

## **Written Submission to the Ad Hoc Committee on Bill of Rights**

Monica McWilliams, Chief Commissioner for NIHRC (2005-2011), negotiator for the Women's Coalition during the multi-party talks leading to the 1998 Belfast/Good Friday Agreement and Emeritus Professor Transitional Justice Institute, Ulster University.

1. With my fellow Commissioners on the NIHRC, I presented the final advice on a Bill of Rights for Northern Ireland to the Secretary of State for Northern Ireland as mandated by Paragraph 4, in the Rights, Safeguards and Equality of Opportunity section, of the Belfast (Good Friday) Agreement, and under Section 69(7) of the *Northern Ireland Act 1998*.
2. Article 1 (v) of the Agreement between the British and Irish governments in 1998 elaborates that: "the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity of, ethos and aspirations of both communities." These are important words and add further to Paragraph 4 of the Agreement and were also taken into consideration by the NIHRC at the time it submitted its advice in 2008.
3. The Bill of Rights was part of the transitional justice measures that followed a thirty-year conflict and to assist Northern Ireland to make a transition from conflict to peace. It was not meant to be a backward looking document but also to look to the future in terms of taking account of the international standards in place that had been ratified by the UK government.

4. It was understood at the time, and confirmed again in the Hillsborough Declaration of 2003 between the parties and the UK government, that legislation would be taken forward at Westminster. Consideration of the advice, it was assumed, would have taken place during the various legislative stages at Westminster. Political parties from Northern Ireland would have made their input at the consideration stages. That did not happen and instead subsequent Secretaries of State passed the responsibility on a Bill of Rights to the NI Assembly.
5. Calls for a Bill of Rights for Northern Ireland go back to 1966 when the Stormont Parliament first debated a motion on the subject. The Standing Advisory Commission on Human Rights, produced a report in 1977, in which it argued that the particular circumstances of Northern Ireland could provide a basis for additional rights to the ECHR incorporation into domestic legislation stating that:  
*"...in the event of the return of devolved legislative and executive functions to a new government in Northern Ireland (either before or after the incorporation of the European Convention into domestic law), it would be desirable for the enabling legislation to include a clear and enforceable charter of rights for Northern Ireland. The guarantees in this charter should be consonant with those which may accompany devolution in other parts of the United Kingdom. This charter of rights could be more comprehensive than the European Convention and should be framed in the light of whatever at the time seem to be the special needs of the people of Northern Ireland."*
6. In the various political negotiations, agreements and declarations a Bill of Rights has remained on the political agenda from the 1974 Sunningdale Agreement onwards. Most of the rights that are affirmed by the parties in Paragraph 1 of the Rights Safeguards and Equality of Opportunity chapter of the Belfast/Good Friday Agreement

were originally set out in the joint Downing Street Declaration in 1995. An additional right - 'the right of women to full and equal political participation' - was added during the multi-party negotiations and inserted into the final 1998 Agreement. The 1998 Belfast/Good Friday Agreement added a further 12 paragraphs to this chapter including Paragraph 4 which outlined the mandate for the NI Human Rights Commission. The paragraphs set out the specific provisions and obligations on the UK government in relation to human rights and equality, the Irish government's obligations in relation its jurisdiction and the new institutions in Northern Ireland. The St Andrews Agreement, the Haas/O'Sullivan and more recently the New Decade, New Approach also made reference to a Bill of Rights for Northern Ireland.

7. Following the 1998 peace agreement, the two governments requested that I chair an implementation committee on the proposal for a Bill of Rights. That committee proposed that a Forum of political parties and representatives of civic society be established. The St Andrews Agreement 2006 took up the proposal and Australian lawyer Chris Sidoti was appointed as the Forum's chairperson. A shared framework could not be found on which rights should be protected in Northern Ireland in the Forum report that was passed to me in March 2008. Of the parties involved in the 1998 peace negotiations, and elected to the first Northern Ireland Assembly, SDLP, Sinn Fein, the Alliance Party, the Women's Coalition and the PUP remained consistent in their support for a Bill of Rights. The Unionist Party and the DUP having initially been more reluctant to accept the proposal for a Bill of Rights later agreed a more inclusive process following the St Andrews Agreement in 2006. The fact that the Ad Hoc Committee is now deliberating on the extent and enforcement of the legislative protection of a Bill of Rights is a step forward.

