

Bill of Rights Forum

Final Report

Recommendations to the Northern Ireland Human
Rights Commission on a Bill of Rights
for Northern Ireland

Bill of Rights Forum

Final Report

Recommendations to the Northern Ireland Human
Rights Commission on a Bill of Rights
for Northern Ireland

31 March 2008

Bill of Rights Forum

www.billofrightsforum.org

Interpoint Centre
20-24 York Street
Belfast
BT15 1AQ

Professor Monica McWilliams
Chief Commissioner
Northern Ireland Human Rights Commission
39 North Street
Belfast
BT1 1NA

31st March 2008

Dear Professor McWilliams

RECOMMENDATIONS OF THE FORUM ON A BILL OF RIGHTS FOR NORTHERN IRELAND

As Chair of the Bill of Rights Forum, and in accordance with the Forum's terms of reference, I am pleased to transmit to the Northern Ireland Human Rights Commission the Forum's recommendations on a Bill of Rights for Northern Ireland.

The recommendations are the result of deliberations by the Forum, which has met 18 times in plenary session since December 2007, and by its seven working groups, which met regularly between July 2007 and February 2008 to consider specific areas of the Bill. I am grateful to all Forum members, and working group members, for the commitment they have shown to the task.

On behalf of the Forum, I wish the Northern Ireland Human Rights Commission well as it considers its advice to the Secretary of State.

Yours sincerely



Chris Sidoti
Chair

BILL OF RIGHTS FORUM FINAL REPORT

INDEX

Chapter 1	INTRODUCTION	p 5
Chapter 2	INTERPRETING THE FORUM'S TERMS OF REFERENCE	p 11
Chapter 3	RECOMMENDATIONS RELATING TO THE PREAMBLE	p 17
Chapter 4	RECOMMENDATIONS RELATING TO SUBSTANTIVE RIGHTS	p 25
Chapter 5	RECOMMENDATIONS RELATING TO TECHNICAL PROVISIONS	p 163
Chapter 6	IMPLEMENTATION	p 181

Appendices

CHAPTER 1. INTRODUCTION

Background to the establishment of the Forum

Under the Multi-Party Agreement made on 10 April 1998 (also known as the Belfast or Good Friday Agreement) responsibility was given to the Northern Ireland Human Rights Commission (NIHRC), itself established under the Agreement, to

consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill Rights for Northern Ireland.¹

The *Northern Ireland Act 1998* established the Commission and included advising on a Bill of Rights for Northern Ireland among its statutory responsibilities.²

Upon its commencement in 1999, the NIHRC began preparatory research and then undertook a very broad consultation to take forward this remit. It published its major consultation document *Making a Bill of Rights for Northern Ireland* on 4 September 2001, setting out a draft Bill of Rights for Northern Ireland. In this paper the NIHRC said “in so far as a narrow interpretation of paragraph 4 might be thought to rule out the recommendation of certain rights, the Commission is satisfied it can properly rely on its general power under 69(3)(b) of the Northern Ireland Act 1998 to make recommendations for the better protection of human rights in Northern Ireland”³. This document was extensively debated and there was a proposal for a ‘roundtable’ in 2003 to involve the political parties, but at the time it was not possible to reach agreement on that proposal. Accordingly, the Commission then, in April 2004 produced an update of the consultation *Progressing a Bill of Rights for Northern Ireland: An Update*. For various reasons the process did not go further at that time.

The Government first committed itself to establishing a round table forum on the Bill of Rights in the Joint Declaration of 2003. The proposal was strongly advocated and supported by civil society. The St Andrews Agreement of 13 October 2006, which formed the framework for restoring devolution in Northern Ireland, then provided the necessary cross-community political support to establish the roundtable or forum. At St Andrews, the Government committed to establish a forum on a Bill of Rights and to convene its first meeting in December 2006.

After a brief consultation period the Government established the Northern Ireland Bill of Rights Forum with 28 members: 14 from the five main political parties, and 14 from sections of civic society.⁴ The Government also formulated the Forum’s terms of

¹ Paragraph 4 of “Rights, Safeguards and Equal Opportunity”, in Strand Three of the Multi-Party Agreement of 10 April 1998.

² Section 69(7).

³ *Making a Bill of Rights for Northern Ireland*, September 2001, p10

⁴ The names of all Forum members, alternate members, substitute members and of all others associated with the work of the Forum are in Appendix 4.

reference, based on the provisions of the 1998 Agreement⁵. An independent, international chairperson, Professor Chris Sidoti, was appointed in late March 2007. The Forum then began to meet regularly from April 2007.

Terms of reference

The Forum was required

To produce agreed recommendations to inform the Northern Ireland Human Rights Commission's advice to Government on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international human rights instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill Rights for Northern Ireland.

Members and observers

The Forum had 28 members and an international Chair.

Of the fourteen political seats the Democratic Unionist Party, Sinn Féin, the Ulster Unionist Party and the Social Democratic and Labour Party were each allocated three. The Alliance Party was given two seats.

Of the fourteen civic society seats, the churches, the trade unions and the business sector were each allocated two. One seat was allocated to human rights non-government organisations and the remaining seven positions were allocated to community and voluntary organisations. The representatives from the community and voluntary organisations were to bring perspectives from the following sectors:

- children and young people
- people with disabilities
- ethnic minorities
- older people
- people of different sexual orientations
- women
- the community/voluntary sector as a whole.

The Northern Ireland Office made contact with the main representative groups for each sector and asked them to agree a representative to reflect views from that sector.⁶

⁵ See *A Forum for a Bill of Rights for Northern Ireland – Response to Consultation* issued by the Northern Ireland Office 12 December 2006 - para 9

⁶ Ibid para 22

Six of these seven sectors (all but the community/voluntary sector as a whole) nominated two alternating members to share their position so as to ensure a broader representation of the sectors.

The Forum granted official observer status to nine organisations:

- The Northern Ireland Human Rights Commission
- The Equality Commission for Northern Ireland
- The Northern Ireland Commissioner for Children and Young People
- The Human Rights Consortium
- Wave Trauma Centre
- The Green Party
- The Loyal Orange Institution
- The Ulster-Scots Heritage Society and
- The Caleb Foundation.

The processes of the Forum

To fulfil the commitment made at St Andrews, the Hon David Hanson MP, Minister of State with responsibility for human rights, chaired the first meeting of the Forum on 18 December 2006. He was very clear that future business and working processes would be for the Forum, as an independent body, and its Chair to arrange.

The first few meetings were taken up largely with discussion of the terms of reference⁷ and the Forum's processes.⁸

At its second meeting, on 4 April 2007, the first meeting chaired by Chris Sidoti, the Forum agreed five principles as the basis of its work.

- A Bill of Rights is needed to provide strong legal protection for human rights for all the people of Northern Ireland.
- The Bill of Rights should be in accordance with universal human rights standards, reflecting the particular circumstances of Northern Ireland.
- The Bill of Rights must be effective, realistic and implementable.
- The Bill of Rights must address the needs of the poorest and most marginalised, recognising that, while the Bill of Rights is for everyone, assisting the poor and marginalised is the surest way of helping everyone.
- While the past cannot be ignored but must be taken into account, the present spirit of optimism and hope should be reflected in the Forum's work and the Bill of Rights should be aspirational and look to the future.

The Forum further agreed that its processes would be based on four operational principles:

- openness
- transparency

⁷ See chapter 2.

⁸ See BORF 14(ii) and 16(ii) at

http://www.billofrightsforum.org/index/forum_meetings/borf_meeting_papers.htm.

- inclusiveness and
- accessibility.

The Forum committed itself to proceeding as much as possible through consensus. It would meet to take major decisions in plenary, and all the meetings would be open to the public, including the media.

The Forum did not want any of the proposals put to it to be lost and so not available to the NIHRC, the Secretary of State or the public. It agreed, therefore, that all proposals for the Bill of Rights discussed by the Forum would be included in its report.

The Forum decided to undertake its initial deliberations through seven working groups, looking at

- Children and Young People
- Civil and Political Rights (including Equality)
- Criminal Justice and Victims
- Culture, Identity and Language
- Economic and Social Rights (including Equality)
- Preamble, Enforcement and Implementation and
- Women.⁹

Each working group was assisted by at least one dedicated legal advisor. Legal advisors were seconded, on a part-time basis, from six universities.¹⁰

The Forum also considered at several meetings the nature of the outreach it should undertake. While there was a variety of views on how extensive this should be, the outreach strategy¹¹ eventually agreed aimed to:

- Raise awareness about a Bill of Rights
- Provide information about the Forum and its work
- Conduct consultations to assist the Forum in developing its advice to the NIHRC, prioritising consultations with identified groups not previously or sufficiently involved in previous Bill of Rights discussions and
- Build support for the Forum's proposals.

It gave priority to those sectors and groups in Northern Ireland that, for differing reasons, had not been engaged fully in previous discussions about a Bill of Rights. The Forum identified the following sectors and groups as falling within that category of persons:

- carers
- children and young people
- lesbian, gay, bisexual and transgender people

⁹ The working groups on Children and Young People and on Women were originally one working group that was divided into two once discussions were underway.

¹⁰ See appendix 4.

¹¹ See BORF 17 Revised Outreach Paper

- linguistic minorities (users of languages other than English)
- low socio-economic groups and areas (new TSN)
- new immigrant communities
- older people
- people with disability
- Travellers
- rural and remote communities
- unionist communities (e.g. Loyal Orders and evangelical churches)
- victims of the Troubles and
- women.

The Forum seconded four half-time outreach workers to assist it in this work.¹² The delay in appointing these outreach workers and clarifying their role meant that in the remaining time available it was not possible for the Forum to undertake even the limited consultation it had originally envisaged. The Forum therefore decided to place emphasis on providing information and raising awareness about its work and about the Bill of Rights generally. The Forum recognises that more work is needed in relation to outreach and consultation, in particular with those groups it has already contacted.

The Forum also established a website as a major information resource that included all Forum papers and submissions to its work.¹³

The process after the Forum

The Forum's terms of reference required it to provide agreed recommendations to the NIHRC around a Bill of Rights for Northern Ireland. This report contains those recommendations.

The NIHRC retains its statutory mandate to advise the Secretary of State on the scope for a Bill of Rights for Northern Ireland in the terms set out in the Multi-Party Agreement.

The NIHRC has advised the Forum,

The Human Rights Commission is an independent body and must reserve its final judgement at this stage. It is also the case that it will undertake a detailed and thorough assessment of the work produced by the Round Table Forum before the Commission submits its final advice to the Secretary of State.¹⁴

¹² See appendix 4. The outreach workers' reports can be found at http://www.billofrightsforum.org/index/what_s_happening.htm

¹³ See www.billofrightsforum.org.

¹⁴ Northern Ireland Human Rights Commission *Submission to the Roundtable on a Bill of Rights for Northern Ireland* May 2006 page 1 at

www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/RoundtablefinalMay2006.doc.

When the NIHRC has provided its advice, the Government will consider how it wishes to respond. As part of that consideration, the Secretary of State for Northern Ireland has advised the Forum (in his letter of 24 January 2008) that he will carry out a consultation in Northern Ireland, including consulting directly with those parties and sectors represented on the Forum. At its meeting on 20 March 2008, the Forum agreed to emphasise to both the NIHRC and the Secretary of State the need to build on the appetite there is among the groups contacted by the outreach workers.

This report

The main part of this report contains the Forum's recommendations to the NIHRC. Each recommendation is explained and includes an indication of the level of support that it received from among Forum members.

Chapter two summarises the Forum's discussion of its terms of reference.

Chapter three contains recommendations about whether the Bill of Rights should have a preamble (an introductory section) and, if so, what should go in it.

The majority of the Forum's recommendations are contained in **chapter four**. This chapter deals with substantial rights in seven main sections:

- dignity and equality
- personal integrity
- freedoms
- social and participation
- justice, including victims
- citizens' rights and
- rights particular to specific groups, including
 - children and young people
 - women

Chapter five contains the Forum's technical recommendations in relation to how the rights should be enforced and made effective.

Recommendations on how the Bill of Rights should be implemented are included in **chapter six**, and **chapter seven** contains the Forum's conclusions.

A number of appendices are also included, including references to all the Forum's papers, and to the reports from the working groups.

CHAPTER 2. INTERPRETING THE FORUM'S TERMS OF REFERENCE

Terms of reference

The terms of reference given to the Forum were:

To produce agreed recommendations to inform the Northern Ireland Human Rights Commission's advice to Government on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international human rights instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill Rights for Northern Ireland.

The Forum discussed its terms of reference on a number of occasions. It noted that the wording was drawn largely from the 1998 Multi-Party Agreement (often called the Belfast Agreement or the Good Friday Agreement).

Some Forum members considered that the terms of reference were very specific, restricting the Forum to making recommendations on a narrow range of issues.

Other Forum members interpreted the terms of reference more expansively, considering that they permitted recommendations for a broad, inclusive Bill of Rights.

Accordingly, the Forum was unable to come to a single view on the issues, most notably on an understanding of what constituted “the particular circumstances of Northern Ireland” and on the meaning and application of the phrase “the principles of mutual respect for the identity and ethos of both communities and parity of esteem”.

“Rights supplementary to those in the ECHR”

The terms of reference required the Forum to make recommendations on legislation for “rights supplementary to those in the European Convention on Human Rights”. The basis for this was, at least in part, that the provisions of the ECHR have already been incorporated into United Kingdom (UK) law through the *Human Rights Act 1998*.

There was disagreement among Forum members on whether this phrase was restrictive, limiting the scope of the Forum's recommendations, or whether it was permissive, enabling the Forum to produce recommendations on anything additional to the actual level of human rights protection offered by ECHR provisions .

The Forum agreed, as a starting point, that its recommendations should supplement the provisions of the ECHR. This had three dimensions: that the recommendations should not simply replicate what was contained in the ECHR (and by implication in the *Human Rights Act 1998*); that they must not reduce the level of protection provided by the ECHR (and the *Human Rights Act 1998*); and that they should add to protection, not simply provide an alternative wording to ECHR provisions.

“Particular circumstances”

No issue divided Forum members more than the understanding of what constituted “the particular circumstances of Northern Ireland”. This challenging issue was discussed explicitly on many occasions and ultimately arose in discussion of almost every proposed recommendation.

To facilitate better understanding of members’ positions and in the hope of identifying common ground, members were invited to submit their own views on what Northern Ireland’s “particular circumstances” are and what particular rights are affected by them.¹ A discussion paper, drawing together the views of members, was considered by the Forum at its meeting on 7 December 2007.²

A range of views was expressed in submissions and during the Forum’s discussion. At the broadest level, some members considered that the legacy of the conflict was so wide-ranging that its impact could be felt in every area that a Bill of Rights might cover, including

- inequality and discrimination
- economic and social rights, given the impact of the conflict on health, housing, education and poverty
- rights connected to justice
- personal safety rights, because of the experience of violence and its persistence after the peace agreement in the areas of, for example, domestic violence and racist and homophobic attacks
- women’s rights, evident, for example, in the low level of women’s participation in public life and the higher than expected incidence of mental health issues among women in Northern Ireland.

At the other end of the range of views, some members considered that

- Northern Ireland today is not very different from other parts of the UK
- in some respects, economic and social conditions are better in Northern Ireland than in other parts of the UK
- the terms of reference directed the Forum to making recommendations only in relation to matters that were issues of human rights concern exclusively in Northern Ireland, not in other parts of the UK, or at least to matters that were of far greater consequence in Northern Ireland
- a number of human rights issues are better addressed at a UK-wide or UK and Ireland level
- only those issues arising directly from the conflict between the two main communities and reflecting the principles of mutual respect for the identity and ethos of both communities and parity of esteem. between them can be described as particular to Northern Ireland.

¹ Those submissions can be found at http://www.billofrightsforum.org/index/resources/particular_circumstances.htm.

² BORF 18. The full text is in appendix 3. The minutes of the discussion of the paper can be found at http://www.billofrightsforum.org/20071207_minutes.pdf.

In the course of the discussion on 7 December 2007, the Chair provided an analysis of the Multi-Party Agreement in terms of its references to human rights issues.³ He suggested that the Agreement provided the most authoritative statement of the human rights issues that were particular to Northern Ireland. Among other things, he presented four main points.

- The Agreement refers to ‘particular’, not ‘unique’, circumstances. Therefore, the Bill of Rights must reflect the actual situation in Northern Ireland.
- The Agreement goes some length toward setting out some of Northern Ireland’s “particular circumstances”. It lists five principles: mutual respect; parity of esteem; commitment to the principles of partnership, equality and mutual respect and to the protection of civil, political, social, economic and cultural rights; a culture of tolerance; and non-violence. These principles could be agreed on by the Forum.
- The Agreement also sets out a number of specific rights that must be considered part of Northern Ireland’s particular circumstances. These include:
 - the right of free political thought
 - the right to freedom and expression of religion
 - the right to pursue democratically national and political aspirations
 - the right to seek constitutional change by peaceful and legitimate means
 - the right to freely choose one’s place of residence
 - the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity
 - the right to freedom from sectarian harassment and
 - the right of women to full and equal political participation.
- The Agreement also includes general references to issues that have a human rights basis:
 - equality and non-discrimination, including ‘in relation to religion and political opinion, gender, race, disability, age, marital status, dependants and sexual orientation’
 - reconciliation
 - rights of victims
 - religion, language, culture and heritage
 - citizenship, nationality and minorities
 - poverty, social exclusion and economic disadvantage
 - housing
 - education
 - employment
 - criminal justice, policing and prisoners
 - political representation and participation
 - parading and the use of symbols and emblems.

³ The minutes of the meeting provide the Chair’s analysis in full. See http://www.billofrightsforum.org/20071207_minutes.pdf.

The Chair's analysis indicated that the St Andrews Agreement of October 2006 had re-affirmed these positions. He concluded that, while it could not be said that the rights and issues identified in the 1998 Agreement and the St Andrews Agreement should be in the Bill of Rights, as this would pre-empt the Forum's negotiations, these rights or issues could be identified as capturing Northern Ireland's "particular circumstances". It was further noted that neither Agreement requires these rights to be enshrined in a Bill of Rights.

The Chair did not ask Forum members to respond to his analysis but suggested that they could bear it in mind during their discussions. A number of Forum members indicated that they could endorse the approach set out by the Chair in regard to the 'particular circumstances' issue. However, some considered, and still consider, that this does not capture how the issues of "mutual respect" and "parity of esteem" are to be dealt with in accordance with the terms of reference.

At the end of the Forum's work there was still no consensus on what constituted "the particular circumstances of Northern Ireland" or as to the handling of the issues of "mutual respect" and "parity of esteem". As a result, each Forum member applied her or his own interpretation and understanding of the phrase in responding to each specific proposal discussed in this report.

The Northern Ireland Human Rights Commission, in an earlier submission to the Forum, expressed its own view on this question.

The Commission recognises that there are many circumstances which are particular to Northern Ireland, and understands and accepts the importance of a generous interpretation of this phrase. Nevertheless, the phrase must have limits if agreement is to be reached on additional rights which merit inclusion within the terms of the mandate. In approaching this task the Commission recognises that its mandate arises from a peace agreement reached after a period of protracted conflict and a political process which established a set of principles and structures for the future governance of Northern Ireland. The mandate, when read in this general context, provides helpful guidance on the circumstances which are particular to Northern Ireland.⁴

"Both communities"

The third issue arising from the terms of reference, and ultimately discussed and resolved first, was the focus on "both communities". Some Forum members expressed concern at the phrase considering that, in the years since the 1998 Agreement, Northern Ireland had developed in such a way that a reference to two communities only was no longer appropriate (indeed there had been opposition to the use of 'both communities' at the time of the Agreement). Others were firmly convinced that the wording of the Agreement could not be altered.

At the Forum meeting on 11 May 2007 the Forum agreed to an interpretive paragraph:

⁴ Northern Ireland Human Rights Commission *Submission to the Roundtable on a Bill of Rights for Northern Ireland*, May 2006, page 3, at www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/RoundtablefinalMay2006.doc .

The Forum discussed the terms of reference given it by the Minister for Human Rights, noting that they were taken directly from the Good Friday Agreement. Forum members all recognised that, in developing a Bill of Rights, they must address the needs and rights of all Northern Ireland's people.⁵

There was a commitment, nonetheless, that the Forum's work would address "mutual respect" and "parity of esteem" in view of the historical context of the conflict between Northern Ireland's two principal communities.

⁵ One member of the Forum has subsequently disagreed with this interpretive paragraph.

CHAPTER 3. RECOMMENDATIONS RELATING TO THE PREAMBLE

INTRODUCTION

A preamble is an introduction which sets out the purpose, context and principles underpinning a legal document such as a constitution or international treaty or statute. While unusual in domestic legislation, inclusion of a preamble is not unknown. Preambles are, however, particularly common in bills of rights, and examples can be found at both the international and national level. International bills of rights containing preambles include the Universal Declaration of Human Rights 1948, the European Convention on Human Rights 1951, the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966. Domestic bills of rights containing preambles include the Canadian Charter of Rights and Freedoms 1982, the New Zealand Bill of Rights Act 1990, the Victoria Charter of Human Rights and Responsibilities Act 2006, and the Australian Capital Territory Human Rights Act 2004. Many national constitutions, containing bills of rights within them, are also introduced by a preamble, for example, the United States Constitution 1789, the Constitution of Ireland 1937 and the Constitution of the Republic of South Africa 1996. As a domestic statute, the Human Rights Act 1998 is not unusual in not having a preamble; however, as a bill of rights, it is unusual in this respect.

THE CONTENT OF PREAMBLES

While there is no one model or form for preambles, many have common features and identify:

- the source of authority or legitimacy of the legal instrument;
- the history of the legal instrument;
- a summary or description of the main ideas of the legal system or instrument;
- the aims or values of the people and the system; and
- statements about the beliefs of the people to encourage unity.

Preambles are generally written in the present verb tense. Moreover, in any legal instrument, it is usually preferable to have one preamble at the beginning of the legal instrument to introduce the instrument in its entirety, rather than have different preambles introducing different sections of the particular instrument.

Preambles can be long or short. Short preambles are found in the New Zealand Bill of Rights Act 1990¹ and the Canadian Charter of Rights and Freedoms 1982.² An example of a longer preamble is that of the European Convention on Human Rights 1950.³

¹ The Preamble to the Act reads as follows: '*An Act— (a) To affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and (b) To affirm New Zealand's commitment to the International Covenant on Civil and Political Rights*'.

² The Preamble to the Charter reads as follows: '*Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law*'.

³ The Preamble to the Convention reads as follows:

THE EFFECTS OF PREAMBLES

Legal effects

While not strictly legally binding, a preamble in a document such as a bill of rights may have a degree of legal effect, and can generally be used by courts in two ways.

First, a preamble may be invoked for interpretive guidance; it informs the courts and others as to the intention behind the bill of rights and thus how the rights it contains should be interpreted. The European Court of Human Rights has often noted that the Convention rights must be interpreted 'in light of the Preamble of the Convention'.⁴ Irish courts have observed that, since the Preamble declares the purpose of the people in adopting the Constitution, it may help in determining the meaning to be given to particular provisions.⁵ The preambles of the New Zealand Bill of Rights Act⁶ and the South African Constitution⁷ have also been deemed capable of interpretive effect. There is always a limit to the interpretive effect of a preamble, and it cannot override the plain and clear language in the text of the particular legal instrument.

A second way in which a preamble can have legal effect is through supporting or assisting judicial reasoning. A preamble can be invoked to strengthen a particular judicial argument, where the argument also relies on other grounds. In other words, the preamble can be used to bolster a particular line of reasoning. For example, the preambles to the Canadian Charter,⁸ the South African Constitution,⁹ the

*The Governments signatory hereto, being Members of the Council of Europe,
Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of
the United Nations on 10 December 1948;
Considering that this Declaration aims at securing the universal and effective recognition and
observance of the Rights therein declared;
Considering that the aim of the Council of Europe is the achievement of greater unity between
its Members and that one of the methods by which the aim is to be pursued is the maintenance
and further realization of Human Rights and Fundamental Freedoms;
Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of
justice and peace in the world and are best maintained on the one hand by an effective political
democracy and on the other by a common understanding and observance of the Human Rights
upon which they depend;
Being resolved, as the Governments of European countries which are like-minded and have a
common heritage of political traditions, ideals, freedom and the rule of law to take the first steps
for the collective enforcement of certain of the Rights stated in the Universal Declaration;
Have agreed as follows:*

⁴ See, e.g., *Macovei v Moldova* (2007) 45 EHRR 48, para. 41.

⁵ See, e.g., *AG v Southern Industrial Trust* (1960) 94 ILTR 161, 175; see also *Buckley v AG* [1950] IR 67.

⁶ See, e.g., *Hansen v The Queen* [2007] NZSC 7, para. 11.

⁷ See, e.g., *First National Bank of SA Limited t/a Westbank v Commissioner for the South African Revenue Services and Another*; *First National Bank of SA Limited t/a Westbank v Minister of Finance* 2002 (4) SA 768 (CC); 2002 (7) BCLR 702 (CC), para. 50.

⁸ See, e.g., *Reference Re Manitoba Language Rights* [1985] 1 SCR 721, 747-750; *Re B.C. Motor Vehicle Act* [1985] 2 SCR 486.

⁹ See, e.g., *South African Broadcasting Corporation Limited v National Director of Public Prosecutions and Others* (CCT58/06) [2006] ZACC 15, para. 28.

Constitution of Ireland,¹⁰ and the European Convention on Human Rights¹¹ have been used in this way.

Educative effects

A preamble to a bill of rights can also have non-legal effects. In particular, it can play a useful educational role in presenting rights to the public, since it provides information, in a very accessible form, on the basic values underpinning the legal document. In this way, a preamble can be used to promote a sense of ownership of the bill of rights in the community at large.

This value of a preamble provided particular motivation for the Victoria Human Rights Consultation Committee to recommend a preamble for Victoria Charter of Human Rights and Responsibilities Act 2006. The Committee proposed that the Charter,

should ... include a preamble that sets out the community values that underpin it. In this form, the Charter could be used in schools and for broader community education, such as for new migrants to Victoria.¹²

The Committee added, The preamble serves as an overarching statement of values underpinning the Charter and could be a useful educative and interpretive tool.¹³

Similarly, the Australian Capital Territory Bill of Rights Consultative Committee recommended that the Australian Capital Territory Human Rights Act 2004 contain a preamble, on the basis that the 'value' of the legislation would be 'enhanced by the attachment to [it] of a short, simply written preamble that sets out in plain English the purpose of the law'.¹⁴

PREAMBLE PROPOSALS

Recommendation

- 1. The Bill of Rights should have a short preamble at its beginning.**

Option A

- 2. The Preamble should contain the following elements:**
 - a. the historical context giving rise to the Bill of Rights, in particular, the human rights violations and suffering associated with the conflict in Northern Ireland;**

¹⁰ See, e.g., *The State (Burke) v Lennon* [1940] IR 136, 155.

¹¹ See, e.g. *Salah v Netherlands* (2007) 44 EHRR 55, para. 68.

¹² *Rights, Responsibilities and Respect: The Report of the Human Rights Consultation Committee*, November 2005, p. ii.

¹³ *Ibid*, p. 23, para. 1.5.

¹⁴ *Report of the ACT Bill of Rights Consultative Committee*, May 2003, p. 5, Recommendation 2.

- b. the historical context giving rise to the Bill of Rights in the divisions between the two main communities in NI from which we hope to move forward, drawing on language in the Multi-Party Agreement of 1998;
- c. reference to Multi-Party Agreement of 1998 and the St Andrews Agreement of 2006;
- d. the dignity and equality of all human beings and their entitlement to the full enjoyment of all human rights and fundamental freedoms on a just and equal basis;
- e. special recognition, in implementing the Bill of Rights, for the specific needs of children and other vulnerable or socially disadvantaged groups, to ensure their full enjoyment of all civil, cultural, economic, political and social rights;
- f. the responsibility of human beings and communities to act towards each other with mutual respect consistent with their human rights and fundamental freedoms;
- g. the relevance of international and European human rights standards;
- h. the role of the Bill of Rights as an expression of hope for a positive future, and in promoting reconciliation, tolerance, mutual trust, and the protection of the human rights of the people living here, and the values of partnership, equality and mutual respect.

Option B

1. Reaffirming the fundamental rights and liberties contained in the ECHR/HRA, the purpose of these Rights Supplementary to the ECHR/HRA is to:
 - a. promote the principles of mutual respect and parity of esteem;
 - b. secure the right not to be discriminated against and the right to equality of opportunity; and
 - c. create a climate of tolerance and dialogue necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for our society;
2. Recognising the duties and responsibilities incumbent upon all in society, nothing in these Rights Supplementary may be interpreted as implying any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedom set forth in the ECHR/HRA or these Rights Supplementary;
3. Being resolved to define and protect the rights and freedoms of persons resident in Northern Ireland, persons exercising such rights and freedoms shall respect the: national constitution; national legislation; rights of others, and act without prejudice to the territorial integrity of the country.

Plenary issues

- whether and, if so, how to describe the particular circumstances of Northern Ireland;
- the need to include reference to the needs of children and other vulnerable groups;
- whether reference should be made to the Multi-Party Agreement of 1998 and the St Andrews Agreement of 2006;
- the need for a forward looking statement about the future;
- whether option A or option B was preferred.

Level of support

DUP	For Option B
Sinn Féin	For Option A, support points c and e, oppose point b
UUP	For Option B
SDLP	For Option A, support points b, c and e
Alliance	For Option A, oppose points b, c and e
Business Sector	For Option A
Children and Young People's sector	For Option A, support point e (would support 1 and 2 of option B)
Churches Catholic Church	For Option A
Irish Council of Churches	Abstain
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Option A
Ethnic Minority Sector	For Option A (with elements of Option B)
Human Rights NGO sector	For Option A (with elements of Option B)
Older People's sector	For Option A, opposition to points b and c, support elements of Option B
Sexual Orientation sector	For Option A with reference to vulnerable groups
Trade Unions	For Option A with reference to vulnerable groups (with

	elements of Option B)
Women's sector	For Option A with reference to vulnerable groups (with elements of Option B)

Statements of position

DUP and UUP

- “The UUP and DUP reaffirm their support for a short preamble, as indicated in the report of the Working Group on Preamble, Enforcement and Implementation. Recognising the wider debate within the Forum about the content of a Preamble, both parties support Option B as more appropriately expressing the nature of supplementary rights, the principles of mutual respect, parity of esteem and equality of opportunity, and reflecting the rights and duties flowing from the FCNM, being in full accordance with the fundamental principles of international law.”

Sinn Féin

- “We cannot support this formulation (point b) as drafted because it does not recognise the role of the British State in the conflict, which was central to the ‘particular circumstances’.”

Alliance

- Support for Option A with re-worked text and deletion of paragraphs b, c and e.
- Propose new text to add to Option A:
 - Reaffirmation of the fundamental rights and liberties in the ECHR/HRA;
 - The historical context giving rise to the Bill of Rights, in particular, the human rights violations and suffering associated with the conflict and communal divisions in Northern Ireland;
 - The dignity and equality of all human beings and their entitlement to the full enjoyment of all human rights and fundamental freedoms on a just and equal basis;
 - The responsibility of human beings and communities to act towards each other with mutual respect consistent with their human rights and fundamental freedoms;
 - The relevance of international and European human rights standards;
 - The role of the Bill of Rights as an expression of hope for a positive future, and in promoting reconciliation, tolerance, mutual trust, and the protection of the human rights of the people living here, and the values of partnership, equality and mutual respect.

Business sector (Neil Faris)

- “I suggest the following (taken from the ECHR Preamble) as additions for consideration:
- That we acknowledge that our fundamental freedoms are best maintained on the one hand by an effective political democracy and on the other hand by a common understanding and observance of the human rights on which they depend

- That we also acknowledge our common heritage of political traditions, ideals and the rule of law.”
- “I also consider that there is much of merit in option B and the NIHRC should not regard this as an “either/or” exercise but should consider all suggestions.”

Churches sector (Catholic Church)

- “The Catholic Church representatives wishes to express regret at the failure to give adequate consideration to a narrative of responsibilities to accompany the rights proposed for the Bill of Rights in the light of the educative nature of such a Bill and given increasing societal concerns over lack of respect for others and lack of concern for our duty to the common good.”

Ethnic Minority sector

- “Ethnic Minority Sector supports Option A with elements of Option B. Due to lack of time for further discussion and compromise, we prefer the short text in the PEI working group report which states that “These supplementary rights are founded on our belief in the supremacy of human dignity and our common vision for the future”.

Older People’s sector

- “While our preferred option is Option A we support the language presented in clause one of Option B.”

CHAPTER 4. RECOMMENDATIONS RELATING TO SUBSTANTIVE RIGHTS

INTRODUCTION

This chapter contains proposals considered by the Bill of Rights Forum in relation to substantive rights to be considered for inclusion in a Bill of Rights.

The Forum's seven working groups were established to undertake the initial stages of the detailed consideration of specific areas of rights. Each was assisted by a legal advisor. Each working group presented a draft, and then a final report to the Forum plenary, containing the recommendations the Working Group wanted the Forum as a whole to consider.

Each report was discussed by the Forum, and from those discussions consolidated proposals were formulated. The consolidated proposals sought to bring together the thinking of the Working Groups and the plenary, in the context of existing international standards. After further plenary discussion, members were given the opportunity to express their support for, or dissent from, each proposal. At all times, the Forum sought to achieve the highest level of support that it could.

Drafting style

In recommendations that relate to provisions in the European Convention on Human Rights, the Forum favours a drafting approach that refers to the relevant provision in the Convention and then, in that context, indicates the supplementary protection that is proposed. In formulating its recommendations the Forum has not had an opportunity to separate out those elements. It recommends to the Northern Ireland Human Rights Commission that, in preparing its advice, it take this approach, so that the direct additions to provisions in the Convention are clear.

The text below indicates those proposals that, in the Forum's opinion, should be developed according to this format.

"Particular circumstances" etc

As has been discussed in chapter two, there were a number of issues for the Forum in trying to come to an agreed understanding of its terms of reference, in particular of what was meant by the phrases "the particular circumstances of Northern Ireland" and "rights supplementary to the ECHR". Those issues remained largely unresolved. As a result, it will be evident in reading this chapter that a number of parties and sectors found themselves unable to support specific recommendations, the thrust of which they may well be in full agreement with, as they did not fall within their understanding of the "particular circumstances of Northern Ireland", or were issues that they did not consider represented rights "supplementary to the ECHR". The recording of position statements in relation both to the chapter as a whole, and to specific proposals, clarifies this.

Definitions

Throughout this chapter, 'shall' has been used to designate a positive obligation on the public authorities, while 'may' has been used to indicate discretion. References to 'indigenous languages' are considered to include Travellers' language and signing.

GENERAL STATEMENTS

Parties and sectors were invited to submit statements outlining their general position in relation to proposals contained in this chapter if they wished.

DUP

The DUP's approach to this Chapter's proposals is driven by three overriding considerations. First, to protect the existing rights of the people of Northern Ireland, and therefore resist any attempt to usurp, rewrite or repeat existing HRA provisions. To do so would not simply go beyond the Forum's remit, but create a dangerous situation where judges are left to arbitrate between two competing sets of rights, which should instead be complementary. Secondly, the Forum's remit which restricts proposals to those particular to the circumstances of Northern Ireland. We will not support proposals which go beyond this, even in cases where we would have sympathy for similar proposals in a UK-wide Bill. Finally, we are determined to ensure that the democratic wishes of the people of Northern Ireland, as expressed through the Assembly, are not circumscribed by imposition of proposals that are more properly policy concerns.

Sinn Féin

We believe a comprehensive and inclusive Bill of Rights will benefit not only citizens and groups but the structures of governance itself. Bills of Rights in other countries have actively assisted governments in taking decisions that shape policies and spending priorities in order to take measurable and progressive steps to produce comprehensive change in the quality of life for everyone.

In the context of a society moving away from conflict, a Bill of Rights must offer an inclusive framework for governance based on the realisation of the rights of all.

UUP

It is the UUP's view that the Belfast Agreement defined the parameters of the "particular circumstances" to be addressed in rights supplementary to ECHR, namely: "the principles of mutual respect for the identity and ethos of both communities and parity of esteem". This mandate is required to be central to any proposals for supplementary rights.

Such supplementary rights must also be compatible both with the UK's tradition of parliamentary sovereignty and also Northern Ireland's constitutional and institutional position within the UK. The UK's constitutional tradition of respect for fundamental rights and liberties has found expression in the HRA. We do not, therefore, begin with a blank sheet. Any proposed supplementary rights must begin with recognition of the fundamental rights already codified in UK law through the HRA.

The UUP shares many of the concerns expressed in the paper submitted by Neil Faris and contained in Appendix 9 of this report.

SDLP

The SDLP is seeking a progressive and comprehensive Bill of Rights. The Good Friday Agreement sets the framework for resolving our conflict, based on the creation of a rights-based culture.

The spirit and central intent of the Agreement as a basis for resolving the historic conflict of national identity between the two main political traditions in Northern Ireland, must be properly reflected in a Bill of Rights.

The Good Friday Agreement defines the remit of the Forum and is itself the 'particular circumstance' we must heed. Its broad scope includes a wide range of relevant social and economic issues. In the historical context of Ireland and Britain, our legacy of conflict and division is unique to Northern Ireland. This shapes and informs our perspective on the terms of reference.

The SDLP believes a Bill of Rights can create common ground in our divided society upon which to build a shared future.

Alliance

The Alliance Party is conscious that many of the proposals are a reiteration or a reworking of aspects of the European Convention on Human Rights, accompanied in some circumstances with the recognition of additional rights. Any Northern Ireland Bill of Rights is supposed to include the Convention plus supplementary rights. Alliance is keen to ensure the protection of the Convention and the maintenance of a common basic human rights regime throughout the UK, and, if possible, across the island of Ireland too. This would likely be the position of the British Government and Parliament too. Any support for rights in this document are conditional on the disaggregation of existing rights from new proposals that requiring legislation. Alliance is happy for a NI Bill of Rights to apply to both devolved and non-devolved matters, provided that the latter can be applied to Northern Ireland discretely from the rest of the UK.

