

## RESPONSE TO NI ASSEMBLY BILL OF RIGHTS COMMITTEE CONSULTATION 2020- 2021

### Miriam Titterton

#### Introduction

1. I welcome the opportunity to respond to the Ad-Hoc Bill of Rights Committee's 2020-2021 consultation on a Bill of Rights for Northern Ireland (BoR). I am a retired public sector worker with experience of rights and equality work in the NI voluntary and statutory sectors. This is an individual response. I wish to make a few general comments before focusing on some areas I think should be included in a BoR.

#### Background

2. I worked on rights and welfare issues affecting, amongst others, children and young people, disabled people and carers, lone parents, social welfare recipients, and LGBTQ people. This included direct advice and casework, which led me to feel that people needed both more rights, and more knowledge of their rights and how to assert them, in areas like housing, education, disability equality, and protection from violence. I helped set up projects promoting the UNCRC and leading to establishment of a Children's Law Centre. For 12 years I was a member of staff of the NIHRC, mainly working on its extensive BoR consultation. I was a staff observer at the BoR Forum, and attended many other BoR discussions and events across NI. Given this background the Committee will not be surprised that I support the creation of a wide-ranging enforceable BoR which includes economic, social, cultural and environmental rights (ESC rights).

3. The consultation led to a number of carefully considered reports and recommendations by the NIHRC on what the BoR should contain and how it could be enforced. I was disappointed that the NIHRC's 2008 recommendations were not accepted by the then UK government and some local parties, given that the public were so involved in the consultation and so overwhelmingly in favour of strengthening rights, in line with the expectations created by the Belfast (Good Friday) Agreement and NI Act of 1998. Human rights were at the heart of the Agreement. Their protection should be a priority. While I am not a lawyer and recognise that the enforcement of human rights is complex, I firmly believe that we should embrace the opportunity to have the benefits of enshrining rights in a BoR.

4. I accept that the Assembly has made some strides in supporting human rights in ways other than a BoR; for example, enhancing children's and older people's rights through the establishment of Commissioners; and recently, improving domestic violence legislation. In other areas, such as victims' rights and rights of women to bodily autonomy, progress has been distressingly slow. The absence of agreement on language rights, cultural rights and integrated education, which have particular importance in NI, highlights the difficulties faced by the Committee. The difficulties should not deter the Assembly from making progress on a BoR and I welcome the intention to do so and the Committee's approach to date.

5. I am in favour of a BoR which would provide a statement of - and constitutional protection for - our shared human rights. I believe it would be encouraging to people in NI to see ourselves, our interests and our multiple identities reflected in such an instrument. I believe it would have a positive impact on the maintenance of peace and stability, as the rights included would belong equally to all, regardless of background. It would provide minimum standards for balancing the roles of the courts, the Executive and the legislature for developing and enhancing rights, and for preventing destitution, ill-treatment and unfairness, especially for the most marginalised and vulnerable.

#### Defining rights

6. The rights under discussion or proposed to be included in a BoR range from the specific and legally enforceable provisions and protections, to statements of values a society holds dear. A right can be defined as:

- a legal entitlement; a claim (on or against another, such as a parent or relevant authority, to provide for or protect the rights-holder);

- a principle; a value fundamental to a society;

- a fundamental freedom or liberty, a freedom from what is undesirable or harmful, or a freedom to do something that is not forbidden (such as the freedom of speech or worship);
- an interest of the rights holder, which may or may not be legally enforceable (such as property or inheritance rights); - a moral interest; something I have that I can choose to or not to assert (such as copyright);
- an intrinsic characteristic or possession - a personal right, a given because I am a human being (such as dignity, the need for self-expression and personal development), which cannot be removed; an absolute (such as the right never to be enslaved or tortured);
- a benchmark, norm or standard against which progress can be measured (such as the UN Millennium Development Goals or environmental treaty objectives);
- a statement of aspiration, a hope for better, which can point the direction for social development but which may not be possible to fulfil at present, through lack of resources or political will, or through legal complexities in making certain rights justiciable (like equal access to technology, or the right to competent government).

7. All these can fit under the umbrella of human rights, which are described as inherent, dynamic, and constantly evolving; universal - applying equally to all, everywhere, from whatever background; and interrelated - all kinds of rights including economic, social, cultural, civil, political and environmental rights, interact with and depend on each other. We see the interdependence of rights in the Covid-19 pandemic situation, where the rights to life and livelihood are interlinked, although the means of ensuring them may be disputed and they appear to be set in opposition.