8. Under the terms of the Belfast (Good Friday) Agreement 1998 and in accordance with the *Northern Ireland Act 1998*, the Secretary of State for Northern Ireland wrote formally to the NI Human Rights Commission inviting it to provide advice of the kind referred to in paragraph 4 of the relevant section of the Agreement, namely:

*“...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 [European Convention on Human Rights] – to constitute a Bill of Rights for Northern Ireland.*

Issues for consideration by the Commission were to include:

*“the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.”*

When I was appointed Chief Commissioner, my first task was to agree a methodology and rationale to ensure we conformed to this mandate. Although the decision to give Convention Rights domestic effect was made on a UK-wide basis, the Commission, pursuant to this mandate held the view that some Convention Rights that were not in the *Human Rights Act 1998*, but reflected the particular circumstances of Northern Ireland should be included in a Bill of Rights for Northern Ireland. These were the rights identified in the NIHRC submission to the Secretary of State.

9. The advice represented the extensive work undertaken by Commissioners and staff as well as the contributions from the working groups and advisors, the community, voluntary and statutory sectors, the Forum Report and the hundreds of people who engaged in the consultation process. From January 2006 to November 2008, the Commission convened 54 meetings of an internal Bill of Rights Working Group and held seven weekend seminars. During this period, the Commission met with individual political party representatives in the Northern Ireland Assembly on 18 occasions. The Commission also met with the human rights spokespersons from the major parties at Westminster. It engaged with Northern Ireland Office officials on a regular basis, and met with the Secretary of State and UK Government Ministers on six occasions. The Commission met with the Taoiseach, hosted a meeting with the Minister for Foreign Affairs at its offices and held several meetings with Irish Government officials on a Bill of Rights. It also met with the Irish Human Rights Commission on a regular basis as part of the joint committee between the two commissions agreed under the terms of the Belfast (Good Friday) Agreement.
10. The minutes of the meeting agreeing the final submission to the Secretary of State show that all ten commissioners agreed the process was inclusive and transparent and that we acted with integrity at all times. As Commissioners, we took our corporate responsibility seriously. The report records that two Commissioners dissented but that did not take away from the majority (eight out of ten) agreeing the final advice. I was pleased to stand alongside the Commissioners on Dec 10<sup>th</sup> 2008 when we fulfilled our mandate by handing the advice on a Bill of Rights to the Secretary of State.

11. This Committee is now engaged in a similar process. The difference between your Assembly Committee and the NI Human Rights Commission was that we were an independent body. Those deliberating on a Bill of Rights in the Commission were required to set aside any party political views since a Bill of Rights would be a foundational document for *all* the people of Northern Ireland. It was not a 'pick and mix' or dependent on the rights with which an individual party agreed.
12. The proposal in the Good Friday Agreement for a Bill of Rights was seen as part of the new constitutional arrangements for Northern Ireland. That should have been made clearer at the time – that having a Bill of Rights for Northern Ireland was a constitutional guarantee and not to be left as an aspiration. The phrase 'advise on the scope for defining, in Westminster legislation, rights supplementary to those in the ECHR' led some to believe that the 'scoping' process would be sufficient and that the UK government could leave it at that. The NI Human Rights Commission understood its mandate to be to advise on an actual Bill of Rights.
13. Prime Minister David Cameron declared after taking office in 2010 that a British Bill of Rights would suffice in meeting the mandate of the Good Friday Agreement. This was a different approach to the one put forward in the Belfast/Good Friday Agreement. The government established a Commission to examine the possibility of the UK having its own Bill of Rights and incorporating Northern Ireland into this process. The Commission did not reach an agreement on a British Bill (that was later referred to as a UK Bill) and concluded in 2013 that the Northern Ireland process was a separate process and that the UK process should not interfere or delay its progress. The Scottish and the GB Commission on Equality and Human Rights held a similar view. The UK