Business sector (Neil Faris)

Neil Faris as a business sector member of the Forum dissents from this Chapter because he considers it is contrary to the Terms of Reference of the Forum. A statement of his reasons is contained in Appendix 9. Neil would emphasise that many of the rights discussed in this Chapter may well be candidates for inclusion in any general bill of rights. But in his view that is not the task of this Forum.

Business sector (Northern Ireland Chamber of Commerce)

NICCI would like to commend the work undertaken to date by all members of the Forum and each working group. NICCI believes that a Bill of Rights for Northern Ireland is long overdue and that the current exercise presents a welcome opportunity to put in place measures, which will guarantee the economic, social and legal rights of all sections of our community. NICCI's response confines itself primarily to those

areas, which we believe could impact upon the private sector and the development of the local economy.

Children and young people's sector

The children and young people's sector believe there is extremely broad and widespread support for maximum children's rights protections to be included in the Bill of Rights. Children suffered disproportionately as a result of the conflict. Too many of our children – who make up a quarter of our population – continue to suffer from neglect and abuse, poverty, discrimination, inequality and inadequate service provision. Children lack an effective and comprehensive legislative framework for the protection of their rights.

We believe that the Bill of Rights represents a unique, and the best, opportunity to guarantee children and young people's rights at a constitutional level in Northern Ireland. It must draw on the principles and provisions contained in international human rights instruments, in particular the UN Convention on the Rights of the Child. It must consolidate children's rights standards in one binding and enforceable document, thus providing all children and young people with the much needed legal protection to which they are entitled and which they currently lack.

Churches sector (Catholic Church)

The Catholic Church has consistently supported the principle of developing a 'culture of rights' in Northern Ireland and the proposal, made in the Belfast [Good Friday] Agreement to develop a Bill of Rights. The Church notes that the Agreement provided specific terms of reference for the proposed Bill. It seems reasonable to suggest the existence of these parameters implies some intended limitation on the scope of a Bill of Rights even if interpreted in a maximal way. It would also seem appropriate to regard as fundamental the need to respect the democratic mandate underpinning the terms specified in the Agreement.

In light of the failure to come to an agreement on how the terms of the Agreement might be applied to the scope of the proposed Bill, the representative of the Church has indicated support for individual rights in this report on the basis of support for that right in 'principle' and without prejudice to the view of the Catholic Church as to whether or not such a right falls within the terms specified by the Agreement.

Ethnic minority sector

The Ethnic Minority Sector is highly supportive of a strong and inclusive Bill of Rights for Northern Ireland. Such legislation should contain the highest possible standards of domestic legal protection in order to safeguard the rights of those most vulnerable in our society. We recognize the historic nature of the process and are supportive of the fact that it has enabled discussion between members of civil society and politicians on disparities between current legal protections and international Human Rights standards.

Human Rights NGO sector

The Human Rights sector is fully committed to the maximum domestic level of protection of human rights and is thus supportive of a comprehensive and inclusive Bill of Rights. As is the norm with Bills of Rights, we believe that its provisions should be general, so as to provide an overarching framework of rights within which

policy and legislation is developed, rather than dealing with legislative or policy issues per se. Key to this general approach are strong enforcement mechanisms. We also believe that a Bill of Rights should be as clear, succinct and legally precise as possible. In the interests of inclusion, we also advocate the mainstreaming approach and the avoidance of lists where possible.

As such, while we are supportive of many of the proposals that have been made, we do indicate queries below as to whether they are appropriate for inclusion in a general Bill of Rights. This should not be read as a lack of support for the proposals, unless otherwise stated.

EQUALITY

Recommendation

- 1. Everyone is equal before and under the law and has the right to equal protection and equal benefit of the law. Equality includes the full and equal enjoyment of all human rights and fundamental freedoms.**
- 2. Public authorities may not unfairly discriminate, directly or indirectly, including harassment, against anyone on one or more grounds, or a combination of grounds, including age, birth status, culture, disability, ethnic origin, colour, gender, gender identity, genetic status, health status, language, marital or family status, nationality, national or social or economic origin, political or other opinion, irrelevant criminal record or conflict related convictions, pregnancy, race, religion or belief or lack thereof, sex, sexual orientation, socio-economic disadvantage, status as a victim, Traveller identity or other status of that person or any member of the person's family or any legal guardian or carer of the person.**
- 3. Discrimination on one or more of the grounds listed in clause (2) is presumed to be unfair unless it is established that the discrimination is fair. Otherwise, unfair discrimination consists of any distinction, exclusion, restriction or preference which has the purpose or effect of impairing the ability of any person to participate on an equal basis with others in any area of economic, social, political or cultural life. Legislation must be enacted to prevent or prohibit unfair discrimination.**
- 4. Public authorities shall, when circumstances so warrant and in accordance with the law, take special and concrete measures to achieve and sustain full equality, in particular by addressing inequalities affecting members of disadvantaged groups on the basis of any of the grounds proscribed in clause (2) above. These measures do not constitute discrimination.**
- 5. Public authorities shall respect and ensure equality between women and men in all areas and take all appropriate measures to eliminate discrimination on the basis of gender.**
- 6. Public authorities shall respect and ensure equality for persons with disabilities and shall take all appropriate measures to ensure reasonable accommodation is provided to enable persons with disabilities to enjoy their rights in this Bill of Rights on an equal basis with others.**
- 7. Public authorities shall, in the exercise of their responsibilities, fully respect all the people in the diversity of their identities and traditions and equality of civil, political, social and cultural rights and of freedom from discrimination for all citizens, and fully respect, on the basis of parity of esteem and equality of treatment, the identity and ethos of the two main communities.**

Alternative model

1. Everyone is equal before and under the law and has the right to equal protection and equal benefit of the law.
2. It shall be unlawful for a public authority carrying out functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of person on the ground of religious belief or political opinion.
3. A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity
 - a. between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - b. between men and women generally;
 - c. between persons with a disability and persons without; and
 - d. between persons with dependants and persons without.
4. Public authorities shall, in the exercise of their responsibilities, fully respect all the people in the diversity of their identities and traditions and equality of civil, political, social and cultural rights and of freedom from discrimination for all citizens, and fully respect, on the basis of parity of esteem and equality of treatment, the identity and ethos of the two main communities.
5. In addition, without prejudice to these obligations, public authorities are also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion, and racial group.

Working group reports

This recommendation is based on proposals on equality and non-discrimination developed by the children and young people's¹, civil and political rights², criminal justice and victims³, economic and social rights⁴ and women's⁵ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

The civil and political rights and economic and social rights working groups were specifically tasked with developing provisions on equality.

Principal issues raised in the working groups included the following:

¹ Non-discrimination, provision 2, page 8, report of the children and young people's working group.

² Right to equality and non-discrimination, provision 1, pages 2-3, report of the civil and political rights working group.

³ Non-discrimination, page 4, report of the criminal justice and victims working group.

⁴ Equality, pages 49-50, report of the economic and social rights working group

⁵ Equality, provision 2, pages 22-23, report of the women's working group.

- equality and non discrimination are basic principles that underpin all human rights and are key provisions in the ECHR.
- inequality and non-discrimination in the enjoyment of economic and social rights were key causes and legacies of the conflict and are therefore central to the particular circumstances of Northern Ireland.
- women are differently affected by every type of discrimination whether it be racial, sexual orientation-based or disability-oriented, and therefore require specific address in equality and non-discrimination provisions
- all provisions in a Bill of Rights would need to be read against a child’s right to non-discrimination and the principle of the best interests of the child.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether Option A or Option B was preferred.
- Option A Clause 2: whether the list of proscribed grounds of discrimination should include the additional grounds of genetic status, health status, irrelevant criminal record or conflict related convictions, Traveller identity.
- Option A Clause 4: whether the obligation relating to special and concrete measures should be strengthened by deleting “when the circumstances so warrant” or weakened by substituting “may” for “shall”.
- Option A Clauses 5 and 6: whether there should be specific provisions on equality issues relating to women and people with disabilities and, if so, whether they should be dealt with in one clause or separate clauses.
- Option A New clause 7: whether there should be specific reference to and provision for “two main communities”.
- Option A New clause 8: whether there should be a provision on promoting good relations and, if so, what groups should be referred to in it, as follows

in addition, without prejudice to these obligations, public authorities are also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion, and racial group.

Levels of support

DUP	For Option B Clause 2 strongly opposed to ‘irrelevant criminal record’ or ‘conflict-related conviction’; clause 7 reserved.
Sinn Féin	For Option A Clause 2 supported only if ‘conflict-related conviction’ is retained, otherwise oppose; clause 7 abstained; clause 8 opposed.

UUP	For Option B [with regard to option A: clause 1 supported; clause 2 strongly opposed to 'irrelevant criminal record' or 'conflict-related conviction'.]
SDLP	For Option A Clause 7 supported; clause 8 supported in principle and subject to confirmation of no impact on equality rights (but possibly include elsewhere).
Alliance	For Option A Clause 2 opposed to 'conflict-related conviction'; strongly opposed to second half of clause 7; clause 8 supported (but possibly include elsewhere).
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Option A Clause 2 supported but no reference to criminal record; clause 7 supported if 'fully respect' is used in both instances; clause 8 supported (but possibly include elsewhere).
Children and Young People's sector	For Option A Clause 2 supported; qualified support of inclusion of 'conflict-related conviction' subject the application of child protection legislation and regulations; clause 7 supported; clause 8 opposed (possibly include elsewhere).
Churches Catholic Church Irish Council of Churches	For Option A Clause 2 supported but opposed to conflict-related conviction; clause 7 accepted; clause 8 accepted (but possibly include elsewhere). For Option A clauses 1, 2, 6. Reserve on the rest. Both Option A new clauses supported.
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Option A Clause 2 supported; clause 4 'shall' not 'may'; clause 7 supported; clause 8 opposed.
Ethnic Minority Sector	For Option A Clause 4 'shall' not 'may'; clause 7 supported; clause 8 opposed.
Human Rights NGO sector	For Option A Clause 2 supported; clause 4 'shall' not 'may'; clause 7 supported; clause 8 opposed.
Older People's sector	For Option A Clause 4 'shall' not 'may'; new clause 7 supported; clause 8 opposed; abstain on criminal record or conflict-related conviction.
Sexual Orientation sector	For Option A Clause 2 supported but reserve on conflict-related conviction; clause 4 'shall' not 'may'; clause 7 supported; clause 8 opposed.

Trade Unions	For Option A Clause 2 supported with conflict-related convictions; clause 4 'shall' not 'may'; clause 7 supported; clause 8 opposed.
Women's sector	For Option A Clause 2 supported with 'conflict-related conviction'; clause 4 'shall' not 'may'; clause 7 supported; clause 8 opposed (possibly include elsewhere).

Statements of position

DUP and UUP

- “Supported Option B as a more appropriate expression of the duty of public authorities to promote equality of opportunity and non-discrimination”.
- “Clauses 5 and 6 have merit in terms of their subject matter, but cannot be considered as relevant to the particular circumstances of Northern Ireland”.

Sinn Féin

- “Support for para 2 subject to inclusion of term ‘conflict-related conviction’: Rationale – Supplementary protection from discrimination on the ground of conflict-related conviction is essential under our particular circumstances, and it would not be acceptable for a Bill of Rights to withhold this protection. The term ‘conflict-related conviction’ accords with OFMDFM Guidelines”.
- “Abstain on para 7: Rationale – Parity of esteem is an underpinning principle and belongs in the preamble”.

Alliance

- Alliance proposed changing ‘shall’ to ‘may’ in clause 4 in preference of “an enabling power in relation to positive action rather than a prescriptive wording”.
- Alliance objected to references to “two communities”, stating “we believe it breaches the fundamental principle of universality of rights, through singling out two identities from all others on a sectarian basis, and potentially further entrenching divisions in our society”.

Churches sector (Catholic Church)

- On clause 2: “The Catholic Church has recognised in previous submissions on this issue that many of those with so-called ‘conflict related’ criminal records would not have had such records but for the ‘particular’ political circumstances of Northern Ireland. There is therefore a willingness to support some form of wording or proposed mechanism by which the appropriateness and proportionality of the impact of retaining such conflict-related criminal records can be independently and expertly adjudicated on a case by case basis. As it is, the wording in the original proposal for this clause was judged to be too sweeping”.

Ethnic minority sector

- “The Ethnic Minority Sector supports the entire section, in particular the concept of unfair discrimination in Clause 2, 3 and 4. We also support a specific clause on gender equality and equality for persons with disabilities. We also support a specific clause that reflects the spirit of the Good Friday Agreement”.

Human Rights NGO sector

- “If the concept of unfair discrimination is accepted, there is no need for the Bill of Rights to articulate exceptions or limitations to discrimination. However in the absence of unfair discrimination, then problems arise. There are many cases where it is entirely legitimate to discriminate but which is not part of an affirmative action measure, and the law already allows for these situations”.
- “A general provision of unfair discrimination would allow the courts – subject to existing legislation – the discretion to determine whether such targeted activities are fair or unfair. In the absence of this, we believe that limitations and exceptions MUST be specifically addressed. Given the reach of the Bill of Rights into so many potential areas, however, we fail to see how this could be easily formulated”.

Older people’s sector

- “We support the concept of unfair discrimination and welcome specific clauses on gender equality and equality for people with disabilities as we believe these have particular resonance to the particular circumstances of Northern Ireland”.

Trade unions sector

- “We fully support the position statement from the Human Rights Sector. We re-iterate our strong view that the unfair discrimination concept be accepted, but that its absence will require detailed definition of discrimination, direct and indirect, exceptions and affirmative action measures. We have, throughout the process, emphasised that there can be no regression from or diminution of the highest standards of equality protections”.

RIGHT TO LIFE

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. Everyone has the right to life which shall be protected by law. No one shall be condemned to death or executed, judicially or criminally.**
- 2. Public authorities shall ensure the effective, prompt and independent investigation of all suspected cases of unlawful, arbitrary or summary executions, suspicious deaths or deaths in custody or in care, including cases where complaints by relatives or other reliable reports suggest unnatural death in these circumstances, whether the death occurred before or after the enactment of this legislation. Investigations should adequately involve the next of kin.**
- 3. Without prejudice to the conduct of inquests in the public interest, the family and friends of a deceased have the right to a timely and effective inquest and, in cases where the State may have some responsibility for the death, to be legally represented by a lawyer of their own choosing, if necessary with the assistance of legal aid, in both the preparation of any case they wish to make and during the proceedings themselves.**
- 4. In the interests of justice, any person alleged to be responsible for or connected with a death is a compellable witness for the purposes of an inquest.**
- 5. Public authorities shall take all necessary measures, including legislation, to protect the right to life.**
- 6. No one shall be involuntarily returned or extradited to a country where there are reasonable grounds for believing that he or she may become a victim of unlawful, arbitrary or summary execution.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights⁶ and criminal justice and victims⁷ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the right to life is a key right in the ECHR.
- additional protections are required to address extradition.

⁶ Right to life, provision 3, page 5, report of the civil and political rights working group.

⁷ Right to life/use of force, page 31, report of the criminal justice and victims working group.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether there should in reference to the right to life of unborn children.
- Clause 2: whether investigation by suspicious deaths should be impartial or independent and whether the obligation should apply in relation to deaths that occurred before the commencement of the Bill of Rights.
- Clause 3: whether families and friends of a deceased should have a right to an inquest.
- Clause 4: whether a person with information relevant to an inquest should be compellable at an inquest.
- Clause 6: whether the use of lethal or potentially lethal weapons against children should be prohibited under all circumstances.
- Clause 8: whether this clause should be included as extradition has not been devolved to Northern Ireland public authorities.

Level of support

DUP	Against
Sinn Féin	For Clause 2 'independent' rather than 'impartial'; supported clauses 3 and 4; clause 6 accepted.
UUP	Against
SDLP	For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Alliance	For Clause 2 abstained on 'independent' rather than 'impartial'; clause 6 accepted.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Children and Young People's sector	Clause 2 'independent' rather than 'impartial'; original clause 6 accepted, revised clause 4 opposed as not strong enough.
Churches	For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Community/voluntary sector as a whole	Not present to vote.
Disability sector	For

	Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Ethnic Minority Sector	For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Human Rights NGO sector	For Clauses 3 and 6 qualified support
Older People's sector	For Clause 2 'independent' rather than 'impartial'; clause 6 opposed as this may contravene the extended right to silence elsewhere, and is imprecise.
Sexual Orientation sector	For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Trade Unions	For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.
Women's sector	For Clause 2 'independent' rather than 'impartial'; clause 6 accepted.

Statements of position

DUP and UUP

- "HRA Article 2 sufficiently protects the right to life".
- "The DUP also opposed on the grounds of its support for capital punishment and for a reference to the right to life of the unborn child".
- "The UUP noted that the ECHR/HRA has explicitly addressed the issue of capital punishment".

Children and young people's sector

- On the use of lethal weapons on children: "whilst the children's sector were content to facilitate the formulation of wording which attracted maximum consensus we, as a constituency, remain fundamentally opposed to the use of lethal or potentially lethal weapons against children in any circumstances".

Ethnic minority sector

- "The Ethnic Minority Sector supports the entire section, in particular using "independent" as opposed to "impartial" in Clause 2 that reflects the international human rights standards".

Human Rights NGO sector

- "Article 2 of the European Convention of Human Rights has established a clear procedural right to adequate investigation, and the jurisprudence from the Court on this right is clear. Qualification on support for clauses 3 and 4 is based on a belief that inquests may already be addressed under the right to adequate investigation, and as currently phrased/inserted is potentially legally imprecise".

Older people's sector

- On clause 4: "we opposed as this as it may contravene the extended right to silence elsewhere in the draft proposals and is insufficiently precise".

RIGHT TO PHYSICAL INTEGRITY

Recommendation

- 1. Everyone has the right to physical and psychological integrity, including**
 - a. the right to be free from all forms of violence, abuse, maltreatment and harassment, from either public or private sources,**
 - b. the right to be free from all forms of violence, abuse, maltreatment and harassment, from either public or private sources, in particular gender-related violence and harassment, including:**
 - domestic violence,**
 - sexual violence,**
 - harmful traditional practices, and**
 - sexual harassment;**
 - c. sectarian and paramilitary violence and harassment;**
 - d. the right to be free from hate crime based on any proscribed ground of discrimination;**
 - e. the right to be protected from sexual exploitation and sexual and other forms of trafficking;**
 - f. the right to make decisions, within the law concerning reproduction;**
 - g. the right to security in and, within the law, control over her or his body.**

- 2. Public authorities shall take all appropriate measures to protect this right effectively.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights⁸, criminal justice and victims⁹ and women's¹⁰ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- freedom from violence and abuse and the right to physical and psychological integrity: are rights that flow from respect for dignity; are rights that have particular resonance for victims; and broadly apply to the criminal justice system.
- the right to physical integrity seeks to address the particularly high level of domestic violence against women in Northern Ireland.
- protection from harassment addresses the particular circumstances of Northern Ireland.

⁸ Prohibition of harassment, provision 2, page 4, report of the civil and political rights working group.

⁹ Bodily and psychological integrity, page 4, report of the criminal justice and victims working group; and freedom from harassment, page 5, same report.

¹⁰ Physical integrity and autonomy, provision 1, pages 10-19, report of the women's working group.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether there should be specific reference to “mental integrity”.
- Clause 1 (b) and (c): whether these two provisions should be combined and whether the specific areas of gender-related violence should be listed.
- Clause 2: whether specific reference should be made to some public authorities with this obligation, namely police, immigration, prison, criminal justice, education, health and social care systems

Levels of support

DUP	Against
Sinn Féin	For Clause 1 supported; clause 2 oppose listing public authorities.
UUP	Against
SDLP	For Clause 1 supported; clause 2 oppose listing public authorities.
Alliance	For Clause 1 supported with added reference to hate crime; clause 2 oppose listing public authorities.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 1 supported; clause 2 oppose listing public authorities.
Children and Young People’s sector	For Clause 1 supported; clause 2 oppose listing public authorities.
Churches	For Clause 1 supported; clause 2 oppose listing public authorities.
Community/voluntary sector as a whole	Not present to vote.
Disability sector	For Clause 1 supported with added reference to hate crime; clause 2 oppose listing public authorities.
Ethnic Minority Sector	For Clause 1 supported; clause 2 oppose listing public authorities.
Human Rights NGO sector	For Clause 1 supported with reservations; clause 2 oppose listing public authorities.

Older People's sector	For Clause 1 supported; clause 2 oppose listing public authorities.
Sexual Orientation sector	For Clause 1 supported with either added reference to hate crime or stopping at 'private sources'; clause 2 oppose listing public authorities.
Trade Unions	For Clause 1 supported; clause 2 oppose listing public authorities.
Women's sector	For Clause 1 supported; clause 2 oppose listing public authorities.

Statements of position

DUP and UUP

- “Some of the proposals (though not all) have merit in terms of their subject matter, but cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “The state's obligation to defend persons from unlawful violence under Article 2 of the HRA sufficiently addresses many of the issues raised”.

Human Rights NGO sector

- Reservation to the listing of public authorities in clause 2.

Older people's sector

- “We oppose clause 2 on the basis that a list of public authorities could be regarded as exclusive”.

Women's sector

- “The UK government is signatory to CEDAW Convention and article 12 calls for states to ‘take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.’ With regards to reproductive rights, we are not meeting our obligations under the law as it currently exists”.

FREEDOM FROM TORTURE AND ALL CRUEL, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. No one shall be subjected to torture or to any cruel, inhuman or degrading treatment or punishment, including rape and other forms of sexual assault.**
- 2. No one shall be involuntarily returned or extradited to a country where there are reasonable grounds for believing that he or she may become a victim of torture or cruel, inhuman or degrading treatment or punishment.**
- 3. Public authorities shall enact legislative provisions to prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other treatment prohibited under clause 1 or threats of such.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights¹¹, criminal justice and victims¹² and women's¹³ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- while international law is very clear in stating that freedom from torture is an absolute right a Bill of Rights for Northern Ireland should include a provision placing an obligation on law enforcement officials not to engage in or to seek to justify such practices.
- the civil and political rights and women's working groups worked together to mainstream women in their proposals on freedom from torture.
- the inclusion of protections concerning extradition and use of evidence in judicial proceedings in proposals on freedom from torture seek to address Northern Ireland's past.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.

¹¹ Prohibition of torture, provision 4, page 6, report of the civil and political rights working group.

¹² Freedom from torture, cruel, inhuman or degrading treatment or punishment, page 32, report of the criminal justice and victims working group.

¹³ Prohibition of torture, provision 10, page 20, report of the women's working group.

- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether the provision should be limited to “serious” sexual assault

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People’s sector	For
Churches Catholic Church Irish Council of Churches	For Abstained
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People’s sector	For
Sexual Orientation sector	For
Trade Unions	For
Women’s sector	For

Statements of position

DUP and UUP

- “HRA Article 3 sufficiently addresses this issue”.
- “It is also noted that extradition and related issues are decided at a Westminster and EU level”.

FREEDOM FROM SLAVERY AND FORCED LABOUR

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. No one shall be held in slavery or servitude, including domestic servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**
- 3. For the purpose of this article the term “forced or compulsory labour” shall not include:**
 - a. any work or service which forms part of normal civic obligations any work required to be done in the ordinary course of lawful detention or during conditional release from such detention, provided that the work is a positive element of rehabilitation and not a punishment;**
 - b. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;**
 - c. any work or service which forms part of normal civic obligations.**
- 4. Public authorities shall take all appropriate measures to make slavery and other forms of forced labour, including trafficking in and exploitation of human beings and enforced prostitution, offences punishable by law and to protect and assist victims of slavery, forced labour, trafficking, exploitation and enforced prostitution with full respect for their human rights, taking into account in particular the age, gender and special needs of victims.**
- 5. “Trafficking in human beings” has the same meaning as in international law.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights¹⁴ and women’s¹⁵ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- trafficking was included as it requires address as a contemporary phenomenon in Northern Ireland.

¹⁴ Prohibition of slavery and forced labour, provision 5, page 7, report of the civil and political rights working group.

¹⁵ Prohibition of slavery and forced labour, provision 11, pages 20-21, report of the women’s working group.

- the civil and political rights and women’s working groups worked together to mainstream women in their proposals prohibiting slavery and forced labour.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 3: whether the provision should refer to compulsory military service
- Clause 5: whether “trafficking” should be defined in the recommendation itself or reference made to the definition referred to international law.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People’s sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People’s sector	For
Sexual Orientation sector	For
Trade Unions	For
Women’s sector	For

Statements of position

DUP and UUP

- “HRA Article 3 sufficiently addresses this issue and the proposal cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “The additions to the HRA text, referring to enforced prostitution and trafficking, often involve issues of border security and immigration and are thus matters to be addressed by Westminster and by the EU”.

Ethnic minority sector

- “The Ethnic Minority Sector supports the entire section, in particular the definition of “trafficking in human beings” in Clause 5 mirrors the definition in accordance with the international law”.

RIGHT TO LIBERTY AND SECURITY OF THE PERSON

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to unlawful or arbitrary deprivation of liberty.**
- 2. Deprivation of liberty may be permitted by law, in accordance with a procedure prescribed by law,**
 - a. where it is reasonably considered necessary to prevent a person committing an offence or fleeing after having done so;**
 - b. for the purpose of bringing a person before the competent legal authority on reasonable suspicion of having committed an offence;**
 - c. after conviction by a competent court, in accordance with the order of the court;**
 - d. for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;**
 - e. for the prevention of the spreading of infectious diseases.**
- 3. Everyone who is arrested or detained shall be informed promptly, in a language which she or he understands and which is accessible and appropriate to her or his age, of the reasons for the detention or arrest and of any charge.**
- 4. Everyone who is arrested or detained has the right to communicate promptly with, and to be visited by, a medical practitioner, a legal representative of choice and, under appropriate supervision if the investigation so requires, a family member.**
- 5. Everyone arrested or detained shall be brought promptly, unless released, before a judge or other person authorised by law to exercise judicial power to determine the lawfulness and necessity of the detention.**
- 6. Everyone who is deprived of liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and release ordered if the detention is not lawful.**
- 7. Everyone charged with a criminal offence shall be entitled to trial within a reasonable time.**
- 8. Everyone charged with a criminal offence shall be entitled to release pending trial unless a court decides that detention on remand for a reasonable period is required for the protection of the public, the protection of witnesses and evidence or to ensure the accused person's**

appearance for trial. Release may be conditioned by guarantees to appear for trial.

- 9. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation and an effective remedy.**
- 10. No one shall be deprived of liberty on the ground of failure to pay maintenance or a debt, fine or tax.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights¹⁶ and criminal justice and victims working groups¹⁷. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the right to liberty and security is a key right in the ECHR
- a provision stating that no one shall be deprived of liberty on the ground of failure to pay a debt was deemed a necessary inclusion.
- the language contained in Article 5.1(e) of the ECHR (Right to liberty and security) which provides for the lawful detention of persons of “unsound mind” is antiquated and fails to pass the “particular circumstances of Northern Ireland test” in that it goes against the current broadly-based movement toward reform of mental health law in Northern Ireland.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 2: how to deal with detention made necessary by reason of mental illness and whether the clause should permit detention by law where it is reasonably considered necessary for the safety of the person or others.
- Clause 8: how to ensure that detention on remand is for the shortest possible period of time and whether there should be a presumption of bail.
- Clause 10: whether detention should be permitted in relation to a debt, fine or tax where a court considers that the person has wilfully refused to pay despite having the means to do so and that the failure to pay constitutes a contempt of the court.

¹⁶ Right to liberty and security, provision 7, pages 9-10, report of the civil and political rights working group.

¹⁷ Liberty and security of the person, page 4, report of the criminal justice and victims working group; and right to liberty, page 35, same report.

Levels of support

DUP	Against
Sinn Féin	For Clause 2 d and e, abstained, opposed 2f; clause 8 supported; clause 10 opposed unless it stops at 'tax'.
UUP	Against
SDLP	For Clause 2f supported if reworded; clause 8 supported; clause 10 supported.
Alliance	For Clause 2f supported; clause 8 supported; clause 10 supported.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 2f supported; clause 8 supported; clause 10 supported.
Children and Young People's sector	For Clause 2f opposed; clause 8 supported; clause 10 supported if it stops at 'tax'.
Churches Catholic Church Irish Council of Churches	For Clause 2f reserved; clause 8 supported; clause 10 supported. Abstained
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2f opposed; clause 8 supported; clause 10 supported if it stops at 'tax'.
Ethnic Minority Sector	For Clause 2f opposed; clause 8 supported; clause 10 supported if it stops at 'tax'.
Human Rights NGO sector	For Clause 2f opposed; clause 8 supported with a reference to 'reasonable period of detention' added; clause 10 supported if it stops at 'tax'.
Older People's sector	For Clause 2f opposed; clause 8 supported; clause 10 supported if it stops at 'tax'.
Sexual Orientation sector	For Clause 2f opposed; clause 8 reserved; clause 10 supported if it stops at 'tax'.
Trade Unions	For Clause 2f opposed; clause 8 supported; clause 10 supported if stops at 'tax'.
Women's sector	For

	Clause 2f supported if redrafted to cover mental ill health and carers; clause 8 supported; clause 10 supported if it stops at 'tax' (and prefer a reference to dependants in clause 10)
--	--

Statements of position

DUP and UUP

- "HRA Article 5 sufficiently addresses these issues".

Sinn Féin

- "Abstain on inclusion of clauses (d) and (e): Rationale – These clauses conflict with our party policy limiting the use of custody to protection of the public from violence".

RIGHT TO PRIVACY AND FAMILY LIFE

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. Everyone has the right to private and family life. No one shall be subjected to unlawful or arbitrary interference with his or her privacy, home or personal communications.**
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, including the right to freedom from domestic violence, and where in the best interests of the child.**
- 3. Everyone of marriageable age has the right to marry or enter into civil partnerships according to the laws governing the exercise of this right. Everyone has the right to found a family, recognising that families exist in diverse forms. No family may be subjected to discrimination on any of the grounds proscribed in this Bill of Rights.**
- 4. Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.**
- 5. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.**
- 6. Compliance with these rules shall be subject to control by an independent authority.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights¹⁸ and criminal justice and victims¹⁹ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the right to privacy must extend beyond the criminal justice context.

¹⁸ Right to marry and form civil partnerships, provision 14, page 18, report of the civil and political rights working group; and right to respect for private and family life, provision 10, page 14, same report.

¹⁹ Right to privacy, pages 32-33, report of the criminal justice and victims working group.

- the right to marriage provided in Article 12 of the ECHR needs to be expanded to include civil partnerships.
- it is important to ensure the protection of families in their diverse forms and to address discrimination against families on the basis of sexual orientation.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 2: whether interference of privacy should be permissible in the interests of national security.
- Clause 3: whether marriage, civil partnerships and the right to found a family should all be dealt with in the one clause.
- Clauses 4 to 6: whether the provision should include specific reference to the protection of personal data.

Levels of support

DUP	Against
Sinn Féin	For Clause 2 opposed unless 'national security' deleted; option A1 (clause 4-6) supported.
UUP	Against
SDLP	For Clause 2 supported with 'national security' deleted; clause 3 separating the right to marry and the right to found a family supported; option A1 (clause 4-6) supported.
Alliance	For Clause 2 supported with 'national security'; option A1 (clause 4-6) opposed.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 2 supported with 'national security'; option A1 (clause 4-6) supported.
Children and Young People's sector	For Clause 2 supported with qualified abstention on 'national security'; option A1 (clause 4-6) support in principle but query inclusion in light of existing protection legislation.
Churches Catholic Church	For Clause 2 supported with 'national security'; option A1 (clause 4-6) reserved.

Irish Council of Churches	For Clause 2 supported with 'national security'; option A1 (clause 4-6) abstained.
Community/voluntary sector as a whole Disability sector	Not present to vote For Clause 2 supported with qualified abstention on 'national security'; option A1 (clause 4-6) supported.
Ethnic Minority Sector	For Clause 2 supported with 'national security'; option A1 (clause 4-6) supported.
Human Rights NGO sector	For Clause 2 abstained on 'national security'; clause 3 opposed last sentence; option A1 (clause 4-6) opposed.
Older People's sector	For Privacy and family life should be two clauses; clause 2 qualified abstention on 'national security'; option A1 (clause 4-6) opposed.
Sexual Orientation sector	For Clause 2 abstained on 'national security'; option A1 (clause 4-6) supported.
Trade Unions	For Clause 2 opposed to 'national security'; clause 3, separating the right to marry and the right to found a family supported; option A1 (clause 4-6) supported..
Women's sector	For Clause 2 supported qualified abstention on 'national security'; Option A1 (clause 4-6) supported.

Statements of position

DUP and UUP

- "HRA Articles 8 and 12 sufficiently address these issues".

Sinn Féin

- "Support for para 2 subject to deletion of the national security limitation:
Rationale – We cannot support the inclusion of the national security limitation in addition to the other limitations (in particular, limitations for the protection of public safety, for the prevention of crime, and for the protection of the rights of others) as it is excessive, unnecessary and potentially prejudicial. During the conflict fundamental human rights were routinely violated using national security as a justification, and the Bill of Rights must ensure this never happens again".

SDLP

- "SDLP would support deletion of "national security" on grounds that the protection sought would be achieved by reference to public safety and

prevention of crime and given that 'national security' has not been defined and has been subject to abuse throughout the conflict".

Children and young people's sector

- "We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of "national security" as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances specifically in relation to children (see opening statement)".

Churches sector (Catholic Church)

- "The representative of the Catholic Church expresses regret at the failure of the Forum to provide any recognition of the family based on marriage between man and a woman as the fundamental unit of society and therefore worthy of special protection, support and assistance".

Ethnic minority sector

- "The Ethnic Minority Sector supports the entire section, in particular Clause 4-6 on data protection right. We also support the inclusion of "national security" as it is consistent with Article 8 of the ECHR".

Human Rights NGO sector

- "Human Rights Sector: while we support these rights we would prefer if the right to privacy can family life, and the right to marry and found a family were separated as in the HRA. Opposed last sentence on the grounds that this is better addressed in the general equality clause".

Human Rights NGO sector; endorsed by the children and young people's sector, disability sector, ethnic minority sector, older people's sector, sexual orientation sector and women's sector

- "We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of "national security" as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland".

Trade unions sector

- "We are sympathetic to the position statement from the Human Rights Sector. However 'national security' has been repeatedly used to abuse rights, in particular the rights of workers. This includes its use: to politically vet, resulting in the dismissal of workers and the denial of right to due process to employers and workers alike; to remove trade union rights, and to frustrate

discrimination cases and access to other judicial remedies. Consequently we oppose its inclusion in a Northern Ireland Bill of Rights”.

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. Everyone has the right to freedom of thought, conscience and religion, including freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.**
- 2. [Clause deleted]**
- 3. Freedom to manifest religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.**
- 4. No one may be compelled to take an oath, or to take an oath in a manner, that is contrary to his or her religion or belief, or that requires him or her to express a belief that he or she does not hold.**

Working group reports

This recommendation consolidates a proposal developed by the civil and political rights working group²⁰ with subsequent written submissions and proposal presented in plenary.

Principal issues raised in the civil and political rights working group included the following:

- this recommendation builds on Article 9 of the ECHR.
- clause 3 was included in an attempt to address oaths as an historically significant feature of Northern Ireland.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.

²⁰ Freedom of thought, conscience and religion, provision 11, page 15, report of the civil and political rights working group.

- New clause 2: whether this clause should be specifically included or whether it is unnecessary because these rights are implicit in the statement of the right in clause 1, as follows

The right to freedom of thought, conscience, religion or belief includes:

- a. the freedom for religious groups to establish and maintain appropriate charitable or humanitarian institutions
- b. the freedom for religious groups to manage their own affairs in matters associated with religion and
- c. the right to conscientious objection, recognised in accordance with national laws governing the exercise of this right.

- New clause 5: whether this clause provides necessary protection for religious organisations or whether it represents a reduction in existing standards applicable in the jurisdiction, as follows

Religious organisations may restrict participation, membership and provision of services and facilities of a non-commercial nature provided that the restriction is imposed

- a. in accordance with the relevant national or European law and
- b. by reason of, or on the grounds of, the purpose of the group or
- c. in order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

Levels of support

DUP	Against New clauses 2 and 5 supported
Sinn Féin	For Clause 2b opposed; clause 2c supported; clause 5 opposed.
UUP	Against New clauses 2 and 5 supported
SDLP	For
Alliance	For Clause 2b opposed; clause 5 opposed.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People's sector	For Clause 2 opposed as it appears to be interpretive; clause 3 supported; clause 5 opposed as covered by Human Rights and the over-riding non-discrimination clause.
Churches	For
Community/voluntary sector as a whole	Not present to vote

Disability sector	For Clause 2 opposed as it appears to be interpretive; clause 5 opposed as covered by existing legislation.
Ethnic Minority Sector Human Rights NGO sector	For Clause 5 opposed as covered by existing legislation. For Clause 2 opposed as covered by existing legislation; clause 5 opposed as covered in equality clause.
Older People's sector	For Clause 2 opposed as covered by existing legislation; clause 5 opposed as covered in equality provision.
Sexual Orientation sector Trade Unions	For Clause 5 opposed For Clause 2 opposed as covered by existing legislation; clause 5 opposed as covered in equality proposals.
Women's sector	For Clause 2 opposed as covered by existing legislation; clause 5 opposed as creates two-tier protections.

Statements of position

DUP and UUP

- “Acknowledging that HRA Article 9 – together with clause 13 of the Act – address this issue, both parties supported the additional clauses proposed by the churches sector as being relevant to the particular circumstances of Northern Ireland”.

Sinn Féin

- On clause 2(b): “this proposed provision is too broad.
- On clause 5: “We are not confident that this proposed provision sufficiently protects against discriminatory employment practice”.

Business sector (Northern Ireland Chamber of Commerce)

- “Agreed with the reservation that the manifestation of the right stated in Clause 4 not have affect on the issue of Commercial Confidentiality”.