#### Functions of a Bill of Rights for NI

8. Human rights find expression in international declarations, treaties and agreements; in Bills and Charters of Rights, and in shaping or being included in the constitutions of many countries. They can form part of a constitutional framework in various ways, as described in submissions to the Committee. It would seem hard on people here, who have been through so much, if we do not have the same protection as people all over the world, by way of a statement of our rights, in a unified document, elevated to a constitutional level.

9. The rights set out in a BoR represent a floor - and not a ceiling - of minimum standards of treatment that we can expect. The protections and provisions of the BoR should cover all people present in NI and not only UK and Irish citizens. They should attach to communities and groups as well as to individuals, as some rights can only be exercised in community with others. However, care should be taken that their formulation does not entrench division. While the Agreement balanced the rights of the two main communities, the makeup of Northern Ireland, as well as its perception of itself, has changed since 1998. There are new and marginalised communities, and new voices, which need to be taken into account.

10. The BoR should refer to and/or incorporate the international standards presently applicable to NI, such as the UNCRC, perhaps in a Preamble in light of which the BoR would be interpreted. There should be an explicit assurance and mechanisms to ensure that rights in NI will not be diminished in time (due for example to Brexit) or fail to develop in line with best European and international practice.

11. I would support a wider rather than a narrower interpretation of "the particular circumstances of NI", as per the findings of the BoR Forum Chair and the NIHRC's careful analysis of the principles on which the interpretation of their task should be based. The BoR needs to form a coherent entity.

12. Since the Belfast Agreement was reached, the importance of ESC rights has grown in social discourse. I understand that the full implementation of ESC rights is constrained by costs and available resources, but so is that of civil and political rights; the lack of rights has also cost society dearly. As well as the suffering of victims of the Troubles, and of the victims of abuse, neglect and criminality in children's homes, new research shows the shocking attitudes towards women and children in mother and baby homes which led to breaches of human rights. In light of the recent Covid-19 pandemic, civil and political rights such as the rights to life and freedom of movement, health and education, and ESC rights, such as the rights to social security and access to food, have gained more prominence, illustrating the powerful interaction of all kinds of rights, and also the costs involved in both action and inaction to implement human rights. Ignoring the importance of rights can be as costly as remedying them.

13. I accept that a Bill of Rights is not a panacea for all legal and social ills, but I believe it would create a reliable framework for legal and policy development, especially in light of the uncertainties created by Brexit, which are acknowledged in the Committee's work. Some further uncertainties include the outworking of the present government's attitude to the European Court of Human Rights, its willingness to eschew the ECHR/Human Rights Act and focus on a "British Bill of Rights" (which might in itself be contentious in NI) and its apparently cavalier attitude to the UK's international human rights obligations, despite the UK's contribution to shaping the ECHR and other standards. Acknowledging the difficulties raised by a number of contributors, such as how to convince the various parties and governments to accept the BoR proposals, how to select appropriate rights for inclusion, and how to enforce them, particularly ESC rights, still we should not allow reluctant or recalcitrant elements in our political systems to undermine or dilute our human rights.

#### Rights and Responsibilities

14. As pointed out in the Committee papers, a duty on an authority may not necessarily create a justiciable right for an individual. Balancing rights, assigning responsibility and ensuring accountability are important functions of the judiciary; however the courts will not be the first port of call for ensuring rights. Making human rights compliant laws, setting of priorities, appropriate allocation of resources, and oversight will be the responsibility of the executive and administrative branches of government. The recognition of human rights in a BoR should not threaten but rather enhance and aid their work.

15. A right does not have to be merited, although some privileges can be earned and removed by law. For instance, a child has a right to a safe and happy childhood, but does not have to deserve this by good behaviour. A right may imply a responsibility arising from the right (for example a driving licence allows you to drive certain vehicles, and implies a responsibility to drive safely). The responsibility may lie on the authorities to provide (e.g. a person with a right to accommodation must rely on the housing authority to provide safe affordable housing) and not to abuse or interfere with rights (e.g. the policing authority must not torture a suspect to obtain information). Again, the intention of a BoR is not to bash the authorities, but to set directions and limits to their power.

