



House of Commons  
Northern Ireland Affairs  
Committee

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# **A Bill of Rights for Northern Ireland: an interim statement**

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**Sixth Report of Session 2009–10**

*Report, together with formal minutes, oral and  
written evidence*

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## The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

### Current membership

Sir Patrick Cormack MP (*Conservative, South Staffordshire*) (Chair)  
Mr David Anderson MP (*Labour, Blaydon*)  
Rosie Cooper MP (*Labour, West Lancashire*)  
Christopher Fraser MP (*Conservative, South West Norfolk*)  
Mr John Grogan MP (*Labour, Selby*)  
Mr Stephen Hepburn MP (*Labour, Jarrow*)  
Lady Hermon MP (*Ulster Unionist Party, North Down*)  
Kate Hoey MP (*Labour, Vauxhall*)  
Dr Alasdair McDonnell MP (*SDLP, Belfast South*)  
Mr Denis Murphy MP (*Labour, Wansbeck*)  
Stephen Pound MP (*Labour, Ealing North*)  
David Simpson MP (*Democratic Unionist Party, Upper Bann*)

Mrs Iris Robinson, former Member for Strangford, was on the Committee during this inquiry.

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/niacom](http://www.parliament.uk/niacom).

### Current Committee staff

The current staff of the Committee are David Weir (Clerk), Alison Groves (Second Clerk), Emma McIntosh (Senior Committee Assistant), Becky Crew (Committee Assistant), Karen Watling (Committee Assistant), Becky Jones (Media Officer) and Mr Tes Stranger (Committee Support Assistant).

### Contacts

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# A Bill of Rights for Northern Ireland

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1. The Belfast Agreement signed on 10 April (Good Friday) 1998 provided for the creation of a Northern Ireland Human Rights Commission, invited 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 of Rights for Northern Ireland.<sup>1</sup>

Among the issues specified for consideration by the Commission were:

- 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.<sup>2</sup>

2. The 2003 joint declaration by the Governments of the United Kingdom and the Republic of Ireland stated that once consultation on a Bill of Rights had concluded:

The British Government is committed to bringing forward legislation at Westminster where required to give effect to rights supplementary to the ECHR to reflect the particular circumstances of Northern Ireland.<sup>3</sup>

3. A Bill of Rights Forum was created after the St Andrew's Agreement of 2006 and its recommendations, made in March 2008, were considered by the Northern Ireland Human Rights Commission. The Commission itself produced its detailed Advice to the Secretary of State for Northern Ireland in December 2008. It made 78 recommendations relating to substantive rights additional to rights contained in the European Convention on Human Rights (which was itself incorporated into UK domestic law in 1998, soon after the Belfast Agreement was reached). It also included recommendations on how a Bill of Rights could be implemented and enforced.

4. Representative polling across Northern Ireland has consistently shown strong support, in both main communities, for the principle of introducing a Bill of Rights specific to Northern Ireland. Substantial differences remain, however, on what the form and content of such a Bill should be.

5. Those differences were exemplified in the Northern Ireland Human Rights Commission itself. Two of the 10 Commissioners dissociated themselves from the Advice to the

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<sup>1</sup> Belfast Agreement 1998, *Rights, Safeguards and Equality of Opportunity*, para 4

<sup>2</sup> Ibid

<sup>3</sup> Joint Declaration by the British and Irish Governments, April 2003, para 2.

Secretary of State by recording formal dissent to the proposal and issuing notes outlining why they disagreed with substantial parts of that Advice.

6. The Northern Ireland Human Rights Commission expected that the Northern Ireland Office would launch its own 12-week consultation on its Advice in the spring of 2009. The Commission also hoped that a Bill might be presented at Westminster before the general election of 2010.

7. The NIO did not, however, respond to the Advice until 30 November 2009. The NIO launched its own consultation on the Commission's proposals, initially seeking responses by 1 March 2010. The Secretary of State for Northern Ireland, Rt Hon. Shaun Woodward MP, announced on 24 February that that deadline would be extended for a further four weeks, to the end of March. As the House of Commons must be dissolved by May 2010 at the latest, there is no prospect of a Bill of Rights for Northern Ireland being presented or enacted in the present Parliament.

8. When we launched this inquiry early in 2009, it was our intention to comment on the proposals made by the Northern Ireland Human Rights Commission and on the Government's response to them in the expectation that legislation might be forthcoming within the lifetime of the present Parliament. As no such legislation will now emerge, we believe it would be improper of us to bind a future Northern Ireland Affairs Committee to a particular position. Therefore, **we have chosen in this Report to publish the evidence that we have received from organisations and individuals in Northern Ireland and to suggest to our successor Committee that it may wish to consider future proposals on a Bill of Rights for Northern Ireland as part of its work programme.**

9. None the less, in order that a new Parliament may be as fully informed as possible, **we join the Secretary of State for Northern Ireland in urging all those who have the best interests of Northern Ireland at heart to study what is proposed for a future Bill of Rights and to give the Northern Ireland Office their views, whether in favour of or in opposition to a Northern Ireland Bill of Rights.**

## Formal Minutes

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### Wednesday 13 January 2010

Members present:

Sir Patrick Cormack, in the Chair

Christopher Fraser	Dr Alasdair McDonnell
Mr John Grogan	Mr Denis Murphy
Mr Stephen Hepburn	Stephen Pound
Lady Hermon	David Simpson

The Committee discussed informally the Chairman's draft report.

[Adjourned till Wednesday 20 January at 2 p.m.]

### Wednesday 20 January 2010

Members present:

Sir Patrick Cormack, in the Chair

Mr Stephen Hepburn	Mr Denis Murphy
Lady Hermon	Stephen Pound
Kate Hoey	David Simpson

The Committee discussed informally the Chairman's draft report.

[Adjourned till Monday 25 January at 11 a.m.]

### Wednesday 10 February 2010

Members present:

Sir Patrick Cormack, in the Chair

Christopher Fraser	Dr Alasdair McDonnell
Lady Hermon	Mr Denis Murphy
Mr Stephen Hepburn	Stephen Pound
Kate Hoey	David Simpson

The Committee discussed informally the Chairman's draft report.

[Adjourned till Wednesday 24 February at 2.30 p.m.]

### Wednesday 24 February 2010

Members present:

Sir Patrick Cormack, in the Chair

Rosie Cooper	Kate Hoey
Christopher Fraser	Dr Alasdair McDonnell
Mr John Grogan	Mr Denis Murphy
Lady Hermon	Stephen Pound
Mr Stephen Hepburn	David Simpson

*Ordered*, That a Sub-Committee on a Bill of Rights for Northern Ireland be appointed to consider the Chairman's draft Report.

*Ordered*, That the Chairman, Lady Hermon, Dr Alasdair McDonnell and David Simpson be members of the Sub-Committee.

*Ordered*, That the Chairman be Chairman of the Sub-Committee.

*Ordered*, That the Sub-Committee travel to Belfast on Monday 15 March 2010 to consider the Chairman's draft Report.

[Adjourned till Wednesday 3 March at 2.30 p.m.]

### Monday 15 March 2010

The Sub-Committee of the Northern Ireland Affairs Committee met at Parliament Buildings, Stormont, Northern Ireland

Members present:

Sir Patrick Cormack, in the Chair

Lady Hermon	David Simpson
Dr Alasdair McDonnell	

The Sub-Committee considered informally the Chair's draft interim Report on A Bill of Rights for Northern Ireland.

*Resolved*, That the Sub-Committee recommend that the Committee agree to the Chair's draft interim Report on A Bill of Rights For Northern Ireland

[The Sub-Committee adjourned.]

## Monday 15 March 2010

Members present:

Sir Patrick Cormack, in the Chair

Christopher Fraser  
Kate Hoey

Stephen Pound  
David Simpson

Draft Report (*A Bill of Rights for Northern Ireland: an interim statement*), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 9 agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence reported to the House and ordered to be published on 22 April, 29 April, 13 May, 3 June and 17 June 2009 was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 24 March at 2.30 p.m.]

## Witnesses

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### Monday 16 March 2009

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**Mr Thomas Duncan**, Commissioner, **Ms Ann Hope**, Commissioner, **Professor Colin Harvey**, Commissioner and **Ms Virginia McVea**, Head of Legal Services, Northern Ireland Human Rights Commission Ev 1

**Ms Fiona McCausland**, Chairperson, **Mr Patrick Corrigan**, NI Amnesty International, **Ms Sara Boyce**, Children’s Law Centre and Save the Children of Northern Ireland and **Ms Pam Tilson**, Signature, Human Rights Consortium Ev 8

### Wednesday 1 July 2009

**Lady Trimble**, Commissioner, Northern Ireland Human Rights Commission Ev 14

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## List of Reports from the Committee during the current Parliament

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First Report	Work of the Committee in 2008-09	HC 90
Second Report	The Report of the Consultative Group on the Past in Northern Ireland	HC 171
Third Report	Television Broadcasting in Northern Ireland	HC 237
Fourth Report	The Omagh bombing: some remaining questions	HC 374
Fifth Report	Forensic Science Northern Ireland	HC 314
Sixth Report	A Bill of Rights for Northern Ireland: an interim statement	HC 236

### Session 2008-09

First Report	Work of the Committee in 2007-08	HC 74
Second Report	Cross-border co-operation between the Governments of the United Kingdom and the Republic of Ireland	HC 78
First Special Report	The Omagh Bombing: Access to Intelligence	HC 873
Second Special Report	Cross-border co-operation between the Governments of the United Kingdom and the Republic of Ireland: Government Response to the Committee's First Report of Session 2008-09	HC 1031

### Session 2007-08

First Report	The Northern Ireland Prison Service	HC 118
Second Report	The Work of the Committee in 2007	HC 286
Third Report	Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past	HC 333
First Special Report	The Northern Ireland Prison Service: Government Response to the Committee's First Report of Session 2007-08	HC 386
Second Special Report	Policing and Criminal Justice in Northern Ireland: the Cost of Policing the Past: Government Response to the Committee's Third Report of Session 2007-08	HC 1084

### Session 2006-07

First Report	Draft Protocol for Community-based Restorative Justice Schemes	HC 87
Second Report	The Work of the Committee in 2006	HC 294
Third Report	Tourism in Northern Ireland and its Economic Impact and Benefits	HC 119
First Special Report	Draft Protocol for Community-based Restorative Justice Schemes: Government Response to the	HC 475

	Committee's First Report of Session 2006-07	
Second Special Report	Tourism in Northern Ireland and its Economic Impact and Benefits: Government Response to the Committee's Third Report of Session 2006-07	HC 545
<b>Session 2005–06</b>		
First Report	Education in Northern Ireland	HC 726
Second Report	The Work of the Committee in 2005	HC 928
Third Report	Organised Crime in Northern Ireland	HC 886
First Special Report	The Work of the Committee in 2004: Government Response to the Committee's Fourth Report of Session 2004-05	HC 393
Second Special Report	The Functions of the Office of the Police Ombudsman for Northern Ireland: Responses by the Government and the Office of the Police Ombudsman for Northern Ireland to the Committee's Fifth Report of Session 2004-05	HC 394
Third Special Report	The Parades Commission and Public Processions (Northern Ireland) Act 1998: Government Response to the Committee's Second Report of Session 2004-05	HC 395
Fourth Special Report	The Challenge of Diversity: Hate Crime in Northern Ireland: Government Response to the Committee's Ninth Report of Session 2004-05	HC 396
Fifth Special Report	Air Transport Services in Northern Ireland: Government Response to the Committee's Eighth Report of Session 2004-05	HC 529
Sixth Special Report	Ways of Dealing with Northern Ireland's Past: Interim Report – Victims and Survivors Government Response to the Committee's Tenth Report of Sessions 2004-05	HC 530
Seventh Special Report	The Functions of the Northern Ireland Policing Board Responses by the Government and the Northern Ireland Policing Board to the Committee's Seven Report of Session 2004-05	HC 531
Eight Special Report	Decision to Cease Stormont Prosecutions	HC 814
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# Oral evidence

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## Taken before the Northern Ireland Affairs Committee

on Monday 16 March 2009

Members present

Sir Patrick Cormack, in the Chair

Mr John Grogan  
Mr Stephen Hepburn  
Dr Alasdair McDonnell

Mr Denis Murphy  
Stephen Pound  
David Simpson

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*Witnesses:* Mr Thomas Duncan, Commissioner, Ms Ann Hope, Commissioner, Professor Colin Harvey, Commissioner and Ms Virginia McVea, Head of Legal Services, Northern Ireland Human Rights Commission, gave evidence.

**Q1 Chairman:** Could I welcome you to this public session. Mr Duncan, are you going to lead?

**Mr Duncan:** I am going to lead.

**Q2 Chairman:** Could I welcome you and your colleagues and say how much we appreciate your coming to give this evidence in public. Could I ask you if you would like, just briefly to introduce your team?

**Mr Duncan:** Yes, certainly. First of all, can I say thank you for hearing us this morning, giving us this opportunity to speak to you, and to apologise for our Chief Commissioner who is out of the country at the moment on Commission business. She sends her apologies and her good wishes as well. Can I just introduce, from my left, Professor Colin Harvey, who is a Commissioner; Ms Ann Hope, who is a Commissioner; and Ms Virginia McVea, who is a senior member of our legal team at the Commission.