Ethnic minority sector

- “The Ethnic Minority Sector supports the entire section, in particular new proposal Clause 2 as it is not implicated in Clause 1 as the Indian Constitution has both Clause 1 and 2”.

Older people's sector

- On clause 2: “opposed as covered by existing legislation”.
- On clause 5: “opposed as covered by equality provision”

FREEDOM OF EXPRESSION

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by any public authorities and regardless of frontiers.**
- 2. Everyone has the right of access to information, including any information held by public authorities and any information that is required for the exercise or protection of any rights in the Bill of Rights.**
- 3. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. It may also be subject to consideration of the best interests of children.**
- 4. These freedoms do not include freedom for advocacy of hatred, on any proscribed ground, that constitutes incitement to unlawful discrimination, hostility or violence.**
- 5. This article shall not prevent public authorities from licensing broadcasting, television or cinema enterprises.**

Working group reports

This recommendation consolidates a proposal developed by the civil and political rights working group²¹ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the civil and political rights working group included the following:

- censorship was considered as having particular relevance in the history of Northern Ireland and on this basis the working group removed references to 'national security' and 'territorial integrity' from Article 10.2 of the ECHR (Freedom of expression) as reproduced in clause 3.
- a right to information was incorporated into clause 1.

²¹ Freedom of expression, provision 12, page 16, report of the civil and political rights working group.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 2: how the right to information should be expressed and whether it should recognise rights against public authorities alone or more generally.
- Clause 4: whether the prohibition of hate speech should be restricted to that relating to national, racial and religious hatred, or be broadened to include that relating to any proscribed ground under the anti-discrimination provision, or be open in its application or whether this clause should be replaced by the following:

These freedoms do not include

- propaganda for war;
- incitement of imminent discrimination, hostility or violence; or
- advocacy of hatred that is based on race, ethnicity, nationality, religion, gender or sexual orientation and that constitutes incitement to cause harm.

Levels of support

DUP	Against
Sinn Féin	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
UUP	Against
SDLP	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Alliance	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Children and Young People's sector	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Churches	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Community/voluntary sector as a whole Disability sector	Not present to vote For

	Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Ethnic Minority Sector	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Human Rights NGO sector	For Clause 4 supported with 'hatred on any proscribed ground' instead of 'national, racial or religious hatred'
Older People's sector	For Clause 4 supported without 'national, racial or religious hatred'
Sexual Orientation sector	For Clause 4 supported with 'national, racial or religious hatred' extended
Trade Unions	For Clause 4 supported without 'national, racial or religious hatred'
Women's sector	For Clause 4 supported with hatred on any proscribed ground' instead of 'national, racial or religious hatred'

Statements of position

DUP and UUP

- "HRA Article 10 sufficiently addresses this issue".
- "Furthermore, the proposal cannot be considered as relevant to the particular circumstances of Northern Ireland".

Ethnic minority sector

- "The Ethnic Minority Sector supports the entire section, in particular Clause 4 with hatred on any proscribed ground".

Older people's sector

- "On clause 4 we support the deletion of national, racial or religious hatred on the basis that this list could be regarded as exclusive".

Women's sector

- "We would prefer to see the grounds extended to hatreds based on ethnicity, gender, sexual orientation, disability etc in order to publicly name the existence of other vulnerable groups".

FREEDOM OF ASSOCIATION AND OF PEACEFUL ASSEMBLY

This provision deals with a right within the European Convention on Human Rights and should be drafted to indicate the additional protection recommended.

Recommendation

- 1. Everyone has the right to freedom of association with others and to freedom of peaceful assembly.**
- 2. Freedom of association includes**
 - a. the right to form and to join a political party;**
 - b. the right to form and to join trade unions for the protection of her or his interests and to participate in trade union activity, including the right to strike and the right to engage in collective bargaining.**
- 3. Freedom of peaceful assembly includes the right to participate in assemblies, processions, protests and parades.**
- 4. The scope of these freedoms should be commensurate with that provided in international human rights law. In particular, no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals or the protection of the rights and freedoms of others.**
- 5. These freedoms do not include freedom for advocacy of hatred, on any proscribed ground, that constitutes incitement to discrimination, hostility or violence.**
- 6. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the public authorities where such exercise does not concern trade union rights.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights²² and culture, identity and language²³ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

²² Freedom of assembly and association, provision 13, page 17, report of the civil and political rights working group.

²³ Right to freedom of peaceful assembly, provision 1, pages 6-10, report of the culture, identity and language working group.

- it is necessary to include a specific provision on harassment within the right to freedom of assembly and association given the particular circumstances of Northern Ireland.
- it was noted that Article 7 of the Framework Convention for the Protection of National Minorities highlights the relevance of freedom of peaceful assembly to the protection of national minorities.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 3: whether this clause was required and, of so, whether it should include protest action and whether it should be limited to assembly for a cultural, political or religious purpose.
- Clause 4: whether the freedom may be limited in the interests of national security.
- Clause 5: whether the prohibition of advocacy of hatred should be restricted to that relating to national, racial and religious hatred, or be broadened to include that relating to any proscribed ground under the anti-discrimination provision, or be open in its application

Levels of support

DUP	Against Clause 3 supported
Sinn Féin	For Clauses 1, 2 and 6 supported; clause 4 supported if 'national security' deleted; clauses 3 and 5 supported.
UUP	Against Clause 3 supported.
SDLP	For Clauses 1, 2, 3 and 6 supported; clause 4 supported if 'national security' deleted; clause 3; clause 5 supported without a broad statement instead of 'national, racial or religious hatred'
Alliance	For Clause 4 supported with 'national security'; clause 5 supported if expanded to cover hate crime categories.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Reserved
Children and Young People's sector	For Clause 3 support in principle but query its necessity

	light of clause 1; clause 4 supported with qualified abstention on 'national security'; clause 5 supported as amended.
Churches Community/voluntary sector as a whole	Support Clause 4 supported with 'national security'. Not present to vote
Disability sector	Support Clause 3 supported; clause 4 supported qualified abstention on 'national security'; clause 5 supported.
Ethnic Minority Sector Human Rights NGO sector	Support Clause 3 reserved; clause 4 supported with 'national security'; clause 5 opposed. Support Clause 3 support; clause 4 abstained on 'national security'; clause 5 supported if 'national, racial or religious' deleted.
Older People's sector	Support Clause 3 reserved; clause 4 support deletion of 'national security'; clause 5 supported.
Sexual Orientation sector	Support Clause 4 abstained on 'national security'; clause 5 opposed.
Trade Unions	Support Clause 3 supported; clause 4 opposed to 'national security'; clause 5 supported with deletions.
Women's sector	Support Clause 3 supported; clause 4 supported with qualified extension on 'national security'; clause 5 supported if 'national, racial or religious' either deleted or grounds extended.

Statements of position

DUP and UUP

- "With the exception of clause 3, this proposal does not meaningfully supplement HRA Article 11 nor – in the case of reference to trade unions – is it relevant to the particular circumstances of Northern Ireland".
- "Both parties particularly note the failure to make reference to the principles of the OSCE guidance, as recommended by the CIL Working Group".

Sinn Féin

- "We cannot support the inclusion of the national security limitation in addition to the other limitations (in particular, limitations for the protection of public safety, for the prevention of crime, and for the protection of the rights of others) as it is excessive, unnecessary and potentially prejudicial. During the conflict fundamental human rights were routinely violated using national security as a justification, and the Bill of Rights must ensure this never happens again".

Business sector (Northern Ireland Chamber of Commerce)

- “Reserve on this matter. The “Right to Strike” referred to in Clause 2b line 3, does not specify that the “Strike” be “Official””.

Children and young people’s sector

- “We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of “national security” as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland with specific reference to children”.

Ethnic minority sector

- “Ethnic Minority Sector supports the entire section. We support Clause 4 with “national security” as it is consistent with Article 11 of the ECHR. We only support Clause 5 for the inclusion of proscribed grounds of discrimination”.

Human Rights NGO sector; endorsed by the children and young people’s sector, disability sector, ethnic minority sector, older people’s sector, sexual orientation sector and women’s sector

- “We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of “national security” as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland”.

RIGHT TO CULTURE, LANGUAGE AND IDENTITY

Recommendation

Option A

- 1. Everyone belonging to a cultural, ethnic, linguistic or religious minority or community shall have the right, individually and with other members of that minority or community, to enjoy her or his own culture, to profess and practise her or his own religion and to use her or his own language. No one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights or inconsistently with the rights and freedoms of others.**
- 2. Everyone belonging to cultural, ethnic, religious or linguistic minorities or communities may exercise the rights and enjoy the freedoms recognised in the Bill of Rights individually as well as in community with others.**
- 3. Everyone has the right to protection from coercive cultural assimilation by public bodies or as a result of public policy.**
- 4. Everyone belonging to a cultural, ethnic, linguistic or religious minority or community shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights connected to that choice.**
- 5. Everyone belonging to a linguistic minority or community has the right to learn his or her minority or community language.**
 - a. Everyone belonging to a linguistic minority or community that is indigenous has the right to be educated in and, where appropriate, through their language.**
 - b. Everyone belonging to a linguistic minority or community that is not indigenous has the right to be educated in their language where there are substantial numbers of users and sufficient demand.**
 - c. These rights are without prejudice to the learning of English or the teaching in English.**
- 6. Public authorities shall develop laws, policies, and practice relating to indigenous minority languages according to the situation of each language and on the basis of**
 - a. recognition of these languages as an expression of cultural wealth;**
 - b. the respect of the geographical area of each language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the language in question;**
 - c. the need for resolute action to promote these languages in order to safeguard them;**

- d. the facilitation and encouragement of the use of these languages in public and private life;
 - e. the maintenance and development of links between groups using these languages and other groups employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups using different languages;
 - f. the provision of appropriate forms and means for the teaching and study of these languages at all appropriate stages;
 - g. the provision of facilities enabling non-speakers of one of these languages living in the area where it is used to learn it if they so desire;
 - h. the promotion of study and research on these languages at universities or equivalent institutions;
 - i. the promotion of appropriate types of exchanges for those languages used also in other jurisdictions; and
 - j. the availability of resources.
7. The law in Northern Ireland shall give effect to the Framework Convention on the Protection of National Minorities. The term 'national minority' shall be interpreted to cover all cultural, ethnic, linguistic and religious minorities and communities in Northern Ireland.

Option B

1. Everyone belonging to a cultural, ethnic, linguistic or religious minority shall have the right, individually and with other members of that minority, to enjoy her or his own culture, to profess and practise her or his own religion and to use her or his own language. No one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights or inconsistently with the rights and freedoms of others.
2. Everyone belonging to a cultural, ethnic, religious or linguistic minority may exercise the rights and enjoy the freedoms recognised in the Bill of Rights individually as well as in community with others.
3. Everyone belonging to a sexual orientation minority or community shall have the right, individually and with other members to enjoy her or his own culture. No one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights or inconsistently with the rights and freedoms of others.
4. Everyone belonging sexual orientation minorities or communities may exercise the rights and enjoy the freedoms recognised in the Bill of Rights individually as well as in community with others.
5. Everyone belonging to a minority has the right to protection from cultural assimilation by public bodies or as a result of public policy.

- 6. Everyone belonging to a linguistic minority has the right to learn his or her minority language and to be educated in and, where appropriate, through their language. In this Bill of Rights special status shall be given to both Irish and Ulster-Scot communities to reflect the mutual respect for the identity and ethos of both communities and parity of esteem. These rights are without prejudice to the learning of English or the teaching in English.**

- 7. Public authorities shall develop laws, policies, and practice relating to indigenous minority languages according to the situation of each language and on the basis of**
 - a. recognition of these languages as an expression of cultural wealth;**
 - b. the respect of the geographical area of each language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the language in question;**
 - c. the need for resolute action to promote these languages in order to safeguard them;**
 - d. the facilitation and encouragement of the use of these languages in public and private life;**
 - e. the maintenance and development of links between groups using these languages and other groups employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups using different languages;**
 - f. the provision of appropriate forms and means for the teaching and study of these languages at all appropriate stages;**
 - g. the provision of facilities enabling non-speakers of one of these languages living in the area where it is used to learn it if they so desire;**
 - h. the promotion of study and research on these languages at universities or equivalent institutions;**
 - i. the promotion of appropriate types of exchanges for those languages used also in other jurisdictions.**

Working group reports

This recommendation consolidates four proposals developed by the culture, identity and language working group²⁴. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the culture, identity and language working group included the following:

²⁴ General right to culture, language and identity, provision 2, page 12, report of the culture, identity and language working group; right to self-identification, provision 3, page 13, same report; language rights, provision 6, pages 23-25, same report; and minority language education rights, provision 5, pages 20-21, same report.

- a general right to culture, language and identity should covers users of British and Irish Sign Language.
- the right to self-identification is important in Northern Ireland as many people do not feel that they either fit or wish to belong to what are perceived as being the two dominant sections of society. It is also important to acknowledge that there is not a uniform correlation between national identity, religious identity and political identity.
- as stated in the Explanatory Report to the Framework Convention for the Protection of National Minorities, minority language education rights are one of the principal means by which individuals can assert and preserve their identity.

Plenary issues

- General: whether this recommendation should provide protection of the rights of minorities alone (option B) or be extended to protection of the rights of communities in addition (option A).
- General: whether this recommendation should apply to sexual orientation minorities in addition to cultural, ethnic, language and religious minorities, as reflected in Option B clauses 3 and 4.
- General: whether there should be a clause on giving effect to the Framework Convention on the Protection of National Minorities, as included in Option A clause 7.
- Option A additional clause: whether a clause on the collection and analysis of data should be retained, as follows

Nothing in this article shall prevent the collection and analysis of appropriate information, including statistical and research data, to enable the monitoring of the enjoyment of human rights under this Bill of Rights by persons who are members of or are identified with or have backgrounds associated with a traditional cultural, ethnic, linguistic or religious minority or community so that laws, policies and programmes can be formulated and implemented to give better effect to this Bill of Rights.

- Option B clause 5: whether the provision should include a clause on cultural assimilation and, if so, whether that should be limited to coercive cultural assimilation.
- Option B Clause 6: whether there should be recognition of the specific position of indigenous languages or of the specific position of the Irish and Ulster Scots language communities, as follows as a replacement of option B clause: 6

Everyone belonging to a linguistic minority has the right to learn his or her minority language.

- a. Everyone belonging to a linguistic minority that is indigenous has the right to be educated in and through their language.
- b. Everyone belonging to a linguistic minority that is not indigenous has the right to be educated in their language where there are substantial numbers of users and sufficient demand.

c. These rights are without prejudice to the learning of English or the teaching in English.

- Option B Clause 7: whether reference to “indigenous minority languages” should be replaced by reference to “the Irish and Ulster Scots language communities”.
- Option B Clause 7: whether availability of resources should be added as an additional basis for the development of laws, policies and practices.
- New clause: whether there should be a specific clause on sign language, as follows:

The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by this Bill of Rights.

- New clause: whether the provision should include a clause on recognition of Irish and British identities

Everyone born within the jurisdiction has the right to identify himself or herself and be accepted as Irish or British or both, as he or she may choose.

Levels of support

DUP	Option A Optional clause on collection of data opposed; reference to ‘sexual orientation’ opposed
Sinn Féin	Option B Clause 6 original text supported; clause 7 original text supported
UUP	Option A Optional clause on collection of data opposed; reference to ‘sexual orientation’ opposed
SDLP	Option B Clause 6 revised text supported; clause 7 original text supported
Alliance	Option A Optional clause on collection of data opposed; reference to ‘sexual orientation’ supported
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Reserved
Children and Young People’s sector	Option B Clause 6 revised text supported; clause 7 original text supported
Churches	Abstained

Community/voluntary sector as a whole	Not present to vote
Disability sector	Option B Clause 6 revised text supported; clause 7 original text supported
Ethnic Minority Sector	Option B Clause 6 revised text supported; clause 7 revised text supported
Human Rights NGO sector	Option B Clause 6 reserved; clause 7 revised text preferred
Older People's sector	Option B Clauses 6 and 7 will accept majority view
Sexual Orientation sector	Option B Clause 6 revised text supported; clause 7 original text supported
Trade Unions	Option B Clause 6 supported; clause 7 revised text supported
Women's sector	Option B Clause 6 original text supported; clause 7 revised text supported

Statements of position

DUP and UUP

- “Both parties supported Option A as more reflective of the provisions of the FCNM and noted their grave disappointment at the approach taken by other parties to the FCNM”.

Sinn Féin

- “We are not satisfied that this section as formulated in Option A could not be used prejudicially to protect the rights of majorities over the rights of minorities, in a manner that distorts the legal intent of the international instruments on which many of the provisions are based. We could more fully support the section if the phrase ‘or communities’ used throughout was deleted, for avoidance of doubt”.
- “Oppose amended para 6 in Option B: We prefer the formulation that appears as para 5 in Option A if the words in 5(a) ‘where appropriate’ are deleted as proposed by Sinn Féin, as it better protects the rights and status of Irish speakers, and is potentially more inclusive of the rights of other indigenous linguistic minority groups, including ISL/BSL and speakers of Cant/Gammon”.
- “Oppose para 4 in Option A: Rationale – We remain concerned about the potential effect of this clause on fair employment legislation and other affirmative action measures”.
- “Oppose para 7 in Option A: Rationale – We are supportive of incorporation of the Framework Convention protections into law, but we do not agree that this clause is the most appropriate method for ensuring this. Rather, the general protections themselves should be enshrined under this section for the sake of clarity and accessibility”.

SDLP

- “SDLP supports Option B, including amended clause 6 on language rights in education; if amendment not carried, remain supportive of original clause 4”.
- “SDLP opposed option A on the basis that ‘minority’ should not be used interchangeably with ‘community’ to extend minority rights to majority communities and that SDLP believes clause 7 would inhibit the achievement of equality of opportunity through obstructing affirmative action generally and particularly fair employment procedures which would be unacceptable given the centrality of fair employment issues to the conflict and its resolution”.
- “In any case, current fair employment monitoring procedures are anonymous and do not amount to disadvantage or denial of the right in question. The party cited opinion of the Council of Europe Experts Committee report in 2004 (appendicised to the CIL Working Group Report) to support the argument that this issue need not be dealt with in a Bill of Rights and would normally be dealt with by legislation”.

Alliance

- “Alliance believes that Northern Ireland is a complicated society with multiple identities, and cross-cutting cleaves. Cultural and identity rights should apply to all persons belonging to different sections of society. Minorities are not fixed, and majorities in one context can be minorities in another. Recognition of the rights of some does not diminish the rights of others. The right to self-identification is an absolutely critical issue for the Alliance Party. People should be free to identify themselves, and to have this right respected by public authorities. This is not the case in for example the census or integrated education viability criteria. Where there are implications for approaches to monitoring, then policies need to be reconsidered. Alliance is opposed to any limitation paragraph on this right. This right to self-identification is one of the few aspects of the Framework Convention to be expressed as a right rather than a state duty, and is not qualified”.

Business sector (Northern Ireland Chamber of Commerce)

- “Must reserve on this matter. NICCI would have concerns about the private sector being forced to bear the costs of providing long term translation and interpreting services, which could not only prove costly but could also interfere with the normal operation of business”.

Churches sector (Catholic Church)

- “I wish note regret at the failure to provide adequate time for the work of the Forum generally and of this section in particular as a result of which critical areas dealing with the particular circumstances of Northern Ireland and the opportunity for achieving agreed positions through dialogue were fundamentally undermined, whereas other areas of rights falling less clearly within the terms of the Agreement, however worthy in principle, were given greater consideration”.

Ethnic minority sector

- “Ethnic minority sector opposes the use of “community” to replace “minority”, this position was initially taken in the Working Group as the only voice and

throughout subsequent discussions. The use of “community” undermines the minority protection under international law and distorts the entire section of the recommendations”.

- “Clauses 5 and 6 in Option A create the hierarchy of rights between the “two communities” and “ethnic minority communities” we have been opposed to this all along. However, we accepted that both “Irish and Ulster-Scot language” should have special language status to reflect the Good Friday Agreement in our compromise Clause 6 in option B”.
- “We are strongly opposed to Clause 4 (self-identification) as it undermines the existing equality law, equality monitoring and the designation on cross-community voting in the Assembly”.
- “The use of “community” also creates confusion with regard to the inclusion of “sexual orientation” in original Clause 1 and 2 and now revised Clause 3 and 4 in option B as it is outside the remit of Article 26 of the ICCPR, the Framework Convention for the Protection of National Minorities and the terms of reference of the Working Group on Culture, Identity and Language”.
- “Ethnic minority sector vigorously supports the position that rights in relation to identities and cultures of sexual orientation should be in the Bill of Rights, but strongly feels that it is not in the right section. It would be more appropriate under either the Equality Clause alongside the gender and disability references or as a stand alone clause on Identity and Culture of Sexual Orientation”. Due to lack of time for further discussion we accept and support Clauses 3 and 4, despite this, the Sexual Orientation Sector accepts our proposal”.

Human Rights NGO sector

- The human rights NGO sector: “has fundamental reservations about many of the proposals in Option A. These reservations stem from the manner in which rights of a minority are treated as synonymous with rights of a community. The term “minorities” has a specific connotation in international human rights law. The protection of rights is obviously in the interests of everyone in society, whether one is a member of a minority or a majority community. Moreover, the rights of individuals to be protected from discrimination is obviously very important: men, white people, English speakers, heterosexuals, settled people must clearly be protected from discrimination, and must be allowed, like everyone else, to express their identity in private and in society. Special provision is rarely, if ever, however required to ensure protection for such groups - and the elaboration of the rights of “dominant” or “majority” groups do not figure in international human rights texts. The purpose of minority rights protections is to protect the most vulnerable groups in society, precisely because they are minority groups. It is quite unacceptable to undermine any of the rights that minority communities have as a result of the Framework Convention, and we believe that the current proposals risk doing that”.

Women’s sector

- “The Women’s Sector proposed the inclusion of ‘sexual orientation’ to this section as we believe protection of minorities must include protection for those who identify other than heterosexual”.

RIGHT TO NATIONALITY AND IDENTITY

Recommendation

- 1. Everyone has a right to a nationality. No one shall be arbitrarily deprived of his or her nationality nor denied the right to change his or her nationality.**
- 2. Everyone may identify themselves as Irish, British or both or other identity as they may so choose and may acquire and hold Irish citizenship, British citizenship or both in accordance with the law.**
- 3. No one's nationality shall be affected automatically, without his or her consent, by entering a marriage or civil partnership or the dissolution of a marriage or civil partnership or a change of nationality by the other person during the marriage or civil partnership.**
- 4. The laws on nationality shall not discriminate on any ground proscribed in the Bill of Rights other than the ground of nationality itself.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights²⁵ and women's²⁶ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the right of persons to possess British or Irish nationality or both was considered a necessary inclusion given Northern Ireland's history.
- migrants should also be entitled to protection as migration is becoming increasingly relevant to Northern Ireland.
- the civil and political rights and women's working groups worked together to mainstream women in their proposals on nationality.

Plenary issues

- General: whether a Bill of Rights is an appropriate place to provide for nationality issues.
- General: whether this proposal is better framed as dealing with citizenship rather than nationality.
- Clause 2: whether this clause is appropriate in dealing only with British and Irish identity and citizenship, in comparison with an alternative clause:

Everyone born within the jurisdiction has a right to British nationality and to recognition of any Irish nationality that he or she may hold.

²⁵ Right to nationality, provision 18, page 21, report of the civil and political rights working group.

²⁶ Right to nationality, provision 26, pages 55-56, report of the women's working group.

Levels of support

DUP	Against Clause 2 supported
Sinn Féin	For Clause 2 supported
UUP	Against Clause 2 supported
SDLP	For Clause 2 supported
Alliance	For Clause 2 supported
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For Clause 2 supported
Churches	For Clause 2 supported
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2 supported
Ethnic Minority Sector	For Clause 2 supported
Human Rights NGO sector	For Clause 2 supported
Older People's sector	For Clause 2 supported
Sexual Orientation sector	For Clause 2 supported
Trade Unions	For Clause 2 supported
Women's sector	For Clause 2 supported

Statements of position

DUP and UUP

- “Both parties strongly urge that (i) this section is entitled "Right to Citizenship" and (ii) in the second bullet point alphabetical order is followed i.e. British, Irish ... etc”.
- “Both parties note that the UK Government is not a party to the European Convention on Nationality”.

- “However, both parties supported clause 2 as an expression of existing legal rights and having reference to the particular circumstances of Northern Ireland”.

Older people’s sector

- “The sector offers qualified support as we are not certain of the appropriateness of clauses 1, 3 and 4 for a Bill of Rights for Northern Ireland”.

RIGHT TO EDUCATION

Recommendation

- 1. Everyone has the right to an education and access to lifelong learning, appropriate to their needs, that enables development to her or his fullest potential, the achievement of independence, economic and social inclusion and participation in the life of the community to the maximum extent possible.**
- 2. Everyone is entitled to accessible and free basic education, pre-school, primary and post-primary education. Primary and post-primary education shall be compulsory.**
- 3. Everyone is entitled to equal access to higher and further education, on the basis of capacity, without discrimination on any ground proscribed in the Bill of Rights.**
- 4. Everyone has the right to found educational establishments with due respect for democratic principles subject always to the child's right to an effective education, to the other provisions of this article and of the Bill of Rights and to the requirement that the education given in such institutions conforms to such minimum standards as may be laid down by the public authorities.**
- 5. Public authorities shall take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of the right in clauses 1 and 4.**
- 6. Public authorities shall take all appropriate measures to ensure that**
 - a. everyone receives an education that promotes equality, respect, human rights, understanding and effective communication among people of different identities**
 - b. the education of each child is directed to the development of respect for the child's parents and knowledge of and respect for**
 - i. the child's own cultural identity, language and values**
 - ii. the cultural identity, language and values of the family and community to which the child belongs**
 - iii. the shared national values of the country in which the child is living, taking into account the particular circumstances of Northern Ireland, and any other country from which the child may originate and**
 - iv. cultures different from the child's own.**
- 7. Public authorities shall take all appropriate measures to ensure that the child's rights are fully respected in the education sphere, including rights**
 - a. to have all decisions affecting the child based on the child's best interests**

- b. to participate in all decisions affecting the child and have the child's views taken into account and given due weight in accordance with child's age and maturity
 - c. to be treated and provided with opportunities on the basis of equality and without discrimination and
 - d. to proper process and treatment in disciplinary matters
8. Public authorities shall take all appropriate measures to ensure that the child and all others in the educational system are free from harassment and bullying.
9. Public authorities shall respect, on the basis of equality and to the greatest extent possible, the right of parents to ensure education and teaching for their children in conformity with their cultural, linguistic, pedagogical, philosophical and religious and other convictions, subject to best interests of the child, the views of the child being given due weight in accordance with child's age and maturity. Any sectoral funding shall be provided in an equitable, transparent and non-discriminatory manner consistent with the ability of the relevant public authorities to manage resources efficiently and effectively.
10. Every child shall retain the right to education in all circumstances.

Working group reports

This recommendation consolidates proposals developed by the culture, identity and language²⁷, children and young people's²⁸ and economic and social rights²⁹ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- in formulating proposals on education a number of issues were addressed, including: special educational needs; the need to protect the most vulnerable and disadvantaged (for instance, Traveller children, children with disabilities, including social, emotional and/or behavioural difficulties); educational underachievement; the need for greater provision of funding for vocational training and for effective and appropriate life-long learning; integrated schooling; bullying and sectarian, racist, disablist and homophobic harassment in Northern Irish schools; and the link between socio-economic disadvantage, child poverty and low levels of education.
- children should be taught about their cultural identity, language and values. This does not currently happen to the same degree in all educational sectors.
- it is easier to respect the cultural identity of others once you have an understanding of your own cultural identity.

²⁷ Education rights, provision 4, pages 15-19, report of the culture, identity and language working group.

²⁸ Education, provision 5, pages 13-14, report of the children and young people's working group.

²⁹ The right to an effective education, page 29, report of the economic and social rights working group.

- the best interests of the child and the right to non-discrimination should be considered paramount in matters concerning access to education.
- children should be entitled to access timely information on such topics as careers, vocational training, sexual and reproductive health, sexuality and other matters impacting on their lives.

Plenary issues

- General: there was concern that the provision was too lengthy and too specific and programmatic for inclusion in this form in a Bill of Rights.
- Clause 9: whether the recommendation should include a provision on a funding procedure.
- Clause 10: whether there should be a specific provision on suspension or exclusion of children from school or a short provision now included as clause 10.

Levels of support

DUP	Against Clause 9 supported with replacement final sentence on funding.
Sinn Féin	For Clause 6b opposed; clause 9 supported only if it stops at 'maturity'; clause 10 supported.
UUP	Against Clause 9 supported with replacement final sentence on funding.
SDLP	For Clause 9 supported with replacement final sentence on funding; clause 10 supported.
Alliance	For Clause 9 supported with replacement final sentence on funding; clause 10 supported.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 9 supported with replacement final sentence on funding; clause 10 opposed.
Children and Young People's sector	For Clause 9 supported with replacement final sentence on funding; clause 10 supported.
Churches Catholic Church Irish Council of Churches	For Clause 9 supported with replacement final sentence on funding; clause 10 supported. For Clause 9 supported with replacement final sentence

	on funding; clause 10 abstained.
Community/voluntary sector as a whole	Not present to vote.
Disability sector	For Clause 9 supported if stops at maturity; clause 10 supported.
Ethnic Minority Sector	For clause 9 supported if it stops at 'maturity'; clause 10 supported.
Human Rights NGO sector	For clause 9 supported if it stops at 'maturity'.
Older People's sector	For Clause 9 accepted majority view; clause 10 abstained.
Sexual Orientation sector	For Clause 9 supported; clause 10 supported.
Trade Unions	For Clauses 4 abstained; clause 6b supported; clause 9 supported with replacement final sentence on funding; clause 10 supported.
Women's sector	Clause 9 supported with replacement final sentence on funding; clause 10 supported.

Statements of position

DUP and UUP

- “While both parties strongly support the provision of quality education, this provision – with the exception of Clause 9 – cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “Clause 9 was supported as an appropriate supplementary right to Protocol 1, Article 2 of the HRA”.

Sinn Féin

- “Oppose para 6(b): Rationale – We oppose the provision on the basis that the phrase ‘shared national values of the country’ is prejudicial”.

Alliance

- “Alliance endorsement for this section is subject to the recognition that international human rights law allows states to respect diversity through either a single publicly funded education system or through funding separate sectors”.
- “Alliance believes that there should be flexibility for the state to fund a single public school system or to support different sectors as a policy matter. However, if there is to be sectoral funding, it should be fair”.

Business sector (Northern Ireland Chamber of Commerce)

- “Again, NICCI recognises the need for effective education and has stated its support through other forums for the development of a knowledge-led

economy with emphasis on the relevant skills sets to meet the demands of Northern Ireland's changing economic landscape".

- "NICCI believes in lifelong learning; however there would be concerns that given the demands on government budgets, any prescriptive legislation may place unnecessary financial demands and burdens on private sector businesses, SMEs in particular and could have an ultimately detrimental effect. NICCI would welcome the development of lifelong learning initiatives, where government agencies, the education sector and the private sector work in close partnership".

Ethnic minority sector

- "Ethnic Minority Sector supports the entire section, in particular Clause 9, but not the funding procedures. We also support Clause 10 the right to education in all circumstances, instead of a lengthy exclusion on education clause".

Human Rights NGO sector

- "We are supportive of the right to education. However, we feel the clauses as currently formulated are overly long, potentially contradictory and address a number of issues more properly dealt with in legislation or policy. For the sake of brevity and clarity we prefer using the clause recommended by the ESR Working Group as a model".

RIGHT TO POSSESSIONS

Recommendation

1. **Everyone, including legal persons, is entitled to the peaceful enjoyment of possessions. No one shall be deprived of personal possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.**
2. **Public authorities may legislate as necessary to control the use of property in the public interest or to secure the payment of taxes or other contributions or penalties.**

Working group reports

This recommendation consolidates a proposal developed by the civil and political rights working group³⁰ with subsequent written submissions and proposals presented in plenary.

The provision developed by the civil and political rights working group reproduced Article 1 of the First Protocol to the ECHR (Protection of property), amending it to ensure that its application was gender neutral.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People's sector	For

³⁰ Right to protection of property, provision 16, page 19, report of the civil and political rights working group.

Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “HRA First Protocol, Article 1 sufficiently addresses this issue”.
- “Furthermore, the proposal cannot be considered as relevant to the particular circumstances of Northern Ireland”.

Ethnic minority sector

- “Ethnic minority sector supports additional rights of possessions in addition to Article 1 of the First Protocol to the ECHR on the protection of property”.

Human Rights NGO sector

- “We see no reason to diverge from the ECHR 1st protocol standard, which articulates a right to peaceful enjoyment of possessions”.

RIGHT TO AN ADEQUATE STANDARD OF LIVING

Recommendation

1. **Everyone has the right to an adequate standard of living, including adequate food, water, energy, fuel and clothing, and to the continuous improvement of living conditions.**
2. **Public authorities shall take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.**

Working group reports

This recommendation consolidates a proposal developed by the economic and social rights working group³¹ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the economic and social rights working group included the following:

- a wide range of issues were considered during the development of the working group's proposal, including fuel poverty, the cost of utilities such as electricity, oil and gas, rising food prices and water charges.
- high levels of socio-economic disadvantage and the poor living conditions experienced by many people in Northern Ireland were believed by some to be a direct result of the conflict. These same people believed it crucial to include a right to an adequate standard of living in a Bill of Rights for Northern Ireland as this right could go some way to addressing poverty, social exclusion and deprivation.
- other working group members pressed that the state cannot create wealth but can merely redistribute it, and questioned how the state would be able to guarantee the "continuous improvement of living conditions".

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights

Levels of support

DUP	Against
Sinn Féin	For

³¹ The right to an adequate standard of living, page 38, report of the economic and social rights working group.

UUP	Against
SDLP	For
Alliance	Abstain
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “Both the UUP and the DUP are strongly supportive of legislative measures to address many of the pressing socio-economic issues raised in the Social Participation section. However, as with many, if not all, of the proposals in the Social Participation section, the right to an adequate standard of living cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “Furthermore, many, if not all, of the proposals in this section are contrary to a key consideration emphasised in *The Governance of Britain*: “this would involve a significant shift from Parliament to the judiciary in making decisions about public spending and, at least implicitly, levels of taxation””.

Alliance

- “Alliance does not believe that such an outcome can be guaranteed through a rights-based approach, and has particular concerns for implications to the parity principle which has provided a standard approach with respect to access to and the resourcing of social security across the UK”.

Ethnic minority sector

- “Ethnic minority sector supports the right to an adequate standard of living through the progressive realisation of the economic and social rights. The

recognition of economic and social rights in the Bill of Rights for Northern Ireland is an important milestone”.

Human Rights NGO sector

- “We welcome the debate that has taken place on the Forum in relation to socio-economic rights. This has been perhaps one of the most significant elements of this process, and we are encouraged at the level of participation and discussion to date”.
- We recognise in particular that there have been discussions around enforceability as well as content. From our perspective, we do not support the lowering of the standard of content in addition to the lowering of the standard of the enforceability mechanism”.

RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH

Recommendation

- 1. Everyone has the right to the highest attainable standard of physical and mental health and well-being**
- 2. Everyone has the right to appropriate healthcare and social care services, including lawful reproductive health care, provided on the basis of free and informed consent and confidentiality.**
- 3. Public authorities shall take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of the right in clause 1.**
- 4. Public authorities shall ensure the provision of healthcare and social care that is appropriate to the needs of particular groups, including women and children, victims of violence, including sexual violence, persons with social, geographical and linguistic disadvantage and those with a disability.**
- 5. No one shall be refused emergency medical treatment and essential primary healthcare.**
- 6. Public authorities shall take all appropriate measures to ensure the child's right to accessible, age and understanding appropriate education and information to promote prevention and early intervention measures to address social and health issues.**

Working group reports

This recommendation consolidates proposals developed by the children and young people's³², economic and social rights³³ and women's³⁴ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- it is crucial that a Bill of Rights for Northern Ireland contain the right to the highest attainable standard of health, having regard to the prevalence of disability in Northern Ireland, the findings and recommendations of the Bamford Review and the shortage of appropriate mental health services.
- inequality in the delivery of healthcare, the discrimination faced by groups such as older people and members of the Traveller community in accessing healthcare services, and the mental health needs of young people were also highlighted.

³² Healthcare, provision 6, pages 15-16, report of the children and young people's working group.

³³ The right to the highest attainable standard of physical and mental health, pages 16-17, report of the economic and social rights working group.

³⁴ Health, provision 5, pages 32, report of the women's working group.

- provisions on health should focus on outcomes, not just access.
- it would be inappropriate to prescribe a series of specific, detailed targets or goals for government.
- participation and consultation are key elements of healthcare.
- women's particular concerns should be mainstreamed into a recommendation on the right to health.
- every child in Northern Ireland should have the right to access the highest attainable level of health.
- public authorities should be required to take action to prevent child abuse, drug and alcohol misuse, unwanted pregnancy, and sexually transmitted infections through the provision of age and understanding appropriate information to children and young people.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 2: how reproductive health care should be dealt with in the recommendations.
- Clause 6: how to reflect concern for the child's right to health education and information.

Levels of support

DUP	Against
Sinn Féin	For Clause 6 supported
UUP	Against
SDLP	For Clause 6 supported
Alliance	For Clause 6 abstained
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Clause 6 abstained
Children and Young People's sector	For Clause 6 supported
Churches Catholic Church	Clauses 1, 5 and 6 supported; clauses 2, 3 and 4 opposed
Irish Council of Churches	For Clause 6 supported
Community/voluntary	Not present to vote

sector as a whole	
Disability sector	For Clause 6 supported
Ethnic Minority Sector	For Clause 6 supported
Human Rights NGO sector	For Clause 6 supported
Older People's sector	For Clause 6 abstain
Sexual Orientation sector	For Clause 6 supported
Trade Unions	For Clause 6 supported
Women's sector	For Clause 6 supported

Statements of position

DUP and UUP

- “As per response to 'the right to an adequate standard of living'”.