Government's Joint Committee on Human Rights, to which I frequently provided evidence, acknowledged that the 1998 Agreement had proposed a Bill of Rights for Northern Ireland and took issue with the Conservative government's position.

14. Despite the British government making no formal response to this conclusion from the UK Commission, the Secretary of State for Northern Ireland then proposed that the Bill of Rights issue should be devolved to the Northern Ireland Assembly. However, none of the parties responded to the NIO correspondence on this issue. Parties consistently exercised a veto in the Northern Ireland Assembly on issues perceived by either side to be contentious and a lengthy stalemate followed.
15. In response to evidence to this committee, that stated that the NIHRC proposed legislation for an 'all singing all dancing' Bill of Rights, I state here that the NI Human Rights Commission did not design legislation. The advice was just that, advice and not a Bill. With regard to a reference about 'bells and whistles' I remind the Committee that the mandate given to the NIHRC included the 'international instruments and experience' and to avoid the potential for any unintended consequences arising from the proposals, the Commission provided the relevant links and details (and not bells and whistles) to the international standards in its advice.
16. I have recently reviewed the original documents in the multi-party negotiations leading up to April 10<sup>th</sup> 1998. The reference to 'international instruments and experience' was inserted in the final week of the negotiations. This points to the parties considering international instruments to be of merit with reference to a Bill of Rights. The multi-party negotiations meetings on human rights were part of the confidence building sub committee. Negotiators at those meetings stated that building a sustainable peace would need

more than the ending of conflict. We were aware that despite the reforms being introduced to institutions in Northern Ireland as a result of the peace accord, that our society might continue to be fragile and at times unstable and that a foundational document (a Bill of Rights for Northern Ireland) was needed to build trust for the future. For that reason, political, civil, social, economic and cultural rights were all discussed at those meetings. I have the minutes and can make these available to the clerk.

17. The NIHRC is a national human rights institution, accredited at the UN International Coordinating Committee with an A status. The Commission has a mandate to uphold the international standards and should the advice in 2008 have fallen below these standards, the Commission's accreditation as a national human rights institution would have been questioned. The international standards that the UK had signed up to were as important as the particular circumstances of Northern Ireland but the focus afterwards was more on the latter. The NI Human Rights Commission's final advice was also based on these standards.
18. Another myth is that a Bill of Rights displaces the role of the Executive by permitting the courts to have too much of a say in policy decisions. The HRA has been in place for over two decades and the judiciary has had no difficulty in making the distinction between its role and that of the legislature or the Executive.
19. A Bill of Rights has several functions, but most of the focus to date has been on the extent of its protection and the role of the courts. There has been less of a focus on how a future Bill of Rights could embed a culture of rights. Had there been more of a focus on this aspect of a Bill of Rights, the preventative function of a Bill of Rights could have played



a much larger role in the discussion. When I wrote the preamble to the advice in 2008, it was in the context of leaving behind the lack of respect for human dignity in the past and laying down the values and principles by which we would adhere to in the future.