**Q3 Chairman:** Thank you very much indeed. You are all very welcome. Before I begin the questioning, is there anything that you would like to say by way of opening statement?

**Mr Duncan:** Yes, I would like to make a short statement of two or three minutes perhaps to set the scene for your discussion and to allow us to go on.

**Q4 Chairman:** Of course.

**Mr Duncan:** Basically, we go back to the Good Friday Agreement, which of course was in April 1998. The Good Friday Agreement laid down the guidelines for the formation of the Commission and defined its mandate for the advice which we were to produce on the Bill of Rights. For those of you who wish to refresh yourselves on that mandate, the mandate is expressed on page eight in our document of advice. The date of formation of the first Commission was 1 March 1999. The Human Rights Commission has the Chief Commissioner and nine part-time Commissioners. The first Commission was under the chairmanship of Professor Brice Dickson, who was Chief Commissioner. In the process of their deliberations on the Bill of Rights the first Commission had widespread consultation with all of the NGOS, including the Human Rights

Consortium, which was founded in 2000, and they also consulted with interest groups. They conducted a series of independent surveys amongst the public culminating in 2004 which showed that 87% of respondents in Northern Ireland supported a proposed Bill of Rights. The first Commission concluded its work on the Bill of Rights in 1995 with the production of a document outlining its conclusions and ideas in the form of a handover document and this document was entitled *Taking Forward a Bill of Rights*. This document was for the new Commission to consider. A largely new Commission was formed on 1 September 2005 with a new Chief Commissioner, Mrs Monica McWilliams. We then had to consider the handover document, but our first decision was to further develop these ideas and integrate the thinking of the new Commission into the logic of it. The Bill of Rights Working Group was formed to advance this aim. Over the course of time we have continued consultation with NGOs, political parties within Northern Ireland, church leaders, human rights spokespersons from major parties at Westminster, Irish Government officials, the Northern Ireland Office and various interest groups. We even had advice from Judge Albie Sachs who co-authored the South African Bill of Rights and who had first-hand knowledge of its outworking. All political parties in Northern Ireland supported the logic of a Bill of Rights for Northern Ireland, albeit with differing views as to what it should contain. The St Andrews Agreement in 2006 reaffirmed the intention of the Government to actively promote the advancement of human rights and committed it to establish a forum to advise the Northern Ireland Human Rights Commission in regard to the content of the Bill of Rights. Meanwhile, we continued to develop further views of the Commission and opinions expressed were noted during various consultation exercises. The Bill of Rights Forum was then created and began its work in December 2006 under the chairmanship of Chris Sidoti to advise the NIHRC about what they thought should be in the Bill of Rights. The Forum consists of 28 nominees from NGOs, civic society, churches, unions, business and the political parties. The Forum completed its advice

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and presented it to the Commission on 31 March 2008. At that stage, therefore, the Commission had completed the development of its own ideas and also had the benefit of the views of the Forum as to the content of the Bill of Rights. The Forum work was the final piece in nine years of consultation. The Bill of Rights Working Group then began to draw all the threads together. A series of tests was devised by the Commission after legal advice and consultation on the application of its mandate in the Good Friday Agreement. This allowed each proposed right to be tested to ascertain if the proposed right met certain defined parameters. This test and the parameters are outlined on pages 177–178 of the Commission's final advice to the Secretary of State. For example, the first test was: "Is the case made that this proposed right arises out of the particular circumstances of Northern Ireland?" There were seven guidelines to this test alone before a conclusion was reached for each proposed right. Advice was sought from lawyers upon the application of the test to each proposed right and the inclusion of it, or otherwise, within the Bill of Rights advice. During this stage discussions were maintained with the Northern Ireland Office, the political parties and interest groups to make them aware of our methodology and, indeed, this methodology was published in June 2008. Discussion after 54 meetings of the Working Group was concluded at the end of November 2008. At almost the final stage, two of the Commission members indicated that they wished to record their dissent from the report. There was, in fact, no minority report presented at the conclusion of the final meeting of the Working Group and both dissenting Commissioners declined the offer to have their views included in the minutes of the meeting when their dissent was first voiced, the minutes which would be available before the handover date for the advice of the Commission. The views of the two dissenting Commissioners are, however, in the public domain. The advice was presented to the Secretary of State on 10 December 2008, a 198 page document. The Northern Ireland Office will shortly produce their consideration of our advice, we think in the spring, and we were told that there will be a 12 week consultation period. We hope then that legislation will follow at an early stage. The Commission continues to engage with political parties and MPs to clarify our advice, including having a hearing in recent weeks at the Joint Committee on Human Rights at Westminster. We have also had a meeting at the Offices of the First and Deputy First Ministers. The Joint Committee on Human Rights at Westminster has made proposals for a Bill of Rights for England and Wales, to which the Government have responded, and we await the Green Paper to be published some time around Easter. In conclusion, gentlemen, we believe that we have produced a document which adheres faithfully to our mandate, honestly reflects the mass of consultation involved, has a sound process and methodology and has a validity based upon the usage of the best available domestic and international legal and professional advice. The people advising us over the period are listed in

Appendix 6 in our advice. We believe that the advice, if enacted, will provide within Northern Ireland a platform to help take us away from our contentious past and help to build a confidence and new-found trust amongst all our people in our form of government and in the various public bodies. We believe that the Bill of Rights as proposed in our advice is for everyone who lives in Northern Ireland, be they old or young, male or female, orange or green, Caucasian or non-Caucasian. If you live in Northern Ireland I would say it is for you and it is for me. Finally, we believe that the Bill of Rights will offer a support and protection to all those in our society who are most vulnerable to abuse of their rights as human beings. There are many around us who are vulnerable because of age, health or circumstances. We note that those bodies and organisations which represent those vulnerable groups of people have soundly endorsed our advice to Government and we note also with satisfaction that there is a fair degree of favourable response to our advice. Gentlemen, that concludes my comments.

**Q5 Chairman:** Well, I am quite relieved because that is the longest three minutes I have ever heard in my life, I must say!

**Mr Duncan:** Yes, but there were things to be said.

**Q6 Chairman:** Yes, and they have now been said, so I am not going to ask your fellow Commissioners to add to that otherwise we will get no questioning done at all. Nobody for a moment could accuse you of not being thorough and diligent in the work that you have done, and nobody could accuse you of not taking infinite pains to try and produce a document that would be acceptable right across the communities within Northern Ireland, but it is equally clear that you have not produced such a document because there are still very real differences of opinion, particularly among what one would loosely call the two major communities. How are you going to go about addressing these cross-community differences? On the one hand, if I can be very general in this, you have got a unionist community that is entirely in favour of having a Bill of Rights but wishes it to be fairly tightly and clearly drawn, and you have another community that would like it to be much more all-embracing. How can you reconcile these two, some people would say, diametrically opposed views to a Bill of Rights?

**Mr Duncan:** If I could speak in advance of my colleagues and maybe some of them would like to come in on that as well. Basically, we would say that there are as many opinions as to what should be in the Bill of Rights almost as there are stars in the sky and there will never be a situation where you will produce a Bill of Rights which will suit everyone. We, on the Human Rights Commission, adopted an apolitical stance and took an honest and sound judgment from what we as individuals, not representing any political party as such, felt should be in a Bill of Rights. We are prepared to stand by that and allow our advice to go into the political debate and consultation which follows. Of course,

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we were aware at all stages that we would never please every political party, I do not think there is anything that has ever been written in Ireland that pleases every political party, but nevertheless there are factors within our document which we feel are sound and we believe we did what it said on the tin and fulfilled our mandate to the best of our ability. All we can say is that we have put on the table the best of our thinking and it is then for others to judge and the Northern Ireland Office will produce their own deliberation and then this will go out to consultation.

**Q7 Chairman:** Since you delivered your own advice to the Secretary of State, the consultative group, the Eames-Bradley Group, has delivered its report. Your recommendations on what you call “effective investigation of all violations of the right to life relating to the conflict in Northern Ireland”, how do these in your estimation accord with the recommendations of the consultative group?

**Mr Duncan:** I am going to ask Virginia to comment on our view on the Eames-Bradley Report and the background to it.

**Ms McVea:** If you will suffer me giving an explanation, it will not take long. Since the time of its inception the Commission has advised Government that the past needed to be dealt with in Northern Ireland and when we came diligently to consider our mandate, international standards and the Convention, we realised that the right to life had indeed been articulated, a great deal had been ventilated in relation to investigative standards and partial independent, effective investigation brought promptly. What the Commission identified as supplementary was that any mechanism that was going to come into effect in Northern Ireland had to be human rights compliant itself. Arguably the McKerr decision in the House of Lords had ramifications for Northern Ireland that were unparalleled anywhere else in relation to the number of unsolved killings that remained on the police books here, so to speak. We would argue that those have yet to have the investigation function fully applied to them. In relation to Eames-Bradley, therefore, whilst the Commission is currently preparing a response, that was the advice we gave, that we regarded Government’s creation of the consultative panel as an acknowledgment of what we had long called for and we made submissions to that group.

**Q8 Chairman:** Do you support their central recommendation on a Legacy Commission?

**Ms McVea:** The Commission as a body has not made a statement on that, so it would be improper for me to put it on the record. We do support the identification of a need for a mechanism. We have articulated in venues, such as the Council of Europe through the Committee of Ministers, that the package of measures the Government has put in place is not satisfying the requirements of the right to life and, therefore, something additional is required.

**Q9 Chairman:** But you have not come to any conclusion on the specific recommendation of a Legacy Commission?

**Ms McVea:** No.

**Q10 Chairman:** When will you come to such a conclusion?

**Mr Duncan:** That is on the agenda for our next monthly meeting.

**Q11 Chairman:** When will that be?

**Mr Duncan:** Sometime in mid-March. I cannot remember the exact date.

**Q12 Chairman:** It is the middle of March now.

**Mr Duncan:** Sorry, the middle of April.

**Q13 Stephen Pound:** I do not want to give too much weight to the dissenting voices amongst your Commissioners that was referred to, but Lady Daphne Trimble has identified an issue that is of considerable concern to many of us and it can broadly be described as the question of whether you are moving away from the universality of human rights to the localism of human rights. There is an issue as to whether you are actually constructing a template for the future or a tool to address the issues of the past. For many of us there does seem to be a certain dichotomy in here where human rights stop and start between Larne and Stranraer and you have additional ones at one end of the ferry and not at the other, to put it crudely. I understand the difficulty of disaggregating issues in the north of Ireland but I would be very grateful if you could explain on the record why you feel you need a different Bill of Rights in this part of the United Kingdom.

**Mr Duncan:** The reason we feel that we need a different Bill of Rights, first of all, is because it was in our mandate and the Good Friday Agreement said that there should be a Bill of Rights for Northern Ireland which would recognise the peculiar circumstances of Northern Ireland. We have consulted in Westminster, not just with the Government as such but shadow members of the Cabinet as well, to hear their views on whether a separate Bill of Rights for Northern Ireland should be—

**Q14 Stephen Pound:** I think they are probably members of the Shadow Cabinet rather than shadow members. Many of my Cabinet colleagues are shadowy, but they are not usually described as such!

**Mr Duncan:** Whatever you want to call them. Basically, the view that kept coming back to us was that a separate Bill of Rights for Northern Ireland was entirely appropriate. What we have done is fulfilled our mandate as best we can and produced a Bill of Rights which is all-embracing for Northern Ireland and we will see what happens when the UK get their act together on the Bill of Rights and responsibilities.

**Q15 Stephen Pound:** I appreciate that point, Sir, and we have been talking about this for about 36 years which was when there were some of the first

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references. Do you see a direct read across with a Bill of Rights in England and Wales to the Bill of Rights in the north or do you think it will be a permanently different one? Surely the logic of that is we are moving away from universal human rights, which I profoundly would hope is something that we would all accept as a universal right.

**Mr Duncan:** There is nothing that is set in stone and there is even talk of where the Human Rights Act will go in the future and so on. We feel we have produced an advice based on our thinking at this point in time.

**Q16 Chairman:** Do you face up to the logic that if what you are recommending comes to pass there will actually be a different interpretation, to take Mr Pound's words, in Stranraer from Larne, and a different one again in Dundalk? Do you accept the logic of that?

**Mr Duncan:** Dundalk has a Charter of Rights.

**Q17 Chairman:** I am well aware where Dundalk is. The point that I am making is do you accept the fact that the logic of your argument would create a situation where there was a different interpretation of rights in those three places, two of which are within the jurisdiction of Her Majesty's Government of the United Kingdom and the other is within the jurisdiction of the Government of the Republic? I am not saying that this is good or bad, I am merely saying do you accept that is the logic of your argument?

**Ms McVea:** The Commission took the view if that ended up being the result that that was in keeping with the Constitutional Settlement and devolution itself. As far back as the 1970s with the Standing Advisory Commission on Human Rights there was a recognition of what they referred to as the "special needs" of the people of Northern Ireland. Throughout its work, considering its mandate, the Commission has been mindful, as I think all are, of the special needs of the people of Northern Ireland. What we were also aware of as we went through the Convention, supplementarity and international standards, was that everyone could potentially benefit, and we make no apologies for the fact that if in other parts of the UK people want to benefit from some of these rights, in our opinion that could only be good thing. That is something to be decided by Government. We have complied with our mandate.