Human Rights NGO sector

- “We are supportive of the right to work. However, we have some concern that the clauses as currently formulated are very long, and address a number of issues more properly dealt with in legislation or policy”.

RIGHT TO HOUSING

Recommendation

- 1. Everyone has the right to adequate housing that is affordable, accessible, habitable, safe and appropriate, with access to public services and social facilities.**
- 2. No one may be evicted from his or her home without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.**
- 3. Everyone has the right to appropriate emergency accommodation.**
- 4. Public authorities shall take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of the right in clause 1.**
- 5. Public authorities shall take all appropriate measures to ensure that no eviction results in homelessness.**

Working group reports

This recommendation consolidates proposals developed by the economic and social rights³⁵ and women's³⁶ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the shortage of social housing, poor quality of housing and segregation in the provision of housing were direct results of the conflict in Northern Ireland and would have to be addressed in a Bill of Rights for Northern Ireland.
- other issues include the lack of appropriate housing for the disabled, shortages in affordable housing, homelessness, evictions on the grounds of alleged anti-social behaviour, inadequate provision for the housing needs of Travellers and reports of migrant workers living in overcrowded and inadequate accommodation.
- recommendations on the right to housing should not require that housing be affordable as while this is a desirable pursuit it is hard to define "affordable" and difficult for any state or public authority to control the housing market.
- everyone should have an immediately enforceable right to appropriate emergency accommodation. Any recommendation on this must provide for women escaping domestic violence.

³⁵ The right to adequate housing, page 24, report of the economic and social rights working group.

³⁶ Housing, provision 6, page 34, report of the women's working group.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether there should be a right to culturally appropriate housing.
- Clause 3: whether to include a general provision for emergency accommodation or one that is specific to particular situations.
- Clause 5: how to deal with evictions that could result in homelessness.

Levels of support

DUP	Against
Sinn Féin	For Clause 3 supported as amended; clause 5 supported
UUP SDLP	Against For Clause 3 supported as amended; clause 5 supported
Alliance Business Sector Neil Faris Northern Ireland Chamber of Commerce	For Clause 3 supported as amended; clause 5 opposed Against Abstain
Business Sector	Against
Children and Young People's sector	For Clause 3 supported as amended; clause 5 supported
Churches	For Clause 3 supported as amended; clause 5 supported
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 3 supported as amended; clause 5 supported
Ethnic Minority Sector	For Clause 3 supported as amended; clause 5 supported
Human Rights NGO sector	For Clause 3 supported as amended; clause 5 supported
Older People's sector	For Clause 3 supported as amended; clause 5 supported
Sexual Orientation sector	For Clause 3 supported as amended; clause 5 supported
Trade Unions	For Clause 3 supported as amended; clause 5 supported
Women's sector	For Clause 3 supported as amended; clause 5 supported

Statements of position

DUP and UUP

- “As per response to 'the right to an adequate standard of living'”.

Alliance

- “Alliance can support in principle the concept of ‘progressive realisation’. However, this support is subject to a realistic rather than a maximalist approach being taken on economic and social rights. We want to see rights that are justiciable. This statement applies to the concept of ‘progressive realisation’ in other sectors”.

RIGHT TO A SUSTAINABLE ENVIRONMENT

Recommendation

- 1. Everyone has the right to a sustainable, healthy and safe environment.**
- 2. Everyone is entitled to have the environment protected and restored, for the benefit of present and future generations, through reasonable legislative and other measures that**
 - a. prevent pollution and ecological degradation;**
 - b. promote conservation; and**
 - c. secure ecologically sustainable development and use of natural resources while promoting economic and social development.**
- 3. Public authorities shall provide accurate, accessible and timely information and communicate, consult and foster participation in planning and decision making on matters which concern the environment.**

Working group reports

This recommendation consolidates a proposal developed by the economic and social rights working group³⁷ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the economic and social rights working group included the following:

- matters relating to the environment include sustainable development, environmental conservation, the protection of cultural heritage and the desirability of leaving a legacy for the children of Northern Ireland.
- concern was expressed about poor planning laws, the issue of pollution and the limited accountability of the Government in relation to looking after the natural environment.
- concern was also expressed at how a recommendation on the right to a sustainable environment would operate in practice, how it would augment existing environmental laws, and whether this area fell within the Forum's terms of reference.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 2(c): whether the responsibility lies towards ecologically sustainable development or more generally to sustainable development.

³⁷ Environmental rights, page 35, report of the economic and social rights working group.

Levels of support

DUP	Against
Sinn Féin	For Clause 2c supported; clause 3 supported as redrafted
UUP	Against
SDLP	For Clause 2c supported; clause 3 supported as redrafted
Alliance	For Clause 2c opposed; clause 3 supported as redrafted
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For Clause 2c oppose inclusion of 'ecologically' as too limiting; clause 3 supported as redrafted
Churches Catholic Church Irish Council of Churches	For Clause 2c supported; clause 3 supported as redrafted For No opinion on clauses 2c and 3.
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2c supported; clause 3 supported as redrafted
Ethnic Minority Sector	For Clause 2c supported; clause 3 supported as redrafted
Human Rights NGO sector	For Clause 2c supported; clause 3 supported as redrafted
Older People's sector	For Clause 2c supported; clause 3 supported as redrafted
Sexual Orientation sector	For Clause 2c supported; clause 3 supported as redrafted
Trade Unions	For Clause 2c supported; clause 3 supported as redrafted
Women's sector	For Clause 2c supported; clause 3 supported as redrafted

Statements of position

DUP and UUP

- “As per response to 'the right to an adequate standard of living’”.

Alliance

- “Alliance is concerned at any qualification being placed on the clearly defined concept of sustainable development”.

Business sector (Northern Ireland Chamber of Commerce)

- “NICCI supports sustainable economic development but has concerns that prescriptive legislation, aimed at ensuring compliance by large polluters, could have a detrimental effect on SMEs”.
- “NICCI welcomes compliance with measures to develop a safe and sustainable environment but believes that this can only be achieved through partnership with government agencies and all private sector businesses; this would include financial help and human resource help to be made available to those SMEs in particular, which need to make adjustments to their working processes to comply with legislation”.

RIGHT TO WORK

Recommendation

- 1. Everyone has the right to contribute to the economic and social life of society, including the right to work and the right to choose freely and practise a trade or profession. The practice of a trade or profession may be regulated by law.**
- 2. Everyone has the right to the enjoyment of just and favourable conditions of work and terms of employment, irrespective of the status of the worker and the nature of the work relationship, including**
 - a. fair wages and equal remuneration for like work and work of equal value without distinction of any kind, consistent with a decent living and human dignity;**
 - b. equitable access to fair and adequate pension arrangements, particularly between men and women;**
 - c. safe and healthy working conditions;**
 - d. freedom from all forms of unfair discrimination and from harassment; and**
 - e. periodic holidays with pay and remuneration for public holidays.**
- 3. Women have the right to enjoy conditions of work equal to those enjoyed by men, with equal pay and benefits for like work and work of equal value and in particular the right to work free from discrimination on the grounds of pregnancy or maternity.**
- 4. Migrant workers shall enjoy treatment not less favourable than that enjoyed by nationals in respect of remuneration, conditions of work and terms of employment. Derogations in private contracts of employment from this principle of equality of treatment shall be prohibited.**
- 5. All workers, including those working in the home or in informal employment, are entitled to rest, leisure, respite and reasonable limitation of working hours, as well as appropriate provision for retirement.**
- 6. Public authorities shall ensure the right of all children to protection from economic exploitation and from performing any work that is likely to interfere with any aspect of their development or wellbeing. To this end public authorities shall effectively regulate to ensure that any employment of children is fair, safe and appropriate. Public authorities shall also ensure that the education, development and general wellbeing of young carers are not affected by caring responsibilities. In all cases the best interests of the child should be paramount.**
- 7. Public authorities shall support, encourage and provide for**
 - a. the continuous development of skills, knowledge and understanding that are essential for employability and fulfilment;****and**

- b. **economic and social conditions to ensure full employment, including adequate transport services.**
8. **Public authorities shall take all appropriate measures to eliminate discrimination against women in the field of employment.**
9. **Public authorities shall take all appropriate measures to ensure equality of opportunity and fair treatment for workers with family and caring responsibilities, including women who are pregnant. Measures shall, in particular, include**
 - a. **provision of appropriate education, training and paid leave measures to enable them to enter, remain in, leave and re-enter the workforce without detriment;**
 - b. **protection of conditions of employment, including remuneration and pension benefits; and**
 - c. **development and promotion of childcare services.**
10. **Public authorities must guarantee the right of all individuals to work, including to conduct a business, free from paramilitary activity, other violence and threats, harassment, extortion and blackmail.**

Working group reports

This recommendation consolidates proposals developed by the children and young people's³⁸, economic and social rights³⁹ and women's⁴⁰ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- the right to work should be addressed directly in a Bill of Rights in light of the high levels of economic inactivity and the low level of economic development in Northern Ireland.
- work-related issues that were highlighted included: the position of carers and those in informal employment; gender discrimination in employment; the challenges faced by workers with family responsibilities; the lack of affordable childcare in Northern Ireland; and the particular vulnerability of migrant workers.
- women must be accorded the same rights as men in employment in light of, among other things, the salary differential between men and women in Northern Ireland.
- while children have a right to work, current employment legislation in Northern Ireland is poorly implemented therefore placing both indigenous and non-national children at risk of exploitation and unsafe practices.

³⁸ Employment protection, provision 11, pages 24-26, report of the children and young people's working group.

³⁹ The right to work, pages 41-43, report of the economic and social rights working group.

⁴⁰ Employment, provision 9, pages 40-42, report of the women's working group.

- the costs of the implementation of economic and social rights should not be transferred directly to businesses through excessive taxation.
- there was concern expressed that the right to work was not adequately related to Northern Ireland's particular circumstances.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether the clause provided rights that were consistent with domestic law.
- General: the length of the recommendation and the appropriateness or otherwise of its provisions being included in a bill of rights.
- General: how to ensure appropriate protection for the rights of groups with particular needs, including women, carers, migrant workers and children.
- General: the appropriate role of public authorities in relation to the right to work.
- Clause 1: how to reflect acceptance of the trade or profession being legitimately regulated by law.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector	Against
Neil Faris	For
Northern Ireland Chamber of Commerce	With reservations
Children and Young People's sector	For
Churches	For
Catholic Church	Abstain
Irish Council of Churches	
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For

Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “As per response to 'the right to an adequate standard of living'”.
- “Both parties are in support of a general equality and non-discrimination clause”.

Business sector (Northern Ireland Chamber of Commerce)

- “NICCI welcomes the above points and would like to ensure that the private sector is fully consulted on these points at all times. NICCI would sound a note of caution regarding the very broad phrase ‘continuous development of skills...’ and would note the potential of employers being negatively impacted if employees were able to make demands, which may not be relevant to their employment”.
- “NICCI broadly welcomes this proposal but would like to note that the normal operations of a business should not be disrupted unnecessarily by prescriptive legislation”.

Women's sector

- “The Women's Sector believes that the high incidence of women in part-time, low wage employment and the lack of affordable child care are a direct consequence of years of conflict, which has led to the neglect of issues relating to women and children”.

RIGHT TO SOCIAL SECURITY

Recommendation

- 1. Everyone has the right to adequate social security, including social assistance, social insurance and pension.**
- 2. Public authorities shall take all appropriate measures, including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.**

Working group reports

This recommendation consolidates a proposal developed by the economic and social rights working group⁴¹ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the economic and social rights working group included the following:

- there was cognisance of the difference between income in the form of wages/remuneration and income in terms of social security or assistance.
- it is desirable to separate the right to social security from the right to work, linking it instead with the concern that everyone should be able to live a life of human dignity without the fear of losing income or other support that is essential for maintaining an adequate standard of living and caring for children and other dependents.
- while there is a wide range of laws and policies dealing with and providing for social security in the United Kingdom the fact that Northern Ireland has suffered from higher levels of poverty than other parts of the United Kingdom justifies the inclusion of a right to social security in a Bill of Rights for Northern Ireland.
- on the other hand, social security does not come within the particular circumstances of Northern Ireland and, therefore, the remit of the Forum. Further, social security is still an excepted matter.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether it is appropriate for matters to be included in a Northern Ireland Bill of Rights that have not been devolved to the Northern Ireland Assembly.
- Clause 1: the need to include pensions in the general provision.

⁴¹ The right to social security, page 59, report of the economic and social rights working group.

Levels of support

DUP	Against
Sinn Féin UUP	For Against
SDLP	For
Alliance	Against
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For
Churches Catholic Church Irish Council of Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “As per response to ‘the right to an adequate standard of living’”.
- “Both parties also note that social security is a UK-wide issue, determined by the parity principle”.

Alliance

- “Alliance has concerns for implications to the parity principle which has provided a standard approach with respect to access to and the resourcing of social security across the UK”.

RIGHT TO A FAIR AND NON-DISCRIMINATORY JUSTICE SYSTEM

Recommendation

- 1. Everyone has the right to a system of justice, including formal and informal justice mechanisms, that is independent and fair, does not discriminate on any proscribed ground, respects human rights, implements the provisions of this Bill of Rights and promotes the interests of justice in society generally.**
- 2. Everyone has the right to access to justice and to legal and administrative action that is lawful, reasonable and procedurally fair.**
- 3. Public authorities shall ensure the provision of independent and appropriate mechanisms of appeal, complaints, review and monitoring to ensure that justice is done and human rights are protected.**
- 4. All those involved in the administration of justice shall act in a way that is compatible with the Bill of Rights. They shall be recruited or appointed on the basis of objective and non-discriminatory criteria relating to qualifications and experience, so as to ensure highly skilled justice officials drawn from all sectors of the society they serve.**

Working group reports

This recommendation consolidates proposals developed by the criminal justice and victims⁴² and women's⁴³ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the issue of non-discrimination merits particular consideration within Northern Ireland's criminal justice system as a whole.
- it was felt appropriate to try to record the dangers of and obviate against a two tier criminal justice system, which would be counterproductive to the full and effective administration of justice.
- domestic violence and female imprisonment in Northern Ireland require redress through provisions relating to criminal justice in a Bill of Rights for Northern Ireland.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.

⁴² Right to non-discriminatory practice within the criminal justice system, page 49, report of the criminal justice and victims working group.

⁴³ Criminal justice, provision 9, page 43, report of the women's working group.

- General: how to ensure that the recommendation deals with everything of serious concern and yet still is as brief as possible.
- Clause 3: desirability of including a right to administrative fairness
- Clause 4: additional element added to draft to include recruitment and appointment of those working in the administration of justice.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	Abstain
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- "HRA Article 6 sufficiently addresses this issue".

NO PUNISHMENT WITHOUT LAW

Recommendation

1. **No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under domestic or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.**
2. **This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was a war crime, crime against humanity or an act of genocide.**

Working group reports

This recommendation consolidates a proposal developed by the civil and political rights working group⁴⁴ with subsequent written submissions and proposals presented in plenary.

The provision developed by the civil and political rights working group reproduced Article 7 of the ECHR (No punishment without law), removing “civilised nations” from 7.2 (which was considered to be antiquated language), and adding “war crime, crime against humanity or genocide”.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	Against
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain

⁴⁴ No punishment without law, provision 9, page 13, report of the civil and political rights working group.

Children and Young People's sector	For
Churches Catholic Church Irish Council of Churches	Against Abstain
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- "HRA Article 7 sufficiently addresses this issue".

Alliance

- "Alliance believes the proposals here are unnecessary in that they almost completely replicate existing ECHR provisions. The additional points are already covered through the UK's international commitments and international law".

RIGHT TO A FAIR TRIAL

Recommendation

- 1. In the determination of his or her human rights and obligations or of any criminal charge, everyone is entitled to a fair and public hearing without undue delay by an independent and impartial tribunal established by law.**
- 2. Everyone tried for a criminal offence has the right to public trial and judgement but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.**
- 3. Everyone has a right to an appeal to a higher tribunal according to law.**
- 4. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.**
- 5. Everyone charged with a criminal offence has the following minimum rights:**
 - a. to be informed promptly, in appropriate and accessible language which he or she understands, of his or her rights in relation to the criminal process;**
 - b. to be informed promptly, in appropriate and accessible language which he or she understands and in detail, of the nature and cause of the charge;**
 - c. to remain silent at all stages of the criminal justice process and to be informed promptly of this right with no adverse inference being drawn at a later stage if this right is exercised;**
 - d. to be released on bail pending trial unless a court otherwise determines, taking into consideration the safety of the public and the likelihood that the accused would not attend for trial or commit a serious offence during release or interfere with the proper administration of justice;**
 - e. to have adequate time and facilities for the preparation of a defence;**
 - f. to trial by jury, unless objective and reasonable grounds are provided by law;**
 - g. to defend himself or herself in person or through legal assistance of his or her own choosing**
 - h. to free legal assistance and representation, if without sufficient means to pay for legal assistance, when the interests of justice so require;**
 - i. to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her**

- behalf under the same conditions as witnesses against him or her;
- j. to have excluded from the process any evidence obtained in a manner that violates any right in the Bill of Rights
 - k. to have the free assistance of an interpreter if unable to understand or speak the language used in custody or court.
6. No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted in accordance with the law and criminal justice procedure, unless
- a. the offence is of a serious nature and new evidence has come to light rendering it manifestly in the public interest to proceed to a retrial, and
 - b. the new evidence adds substantially to the strength of the prosecution or defence case and could not, with due diligence, given the investigative mechanisms operating at the relevant time, have been adduced at the time of the original hearing.
7. No child or other vulnerable person should be subjected to the ordinary criminal process unless the seriousness of the offence and the interests of justice so require, the level of maturity and understanding of the person being taken into account in determining the appropriate process.
8. A lawyer, as an officer of the court, shall not be subject to hindrance or intimidation or harassment of any kind in the performance of duties in the justice system.

Working group reports

This recommendation consolidates proposals developed by the civil and political rights⁴⁵ and criminal justice and victims⁴⁶ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- the right to a fair trial, while a key right in the ECHR (Article 6), needs to be augmented with the right to trial by jury.
- the “baseline” rights contained within the ECHR need to be supplemented or more explicitly articulated.
- having regard to Northern Ireland’s particular circumstances there is a need to protect the integrity of the judicial system.

⁴⁵ Right to a fair trial, provision 8, pages 11-12, report of the civil and political rights working group.

⁴⁶ Right within the criminal justice system, pages 23-26, report of the criminal justice and victims working group; policing and criminal justice, pages 28-31, same report; right to an effective investigation, pages 33-34, same report; right to a fair prosecution process, pages 38-39, same report; right to a fair trial, pages 39-42, same report; right to a fair and independent judiciary, pages 42-43, same report.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: concern relating to the length of the recommendation and the specificity of some of its provisions.
- Clause 6; whether this provision is required as the issue is adequately protected in domestic law;
- Clause 7 reflected the position of many groups to encourage the diversion of children and vulnerable adults out of the court system.

Levels of support

DUP	Against
Sinn Féin	For Clause 2 supported subject to deletion of 'national security'; clause 5 expand right to silence
UUP	Against
SDLP	For Clause 2 delete 'national security'; clause 5 expand right to silence
Alliance	For Clause 2 retain 'national security'; clause 5 opposed expanding right to silence
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For Clause 2 supported with qualified abstention on 'national security'; clause 5 expand right to silence
Churches Catholic Church Irish Council of Churches	For Clause 2 delete 'national security'; clause 5 expand right to silence For Clause 2 retain 'national security'; clause 5 abstained (expand right to silence)
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2 retain 'national security'; clause 5 expand right to silence
Ethnic Minority	For

Sector	Clause 2 retain 'national security'; clause 5 expand right to silence
Human Rights NGO sector	For Clause 2 abstain on 'national security'; clause 5 reserved on expanding right to silence
Older People's sector	For Clause 2 qualified abstention on 'national security'; clause 5 expand right to silence
Sexual Orientation sector	For Clause 2 retain 'national security'; clause 5 expand right to silence
Trade Unions	For Clause 2 delete 'national security'; clause 5 expand right to silence
Women's sector	For Clause 2 supported with qualified abstention on 'national security'; clause 5 expand right to silence

Statements of position

DUP and UUP

- "HRA Article 6 sufficiently addresses this issue".

Sinn Féin

- "Support for para 2 subject to deletion of the national security limitation on the right to a public trial: Rationale – We cannot support the inclusion of the national security limitation in addition to the other limitations (in particular, limitations for the protection of public order and for the protection of the rights of others) as it is excessive, unnecessary and potentially prejudicial. During the conflict fundamental human rights were routinely violated using national security as a justification, and the Bill of Rights must ensure this never happens again".

Children and young people's sector

- "We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of "national security" as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland with specific reference to children. circumstances of Northern Ireland with specific reference to children".

Human Rights NGO sector

- "We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR.

However, we would like to record our grave concern at the detrimental impact of “national security” as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland”.

RIGHT TO HUMANE CONDITIONS OF DETENTION

Recommendation

- 1. Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person, without deprivation or restriction of any human right except to the extent demonstrably necessitated by the fact of detention.**
- 2. Everyone deprived of liberty has the right to be informed promptly, in appropriate and accessible language which he or she understands and in detail, of the reason for the deprivation of liberty, of the procedure applicable to him or her and of how to challenge that deprivation in a court or tribunal.**
- 3. Everyone deprived of liberty has the right to have the fact of the deprivation of liberty and the place of detention notified at the earliest opportunity to a person of his or her choice outside the detention system.**
- 4. A person convicted of a criminal offence is entitled to treatment or other support that enables reformation and social rehabilitation, develops a sense of responsibility and encourages attitudes and skills to assist successful return to society.**
- 5. Women, children, people with disabilities and other individuals with particular needs and vulnerabilities are entitled to have their particular needs and their rights to privacy and dignity catered for within the detention regime, in manner appropriate to age and understanding, including through the provisions of appropriate separate accommodation and specialised services that correspond to their situations and needs.**
- 6. Everyone deprived of liberty shall the right to prompt access to appropriate legal and medical assistance and pastoral care, no less than generally available in the community.**
- 7. Public authorities shall ensure the separation in detention**
 - a. of unconvicted persons from convicted persons**
 - b. of children from adults**
 - c. of children on remand from children who have been sentenced**
 - d. of women from men.**
- 8. Public authorities shall provide for the safety, health, hygiene and appropriate nourishment of persons in detention. This includes appropriate accommodation, exercise, full access to the curriculum for all children, opportunities for education and training where detention is lengthy, provision for communications and meetings with family and legal advisers, and access to religious and other counsellors and to**

health and medical personnel, subject only to conditions and restrictions as specified by law to the extent that these are reasonable in the circumstances. Detainees shall be protected from violence, intimidation and harassment.

- 9. Public authorities shall ensure provision of adequate support for the families and children of prisoners and ex-prisoners. In particular they shall respect the right of children in detention to maintain regular and direct contact with parents, guardians or other family members or friends save in exceptional circumstances, in accordance with the best interests of the child.**
- 10. Public authorities shall provide for the reintegration and resettlement of the former prisoners into society under the best possible conditions.**

Working group reports

This recommendation consolidates proposals developed by the criminal justice and victims working group⁴⁷ with subsequent written submissions and proposals presented in plenary.

A principal issue raised by the criminal justice and victims working group was that rights in detention merit specific consideration given Northern Ireland's particular circumstances.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 4: reflects the concern to provide the rehabilitative purpose of the criminal justice system's treatment of convicted persons.
- Clause 5: how to provide effective protection of the rights of people with particular needs and vulnerabilities.
- Clause 8: ensures separation of the different categories of detainees to ensure their proper treatment.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For

⁴⁷ Right to fair and appropriate conditions of detention, pages 34-38, report of the criminal justice and victims working group; and rights in detention, pages 43-47, same report.

Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “While abstaining on clause 7, the remainder of the proposal cannot be considered as relevant to the particular circumstances of Northern Ireland”.

Alliance

- “Alliance is concerned at the potential resource implications here”.

Human Rights NGO sector

- “While we are extremely supportive of the right of everyone to humane conditions of detention, we believe this clause is too long and detailed for inclusion in a Bill of Rights. A more general right to humane and appropriate conditions of detention may be more concise”.

THE RIGHTS OF VICTIMS AND WITNESSES TO FAIR TREATMENT

Recommendation

1. **Everyone who is a victim of or witness to a crime or a human rights violation is entitled to support and assistance in the criminal and civil justice system to enable him or her to give the best possible evidence, free from intimidation and harassment and from fear of victimisation. In particular, a victim of sexual crime, child abuse and/or domestic violence has the right to be treated with respect and sensitivity by appropriately trained justice officials.**
2. **Following any conviction in a trial for a serious offence and prior to sentence being delivered, a victim has the right to make a statement orally or in writing in open court indicating the impact of the crime on himself or herself and to close relatives and associates.**

Working group reports

This recommendation consolidates a proposal developed by the criminal justice and victims working group⁴⁸ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the criminal justice and victims working group included the following:

- victims' rights include the right: to be treated with courtesy, respect, fairness and dignity; to be heard; to receive accurate and timely information; to privacy and protection; to support, reparation and compensation; to an effective and efficient investigation of the crime; and to timely processing of criminal or other appropriate proceedings following the arrest of the accused.
- it was noted that the particular circumstances of Northern Ireland have also seen the development of information and restorative statutory and non-statutory processes in which it is important to secure victims' rights.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights

⁴⁸ The rights of victims/witnesses to a fair trial, pages 16-17, report of the criminal justice and victims working group.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For Clause 2 supported with reservations on victim impact statements
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For Clause 2 opposed
Women's sector	For

Statements of position

DUP and UUP

- “While some of the proposals have merit in terms of their subject matter, they cannot be considered as relevant to the particular circumstances of Northern Ireland”.

Human Rights NGO sector

- “While supportive of the rights and needs of victims and witnesses in the criminal justice system, we have queries as regards the concept of the rights of victims and witnesses to a fair trial. The criminal justice system is designed to bring to justice those who have committed crimes, and as such its very purpose is to protect the rights of and bring justice to the victims and witnesses of those crimes. The right to a fair trial within a criminal justice system is designed to ensure that such justice is served in a fair and objective manner. The rights articulated in the criminal justice rights section guarantee address this issue sufficiently”.

RIGHTS OF CHILDREN AND VULNERABLE ADULTS AS WITNESSES AND VICTIMS OF CRIME

Recommendation

- 1. A child witness has the right to the highest level of support throughout court proceedings to ensure that she or he feels safe, is heard in court and is able to give evidence effectively.**
- 2. Public authorities shall take all necessary measures to ensure that**
 - a. children are continuously and appropriately informed throughout court proceedings;**
 - b. children are dealt with in a respectful and age appropriate manner in a child appropriate environment free from exploitation, intimidation and abuse;**
 - c. children are only cross-examined by trained individuals with child specific expertise;**
 - d. court proceedings should be taken forward without undue delay.**
- 3. Vulnerable adults shall enjoy the same rights.**

Working group reports

This recommendation consolidates proposals developed by the children and young people's⁴⁹ and criminal justice and victims⁵⁰ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- special provision should be made for child witnesses and children who are victims of crime.
- there is currently no Northern Ireland-wide support available to children to enable them to give their best evidence and to support them before, during and after court proceedings.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: this recommendation reflects the specific concerns for the situations of children and young people as victims and witnesses.
- Clause 3: reflects the concern to ensure equal rights to vulnerable adults.

⁴⁹ Child witnesses and victims of crime, provision 13, pages 28-29, report of the children and young people's working group.

⁵⁰ Child witnesses and victims, pages 17-18, report of the criminal justice and victims working group.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For
Churches Catholic Church Irish Council of Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “While some, but not all, of these proposals have merit in terms of their subject matter, they cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “However, both parties express in the strongest terms their opposition to the suggestion to raise the age of criminal responsibility as proposed”.

VICTIMS OF THE CONFLICT

Recommendation

- 1. Every victim of the conflict has the right to full disclosure of the truth in relation to the circumstances of the injury suffered as a result of the conflict, including the right to access all relevant information.**
- 2. Every victim of the conflict has the right to necessary care and support in accordance with his or her need.**
- 3. Public authorities shall ensure that victims of the conflict have access to necessary care and support that is gender appropriate, including personal security and access to health and mental health care, income support, employment, training and education.**
- 4. “Victims of the conflict” are the surviving physically and psychologically injured of violent, conflict related incidents and those close relatives or partners who care for them, along with close relatives or partners who mourn their dead.**

Working group reports

This recommendation consolidates a proposal developed by the criminal justice and victims working group⁵¹ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the criminal justice and victims working group included the following:

- the right to verification and to full and public disclosure should also be available to victims of alleged serious or gross human rights abuses.
- the working group adhered to the definition of victims of the conflict used by OFMDFM and reflected in the Victims and Survivors (Northern Ireland) Order 2006.

Plenary issues

- General: whether recommendations for victims of the conflict and victims of crime or human rights violations generally should be kept in two provisions or merged in one.
- General: whether the provision provided equivalence between victims of the conflict who were also responsible for human rights violations and victims who were not.
- General: whether this option was preferable or the following:

⁵¹ Definition: victims of the conflict, page 8, report of the criminal justice and victims working group.

1. “Victims of the conflict” are the surviving physically and psychologically injured of violent, conflict related incidents and those close relatives or partners who care for them, along with close relatives or partners who mourn their dead.
2. With a view to promoting the principles of truth and reconciliation in the aftermath of a lengthy period of conflict, the Government shall take legislative and other measures to ensure that the loss and suffering of all victims of the conflict and the responsibility of State and non-State participants are appropriately and independently established, and/or acknowledged and remembered.
3. All victims of the conflict have the right to verification of the facts relating to the circumstances and full and public disclosure of the truth.
4. Public authorities shall ensure that victims of the conflict have the necessary care and support in accordance with their needs including personal security and access to health and mental health care, income support, employment, training and education, through government, voluntary and community-based means.

Levels of support

DUP	Qualified support If model A clauses 2 and 3 supported; clauses 1 and 4 opposed;
Sinn Féin	For Option A supported
UUP	Option A clauses 2 and 3 supported, clauses 1 and 4 opposed
SDLP	For Option B supported
Alliance	For Option A supported
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For Option A supported
Children and Young People’s sector	For Option A supported
Churches Catholic Church Irish Council of Churches	For Option B supported For Option A supported
Community/voluntary sector as a whole	Not present to vote

Disability sector	For Option A supported
Ethnic Minority Sector	For Option A supported
Human Rights NGO sector	For Option A supported
Older People's sector	For Option A supported
Sexual Orientation sector	For Option A supported
Trade Unions	For Option A supported
Women's sector	For Option B supported

Statements of position

DUP and UUP

- “Supporting clauses 2 and 3 as addressing the particular circumstances of Northern Ireland, both parties note that a legislative approach to the vexed but necessary question of how we as a society treat victims of the conflict is more likely to strike the right balances in addressing the concerns and needs of a very varied sector of society”.
- “The use of the definition of ‘victim’ provided in the 2006 Order is unacceptable”.

Human Rights NGO sector

- “We recognise and are supportive of the particular needs, rights and circumstances of victims in Northern Ireland. However, we are uncertain about the need for different rights for different types of victims”.

Women's sector

- “We fully support the rights of all victims of the conflict to all the support they require and as such preferred the original fuller option B. We also urge that all programmes developed are gender-sensitive and aware of the effect on women on maintaining family life in the midst of conflict”.

VICTIMS OF CRIME OR OF HUMAN RIGHTS VIOLATIONS

Recommendation

- 1. Every victim of crime or a human rights violation has the right to justice and redress.**
- 2. Every victim of crime or a human rights violation has the right to**
 - a. have the crime or violation in question investigated thoroughly, promptly and impartially**
 - b. make representations and to be kept informed at every stage of the investigative, judicial or administrative process, particularly where their personal interests are affected**
 - c. full disclosure of the truth relating to the relevant crime or human rights violation, including through access to any relevant information**
 - d. redress, through judicial and other measures, civil as well as criminal, formal and informal**
 - e. necessary care and support in accordance with his or her need.**
- 3. Public authorities shall establish effective facilities and procedures to investigate thoroughly cases of disappeared and missing persons in circumstances that may have involved a violation of the right to life.**
- 4. Public authorities shall provide appropriate assistance and support to victims throughout informal, investigative, judicial and administrative processes, including protecting their safety and privacy, keeping them informed and avoiding unnecessary delays.**
- 5. Public authorities shall provide all victims of crime or human rights violations with access to mechanisms of justice and redress which are expeditious, fair, inexpensive, gender appropriate, transparent and accessible, in keeping with international standards, and provided for by domestic legislation and shall provide information to victims about accessing these mechanisms.**
- 6. Public authorities shall ensure that victims of crime or human rights violations have access to necessary care and support that is gender appropriate including personal security and access to health and mental health care, income support, employment, training and education.**
- 7. Public authorities shall endeavour to provide compensation to victims of crime or human rights violations who have sustained significant bodily injury or impairment of physical or mental health as a result of violent crime and, where appropriate, to the victims' family.**
- 8. Status as a victim of crime is not dependent on whether the crime or human rights violation is reported to the police or other authorities, whether a perpetrator is identified, apprehended, prosecuted or convicted or whether there is a familial relationship between the**

perpetrator and the victim. The term ‘victims’ also includes, where appropriate, the immediate family or dependents of the direct victims and persons including lawyers and voluntary sector workers who have suffered in intervening to assist victims in distress or to prevent harm or injury.

Working group reports

This recommendation consolidates proposals developed by the criminal justice and victims working group⁵² with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the criminal justice and victims working group included the following:

- the working group focused on victims’ rights: to be treated with courtesy, respect, fairness and dignity; to be heard; to receive accurate and timely information; to privacy and protection; to support, reparation and compensation; to an effective and efficient investigation of the crime; and to timely processing of criminal or other appropriate proceedings following the arrest of the accused.
- the working group took notice of the particular circumstances of Northern Ireland which have seen the development of information and restorative statutory and non-statutory processes in which it is important to secure victims’ rights.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether recommendations for victims of the conflict and victims of crime or human rights violations generally should be kept in two provisions or merged in one.
- Clause 3: whether this recommendation should include a clause dealing with the investigation of disappearances and, if so, whether the clause should also contain a responsibility on private person to disclose all information in their possession relating to a disappearance.
- An additional clause was proposed but not accepted, as follows,

⁵² Definition: victims of crime and abuse of power within the criminal justice system and victims of human rights abuse, pages 9-10, report of the criminal justice and victims working group; right to be protected from crime and victimisation, page 10, same report; treatment with courtesy, respect, fairness and dignity, page 10, same report; access to justice and fair treatment, pages 10-12, same report; right to information and support, pages 12-13, same report; restoration, reparation and compensation, pages 12-13, same report; and boy child and male victims, page 16, ‘other relevant provisions’, same report.

Public authorities shall reimburse victims and witnesses for their reasonable expenses related to the procedure incurred as a result of their participation in relevant proceedings, including inquests.

Levels of support

DUP	Against
Sinn Féin	For New clause 8 supported
UUP	Against
SDLP	For New clause 8 opposed
Alliance	For New clause 8 opposed
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For New clause 8 opposed
Churches Catholic Church Irish Council of Churches	For Open to new clause 8 For New clause 8 abstained
Community/voluntary sector as a whole	Not present to vote
Disability sector	For New clause 8 supported
Ethnic Minority Sector	For Reserved on new clause 8
Human Rights NGO sector	For(qualified as below) New clause 8 abstained
Older People's sector	For New clause 8 abstained
Sexual Orientation sector	For Reserved on new clause 8
Trade Unions	For New clause 8 opposed
Women's sector	For New clause 8 supported

Clause on Disappeared

DUP	For
Sinn Féin	For Clause on provision of information covered elsewhere

UUP	For
SDLP	For Clause on provision of information covered elsewhere
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against <i>Vote to be submitted</i>
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For (with general qualification) Clause on provision of information covered elsewhere
Older People's sector	For Clause on provision of information covered elsewhere
Sexual Orientation sector	For Clause on provision of information covered elsewhere
Trade Unions	For Clause on provision of information covered elsewhere
Women's sector	For Clause on provision of information covered elsewhere

Statements of position

DUP and UUP

- “While recognising and condemning the gross violations of human rights by non-state actors in Northern Ireland’s recent past, both parties regard this proposal as unacceptably focussed on the actions of the state”.
- “Both parties, however, supported the clause concerning the disappeared – and stated their view that it should be included in the section on victims of the conflict, that its proper focus should be on ‘the disappeared’ and that it should include a specific reference on the duty to provide information”.

Human Rights NGO sector

- “We have concerns about according the same rights to victims of crime as to victims of human rights violations. Not all crimes will be human rights violations just as not all human rights violations will be crimes. In addition, articulating the rights of victims of crime in this way is repetitious of much of the criminal justice rights section”.

Women's sector

- “This provision on support for victims of crime is essential to afford human rights and support to women experiencing domestic and/or sexual violence. We supported clause 8 as it recognises that a crime of this nature can be committed even when it is not disclosed to the police or other authorities”.