20. The Good Friday Agreement proposed a Committee in the Assembly to examine and report on whether a measure or proposal for legislation conformed to human rights and equality requirements, including the ECHR/Bill of Rights. It was proposed that such a Committee should have had the power to call people and papers to assist its deliberations. Any reports from the Committee would go in front of the Assembly for a vote to be taken in accordance with the cross community procedure. I was a Member of the NI Assembly from 1998 to 2003 and with the exception of the UUP and SDLP, the proposal to establish the Committee received support. The Executive did not establish the Committee. Had this Standing Committee existed, more consideration of human rights issues might have taken place, particularly given the context that human rights issues were not devolved to the Assembly. The Assembly missed an important opportunity to deliberate on such matters. The Northern Ireland Human Rights Commission was the only body that was asked to scrutinize legislation for compliance with human rights and it would have benefitted in having an Assembly committee at which to present its reports. The proposed Committee would also have helped to familiarize Assembly members with the complex (and frequently contested) arguments on human rights issues in Northern Ireland. A Standing Committee like this might also have provided a more unifying focus on issues that required a rights-based framework to the problems that have been encountered.

21. Para 10 of the Rights, Safeguards and Equality of Opportunity Chapter of the 1998 Agreement stated:

*'The joint committee (of the NIHRC and the Irish Human Rights Commission) will consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.'*

The NIHRC and the Irish Commission presented the advice on the Charter in 2010 to the Speaker of the Northern Ireland Assembly and the Ceann Comhairle of Dáil Éireann. Had there been a Standing Committee on Human Rights in the Northern Ireland Assembly, the advice on the Charter could have been discussed as to how best to take it forward. The Ad Hoc Committee may also wish to consult the joint Committee's Charter of Rights.

22. Had a Standing Committee existed in the Assembly, the advice from the Commission could have been discussed in a more informative manner. Going forward, consideration should be given to establishing a Standing Committee in this Assembly for scrutinizing compliance of legislation with reference to human rights and equality issues. Both the UK and Scottish Parliaments have a Human Rights Committee and I have engaged with both in my role as Chief Commissioner.

23. On the contested non-devolved issues, such as human rights and policing at that time, Westminster held the responsibility for legislating. The Patten Commission, like the NIHRC, had a mandate from the Good Friday Agreement and Westminster legislated to implement it. But the Bill of Rights advice, unlike that of the Patten Commission, was passed to the Northern Ireland Assembly. As Chief Commissioner, I was not asked by the Secretary of State to find consensus amongst the parties before submitting the final advice. Adherence to the international standards was the NIHRC's guiding

principle. A vacuum of over a decade has resulted on how best to take forward a Bill of Rights for Northern Ireland. Surveys repeatedly showed that a majority of the public supported having this legislation. Given the uncertainty that currently exists over rights protections, the Ad Hoc Committee's deliberations could be considered in the light of providing 'a confidence building measure' at this time.

24. There have been new issues since the Commission forwarded its advice in 2008 that this Committee has taken evidence on. For example, the EU Withdrawal Agreement has had an impact on the provision of rights in Northern Ireland. The implications of the Charter of Fundamental Rights no longer applying as a result of the UK withdrawal from the EU also raises concerns. The Conservative government has introduced a review of the Human Rights Act that also raises issues about what rights will continue to be protected in Northern Ireland. It would appear that the necessity of having a Bill of Rights remains just as pertinent as it was in 2008.

25. You will need to set aside time to take your own mind on all of the material that has been put before you. In my experience, the NIHRC benefitted greatly from spending several days at a time, away from HQ, to review and bank what could be agreed, to review areas where there was less agreement and deliberate on the problematic areas. The Commissioners spent nine months of dedicated time outside of the consultation period to take our own minds on the final advice. It was hard work but I considered it a privilege as well as a duty to be asked to deliver the mandate on a Bill of Rights for Northern Ireland. I hope you feel the same in relation to your deliberations on the Ad Hoc Committee.