16. Rights and responsibilities do not have to balance out, as if the one depended on the other; or as if a trade-off or compromise must be reached ("you can have that right if we can have this right", which may be a consideration in negotiations in NI). I take the point that the Assembly must come to some compromises about the content and enforcement of the BoR and how far rights can be implemented in light of the resources available. However, margin of appreciation (local application) and "particular circumstances" aside, I am uncomfortable with the idea that my rights provided by international treaties, or by statute in other parts of the UK/Ireland, should depend on whether local politicians agree with them. As an LGBT person, for instance, I should have the same rights to marry my partner, if we so wish, as people elsewhere in the UK and Republic of Ireland. Young people should be protected from physical punishment (as in Scotland), and not left unprotected because there is a tradition here which believes that parents have a duty to physically chastise a child. A BoR should encourage the Assembly (and the UK /Irish government/s if parallel rights are enacted there in Bills of Rights) to look to best international practice.

17. There is a risk that if expressed as a simple exchange (implied in the present UK government's promise of a "UK Bill of Rights and Responsibilities" to replace the ECHR and Human Rights Act) rights and freedoms will be undermined rather than enhanced. I acknowledge that everyone (given their age, ability and situation) has both rights and duties, including to their family, to the community, and to themselves. It may be useful in the particular situation of NI to stress that we all have duties to the whole community and not just to the part of it we may identify with.

18. Both the content of, and the public information about the BoR, including leading up to its enactment, need to dispel misunderstandings about how rights work. I have recently heard expressions such as "Everyone has the human right to fight for their community's rights" (or similar wording, aired recently by community representatives) which distort the concept of human rights, besides being unhelpful to peace-building. Resources will have to be found for human rights education and for public information on the content, purpose and practical outworking of the BoR. The media, including social media, has a role in this respect which could be highlighted in the BoR.

19. It should be clear that the rights in the BoR can be limited or restricted by, inter alia, the need for public order or respect for the rights of others. In the context of the Covid-19 pandemic, for example, it is stressed that people have a duty to obey the health regulations (even when they are not backed by law) and to temporarily forego the expression of rights such as freedom of movement, rights to private and family life, and the right to assemble with family and friends, in worship and so forth. This is currently much debated, including internationally, as there is a tension between the restriction of individual freedoms and the public good. It is not an easy situation for elected bodies, but again a BoR should provide direction in looking at who should be prioritised in emergencies.

#### SPECIFIC RIGHTS I WOULD LIKE TO SEE INCLUDED:

20. I would urge respect for the knowledge and expertise of statutory bodies and NGOs working in the areas of rights at issue. The following is not a complete list of what I think should be included – there need to be additional provisions covering, for example, the administration of justice and the formulation of the equality duties, which are outside my experience. These are just some points that strike me as important to consider including in the BoR in light of recent developments, in no order of priority:

- a. Children's and young people's rights, childcare: The pandemic has exposed the uncertainty of the provision of childcare across NI and particularly for vulnerable children. It has exposed the lack of support for young people's mental health. Severely disabled children and parents have been left struggling for education and social support. A duty could be formally placed on the Assembly to meet the standards of the UNCRC at a minimum and to address issues such as childcare in a regularly reviewed strategy backed by law.
- b. Older people's rights and end of life: Again the pandemic has exposed the vulnerability of older people in care homes and other settings. The need for better staff training and rewards, particularly for home carers, could be addressed by including wording such as "the highest attainable standards of staff training and systems development..." under a specific section on the right to health and healthcare. Provision could be made for choices about end of life. (These issues are more relevant to me as that time comes nearer.) The loneliness of many older people has been exposed by the pandemic and social and emotional support should be among the ESC rights in the BoR.
- c. Protection from violence: The BoR should stress the rejection of violence of all kinds, including especially domestic violence and coercive control, as recent Assembly legislation has done. The BOR should include, perhaps in a Preamble, a statement that violence and bullying of all kinds is unacceptable. There should be an enforceable duty to provide adequate funding for prevention, education, protection, safe accommodation, and healing services as well as a duty of interagency co-operation.
- d. Gender and sexuality: No one should be discriminated against on grounds of gender and sexuality, including on transgender issues. This should be framed in such a way that women's safety and provision are not set against those of transgender people. Everyone needs protection from violence, bullying, coercion, sexual exploitation, harassment, stalking and so forth, along with appropriate support services. Wording should be developed to include protection from on-line bullying and exploitation.
- e. Women's rights, men's rights: In this pandemic, though all have suffered, women in particular have lost their jobs and carried increased responsibilities, including for home schooling. The BoR must ensure that women's rights and progress are not set back by such emergencies. It should be made clear that providing for the specific needs of one group, such as women, does not mean the specific needs of others are not equally recognised; for example, provision aimed at men's needs in terms of mental well-being. However there must be specific mention of the rights of women and girls; for example, in terms of reproductive rights, or equal representation. The equality provisions should state that there should be no discrimination based on prejudices and gender stereotypes.
- f. Victims' rights: The Agreement included a specific mention of victims' rights; however progress has been slow (witness the shameful wrangling about who will pay the legally agreed victims' compensation). Redress for victims of conflict, criminality, abuse and ill-treatment (such as that recently exposed in

mother and baby homes) as well as of human rights breaches, should be included in the BoR.