RIGHTS OF CHILDREN AND YOUNG PEOPLE IN THE JUSTICE SYSTEM

Recommendation

- 1. Every person under the age of eighteen years has the right to be treated as a child for the purposes of the administration of criminal justice.**
- 2. Every child alleged to, accused of, or recognised as having infringed the criminal law has the right to be treated in a manner that**
 - a. is consistent with the promotion of the child's human rights and dignity;**
 - b. reinforces the child's respect for human rights and the rights of others;**
 - c. takes into account the child's age; and**
 - d. is directed towards the child's reintegration and assumption of a constructive role in society.**
- 3. Every child questioned, detained or charged with an offence has the right to have an appropriate adult present to represent the interests of the child even if a solicitor or responsible adult is also present.**
- 4. In all decisions in the administration of justice affecting a child, the best interests of the child shall be the paramount consideration.**
- 5. Every child has the right to be heard in any proceedings in the justice system affecting that child and to have his or her views given due weight according to the age, maturity and understanding of the child.**
- 6. Public authorities shall ensure that children are held responsible for any infringement of the law in a manner appropriate to the age, understanding and maturity of the child.**
- 7. The age of criminal responsibility shall be raised in line with international human rights standards and best practice.**
- 8. Public authorities shall provide a range of procedural options as alternatives to the criminalisation of children, including family based support and community based diversion, that are in the child's best interests. They shall ensure that all programmes or initiatives are effectively regulated and monitored to protect the child.**
- 9. A child tried for a criminal offence has the right to be tried in a children's court under a special procedural law that ensures an appropriate environment and procedure, having regard**
 - a. to the child's age, maturity, needs, vulnerability and understanding;**
 - b. the child's right to have measures taken to ensure his or her participation in and understanding of the criminal proceedings;**
 - and**

- c. **the child's right to have his or her privacy respected before, during and after the proceedings.**
10. **A child shall not be detained or imprisoned except as a measure of last resort and in accordance with the law and then only for the shortest appropriate period of time. A child in detention shall be treated in a humane manner that conforms with human dignity.**
11. **No child in the criminal justice system shall be subject to the use of force or instruments of restraint except where all other methods have been exhausted, and only in exceptional circumstances and where there is a danger to the child or others. Physical restraint and use of force should not cause physical injury, humiliation or degradation, and should only be used for the shortest period of time.**
12. **Every child in detention has the right prior to release to appropriate preparation for re-integration into society and upon release to appropriate care and resettlement support.**

Working group reports

This recommendation consolidates proposals developed by the children and young people's⁵³ and criminal justice and victims⁵⁴ working groups. It also incorporates subsequent written submissions, input from an informal Forum group examining the issue of age of criminal responsibility, and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- special provision should be made for child witnesses and children who are victims of crime.
- children have been profoundly affected by conflict and by poverty.
- it is important for the future to appropriately address the needs of children and their offending behaviour and to support them in becoming responsible adults.
- appropriate resettlement programmes, incorporating education and training in addressing the best needs of children and subsequently preventing recidivism, are of critical importance.
- Northern Ireland has a particularly low age of criminal responsibility at ten years of age. This is among the lowest in Europe.
- it was not possible for the working groups to reach consensus on the age of criminal responsibility.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.

⁵³ Youth justice, provision 14, pages 30-33, report of the children and young people's working group.

⁵⁴ Youth justice, pages 19-22, report of the criminal justice and victims working group.

- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: concern relating to the length of the recommendation and the specificity of some of its provisions.
- Clause 3: whether this clause should be added to require the attendance of an appropriate adult to support a child.
- Clause 7: whether the age of criminal responsibility in Northern Ireland, at 10 years, is too low and, if so, what the recommendation should say on this issue.
- Clause 10: whether the recommendation should provide, at some length, for specific rights relating to children in detention or leave this issue more generally.

Levels of support

DUP	Against
Sinn Féin	For Clause 2 supported new clause; clause 6 supported new clause;
UUP	Against
SDLP	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 opposed
Alliance	For Clause 7 opposed.
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstained
Children and Young People's sector	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Churches Catholic Church	For Clause 2, 6, 9 position not stated
Irish Council of Churches	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Ethnic Minority Sector	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Human Rights NGO	For

sector	Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Older People's sector	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Sexual Orientation sector	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Trade Unions	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported
Women's sector	For Clause 2 supported new clause; clause 6 supported new clause; clause 9 supported

Statements of position

DUP and UUP

- “While some, but not all, of these proposals have merit in terms of their subject matter, they cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “However, both parties express in the strongest terms their opposition to the suggestion to raise the age of criminal responsibility as proposed”.

Alliance

- “Alliance is opposed to any arbitrary revision of the age of criminal responsibility. We simply believe that it should be decided as a policy issue and be informed by international standards and practices”.

Children and young people's sector

- “In Northern Ireland the current age of criminal responsibility is 10 which is among the lowest ages in Europe a situation which has led to severe criticism from the United Nations Committee on the Rights of the Child (CRC). In its Concluding Observations in 2002 the UN Committee in the Rights of the Child commented that it was “particularly concerned that the age at which children enter the criminal justice system is low with the age of criminal responsibility... at 10 years ... and the abolition of the principle of doli incapax” and recommended that the UK “considerably raise the age of criminal responsibility”.
- “Furthermore in 2007 the Committee issued a General Comment on Juvenile Justice which stated that setting an age of criminal responsibility below 12 was “not internationally acceptable””.
- “On 13th March 2008 the Chair of the UN Committee on the Rights of the Child, Professor Yanghee Lee, speaking in Belfast, clarified in the context of an industrialised, democratic society, the expectation of the Committee vis-a-vis the age of criminal responsibility”.

RIGHT TO PARTICIPATION IN PUBLIC LIFE

Recommendation

- 1. Everyone has the right and shall have the opportunity without discrimination:**
 - a. to participate freely in public and political life and affairs, either directly or through freely chosen representatives;**
 - b. to vote and to be elected at periodic elections which shall be by universal and equal suffrage and by secret ballot, guaranteeing the free expression of the will of the electors; and**
 - c. to public service.**
- 2. Public authorities shall take active measures to facilitate full participation of women in political and public life including, where appropriate, by the use of temporary special measures to achieve balance in men and women holding domestic and international public positions and the equal representation of men and women in the formulation of government policy.**
- 3. Public authorities shall have particular regard to the equal participation of women in the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution.**

Working group reports

This recommendation consolidates a proposal developed by the civil and political rights working group⁵⁵ with subsequent written submissions and proposals presented in plenary.

A principal issue raised in the civil and political rights working group was the importance of ensuring that people have the right to participate in political processes in line with the Multi Party Agreement, and to be involved in decisions affecting their rights.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether this clause should require election by secret ballot based on proportional representation and governance arrangements based on the

⁵⁵ Right to participation and good governance, provision 15, pages 18-19, report of the civil and political rights working group.

principles of proportionality and cross-community decision-making and whether there should also be a clause to the effect that,

Nothing in this section can be used to defend any particular set of institutional arrangements.

- Clause 2: whether the level of obligation in relation to women's participation should be lower or higher.
- Clause 3: whether to recognise and affirm women's role in peace and security.

Levels of support

DUP	Against
Sinn Féin	Clause 1b abstained; clause 1c supported; additional sentence opposed; clause 2 option 3 supported; clause on women's contribution to peace supported
UUP	Against
SDLP	Clause 1b supported; clause 1c supported; additional sentence opposed; clause 2 option 3 supported; clause on women's contribution to peace supported
Alliance	Clause 1b supported; clause 1c supported; additional sentence supported; clause 2 only supported if 'may' not 'shall'; clause on women's contribution to peace opposed
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	Clause 1b qualified abstention; clause 1c supported; additional sentence reserved; clause 2 option 3 supported; clause on women's contribution to peace supported
Churches Catholic Church Irish Council of Churches	Clause 1b and c supported; additional sentence reserved; clause 2 option 3 supported; clause on women's contribution to peace supported Clause 1b and c opposed; additional sentence opposed; clause 2 option 3 supported; clause on women's contribution to peace supported
Community/voluntary sector as a whole	Not present to vote
Disability sector	Clause 1b and c opposed; additional sentence reserved; clause 2 option 3 supported; clause on women's contribution to peace supported
Ethnic Minority Sector	Clause 1b and c opposed; additional sentence reserved; clause 2 option 3 supported; clause on women's contribution to peace supported

Human Rights NGO sector	Clause 1b and c opposed; additional sentence opposed; clause 2 option 3 supported; clause on women's contribution to peace supported
Older People's sector	Clause 1b and c opposed; additional sentence opposed; clause 2 option 3 supported; clause on women's contribution to peace supported
Sexual Orientation sector	Clause 1b and c reserved; additional sentence reserved; clause 2 option 3 supported; clause on women's contribution to peace supported
Trade Unions	Clause 1b and c opposed; additional sentence opposed; clause 2 option 3 supported; clause on women's contribution to peace supported
Women's sector	Clause 1b supported; clause 1c supported; additional sentence supported; clause 2 option 3 supported; clause on women's contribution to peace supported

Statements of position

SDLP

- “SDLP believes that the principles of proportionality in representation and cross-community decision-making are essential given the historic imbalance of representation and abuse of power in Northern Ireland”.

Alliance

- “Alliance believes that there must be flexibility with respect to approaches to power-sharing and institutional design with respect to governance, and to allow the emergence of a system of government consistent with liberal democratic norms. There is also a distinction to be made between the narrow concept of government and the broader conception of governance”.

Children and young people's sector

- “The Children and Young People's sector abstain on issues relating to voting on the basis that this right is not currently extended to children”.

Human Rights NGO sector

- “We are supportive of these rights in principle. However, we believe they are too prescriptive in places. We also propose dealing with participation in the equality clause”.

Older people's sector

- “We fully support the principles of participation in public life. However, we cannot support the inclusion of specific voting measures, i.e. proportional representation, within a Bill of Rights, and should instead be determined as a procedural issue”.

Women's sector

- “The women's sector supports 1c with the addition of the additional sentence, which allows for alternative governance arrangements to develop in the future”.

- “Clause 2 on the participation of women in political and public life is the recommendation put forward by the women’s working group. It reflects the recommendations of articles 7 and 8 of CEDAW and is in accordance with the spirit of the Agreement. Because of the lack of women in public life they have been largely excluded from decision-making on peace building. Clause 3 addresses this by reflecting UN Convention 1325 regarding gender parity in all institutions relating to conflict resolution and peace building”.

FREEDOM OF MOVEMENT

Recommendation

- 1. Everyone has the right to freedom of movement and freedom to choose his or her residence.**
- 2. Everyone shall be free to leave Northern Ireland.**
- 3. No one with the right to enter and remain in Northern Ireland shall be arbitrarily deprived of that right.**
- 4. Every citizen has the right to a passport.**
- 5. These rights shall not be subject to any restrictions except those that are provided by law and are necessary to protect national security, public order, public health or morals or the rights and freedoms of others. In this context the particular needs of trafficked people, domestic workers and the victims of domestic violence must be taken into account.**

Working group reports

This recommendation consolidates proposals developed by the civil and political rights⁵⁶ and women's⁵⁷ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- it was felt necessary to include a right to freedom of movement given the situation in Northern Ireland, particularly in relation to housing, borders and other issues.
- issues that arise for women in the context of freedom of movement include women that have found themselves in Northern Ireland because they have been trafficked or women that have arrived voluntarily as domestic workers or spouses. In the former case disclosure of their existence to authorities renders them vulnerable to removal; and in the latter case their entitlement to remain in Northern Ireland may be in the hands of abusive employers or spouses.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.

⁵⁶ Freedom of movement, provision 17, page 20, report of the civil and political rights working group.

⁵⁷ Freedom of movement, provision 25, page 55, report of the women's working group.

- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clauses 1 and 2: whether this area should be referred to as “Northern Ireland” or “the jurisdiction”.
- Clause 5: whether national security should be a permitted basis for restricting freedom of movement.

Levels of support

DUP	Against
Sinn Féin	For Clause 2 and 3 supported ‘jurisdiction’; clause 5 delete ‘national security’
UUP	Against
SDLP	For Clause 2 and 3 no preference between ‘jurisdiction’ and ‘Northern Ireland’; clause 5 delete ‘national security’
Alliance	For Clause 2 and 3 supported ‘Northern Ireland’; clause 5 retain ‘national security’
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People’s sector	For Clause 2 and 3 no preference between ‘jurisdiction’ and ‘Northern Ireland’; clause 5 supported with qualified abstention on ‘national security’
Churches Catholic Church Irish Council of Churches	For Clause 2 and 3 no preference between ‘jurisdiction’ and ‘Northern Ireland’; clause 5 abstained on ‘national security’ For Clause 2 and 3 supported ‘Northern Ireland’; clause 5 retain ‘national security’
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2 and 3 supported ‘Northern Ireland’; clause 5 supported with qualified abstention on ‘national security’
Ethnic Minority Sector Human Rights NGO	For Clause 2 and 3 supported ‘Northern Ireland’; clause 5 abstained on ‘national security’ For

sector	Clause 2 and 3 abstain on 'jurisdiction' or 'Northern Ireland'; clause 5 abstain on 'national security'
Older People's sector	For Clause 2 and 3 supported 'Northern Ireland'; clause 5 qualified abstention on 'national security'
Sexual Orientation sector	For Clause 2 and 3 no preference between 'jurisdiction' and 'Northern Ireland'; clause 5 retain 'national security'
Trade Unions	For Clause 2 and 3 supported 'Northern Ireland'; clause 5 delete 'national security'
Women's sector	For Clause 2 and 3 supported 'Northern Ireland'; clause 5 delete 'national security'

Statements of position

DUP and UUP

- "This provision forms a protocol of the ECHR from which the UK Government has a derogation. As such, it is entirely inappropriate to suggest that it be included in supplementary rights for Northern Ireland".
- "Both parties note that HRA Articles 2 and 5 place an obligation on the state to protect all persons from unlawful violence and from being unlawfully deprived of liberty. That being so, Articles 2 and 5 address the issue of 'exiling' by paramilitary organisations".

Sinn Féin

- "We cannot support the inclusion of the national security limitation in addition to the other limitations (in particular, limitations for the protection of public order and the rights of others) as it is excessive, unnecessary and potentially prejudicial. During the conflict fundamental human rights were routinely violated using national security as a justification, and the Bill of Rights must ensure this never happens again".

Alliance

- "Alliance notes that there are aspects here that can only be determined at a UK-wide level. There are relevant aspects to a NI Bill of Rights relating to internal transfer within the UK, and the potential problems regarding identification for travellers between Northern Ireland and Great Britain".

Human Rights NGO sector

- "We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of "national security" as a limitation on the enjoyment of rights in Northern

Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland”.

Children and young people’s sector

- “We note that national security is an excepted matter under the Northern Ireland Act 1998. We also note that the Bill of Rights will be a piece of Westminster legislation and that it will be for Westminster to decide how this issue is addressed. We further note its grounds as a limitation in the ECHR. However, we would like to record our grave concern at the detrimental impact of “national security” as a limitation on the enjoyment of rights in Northern Ireland, given its use and impact during the conflict and its continuing impact on the particular circumstances of Northern Ireland with specific reference to children”.

RIGHT TO CHOOSE A NOMADIC OR SETTLED LIFESTYLE

Recommendation

Everyone has the right to choose a nomadic or settled lifestyle and to change from one lifestyle to the other.

Working group reports

This recommendation consolidates a late proposal submitted to the culture, identity and language working group⁵⁸ with subsequent written submissions and proposals presented in plenary.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether provision of a specific right to acknowledge the culture and lifestyle, experiences and choices of one of Northern Ireland's minorities.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For

⁵⁸ Right to choose a nomadic or sedentary lifestyle, Other Proposal 1, page 31, report of the culture, identity and language working group.

Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- "This proposal cannot be considered as relevant to the particular circumstances of Northern Ireland".

RIGHT TO COMMUNICATE

Recommendation

1. **Everyone has the right to communicate with any public authority through an interpreter, translator or facilitator when this is necessary for the purposes of accessing, in a language that he or she understands, information or services essential to his or her life, health or security. In this context “language” includes sign language and other forms of communication.**
2. **Everyone has the right to communicate with any public authority and receive a response in Irish.**

Working group reports

This recommendation consolidates two proposals from the culture, identity and language working group⁵⁹ (the latter a late submission to the working group) with subsequent written submissions and proposals presented in plenary.

A principal issue raised by the culture, identity and language working group was that the right to communicate was included in the February 2005 report of the Northern Ireland Human Rights Commission.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether “communicate” constituted a two-way flow of information or whether it placed obligations only on one party.
- Clause 2: whether this clause should be extended to Ulster-Scots speakers too or to major languages spoken in Northern Ireland.

Levels of support

DUP	Clause 1 supported; clause 2 opposed
Sinn Féin	For
UUP SDLP	Clause 1 supported; clause 2 opposed For
Alliance	Clause 1 supported; clause 2 opposed
Business Sector Neil Faris	Against

⁵⁹ Right of communication, provision 9, page 30, report of the culture, identity and language working group; and right to communicate in Irish, Other Proposal 3, page 31, same report.

Northern Ireland Chamber of Commerce	Clause 1 supported; clause 2 opposed
Children and Young People's sector	For
Churches	
Catholic Church	For Clause 2, extend languages
Irish Council of Churches	For Clause 2 abstained
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For Clause 2 abstained, it may be covered in clause 1.
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “While supporting clause 1, clause 2 is not in accordance with the provisions of the FCNM. Both parties note their grave concern that the proposal in clause 2 would give preferential treatment to one indigenous minority language over others and would therefore be discriminatory”.

Alliance

- “Alliance believes that this ‘right’ would create an unrealistic and unnecessary financial and administrative burden on public authorities”.

RIGHTS PARTICULAR TO SPECIFIC GROUPS

RIGHTS OF THE CHILD

Recommendation

A child is entitled to all human rights and fundamental freedoms on the basis of equality and without discrimination. A child is a human being below the age of eighteen years.

Working group reports

This recommendation consolidates proposals developed by the children and young people's working group⁶⁰ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the children and young people's working group included the following:

- while recognising that individuals under the age of eighteen, particularly teenagers, may not consider themselves to be children, childhood has been defined as up to the age of eighteen years to match international standards and to ensure the maximum level of protection for children and young people.
- all provisions in a Bill of Rights would need to be read against a child's right to non-discrimination and the principle of the best interests of the child.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 2: Whether a new clause should be added to provide that the child's human life begins at conception.

Levels of support

DUP	Clause 1 opposed; new clause 2 supported
Sinn Féin	For New clause 2 abstained
UUP	Against New clause 2 abstained
SDLP	For New clause 2 supported

⁶⁰ Definition of the child, provision 1, page 7, report of the children and young people's working group; and non-discrimination, provision 2, pages 8-9, same report.

Alliance	For New clause 2 abstained
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstained
Children and Young People's sector Churches	For New clause 2 opposed For New clause 2 supported
Community/voluntary sector as a whole	Not present to vote
Disability sector	For New clause 2 abstained
Ethnic Minority Sector	For New clause 2 abstained
Human Rights NGO sector	For New clause 2 opposed
Older People's sector	For New clause 2 opposed
Sexual Orientation sector	For New clause 2 opposed
Trade Unions	For New clause 2 opposed
Women's sector	For New clause 2 opposed

Statements of position

DUP and UUP

- “While strongly supporting the protection in law of children’s rights, this proposal cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “The DUP supported the new clause 2 with regards to life beginning at conception”.
- “The UUP, following the established parliamentary convention of giving a free vote to representatives on issues of conscience, abstained on the new clause 2”.

Alliance

- “Alliance members hold a range of views on the issue of abortion. This should be a policy issue rather than determined within a Bill of Rights”.

Children and young people’s sector

- “There is no consensus position within the Children and Young People’s Sector on when the life of the child begins. The range of views, opinions and

beliefs held by individuals and organisations within the sector are as varied and diverse as those reflected in society as a whole”.

- “Where there is no consensus on how best to protect children and their rights, the Children and Young People’s Sector and their representative’s hold to the application of international law and standards. We can therefore only support the relevant rights as defined by the UN Convention on the Rights of the Child and its additional protocols”.
- “The UNCRC defines the child as: “a child means every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier””.
- “The Children and Young People’s sector therefore oppose the inclusion of the new clause 4 on the basis that it conflicts with international standards.”

Human Rights NGO sector

- “We are strong advocates of children’s rights and extremely supportive of the recommendations made in relation to children and young people. We also recognise the specific vulnerability of children in the particular circumstances of Northern Ireland. We are supportive of the rights of other marginalized and vulnerable groups, but we recognize that a Bill of Rights cannot specifically address all the rights of all these groups. Thus, and in line with the position highlighted in our general statement, we would prefer that many of the rights in this section be mainstreamed to the extent possible”.

Older people’s sector

- “We oppose clause 2 as it does not conform to the international standards as laid down in the UN Convention on the Rights of the Child”.

Women’s sector

- “The Women’s Sector does not support the view that the foetus can be assumed to have the attendant rights of children who are born. This places the right to life of a woman on a par with a foetus and has the potential to severely jeopardise the rights of the pregnant woman. It is women – not men – who are exposed to increased health risks and this has a discriminatory effect, undermining women’s capacity to make appropriate and informed decisions about their lives and their bodies. Article 12 of CEDAW states that it is ‘discriminatory for a State Party to refuse to legally provide for the performance of certain reproductive health services for women.’
- The Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe has called on all Council of Europe Member States which have not already done so to decriminalise abortion”.

BEST INTERESTS OF THE CHILD

Recommendation

In all actions and decisions, including policy and legislative decisions, concerning or affecting children, whether undertaken by public or private institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the paramount consideration.

Working group reports

This recommendation consolidates a proposal developed by the children and young people's working group⁶¹ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the children and young people's working group included the following:

- the best interests of the child is a principle that requires the state to ensure that priority is given to a child's best interests in all matters concerning or impacting on that child.
- the best interests of the child, with the right to non-discrimination, should be read alongside every provision relating to children in a Bill of Rights for Northern Ireland.
- much of the legislation in Northern Ireland relating to children and young people continues to prioritise welfare approaches rather than best interests.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether existing UK law made the provision unnecessary.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland	Against For

⁶¹ Best interests of the child, provision 3, page 9, report of the children and young people's working group.

Chamber of Commerce	
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “While strongly supporting the protection in law of children’s rights, this proposal cannot be considered as relevant to the particular circumstances of Northern Ireland”.

RIGHT TO PARTICIPATE

Recommendation

- 1. Every child has the right to have his or her views respected, considered and given due regard in all matters affecting the child, taking into consideration the child's age, level of understanding, maturity and evolving capacities.**
- 2. Every child shall be informed of this right and be provided with appropriate opportunities to be heard in any matter, including judicial or administrative proceedings, affecting the child, directly or through a representative or an appropriate body.**
- 3. Every child shall have the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds, in accordance with international standards, best practice and the best interests of the child.**
- 4. Public authorities shall promote and protect this right.**

Working group reports

This recommendation consolidates a proposal developed by the children and young people's working group⁶² with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the children and young people's working group included the following:

- there is a statutory duty on public authorities in Northern Ireland to consult with children.
- there was recognition of the right of children to be involved in all matters affecting them, in particular school hearings, custody cases, and criminal cases, and to have their views respected and taken into consideration.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.

Levels of support

⁶² Right to participate, provision 9, pages 20-21, report of the children and young people's working group.

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	Abstain
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “Many of the issues have merit in terms of their subject matter, but cannot be considered as relevant to the particular circumstances of Northern Ireland”.

RIGHT TO FAMILY LIFE AND CARE

Recommendation

- 1. Every child has the right to grow up in a stable, safe and secure family environment. A child who for whatever reason is deprived of that environment is entitled to the highest level of special protection and assistance.**
- 2. Public authorities shall respect the rights, responsibilities and duties of parents, legal guardians and carers to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his or her rights.**
- 3. Public authorities shall provide all appropriate support and resources necessary to assist parents, carers and legal guardians to carry out their child rearing responsibilities and shall support them in enabling children to grow up to realise their full potential. This obligation shall end only when it is no longer required and shall in all circumstances be based on the best interests of the child.**
- 4. Any alternative care shall be determined by the best interests of the child alone and shall be provided in a way that enables children to enjoy all their rights. Children leaving alternative care should be prepared for and supported towards independent living.**

Working group reports

This recommendation consolidates proposals developed by the children and young people's working group⁶³ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the children and young people's working group included the following:

- the vital role of the family in terms of the care and development of children was a paramount consideration during discussions
- there was recognition of the central role of parents in the realisation of the rights of children.
- parents have rights as well as their children. The promotion of children's rights is not intended to undermine the rights of parents, rather to ensure that children are raised in a manner which reflects their best interests.
- it is anticipated that the rights of parents will be balanced with the rights of children, however, where there is any conflict, the best interests of the child shall be paramount.
- a safe and secure family environment is important to the well being of children.

⁶³ Family, provision 4, page 11, report of the children and young people's working group; and standard of living, provision 7, page 18, same report.

- caregivers need to be supported by the state, including through the provision of maternity and paternity leave and child care assistance.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- General: whether these rights are already protected in UK law.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	Clause 1 supported, clauses 2-4 abstained
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- "Many of the issues have merit in terms of their subject matter, but cannot be considered as relevant to the particular circumstances of Northern Ireland".

FREEDOM FROM ABUSE AND EXPLOITATION

Recommendation

- 1. Every child has the right to be protected from all forms of violence, abuse, maltreatment, neglect and exploitation including sexual abuse, child prostitution, trafficking and involvement in pornography, and from sectarianism and paramilitary violence.**
- 2. Public authorities shall take all appropriate legislative, administrative, social and educational measures in the best interests of the child to protect the child from all forms of abuse and exploitation, including through**
 - a. effective social programmes to provide support to the child and his or her carers; and**
 - b. other forms of prevention and for the identification, reporting, referral, investigation, treatment and follow-up of instances of child mistreatment and, as appropriate, for judicial involvement.**
- 3. Public authorities shall take positive steps to encourage the media to recognise their responsibility in the promotion of child rights and the protection of children.**

Working group reports

This recommendation consolidates a proposal developed by the children and young people's working group⁶⁴ with subsequent written submissions and proposals presented in plenary.

Principal issues raised in the children and young people's working group included the following:

- attention was paid to modern forms of slavery, particularly the sexual exploitation of children.
- it is imperative that a Bill of Rights for Northern Ireland address the sexual exploitation of children by promoting strong legislation and a victim-orientated system of protection and assistance that adheres to the best interests of the child.
- the issue of deporting or returning trafficked children to their country of origin should be carefully considered given the high likelihood of re-trafficking and the risk of violence to the child upon return.

⁶⁴ Protection from abuse and exploitation, provision 10, pages 22-23, report of the children and young people's working group.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 3: whether public authorities have a role in encouraging media recognition and, if so, what that role is.
- Additional clause: whether the recommendation should have an additional clause relating to care of children, before as well as after birth, as follows

The child, by reason of physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.

Levels of support

DUP	Clause 1 supported; clause 2 opposed; new clause 3 opposed; new clause 4 supported
Sinn Féin	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 abstained
UUP	Clauses 1 supported; clause 2 abstained; new clause 3 opposed; new clause 4 abstained
SDLP	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 supported
Alliance	For Clauses 1 and 2 supported; new clause 3 opposed; new clause 4 abstained
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstained
Children and Young People's sector	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 opposed
Churches Catholic Church	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 supported
Irish Council of Churches	For Clauses 1 and 2 supported; new clause 3 abstained; new clause 4 supported
Community/voluntary sector as a whole	Not present to vote
Disability sector	For

	Clauses 1 and 2 supported; new clause 3 supported; new clause 4 abstained
Ethnic Minority Sector	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 opposed
Human Rights NGO sector	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 abstained
Older People's sector	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 opposed
Sexual Orientation sector	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 opposed
Trade Unions	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 opposed
Women's sector	For Clauses 1 and 2 supported; new clause 3 supported; new clause 4 opposed

Statements of position

DUP and UUP

- “While supporting clause 1 as relevant to the particular circumstances of Northern Ireland, the remainder of this proposal has merit in terms of its subject matter, but cannot be considered as relevant to the particular circumstances of Northern Ireland”.
- “Legislation and practice should ensure that protection of children from all forms of violence, abuse, maltreatment, neglect and exploitation is an overarching obligation on public authorities”.
- “Both parties note – with reference to clause 3 – that HRA Article 10 (2) provides limitations on the freedom of expression with regards to “the prevention of disorder and crime, [and] for the protection of health and morals”.
- “The UUP, following the established parliamentary convention of giving a free vote to representatives on issues of conscience, abstained on the new clause 4”.

Children and young people's sector

- “There is no consensus position within the Children and Young People's Sector on when the life of the child begins. The range of views, opinions and beliefs held by individuals and organisations within the sector are as varied and diverse as those reflected in society as a whole”.
- “Where there is no consensus on how best to protect children and their rights, the Children and Young People's Sector and their representative's hold to the application of international law and standards. We can therefore only support

the relevant rights as defined by the UN Convention on the Rights of the Child and its additional protocols”.

- “In relation to the suggested additional clause 4 the Children and Young People’s Sector support consistency with the UNCRC. We recommend that if this phrase is to be included in a Bill of Rights it should more appropriately form part of the Preamble since it appears in the Preamble to the UNCRC. On this basis we oppose the inclusion of the new clause 4”.

Churches sector (Catholic Church)

- “The Catholic Church representative expresses profound regret that having provided a comprehensive set of rights for women, children and those who are vulnerable, the Forum has provided no recognition, protection or rights whatsoever for the child before birth, despite such recognition being proposed in the preamble to the UN Convention on the Rights of the Child”.

Older people’s sector

- On clause 4: “We can only agree this clause if ‘before and after birth is removed.’ Otherwise we oppose, as this clause does not conform to the international standards as laid down in the UN Convention on the Rights of the Child”.

Women’s sector

- “The Women’s Sector opposes the additional clause ‘before and after birth’. This has serious implications regarding the rights of the mother. Holding to the position of the right of the foetus has the potential to severely jeopardise the rights of the pregnant woman, outlawing access to health care because of potential damage to the foetus. This has led to maternal deaths in the Republic of Ireland. We have the same reservation regarding the additional and similar clause in the section on the Rights of the Child”.

RIGHT TO PLAY

Recommendation

1. **Every child has the right to engage in appropriate play, sport and recreational activities, to participate in cultural and artistic life and to rest and leisure.**
2. **Public authorities shall promote and protect this right, ensure the provision of all appropriate resources and enable access to cultural, artistic, recreational, sport and leisure activity.**

Working group reports

This recommendation consolidates a proposal developed by the children and young people's working group⁶⁵ with subsequent written submissions and proposals presented in plenary.

A principal issue raised in the children and young people's working group was that research has shown that one of the primary concerns of children in Northern Ireland is the lack of access to leisure services and safe play areas, particularly in rural communities.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP Alliance	For For Clause 2 abstained
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young	For

⁶⁵ Right to play and leisure, provision 8, page 20, report of the children and young people's working group.

People's sector	
Churches Catholic Church Irish Council of Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “While recognising the social policy imperative for legislators and public authorities to secure play, sport and recreational activities for children and young people, it is the view of both parties that this proposal is not relevant to the particular circumstances of Northern Ireland”.

CHILDREN AND ARMED CONFLICT

Recommendation

- 1. Public authorities shall not conscript any child into their armed forces.**
- 2. Public authorities shall ensure that persons who have not attained the age of 18 years are not recruited into their armed forces.**
- 3. Public authorities shall ensure that children shall not be directly engaged or involved in any capacity in hostilities, including their use as informants.**
- 4. Public authorities shall take all necessary measures to protect every child from all violence resulting from armed conflict.**
- 5. Public authorities shall take all necessary measures to guarantee that children affected by violence and conflict have access to prompt and appropriate support and all necessary services for their physical and psychological recovery and their social integration which is in accordance with the best interests of the child.**
- 6. Public authorities shall take all necessary measures to prevent children being recruited or otherwise involved with any non-state armed group.**

Working group reports

This recommendation consolidates a proposal developed by the children and young people's working group⁶⁶ with subsequent written submissions, input from an informal Forum group and proposals presented in plenary.

Principal issues raised in the children and young people's working group included the following:

- there was a desire to address issues particular to Northern Ireland, such as the use of children as informers.
- in line with international best practice, and to protect the best interests of the child, there was a desire (but not agreement) to raise the age of recruitment into the armed forces to eighteen years of age, in line with the age of recruitment for the police service.
- there is a need for the state to protect children from violence arising as a result of conflict.
- the working group's use of the term "non-state armed groups" is intended only to cover illegal groups and not sports clubs which would be subject to health and safety and child protection legislation.

Plenary issues

⁶⁶ Children and armed conflict, provision 12, page 26, report of the children and young people's working group.

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.
- Clause 1: whether it was necessary to include military conscription.
- Clause 2: whether children should not be permitted to join the armed forces before the age of 18, including whether this issue was better addressed by an alternative clause, as follows

Public authorities shall ensure that children who choose to commence a career in the armed forces maintain their status and rights as civilians until they attain the age of 18 years.

- Clause 3: whether children should ever be used a police informants.
- Clauses 4 to 6: dealing with children in armed conflict situations, as victims and possible recruits.

Levels of support

DUP	Against
Sinn Féin	For Clause 2 supported original text; clause 6 supported
UUP	Against
SDLP	For Clause 2 supported revised text; clause 6 supported
Alliance	For Clause 2 opposed; clause 6 supported
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against Abstain
Children and Young People's sector	For Clause 2 supported original text; clause 6 supported
Churches Catholic Church	For Clause 2 supported revised text; clause 6 supported
Irish Council of Churches	For Clause 2 opposed; clause 6 opposed
Community/voluntary sector as a whole	Not present to vote
Disability sector	For Clause 2 supported original text; clause 6 supported
Ethnic Minority Sector	For Clause 2 supported original text; clause 6 supported
Human Rights NGO sector	For Clause 2 supported original text; clause 6 supported

Older People's sector	For Clauses 4-6 supported; clauses 1-3 abstained
Sexual Orientation sector	For Clause 2 supported original text; clause 6 supported
Trade Unions	For Clause 2 supported original text; clause 6 supported
Women's sector	For Clause 2 supported original text; clause 6 supported

Statements of position

DUP and UUP

- “Both parties strongly opposed this proposal as not relevant to the particular circumstances of Northern Ireland, while being conscious of the obligation on the military to ensure relevant protection for 16 and 17 year old recruits”.
- “Both parties strongly affirmed the right of young people to pursue a career in the armed forces”.

Alliance

- “Alliance believes that the standards of recruitment to armed services can only be addressed at a UK-wide level. It cannot be disaggregated to be handled on a discrete basis in relation to Northern Ireland. People should be able to join the armed services below the age of 18”.

Children and young people's sector

- “The rationale for the inclusion of clause 2 is to ensure that children in the armed forces are not denied the enjoyment of all human rights and the protection afforded through the application of child specific domestic law and policy in particular child protection”.

WOMEN'S RIGHT TO LIVE FREE FROM VIOLENCE

Recommendation

- 1. Every woman has the right to live free from violence, including any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.**
- 2. Every woman who is a victim of violence or a witness to the infliction of violence has the right within the justice system to protection and support that is appropriate and sensitive to her situation.**
- 3. Public authorities shall take all appropriate measures, including legislative measures, to prevent and eliminate and provide redress for all forms of violence against women and girls, whether physical, sexual, emotional or psychological occurring in public or in private life.**

Working group reports

This recommendation consolidates proposals developed by the criminal justice and victims⁶⁷ and women's⁶⁸ working groups. It also incorporates subsequent written submissions and proposals presented in plenary.

Principal issues raised in the working groups included the following:

- in the context of Northern Ireland violence against women in the family and society is pervasive and cuts across lines of income, class and culture and needs to be matched by urgent and effective steps to eliminate its incidence.
- conviction rates for domestic violence and rape in Northern Ireland are abysmally low.
- there is an urgent need for research into the full extent of violence against women in Northern Ireland.
- concern was expressed at the lack of publicly funded preventative educational programmes in schools teaching about healthy, respectful relationships.

Plenary issues

- General: whether this recommendation dealt with matters that were within the particular circumstances of Northern Ireland.
- General: whether the recommendation defines rights supplementary to the European Convention on Human Rights.

⁶⁷ Interpretive clause: violence against women, pages 14-15, report of the criminal justice and victims working group; and substantive provisions: violence against women, page 15, same report.

⁶⁸ Physical integrity and autonomy, provision 1, pages 10-19, report of the women's working group.

Levels of support

DUP	Against
Sinn Féin	For
UUP	Against
SDLP	For
Alliance	For
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against For
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

DUP and UUP

- “This proposal cannot be considered as relevant to the particular circumstances of Northern Ireland. HRA Article 2 (a) places upon the state the obligation to defend persons from unlawful violence”.
- “The UUP and DUP note their strong support for legislative, administrative and policing actions to protect women from violence, and affirm the right of all to live free from violence”.

Women's sector

- “Given the high levels of all forms of violence against women and girls in Northern Ireland inclusion of this right and of the need for public authorities to take action to implement it, is imperative if women are to achieve full equality and be free to exercise their full human rights”.

CHAPTER 5. RECOMMENDATIONS RELATING TO TECHNICAL PROVISIONS

INTRODUCTION

This chapter considers technical provisions to be included in any Bill of Rights for Northern Ireland. The Bill of Rights Forum had a working group examining issues associated with preamble, enforcement and implementation. This chapter takes the proposals developed in that working group and provides the views of the various sectors and parties represented on the Forum in relation to each. The full discussion of the proposals is contained in the working group's report, available on the Forum website.¹

RELATIONSHIP WITH THE HUMAN RIGHTS ACT

Recommendation

Model 1

Repeal the HRA as it applies to Northern Ireland and adopt a new Bill of Rights that incorporates both rights contained within the HRA and any newly proposed Supplementary Rights.

Model 2

Pass legislation to introduce new rights for Northern Ireland and in the process amend the HRA to address what may be regarded as its present shortfalls (e.g. standing, application, enforcement and substantive rights).

Model 3

Retain the HRA in its present form and introduce Supplementary Rights in separate legislation for Northern Ireland. Enforceability/implementation proposals beyond those in the HRA would only be applicable to the Supplementary Rights contained in the separate statute.

Levels of support

DUP	Model 3
Sinn Féin	Model 1, with model 2 as second preference
UUP	Model 3
SDLP	Model 1, with model 3 as second preference
Alliance	Model 3
Business Sector	

¹ http://www.billofrightsforum.org/index/working_groups/preamble_and_implementation.htm

Neil Faris Northern Ireland Chamber of Commerce	Model 3
Children and Young People's sector	Model 3, with model 2 as second preference
Churches	
Community/voluntary sector as a whole	
Disability sector	Model 2
Ethnic Minority Sector	Model 3
Human Rights NGO sector	Model 3, with Model 2 as second preference
Older People's sector	Model 2
Sexual Orientation sector	
Trade Unions	Model 2
Women's sector	Model 2

Statements of position

Sinn Féin

- Support Model 1 for reasons contained in the report of the Preamble, Enforcement and Implementation working group: "This single-document option leaves open the possibility of implementing different and potentially more robust rights enforcement mechanisms than those which currently exist in the HRA. This option would also be more accessible to people making a claim."