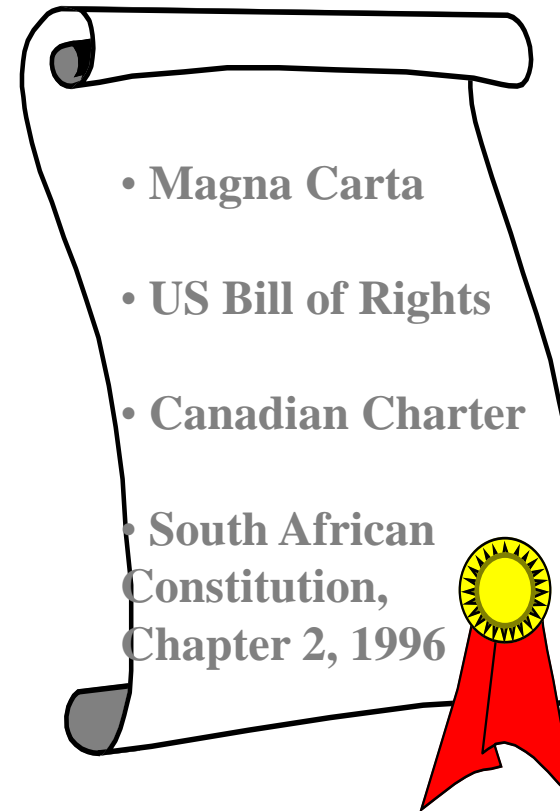


# **Making a Bill of Rights for Northern Ireland**

# What is a Bill of Rights?



- A list of rights belonging to everyone in a country
- Can be part of a constitution
- Post conflict societies introduce a BOR as a transitional justice mechanism to avoid a reoccurrence of conflict
- Rights mostly judiciable but some rights can be progressively realized
- Enforceable but also educational



# Context



- The demands for a BOR began in the mid 1960's with political parties later lamenting not introducing it earlier
- White Paper on the NI Constitution Act 1973 proposed provisions for a BOR (not enacted)
- Anglo-Irish Agreement 1985 and the Intergovernmental Conference considers BOR
- Framework Document 1995 mentions need for a Charter or BoR and lists a range of rights
- Belfast (Good Friday) Agreement 1998 mandates the NIHRC to scope out advice for a BOR
- Comprehensive Agreement 2004 establishes a Political Roundtable on BOR
- St Andrews Agreement endorses a BOR

# Belfast (Good Friday) Agreement

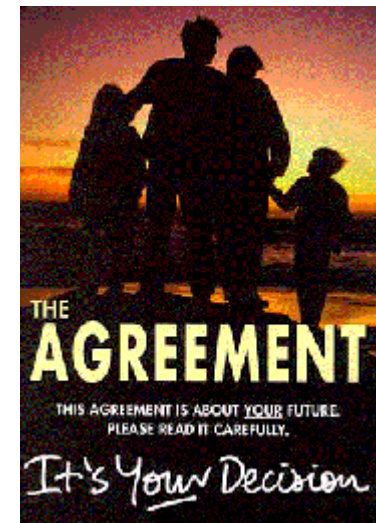


- To consult and advise on the scope for defining
- in Westminster legislation
- rights supplementary to those in the European Convention on Human Rights
- to reflect the particular circumstances of Northern Ireland
- drawing as appropriate on international instruments and experience.

# Task in Agreement, cont.



- 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 of Rights for Northern Ireland.





# Task in Agreement, cont.



## Among the issues for consideration:

- The formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
- A clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.

# Timeline



- Launch March 2000
- Public meetings, events and conferences
- 2001- 2004 NIHRC working groups advice and progress reports
- Sept 2005 - new Commission formed
- 2006 - St Andrew's Agreement
- 2006 – 2008 BOR Forum involving political parties and civic society groups
- 10 December 2008 - NIHRC provides final advice to Sec of State
- November 2009 – Government consultation on NIHRC advice
- 2009 to present – no agreement on a BOR at devolved level



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

# A Bill of Rights for Northern Ireland

The Northern Ireland Human Rights Commission advised the government that there should be a Bill of Rights for Northern Ireland. It set out recommendations for rights to be included that reflect the particular circumstances of our society. It also advised how the rights could work in practice. These are the recommendations.