- g. Information rights: including access to information about one's background, balanced against data privacy. The situation of home schooling has illustrated the unevenness of provision in which poorer and rural families have lost out, perhaps on vital educational and work opportunities. Identity rights should include the right to access and obtain information about one's background.
- h. Environmental rights: The environmental crisis creates new priorities – the right to clean water and breathable air, the right to food security and safety, the right to a clean safe environment and biodiversity; a right to the night sky (that is, protection from light pollution) and so forth. Again there are costs to not ensuring rights in these areas. There could be a duty to meet the highest international standards relating to the environment and green energy.
- i. Animal rights and welfare: There are arguments about whether animals have rights in the sense that human beings have them. An animal has the right to protection from ill-treatment, but clearly cannot exercise this right; rather, the right is realised by the exercise of responsibility by the owner/keeper/companion and by the duty on the relevant authority charged with animal welfare. However I think that as a nod to the future, in light of the possible dangers to animal welfare standards posed by Brexit and the importance of NI as an agri-food producer, as well as in principle in setting a value on compassion, there should be a mention of relevant rights and duties in the BoR.
- j. Social security, social welfare and employment rights: at a minimum, rights to a basic (living) income, a basic standard of living, to access nutritious food, to social security, to social support services, to employment rights, to accessible transport, to form and join a trade union, to decent and secure accommodation and so forth, should be among the ESC rights included in the BoR. There should be protection from destitution.
- k. Education rights, right to integrated education: the right to education has been highlighted by the pandemic. As Prof Brice Dickson points out, the right to integrated education was not included in the NIHRC's advice. If the segregation of communities is underlying the issues in NI, then what seems to be a policy proposal around parental choice should be elevated to a principle in the BoR.
- l. Language, culture, sports and the arts: The identity and culture provisions should not be limited to those aspects claimed by the "two communities". The importance of leisure and physical activities to mental and physical well-being has been highlighted by the pandemic. The arts and voluntary sectors have taken a huge financial hit recently. There should be a duty to provide funding for organisations, facilities and education related to arts, crafts, music, dance, cinema, languages, sports and leisure. The BoR should at a minimum be worded so as to ensure that the relevant international standards are enshrined at constitutional level.
- m. Democratic rights: the shock of the outcome of populism and demagoguery in America should make us alert to the need to protect democracy. The right to vote (which is also a duty) should be extended to all obeying electoral law, including prisoners. The right to peace could be included among these rights, or be contained in a separate section.
- n. Looking to the future - new developments: Rights relating to , for example, artificial intelligence are being debated. There should be a mechanism to take on board new rights in the future.
- o. Enforcement: The merits and disadvantages of various kinds and levels of enforcement are beyond my capacity to analyse. However implementation should include education about the BoR, about children's and human rights, and about the remedies available for breaches of rights. The contributors to the Committee have examined the various ways human rights could be enshrined in a BoR here, for example looking at the approach to socio-economic rights in South Africa, and at ways of ensuring the "progressive realisation" of ESC rights. There should be a mechanism to review the effectiveness of the BoR. I am wary though about handing the Assembly the power to delete or further limit my human rights. There should be specific mention of mechanisms to enable continuing to match developing EU and international standards.

In conclusion

21. I believe the UK government has so far missed an opportunity to support the creation of a unifying, generous and inspirational document for the benefit of all the people of NI. It is positive that the Assembly in its new phase is reconsidering the issues.

22. I support the creation of a Bill of Rights for NI. As well as the rights currently protected by the ECHR, it should contain a range of civil, political, economic, social, cultural, and environmental rights, including the rights to democracy and peace. These should be justiciable as far as possible, with remedies for breaches of rights. There should be mechanisms for review but also mechanisms to ensure no diminution of our rights in future. There should be sections on how the BoR will be implemented, and how the public will be informed about the BoR, including by means of public information and education campaigns. It should reflect the philosophic ideas common to civilised societies across the world.

23. I believe passionately in the benefits of a Bill of Rights in maintaining peace and hope for the people of Northern Ireland, and wish the Committee well with its work.

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