UUP

- "The Agreement explicitly stated that rights 'supplementary' to the ECHR 'taken together with the ECHR' would constitute a Bill of Rights for Northern Ireland. That being so – and recognising the status of the HRA as having application throughout the UK – Model 3 is supported."

Children and Young People' sector

- "The Children's Sector would be supportive of Model 1 if it were not for its potential to undermine the HRA. Therefore we favour Model 3, with Model 2 as second preference. In terms of accessibility the Children's Sector favour a single document."

Ethnic Minority sector

- "Ideally we would support Model 1 as the best model but we do not want to undermine the Human Rights Act."

Human Rights sector

- “Ideally, we would favour these options in reverse (ie, preference for Models 1, 2 and 3 in that order), but we have adopted our current position because of as desire not to undermine the Human Rights Act.”

Trade Unions

- “Trade Union Sector supports Model 2 as the Model most likely to secure parliamentary consent.”

LIMITATIONS

Recommendation

Limitations to rights in a Bill of Rights should be on a right-by-right basis and uniform to the extent possible. They should be narrowly defined, similar to the model of limitation found in the ECHR, to ensure that the rights cannot be unduly restricted. Any limitation clause must require that the limitation on the right be:

- **prescribed by law;**
- **not adversely affect current domestic or international human rights obligations; and**
- **be necessary in a democratic society, taking into account all relevant factors, including but not necessarily limited to:**
 - **the nature of the right;**
 - **the importance of the purpose of the limitation;**
 - **the nature and extent of the limitation;**
 - **the relation between the limitation and its purpose; and**
 - **the least restrictive means to achieve the purpose.**

Levels of support

DUP	For
Sinn Féin	For
UUP	For
SDLP	For
Alliance	For
Business Sector	For
Children and Young People's sector	For
Churches	
Community/voluntary sector as a whole	
Disability sector	For

Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	
Trade Unions	For
Women's sector	For

Statements of position

UUP

- “The recommendation that limitations be on a right-by-right basis, in conformity with ECHR/HRA, reflects the required, necessary relationship of supplementary rights with the HRA.”

Ethnic Minority sector

- “The Ethnic Minority Sector supports the entire section and views that it is the best model to deal with limitation of rights.”

DEROGATION

Recommendation

Convention rights

Option A: Convention rights, as contained in the HRA, left as they are, that is, subject to derogation; or

Option B: Derogation removed from Convention rights as contained in the HRA and subjected only to appropriate limitations clauses.

Other rights in the Bill of Rights

Option C: Supplementary rights non-derogable but subject to appropriate limitations clauses; or

Option D: Supplementary rights subject to derogation, with listed exceptions.

- 1. Any supplementary rights corresponding with non-derogable international rights which the UK has ratified must not be derogable in the Bill of Rights.**

2. If a derogation clause is agreed, the following possibilities (which are not mutually exclusive) in relation to a process for the exercise of derogation power:²

- **Westminster legislation**
- **cross-community vote of the NI Assembly**
- **judicial scrutiny**
- **setting of time limits**
- **review mechanism after the derogation has been in place for some time.**

Levels of support

DUP	Option A; option D; for point 1; reserved on derogation process
Sinn Féin	Option B; option C; for point 1; opposed to derogation
UUP	Option A; option D; for point 1; reserved on derogation process
SDLP	Option B; option C; for point 1;
Alliance	Option A; option D (but could compromise to accept option C)
Business Sector Neil Faris	Options A and D Option A; option D; for point 1; NI Assembly to exercise derogation power
Northern Ireland Chamber of Commerce	
Children and Young People's sector	Options B and C, for point 1
Churches	
Community/voluntary sector as a whole	
Disability sector	Options B and C, for point 1
Ethnic Minority Sector	Option B; option C; for point 1; a and b for derogation process
Human Rights NGO sector	Option B; Option C, for point 1
Older People's sector	Option A; option C; for point 1; a and b for derogation process
Sexual Orientation sector	

² Sinn Féin proposed that the relevant requirements should at least meet the standards of Article 4 of the ICCPR.

Trade Unions	Option B and C, for point 1
Women's sector	Option B; option C; for point 1

Statements of position

Sinn Féin

- “Support derogation options B and C (no derogation of either ECHR rights or supplementary rights) for the reasons outlined in the PEI report and would argue for the narrowest possible powers and the strongest possible safeguards in the event derogation provisions appear in the final Bill.”

UUP

- “Options A and D reflect the required necessary relationship of supplementary rights with the HRA.”

Ethnic Minority sector

- “We feel strongly that the supplementary rights should be non-derogable but subject to appropriate limitation clauses.”

ENTRENCHMENT AND AMENDMENT

Recommendation

1. **The Bill of Rights to be enacted through Westminster legislation should first receive cross-community support in the Northern Ireland Assembly.**
2. **The Bill of Rights to be enacted through Westminster legislation should first receive popular support in a referendum.**
3. **The Bill of Rights should be amendable only through the same process as led to its enactment.**

Levels of support

DUP	For 1; sceptical on 2
Sinn Féin	abstaining; reserved on intergovernmental treaty
UUP	For 1; sceptical on 2
SDLP	Oppose 1 for adoption of Bill of Rights but support it for amendment; open on 2
Alliance	For 1; sceptical on 2; preference for an intergovernmental treaty
Business Sector	For 1, 2 and 3
Children and Young	Against 1 on qualified basis, abstain on 2

People's sector	
Churches	
Community/voluntary sector as a whole	
Disability sector	For 1; sceptical on 2
Ethnic Minority Sector	Against 1 on a qualified basis; for 2
Human Rights NGO sector	Qualified opposition to 1; for 2
Older People's sector	For 1; sceptical on 2
Sexual Orientation sector	
Trade Unions	Qualified opposition to 1, for 2
Women's sector	For 1, qualified; for 2, qualified.

Statements of position

Sinn Féin

- “Under the Good Friday Agreement and St Andrews Agreement responsibility to deliver the Bill of Rights lies with the British Government.”

UUP

- “Support via a cross-community vote in the Northern Ireland Assembly is necessary both in terms of community confidence in supplementary rights and in light of the potential impact of supplementary rights on government and administration in Northern Ireland.”

SDLP

- “There should be no prerequisite (for cross-community support in the Assembly) before the adoption of the Bill of Rights. The Bill of Rights is an agreed commitment that arises out of the Good Friday Agreement and the St Andrews Agreement. SDLP agrees that, to amend the Bill of Rights in the future, cross-community support in the Assembly is desirable.”

Children and Young People's sector

- “while we support the principle of this requirement, we do not support its potential use as a blocking mechanism. The Children's Sector abstain on the referendum issue but insist that any decision making process in relation to the Bill of Rights ensures the right to participation of children as enshrined in international law and therefore believes that a mechanism for formal consultation with children and young people on the proposals of the Bill of Rights need to be developed and effectively implemented.”

Ethnic Minority sector

- “We strongly feel that the participation of the people in Northern Ireland is important for the democratic process surrounding the Bill of Rights. It will create the culture of rights for us all. We have serious concerns about Option 1 as it has the potential to be used as a blocking mechanism.”

Human Rights sector

- “While we would support the principle of a cross-community vote in the Assembly, we do not support its potential use as a blocking mechanism.”

Trade Unions

- “While we would support the principle (of cross-community voting in the Assembly) we do not support its potential use as a blocking mechanism.”

Women’s sector

- For 1, qualified due to under-representation of women in the Assembly; for 2, qualified dependent on proper outreach program

APPLICATION

Recommendation

- 1. The Bill of Rights should bind all public authorities, broadly defined, including courts to ensure indirect horizontal effect, but not either House of Parliament or a person exercising functions in connection with proceedings in Parliament. It should include persons exercising functions of a public nature. It should also include those performing functions pursuant to a contract or other arrangement with a public authority that exercises a power or is under a duty to perform that function.**
- 2. A public authority shall not act in a way which is incompatible with the Bill of Rights or, in making a decision, fail to give due regard to a relevant right, except where**
 - a. as the result of one or more provisions of primary legislation, the authority could not have acted differently; or**
 - b. in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the rights, the authority was acting so as to give effect to or enforce those provisions.**
- 3. “An act” includes a failure to act but does not include a failure to**
 - a. introduce in, or lay before, Parliament a proposal for legislation; or**
 - b. make any primary legislation or remedial order.**

Levels of support

DUP	Reserved on broad definition of public authorities at 1; against 2
Sinn Féin	For 1; for 2
UUP	Reserved on broad definition of public authorities at 1; against 2
SDLP	For 1; for 2
Alliance	For 1; for 2
Business Sector	For 1, 2 and 3
Children and Young People's sector	For 1; for 2
Churches	
Community/voluntary sector as a whole	
Disability sector	For 1; for 2
Ethnic Minority Sector	For 1, 2 and 3
Human Rights NGO sector	For 1; for 2
Older People's sector	For 1; for 2
Sexual Orientation sector	
Trade Unions	For 1, for 2
Women's sector	For 1; for 2

Statements of position

Sinn Féin

- Support 1 and 2 but oppose 3. "Ministers should not be exempt from liability for rights violations resulting from a failure to legislate."

UUP

- "Our position is necessarily reserved until the actual content of supplementary rights becomes clear."

STANDING

Recommendation

Standing in relation to the Bill of Rights should be such as to enable access to justice which is sufficiently resourced and accessible, based on the current sufficient interest test used for judicial review cases, as follows:

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section ... may—

(a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

(b) rely on the right or rights concerned in any legal proceedings, but only if that person has (or would have) a sufficient interest in the unlawful act.

(2) In subsection (1), whether a person has a ‘sufficient interest’ in the unlawful act must be determined having regard to the need to ensure access to justice.

(3) In subsection (1)(a) ‘appropriate court or tribunal’ means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.

Levels of support

DUP	For
Sinn Féin	For
UUP	For
SDLP	For
Alliance	For
Business Sector	For
Children and Young People’s sector	For
Churches	
Community/voluntary sector as a whole	
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People’s sector	For
Sexual Orientation sector	
Trade Unions	For

Women's sector	For
----------------	-----

Statements of position

Sinn Féin

- Support on the basis of the PEI working group: "Prefer the broadest possible standing provisions on the South African model, but support this proposal as an improvement on the victim-based definition (as contained in the HRA), which is too narrow."

UUP

- We note the consensus within the Working Group on this matter."

INTERPRETATION

Recommendation

1. **So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Bill of Rights.**
2. **In interpreting and applying this Bill of Rights the courts may have regard to relevant international human rights law and jurisprudence and the human rights jurisprudence of comparable jurisdictions.**

Levels of support

DUP	For 1; against 2
Sinn Féin	For 1; prefer a directive clause at 2 but supportive of permissive as a compromise
UUP	For 1; against 2
SDLP	For 1; for 2
Alliance	For 1; for 2
Business Sector Neil Faris Northern Ireland Chamber of Commerce	For 1; against 2
Children and Young People's sector	For
Churches	
Community/voluntary	

sector as a whole	
Disability sector	For 1; prefer a directive clause at 2 but supportive of permissive as a compromise
Ethnic Minority Sector	For 1; for 2
Human Rights NGO sector	For 1; for 2
Older People's sector	For 1; for 2
Sexual Orientation sector	
Trade Unions	For 1, for 2
Women's sector	For 1; prefer a directive clause at 2 but supportive of permissive as a compromise

Statements of position

Sinn Féin

- Support for reasons in PEI working group report.

UUP

- “While supportive of a HRA-style interpretation clause, again reflecting the required necessary relationship of supplementary rights with the HRA, we do not support a more general clause which would compel courts to refer to international instruments.”

Business sector (Neil Faris)

- Prefers the working group's wording for a clause on the issue in clause 2.

COVERAGE

Appendix 3 (to be attached to the report) provides a range of possibilities in relation to transferred, reserved and excepted matters.

Levels of support

See appendix 3.

Statements of position

UUP

- “In light of the nature of such rights as supplementary and addressing the particular circumstances of Northern Ireland (as defined), and acknowledging the legislative supremacy of Parliament, supplementary rights can only have relevance to public authorities in Northern Ireland.”

JUSTICIABILITY

Recommendation

OPTION A

All provisions in the Bill of Rights shall be justiciable.

OPTION B

All provisions in the Bill of Rights shall be justiciable except those in relation to which the obligation is one of progressive realisation.

Levels of support

DUP	Against A
Sinn Féin	For A
UUP	Against A
SDLP	For A
Alliance	Reserved on A
Business Sector Neil Faris Northern Ireland Chamber of Commerce	Against both options
Children and Young People’s sector	For A
Churches	
Community/voluntary sector as a whole	
Disability sector	For A
Ethnic Minority Sector	For A
Human Rights NGO sector	For A
Older People’s sector	For A
Sexual Orientation sector	

Trade Unions	For A
Women's sector	For A

Statements of position

Sinn Féin

- Support Option A for reasons in PEI working group report: “Courts are clearly capable of giving judicial effect to programmatic obligations, without encroaching unduly on the competences of the executive or the legislature or other public authorities. Making programmatic rights fully justiciable is necessary to ensure effective realisation of the rights.”

UUP

- “Re-affirming our position, stated in the Working Group Report, of opposition to the legal enforceability of any programmatic rights, we reserve our position on justiciability until the actual content of supplementary rights becomes clear.”

Business sector (Neil Faris)

- “I support the proposal of the working group that an audit needs to be carried out and then the matter can be considered further by the Human Rights Commission.”

ENFORCEMENT MECHANISMS

Recommendation

There are a number of options for how the Supplementary Rights/Bill of Rights could be enforced in the Courts:³

1. A dedicated Human Rights Court
2. A Human Rights Tribunal
3. The creation of a Human Rights Division of the High Court
4. Rights enforced through existing court system

³ The levels of support within the Group for these options are laid out under the ‘Level of Support’ section below.

Levels of support

DUP	For option 4
Sinn Féin	For option 1 with option 3 as a second preference and option 2 as a potential provided it is complementary to judicial enforcement
UUP	For option 4
SDLP	For option 1
Alliance	For option 4
Business Sector Neil Faris Northern Ireland Chamber of Commerce	For option 4
Children and Young People's sector	For option 1, second preference option 4
Churches	
Community/voluntary sector as a whole	
Disability sector	For option 4
Ethnic Minority Sector	For option 1
Human Rights NGO sector	For option 1
Older People's sector	For option 4
Sexual Orientation sector	
Trade Unions	For option 1
Women's sector	For option 4

Statements of position

Sinn Féin

- Support Option 1 as first preference and Option 3 as second preference, for reasons in PEI working group report.

UUP

- "We strongly re-affirm our position, stated in the Working Group Report, that enforcement via the existing courts system is the only model worthy of consideration. We also note that model had very strong support in the Working Group."

GENERAL REMEDIES

Recommendation

A court shall grant an effective remedy to any person whose rights and freedoms under the Bill of Rights have been or may be violated and, for this purpose, may grant such relief or remedy, including compensation, or make such order as it considers just and appropriate.

Levels of support

DUP	For
Sinn Féin	For
UUP	For
SDLP	For
Alliance	For
Business Sector	For
Children and Young People's sector	For
Churches	
Community/voluntary sector as a whole	
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Statements of position

UUP

- We note the consensus within the Working Group on this matter.”

HARMONISATION AND NON-DIMINUTION

Recommendation

- 1. The Bill of Rights shall be interpreted consistently with the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. This provision shall not prevent the Bill of Rights providing more extensive protection than is provided by the ECHR.**
- 2. Nothing in this Bill shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and by international agreements to which the UK is a party, including but not limited to the European Convention for the Protection of Human Rights and Fundamental Freedoms, or by any law applicable in Northern Ireland.**

Levels of support

DUP	For
Sinn Féin	For
UUP	For
SDLP	For
Alliance	For
Business Sector	For
Children and Young People's sector	For
Churches	
Community/voluntary sector as a whole	
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	
Trade Unions	For
Women's sector	For

Statements of position

Sinn Féin

- Support but, for avoidance of doubt, propose amendment to clause 2 to add “domestic or” before “international law” in the third line.

UUP

- We note the consensus within the Working Group on this matter.”

CHAPTER 6. RECOMMENDATIONS RELATING TO IMPLEMENTATION

INTRODUCTION

The success of any bill of rights is dependent on community acceptance of it. All community members need to have an understanding of what human rights are and why it is important to protect them. Consequently, in conjunction with the enactment of the Bill of Rights, there should be a programme of work to ensure that it can be implemented and that it is meaningful and accessible to those who need it. A well-structured programme of implementation is required to ensure the promotion of a culture of respect for human rights and to foster positive attitudes towards rights. In the absence of such a programme, the Bill of Rights risks being an instrument with legal effect but with little actual meaning or significance to ordinary people.

Recommendations on how to implement a bill of rights effectively are generally not contained within the instrument itself. Review of international and comparative experience suggests that, broadly speaking, three categories of implementation activity are required to render a bill of rights effective in practice: accessibility action, education and training, and litigation support. To be successful, these implementation activities require good coordination and appropriate funding.

ACCESSIBILITY ACTION

If the Bill of Rights is to have meaning for ordinary people, it must be accessible to all sections of the population. Effective accessibility entails access to the Bill of Rights itself, and access to clear and simple guidance on its meaning.

The Bill of Rights must be made available in different versions, including in large print, in different languages, in child-friendly language, in Braille, on audio and video tape or DVD/CD and in Easy Read formats, so that it is accessible to everyone within the jurisdiction. In addition, guidance documents explaining the Bill of Rights, again available in different versions, are also essential. Guidance information can take many forms. Examples used elsewhere have included a human rights DVD (used in Victoria); promotional posters; and simple pamphlets in question and answer format.

At the very least, these documents should be available from government departments and non-government organisations and on government and NGO websites, which should be accessible to people with disabilities. The more widespread the distribution of these documents, however, the better.

EDUCATION AND TRAINING

General

The Bill of Rights will be most effective for ordinary people if they are well aware of it, and understand what it is. Its development will also be stifled if those responsible for

its implementation – namely legislators, public officers, civil servants, judges and lawyers – do not fully comprehend it and their obligations under it. Human rights education and training form a fundamental part of good practice in the implementation of human rights.

Education and training must clarify what human rights are and how they can be used, and address misinformation about human rights. They require the examination of the relevant human rights instruments and the promotion of critical reflection and inquiry.¹ They should be directed at both the community at large, and at those charged with the responsibility of safeguarding the Bill of Rights.

If conducted properly, human rights education can contribute to the reduction of human rights violations² and to fostering a sense of community ownership of the Bill of Rights.

International experience

Human rights education has formed an important focus in the international human rights sphere for some time. Indeed, 1995-2004 was the United Nations Decade for Human Rights Education. Article 26(2) of the Universal Declaration of Human Rights 1948 acknowledges the importance of education in ‘the strengthening of respect for human rights and fundamental freedoms’. The Vienna Declaration and Programme of Action 1993 sets out the general goals of human rights education.³

The content of human rights education should be threefold and entail:

- knowledge: the provision of information about human rights and the mechanisms for their protection;
- values, beliefs and attitudes: the promotion of a human rights culture through the development of values, beliefs and attitudes which uphold human rights; and
- action: encouragement to take action to defend human rights and to prevent human rights abuses.⁴

Education should be built upon partnership between government, non-governmental organisations, professional associations, individuals and large segments of civil society.⁵ Other key elements of successful human rights education include:

- public awareness and outreach campaigns;⁶
- integration of human rights education into formal education;⁷

¹ See, e.g., Equitas: International Centre for Human Rights Education, <<http://www.equitas.org/english/ed-manuals/vision.php>> (accessed 28 March 2008).

² See UNHCHR *Guidelines for National Plans of Action for Human Rights Education*, para. 12 (‘Guidelines’)

<[http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/de5002e16faf1df980256678005ceaa8/\\$FILE/N9728411.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/de5002e16faf1df980256678005ceaa8/$FILE/N9728411.pdf)> (accessed 26 March 2008).

³ Section D, paras 78-82.

⁴ Guidelines, note 2, para. 13.

⁵ Ibid, Preface, para. 2.

⁶ Ibid, paras. 43, 46(e).

⁷ Ibid, para. 46(c).

- education of socially vulnerable groups;⁸
- a financial strategy;⁹ and
- production of materials and continuing research in, and evaluation of, educational programmes.¹⁰

Comparative national experience

In Canada and Australia, educational programmes to promote human rights awareness have been given particular prominence and there are useful lessons to learn from these jurisdictions. In Canada, the Department of Canadian Heritage operates a 'Human Rights Program' to promote the development, understanding, respect for and enjoyment of human rights in Canada.¹¹ Part of the Program entails organising educational and promotional activities involving the public, educators, non-governmental organisations, government departments and others on a continuing basis. The Human Rights Program is also responsible for distributing human rights publications upon request, such as, one of its primary documents, *Your Guide to the Canadian Charter of Rights and Freedoms*.

In Victoria, Australia, a three-fold strategy was adopted in relation to education on the Victoria Charter of Human Rights and Responsibilities Act 2006.¹² First, the Human Rights Unit of the Department of Justice was charged with primary responsibility for the education of the public sector. This involved training legal and legislative policy officers; 'train-the-trainer' programmes, to enable trainers, in turn, to disseminate information within their own public authority; and training government prosecutors and criminal law practitioners. Second, community education was, and continues to be, conducted by the Victorian Equal Opportunity and Human Rights Commission. Third, the Judicial College of Victoria provided, and continues to provide, specialised training for the judiciary.

In terms of public awareness campaigns, a noteworthy example is a radio advertising campaign conducted by the Victorian Equality Opportunity and Human Rights Commission. The campaign was conducted in 45 languages, and sought to raise awareness of racial and religious rights.¹³

LITIGATION SUPPORT

Even if individuals are aware of the Bill of Rights and fully understand its implications, they may be impeded from asserting their rights due to lack of finance

⁸ Ibid, para. 46(d).

⁹ Ibid, para. 47.

¹⁰ Ibid, para. 46(g)-(h).

¹¹ See generally: <http://www.pch.gc.ca/progs/pdp-hrp/index_e.cfm> (accessed 26 March 2008).

¹² See

<<http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Human+Rights/Human+Rights+Charter/JUSTICE+--+Human+Rights+Training+and+Communication>> (accessed 26 March 2008).

¹³ See 'New radio campaign promoting awareness of religious and racial rights' 27 November 2007, <<http://www.humanrightscommission.vic.gov.au/news%20and%20events/media%20releases/20071127.asp>> (accessed 26 March 2008).

and lack of legal expertise. Effective litigation requires adequate financial and legal resources.

Financial assistance is the primary way to support human rights litigation. This option, which is already in place throughout the UK, can be achieved through prioritising human rights issues in the legal aid funding criteria. For instance, under the current Legal Aid Funding Criteria (July 2007), where other eligibility criteria are met, a presumption in favour of legal aid funding operates if the case raises 'significant human rights issues'.¹⁴

Litigation support can also be provided through specialist legal centres. Again international experience is instructive. The Canadian Charter of Rights and Freedoms came to life in the broader community only when a small number of specialist legal centres were funded to take test case litigation.¹⁵ In Victoria, part of the implementation programme was the establishment and funding of the Human Rights Law Resource Centre as an independent agency to take test cases, among other things.¹⁶

OVERARCHING STRUCTURES

Coordination

These implementation activities – accessibility action, education training, and litigation support – are more likely to be successful if they are properly coordinated by one responsible authority. In this way, both overlaps and gaps can be avoided and attention can be directed to any particularly vulnerable social groups.

Funding

Designated human rights funding is essential to achieve effective implementation of human rights. This funding is necessary to ensure that the implementation activities can be undertaken. An example of a successful general funding programme is the Canadian Human Rights Program, already noted, which provides a selected number of grants and contributions to eligible organisations for projects that increase awareness, knowledge, and practical enjoyment of human rights in Canada.¹⁷ In any given year, the Human Rights Program might also focus on projects linked to a particular set of rights; so for instance, for 2007-2008, the Program has been focussing on projects increasing public awareness of the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child.¹⁸

¹⁴ Funding Code Criteria (July 2007), para. 7.5.2. See also paras. 7.4.5, 8.3.2, and 13.4.

¹⁵ See for example the Women's Legal Education and Action Fund: www.leaf.ca

¹⁶ See www.hrirc.org.au.

¹⁷ See www.pch.gc.ca/progs/pdp-hrp/index_e.cfm.

¹⁸ See n 11.

Monitoring

Implementation of the Bill of Rights needs to be monitored. The Northern Ireland Human Rights Commission can play a role here under its existing statutory mandate which is sufficient to enable it to do so. In addition, Assembly promotion and monitoring of implementation would be advantageous to encourage a thorough approach in relation to consistency of Assembly Bills and draft subordinate legislation with the Bill of Rights and effective implementation in other areas. The establishment of an Assembly committee on human rights, with similar responsibilities to Parliament's Joint Committee on Human Rights, would be an appropriate means to achieve this.

IMPLEMENTATION PROPOSALS

Recommendations

- 1. A programme of activities should be developed to enable full implementation of the Bill of Rights, including through**
 - a. accessibility action to make the Bill of Rights as accessible as possible through the production of the document itself and supplementary material in different formats, including child-friendly, plain English, different languages, Braille, audio and radio tape or DVD/CD and Easy Read formats, with priority given to reaching vulnerable and hard to reach groups;**
 - b. education and training for those with responsibilities for implementation of the Bill of Rights, for community organisations and groups and for the general community;**
 - c. adding the Bill of Rights to the Human Rights Act in current human rights education programmes and**
 - d. litigation support through specific legal aid funding and through specialised legal services, including for test case litigation.**
- 2. Implementation should be supported by**
 - a. designation of a central governmental authority with primary responsibility for coordination of implementation and related activities; and**
 - b. provision of government funding to support implementation of the Bill of Rights.**
- 3. A committee of the Northern Ireland Assembly should promote and monitor implementation of the Bill of Rights.**
- 4. As with the Human Rights Act, a period of time should be allowed between passage of the legislation and its commencement to permit public authorities to make necessary preparations and community information and education programmes to be commenced.**

Plenary issues

- the need for the Bill of Rights itself and supplementary information to be provided in a variety of formats so ensure accessibility to as many people as possible;
- the need to ensure effective education and training for full implementation of the Bill of Rights;
- the need for human rights education in relation to the Bill of Rights, in conjunction with current human rights education on the Human Rights Act;
- monitoring mechanisms through the Assembly.

Level of support

DUP	For
Sinn Féin	For
UUP	For
SDLP	For
Alliance	For
Business Sector	For
Children and Young People's sector	For
Churches	For
Community/voluntary sector as a whole	Not present to vote
Disability sector	For
Ethnic Minority Sector	For
Human Rights NGO sector	For
Older People's sector	For
Sexual Orientation sector	For
Trade Unions	For
Women's sector	For

Appendices

Appendix 1	terms of reference of the Forum
Appendix 2	discussion paper on the particular circumstances of Northern Ireland
Appendix 3	Bill of Rights and legal options
Appendix 4	members of the Forum and other participants
Appendix 5	list of Forum meeting dates
Appendix 6	list of BORF papers
Appendix 7	list of working group reports
Appendix 8	list of outreach workers' reports
Appendix 9	list of contributions from the public
Appendix 10	chapter four explanatory paper by Neil Faris

Terms of reference of the Forum

The Forum's terms of reference were:

“To produce agreed recommendations to inform the Northern Ireland Human Rights Commission's advice to Government on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international human rights instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill Rights for Northern Ireland.”

At the Forum meeting on 11th May it was agreed to add the following interpretive paragraph to the terms of reference

“The Forum discussed the terms of reference given it by the Minister for Human Rights, noting that they were taken directly from the Good Friday Agreement. Forum members all recognised that, in developing a Bill of Rights, they must address the needs and rights of all Northern Ireland's people.”

Discussion paper on the particular circumstances of Northern Ireland and the particular rights affected by these circumstances (BORF 18 revised)

This discussion paper collates submissions on the particular circumstances of Northern Ireland and the particular rights affected by these circumstances from sectoral and political representatives/organisations on the Northern Ireland Bill of Rights Forum (the Forum).¹ It served as the base document for discussion on the particular circumstances of Northern Ireland at the ninth plenary session of the Forum on 7 December 2007.

This paper is divided into nine sections. Each of the Forum's seven working groups is allocated a section, under which relevant rights and particular circumstances identified in submissions are grouped. The eighth section collates submissions on equality, non-discrimination and other specific groups. The paper's ninth and final section groups remaining submissions into two subsections: general and interpretive comments on Northern Ireland's particular circumstances; and interpretive statements on the Belfast (Good Friday) Agreement (the Agreement).

Organisational submissions are ordered alphabetically in each section. An annex to this document collates statements by organisations that chose not to submit papers on Northern Ireland's particular circumstances².

For conciseness, only sections of submissions that directly address the particular circumstances of Northern Ireland and/or the particular rights affected by these circumstances have been reproduced in this paper. Page references for extracts taken from submissions are indicated in parentheses.³

1. Children's rights

The **submission of the Catholic Bishops**⁴ states that '(a)s Catholic Bishops we are wholly supportive of the general principle of promoting and defending the rights of children... (t)here is, however, some doubt as to whether the interests of children are best served through the presentation of a new and discrete section in the Bill of Rights on the Rights of Children' (at 5). The **Catholic Bishops** 'propose instead the direct incorporation and operation of the operative provisions of the UN Convention on the Rights of the Child as the best method of ensuring the effective protection in National Law of current international standards' (at 5).

1 Papers were submitted by the: Alliance Party, business sector (two papers by Neil Faris), human rights NGO sector (CAJ), Catholic Church (Father Tim Bartlett and a submission from the Catholic Bishops), children's sector, DUP, trade unions sector (ICTU), Irish Council of Churches (the Very Reverend Dr Samuel Hutchinson), SDLP, sexual orientation sector (CoSO), Sinn Féin, UUP, and the women's sector.

2 Including the disability sector, ethnic minorities sector, and older persons sector.

3 With the exception of Father Tim Bartlett's personal submission and the submission of the women's sector, both of which were submitted in email form.

4 Entitled 'A Response to the NIHRC Consultative Document, 'Malting a Bill of Rights for Northern Ireland' by the Catholic Bishops of Northern Ireland' [sic].

The **submission of the Catholic Bishops** also ‘suggest[s]’ that the issue of the age of criminal responsibility ‘does not properly belong to a Bill of Rights’ (at 5) (see also economic and social rights for the **Catholic Bishops**’ comments on children’s education).

The **children’s sector**⁵ states that the Bill of Rights: must meet the standards set out in the United Nations (UN) *Convention on the Rights of the Child* (CRC); should adapt CRC principles and provisions to ensure the highest standards of children’s rights are incorporated into law; should both mainstream children’s rights and contain a dedicated children’s rights provision with child specific rights; should include socio-economic and civil and political rights; should make all children’s rights justiciable; should place positive obligations on public authorities to prioritise children’s rights when taking decisions, including budgetary decisions; should recognise rights rather than responsibilities; and should recognise the right of children to have their rights protected in the private sphere (at 20). The **children’s sector** also states that the ‘enumeration of children’s rights should not be construed as a denial of children’s rights set out elsewhere’; that CRC provisions should be tailored to the special circumstances of Northern Ireland; and that full incorporation of children’s rights should take place at a constitutional level in the Bill of Rights (at 20).⁶

Specific rights identified by the **children’s sector**⁷ (drawn from the CRC) include children’s right to: enjoy their rights without discrimination; have their best interests made a paramount consideration in actions concerning them (including children’s services, education, justice and health); appropriate legislative, administrative and other measures for implementation of their rights (including necessary resources); channels and a means to enable them to express their views; be aware of their rights; be detained only as a last resort; be treated in a manner consistent with their dignity and human rights; play and have access to space and leisure facilities; the highest attainable standard of health (along with the right of access to health facilities and services); justiciable social and economic rights (starting with a standard of living adequate to physical, mental, spiritual and social development); life and survival; and the right to realise their full potential (at 14).

CoSO⁸ states that the particular circumstances of Northern Ireland are such that the CRC ‘should be acknowledged in the Bill of Rights so that public authorities, but also community and voluntary groups and private sector bodies, are subject to its terms, particularly the ‘voice of the child’ (at 2).

The **SDLP**⁹ identifies lawlessness, violence, a questioning of the legitimacy of the State, sectarianism and intolerance as ‘particular circumstances [that] should be

5 Two submissions: ‘Protecting children and young people’s rights in the Bill of Rights for Northern Ireland – Why? How?’; and ‘How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland – Learnings from international law and the experience of other jurisdictions’ (Goretti Horgan and Dr Ursula Kelly), commissioned by Save the Children and the Children’s Law Centre for the Children and Young People’s Sector Bill of Rights Group.

6 ‘How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland’.

7 ‘Protecting children and young people’s rights in the Bill of Rights for Northern Ireland’.

8 Submission entitled ‘SO rights which are particular to NI’

9 Submission entitled ‘SDLP Draft Position Paper – The “Particular Circumstances” of Northern Ireland – Implications for a Bill of Rights’, October 2007.

reflected in a progressive statement of rights in relation to children's rights' in the Bill of Rights (at 6). To the **SDLP** 'the particular circumstances of our young people reinforce the argument for a comprehensive bill of rights generally, as a tool for delivering the fresh start promised by the Agreement, to educate our children, helping them come to an understanding of their rights and responsibilities, of difference and diversity... to ensure that no future generation of children will suffer as before' (at 6).

2. Civil and Political Rights

Father Tim Bartlett¹⁰ supports 'the inclusion of and elaboration on the meaning and consequences' of civil and political rights, including freedom of conscience and religion (including issues around marching and protection of places of worship and religious gathering) and 'some creative thinking on community rights'. The **submission of the Catholic Bishops** also calls for the Bill of Rights to protect religious freedom and 'to recognize the right of individuals and religious institutions not to be obliged by State legislation to promote a view of fundamental human rights or values, such as the right to life or the value of heterosexual marriage and the family, which are contrary to their deeply held philosophical and religious convictions' (at 2). Addressing the right to life, the **submission of the Catholic Bishops** states that there 'should be no provisos or exceptions to the right to Life, from the moment of conception to natural death' (at 5). The **submission of the Catholic Bishops** also argues that it is not appropriate to deal with voting age in the Bill of Rights.

CoSO, addressing political representation and democratic rights and, drawing from the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Yogyakarta Principles)*, states that 'the full enjoyment of the right to participate in public and political life and affairs...should be "without discrimination on the basis of, and with full respect for, each person's sexual orientation and gender identity"' (at 2). **CoSO** wants 'respect for civil partnerships to be acknowledged in NI' (at 2) and for the Bill of Rights to contain a broad formulation of the right to found a family, mirroring language contained in the *Yogyakarta Principles*, which provides (at principle 24) '(e)veryone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members' (at 2). **CoSO** also states that 'in light of unprecedented remarks made by public representatives in NI... representation/democratic rights must include respect of all sections of the community without any discrimination or harassment' (at 2).

The **DUP** supports addressing emergency laws in the Bill of Rights, considering this issue to fall within the particular circumstances of Northern Ireland (at 1).

ICTU's¹¹ submission addresses, in the context of trade union rights, freedom of association including the right to form and join trade unions.

¹⁰ Email entitled 'Material on Particular Circumstances', 29 October 2007, accompanying submission by the Catholic Bishops of Northern Ireland.

¹¹ Submission entitled 'ICTU Submission to the Bill of Rights Forum - Trade Union Rights and the Particular Circumstances of Northern Ireland', 29 October 2007.

The **Very Reverend Dr Samuel Hutchinson**¹² (writing as a member of the Forum) identifies the Northern Ireland conflict as neither ordinary criminality nor a conventional war, but a third thing 'that the criminal justice system was not designed to deal with' (at 1). He links this circumstance to the 'right to live free from paramilitary threat' (at 1).

The **SDLP** believes that the right to proportionate representation of the two main communities in elected bodies and the right to protection from coercive cultural assimilation by public bodies or as a result of public policy 'can be deduced from the general principles of the Agreement' (at 4). The **SDLP** also states that the Bill of Rights is instructed by the Agreement 'specifically to include' the rights to: free political thought; freedom and expression of religion; pursue democratically national and political aspirations; seek constitutional change by peaceful and legitimate means; and freely choose one's place of residence. The **SDLP** also supports addressing freedom of information in the Bill of Rights (at 7).

Sinn Féin¹³ identifies 'a system of local government, with severely, and exceptionally, restricted powers, remit, and participatory structures of governance, or engagement with NGO and community sectors [which]... continues, in many areas, to run, and legitimise exclusive, majoritarian governance' as a particular circumstance characterising Northern Ireland's society (at 2). Drawing directly from the Agreement¹⁴, **Sinn Féin** states that the following rights should be incorporated into the Bill of Rights: free political thought; freedom and expression of religion; and the rights to pursue democratically national and political aspirations, seek constitutional change by peaceful and legitimate means, and freely choose one's place of residence (at 3).

The **women's sector**¹⁵ states that in the Bill of Rights debate to date '(t)here is no acknowledgement that the conflict has impacted on women's lives in many ways'. Addressing democratic rights, the **women's sector** states that '(i)n the political and public sphere women are seriously under-represented. 18 of our newly elected Assembly of 108 members are women. By any measure women do not have full and equal participation in political and public life and access to power and decision making'. The **women's sector** continues: 'A commitment to positive action could have compelled political parties to select equal numbers of male and female candidates. No positive action measures have been introduced to deal with this and at the present rate we will all be into the next century before a critical mass of women in politics is reached... this situation is so fundamentally undemocratic that the Bill of Rights must promote and protect women's rights in this sphere'.

