



Human Rights Consortium submission to the Ad-Hoc
Committee Survey on a Bill of Rights for Northern Ireland

February 2021

Survey Responses

1. Views on Human Rights

This first set of questions looks at your general view on human rights.

a. To what extent do you agree that everyone in Northern Ireland today enjoys the same basic human rights?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

b. Why do you feel this way?

The framing of this question has the potential to create confusion amongst members of the public whose views the Committee are seeking. The use of the word 'enjoys' has been given no explanation or supporting context. It is very unclear what is being asked precisely in this question.

Some respondents may interpret this question as asking whether existing domestic human rights laws apply to everyone within the jurisdiction of Northern Ireland and answer in the affirmative. The more substantive interpretation of the words 'enjoys' or 'enjoyment' in relation to human rights is that a person can both access and exercise a right and in turn realize the right for themselves.

There are many circumstances in Northern Ireland in which different individuals will have greater or lesser access and enjoyment of certain rights due to a range of circumstances and factors. For instance, working class protestant boys may have the same prima facia access to education as every other individual in Northern Ireland, but certain evidence would suggest that a range of factors are disproportionately impacting on their ability to enjoy or realize that right.

Another perspective is that all rights that are set out within International Human Rights standards are universal and apply to every human being on the planet. So, in that limited sense individuals in Northern Ireland could be described as enjoying the same rights as everyone else on the planet – not just others in this jurisdiction. However, we know that those international standards have not yet been adopted in Northern Ireland domestically and are therefore not enforceable or realizable for individuals. So, enjoyment of those rights in many respects is in name only.

We interpret the phrase 'enjoys' as meaning that everyone in Northern Ireland can realize the rights they are entitled to and as a result we strongly disagree with this statement.

2. Protections

In your view, do people in Northern Ireland need more protection for their human rights in relation to any of the following areas?

Choose as many as you like.

- | | |
|-------------------------------|-------------------------------------|
| A. Age | <input checked="" type="checkbox"/> |
| B. Caring responsibilities | <input checked="" type="checkbox"/> |
| C. Community background | <input type="checkbox"/> |
| D. Criminal record | <input checked="" type="checkbox"/> |
| E. Cultural background | <input checked="" type="checkbox"/> |
| F. Disability | <input checked="" type="checkbox"/> |
| G. Economic status or income | <input checked="" type="checkbox"/> |
| H. Ethnic group | <input checked="" type="checkbox"/> |
| I. Family or civil status | <input checked="" type="checkbox"/> |
| J. Gender | <input checked="" type="checkbox"/> |
| K. Health status | <input checked="" type="checkbox"/> |
| L. Language | <input checked="" type="checkbox"/> |
| M. National identity | <input checked="" type="checkbox"/> |
| N. Political or other opinion | <input checked="" type="checkbox"/> |
| O. Pregnancy and maternity | <input checked="" type="checkbox"/> |
| P. Property | <input checked="" type="checkbox"/> |
| Q. Religion or belief | <input checked="" type="checkbox"/> |
| R. Sexual orientation | <input checked="" type="checkbox"/> |
| S. Don't know | <input type="checkbox"/> |
| T. None of the above | <input type="checkbox"/> |
| U. Other | <input checked="" type="checkbox"/> |

If you selected 'Other', please let us know what other areas you think should be included:

Some of the areas covered above have some protection in domestic law under articles of the European Convention on Human Rights already incorporated in the Human Rights Act 1998. The mandate under the Belfast/Good Friday Agreement was to incorporate these rights in a Bill of Rights for Northern Ireland and add supplementary rights. These additional rights 'taken together with the ECHR - to constitute a Bill of Rights'. The starting point should therefore be to incorporate ECHR rights within a local Bill of Rights for Northern Ireland. By doing so there would be enhanced layer of protection created for many of the rights above.

In addition, there are numerous areas of rights (including many of those ticked above) which are detailed in existing international standards – most specifically the core international human rights instruments of ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, CPED and CRPD. The protections in these instruments correlate with many of the areas listed above and various others but have not been adopted in domestic law and therefore people in Northern Ireland are unable to access these protections directly. We believe that their incorporation within a Bill of Rights for Northern Ireland is necessary to provide protection for many of the areas listed above and give appropriate access and effect to international standards in these areas. We have not ticked the community background box for this question as we were unsure of the definition of the term in this context, while all the other areas can be related to existing human rights standards.

3. Values

In your view, which of the following values, if any, would make appropriate foundations for rights in Northern Ireland?

Choose as many as you like.

- A. Community
- B. Human dignity (everyone deserves respect)
- C. Fairness
- D. Freedom and democracy
- E. Justice
- F. Mutual respect (respect for each other)
- G. Parity of esteem (valuing all traditions equally)
- H. Respect for culture, identity, traditions and aspirations
- I. Peace and reconciliation
- J. Don't know
- K. Other

If you selected 'Other', please let us know what other foundations you think should be included:

We believe that there are many values that should help form the foundation of a Bill of Rights for Northern Ireland. First and foremost, among these should be respect for international human rights standards and the universality of human rights.