**Q18 Stephen Pound:** Surely, again, the logic of that is you are recasting the Universal Declaration of Human Rights. If you are saying there are additional human rights here which you have drawn attention to, surely the rest of the world should be enjoying those.

**Ms McVea:** I do not think we would be dissuaded by that. That is the difficulty with human rights, there are international standards out there and we are seeking to improve what is available in individual states.

**Q19 Chairman:** What do you say to the argument of those who would say that basic human rights can and should be clearly and simply defined and should be universally applicable and the sort of argument you are advocating is more like a codification of good behaviour?

**Professor Harvey:** Again, could I just reaffirm the basis for this was in our mandate in the Belfast Good Friday Agreement and we were working to that. I would also point out that we launched this document on 10 December 2008, which was the 60th anniversary of the Universal Declaration of Human Rights, underpinning our commitment to that. You will find in the document consistent references in many parts of it to "everyone", again emphasising the universality of the rights in it. An important part of our mandate was about supplementing the European Convention on Human Rights and international human rights law and international standards are not all contained within the European Convention on Human Rights. The Convention contains some significant civil and political rights, and has gone slightly beyond that in some respects through judicial interpretation, but the sum of international human rights law is not just contained in the European Convention on Human Rights and as part of our process we clearly identified areas within our mandate where the Convention could be supplemented to, in a sense, achieve the sort of universality of protection that you are talking about.

**Q20 Chairman:** Does that not devalue the very concept by being so diffuse?

**Professor Harvey:** It is important to point out that the Universal Declaration of Human Rights recognised civil, political, economic, social and cultural rights and, in a sense, our document is in tune with that very aspiration, that all the generations of rights should be brought together in one document, a Bill of Rights for Northern Ireland.

**Q21 Mr Murphy:** Surely, therefore, it would be easy to draft a UK-wide Bill that would cover everything that was required in Northern Ireland and the benefits would then be spread throughout the UK?

**Professor Harvey:** Could I respond to that? I think the Government and others made it quite clear that there is no necessary contradiction or tension between a UK-wide approach and a particular approach in Northern Ireland which draws very much on our particular circumstances. I think that has been fairly widely recognised. While we are the Northern Ireland Human Rights Commission and our mandate relates to Northern Ireland, and we have argued for the rights we have proposed, we feel that our debate is very much in tune with the UK-wide debate that is happening across the political parties in the UK around a Bill of Rights. The Joint Committee on Human Rights at Westminster in August of last year proposed a document which contained details on a Bill of Rights for the UK. While very focused on Northern Ireland for very obvious reasons, we have a mandate and have tried to stick to that mandate in providing advice for

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Northern Ireland, but we feel that many of the things we are discussing are very much in tune with debates that are happening across the UK.

**Q22 Mr Grogan:** Mr Duncan, you said in your introduction that you had quite hard and specific tests as to what rights to include and there had to be some element of Northern Ireland specificity. I can see looking down the list of rights you have proposed—freedom from violence, exploitation, harassment, right to identity, language rights—you could argue that, but is it more difficult to argue that there are distinctive rights that need to be enshrined in that when it comes down to environmental rights and economic and social rights?

**Ms Hope:** It is officially acknowledged that grievances amongst large sections of the population in Northern Ireland in relation to discrimination, exclusion, poverty, particularly in the areas of employment and housing, were prime factors in the conflict in Northern Ireland. That relationship between social and economic grievances and the conflict was recognised by the Government at the outbreak of the conflict and Lord Cameron made specific reference to them in his Commission Report. If we were to look at the particular circumstances in Northern Ireland, remembering that this Bill of Rights is a Bill of Rights addressing issues in a society that is coming out of conflict, then, as far as we were concerned, social and economic rights had to be part of that. In fact, it is one of the confidence building measures that would be contained in the Bill, not least to say the abuses that took place around those particular rights would not happen again, so they should be very much in a Bill of Rights. Additionally, if you look at what your own Joint Committee on Human Rights has said at Westminster, they have also included social and economic rights in what they would like to see in a Bill of Rights for the UK. In fact, I think we are now in tune with what international standards and international thinking are about. Civil and political rights, if you like, were the rights that were normally included in Bills of Rights, but more and more current Bills of Rights are including the social and economic rights as well.

**Q23 Mr Grogan:** And environmental rights?

**Ms Hope:** And environmental rights. I take it you have had a look at the website and we would need to include those as well. For us, the Bill of Rights is not just about addressing the legacy of the past in Northern Ireland, it should be a forward looking document and one of the main considerations, now we have had civil and political rights, we have gone on to the next generation of rights, social and economic, and there is another generation of rights, which is environmental rights, and we need to address those as well.

**Q24 David Simpson:** Many people I speak to in the business world and different organisations, their opinions would be that human rights legislation and equality legislation is coming out of our ears in Northern Ireland and their belief would be there is

hardly any other part of the United Kingdom as rigidly governed in relation to this legislation because of the background of Northern Ireland between the two communities. I see that it has taken some eight years to produce this and maybe you could give us some explanation of that. On the point that the Chairman raised earlier on in relation to agreement on this, when it comes to publication of your report and your document that will go forward to the parties, if there is discussion, whether it be in this House or wherever, and there is no agreement, is it dead?

**Mr Duncan:** Basically, and I think maybe everyone should comment on this, as far as we are concerned, we set out to fulfil our mandate and produce an advice on the Bill of Rights and it now goes into the political domain, if you like.

**Q25 Chairman:** That is fine, you have done your duty and nobody for a minute could impugn your credentials on that front, but Mr Simpson asks a simple question: if there is not political consensus effectively in Stormont among the political parties following devolution, is this dead or will it carry on?

**Mr Duncan:** You are asking us a question which we do not know the answer to because the governing body, if you like, that controls all this is the Westminster Government through the Northern Ireland Office and they will undoubtedly listen to what the debate in this building will produce and if the debate in this building comes out that there is no consensus for what should be in the Bill of Rights then it goes back to the Northern Ireland Office and through that to the Government to decide on where they go. You are asking us a question that we have no control over.

**Q26 Chairman:** Thank you for putting that on the record.

**Professor Harvey:** What the process has demonstrated, and it has been a lengthy process launched in 2000, is that there is a diversity of opinion on what should be in a Bill of Rights. In one sense that is a healthy sign because in such a significantly constitutional document it would be worrying if there was not a diversity of opinion on what should be in it. I think what the Commission has taken great heart from as part of this process has been that the political parties and across all communities have taken the view that there should be a Bill of Rights, which is a positive thing to note, but there is a diversity of view in relation to what its content is. As Tom has underlined, we were charged with providing advice and we look forward to the extensive debate to come in which we will be defending our proposals which we feel are credible and authoritative which provide a persuasive way forward. We will be arguing and debating and trying to persuade those who remain sceptical. We fully acknowledge that the process has made clear that there is a diversity of opinion on content but agreement that there should be a Bill of Rights.

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**Q27 Mr Hepburn:** Just two questions. You said that the Working Group consulted widely on the document that you produced and you mentioned consulting with political parties, NGOs and other groups. I would be interested to find out if you consulted with trade unions that represent workers and working people in both communities, such as Unison, the health workers and local government workers' union and the teachers' union. Were these organisations consulted and what sort of response did they bring back?

**Mr Duncan:** The unions had a voice in the Forum, which was providing advice. Over the years we have consulted with anybody who has really wanted to talk to us or meet with us and they have been proactive in this by inviting people to talk to us. Over the years there has been consultation, not necessarily at Commission level but maybe at Chief Commissioner level with the various trade unions involved in Northern Ireland.

**Q28 Mr Hepburn:** They have been positive towards the work that you have been doing?

**Mr Duncan:** Yes, I think the general view is that they are positive.

**Ms Hope:** In my previous existence I worked for the Irish Congress of Trade Unions and one of my responsibilities was the Bill of Rights. The Commission has not gone out to consultation on this particular document because we think the amount of consultation that has already taken place has been enough and we have heard all these voices. I was one of the people who organised the consultations throughout the trade union movement in Northern Ireland on the previous documents and while we responded to everything that was in both documents we particularly responded to the social and economic rights chapters. That was and still is a positive response. In fact, when this document was produced the Northern Ireland Committee of the Irish Congress of Trade Unions wrote to the press commending the Commission on the document, particularly on the social and economic rights in it. Yes, they have been consulted.

**Q29 Mr Hepburn:** My second question is on the list of rights you have identified. I notice that you have got rights for sick children, social rights, including rights to health, standard of living, social security, accommodation, they are very wide-ranging dealing from work to health rights, but what I cannot understand is even though you mention children you do not mention education. Has education been put down as a right? I do not want to get into the domestics of the Northern Ireland education system because it is—

**Chairman:** Better steer clear of that, I think.

**Mr Hepburn:** —for the devolved Assembly to sort out itself. It does come to mind that Northern Ireland, whereas it has some of the best education systems in the world, also has some of the worst in the UK, so why was education not mentioned?

**Mr Duncan:** We have education mentioned.

**Ms Hope:** It is page 38 of our advice.

**Mr Hepburn:** It is not mentioned in my briefing document.

**Ms Hope:** Also, pages 91–93 explain more fully why we have those particular rights in.

**Chairman:** Covered at some length, yes.

**Q30 Dr McDonnell:** I have two questions and one may be simpler than the other. The first one is your recommendations appear to suggest that on women's rights in terms of equal participation of women in political and public life there was the principle of positive discrimination and there was some dissent from that by one of your Commissioners? Is that a true assessment? Are you suggesting that there should be positive discrimination where there are deficits?

**Stephen Pound:** We would be grateful if you did not draw attention to the fact that the Committee consists of seven men as present here today!

**Chairman:** I was just going to correct you. The Committee has four women.

**Ms Hope:** Colin wants to speak on the equality provision. The Good Friday Agreement itself, the Belfast Agreement, did include a statement saying that the participation of women in public life was one of the things that needed to be addressed given that under-representation. We have not, I understand, in our advice recommended quotas, et cetera, but we have recommended actions that would address that. What those actions are are up to the legislators of the parties themselves. We do have a strong equality clause. Colin, do you want to speak on that?

**Professor Harvey:** Drawing on our mandate, the mandate asked for us to draw on international instruments and experience. What international human rights law makes clear in the equality context is that there will be a need for positive action in certain contexts and that is an example of it.

**Chairman:** I think I must just put on the record, in case there is any misunderstanding, that there are four ladies on this Committee, it just so happens that they are not here at the moment, three of them for reasons of indisposition sadly. We do have four ladies on this Committee. Your second question, Dr McDonnell.

**Q31 Dr McDonnell:** Thank you, Chairman. One of the other questions that I worry about is while legislation would be vested at the moment in the Secretary of State, as we travel down the road there will be some devolution locally here. How do you see us retaining a balance? How do you see us balancing the House of Commons element of management, the Secretary of State's responsibility, with some of the responsibility that would devolve to our Local Assembly? My question really is how can we ensure that would be functional if we are coming from two different angles?

**Mr Duncan:** Basically the Bill of Rights is a reserve matter and is initially the responsibility of the Westminster Government. In terms of devolution, we have suggested within our advice that there is a

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mechanism by which it is not set in stone forever and the Bill of Rights in the future could be changed by a cross-community vote in this House here and that would be directed towards Westminster that we would change what the Bill of Rights so said. Additionally, within the actual outworking of a Bill of Rights within Northern Ireland there is a very clear suggestion as to what the role of the Northern Ireland parties and the Northern Ireland Assembly would be in that we are proposing that there would be a similar, as exists in Westminster, committee on human rights which would look at future legislation and see if it is human rights-proof, to raise human rights issues and carry forward the logic and extension of the Bill of Rights. There are lots of other factors which are in favour of the outworking of the Bill of Rights here and within the Assembly we have a programme of government and targets which are set and within the areas of rights which are progressively realised that provides a sound methodology to assess whether the rights so stated are being addressed and realised. There is a very clear pathway for the devolved administration here.

**Q32 Chairman:** Mr Duncan, can I just ask you a question about co-operation across the border. We are conducting an inquiry into cross-border co-operation and in the context of that inquiry we have had informal discussions with the Commissioner for Human Rights in Dublin. What sort of contact have you had and how practical would it be to have a code that applied both sides of the border, bearing in mind we have had very clear evidence from both sides that in such issues as child protection absolute compatibility is thoroughly desirable and there are people working on both sides of the border on the issue of sex offenders and so on to try and make that so? Could you say a word about your work in that context?

**Mr Duncan:** Basically, the Northern Ireland Human Rights Commission meets on a bimonthly basis with the Human Rights Commission in Dublin. We raise all sorts of issues. We talk about some of the things that you have talked about. We have expressed concerns about child protection on both sides of the border where there is a very clear difference of control and understanding as to how it should apply. We talk about that and issues which cross the border and recognise no border, such as trafficking, racism and so on. We are beginning to talk about a charter of rights for the island of Ireland which, again, is part of the Good Friday Agreement. We have these meetings where we alternate between Belfast and Dublin, we have them regularly and discussions are ongoing about some of the things you have mentioned. The charter for the island of Ireland is part of our mandate as well and that will begin to gather a head of steam in due course.