In an address of violence against women and the right of women to dignity and physical integrity, the **women's sector** states that '(w)ithin the debate to date the gender-specific nature of domestic violence and sexual violence has been obscured. There is no 'gender parity' in terms of who is most affected by gender-based

12 Submission entitled 'Particular Rights Affected by the Particular Circumstances of Northern Ireland'.

13 Submission entitled 'Note on Particular Circumstances', November 2007

14 Section 6 of the Agreement: 'Rights Safeguards & Equality'

15 Submission entitled 'The particular circumstances of Northern Ireland', 5 November 2007.

violence... Women are currently at threat of violence in the home, and society at large and little recognition or resources have gone into dealing with this onslaught. We need an acknowledgment of the problem and its impact on the lives of women and girls and an explicit commitment to eliminate gender-based violence. This should reflect the standard laid down in the 1993 UN Declaration on the Elimination of Violence Against Women, asking states to pursue by all appropriate means and without delay, a policy of eliminating violence against women’.

3. Criminal Justice and Victims

The **Alliance Party**¹⁶ identifies ‘three imperatives’ for the recognition of rights additional to those contained in the *European Convention on Human Rights* (ECHR)¹⁷: to address the factors that led to division and conflict in the past; to address the legacy of conflict and division in order to avoid the mistakes of the past, and to move Northern Ireland forward; and to address and build those aspects of society in Northern Ireland that could have mitigated or prevented the descent into division and conflict (at 2/3). **Alliance** also identifies victims and survivors of the conflict as part of Northern Ireland’s particular circumstances (at 3).

Tim Bartlett supports ‘the inclusion of and elaboration on the meaning and consequences’ of criminal justice, victims, and rights to do with healing, reconciliation and truth telling.

CoSO, addressing homophobic violence, abuse and hate crime in Northern Ireland, states that it ‘accepts that ‘degrading treatment’ under Article 3 ECHR provides some protection in these circumstances but considers that a harassment provision, possibly modified to accommodate other rights, or a right against violence and abuse, must be included in the Bill of Rights’ (at 2).

The **DUP** supports an address of victims and inter-communal violence in the Bill of Rights, considering these issues to fall within the particular circumstances of Northern Ireland (at 1).

Samuel Hutchinson, acknowledging that “victim” is an emotionally charged term, states that ‘(w)e need to consider the rights of those who suffered bereavement, injury or loss as a result of the conflict, such rights to include entitlement e.g. to compensation, access to support services, health care, etc’ (at 1).

The **SDLP** states that ‘(i)ssues of rights in the justice system were central to the conflict... The Criminal Justice Review has addressed many related issues but there remains a strong argument for including in our Bill of Rights, commitments consistent with international standards’ (at 6). Addressing the rights of prisoners, the **SDLP** states that ‘(t)he Agreement includes a section in which the government commits itself to addressing the needs of prisoners in terms of rehabilitation and reintegration and this should be reflected in the Bill... the prison population includes many mental health sufferers and those with learning difficulties, who are arguably in prison, merely due to the inadequacy of other public services’ (at 6).

16 Submission entitled ‘The Particular Circumstances of Northern Ireland’ – Perspective of the Alliance Party’.

17 Full title the Convention for the Protection of Human Rights and Fundamental Freedoms.

Sinn Féin states that the Forum needs to look at ‘the rights of victims of the conflict and truth... and at the rights of those accused with regard to the criminal justice system’ (at 3).

The **women’s sector** states that the ‘gender specific nature of domestic violence and sexual violence’ has been ‘obscured’ within the Bill of Rights debate to date. The **women’s sector** also states that ‘(w)omen are currently at threat of violence in the home, and society at large and little recognition or resources have gone into dealing with this onslaught’.

4. Culture, Language and Identity

To the **Alliance Party** ‘the most clear-cut additional rights for recognition [in the Bill of Rights] are those with specific application to deeply divided societies with clashes of identity on grounds of religion, language, culture or ethno-national identity’ (at 3). Addressing identity, **Alliance** states that the adoption of ‘an open, mixed and multiple approach to identity rather than institutionalising two exclusive identities can serve as an aid to peace and stability’ (at 3). **Alliance** also states that the terms of the *European Framework Convention on the Protection of National Minorities* (the *Framework Convention*) should apply to all sections of society not just indigenous groups.

Neil Faris¹⁸ lends conditional support to the list of issues developed by Professor Stephen Livingstone¹⁹, which, **Neil Faris** states, is ‘correctly focused in terms of the Agreement’ (at 4). This list of issues includes language, citizenship, flags and marches.

Tim Bartlett supports ‘the inclusion of and elaboration on the meaning and consequences’ of cultural and linguistic rights, and equality and parity of esteem. He states that it is ‘manifestly more difficult to justify under the current terms of reference’ debate on the *Yogyakarta Principles* or debate on minority rights which do not fall within the collective issues that the Church has identified. The **submission of the Catholic Bishops** states that ‘in our view it is important in a pluralist society such as Northern Ireland to recognise that difference in culture, or religious or political beliefs is not of itself the sole or primary source of our communal difficulties but our failure to accommodate and celebrate such difference’ (at 2). The **Catholic Bishops** also ‘recognise the rights of all to have their language respected’ (at 8).

The **DUP**²⁰ supports addressing parading in the Bill of Rights, stating that it falls within the particular circumstances of Northern Ireland (at 1).

Samuel Hutchinson states that ‘(t)he right to parade and the right to protest against parades are obviously part of our “particular circumstances”’. The former NIHRC seemed to ignore this issue; the Forum cannot avoid it’ (at 1). He also states that, if the Forum’s terms of reference permit proposals on such issues and family values

18 Submission entitled “Particular Circumstances?” – A Further Note’, 29 October 2007.

19 The Need for a Bill of Rights in Northern Ireland (2001) 52 NILQ.

20 Submission entitled ‘Particular Circumstances of Northern Ireland’.

and sexual orientation (see also section on economic and social rights), then such proposals should be fair and balanced, protecting ‘the rights of all reasonable viewpoints... including the right to reasonable freedom of expression, and the right of individuals and corporate bodies like Churches not to be forced into accepting and promoting any particular set of beliefs, standards and values as a pre-condition for receiving grants from the public purse for the various charitable services they provide’ (at 1).

The **SDLP** identifies and calls for, as central to Northern Ireland’s particular circumstances, an ‘express recognition of the conflict of national identity which underlies our historic problems, through the incorporation of community rights’ (at 3). To the **SDLP**, the following rights ‘must be given specific protection by the Bill of Rights: the right of all people to identify themselves and be accepted as Irish or British or both, as they may so choose; the right to hold British or Irish citizenship, or both; and parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities’ (at 3). The **SDLP** also states that the Bill of Rights is instructed by the Agreement ‘specifically to include’ the rights to freedom and expression of religion and freedom from sectarian harassment (at 4).

Sinn Féin, addressing Northern Ireland’s particular circumstances, states that a ‘society dominated by a single identity based on majoritarianism produced a unionist state for a unionist people’ with resulting discrimination against minority and disadvantaged groups (at 2). To **Sinn Féin**, ‘(t)he North is a state which has been based on majoritarianism and domination by a single identity culture. This has fed a culture of systematic discrimination often reinforced by violent attack and fear, against any and all minority groups, and the socio-economically disadvantaged’ (at 2). Drawing directly from the Agreement²¹, **Sinn Féin** states that the rights to freedom and expression of religion, freedom from sectarian harassment, and respect for culture, language, and the use of symbols and emblems for public purposes should be incorporated into the Bill of Rights (at 3). **Sinn Féin** also states that the Forum needs to look at marching with regard to the rights of host communities, language rights, and ‘environmental and developmental rights which affect our communities rights to meaningful participation in decision-making [sic]’ (at 3).

The **UUP**²², discussing the *Framework Convention*, endorses the view that ‘(a)ny entrenched bill of rights for Northern Ireland or other parts of the United Kingdom or for Ireland as a whole should include provisions to ensure that communal rights are effectively guaranteed’ (at 4). To the **UUP**, ‘the best approach may be to incorporate the major provisions of the European Framework Convention on the Protection of National Minorities into any new bill of rights leaving the detailed provisions to be worked out in ordinary legislation’ (at 4/5).²³ Further, addressing the nationalist ‘aspiration for a united Ireland’, the **UUP** ‘notes that the ‘aspiration’ dimension of the nationalist position has already been accommodated within the terms of The Belfast

21 Section 6 of the Agreement: ‘Rights Safeguards & Equality’.

22 Submission entitled ‘Bill of Rights for Northern Ireland – ‘The Particular Circumstances – The Ulster Unionist Party’s Position’, Demot Nesbitt.

23 Forum for Peace and Reconciliation, Dublin (Boyle, Campbell and Hadden): ‘The Protection of Human Rights in the context of Peace and reconciliation in Ireland’; Consultancy Studies Number Two, May 1996, at 6.

Agreement and needs no further accommodation by way of consideration of ‘the particular circumstances.’ (At 6)

5. Economic and Social Rights

The **Alliance Party** states that ‘there was clearly an economic and social aspect to conflict in Northern Ireland, and there is also a clear economic and social legacy from the past, not least in terms of the distortions with respect to public expenditure and a legacy of lack of inward investment’ (at 3). **Alliance** recognises ‘some scope for economic and social rights arising out of the ‘particular circumstances’’, but also urges caution, suggesting the following draft language for inclusion in the Bill of Rights:

‘Legislation shall be enacted to secure the protection of social and economic rights in line with the commitments made by the United Kingdom government when it ratified the International Covenant on Civil and Political Rights’ (at 3).

Neil Faris lends conditional support to the list of issues developed by Professor Stephen Livingstone²⁴, which includes education.

The **submission of the Catholic Bishops** states its support for the inclusion of economic and social rights in the Bill of Rights, holding that ‘the inclusion of such rights is wholly in keeping with a reasonable interpretation of the clause ‘to reflect the particular circumstances of Northern Ireland’ prescribed by the Belfast Agreement’ (at 8). The **submission of the Catholic Bishops** also identifies and welcomes the rights to ‘property, health care, an adequate standard of living, housing, work and to a healthy and sustainable environment’ (at 8) which appeared in the NIHRC’s 2001 consultative Document *Making a Bill of Rights for Northern Ireland*. However, the **Catholic Bishops** strongly object to the inclusion of sexual and reproductive health care in the Bill of Rights (at 8/9).

Addressing children’s education, the **submission of the Catholic Bishops** states that the ‘Catholic Church fully supports the rights of all parents to send their children to schools of their choice’ (at 7). They also call for the Bill of Rights to recognise the entitlement of ‘schools promoting certain religious values’ to exemptions in relation to the recruitment of teachers and the termination of their employment (at 7).

Addressing the right to a healthy and sustainable environment, the **Catholic Bishops** consider that ‘it would be appropriate for the Bill to seek to address the increasing environmental phenomenon of ‘marking out territory’ along sectarian lines through the unsolicited use of public or private property’ (at 9).

Tim Bartlett supports ‘the inclusion of and elaboration on the meaning and consequences’ of economic and social rights, namely housing and education. **Tim Bartlett** states, however, that it is ‘manifestly more difficult to justify under the current terms of reference’ debate on reproductive rights, or debate on age, disability and health that do not fall within the collective issues that the Church has identified.

²⁴ See footnote 18.

CoSO states that 'socio-economic rights must be included in Bill of Rights' (at 3). It also states that an address of education rights in the Bill of Rights 'cannot be parent focused' and should adequately account for 'the voice of the child' (at 3). **CoSO** also supports the inclusion of a strong equality provision in the Bill of Rights (at 3).

The **DUP**, applying the test that it has devised to determine which rights should fall within the remit of the Bill of Rights (see final section of paper), states that 'a wide range of issues such as many of those contained in the economic and social field, will have a very steep hill to climb to persuade us, or indeed be seen objectively as being particular to the circumstances of Northern Ireland' (at 2).

ICTU identifies three 'minimum core international standards' of trade union rights: the right to organise (the right of trade unions to freely establish their own constitutions, rules and elect their own representatives and the right of trade unions to freely organise their administration, activities and programmes, including political activity); the right to collective bargaining (the right of trade unions to engage in collective bargaining on behalf of their members and others, and the right of trade unions to engage in collective bargaining in all workplaces and in all matters relating to employment); and the right to strike (the right of trade unions to organise industrial action in defence of their social and economic interests, and the right of trade unions to organise industrial action in solidarity with other workers) (at 7).

Samuel Hutchinson states that, if the Forum's terms of reference permit proposals on such issues as abortion (see also culture, language and identity), then such proposals should be fair and balanced, protecting 'the rights of all reasonable viewpoints... including the right to reasonable freedom of expression, and the right of individuals and corporate bodies like Churches not to be forced into accepting and promoting any particular set of beliefs, standards and values as a pre-condition for receiving grants from the public purse for the various charitable services they provide' (at 1).

The **SDLP** states that the Agreement stipulates that the Bill of Rights is 'specifically to include' the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. The **SDLP** also calls for the Bill of Rights to address housing, employment rights, health, education, and the environment (at 7/8). Addressing the implementation of economic and social rights, the **SDLP** states: 'consistent with the approaches in other international instruments... we would anticipate that such rights would be referred to in the context of a reference to "available resources" and should not therefore, give rise to fears about unrealistic or unenforceable expectations, particularly in light of emerging international jurisprudence' (at 4).

Sinn Féin identifies as particular circumstances characterising Northern Ireland's society: 'housing, health and other public institutions run by mostly un-elected Quangos which have no democratic mandate or accountability to the people, which maintain sectarian policies, including continuing ghettoisation of communities'; discriminatory aspects of the education system; a 'predominantly satellite economy, dependent upon and run for and by, the needs of Westminster', lacking fiscal and monetary autonomy and powers to regulate commerce and trading agreements; particularly high economic inactivity rates, low investment growth, low expenditure on

research and development and a non-productive service sector; 'systematic in-built rejection of opportunities to engage with the rest of the island, in joint economic development to mutual advantage'; and 'exceptionally high pockets of persistent disadvantage' (at 2).

Sinn Féin states that 'the Bill of Rights must reflect the need to ensure that socio-economic rights are defined as they have played a key role within our particular circumstances and can play a significant role in transforming our society if defined in a Bill of Rights'. Drawing directly from the Agreement²⁵, **Sinn Féin** also states that the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity should be incorporated into the Bill of Rights (at 3). It also states that the Forum needs to look at rights with regard to health, education, environment rights, housing, and employment, including trade unions rights and employers' rights (at 3).

The **women's sector** states that in the Bill of Rights debate to date '(t)here is no acknowledgement that the conflict has impacted on women's lives in many ways', including mental health issues, and women's life opportunities in education, employment and training. In a particular address of economic and social rights, the women's sector states that '(w)omen view the inclusion of socio-economic rights generally within a Bill of Rights as essential. There has been an abject failure in this society to promote the equality of women in society in socio-economic terms e.g. pensions, pay, social security etc. Much of this inequality stems from the lack of acknowledgement and (financial) value attached to the 'caring role' appropriated to women leading to blatant inequalities being faced by lone parents, carers and women pensioners, e.g. lack of affordable childcare'. The **women's sector** continues: '(t)he establishment of a culture of socio-economic rights could fundamentally lift the position of women in society - and thereby also lift many of the families and groups in society who are suffering from the dual nightmare of poverty and inequality'.

Addressing women's health, the **women's sector** states that '(b)ecause of women's particular reproductive capacities, access to sexual and reproductive health services is critical to their health and well-being. Adequate resources for sexual health services, including family planning and reproductive rights is essential. Without a guarantee of access to these rights all other rights for women become contingent'.

6. Preamble, Enforceability and Implementation

The **submission of the Catholic Bishops** calls for the possible attachment of a preamble to each section of the Bill of Rights to ensure that the 'achievement of reconciliation, tolerance, mutual trust and the protection and vindication of the human rights of all', 'concepts of interdependence, mutual responsibility and the common good' and 'responsibility... for the promotion and observance of the rights recognised' in the Bill of Rights are 'overtly and consistently presented throughout the document' (at 3). Addressing enforcement, the **submission of the Catholic Bishops** expresses 'reservation' at the potential establishment of a new Human Rights Court (at 9).

²⁵ Section 6 of the Agreement: 'Rights Safeguards & Equality'.

The **children's sector** provides a series of child-specific recommendations toward the enforcement and implementation of the Bill of Rights, stating that: a provision for enforcing and implementing is central to the potential of the Bill of Rights to protect and promote children's rights; a comprehensive and effective review procedure should be established to ensure that the protection and promotion of children's rights is a continuous and comprehensive process; a comprehensive and meaningful review of the extent to which the law and policy complies with the Bill of Rights should be undertaken before it comes into force; a constitutional court should be established to hear complaints from individuals and groups regarding breaches of the Bill of Rights; children and those representing them must enjoy access to the court to have their rights indicated; support, including financial support, and advocacy programmes should be established to assist children in this regard; and the court should have the power to supervise the implementation of the Bill of Rights and should have the power to strike down legislation that is inconsistent with the Bill of Rights.

The **children's sector** also states that the Bill of Rights must contain a meaningful system for ensuring that all law and policy is compliant with children's rights principles and provisions in the Bill; must contain strong interpretive principles compelling those charged with interpreting its provisions to take children's rights into account; and should be accompanied by a widespread campaign to educate and raise awareness among children and young people, and adults, about the rights protected (at 20).²⁶

The **SDLP**, discussing the implementation of economic and social rights, states: 'consistent with the approaches in other international instruments... we would anticipate that such rights would be referred to in the context of a reference to "available resources" and should not therefore, give rise to fears about unrealistic or unenforceable expectations, particularly in light of emerging international jurisprudence' (at 4).

7. Women's rights

The **submission of the Catholic Bishops** condemns discrimination and violence against women. It also states that it is 'less certain, however, how an extensive treatment of the 'Rights of Women' as a specific category within the proposed Bill of Rights for Northern Ireland can be justified within the limits imposed on the scope of such a Bill by the Belfast Agreement. Rights in regard to equality and discrimination apply to every person, irrespective of gender. This fundamental principle of equality also mitigates against the proposed elaboration of Women's Rights as a distinct section within the Bill' (at 4/5). **Tim Bartlett** also states that it is 'manifestly more difficult to justify under the current terms of reference' debate on women's rights that do not fall within the collective issues that the Church has identified.

The **SDLP** states that the Agreement stipulates that the Bill of Rights is 'specifically to include' the right of women to full and equal political participation. The **SDLP** also states that '(t)he Agreement includes a specific commitment to address women's

²⁶ 'How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland'.

right to participation in public life. The particular circumstances of women in Northern Ireland today cannot be separated from the conflict and the pressures that it created for families. Many women were left struggling to hold families together following injury, bereavement and imprisonment which affected more men than women... While there have been advances in workers' rights over recent years, women still occupy the bulk of badly paid, part-time jobs' (at 7).

Sinn Féin, drawing from the Agreement²⁷, states that the right of women to full and equal political participation should be incorporated into the Bill of Rights.

The **women's sector** identifies a range of issues affecting women as a product of Northern Ireland's particular circumstances (see preceding sections). These include: women's under-representation in political and public life; violence against women; health, including mental health issues in communities and women's access to sexual and reproductive health services; and women's life opportunities in education, employment and training.

8. Equality, non-discrimination and other specific groups

The **submission of the Catholic Bishops**, in addressing women's rights, states that '(r)ights in regard to equality and discrimination apply to every person, irrespective of gender' (at 5).

CoSO supports the inclusion of a 'strong equality provision in the Bill of Rights and the mainstreaming of that clause throughout the Bill' (at 3). While 'not convinced that the list of equality grounds should be too exhaustive [in the Bill of Rights] as this would put pressure on the equality law system', **CoSO** 'wishes to see the equality provisions reflect multi-identity issues' (at 3). **CoSO** also states that 'in light of unprecedented remarks made by public representatives in NI... representation/democratic rights must include respect of all sections of the community without any discrimination or harassment' (at 2).

The **SDLP** presses that 'principles of universal entitlement to rights and equality before the law underpin all international human rights instruments' (at 2). The **SDLP** also states that the Agreement 'specifically requires us to draft new clauses relating to equality and non-discrimination... which is important given the importance of these issues locally, and given the acknowledged limitations of the ECHR on these matters. The SDLP wishes to see all 9 of the section 75 categories acknowledged in this regard' (at 3). The **SDLP** also calls on the Bill of Rights to address carers, disability, older people, and migrants and asylum seekers (at 7/8).

Sinn Féin identifies as particular circumstances characterising Northern Ireland's society, 'exceptionally high pockets of persistent disadvantage, within geographical areas, as in cross cutting disadvantaged sectors, such as women, lone parents, gays and homosexuals, migrant workers, rural dwellers, disabled, aged and youth' (at 2). **Sinn Féin** states that areas of the Agreement in relation to 'equality and non-discrimination, to parity of esteem between the two main communities and to the development of a culture of equality and human rights for all' should also be reflected

²⁷ Section 6 of the Agreement: 'Rights Safeguards & Equality'.

in the Bill of Rights (at 3). **Sinn Féin** also calls on the Forum ‘to identify how the rights of older people in our society, of carers, women, children and young people; of the disabled, ex-prisoners, Travellers, GBLT and of our new communities are to be protected’ (at 3).

The **UUP**²⁸, addressing equality, states that ‘there has been neither a clearly established baseline for the equality problem, or an effective measurement methodology to gauge the level of policy success’ (at 2). Accordingly, the **UUP** states that ‘(s)ince both the ‘values’ of equality and justice are central to human rights and also Economic and Social rights are viewed as central to the discussion, the *Bill of Rights Forum* must play its part in this assessment’ (at 2). Continuing its discussion of equality in the context of economic and social rights, the **UUP** states that, in strongly supporting fairness for all, it ‘realises that equality is a sensitive issue and disadvantage must be addressed by Government and others who have such responsibility. The challenge to government and by implication the *Bill of Rights Forum*...is to address accurately the issues of equality that are of concern to people in Northern Ireland’ (at 17).

9.1. General and interpretive comments on Northern Ireland’s particular circumstances

To the **Alliance Party**, the phrase ‘particular circumstances’ is ‘effectively meaningless’ – open to both broad and narrow interpretations (at 1). **Alliance** also draws a distinction between ‘particular’ circumstances and ‘unique’ circumstances, pressing that the ‘particular circumstances of Northern Ireland are... not necessarily exclusive to Northern Ireland’ (at 1). For **Alliance**, any interpretation of the phrase must address Northern Ireland’s deep societal divisions and legacy of violence, and must account for continuing changes to Northern Ireland’s circumstances.

The **submission of the Catholic Bishops** acknowledges ‘the intimate connection between social disadvantage and exclusion and the history of physical conflict in Northern Ireland’ (at 8).

The **children’s sector**²⁹ identifies among Northern Ireland’s particular circumstances: the legacy of the conflict; segregation in housing, education, health and leisure services; the high level of child poverty and low level of family support; inadequate provision of support for children and young people with additional needs; and the relationship between poverty, segregation and conflict. The **Children’s sector**³⁰ states that ‘maximum protections in the Bill of Rights for children and young people would be a powerful tool to address the realities of the past and present and help prevent these from happening in the future’ (at 14).

CoSO, addressing the particular circumstances of lesbian, gay, bisexual and transgender (LGBT) people in Northern Ireland, states that Northern Ireland ‘in part remains a deeply conservative society and there is still a gulf between advances in

28 Submission entitled ‘Bill of Rights for Northern Ireland – Equality – Rights and Differentials – The Ulster Unionist Party’s Position’, Dermot Nesbitt.

29 ‘Protecting children and young people’s rights in the Bill of Rights for Northern Ireland’.

30 Ibid.

legal protection and the practical realities of the lives of many LGBTs in NI. In this context, it is essential that LGBT rights in NI are underpinned by the Bill of Rights' (at 1).

CoSO identifies the following issues affecting LGBT persons: enforced invisibility (imposed by society and self imposed through fear, discrimination, prejudice and practice); homophobic attacks (physical and verbal/personal and property; hate crime/intimidation; bullying and harassment in schools and invisibility and hostility within the school environment; bullying and harassment in the workplace; marginalisation in society/communities; marginalisation/exclusion from religious institutions; mental and physical ill health; political representatives making homophobic remarks; public representatives having lack of knowledge, insensitivity to and/or prejudice against LGBT people); institutionalised homophobia; non-reporting of incidents/attacks; and family estrangement (at 1/2).

ICTU states that 'a Bill of Rights which reflects the 'particular circumstances' of Northern Ireland implies a Bill of Rights that both deals with the legacy of the past and looks to a fair and inclusive future for all our citizens' (at 1). To ICTU, 'trade union rights are a vital component in the Bill of Rights for Northern Ireland; the workplace is where equality and fairness are tested, it is where workers can secure for themselves the fairness and equal treatment that is promised by all sections of civil society, state and government' (at 2).

Sinn Féin identifies a collection of particular circumstances that 'characterise' Northern Ireland's society. These include³¹: the 'undemocratic partitioning of the Irish nation by Britain'; 'the effects of 50 years of unionist party political and cultural dominance and discrimination'; 'the effects of the 40 years armed conflict which arose from this'; 'the effects of almost two decades of governance by direct rule from Westminster which was neither accountable to, nor responsive to, the needs of the people'; the entrenchment of sectarian discrimination in 'many key areas of society despite the legislative and other equality frameworks in place'; the 'social fabric in communities is increasingly decimated by gangsterism, intimidation, drug dealing and racketeering by armed gangs'; widespread 'sectarian, indiscriminate and violent attacks on minorities'; a 'highly polarised society in which the political parties draw their support primarily on the basis of where they stand on the constitutional issue' and patterns of racism and racist attacks linked to 'substantial immigration, from both EU and non-EU countries' (at 1/2).

The **women's sector** states that '(w)ithin the Bill of Rights debate to date there has been little acknowledgement of the particular circumstances of Northern Ireland in terms of the material reality of women's lives. There is no acknowledgement that the conflict has impacted on women's lives in many ways, affecting their under-representation in public and political life; violence against women; mental health issues in communities; the impact on women's life opportunities in education, employment and training opportunities'.

The **women's sector** continues: '(i)t is generally accepted that most international instruments reflect the minimum consensus of agreement between State parties who

³¹ Other particular circumstances identified by Sinn Féin are addressed in preceding working group sections.

ratify any subsequent agreement. As a result of this, we would greatly welcome recognition of the international importance and overall ethos of CEDAW [*Convention on the Elimination of All Forms of Discrimination against Women*] coupled with a determination to both reflect and build upon the standards laid down by the Convention’.

9.2. Interpretive statements on the Belfast (Good Friday) Agreement

The **Alliance Party** states that the Bill of Rights process should not be ‘hide-bound by an overly strict interpretation’ of the Agreement (at 2).

Neil Faris presses that any ‘additional rights to reflect the particular circumstances of Northern Ireland must be such as reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem’ (at 1). He fleshes out his understanding of the phrase ‘parity of esteem’, and traces its development and application, stating: ‘the phrase ‘parity of esteem’ between the two communities in the particular and specific context of the Agreement has a distinct and discrete meaning from the phrase ‘parity of esteem between all communities’ as it may be understood in the general context apart from the Agreement’ (at 1). To **Neil Faris**, Taoiseach Bertie Ahern captured the essential elements of the phrase in the context of the Agreement in a speech delivered in 2000.³² **Neil Faris** also encourages further Forum debate on the proper scope of the Bill of Rights (at 3) and on the ethical framework that would underpin it (at 3/4).³³

CAJ³⁴ recalls that the Bill of Rights ‘must ‘reflect’ the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities and parity of esteem’ (at 1), and calls for a Bill of Rights that is not too narrow in its range of rights (at 2), that offers a ‘vision of shared common values’ (at 2) and that can attract cross-community ownership.³⁵

CAJ also states that the ‘clear emphasis’ of the Agreement is ‘new beginnings and a fresh start’ (page 1). It extends this point, stating that section 6 of the Agreement (Rights, Safeguards and Equality of Opportunity) ‘must be approached as part of the overall emphasis on a fresh start and the fundamental importance of the protection

32 In which the Taoiseach stated: “The validity of both the Nationalist and Unionist identities in Ireland must be accepted; both of these identities must have equally satisfactory, secure and durable, political, administrative and symbolic expression and identity”/ “I and my Government stand by that principle, and it is reflected in the Good Friday Agreement. Each community’s sense of their own identity is one of the building blocks of the Agreement, and was throughout all of the discussions” (at2).

33 In an email sent on 6 December 2007, Neil Faris stated that this paragraph is not a full reflection of his position. He states: ‘(m)y point in both my papers is that this is what the text of the Agreement requires. I press the point because I believe we must all - in respect for the rule of law - apply legal texts for what they say - not what we might wish them to say. For what it is worth I am not an enthusiast for looking at Northern Ireland and rights issues in terms of the ‘two communities’. But that is what the people in the two jurisdictions in Ireland voted for by quite clear majorities - and that is what we must all respect and apply in this exercise in the Forum’.

34 Submission entitled ‘Submission to the Bill of Rights Forum on the “particular circumstances of Northern Ireland” – Committee on the Administration of Justice (CAJ)’, October 2007.

35 In an email sent on 11 December 2007, CAJ stated: ‘CAJ has worked extensively on potential rights to be included in a Bill of Rights, and its proposals are a matter of public record. However, for the purposes of this paper we have concentrated on the interpretation of the particular circumstances and will contribute on specific rights as and when appropriate’.

of the human rights of all' (at 1). **CAJ** continues, '(w)hile it is clearly essential to justify the adoption of rights within the terms of the Agreement, an equally important issue in this debate must be which rights a modern Bill of Rights should contain, given comparative experience and international developments' (at 1).

To **CAJ**, 'the best way to ensure that the identity and ethos of both communities is respected, given the particular circumstances of Northern Ireland, is the creation of an inclusive Bill of Rights dedicated to the protection and vindication of the human rights of all' (at 1), and that is not reduced to only... those rights that address specifically Northern Ireland concerns in a narrow way' (at 2).

Tim Bartlett states that 'the broad intention of the parameters established by the Agreement are both clear and have legal authority. It has been the consistent view of the Church that the wording clearly infers that the 'additional rights' beyond the ECHR to be considered for a BOR(NI) are those which relate directly (as opposed to indirectly or loosely) in some way to the history, causes and consequences of the conflict here'. To **Tim Bartlett** 'the sword of Damocles hangs over all that we are doing as a Forum if we do not stay within a reasonable and legally sustainable interpretation of the parameters established by Agreement. We could be legally challenged at any point on this issue'. This augments the **Catholic Bishops'** submission, which states 'it is our view that any issue which falls outside the reconciling objectives and the specific terms of the Belfast Agreement should not be included in the Bill' (at 1).

The **DUP**, considering how to interpret the phrase 'the particular circumstances of Northern Ireland' states that it 'holds to the straightforward view that this must be answered using both the context of the phrase and the application of it in terms of our remit' (at 1). While expressing its 'distaste' for the Agreement, the **DUP** states that 'there is no escaping the fact' that the Forum's remit and the entire Bill of Rights process lies with the Agreement. From this the **DUP** draws two points: '(f)irstly, the need for a Bill of Rights is clearly put in the context of the incorporation of the ECHR into domestic law... (t)hus any need for a local Bill of Rights was put in the context of supplementary rights to the ECHR'; and '(s)econdly, and crucially the additional need for a Bill of Rights is framed within the context of the particular circumstances of Northern Ireland' (at 1).

To the **DUP**, the particular circumstances of Northern Ireland are 'further refined by the reference to it relating to the problems that have arisen by the clash between the two main communities in Northern Ireland', including issues such as victims, emergency laws and inter-communal violence, and, while the **DUP** 'is prepared to accept a wider definition of community in Northern Ireland, to include those who include the ethnic minorities', it considers that 'any wider interpretation would clearly go against the intention of the draftsmen' (at 1).

In determining which rights, then, may fall within the remit of the Bill of Rights, the **DUP** devises the following test: does the proposed right have a particular applicability to Northern Ireland which would not apply to other parts of the British Isles? Is it uniquely beneficial to someone in Northern Ireland? To the **DUP**, '(i)f the same additional right was given to an individual in Birmingham, Banff or even Bantry in their respective

jurisdiction, and it would similarly benefit them as well as the individual in Belfast, then it could not be argued that this was a right particular to Northern Ireland' (at 1).

Samuel Hutchinson addresses the particular circumstances of Northern Ireland specific to criminal justice and victims. In opening his submission, he states that Neil Faris' first submission on Northern Ireland's particular circumstances³⁶ is deserving of further consideration (at 1). Drawing from this submission, **Samuel Hutchinson** frames his discussion around the following construction: "The 'particular circumstances' [of Northern Ireland] are those concerning the lack of mutual respect and parity of esteem as pertaining between both communities in and before 1998" (at 1), and, in drawing a distinction between 'needs' and 'rights', he asks whether the Forum and its working groups should draw their own 'conclusions on this issue', or whether the Forum should seek advice from legal counsel on its terms of reference.

The **SDLP** states that the Agreement 'is widely accepted as a framework for the resolution of conflict and the development of our society based on parity of esteem, tolerance, equality and human rights' (at 1). To the **SDLP**, '(t)he particular circumstances are reflected in the content of the Good Friday Agreement... (t)he Agreement is the principal 'particular circumstance' we should have in mind. The architecture of the Agreement must be fully respected and reflected in the Bill of Rights' (at 1). The **SDLP** also identifies the 'fact that a majority of both unionists and nationalists support the creation of a Bill of Rights' as a 'feature of our particular circumstances' (at 2) and submits that Northern Ireland's 'particular circumstances extend to our international context' (at 8).

Interpreting the Agreement, the **SDLP** states that 'there is nothing in the language of the Agreement which would justify an excessively restrictive instrument. A timid approach to the Bill of Rights would in practice run counter to the spirit of the Agreement, which promises a fresh start' (at 2). Further, the **SDLP** states that the 'preamble and comprehensive nature of the Agreement's content and the references to a wide range of rights... make it clear that lasting resolution of conflict necessarily requires a focus on issues from civil and political rights to economic, social and cultural matters, justice, policing and victims' rights' (at 4). Similarly, in addressing parity of esteem between the 'two main communities', the **SDLP** states '(t)here is no justification... for interpreting this reference as suggesting somehow that there should be parity of esteem only between these two communities... Any statement of rights would obviously be entirely lacking integrity and credibility if it were to apply only to certain sections of society' (at 2).

Sinn Féin, while identifying rights that it believes should be included in the Bill of Rights (see preceding sections), states that 'it would be premature to put forward definitive lists of rights as the Working Groups, political parties and representatives of civic society, are still engaged in their deliberations' (at 3). However, **Sinn Féin** calls for the Bill of Rights to define socio-economic rights and states that, in its view, 'the Agreement does not restrict us to formulating a narrow set of rights but charges us with building a new society where everyone's rights are enhanced and protected' (at 3). **Sinn Féin** also 'welcomes the Forum's collective agreement to produce

36 'Particular Circumstances? A Note for the Residential Conference'.

recommendations/advice to the North's Human Rights Commission that will protect the rights of all in the Bill of Rights' (at 4).

The **UUP** traces the background to the Agreement in examining the particular circumstances of Northern Ireland. The **UUP**, stating that it 'bases its approach squarely on the principles of international law and practice' (at 5), also explores the *Framework Convention* and the treatment of the 'aspiration for a united Ireland' in the Agreement (at 6).

The **UUP** states that it 'is clear as to the meaning of the 'particular circumstances' with regard to consideration of a Bill of Rights, as contained in The Belfast Agreement' and that '(t)he boundaries for any discussion and agreement are clear'. To the **UUP**, the 'widening of the deliberation [on the Bill of Rights] has had a detrimental effect on the timescale and in turn proceeding to a conclusion by the Northern Ireland Human Rights Commission as to any advice it may give on the "scope for defining in Westminster legislation rights supplementary to those of the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland"' (at 10/11).

The **UUP** makes three further points on the Agreement. Firstly, while the **UUP** 'has been understanding of those who wish to consider a wider perspective and has responded positively... there is a limit to this understanding and the party does not support 'mission creep' becoming, as it has tended to do, 'mission gallop'.³⁷

Secondly, the **UUP** 'sees merit in any Bill of Rights, but strongly believes that any short-term benefits have been over-emphasised. Any benefits are likely to be long-term in that a Bill of Rights could act as a catalyst from: an educational perspective; attitudinal perspective; and, providing guidelines to assist decision makers while at the same time assisting in making the decision process more clear'. Thirdly, the **UUP** 'believes in the authority vested in the elected democratic process and [that] any Bill of Rights should act as a guide to decision makers but not supplant the democratic process. The decision as to the degree of application of rights and to the prioritising of competing rights is a political choice' (at 11).

Annex: Statements by organisations that chose not to make submissions on Northern Ireland's particular circumstances

Older persons sector

'The older person's sector did not submit a paper on particular circumstances. We believe that an attempt to divide each part of the Forum into component parts actually dilutes the effect of the Forum's work and attempts to divide the indivisible, at least in the case of older people. Older people are not a stand-alone category. Older people are men, women, unionists, nationalists, people with disabilities,

³⁷ This point is linked to the UUP's examination of the role of the NIHRC in the previous Bill of Rights process (in which, to the UUP, the Commission 'went beyond the intention of The Belfast Agreement and also the law based on this Agreement' (at 8)), as well as the UUP's examination of the Human Rights Consortium's treatment of 'what The Belfast Agreement considered were the particular circumstances' (at 8) and the 'wide-ranging set of circumstances that [the Consortium] believed should comprise a Bill of Rights' (at 9).