It is usual for an introductory section, called a Preamble, to be included in a Bill of Rights. The preamble describes the values on which a Bill of Rights is based.

## Preamble

Founded on the principles of full respect for, and equality of, civil, political, economic, social, and cultural rights and of freedom from discrimination it:

Recognises that a just and equal society is best maintained by a stable and functioning democracy and the common observance of human rights;

Acknowledges the dignity and worth of every person and the equal and inalienable rights of all;

Reiterates an absolute commitment to exclusively peaceful means of resolving differences;

Addresses the legacy of the past and the special needs of victims and survivors of the conflict;

Enshrines the entitlement of all to the full range of human rights and fundamental freedoms, safeguarded by the rule of law;

Strives to ensure that every child will grow up safe and secure;

Values the role of women in public and political life and their involvement in advancing peace and security;

Cherishes our common humanity and advocates freedom from fear and want;

Seeks to protect our common heritage and natural environment for future generations;

Accepts the commitment to mutual respect and the religious and civil rights of everyone;

Welcomes the rich variety of languages, beliefs and traditions which is the cultural wealth of our society;

Upholds the existing rights and protections of individuals and groups especially those that guarantee free and fair participation in economic, social and political life; and

Is dedicated to the achievement of reconciliation and the vindication of the human rights of all.

**1** the **right to life** and ensure all deaths relating to the Northern Ireland conflict are effectively investigated, complying with international law.

**2** the **right to freedom from torture, inhuman or degrading treatment**

**3** **democratic rights** to vote in free and fair elections, subject to proportional representation for the Assembly and local councils, overseen by an independent authority. There should be equal opportunity to take part in public service. Public authorities should be representative of society and take effective steps to enable full and equal participation of women in political and public life.

**4** the **right to equality and prohibition of discrimination**. Affirmative action should be allowed. Public authorities should help older and disabled people to live independently and take a full part in community life.

**5** **children's rights**, ensuring that everyone under 18 years old, without discrimination, has their best interests protected and given the highest consideration in all actions concerning them. The government must take all necessary measures to protect children from all forms of abuse and exploitation as well as from the dangers posed by conflict. Special protection and assistance should be given to children who don't live with their family. Children should have access to safe play and leisure facilities. Government must ensure that children know their rights and that their views are taken seriously in all relevant matters.

**6** the **right to health**, ensuring that everyone has the highest possible standard of physical and mental health, including free, prompt, appropriate services.\* No one should be refused emergency medical treatment and essential primary healthcare. Women and girls should have gender-sensitive and appropriate healthcare and information.

**7** the **right to an adequate standard of living**.\* No one should be allowed to become destitute.

**8** the **right to respect for private and family life**

**9** the **right to education** and ensure all children can access the full curriculum. Education should promote human rights, dignity of the person, equality, respect for diversity and tolerance.

**10** **freedom from violence, exploitation and harassment** including domestic, sexual, gender-related or sectarian violence, sexual exploitation and trafficking. All appropriate steps should be taken to ensure these protections.

**11** the **right to found a family**

**12** the **rights of victims**, ensuring access to appropriate material, medical, psychological and social help. They must be kept informed about investigations and legal proceedings. These rights must also be protected in separate legislation for victims of the Northern Ireland conflict.

**13** **freedom of thought, conscience and religion**

**14** the **right to a fair trial or public hearing and no punishment without law** and ensure trial by jury for serious offences and the right to waive it. Evidence obtained through torture or inhuman and degrading treatment or by breaching any of the rights in the Bill of Rights cannot be used in the trial. The best interests of children and vulnerable adults should be specially protected. Witnesses, jurors, the judiciary and lawyers should be protected in carrying out their duties.

**15** **liberty of movement and freedom to choose where to live**

**16** the **right to identity and culture** including a choice to be Irish or British or both without discrimination. Public authorities should treat the identity and ethos of both main communities equally and encourage mutual respect, understanding and co-operation. Minorities should be able to enjoy their culture, practice their religion and use their language, in private and public. No one should be made to take an oath in Northern Ireland contrary to their religion or belief.