**Q33 Chairman:** Thank you. This Committee will have to decide whether it wishes to receive oral evidence from the two dissenting Commissioners, and that is a decision we have to make in due course

and, of course, we will give them every opportunity to put in written submissions. Lady Trimble in particular has raised a number of what, on the face of it, seem to be very real criticisms of your report and the way you have operated. What would your answer be to this Committee?

**Mr Duncan:** In regard to whether they should be giving evidence?

**Chairman:** No, that is for our Committee to decide. How do you respond to the substance of Lady Trimble's criticisms which perhaps can be summed up by saying you are going far beyond the remit that you were given and to which you should have been working?

**Mr Duncan:** We said a moment ago there are as many different opinions as there are stars in the sky and Lady Trimble is one of those stars and she has her own opinions. On the Commission, we take the view that we do not agree with them and take the view that some of them are factually incorrect and, therefore, we stand by what we say and are prepared to defend what we say against what Lady Trimble has said.

**Q34 Mr Murphy:** Could I ask whether the Commission would agree to a UK-wide Bill of Rights provided it covered the points that are very specific to Northern Ireland?

**Mr Duncan:** The problem is that nobody in the UK seems to know where they are going at the minute. When we were talking to the Joint Committee a few weeks ago the message came back to us that we were light years ahead of them in our consultation and thinking. We even get the vibes that the Green Paper will not be very definitive but will be very general. A UK Bill of Rights sometime in the future when that comes about can take into account the status quo that exists in Northern Ireland.

**Q35 Mr Murphy:** You have no objection to that in principle?

**Mr Duncan:** I would say not, but we are fulfilling our mandate which is for a separate Bill of Rights for Northern Ireland. There is nothing cast in stone.

**Q36 Chairman:** Thank you very much indeed. Could I come back to the document that is occupying our attention a lot at the moment, which is the consultative group's report. We are going to give our own report on that to Parliament in the course of the next two or three months. For reasons that I completely understand, and my colleagues would also understand, you have refused to answer on the question of the Legacy Commission, but what about their very emphatic view on future public inquiries?

**Mr Duncan:** As I say, we are not going to be drawn into pre-empting what our deliberations will be next month. I do not know whether you remember us sitting behind Lord Eames when he was giving his evidence to you at the last meeting. We listened to

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that and listened to the content and tone of the meeting and we think we will reflect on all aspects of the report and issue a statement in April.

**Q37 Chairman:** We would be very grateful, bearing in mind our own inquiries, for an early indication of your views because we would hope to be able to take those into account in formulating our own response.

**Mr Duncan:** That is reasonable.

**Ms McVea:** Our understanding is the inquiries that are currently running will have concluded by the time that any Legacy Commission would have been set up so, in effect, for those inquiries that is irrelevant. There is one outstanding inquiry in terms of Judge Cory's work and that is the Finucane Inquiry.

**Q38 Chairman:** Indeed.

**Ms McVea:** There is an offer on the table that the Legacy Commission would absorb that. That is a matter for response by the Finucane family. The human rights compliant mechanism that the Commission has continued to argue for, no matter what the package of measures are, the Government has had inquests and HET and inquiries and every one has been deemed by the Government to satisfy Article 2. We have said that has not satisfied Article 2 and also the inquiries themselves as previously run were raising concerns about Article 2. The things that we have already articulated would continue to apply. The Human Rights standard is our benchmark for Article 2 and how that is achieved.

**Professor Harvey:** Talking about our Bill of Rights advice, we do make a recommendation on the right to life. We do talk about violations of the right to life relating to the conflict in Northern Ireland being effectively investigated, but we do say in the Bill of Rights advice that any mechanisms established must be fully in compliance with international human rights law. Obviously we will be issuing a further response in April, but in the Bill of Rights advice we do speak to the right to life.

**Q39 Chairman:** Thank you. We are going to be taking evidence very shortly from the Human Rights Consortium. Would you like to give us your comments on the Consortium, how it is operated and what your relationships with the Consortium are?

**Stephen Pound:** Do not hold back in any way! Be full and frank!

**Chairman:** Just between ourselves?

**Mr Duncan:** I see smiles over my left shoulder here. We have always had a good relationship with the Human Rights Consortium.

**Q40 Stephen Pound:** Do you have a formal relationship?

**Mrs Hope:** We meet with them on a regular basis.

**Mr Duncan:** It is not at full Commission level, it would normally be a Commissioner, Chief Commissioner and maybe one or two others.

**Q41 Stephen Pound:** Is that good practice or is that enshrined in any sort of constitutional requirement?

**Mr Duncan:** It is just good practice and it is a furtherance of our logic of consultation because the only way to keep good relations with everybody in Northern Ireland is to keep talking to them.

**Stephen Pound:** Yes, to talk to them.

**Mr Duncan:** We are heartened by the fact that the Northern Ireland Human Rights Consortium is behind us.

**Stephen Pound:** Indeed they are!

**Chairman:** Literally, yes!

**Mr Duncan:** Behind us emotionally too on what we have said in the Bill of Rights. There might be one or two little nuances where they feel they would like to have had in more than they would have liked to have out, but that is a healthy debate. We have good friends on the Consortium and I think they are still friends with us after our advice.

**Q42 Chairman:** In Northern Ireland, as we have been told so often, where everybody knows everybody else that is quite important.

**Mr Duncan:** Yes.

**Chairman:** Do any colleagues have any other questions for our current witnesses? No. In which case, I would like to thank you, Mr Duncan, Ms Hope, Professor Harvey and Ms McVea for coming and giving us your views. Obviously we will be taking these into account on three reports that we are working on. One is, of course, the cross-border co-operation, another is going to be on this issue of the Bill and whether there should be one and what it should contain, and we are also going to be seeing later today the Omagh Victims' Support Group and some of the things you have said this morning are relevant in that context. Thank you very much indeed, we much appreciate your presence.

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*Witnesses:* Ms Fiona McCausland, Chairperson, Mr Patrick Corrigan, NI Amnesty International, Ms Sara Boyce, Children's Law Centre and Save the Children of Northern Ireland and Ms Pam Tilson, Signature, Human Rights Consortium, gave evidence.

**Q43 Chairman:** Welcome. I gather, Fiona McCausland, you are the Chairman leading the group, is that right? We did not know you were coming, but you are most welcome and we are delighted you are here to give evidence. Maybe you would like to introduce your colleagues.

**Ms McCausland:** We have Patrick Corrigan at the end from Amnesty International, Sara Boyce from the Children's Law Centre Northern Ireland and Save the Children, and Pam Tilson, who is working with the deaf community. I would ask Pam to start off and give a brief background on the Consortium.

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**Chairman:** Before that, and obviously we are delighted she should do that, could I say that I have had the pleasure of meeting some of you on behalf of the Committee before and this is a relatively short session so I know you will bear that in mind because we do have to conclude this just before one o'clock. If you could bear that in mind in your brief introductory comments that would be helpful.

**Stephen Pound:** Chairman, for the record can I state I am a member of Amnesty International but that will not in any way affect the statements I make. For the record, I think it is important to state that I am and have been a member for many years.

**Chairman:** Perhaps I should say that I am a subscriber to them.

**Stephen Pound:** If anyone else would like to join!

**Q44 Chairman:** Would you like to start?

**Ms Tilson:** Thank you very much, Chairman, for the opportunity to address the Committee today. As Fiona has outlined, we are here representing a range of organisations which are members of the Consortium, but we are here representing the Consortium rather than our individual organisations. The Human Rights Consortium was established in 2000 to encourage widespread community participation in the consultation process on the proposed Bill of Rights for Northern Ireland. Its membership has grown to over 130 NGOs, trade unions, community and voluntary groups and represents a huge number of people from a diverse range of constituencies and communities across Northern Ireland. Some of the organisations are region-wide sectoral organisations, such as Disability Action, Save the Children, Age Concern and Mencap. Others are geographically-based community organisations, such as the Old Warren Partnership or the Federation of Community Groups in Newry or the Upper Springfield Development Trust. We have a wide range of membership from church-based and trade union organisations. The unifying factor in the Human Rights Consortium is a firmly-held belief that a strong and inclusive Bill of Rights can play a fundamental role in the creation of a better, more just, inclusive and shared Northern Ireland. The Consortium has helped put the Bill of Rights on the agenda of local churches, trade unions and civic society more generally and promoted dialogue with local political parties. Our aim has been to mobilise widespread popular and political support behind a strong and inclusive Bill of Rights for Northern Ireland. Members, both as individuals and as a Consortium, have responded to the various consultations from the Human Rights Commission over the years. The development of the Consortium has really been in two phases: from 2000–07 and from 2007 onwards. In 2007, the Consortium was able to attract funding from Atlantic Philanthropies to employ staff and fund activity. A board was established elected from amongst the Consortium members to manage both the staff and the budget. The Consortium from the outset has never taken a

strong view on the context of a Bill of Rights, instead focusing on building widespread community support for the broad concept. The unifying factor in the Human Rights Consortium is a firmly-held belief that a strong and inclusive Bill of Rights can play a fundamental role in the creation of a better, more just, inclusive and shared Northern Ireland. Our work in 2005–06 focused on working to get the Round Table Forum established with representatives from political and civic society together to see where consensus might be reached on the scope for, and content of, a Bill of Rights. On 10 December last year, when the Commission, having looked at that report, handed over its advice to the Secretary of State that was another step on the road. As a Consortium we now want to see the Government making the consultation on their response to the Commission's advice meaningful and accessible. It must generate debate amongst the public and it must be more than PDF on a website. Public engagement with the process must be facilitated. We ask for your help in ensuring that this happens. We ask for your support in delivering a strong and inclusive Bill of Rights for Northern Ireland, and for your support in ensuring that it happens in the lifetime of this Parliament.

**Chairman:** Well, congratulations on your speed reading!

**Ms Tilson:** Patrick would like to say something.

**Q45 Chairman:** Yes, but we do have some questions so could I ask you to be very brief.

**Mr Corrigan:** I will be very brief and excise my comments. I will simply abbreviate them to this. One of the lessons which we draw from the public response to the very tragic events of last week is that just about everybody in this society wants to move forward, people do not want to go backward. We feel that a strong Northern Ireland Bill of Rights can be a cornerstone in the future of that notion of an equal society, a shared society, one based on peace and justice. It is important that such a Bill of Rights addresses the legacy of our past, as I think the recommendations from the Commission point us towards, that they deal with some of those narrower issues to do with the community divisions and the issues of particular rights conflicts that we have experienced here, but that it also offers a shared vision for what our future can be together addressing some of the issues that are common to all communities, whether green, orange or other, and address those everyday needs, the socioeconomic needs of people in this society as well. We do not wish to see a Bill of Rights that usurps the place of politicians, we value the devolved arrangements which we have here and we want to cherish that role, but we see a Bill of Rights as a normal part of the checks and balances of constitutional government and we think Northern Ireland should join that international mainstream in terms of having a Bill of Rights here, not just to address our past but also to help forge the future that I think we all want to see in this part of the world.

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**Q46 Chairman:** Thank you. You heard the evidence given by the Commission who told us of their very good and cordial relations with you, and I am sure you feel the same, do you?

**Ms McCausland:** Yes.

**Stephen Pound:** It would be interesting if you said no!

**Q47 Chairman:** It would be very interesting. How far does the advice provided by the Commission meet your expectations? What, if any, specific rights that you would like included are missed out from their advice?

**Mr Corrigan:** If I can open very briefly and say that the Consortium, representing 130 different community groups, NGOs, trade unions, a very wide membership representing several hundred thousand people, within our diversity does not take a single view on inclusion of particular rights or how that content should be drawn. Broadly speaking, the Consortium as a forum for civic society, welcomes the advice of the Commission and thinks that it is reflective of the long consultation process that they engaged in both in their present form and in their previous constitution. We think that the methodology that they laid out, which we understand all Commissioners endorsed and there was no dissent from that methodology from political parties, and certainly not civic society, was well thought through and well applied. We welcome the proposals. We do think the proposals deal with the narrow circumstances in Northern Ireland but also the wider particular circumstances of this place and we would now like to see the Northern Ireland Affairs Committee giving consideration to that and in due course the Government without any undue delay going to the people with a public consultation. We know from our membership, which as I say is broad and cross-community in nature, and also from an independent polling that the Human Rights Commission and Consortium commissioned, that there is broad cross-community public support for a Bill of Rights and a strong and broad Bill of Rights, and we now wish to see that brought to the fore through public consultation.

**Q48 Chairman:** Can anybody add to that?

**Ms Boyce:** First of all, I would like to reinforce what Patrick said. Obviously we do not take a position on content but we were very supportive of the approach the Commission took and we feel that the advice in terms of how it has been laid out it is very clear to see how they have addressed the mandate that was given to them, the way they have broken it down and the methodology that is set out for everybody to see. I think there can be no question but that they have addressed each section of the mandate that was given to them, so that is very helpful. We are campaigning for a strong and inclusive Bill of Rights. What we mean by a strong Bill of rights is one of the elements of that would have to be social and economic rights protections because our bottom line is that the Bill of Rights must protect the most vulnerable in society, the people whose social and economic rights are most neglected, denied or

restricted. We are very supportive, therefore, of the inclusion of provisions on social and economic rights in the Commission's advice.

**Ms McCausland:** I would like to talk to the support that there is in the communities as our Consortium is very broad-based and very equally divided between unionist and nationalist communities. The polls that Patrick referred to received a result of approximately 75% support for a Bill of Rights in both the protestant and catholic communities. That would also be reflective of our particular experience.