Catholics, Anglicans, Presbyterians, Hindus, Muslims, agnostics, carers, ex-prisoners, victims, parents, volunteers, health care professionals, etc. There are particular circumstances for older people - higher rates of poverty, higher rates of disability, but we would like to understand particular circumstances from a broader, more inclusive view which encompasses the community as a whole'.³⁸

Ethnic minorities sector

'The Ethnic Minority Sector did not submit our view on "particular circumstances". We understand that at the third meeting the Forum agreed the Terms of References which is an inclusive one (extend beyond the two communities). This is the best approach in developing the Bill of Rights within the Forum. Whereas the request for each sector to submit their view will push individual sector to use the victimhood approach to prove their existence in that particular circumstances which is counter-productive and will dilute the cohesion within the Forum that has been established over the last 11 months. Moreover the Bill of Rights is not a zero-sum game between communities but it is a collective effort to accommodate differences with a good will to decide the best interests for the society'.³⁹

Disability sector

'There are many circumstances particular to Northern Ireland with respect to people with disabilities, including higher levels of disability due to the conflict. Those thousands of people disabled as a result of conflict join with other disabled people in Northern Ireland in experiencing

- Lower educational attainment (twice as likely to have no qualifications)
- Lower levels of employment (four times as likely to be unemployed as their non-disabled peers)
- An economic inactivity rate of 64%
- High levels of poverty (70% living on or about the poverty level)
- Lack of, or reduced, access to a range of public services including transport housing, the built environment

There is no single interpretation among people with disabilities of the phrase 'particular circumstances' in the Agreement. This is a politically contentious issue and the political views of people with disabilities are at least as wide as those political views represented on the Bill of Rights Forum.

Consequently, the Disability Sector representatives felt that it would be inappropriate to put forward here [i.e. Forum document BORF 18] an account of those particular circumstances of people's real lives in a way that would in practice amount to an interpretation of the Belfast/Good Friday Agreement.

Those representatives have already hosted a meeting attended by over 70 individuals with disability to discuss the potential contents of a Bill of Rights. The

³⁸ Email entitled 'Particular Circumstances', 13 December 2007.

³⁹ Email entitled 'Particular Circumstances', 14 December 2007.

disability sector will continue to engage constructively in debates on this issue, seeking to forward the work of the Forum.

We will consider any proposals on this issue in terms of their general reasonableness and coherence, rather than their conformity with any particular contested interpretation of the Agreement'.⁴⁰

⁴⁰ Email sent 11 December 2007.

Bill of Rights and Devolution: Legal Options

Prepared by Dr Catherine Donnelly, Trinity College Dublin, for the Preamble, Enforcement and Implementation Working Group

Introduction

Three tables are provided in this Appendix. These tables outline possible methods of enforcing the Bill of Rights in three spheres: first, in the sphere of transferred matters; second, in the sphere of reserved matters and excepted matters ancillary to reserved or transferred matters; and third, in the sphere of excepted matters.

For the sake of clarity:

- Transferred matters are those matters in respect of which the Northern Ireland Assembly exercises legislative competence. They are not listed in the Northern Ireland Act 1998.
- Reserved matters and excepted matters ancillary to reserved or transferred matters are those matters in respect of which Westminster can legislate or the Northern Ireland Assembly may legislate with the consent of the Secretary of State (see: s. 8, Northern Ireland Act 1998). These matters are listed in Sch. 3 of the Northern Ireland Act 1998. Examples include criminal law and the maintenance of public order.
- Excepted matters are those matters in respect of which only Westminster can legislate. These matters are listed in Sch. 2 of the Northern Ireland Act 1998. Examples include the armed forces and electoral law.

Many of the options proposed in these tables are premised on the fact that the Bill of Rights will be enacted by Westminster legislation (as required by the Multi Party Agreement). As a matter of constitutional and legal principle, this means that the Bill of Rights may be capable of more far-reaching legal effects than might normally be the case with sub-national bills of rights. For example, the Westminster legislation enacting a Bill of Rights could provide that future Westminster legislation be interpreted compatibly with a Bill of Rights or be subject to declarations of incompatibility with a Bill of Rights.

The purpose of these tables is purely to outline the options available within the current constitutional framework of the United Kingdom⁴¹ The tables are not intended to be exhaustive and have not attempted to set out every procedural detail that would have to be decided to give effect to these legal options. It is

⁴¹ It is the Legal Advisor's view that one of the options (disapplication of Westminster primary legislation) is extremely problematic from the perspective of the current constitutional framework of the UK for reasons set out in Section 2(viii) of the Preamble, Enforcement & Implementation Working Group Report. Please refer to paras. 2.69-2.70 of that report for discussion of this issue.

recognised that where the content of a Bill of Rights has implications for reserved or excepted matters, proper vindication of a Bill of Rights will be undermined if they have no legal enforceability in these areas. However, it is also accepted that significant political and practical challenges may be raised by, for instance, Northern Ireland courts reviewing, for compliance with a Bill of Rights, legislation or public programmes of UK-wide application. The presentation of legal options in these tables does not seek to underestimate those challenges.

Comment on Orders in Council made pursuant to Section 84, Northern Ireland Act 1998

Orders in Council made pursuant to s.84 NIA are treated as 'primary legislation' for the purposes of the Human Rights Act 1998. While it does not necessarily follow that such Orders must be treated as Westminster 'primary legislation' for the purposes of any Bill of Rights, it would have to be considered whether this status should be extended to such Orders in any Bill of Rights. Section 21 of the Human Rights 1998 also treats other legal instruments, normally considered 'subordinate', as 'primary' (Prerogative Orders in Council and those that amend an Act of a kind mentioned in the definition of primary legislation).

Dr Catherine Donnelly
10 March 2008

Table 1: A Bill of Rights and Transferred Matters

In the area of transferred matters, competence for legislation and implementation rests with the NI institutions.

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Assembly Legislation	Assembly declaration of compatibility with BR (akin to s.19 HRA) Note: Not strictly necessary (particularly given the obligation found in s.9 NIA on Minister to issue statement of competence, which would imply compliance with BR) but possibly desirable to promote BR dialogue between Assembly and courts Interpretive obligation on courts to interpret Assembly legislation insofar as it is possible to do so to be compatible with BR (akin to s.3 HRA) Invalidation of incompatible Assembly legislation Note: This is required by the Multi Party Agreement.	DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector

Table 1 Continued

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
NI Subordinate Legislation (rules/other measures made pursuant to Acts of the Assembly)	Interpretive obligation on courts to interpret Assembly legislation insofar as it is possible to do so to be compatible with BR (akin to s.3 HRA) Invalidity of incompatible measures (see also s. 6(1) HRA and s. 24 NIA 1998)	DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector

Table 1 Continued

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Acts of NI Public Authorities	<p>Obligation on public authorities to act compatibly with BR/SR (akin to s.6(1) HRA)</p> <p>Note: This obligation is required by the Multi Party Agreement. This obligation would be subject to an inability to act otherwise, either due to primary legislation, or primary or secondary legislation which cannot be read or given effect to be compatible with BR etc (akin to defence found in s.6(2) HRA).</p>	<p>DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector .</p>

Table 2: A Bill of Rights and Reserved Matters and Excepted Matters which are Ancillary to Reserved/Transferred Matters

In both the areas of reserved matters and of excepted matters which are ancillary to reserved or transferred matters, legislative competence exists at both central government level, and at Assembly level (with the consent of the Secretary of State pursuant to s.8 NIA). NI public authorities may also be required to implement legislation (whether Assembly or Westminster) in these areas; while central government authorities may engage in activities implementing legislation in reserved matters in NI.

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Westminster Primary Legislation	<p>1. Westminster primary legislation in the area of reserved matters could be excluded entirely from the reach of BR.</p> <p>2. Alternatively, if BR is to have effects for Westminster primary legislation in reserved matters, the following options could be adopted:⁴³</p> <ul style="list-style-type: none"> Obligation to make a statement of compatibility with BR (akin to s.19 HRA) Interpretive obligation on courts to interpret compatibly with BR ('so far as it is possible to do so') (akin to s.3 HRA) Disapplication if compatible interpretation not possible⁴⁴ Declaration of incompatibility with BR (akin to s.4, HRA) (safeguard: only available in the NI High Court and Court of Appeal) Expedited remedial procedure (akin to s.10, HRA) 	<p>Option 1:</p> <ul style="list-style-type: none"> DUP UUP <p>Option 2:</p> <ul style="list-style-type: none"> Sinn Féin SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector

⁴³ The remedies listed in Option 2 could generally be combined. However, in any individual case, it would be necessary to decide between disapplication and a declaration of incompatibility, since these remedies cannot co-exist; and it would be preferable to either indicate a remedial choice in the legislation or to issue clear guidelines for the use of each remedy.

⁴⁴ This option was proposed by Sinn Féin. The Legal Advisor is of the view that this is extremely problematic for reasons outlined in Section 2(viii) above. Please refer to paras. 2-69-2.70 in the Preamble Enforcement and Implementation Report for discussion of this issue.

		<p>Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p> <p>Although Business, Older People's and Ethnic Minorities Sectors do not support disapplication in this situation</p>
--	--	--

Table 2 - Reserved and Ancillary Excepted Continued:

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Westminster Subordinate Legislation	<p>1. Westminster subordinate legislation could be excluded entirely from the reach of BR.</p> <p>2. Alternatively, if BR is to have effects for Westminster subordinate legislation, the following options could be adopted:</p> <p>Obligation to make a statement of compatibility with BR (akin to s.19 HRA) Note: This option is deemed unnecessary in the context of the HRA since subordinate legislation can be invalidated and is not included in the 'dialogue' established by ss. 19, 3, 4, and 10 of the HRA. However, if a declaration of incompatibility with supplementary rights is the chosen remedy, it may be desirable to add this requirement to the procedures for subordinate law-making.</p> <p>Interpretive obligation on courts to interpret compatibly with BR ('so far as it is possible to do so') (akin to s.3 HRA)</p> <p>Declaration of incompatibility with BR (akin to s.4, HRA) OR disapplication of central subordinate legislation insofar as it applies to NI (safeguard: only available in the NI High Court and Court of Appeal)⁴⁵</p> <p>Note: The remedy of 'disapplying' legislation is currently used to disapply Westminster primary legislation that is incompatible with European Community law.</p> <p>Options considered in respect of central subordinate legislation included invalidation. Disapplication would be more appropriate than invalidation, given that the central subordinate legislation would continue to apply in the rest of the UK.</p> <p>Expedited remedial procedure (akin to s.10, HRA) Note: This option is not necessary under the HRA since subordinate legislation can be invalidated. If invalidation for incompatibility with BR is not available; it may be desirable to adopt this option.</p>	<p>Option 1:</p> <p>DUP UUP</p> <p>Option 2:</p> <p>Sinn Féin SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

⁴⁵ See also n 42 above.

Table 2 - Reserved and Ancillary Excepted Continued:

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
<p>Assembly Legislation with Consent of Secretary of State (s. 8 NIA)</p>	<p>Assembly declaration of compatibility with BR (akin to s.19 HRA) Note: Not strictly necessary (particularly given the obligation found in s.9 NIA on Minister to issue statement of competence, which would imply compliance with BR) but possibly desirable to promote BR dialogue between Assembly and courts Interpretive obligation on courts to interpret Assembly legislation insofar as it is possible to do so to be compatible with BR (akin to s.3 HRA) Invalidation of incompatible Assembly legislation Note: This is required by the Multi Party Agreement.</p>	<p>DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

Table 2 - Reserved and Ancillary Excepted Continued:

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
<p>NI Subordinate Legislation (rules/other measures made pursuant to Acts of the Assembly)</p>	<p>Interpretive obligation on courts to interpret Assembly legislation insofar as it is possible to do so to be compatible with BR (akin to s.3 HRA) Invalidation of incompatible measures (see also s. 6(1) HRA and s. 24 NIA)</p>	<p>DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

Table 2 - Reserved and Ancillary Excepted Continued:

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
<p>Acts of NI public authorities implementing Westminster primary legislation, Westminster subordinate legislation, NI Assembly legislation/NI subordinate legislation in reserved/ancillary matters</p>	<p>Obligation on public authorities to act compatibly with BR (akin to s.6(1) HRA) Note: This obligation is required by the Multi Party Agreement. This obligation would be subject to an inability to act otherwise, either due to primary legislation, or primary or secondary legislation which cannot be read of given effect to be compatible with BR etc (akin to defence found in s.6(2) HRA)</p>	<p>DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

Table 2 - Reserved and Ancillary Excepted Continued:

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
<p>Acts of central government authorities in NI implementing Westminster primary, Westminster subordinate legislation in reserved matters</p>	<p>1. Acts of central government in NI in the area of reserved matters could be excluded entirely from the remit of supplementary rights.</p> <p>2. Alternatively, if BR is to have effects for acts of central government in reserved matters, the following options could be adopted: Obligation on public authorities to act compatibly with BR (akin to s.6(1) HRA) This obligation would be subject to an inability to act otherwise, either due to primary legislation, or primary or secondary legislation which cannot be read of given effect to be compatible with BR etc (akin to defence found in s.6(2) HRA).</p>	<p>Option 1: DUP UUP</p> <p>Option 2: Sinn Féin SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

Table 3: Supplementary Rights and Excepted Matters

In the area of excepted matters, legislative competence rests at Westminster level. However, NI public authorities may be required to implement legislation in this area; while central government authorities may also undertake activities in NI in furtherance of legislation/policies in these areas.

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Westminster Primary Legislation	<p>1. Westminster primary legislation on the area of excepted matters could be excluded entirely from the reach of BR.</p> <p>2. Alternatively, if BR are to have effects for Westminster primary legislation in excepted matters, the following options could be adopted:⁴⁶</p> <ul style="list-style-type: none"> Obligation to make a statement of compatibility with BR (akin to s.19 HRA) Interpretive obligation on courts to interpret compatibly with BR ('so far as it is possible to do so') (akin to s.3 HRA) Disapplication if compatible interpretation not possible⁴⁷ Declaration of incompatibility with BR (akin to s.4, HRA) (safeguard: only available in the NI High Court and Court of Appeal) Expedited remedial procedure (akin to s.10, HRA) 	<p>Option 1:</p> <p>DUP UUP</p> <p>Option 2:</p> <p>Sinn Féin SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights</p>

⁴⁶ The remedies listed in Option 2 could generally be combined. However, in any individual case, it would be necessary to decide between disapplication and a declaration of incompatibility, since these remedies cannot co-exist; and it would be preferable to either indicate a remedial choice in the legislation or to issue clear guidelines for the use of each remedy.

⁴⁷ This option was proposed by Sinn Féin. The Legal Advisor is of the view that this is extremely problematic for reasons outlined in Section 2(viii) above. Please refer to paras. 2.69-2.70 for discussion of this issue.

	<p>Sector Older Peoples Sector Trade Union Sector Women's Sector</p> <p>Although Business, Older People's and Ethnic Minorities Sectors do not support disapplication in this situation</p>
--	---

Table 3 - Excepted Matters Continued

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Westminster Subordinate Legislation	<p>1. Westminster subordinate legislation on excepted matters could be excluded entirely from the reach of BR.</p> <p>2. Alternatively, if BR is to have effects for Westminster subordinate legislation on excepted matters, the following options could be adopted:</p> <p>Obligation to make a statement of compatibility with BR (akin to s.19 HRA) Note: This option is deemed unnecessary in the context of the HRA since subordinate legislation can be invalidated and is not included in the 'dialogue' established by ss. 19, 3, 4, and 10 of the HRA. However, if a declaration of incompatibility with supplementary rights is the chosen remedy, it may be desirable to add this requirement to the procedures for subordinate law-making.</p> <p>Interpretive obligation on courts to interpret compatibly with BR ('so far as it is possible to do so') (akin to s.3 HRA)</p> <p>Declaration of incompatibility with BR (akin to s.4, HRA) OR disapplication of central subordinate legislation insofar as it applies to NI (safeguard: only available in the NI High Court and Court of Appeal) ⁴⁸</p> <p>Note: This remedy of 'disapplying' legislation is currently used to disapply Westminster primary legislation that is incompatible with European Community law. Options considered in respect of Westminster subordinate legislation included invalidation. Disapplication would be more appropriate than invalidation, given that the Westminster subordinate legislation would continue to apply in the rest of the UK.</p> <p>Expedited remedial procedure (akin to s.10, HRA) Note: This option is not necessary under the HRA since subordinate legislation can be invalidated. If invalidation for incompatibility with BR is not available; it may be desirable to adopt this option.</p>	<p>Option 1:</p> <p>DUP UUP</p> <p>Option 2:</p> <p>Sinn Féin SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

⁴⁸ See also n 45 above.

Table 3 - Excepted Matters Continued

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
Acts of NI public authorities implementing Westminster primary or Westminster subordinate legislation in excepted matters	Obligation on public authorities to act compatibly with BR (akin to s.6(1) HRA) Note: This obligation is required by the Multi Party Agreement. This obligation would be subject to an inability to act otherwise, either due to primary legislation, or primary or secondary legislation which cannot be read of given effect to be compatible with BR etc (akin to defence found in s.6(2) HRA)	DUP Sinn Féin UUP SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector

Table 3 - Excepted Matters Continued

Relevant Action	Bill of Rights ('BR') Enforceability Options	Level of Support
<p>Acts of central government authorities in NI implementing Westminster primary or Westminster subordinate legislation in excepted</p>	<p>1. Acts of central government in NI giving effect to excepted matters could be excluded entirely from the remit of supplementary rights. 2. Alternatively, if BR is to have effects for such acts, the following options could be adopted: Obligation on public authorities to act compatibly with BR (akin to s.6(1) HRA) This obligation would be subject to an inability to act otherwise, either due to primary legislation, or primary or secondary legislation which cannot be read of given effect to be compatible with BR etc (akin to defence found in s.6(2) HRA).</p>	<p>Option 1: DUP UUP Option 2: Sinn Féin SDLP Alliance Business Sector Children & Young Peoples Sector Disability Sector Ethnic Minority Sector Human Rights Sector Older Peoples Sector Trade Union Sector Women's Sector</p>

Members of the Forum and other participants

Forum members

Membership of the Forum was not static: some members left and were replaced, some delegations opted to use substitute members at various times. The list below records the formally nominated members of the Forum, alternates (in the case of six of the civic sector seats), and substitutes where these attended more than one meeting. Links to Forum members' websites can be found at http://www.billofrightsforum.org/index/forum/forum_members-link

Sector/Party	Name and organisation	Replacement or substitute member
Chair	Chris Sidoti	
Business Sector (two seats)	Neil Faris, Solicitor Rena Shepherd, Northern Ireland Chamber of Commerce	
Children & Young People's sector	Sheri Chamberlain, Save the Children <i>alternating with</i> Paddy Kelly, Children's Law Centre	Sub: Sara Boyce, Children's Law Centre/Save the Children, Sub: Sorcha McKenna, Children's Law Centre/Save the Children
Churches (two seats)	Father Tim Bartlett, Catholic Church Very Rev Dr Samuel Hutchinson, Irish Council of Churches	
Community/Voluntary sector as a whole	Michael Hughes, NICVA	
Disability sector	Alan Sheeran, MENCAP <i>alternating with</i> Monica Wilson, Disability Action	Dr Colin Harper, Disability Action (replaced Alan Sheeran, Oct 2007)
Ethnic Minority sector	Derek Hanway, An Munia Tober <i>alternating with</i>	Sub: Helena Macormac, Northern Ireland Council for Ethnic Minorities

	Patrick Yu, Northern Ireland Council for Ethnic Minorities	
Human Rights NGO sector	Aideen Gilmore, Committee on the Administration of Justice	
Older People's sector	Elaine Campbell, Age Concern NI <i>alternating with</i> Seamus Lynch, Help the Aged	
Sexual Orientation sector	James Knox, Coalition on Sexual Orientation <i>alternating with</i> Mairead McCafferty, Coalition on Sexual Orientation	
Trade Union (two seats)	Patricia McKeown, Irish Congress of Trade Unions	Sub: Pauline Buchanan, ICTU
	Thomas Mahaffy, Irish Congress of Trade Unions	
Women's sector	Annie Campbell, Women's Aid Federation <i>alternating with</i> Dr Margaret Ward, Women's Resource & Development Agency	Sub: Deirdre McAlliskey, Women into Politics Sub: Irene Miskimmon, Northern Ireland Women's European Platform
Alliance Party (two seats)	Dr. Stephen Farry MLA Anna Lo, MLA	Sub: Ian Parsley
DUP (three seats)	Simon Hamilton MLA Nelson McCausland MLA Peter Weir MLA	Sub: Deirdre Nelson Sub: Cllr Christopher Stalford
SDLP (three seats)	Dolores Kelly MLA Alban Maginness MLA Eilis Haughey	Sub: Damian O'Loan (for Eilis Haughey, until Sept 2007)
Sinn Féin (three seats)	Martina Anderson MLA Chrissie McAuley Domhnall Ó Cobhthaigh,	Sub: Vincent Parker Sub: Shannonbrooke Murphy
UUP (three seats)	Esmond Birnie	Paula Bradshaw

Brian Crowe
Dermot Nesbitt

(replaced Esmond Birnie,
Oct 2007)
Sub: Jeff Dudgeon

Forum Secretariat

Professor Chris Sidoti, Chair
Gillian Preece, Secretary
Benjamin Lee, Human rights advisor to the Chair
Gareth Wright, Executive Officer

Official observers

The following nine organisations were granted formal observer status to the Forum:

- The Northern Ireland Human Rights Commission
- The Equality Commission for Northern Ireland
- The Northern Ireland Commissioner for Children and Young People
- The Human Rights Consortium
- Wave Trauma Centre
- The Green Party
- The Loyal Orange Institution
- The Ulster-Scots Heritage Council
- The Caleb Foundation

Working group members

Membership of the working groups was not static: some members left and were replaced, some delegations opted to use substitute members at various times. The following list records only the formally nominated members of the working groups.

Children and Young People

Convenor: Sara Boyce, replaced by Sorcha McKenna (Sept 2007), Children's Law Centre/Save the Children

Sector/Party	Name and organisation
Children and Young People	Paddy Kelly, Children's Law Centre
Churches	Lindsay Conway, Irish Council of Churches
Community/Voluntary	Pip Jaffa, Parents Advice Centre
Disability	Dr Bronagh Byrne, Disability Action
Sexual Orientation	Liam Larmour, CoSO
Alliance Party	Anna Lo MLA
DUP	Jenny Palmer

SDLP	Cllr Matthew McDermott
Sinn Féin	Sue Ramsey MLA
UUP	Roy Beggs MLA

Civil and Political Rights (including Equality)
 Convenor: Domhnall O’Cobhthaigh, Sinn Fein

Sector/Party	Name and organisation
Churches	Rev Dr Frederick L Munce, Irish Council of Churches
Churches	Sr Brighde Vallely OP, Catholic Church
Comm/Voluntary	Lisa McElherron, NICVA
Human Rights NGO	Kieran McEvoy, CAJ
Sexual Orientation	James Knox, CoSO
Alliance Party	Gerry Lynch
DUP	David McConaghie
SDLP	Cllr John O’Kane
Sinn Féin	Vincent Parker
UUP	Sandra Baillie

Criminal Justice and Victims
 Convenor: Very Rev Dr Sam Hutchinson, Irish Council of Churches

Sector/Party	Name and organisation
Children and Young People	Edel Quinn, Include Youth
Churches	Seat not taken
Sexual Orientation	Barry Fitzpatrick, CoSO
Trade Unions	Marian Killen, ICTU (resigned)
Women	Annie Campbell, Women’s Aid
Alliance Party	Gillian Clifford (first four meetings), David Young (one meeting)
DUP	Stephen McIlveen
SDLP	Eilis Haughey
Sinn Féin	Alex Maskey MLA

UUP Stephen Nicholl

Culture, Identity and Language

Convenor: Nelson McCausland MLA, DUP

Sector/Party	Name and organisation
Churches	Father Tim Bartlett, Catholic Church
Churches	Rev Patricia Ann McBride, Irish Council of Churches
Disability	Brian Symington, RNID
Ethnic Minority	Patrick Yu, NICEM
Trade Unions	Willis McBriar, ICTU
Alliance Party	Stephen Farry MLA
DUP	Lee Reynolds
SDLP	Dominic Bradley MLA
Sinn Féin	Barry McElduff MLA
UUP	Stephen Nicholl

Economic and Social Rights (including Equality)

Convenor: Patricia McKeown, ICTU

Sector/Party	Name and organisation
Business	Rena Shephard, Northern Ireland Chamber of Commerce
Children and Young People	Anne Moore, Save the Children
Community/Voluntary as a whole	Michael Hughes, NICVA
Disability	Monica Wilson, Disability Action
Ethnic Minorities	Derek Hanway, An Munia Tober
Human Rights	Maggie Beirne, CAJ
Older People	Seamus Lynch, Help the Aged
Sexual Orientation	Mairead McCafferty, CoSO
Trade Unions	Stephen Nolan, ICTU
Women	Lynn Carvill, Women's Support Network
Alliance Party	Anna Lo MLA

Alliance Party	Ian Parsley
DUP	Christopher Stalford
DUP	Simon Hamilton MLA
SDLP	Dolores Kelley MLA
SDLP	Nuala O'Neill
Sinn Féin	Chrissie McAuley
Sinn Féin	Fra McCann
UUP	Dermot Nesbitt
UUP	Jeff Dudgeon

Preamble, Enforcement and Implementation
 Convenor: Aideen Gilmore, CAJ

Sector/Party	Name and organisation
Business	Neil Faris, Solicitor
Disability	Dr Colin Harper, Disability Action (replaced Alan Sheeran, Mencap)
Ethnic Minority	Patrick Yu, NICEM
Older People	Barry Fitzpatrick, Help the Aged (replaced Jean Gould, Help the Aged)
Women	Laura McMahon, Women's sector
Alliance Party	Stephen Farry MLA
DUP	Peter Weir MLA
SDLP	Alban Maginness MLA (sub: Lisa Coyle)
Sinn Féin	Martina Anderson MLA (sub: Shannonbrooke Murphy)
UUP	Brian Crowe

Women
 Convenor: Dr Margaret Ward, Women's Resource and Development Agency

Sector/Party	Name and organisation
Ethnic Minorities	Helena Macormac, NICEM
Human Rights	Tim Cunningham, CAJ
Older People	Elaine Campbell, Age Concern

Trade Unions	Seat not taken
Women	Irene Miskimmon, NIWEP
Alliance Party	Sara Duncan
DUP	Deirdre Nelson
SDLP	Cllr Kate Lagan
Sinn Féin	Jennifer McCann MLA
UUP	Paula Bradshaw

Legal advisors to the working groups

Children and Young People	Dr Linda Moore	University of Ulster
Civil and Political Rights (including Equality)	Professor Rachel Murray (leading a team)	University of Bristol
Criminal Justice and Victims	Mary O’Rawe, Dr Linda Moore	University of Ulster
Culture, Identity and Language	Dr Elizabeth Craig	University of Sussex
Economic and Social Rights (including Equality)	Dr Aoife Nolan	Queens University of Belfast
Preamble, Enforcement and Implementation	Dr Catherine Donnelly	Trinity College, Dublin
Women	Professor Aileen McColgan	Kings College London

Note-takers

The working groups were assisted by the following note-takers:

Richard Barklie, Ian Black, Ayot Elizabeth, Josephine Lett, Mari O’Donovan, Shauna Page, Colleen Smyth and Amy Stewart

Outreach workers

The Forum seconded the following four part-time outreach workers to undertake awareness-raising work on the Bill of Rights:

- Joe Law (working with the unionist communities)
- Mary Lavery (working with new immigrant communities and users of languages other than English)
- Lesley Macauley (working with victims)
- Etain O’Kane (working with travellers, LGBT people, and carers)

List of Forum meeting dates

The Forum met in plenary 18 times. Minutes of the meetings are on the Bill of Rights website (http://www.billofrightsforum.org/index/forum_meetings/forum_minutes.htm)

18 December 2006	Parliament Buildings, Belfast
4 April 2007	Europa Hotel, Belfast
11 May 2007	Wellington Park Hotel, Belfast
29 June 2007	Interpoint Centre, Belfast
27 July 2007	Interpoint Centre, Belfast
7 September 2007	Interpoint Centre, Belfast
12-13 October 2007	Calgach Business Centre, Derry/Londonderry
2 November 2007	Interpoint Centre, Belfast
7 December 2007	Interpoint Centre, Belfast
14 December 2007	Interpoint Centre, Belfast
1 February 2008	Wellington Park Hotel, Belfast
8 February 2008	Wellington Park Hotel, Belfast
12 March 2008	Wellington Park Hotel, Belfast
14 March 2008	Wellington Park Hotel, Belfast
18 March 2008	Wellington Park Hotel, Belfast
20 March 2008	Wellington Park Hotel, Belfast
28 March 2008	Wellington Park Hotel, Belfast
29 March 2008	Wellington Park Hotel, Belfast

List of BORF papers

All Bill of Rights Forum (BORF) papers are on the Forum's website and can be found at http://www.billofrightsforum.org/index/forum_meetings/borf_meeting_papers.htm

BORF 1	composition
BORF 2	timescales
BORF 3	consultation responses
BORF 4	process paper – first draft
BORF 5	public outreach – first draft
BORF 6	working group proposals – first draft
BORF 7	working groups – first revision
BORF 8	revised process paper– first revision
BORF 9	revised outreach paper– first revision
BORF 10	draft brochure
BORF 11	draft rules of procedure – first draft
BORF 12	revised rules of procedure – first revision
BORF 13	final text of brochure
BORF 14	revised process paper – final revision
BORF 15	revised timetable – first revision
BORF 16	revised rules of procedure – final revision
BORF 17	revised outreach paper – final revision
BORF 18	discussion paper on the particular circumstances of Northern Ireland
BORF 19	outreach workers
BORF 20	broad approaches to a Bill of Rights
BORF 21	draft outline of Forum report
BORF 22	final decision making
BORF 23	draft proposals
BORF 24	draft - chapter 3 - preamble
BORF 25	draft - chapter 5 - technical Provisions
BORF 26	draft - chapter 6 - implementation

Reports of the Working Groups

Each of the Working Groups has its own pages on the website, at which can be found details of membership, minutes of meetings, the Working Group's interim report and its final report.

Children and Young People

http://www.billofrightsforum.org/index/working_groups/children_and_young_people.htm

Criminal Justice and Victims

http://www.billofrightsforum.org/index/working_groups/criminal_justice_and_victims.htm

Civil and Political Rights (including relevant equality issues)

http://www.billofrightsforum.org/index/working_groups/civil_and_political_rights_including_relevant_equality_issues.htm

Culture, Identity and Language

http://www.billofrightsforum.org/index/working_groups/culture_and_identity_and_language.htm

Economic and Social Rights (including equality)

http://www.billofrightsforum.org/index/working_groups/economic_and_social_rights_including_relevant_equality_issues.htm

Preamble, Enforcement and Implementation working group

http://www.billofrightsforum.org/index/working_groups/preamble_and_implementation.htm

Women

http://www.billofrightsforum.org/index/working_groups/women.htm

Outreach workers' reports

The Forum's outreach workers' reports can be found at:

LGBT, Carers and Travellers

http://www.billofrightsforum.org/outreach_report_lct.pdf and
http://www.billofrightsforum.org/lct_contacts.pdf

New Immigrant Communities and Linguistic Groups

http://www.billofrightsforum.org/outreach_report_ilc.pdf

Unionist Communities

http://www.billofrightsforum.org/outreach_rep_uc-3.pdf

Victims/Survivors Groups

http://www.billofrightsforum.org/outreach_report_vs.pdf

List of contributions from the public

The contributions received by the Bill of Rights Forum are listed below. All can be found on the Forum's website:

<http://www.billofrightsforum.org/index/submissions.htm>

BS01	Human Rights Consortium
BS02	WAVE
BS03	Victim Support NI
BS07	Glenarm Village Committee
BS08	Star Neighbourhood Centre
BS09	The Future Together
BS10	Newry & Mourne Senior Citizens Consortium
BS11	Foyle Youthbank
BS12-15	Carers NI (Submitted to 4 Working Groups)
BS16	Rasharkin Community Association
BS17	Harryville Partnership Initiative/Ballycolman/ Linkside Community Dev. Association
BS18	Communities in Transition
BS19	ACSONI
BS20	COSTA
BS21	Drumcree Community Trust
BS22	Bogside & Brandywell Women's Group
BS23	Newtownabbey Shadow Youth Council
BS24	Lower Shankill Community Association
BS25-26	Loyal Orange Institution (Submitted to 2 Working Groups)
BS27	Equality2000
BS28	East Down RCN & TRUST Youth Council
BS29	Ex Prisoners Outreach Programme
BS30	CAW2000
BS31	Cross Border Cross Community Youth Project

- BS32 Cross Border Cross Community Conference
- BS33 Carrowshee Park & Sylvan Way
Community Development Association
- BS34 Lisburn Drugs Watch
- BS35 Loup Women's Group
- BS36 P.L.A.C.E. Initiatives
- BS37 The Rainbow Project
- BS38 Teach na Failte
- BS39 The Villages Together
- BS40 Ballynafeigh Comm Dev Association
- BS41 Ederney Comm Dev Trust
- BS42 Latinoamerica Unida Association
- BS43 Coiste na nIarchimí
- BS44 Include Youth
- BS45 Cairde
- BS46 Carers UK, Belfast Central Branch
- BS47 Evangelical Alliance
- BS48 Craigavon and District Trade Union Council and
Lurgan branch of the Transport and General Workers Union

Statement of position in relation to Chapter 4

Neil Faris – Business Sector member of the Forum

The contents of Chapter 4 appear to me to be contrary to the Terms of Reference ('ToR') of the Forum for the following reasons:

1. Rights Supplementary to those in the European Convention of Human Rights:

It is out with our Terms of Reference ('ToR') to incorporate, as Chapter 4 proposes, amended versions of the text of various Articles of the Convention.

For our purposes, and in respect of our ToR, we are to deal with 'supplementary' rights only and so we should not seek to meddle with the text of the Convention Articles.

That the 'supplementary rights' are seen by the Agreement as a 'bolt on' to the Convention Rights is to my mind underscored by the terms of the final lines of the ToR:

“These additional rights . . . – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland”

I would not see the outworking of this as in any way negative or limiting. The legislation itself could be cast in the format of the *Human Rights Act*. There the detailed and technical (but all important) legal provisions are contained in the body of the legislation while the Convention rights are set out in a schedule. So in a *Northern Ireland Bill of Rights Act* the Supplementary Rights themselves could be contained in a schedule to the Act.

If we think forward to implementation one could see how leaflets and posters could set out simply both the Convention Rights and the Supplementary Rights. That might help to bring home to us all that we are not a place apart and that the Convention Rights apply here just as they apply across the rest of Europe.

I know that this does not address the concerns of those who believe that the Convention's text is 'old fashioned', 'out of date', needs 'up-dating' or the like.

But first of all I suggest for us to meddle with the text of an international convention is both presumptuous and legally dangerous. It may take us outside the accepted jurisprudence of the European Court of Human Rights as applied by our courts and by courts across Europe. In my view that would be legal folly of the highest order.

In any case, and reverting to our ToR, this is not an issue for us to debate. It could, I suppose by a matter for debate across the country if political proposals for a 'replacement' for the *Human Rights Act* gain any momentum. While I and all other Forum members may of course participate in that debate it is not a matter for us as Forum Members abiding by our ToR.

2. 'Particular Circumstances'

I have already set out my detailed views on this in my paper for the Residential on 12 – 13 October 2007 and in my follow up paper of 29 October 2007.

Several of the Working Group Reports do contain at least some text on the application of 'Particular Circumstances'. But it all seems to me to be (with respect) scant, superficial and unconvincing. That is not in any way to denigrate the importance to everyone of what the Reports discuss. But I cannot accept that it is legitimate to depart from the rule of law by impermissible widening of our ToR no matter how acute the circumstances of demonstrable need.

If we seek to undermine the foundations of the rule of law for what we believe is 'good cause' we risk a precedent on which any future government may seize to justify its own departures from the rule of law for any cause. To create circumstances where the rule of law becomes negotiable according to circumstances is in my view a most serious human rights violation.

So I do not find that the Forum has an adequate base of debate and understanding on which to ground rights beyond those in the Convention.

3. 'Mutual respect for the identity and ethos of both communities and parity of esteem'

I do not find in any Report any treatment or discussion of the meaning of these requirements or of how they would apply to the treatment of the issues under discussion in each of the Working Group Reports.

In cases where all might agree that issues (such as language, citizenship, flags, marches and education⁴⁸) do fall within any application of 'particular circumstances' regrettably in my view the Reports concerned do not go on to develop how the requirements of 'mutual respect' and 'parity of esteem' may apply to the treatment of each such particular right.

So in this case also I regret that I find that the Forum has an inadequate base of debate and understanding on which to ground rights beyond those in the Convention.

4. Respect for our ToR is respect for the Rule of Law

Our ToR as we know derive directly from the Agreement⁴⁹. In my view respect for the rule of law demands that we abide by the terms of the Agreement as they were set down in 1998 not as we might now wish them to be. It would be generally accepted

⁴⁸ See the late Professor Stephen Livingstone in *The Need for a Bill of Rights* (2001) 52 NILQ p 269 at p 281

⁴⁹ see paragraph 4 of 'Rights, Safeguards and Equality of Opportunity' in Strand 3 of the Agreement

that the rule of law encompasses the principle of government held accountable to law and that all governmental action must find its authority in law.

In a true sense the Forum itself must be bound by this principle. It is carrying out a function of government – albeit an independent advisory role – in providing advice to the Northern Ireland Human Rights Commission in regard to how the Commission should itself perform its duty under the Northern Ireland Act 1998 in regard to the Bill of Rights Project

So on this view to depart from the text of the Agreement does impermissible damage to the foundations of any Bill of Rights which must surely be firmly founded upon complete respect for and adherence to the rule of law.

5. A better way forward?

In a wider sense I do regret that I have failed to convince the Forum that our ToR do address issues of critical importance to our future here. Respect for law should demand that we follow our ToR but in doing so we could feel we are going forward at least in an attempt to grapple with some of the most difficult issues that face our society.

We know that some of these most difficult issues concern how the two communities regard the past and commemorations of the past, allied to issues of identity (language and citizenship) and displays of community adherence (such as parades and flags).

Our focus should have been on these as they are not by any means past history.

If we, or the Northern Ireland Human Rights Commission, would properly address what the Agreement says should be done, what could be produced could give at least great moral force which could be most potent for us in the long run as we address all the issues from the past that will affect and – if we are not careful – circumscribe our future.

Neil Faris Solicitor Belfast

28 March 2008