**17** **environmental rights**, including a duty on public authorities to limit pollution, promote conservation and secure sustainable development.

**18** the **right to civil and administrative justice** including access to information held by public authorities. Public authorities must make fair decisions within a reasonable time, provide reasons and allow for the decision to be appealed.

**19** **freedom of assembly and association**

**20** **language rights**, ensuring that minorities can learn or be educated in their own language, when there is enough demand. Essential services should be accessible by communicating in a language (including sign language) you understand. Public authorities should support Irish and Ulster-Scots, as committed to under the European Charter for Regional and Minority Languages.

**21** the **prohibition of slavery or forced labour**

**22** the **right to accommodation**, appropriate to your needs.\* Public authorities should take all appropriate steps to ensure no one is forced out of their home by threats or harassment or evicted without a court order. No one should be denied emergency accommodation.

**23** the **right to own property and peaceful enjoyment of possessions**

**24** **freedom of expression**

**25** **social security rights**, including access to social assistance, social insurance and a pension\*.

**26** the **right to work**.\* Just and favourable working conditions without discrimination should be protected. Workers should be able to strike and to bargain collectively. Carers should have respite from their caring responsibilities.

**27** the **right to marry or to enter civil partnership** and to end both.

**28** the **right to liberty and security** and ensure that anyone arrested or detained can speak privately with a solicitor and have them present during questioning, which must be recorded. A family member should be able to visit under supervision. Medical help, if needed, should be given without delay. Anyone detained or in care should be helped to reintegrate into society. No one should be imprisoned because of their inability to fulfil a contractual obligation. Children or vulnerable adults who are arrested or detained should have special protections. Children should be treated in a way that considers their age, needs and understanding. They should only be detained as a last resort for the shortest time possible, separately from adults, in conditions appropriate to their age. When a child is the victim of crime they should be given special assistance to help them give evidence and supported throughout the process.

\* Government must take steps to ensure that these rights are realised over time as fully as possible. All these rights can be limited if it is fair, reasonable and proportionate to do so.

## Protecting and promoting your rights

Further Information ■ Northern Ireland Human Rights Commission ■ [www.nihrc.org](http://www.nihrc.org) ■ [information@nihrc.org](mailto:information@nihrc.org)



28 general areas of concern (7 of which are already covered by schedule 1 of the Human Rights Act).

Some of the proposals would give effect to new rights.

Many proposals would, however, merely enshrine protections found in existing legislation.

A Bill of Rights should bring together and secure protection of pre-existing rights as well as affording new rights and freedoms justified in accordance with the mandate of the Belfast (Good Friday) Agreement.

# Rights protected by ECHR/HRA: Mostly civil and political



- Right to life
- Right not to be subjected to torture or inhuman or degrading treatment
- Right not to be held in slavery or servitude
- Right to liberty and security of person
- Right to fair trial
- Right against retrospective punishment
- Right to freedom of peaceful assembly & association
- Right to respect for privacy and family life
- Right to freedom of thought, conscience and religion
- Right to freedom of expression
- Right to marry and found a family
- Right to an effective education
- Property rights
- Right to enjoy rights free from discrimination
- No death penalty



# BOR Advice to Secretary of State

## NIHRC recommends:

- There should be a BOR for NI
- It should include:
  - a Preamble setting out context and values
  - Rights already protected by the ECHR/HRA
  - Some rights in various protocols of ECHR not in the HRA
  - Supplementary rights needed because of the particular circumstances of NI
  - How the rights should be implemented and enforced
  - How they should be made a reality



## Supplementary rights re:

- Right to life
- Liberty
- Fair trial, including rights of children and vulnerable adults
- Civil partnership
- Equality, non-discrimination
- Democratic rights
- Education
- Freedom of movement
- Freedom from violence, exploitation & harassment
- Civil and administrative justice