**Q49 Chairman:** What was the question asked when you got that amazingly high response? How many people did you poll?

**Ms McCausland:** "Do you support a Bill of Rights for Northern Ireland?"

**Mr Corrigan:** I think, drawing from our own and the Commission's polling, there were straightforward questions such as, "Do you support a strong Bill of Rights for Northern Ireland", but there were also deeper questions around socioeconomic rights and named particular rights and dug a little deeper into people's views. We would be happy to forward to the Committee the more detailed findings of those polls.

**Q50 Chairman:** How many people were polled?

**Mr Corrigan:** I think just over 1,000, so standard operating procedure for independent polling.

**Q51 Chairman:** A thousand from each community or a thousand across?

**Ms Boyce:** Across the community.

**Mr Corrigan:** Across the community. That was commissioned from an independent polling organisation at a level of representation that they recommended, so we know it is a standard poll.

**Q52 Chairman:** You made a very important statement when you said it was 75% from the unionist community and 75% from the nationalist community. How can you be so sure if it was a cross-community poll? Did you have 500 of each? I am not casting aspersions on what you are saying, but if we are to take this seriously into account we want to know the statistical validity on which it is based.

**Mr Corrigan:** The polling was demographically representative, including along the green/orange community lines. Yes, the scrutiny of the survey holds up when one tries to dig a little deeper and find out did these views hold equal weight on both sides of the community and the answer is they did. Given that a Bill of Rights and human rights generally at a political level seem to be contentious, at a people's level, a community level, the polling would suggest they do not see it in that way and there is cross-community support out there even if at the moment there is not cross-party consensus of what the content should be.

**Ms McCausland:** I work for an organisation as a youth worker at the Old Warren Partnership in Lisburn, which is just outside Belfast, and it is a working class protestant community. We have been working on supporting a Bill of Rights for Northern Ireland and working using human rights as a

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framework for our work since 1998. There is huge and historic support amongst the unionist communities as well as nationalist communities for human rights. We have used rights to change the area that we live in from being what was called the second least popular estate in Northern Ireland by the Housing Executive, the place that no-one wanted to live, to being one of the most popular in that city, and using rights to unify our community and being able to work with communities, nationalist, catholic, republican communities, such as the New Lodge, where we work together using rights as a tool to improve the housing stock and using rights as a tool working with Poleglass, another nationalist community, to bring SureStart into our area. We would not have had that fantastic scheme in the protestant Old Warren if it had not been using a rights-based approach and we could not work with Poleglass. I was brought up as British but I recognise other people in my country do not see themselves as that. We have used rights as a framework to be able to unify and work for the betterment of both communities across the divide. A Bill of Rights is important to us. While there are rights, the European Convention of Human Rights, this is special for our country because here we have a country where I have been brought up to be British, and that was just the way it was, and my neighbour across the street was brought up to think they belonged to another country, but using rights we can work together to form a new contract with the government of our country, which is Northern Ireland. That is why it is so important to people, particularly in working class communities, but that benefits the whole community right across unionist and nationalist and that is why it is so important.

**Q53 Chairman:** That is a very powerful argument for a specific Northern Ireland Bill of Rights and one that certainly we take most seriously, but what do you say to the dissenting voice of Lady Trimble and her colleague who thought that what was produced by the Commission went way beyond that and was not sufficiently specific to Northern Ireland? Lady Trimble was not arguing there should not be a Bill of Rights in Northern Ireland, she took issue because she felt that this went too wide and went beyond the specific and particular circumstances of Northern Ireland. I am not expressing a view, merely seeking to articulate hers for the benefit of your comment. What would you say to that?

**Ms Boyce:** Can I start off in answering. I have had an opportunity to read Daphne Trimble's note of dissent and if we are looking at the core problems or difficulties that she put forward in that she had with the final advice from the Commission, one of the big difficulties she saw was around the failure of the Commission to address in the mandate the mutual respect for identity and the parity of esteem issue as she saw it. When you go back and look at the way the Commission did approach this task and look in detail at the methodology, I do not think that criticism can be sustained because the Commission said all of these rights taken together, all of the provisions together in the Bill of Rights address that

mandate in terms of mutual respect and parity of esteem. That was one of the issues. For us, the other issue that was raised was around social and economic rights. It is a matter of interpretation in terms of to what extent social and economic rights come within that mandate. The Consortium would very clearly see that social and economic rights must be addressed by the Bill of Rights given the mandate that came from the Agreement.

**Q54 Chairman:** Does Sara Boyce speak for you in that view of what I call the Trimble note of dissent?  
**Ms McCausland:** Absolutely. We would see social and economic rights as particular circumstances of Northern Ireland, not necessarily that there is not deprivation in parts of Glasgow, Birmingham or Manchester but it is the way that deprivation has been played out. We are a specific area where we have two people recognising themselves as different nationalities and it is important that equality issues can be addressed in this special contract which we have worked together across communities to draw up, to be our special contract with government for our particular circumstances in Northern Ireland.

**Q55 Stephen Pound:** In some ways you represent the delivery element of the equation in terms of the evidence we have had from the Commissioners. Your people are very often the practitioners who deliver it. We keep coming back to this issue of local versus universal. One of the points you make, in my opinion quite rightly, is in reference to Traveller children. You talk about high infant mortality rates in Traveller children. From the point of view of the people who actually deliver, what human right would make a difference that does not currently exist for Traveller children without you impinging on their rights to have very large families and to keep mobile?

**Ms Boyce:** I suppose in relation to children and young people, Traveller children included, it is an area that the Children's Law Centre and Save the Children have been particularly focused on around the potential of a Bill of Rights to provide additional protections.

**Q56 Stephen Pound:** You have done a great deal of work.

**Ms Boyce:** Yes, the situation of Traveller children is absolutely unacceptable. You have infant mortality three times the rate among settled children. The levels of discrimination is something we would get coming in on our advice line to the Children's Law Centre, issues and incidents of discrimination against Traveller children. What we would be arguing for in the Bill of Rights is those standards that are set out in the international legal instruments, the UN Convention and the Rights of the Child primarily, that the standards, particularly the general principles in that Convention of best interests of the child and non-discrimination and right to life itself, but not just right to life, the interpretation of the UN Convention is development to the maximum extent possible. It is not just about survival, which is the case at the moment for a lot of

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Traveller children, it is to the maximum extent possible. What we would be arguing for in the Bill of Rights is the inclusion of those principles, but also provisions in the UN Convention around respect for culture which would also come in in relation to Traveller children.

**Q57 Stephen Pound:** There is almost an element of competing human rights. Sir Isaiah Berlin made that famous statement about the rights for the shark do not equal rights for the minnow. This is not the same issue here, but with travelling families how can we possibly extend those rights to them if by definition they do not wish to avail themselves of those rights as constraining their absolute right to live in freedom as they wish?

**Ms Boyce:** In my experience, and I am wearing the hat of having worked with Traveller children for about six years. All Traveller families I know would wish their children and themselves to have rights protections that do not currently exist. I do not know any Traveller family who would say they do not want additional rights protections.

**Q58 Chairman:** If the rate of infant mortality arises, as it does to some degree, because of their nomadic lifestyle, how do you square the particular circle that Mr Pound is talking about?

**Ms Boyce:** I think the onus and responsibility is on Government and what people would like to see coming out in terms of programmatic obligations in the Bill of Rights is for Government to fully respect and resource that nomadic lifestyle.

**Q59 Chairman:** Pay for it you mean.

**Ms Boyce:** What we have at the moment is criminalisation of the nomadic lifestyle under the unauthorised encampments legislation from a few years ago. It is widely accepted that we have practically no emergency provision for Traveller accommodation in terms of emergency halting sites and very little development of standard halting sites. That would be a first step. That is the fundamental underlying reason why Traveller infant mortality rates are so high, because of the living conditions. This is the problem that needs to be tackled and that is where we would see the Bill of Rights kicking in in terms of the protections it will provide.

**Chairman:** I think that is an answer that would be of interest both sides of the Irish Sea.

**Q60 Mr Grogan:** Just very quickly back to socioeconomic rights. What would be the essential rights you would be trying to enshrine in that area? Is it essentially to do with equality of access to employment, to training, to services and so on? What are you getting at essentially?

**Ms Boyce:** Are you asking in relation to Traveller children?

**Mr Grogan:** No, more broadly.

**Stephen Pound:** That is my hobby-horse and we have moved on from that. My hobby-horse and cart!

**Mr Corrigan:** We would look towards the Bill to create a level playing field for all, a safety net for the most vulnerable, and there would be a broad range

of views within the collective Human Rights Consortium of the priority that particular rights or particular constituencies should be given. The Commission's advice on the particular additional rights that they identified in addition to the European Convention on the Human Rights Act would be the rights that there would be broad agreement around, so rights of accommodation, health rights, rights of workers. There would be a number of specific areas where we feel there is a requirement for additional socioeconomic rights protection. The role of the Consortium as a collective is not to do campaigning on the particular content of one right as opposed to another right, but broadly speaking we would like to see advances.

**Q61 Chairman:** I just want to ask you two things. It was quite clear from what our previous witnesses said that they paid enormous regard, and in my view rightly, to what the politicians here in Northern Ireland think. Without a reasonable consensus across the parties here in Stormont it is difficult to see legislation agreed and sticking even though it is, of course, the responsibility of Westminster Parliament. Do you go along with that view?

**Mr Corrigan:** As we identify, and as the international Belfast Agreement identifies, it is a Westminster responsibility to deliver the Bill of Rights and we look to the Westminster Parliament to do that as one of the final fulfilments of the Agreement. In terms of the kernel of your point, all of the parties, as you have rightly pointed out, have backed the principle of a Bill of Rights but there is some disagreement and diversity of viewpoint about the particular content that should be found within. All that we can do, I guess, is speak on behalf of the tens of thousands of people that our groups represent in one shape or another and represent what we think is the view of the majority of the population of Northern Ireland, ie they support a Bill of Rights, and a Bill of Rights worthy of the name, a meaningful Bill of Rights, one fit for the 21st century. Part of our role is to continue to act as persuaders, if you like, to all of the parties to see a good Bill of Rights for Northern Ireland. We note in the Commission's advice that they suggest particular responsibility in terms of the review process of how a Bill of Rights might be amended in the future, that there ought to be cross-party, cross-community agreement within the Assembly before Westminster would move ahead, but I guess we would say we would look to you as the guarantors of our rights first and foremost to legislate for this and ultimately it may be open to the Assembly to further debate this and lodge a view about how it might be amended in the future if Northern Ireland's particular circumstances change.

**Ms Boyce:** As a Consortium we have not got there in terms of looking at it politically that there is all cross-party and all-party consensus on the content of the Bill of Rights, although obviously there is on the principle of having a Bill of Rights, but if you look at the experience of the work of the Bill of Rights Forum, and we were observers as the Consortium and a lot of our members sat on the Forum, the level of consensus that was achieved in the seven working

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groups should not be underplayed or ignored in any way. There was very significant consensus achieved, I know, from the Children and Young's People Working Group, across all the parties, that were represented in each working group. Sadly, that high level of consensus was not maintained to the same degree when it went back into the plenary session but we are hopeful still greater consensus can be achieved and that is ultimately what we are looking for. It is a very high bar but we want the maximum extent of consensus possible. It is not going to be possible to get unanimity on every single provision in the Bill of Rights and we are going to have to accept that, but it is above party politics, it is at a constitutional level, and we need to keep that in mind.

**Q62 Mr Murphy:** Following on from that, is it your view, therefore, that a separate Bill of Rights would be preferable for Northern Ireland?

**Ms Boyce:** Yes, that is what we are campaigning for, a Bill of Rights for Northern Ireland.

**Chairman:** That is the purpose of their campaign.

**Q63 David Simpson:** This is the same question that I put to the Commission. Would you accept that a UK-wide Bill of Rights would be acceptable if it incorporated the issues that you have raised?

**Ms Boyce:** We have no problem per se with a UK Bill of Rights. Obviously we have been monitoring and tracking that process but it is not something we have any position on. We want to see the Bill of Rights for Northern Ireland finalised, it is very far down the road. It is a very distinct process coming from the Agreement, so it is totally separate. Just one note of caution we would sound is we wish the Bill of Rights for the UK a fair wind but we would have concerns if it impinged negatively in terms of the process and timing.

**Q64 Chairman:** What you do not want is to see a delay, and I understand that.

**Ms Boyce:** Absolutely.

**Q65 Chairman:** We will take on board what you have said. We will be questioning the Secretary of State in a couple of weeks' time and certainly will be asking him some questions about this. We will reflect and may well make a report to Parliament. One thing we

have committed ourselves to making a report to Parliament on in the fairly near future is the report of the consultative group. For reasons that we respect, and that you heard, the Commission felt unable to give an opinion on a Legacy Commission and on the fact that the consultative group has recommended there should be no further public inquiries. Do you wish to comment on either of those issues or are you in the same position as the Commission?