It is also important to recognise that there is a fundamental difference between establishing the values that would underpin a Bill of Rights and the specifics of the rights themselves. Values, which would likely be outlined within a preamble of a Bill of Rights would set out the broad principles and aspirations of the document while the main text of the document would set out the fundamental rights which would be protected in law. The framing of the question rightly highlights that values are the foundation of rights – they are not however, replacements for the rights themselves. This distinction is critical and there would be no practical value in a Bill of Rights that was purely aspirational.

While the list above mentions some important values, we believe that some of the bracketed explanations are in danger of misinterpreting or minimizing the scope of such values. For example, the concept of dignity is not simply limited to the idea of everyone deserving respect. Rather it also is inclusive of rights that would allow someone to live their life with dignity. For instance, an elderly person may be respected but could not lead a life of dignity in certain circumstances if for example rights to an adequate standard of living, health or accommodation were unavailable to them. Likewise, Parity of Esteem may well become meaningless as a value if certain rights (e.g right to identify as British, Irish or both) which would underpin it are not enacted. That is why the framing of question 4b below is so confusing. The concept of an 'aspirational vision' may seem innocuous to the lay reader but from the history of discussions on a Bill of Rights locally this is usually interpreted in some political circles as meaning that any rights in a Bill of Rights should be declaratory or without enforcement. If members of the public were aware of this it is unlikely that they would support that interpretation. We therefore find that the framing of this question is deeply misleading and have therefore strongly disagreed in response.

4. Bill of Rights

Human rights are freedoms and protections belonging to everyone. A bill of rights contains human rights protections for everyone - it is a list of the laws a country agrees to make to protect all the people who live there.

a. How important, if at all, do you think a bill of rights is for Northern Ireland?

- A. Very Important
- B. Important
- C. Moderately important
- D. Slightly important
- E. Not important at all
- F. Don't know

b. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should set out an aspirational vision based on guiding or foundational values?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

c. Civil and political rights can include freedom from discrimination; the right to privacy; freedom of expression, assembly, religion and movement; and the right to a fair trial. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should include civil and political rights?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

d. What, if any, political and civil rights would you like to see in a bill of rights for Northern Ireland?

As outlined in our answer to question 1b we believe that the commitment to replicate ECHR rights within a Northern Ireland Bill of Rights should be implemented. ECHR rights are largely civil and political in nature and have formed the cornerstone of such protections in Northern Ireland. Given the ongoing political attempts to undermine these rights as they apply locally through the Human Rights Act the inclusion of these rights in our Bill of Rights would serve as a mechanism of ringfencing those protections.

In addition, we have already outlined our belief that current International Standards should be incorporated domestically in a Bill of Rights. That includes any additional CPR standards that may be outlined in the ICCPR (International Covenant on Civil and Political Rights) or other relevant covenants.

e. Social and economic and cultural rights can include rights around standards of living, health, social security, victims, education and language. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should include social, economic and cultural rights?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

f. What, if any, social, economic and cultural rights would you like to see in a bill of rights for Northern Ireland?

As with our answer to 4d above we believe that current International Standards should be incorporated domestically in a Bill of Rights. That includes the economic and social rights protections outlined in ICESCR (International Covenant on Economic, Social and Cultural Rights) and the other international covenants that clearly have ESR contents such as CERD, CEDAW, CRC, CRPD and others.

Given the Committees remit in looking at the role that a Bill of Rights might play in potentially replacing rights that may be lost as a direct result of the UK leaving the EU we would recommend that the provisions of the Charter of Fundamental Rights (many of which are social and economic rights protections) which will no longer be directly available in Northern Ireland are incorporated in a Bill of Rights.

We would be concerned that ordinary members of the public would not be able to list such rights or points of reference from international standards despite their support generally for the strong protection of economic and social rights. We would therefore urge a strong note of caution around the ability of the public to engage in providing detailed answers to this or similarly framed questions.

g. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should include the right to a healthy environment?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

h. Do you have any other comments?

The right to a safe, clean, healthy and sustainable environment is a right that has been given legal effect by over 150 nations across the world and there is ongoing work to develop this as a recognised right at a United Nations level. Many rights, particularly social and economic rights, are clearly dependent upon the right to a healthy environment. This is already recognised in Article 12(2) of ICESCR which sites environmental measures as essential in the realisation of the rights to the enjoyment of the highest standard of physical and mental health.

In the current climate where our response to the ongoing climate emergency is a challenge that will cross into all spheres of human life it would be very appropriate to protect the rights to a safe, clean, healthy and sustainable environment in a Bill of Rights for Northern Ireland.

Equality

In addition to the various civil and political and social and economic rights mentioned above the inclusion of strengthened equality rights is essential in a Northern Ireland Bill of Rights. With no single Equality Act in Northern Ireland and no access to the Equality Act 2010 Northern Ireland's protections in this field are significantly lagging when compared with the rest of the UK. A free-standing equality provision that established a comprehensive right to equality - that everyone is equal before and under the law and has the right to equal protection and equal benefit of the law should be established in a Bill of Rights. It should also provide for a prohibition on unfair discrimination on certain grounds. This should include the concept of 'any other status' as drawn from International Standards in order to ensure the approach is future proofed and not closed of to new categories or grounds that may emerge over time. These equality provisions should also provide for public authorities and the executive to enact special procedures that allow for the targeting of existing inequalities in order for them to be improved or removed.