# Equality & cultural rights – Group rights are different from individual rights



- The right to equality and non-discrimination
  - Applies to everyone, including named groups, e.g. Travellers
  - Irrelevant criminal record (to address the ban on employment of prisoners with a political conviction).
  - Allows affirmative action ( to address under representation on basis of political/religious/ethnic affiliation or gender/disability. This provision already exists in NI)
- The right to identity and culture
- Language rights



# BOR advice – economic and social rights



## “Progressive realisation”

- The right to health (supplementary to Art 2 ECHR/HRA right to life)
- Adequate standard of living
- Accommodation
- Education (supplementary to Protocol 1,2 of ECHR/HRA)
- The right to work, including trade union rights
- Environmental rights
- Social security rights

These were largely misunderstood. Most already exist through the UK having ratified various international instruments. Unionist parties opposed these as they believed these to be policy decisions to be taken by government. Progressive realisation means these rights would depend on available resources

# BOR Advice - Enforcement & implementation



## Technical matters

- Relationship with the Human Rights Act
- Limitations
- Interpretation
- Derogation in emergencies
- Entrenchment and amendment
- Application, standing
- Devolved and non-devolved issues
- Judiciability, remedies

# NIO Consultation 2009

1. Inadequate consultation
2. Misunderstands the purpose and functions of a BOR
3. Fails to clarify the status of the Belfast (Good Friday) Agreement mandate
4. Fails to take account of international human rights standards
5. Misrepresentation of the Commission's advice

## Party political differences on a BOR



- The two main unionist parties took the position that it was the responsibility of others to convince them that a Bill of Rights was needed for Northern Ireland
- Concerned that it would create a separation of rights from those available elsewhere in GB
- Supported a British BOR with a separate chapter on Northern Ireland
- The SDLP, SF and Alliance Party argued that they should not have to persuade the main Unionist parties of the need for a Bill of Rights for Northern Ireland since that responsibility lies with the sovereign government.

# What happened next



- UK Conservative government established a Commission on a British Bill of Rights
- It did not reach an agreement
- It concluded that the NI process was a separate one
- Conservative government insisted on decision to be taken at NI Assembly
- Political parties did not respond to the SOS letter on this suggestion
- BOR remains on agenda for political resolution particularly in response to Brexit

## The GB, Scottish and Irish Commissions all have a role to play

- The three UK National Human Rights Institutions agree that any process towards establishing a Bill of Rights and Responsibilities which seeks to repeal the UK Human Rights Act 1998 would be retrogressive
- The Irish Human Rights and Equality Commission and the NIHRC drafted a Charter of Rights for the island of Ireland as mandated by the GFA
- Would a Charter of Rights help to alleviate concerns about the lack of equivalency of rights for the PUL community in south of Ireland in respect of their identity

# Haass-O'Sullivan talks 2013



Recommended that a Commission on Identity and Culture be set up to consider amongst other issues a Bill of Rights for Northern Ireland.

Mixed views amongst the political parties on whether or not this is the best way to take forward the discussions with some holding the view that it should not preclude other routes to progress.

Some reiterated the importance of keeping the issue on the political agenda and that an alternative approach to the current stalemate was much needed.

# What might help



- A process through which the parties can agree and/or disagree with the proposals forwarded by the NIHRC, the Bill of Rights Forum and any other bodies to date.
- Parties should agree a set of principles from which the rights appropriate to the particular circumstances of Northern Ireland can be developed
- The process could be assisted with a facilitator bringing expertise on resolving similar issues from elsewhere





“Then we began speaking about a bill of rights, a constitution, the sorts of things that we thought we might want. Each, I suppose, initially approached it from the position of ‘well, what is good for me?’ Then people gradually discovered: ‘hey the things that bind us, the things that are common to us, are many times more than the things that divide us.’”