**Mr Corrigan:** As the Consortium we have no comment because we do not take a particular view on any of the content issues. If I may say briefly with my Amnesty International hat on, we welcome much of the Eames-Bradley report, a very serious piece of work requiring serious attention. However, we do have some concerns around their recommendation for a Legacy Commission and the potential for immunity leading to impunity for past human rights abuses, whether committed by state or non-state actors. We would caution the Committee about some of those particular recommendations from the consultative group, that we do not go down a road of offering immunity for past abuses in exchange for information or co-operation with a truth gathering process.

**Q66 Chairman:** You are making that comment wearing your Amnesty International hat?

**Mr Corrigan:** Yes.

**Q67 Chairman:** Probably it would be better if you were to send us a note of Amnesty's view which we will take into account. When I say "take into account", that does not mean committed to agree or disagree with, but truly take into account. Thank you all very much. We appreciate the points you have made. We particularly appreciate the powerful argument you made, Fiona McCausland, when you answered your questions. We will obviously reflect upon this as we deliberate further. If there are any other points you wish to put to us when you are conferring in private afterwards feel free to write to our clerk. Anything that he receives by the end of March will be in good time to be assessed.

**Ms McCausland:** I would like to thank you on behalf of the Consortium and the delegation for the time that you and your colleagues have given to us.

**Chairman:** Thank you very much indeed.

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Wednesday 1 July 2009

Members present

Sir Patrick Cormack, in the Chair

Rosie Cooper  
Christopher Fraser  
Mr John Grogan  
Mr Stephen Hepburn

Mr Denis Murphy  
Dr Alasdair McDonnell  
David Simpson

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*Witness:* **Lady Trimble**, Commissioner, Northern Ireland Human Rights Commission, gave evidence.

**Q68 Chairman:** Lady Trimble, on behalf of the Northern Ireland Affairs Committee, could I welcome you and thank you very much indeed for coming. You will know that the Committee is engaged on an inquiry into the whole business of the Human Rights Bill in Northern Ireland. We have met and taken formal evidence from the Commission following its report, and because you entered a powerful note of dissent, we thought it only fair to give you the opportunity of speaking to the Committee, and answering our questions, so that we can take fully into account your views and your misgivings and concerns before we make up our own minds and make our report to Parliament, so you are most welcome. Did you wish to make anything in the way of a brief opening statement before we move on to questions?

**Lady Trimble:** I have prepared a very brief statement which may cover some of the areas that you propose to question me on. I will start by saying that I am a member of the Northern Ireland Human Rights Commission, but my evidence to this Committee is given in a personal capacity as one of the two Commissioners who dissented from the advice delivered by the Commission to the Secretary of State on 10 December 2008. I would also say that I am personally committed to human rights, and that I remain a loyal member of the Northern Ireland Human Rights Commission. I have prepared some further words, but I suspect that they may come up in questioning in any event.

**Q69 Chairman:** I am sure that is the case, and probably the most sensible thing is for us to proceed on this basis: of course we accept that you are appearing here in your own right; as a loyal member, as you say, of the Commission, but as one who has some fairly significant differences of opinion with the majority view of the Commission as expressed in its pre-Christmas report. If at the end of questioning, you feel that there are any points that have not been adequately addressed from your point of view, then of course, feel free to make a final comment, or, if you think it is more appropriate, to write to the Committee afterwards if there are several things that you wish to pick up on. Can I begin by asking you whether you believe the Secretary of State for Northern Ireland is right to say that the advice provided by the Human Rights Commission goes well beyond the brief that they were given; that is his view, would you like to tell us your view on that?

**Lady Trimble:** Yes. I do, in many senses, agree with the Secretary of State in his views. The task that we were given was to give advice to the Secretary of State under section 69(7) of the Northern Ireland Act of 1998. The Commission does have the general duty to advise the Secretary of State and the Executive Committee of the Assembly of whatever legislative and other measures they feel ought to be taken to protect human rights, and that duty is under section 69(3) of the Northern Ireland Act, but this was not the section under which the Commission was carrying out its report. The task that led to the Commission's report was very specifically under section 69(7) of the Northern Ireland Act, and that section refers directly to paragraph 4 of the rights section of the Belfast Agreement, which sets out that the Human Rights Commission will be invited 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, and drawing as appropriate on international instruments and experiences; "these additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem." Now the agreement links the particular circumstances with the principles of mutual respect for the identity and ethos of the two communities. The phrase "to reflect" appears twice. My belief is that that phrase is prescriptive and mandatory, that we have to reflect those particular circumstances and the mutual respect, that those are mandatory and compulsory on the Commission, and that is where I feel that the Commission went too far in carrying out its remit.

**Q70 Chairman:** So could you just say, before I turn to my colleague, Rosie Cooper, to continue the questioning, very briefly, what form, in your view, should an ideal Bill of Rights for Northern Ireland take?

**Lady Trimble:** That is an extremely difficult question to answer. I lack the wisdom of Solomon, but I do—

**Q71 Chairman:** Well, have a go.

**Lady Trimble:** I feel that we should have been looking at the circumstances under which the Agreement was made, where we have a society coming out of a period of protracted conflict. The agreement sets out, if you like, a constitutional *modus vivendi* for people to work together and to live together, so it was that conflict that the agreement

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was addressing, and the Commission was being asked, I believe, to see if there were some areas that could contribute to the alleviation of that conflict. Now I realise that is a rather circular response, but I am not being specific, because I find it very difficult to actually say what ought to be in a Bill of Rights, and that has been a huge difficulty for a lot of people.

**Chairman:** I will let my friend and colleague, Rosie Cooper, take up the questioning on those points.

**Q72 Rosie Cooper:** Thank you. I would like to perhaps ask two questions if I may. Firstly, I would like to just ask you generally, do you support the concept of a Bill of Rights, and did you agree with the methodology for the final stages, I think that was determined around June 2008? If I may, I will come back and ask you another question.

**Lady Trimble:** The methodology was something that we as a Commission spent several months trying to perfect, and we came up with a rather complex set of tests which I played as full a part as anybody else in setting, in coming to that methodology, but we did actually take counsel's opinion as to our methodology, and he came back with a suggestion that we should adopt a simpler test, a threefold test, instead of our rather complex sevenfold test. I do not know whether, if we had adopted his methodology, instead of ours, we would have come up with anything different at the end of the day, so that is just one of those things that one cannot know.

**Q73 Rosie Cooper:** I will not continue down that line about corporate governance and how you get there. If you say that, I suppose, many of the proposals put to the Secretary of State, the 80 new statutory rights proposed by the Human Rights Commission, go well beyond the proposals in either the Joint Declaration or the Good Friday Agreement, how do you feel about that? Do you agree that is the case? If you do, could you perhaps give us some examples of that?

**Lady Trimble:** I do think that that is the case. If you look at the proposals around the socio-economic rights, the areas that those are addressing are by and large common societal problems right across the UK; if you look at housing, that is a problem right across the UK, it is not specific to Northern Ireland; ditto the environment, and rights to social security. So it seems to me to be rather difficult to come up with a proposal that there should be rights around these areas in Northern Ireland when there are not similar rights in the rest of the UK, and I feel concerned that we may lead to rights tourists coming to Northern Ireland to avail of these proposed rights which are not necessarily going to be available to people in other parts of the UK, or even in other parts of Europe, because what is proposed goes so much beyond what is in the European Convention, and so much beyond what is in the Human Rights Act, that we would be in a very, very particular standalone bubble, if you like, and I just am not at all sure that the consequences of that would be particularly good.

**Q74 Mr Murphy:** Lady Trimble, the Commission actually disputes your view that its advice suggests introducing the principle of positive discrimination when discussing a greater role for women in public life; indeed, the Commissioner Ann Hope told the Committee, and I quote, "We have not, I understand, in our advice recommended quotas, et cetera, but we have recommended actions that would address [the question of greater participation of women in public life]." Do you stand by your original statement in your note of dissent?

**Lady Trimble:** I am all for participation by women in public life, I am very much a supporter of participation by women, but I am not sure that it needs to be enshrined in a Bill of Rights in a greater way than participation by men or participation by any other group.

**Q75 Mr Murphy:** Would you agree though that the Commission have explained that part of their remit was to take forth this issue of lack of participation of women in public life in particular, and that whilst they certainly did not suggest a quota should be introduced, they felt that it should be written in that action needed to be taken; do you think that was a reasonable position for them to take?

**Lady Trimble:** It is certainly reasonable to look at the question of participation of women in public life, which does lead to some action, but does it need to be enshrined in a fundamental Bill of Rights? Is this something that could be looked at from year to year and changed perhaps from year to year? Does it need to be in what ought to be an absolutely foundational document, that is my—

**Q76 Chairman:** So what you are saying is you endorse the principle, but you do not believe it needs a statutory statement?

**Lady Trimble:** Indeed, I would even go further than that, it does not need a statutory statement in what is intended to be a foundational document, which should not be tinkered with on a regular basis.

**Q77 David Simpson:** If I can just take the first question in relation to the Government's response to this, and I quote from the briefing notes that we received from the Secretary of State: "I am not quite sure that it actually sets Northern Ireland apart from the rest of the United Kingdom, and insofar as it does it raises a whole set of issues about how actually you would implement it without implementing it across the whole of the United Kingdom." So really the question I am coming to is: does Northern Ireland require a Bill of Rights when the whole of the United Kingdom is about to put one forward?

**Lady Trimble:** In an ideal world, I would see Northern Ireland as having the same rights as the rest of the United Kingdom, and I believe that what we were asked to do was to look and see if there were any specific issues relating to our conflict which might be added into a United Kingdom Bill of Rights, and there was, in my view, a particular small set of rights that might have been achievable, but we have not managed to achieve that.

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**Q78 Chairman:** You would like those bolted on, added to a UK statute, if you had your way?

**Lady Trimble:** Yes, if any such rights can be identified, and I am not convinced that they have been identified as yet.

**Q79 David Simpson:** To follow on from that, to deal with the particular circumstances, and again quoting, a significant part of the rationale for proposing a separate Bill of Rights for Northern Ireland was that it should include rights relating to the “particular circumstances of Northern Ireland”; could you tell us how much discussion was there in the Commission meetings of how the phrase “particular circumstances” should be interpreted?

**Lady Trimble:** There was quite considerable discussion around the meaning of “particular circumstances”, but there was also quite a broad division in terms of views as to what the particular circumstances were that should be taken into account, so I cannot say that the Commission ignored the question of “particular circumstances”, that would be totally unfair to say that, but in my view, they went much beyond what my interpretation of “particular circumstances” were. But the other thing that did not get mentioned sufficiently in my view was the “mutual respect for the identity and ethos of the two communities and parity of esteem”, and in my view, those areas are of equal importance as the “particular circumstances”, they are described equally in our remit, and yet they were not given equal value.

**Q80 David Simpson:** Very briefly, in relation to all the work that the Commission is doing, and I think the Committee Chairman met with representatives of the Commission in the Assembly, and I put the same question to them: if when the report is finished, and there is a paper put before the Assembly or the Executive, if they reject it, does that mean that Bill of Rights for Northern Ireland is dead in the water?

**Lady Trimble:** Well, the remit referred to Westminster legislation, but I would find it very difficult to believe that Westminster would enact legislation if the Assembly had turned it down, so to speak.

**Q81 Chairman:** I think we would find that a little difficult to envisage as well. Further to one of Mr Simpson’s very important questions, you talked about the discussion within the Commission, and the divisions, perfectly honest, honourable divisions; were those meetings minuted, and if so, are the minutes available?

**Lady Trimble:** The meetings were minuted, and the record of discussions was taken. I have not brought the minutes with me.

**Q82 Chairman:** No, of course not.

**Lady Trimble:** But they certainly were minuted within the Commission.

**Q83 Chairman:** This would be something that our Committee could have a look at, obviously?

**Lady Trimble:** Yes, sometimes the minutes were, how shall I say, the minutes may not have reflected the entirety of the discussion. The minutes were shortish, shall we say.

**Q84 Chairman:** We are well aware of cabinet minutes, for instance, which will record a decision, but not necessarily the discussion leading up to the decision. Do you feel that at all times, when you were discussing these matters with your fellow Commissioners, that you were given adequate and proper opportunity to express your doubts and misgivings?

**Lady Trimble:** I certainly did express them. There was no attempt to stifle me.

**Q85 Chairman:** I should think that would be pretty difficult anyhow, but could I move on then to Dr McDonnell?

**Lady Trimble:** Sorry, except once, when we were discussing the equality provision, I was cut off in mid sentence.

**Q86 Chairman:** Oh really? Was that because it was a long sentence?

**Lady Trimble:** It was because I was going down a route that perhaps others in the Commission did not want to go down, but that was the only time when I was cut off in my prime, so to speak.

**Q87 Dr McDonnell:** I am trying to get my head around—because I am not still fully clear, what I would like to ask you is: do you reject all of the proposals? You have indicated that you are committed to human rights and to the Commission; do you reject all of the stuff that they produced broadly, or is it just some parts of it you object to, some parts of the advice they gave?

