3, 2015, <http://www.theguardian.com/law/2015/oct/03/un-criticises-british-government-bill-of-rights>