**Lady Trimble:** There are some good elements in the report, but I objected to the entirety of the report, because if you look at the proposals around implementation and amendment and the question of standing, I felt that I could not agree to those elements, and those elements read back to the entirety of the substantive proposals. For example, the bill was to be enacted by Westminster, but the suggestion was that it could be amended jointly by Westminster and a cross-community vote of the Assembly. Now I felt that I could not support that, and that would apply to not just the supplementary proposals, but to the entirety of the current contents of the Human Rights Act, because the proposal was that it would be re-enacted as a Bill of Rights which incorporated the current sections of the Human Rights Act together with the supplementary sections. The amendment proposals would attach to both the existing and the new provisions. As well as that, there was a question of standing of people who would be enabled to go to court, and under the Human Rights Act, a person needs to be a victim or a perceived victim of a human rights abuse in order to go to court, the 2007 Justice and Security Act gave the Northern Ireland Human Rights Commission the opportunity to do likewise, but the new Bill would actually allow “any person or body who has

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a sufficient interest in the matter may bring legal proceedings” claiming that a public authority has acted incompatibly with the Bill of Rights for Northern Ireland. Now to me, that goes so far beyond—that allows not just the Human Rights Commission, but it allows people like NGOs to bring an action which in the rest of the UK is restricted to a victim. So it is not just the courts interfering in what in my view ought to be the remit of Parliament or the Assembly, but it is allowing other people to bring the action before the courts, and to be specific about what they can do to bring, say, a case about housing.

**Q88 Chairman:** Do you fear it could encourage frivolous or vexatious or inconsequential and trivial complaints?

**Lady Trimble:** Not so much frivolous or vexatious, but that it might prevent the Executive from having certainty in terms of their policies, that is really the point that I have.

**Q89 Dr McDonnell:** Just to follow on with the broad thrusts, you indicated that you agreed with the broad thrust of the Bill, the broad principles of the Bill, and some of the aspects of it. Are you happy enough with the proposals on the rights of victims of crime, for instance, are those acceptable enough? I am trying to just tease out what bits of it might work.

**Lady Trimble:** Yes, we did discuss victims at some length, and we started off talking about victims of the conflict in Northern Ireland, and how you might include them in a Bill of Rights. We actually came to the view that there was nothing that they, as victims of the conflict, could gain from being in a Bill of Rights, because how do you give them a right which is not given to other people? So I am about to say yes to you, but I just—yes. The third element on the victims issue, which is legislation must be enacted to recognise all the victims of the Northern Ireland conflict, and to ensure that their rights are protected, these rights include rights to redress and to “appropriate material, medical, psychological and social assistance”; that is terribly wide, and I feel that that possibly goes beyond what I would feel appropriate. The right to be informed about the progress of an investigation and relevant legal proceedings, that seems fair enough, but I would like to see teased out exactly what the implications of each of these would be, so that I could have a clear picture of precisely what that would involve, and as I have no doubt people in the Secretary of State’s office are doing before they come up with a consultation.

**Q90 Dr McDonnell:** I am thinking more in terms of victims of crime generally, rather than just victims of the conflict, but again, just to take another example, are you happy enough with the right to be free from violence, exploitation or harassment that is contained in the document, or is that too loose as well?

**Lady Trimble:** I think everyone wants to be free from violence, harassment and so on. The question that I have is just how does that translate into an enforceable or justiciable right, and I do not have answers to some of these questions.

**Q91 Dr McDonnell:** Could I maybe tease it on a bit further? Broadly you are telling us, and I accept that, that you see the need for a Bill of Rights; you dissented, at what point did you feel the need to dissent? Was it early, middle or at a late stage in the proceedings?

**Lady Trimble:** As we progressed through our discussions, and it was late September before we were coming on to the socio-economic rights and the implementation areas, so it was around then that I started to become uneasy, and at the beginning of November, I wrote to the Chief Commissioner and said that it might be necessary for me to seek a minority report, and just to give her a heads-up as to where I was coming from.

**Q92 Dr McDonnell:** Did you, in that note of dissent, make any suggestions or give any alternatives in terms of what might be included in the Bill or how it might be rewritten, in terms of narrowing some of the points?

**Lady Trimble:** I did not make specific suggestions, because I do find that this is a terribly difficult area. I felt that what was intended that we should be looking at would be areas around freedom of assembly, on which we made no suggestion whatsoever; the areas of language, where we made some suggestions; culture and identity; and education. On education, this has been an area of some difficulty within Northern Ireland, but we did not come up with any earth-shattering suggestion around education, because as we discussed the difficulties around education in Northern Ireland, we found that we could not actually come up with something that could be put in a Bill of Rights, that would resolve any of our difficulties.

**Q93 Dr McDonnell:** You mentioned there just the right to assembly, and you felt that was not included. Is there anything else broader than just the parading and flags issues that you felt—

**Lady Trimble:** Those are issues which go to the heart of some of the difficulties that have surrounded us in Northern Ireland, so those would be areas that could be discussed. Whether, after discussion, you would come up with something that should be in a Bill of Rights, I do not know.

**Q94 Chairman:** But what would you advocate? Would you advocate the enshrining of the right to march and parade, or would you think that that is not something that should be in a Bill, just as you said you did not think the advancement of women’s rights should be in the Bill?

**Lady Trimble:** Indeed. The more I looked at the European Convention on Human Rights, the more I thought, well, this is not bad.

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**Q95 Mr Hepburn:** Lady Trimble, you are on record as saying that the Commission's proposals for amending a future Bill of Rights basically makes it unamendable. Can you explain your logic in that?

**Lady Trimble:** Well, if a Bill can only be amended by a procedure which would involve legislation at Westminster and a cross-community vote in the Assembly, I am afraid the assumption of those who are making that proposal was that there would not be cross-community support from the Assembly, so that that support might not be forthcoming.

**Q96 Chairman:** There has been some dispute between you and Professor McWilliams about the status of your minority report. She refuses to accept that it is a minority report. What do you say to that?

**Lady Trimble:** Well, technically, of course, it is not a minority report, it was not appended to the report. I and my fellow dissenter asked for permission to have a minority report put into the report, in the way that the Standing Advisory Commission on Human Rights had done for at least three reports, and that consent was refused. So clearly, there was not and cannot have been a minority report. What I published, I described as a note of dissent, I think the terminology is probably neither here nor there, to some degree, it is the content of what I said that matters.

**Q97 Chairman:** In the six or seven months that have passed, have you been able to gauge the feeling and how much support there is for the propositions you advanced as distinct from the proposition advanced in the official report?

**Lady Trimble:** Well, I found that rather difficult. I do speak to people, and some people have indicated their support to me.

**Q98 Chairman:** Yes, but did you get a great fan mail saying, "Well done, Lady Trimble"?

**Lady Trimble:** A small fan mail. No, my note of dissent did not get circulated with the report.

**Q99 Chairman:** No, I appreciate that.

**Lady Trimble:** So it has, in truth, not been seen by very many people.

**Q100 Chairman:** This is a very subjective question and a subjective answer, inevitably, but was it well reported in your view in the Northern Ireland press?

**Lady Trimble:** The fact of my dissent was reported widely in the Northern Ireland press.

**Q101 Chairman:** But not the content?

**Lady Trimble:** Not the contents.

**Q102 Chairman:** Did you write any articles, remind me, for the Northern Ireland papers?

**Lady Trimble:** No, I did not write any articles. I felt that in terms of relationships within the Commission, I should just—I gave my note of dissent to the Secretary of State, circulated it to a small number of people, and that I should just leave it at that.

**Q103 Chairman:** Do you think the impact of your views, to which you clearly attach great importance, and that is right that you should, would have been greater had you resigned?

**Lady Trimble:** I am not sure that I can answer that question easily. I felt it was important to stay within the Commission because the Bill of Rights work is not the only work within the Commission, there is a lot of other work there, which is very good work, to which I feel I can make a major contribution, so I do not feel that this was necessarily a resigning matter for me. I would have been more than contented to have had my views tucked in at the back of the report, and to have just let them go out into the world—

**Q104 Chairman:** But the fact is they were not, so rather than be more than contented, you are less than contented?

**Lady Trimble:** Yes.

**Q105 Chairman:** Where do we go from here then, Lady Trimble?

**Lady Trimble:** Well, this is now for the Government to decide what it is going to do, and I do understand that the Government proposes to have a consultation, that it will consult on its own proposals, not on the advice from the Human Rights Commission. I also understand that the timescale of such consultation is—we in the Commission had at one stage been given a potential date of early spring, and then late spring, and then early summer, and we are now at the beginning of July, and I am not getting any feeling that this is going to come before the recess.

**Q106 Chairman:** This Committee, of course, will be making a report, and we will have to say what we think because this is Westminster legislation we are concerned with, as you appreciate. I think the general feeling is that we would not feel it was very practical to go forward if there was widespread dissent in Northern Ireland, but we will have to deliberate on this. What would it be your hope that this Committee should say when we report to Parliament and send our report to the Secretary of State, that there should be a Bill of Rights but it should be tightly drawn, and should not be in any way in conflict with what exists in the rest of the UK; that really on balance it is better not to have any report at all; or that having made your note of dissent and remained on the Commission, you are content for the Commission's views to prevail. What would you like us to come out and say? This does not guarantee we will, of course.

**Lady Trimble:** Yes, I think that what I would like to see is—and here I pause to collect my thoughts. I feel that the 80 statutory proposals are so wide that they will be quite divisive within Northern Ireland, so I think a tightly drawn Bill of Rights which would be subsidiary or an appendage, if you like, to a UK wide Bill of Rights, would be the most appropriate thing to come up with in the end.

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**Chairman:** That is very clear, and that is very helpful, and the Committee will obviously take that view very, very carefully into account. Are there any further questions any colleague wishes to put?

**Q107 Dr McDonnell:** Just for clarification, in the light of your later questions there, Chairman, I just wanted to follow through as to the position—obviously you did not resign. You felt that nevertheless the Commission acted *ultra vires* at the time?

**Lady Trimble:** Yes, I felt they acted beyond the remit, beyond that specific remit that relates back to the Agreement, and the Agreement is something that I hold very dear.

**Q108 Dr McDonnell:** Do you feel comfortable remaining on the organisation and involved in the organisation, or do you feel that you have been marginalised or excluded as a result of that?

**Lady Trimble:** Well, there clearly have been differences within the Commission, and there have been robust discussions, but I do not feel that I thereby feel obliged to resign from the Commission.

**Q109 Dr McDonnell:** So you feel comfortable. The other thing I would like to clear, Chairman, is very simply: while Lady Trimble has given us evidence here very eloquently and all the rest, Jonathan Bell is mentioned; is he dissenting in conjunction with you, or on his own bat, or where does he fit in? Are there two of you, or are there two separate ones of you coming at different angles? Did he, for instance, agree with your dissenting note at the time?

**Lady Trimble:** Had we been permitted to have a minority report, he and I would have worked together to come up with an agreed text. We were not permitted that, so he came up with his own note of dissent, which differs from mine in some degrees, but we are generally singing from the same hymn tune, if you like.

**Q110 Dr McDonnell:** But you are presenting evidence here on your own behalf?

**Lady Trimble:** Solely on my own behalf.

**Q111 Mr Grogan:** Just to clarify, so you have indicated that you may see circumstances, in the particular circumstances of Northern Ireland, where an appendage to a UK Bill of Rights would have some advantages, and you have indicated some of the areas; you mentioned education, right of assembly, I think perhaps identity and culture, that it may apply, but is your position that no one yet has written the words or come up with the phrases that would give substance to those aspirations?

**Lady Trimble:** Yes, in the main, yes, that is my position. On the question of identity and culture, we have a proposal that people can identify themselves as British or Irish or both, and that actually went into the report at my request and others agreed with it. So I am comfortable with that, but there may well be other areas where there could be something that is specific to Northern Ireland which we have not got in any agreed wording.

**Q112 Chairman:** Thank you very much. Is there anything you would finally like to say to the Committee, Lady Trimble?

**Lady Trimble:** No, Sir Patrick, thank you for your courtesy in listening to me.

**Chairman:** We are very grateful to you, this is an important subject, and it is one on which the Committee must form a view, and in forming that view, we shall take carefully into account obviously what your fellow Commissioners have said, but what you have said as well, and we will try and come up with a report that makes some practical and workable and sensible suggestions, and suggestions that would commend themselves as being constructive to those in the Assembly who have to try and come to a collective view at some stage. We are very grateful to you, thank you very, very much indeed, and that concludes the session. I thank all my colleagues for taking part.

# Written evidence

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## Written evidence from Dr Austen Morgan

### INTRODUCTION

1. How can anyone be opposed to human rights, and more and more of the same? Answer: when the Northern Ireland human rights community is seeking to short circuit the democratic process; quango governance is an issue of constitutional importance, especially as regards Northern Ireland.

2. I write in response to the Northern Ireland Affairs Committee's press release of 1 April 2009, announcing an inquiry into recent advice from the Northern Ireland Human Rights Commission.<sup>1</sup> I do so as the author of a legal textbook on the Belfast Agreement,<sup>2</sup> as a barrister practising in London and in Belfast, and as one of two independent members of David Cameron's commission on a United Kingdom bill of rights and responsibilities, established in 2007.<sup>3</sup>

### GENERAL ARGUMENTS

3. I argue in general that: (1) the Northern Ireland ("NI") human rights community is a product of particular circumstances; (2) the 1998 Belfast Agreement, between the UK and Irish states, did provide for legal advice; (3) the Brice Dickson commission (see further below) exaggerated its remit, and did considerable damage to the culture of human rights with its two draft bills; (4) the Monica McWilliams commission (see further below) has, to the surprise of some, followed suit, in effectively adopting the work of the bill of rights forum (see further below); (5) the key to much of this activity is the Northern Ireland Office ("NIO") (charged with ending a terrorist war), which continues to provide finance and opportunities; (6) the legislative future for NI, as for the rest of the United Kingdom ("UK"), lies in a bill of rights and responsibilities, to replace the Human Rights Act ("HRA") 1998; (7) this government is most unlikely to deliver the result desired by the Northern Ireland Human Rights Commission ("NIHRC") majority, and the next government is advised to seek genuine experts to provide the outstanding Belfast Agreement advice.

### *The Northern Ireland Human Rights Community*

4. The rhetoric of human rights has echoed in international relations since the 1970s,<sup>4</sup> and in domestic UK politics from the 1990s. This has been reflected in very many submissions to Westminster select committees.

5. The NI human rights community originated in the Committee on the Administration of Justice ("CAJ"), founded in Belfast in 1981. Legal radicalism was embedded in NI's two universities, well before human rights became part of the professional training of solicitors and barristers. The CAJ dominated the NIHRC, established under the Northern Ireland Act 1998. I refer to the first, or Dickson, commission, given that Prof Brice Dickson was chief commissioner between 1999 and 2005. I also refer to the second, or McWilliams, commission, since Prof Monica McWilliams took charge in 2005 (and will be there until 2011). The rest of the community comprises those members of NI's state-sponsored community and voluntary sector, who have backed the NIHRC's plans for a comprehensive bill of rights. The NIO-established bill of rights forum (2006–08), chaired by Chris Sidoti of Australia via Geneva, comprised the political parties and a greater number of activists. The human rights consortium, funded by an Irish-American philanthropist,<sup>5</sup> is the same people. (I should also mention British Irish Rights Watch in London, which acts as the overseas office—as members see it—of the NI human rights community).<sup>6</sup>

6. The NI human rights community, it is distressing to report, is not infused with liberal-democratic values. It has emerged in and around the NIHRC, because of a Faustian pact with minority nationalism (including Irish republicanism).<sup>7</sup> Positions taken—in a place where reconciliation may take the form of Ulster nationalism—would appear strange in Edinburgh, Cardiff or London: Monica McWilliams, formerly the leader of the women's coalition (a now defunct fringe party), for example, suppresses the case—promoted in every other advanced democracy—for abortion.<sup>8</sup>

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<sup>1</sup> I contrast this with the Joint Committee on Human Rights. Some time ago, I wrote to its chair, Andrew Dismore MP, suggesting such an inquiry (and offering to give evidence). I received no reply to my letter. On 24 February 2009, as anticipated, the committee took evidence from Prof McWilliams and colleagues: to be published as HC 280-i.

<sup>2</sup> Austen Morgan, *The Belfast Agreement: a practical legal analysis*, London 2000.

<sup>3</sup> Publicly announced on 27 February 2007, to advise the conservative party in opposition. This commission is considering the devolved administrations in Cardiff, Edinburgh and Belfast, as part of its work programme. The views expressed here are entirely my own and do not bind that commission in any way.

<sup>4</sup> On human rights in international relations, see Kirsten Sellars, *The Rise and Rise of Human Rights*, Sutton 2002. See also the foreign and commonwealth office's—increasingly fatter—annual reports on human rights, published since 1998. These reports are commented upon each year by the foreign affairs committee of the house of commons.

<sup>5</sup> Chuck Feeney (*Irish News*, 2 April 2008).

<sup>6</sup> For a humorous, but no less accurate, description of the NI human rights community, see Steven King, *Belfast Telegraph*, 14 April 2004.

<sup>7</sup> A drama worthy of the stage or screen is the breaking of the Dickson commission on the anvil of the Holy Cross school in north Belfast in 2001: *E v Chief Constable of RUC* [2008] UKHL 66 [2008] 3 WLR 1208.

<sup>8</sup> See also, the Irish government's negotiations with the EU regarding a second referendum on the Lisbon treaty.

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 THE BELFAST AGREEMENT

7. The Belfast Agreement<sup>9</sup> provided, in the first paragraph 4 of the rights, safeguards and equality of opportunity section, for the new NIHRC to be (and I quote in full): “invited 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 of Rights for Northern Ireland. Among the issues for consideration by the Commission will be: 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.”

8. A number of points may be made succinctly:<sup>10</sup>

- there is no clear reference to the HRA 1998, then being enacted;<sup>11</sup>
- a bill of rights is referred to more tentatively in the rest of the Belfast Agreement;<sup>12</sup>
- there is no commitment by the UK to a Northern Ireland bill of rights, and certainly not to a comprehensive one;
- the international obligation of the UK was to invite the NIHRC to consult and advise, and this was discharged by Mo Mowlam<sup>13</sup> MP’s letter of 24 March 1999 (a copy is attached);
- there was a commitment by the Irish state (in the first para 9 of the rights etc. section) to “an equivalent level of protection of human rights as will pertain in Northern Ireland”—about which we have heard little;
- the remit quoted above has to be interpreted using particular legal rules,<sup>14</sup> and human rights activists breach the rule of law when they fail to respect such language; the NIHRC’s so-called methodology, for deciding to include a right or not, is not a legal interpretation of the first para 4 of the rights etc. section;
- the NIO has kept its head down for ten years, but a NIO minister—Des Browne MP—did, in a letter of 22 November 2001 to the NIHRC (a copy is attached), express government disapproval of activists substituting for elected representatives; and
- the key words in the remit are: “to advise”; “scope”; “supplementary” rights; “to reflect the particular circumstances of Northern Ireland” (meaning what makes it different from the rest of the UK); the principles of “mutual respect for the identity and ethos of both communities” and “parity of esteem”; and the two examples of “issues” (the second of which was violated by the Police (Northern Ireland) Act 2000 ss 46 to 49 providing for reverse discrimination in recruitment: the so-called 50/50 rule).

## BRICE DICKSON’S TWO BILLS OF RIGHTS

9. On 4 September 2001, after barely 18 months, the NIHRC published *Making a Bill of Rights for Northern Ireland*: it wanted it enacted before the end of its three-year term.<sup>15</sup> A motion, proposed by two liberal unionists, and condemning the NIHRC, was debated in the NI assembly on 25 September 2001. A petition of concern by nationalists the following week, led to a unionist majority (48 to 39) but not the necessary cross-community vote to succeed.<sup>16</sup> This first bill had 164 clauses: 37 had existing effect through the HRA 1998; 77% of the rights supposedly supplementary to the European convention on human rights were new.

10. In April 2004, with less than a year to go to the end of the Dickson commission, the NIHRC published *Progressing a Bill of Rights for Northern Ireland*. Appendix 1 contained a proposed bill of 20 sections and 104 clauses.<sup>17</sup> The NI assembly was suspended at the time. But, by then, the two unionist parties had been alienated from the process: the nationalist Social Democratic and Labour Party wanted more; and the republicans seemed to be secretly wary of the human rights agenda.

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<sup>9</sup> Northern Ireland Act 1998 s 98(1). The term Good Friday agreement has no legal basis.

<sup>10</sup> See also, Morgan, *Belfast Agreement*, paras 18.114 to 18.128; Austen Morgan, “What Bill of Rights?”, NILQ, 52, 3 & 4, autumn & winter 2001, 234; Austen Morgan, “Why we don’t need a Bill of Rights”, *News Letter*, 21 January 2008.

<sup>11</sup> The Belfast Agreement is dated 10 April 1998. The HRA 1998 received the royal assent on 9 November 1998. See the first para 2 of the rights etc. section.

<sup>12</sup> Strand One, paras 5, 11 and 26.

<sup>13</sup> The secretary of state for Northern Ireland.

<sup>14</sup> 1969 Vienna convention on the law of treaties arts 31 and 32. Art 2 of the British-Irish agreement of 10 April 1998 does not legalize all the text of the multi-party agreement of the same date.

<sup>15</sup> Minutes, 10 September 2001.

<sup>16</sup> NI Assembly, *Official Report*, vol 12, no 6, pp 199–214 and vol 12, no 7, p 262.

<sup>17</sup> The commission looked forward to a Northern Ireland Act 2004. It never came.

11. In March 2009, Brice Dickson, now back in academia,<sup>18</sup> published an article in *Fortnight*<sup>19</sup> (a copy is attached), effectively revising his view: he simply wanted legislation on issues such as integrated education and the destruction of fingerprints: “Judges, remember, are unelected. In the 1960s and 70s they were supposedly the least trustworthy of officials. What makes them flavour of the decade now?”<sup>20</sup>

#### THE FORUM REPORT AND THE MONICA McWILLIAMS’ BILL

12. As part of the deal to restore devolution, a forum of 14 political representatives and 14 civil society activists was created to fill the void between public opinion and the NIHRC. The bill of rights forum report of 31 March 2008 widened the distance. Civil society was uncompromising, an alliance of the politically correct. The political representatives split tribally: of the 54 levels of support recorded, the five parties (including the alliance party) agreed on only five proposals, all legal technical.

13. The NI assembly voted, on 8 April 2008,<sup>21</sup> by 51 votes to 33, to effectively oppose “a comprehensive and progressive Bill of Rights”.<sup>22</sup> Lord Laird tabled 34 parliamentary questions on 21 May 2008, inspired by the forum report. Replying on 29 September 2008, in the form a written ministerial statement, a lords’ justice minister indicated that effectively none of the forum’s proposals was government policy.<sup>23</sup>

14. On 10 December 2008 (after nearly ten years), the McWilliams commission published the 189-page *Bill of Rights for Northern Ireland*—with more than 120 proposals. This was the advice sent to the secretary of state. There was considerable continuity. No political lessons, according to Brice Dickson, had been learned. And the content was virtually 1970s’ and 1980s’ political radicalism turned into the language of rights: with major new rights to health, adequate standard of living, accommodation, work, environmental protection, and social security. Lord Laird tabled another 36 parliamentary questions, which were answered by another justice lords’ minister on 15 and 21 January 2009.<sup>24</sup> Interestingly, the minister referred back to the lengthy statement of 29 September 2008, indicating that the government saw the forum report and the NIHRC’s advice as very similar.

15. The report claimed there was a consensus of the ten commissioners, but had to admit that two—Jonathan Bell, a member of the Democratic Unionist Party, and Lady Trimble, a member of the Ulster Unionist Party—had dissented.<sup>25</sup> They were not permitted to state their positions. This was done independently (with NIHRC workers monitoring the dissenters), the reason given by the two commissioners—in their minority reports—being the NIHRC’s departure from the limited Belfast Agreement remit.<sup>26</sup>

16. The following criticisms may be made of the NIHRC bill of December 2008 (bearing in mind the remit in paragraph 8 above):

- the commission overrides the review provisions of the Belfast Agreement, and seeks to extend involuntary coalitionism from the assembly to local government (p 35);
- the commission hopelessly confuses international law and domestic law (p 41);<sup>27</sup>
- the commission has gone far beyond supplementary rights, and not even defined the particular circumstances of NI (pp 17 to 60 & 13 to 15 and 177 to 180);
- the commission has not produced advice, as lawyers understand the term, but sought to achieve objectives normally pursued politically;
- the commission has recommended an unworkable mixture of existing European Convention on Human Rights (“ECHR”) provisions, given domestic effect through the HRA 1998, and additional domestic rights to be made law by statute (pp 17 to 60, especially 52);
- the commission has extended article 5 of the ECHR – right to liberty and security – to make the former dominant over the latter (pp 23–4);<sup>28</sup>
- the commission has not sought to modernize article 8 of the ECHR: respect for private and family life (p 28);

<sup>18</sup> As director of the human rights centre, school of law, Queen’s University, Belfast.

<sup>19</sup> This had been anticipated by an article in the same periodical, of May 2007.

<sup>20</sup> See also the view of Prof Tom Hadden, also a former human rights commissioner: “Community and Identity Rights in the Bill of Rights”, July 2008.

<sup>21</sup> This had been anticipated, on 15 October 2007, when the assembly divided 47 to 42, on a motion critical of the composition of the bill of rights forum: NI Assembly, *Official Report*, vol 24, col X.

<sup>22</sup> NI Assembly, *Official Report*, vol 29, col X.

<sup>23</sup> House of Lords, *Hansard*, vol X, col WS 180.

<sup>24</sup> House of Lords, *Hansard*, vol X, col WA 168 and WA 207.

<sup>25</sup> P 4.

<sup>26</sup> Dr Morgan relies upon: NIHRC minutes, 15 December 2008 Section 6 and 19 January 2009 Section 8, and confidential information.

<sup>27</sup> With reference to art 1(vi) and annex 2 of the British-Irish agreement of 10 April 1998. See also, para 1(vi) of the multi-party agreement of the same date.

<sup>28</sup> Prof McWilliams acted on her desired article 5 when she visited Antrim police station on 23 March 2009, to assist inter alia the 17 year old, later charged with the (dissident republican) murder of a police officer: “Every child has the right not to be detained except as a measure of last resort, in which case, the child may be detained only for the shortest appropriate period of time...” (p 25)

- the commission leaves articles 9 to 11 of the ECHR – basic civil rights – untouched, including the NI particular circumstance of freedom of assembly (pp 29 to 31);
- the commission turns the limited anti-discrimination provision (article 14 of the ECHR) into a formidable reverse discrimination provision for selected social groups (pp 33–34);
- the commission makes “the full and equal participation of women” in politics an overriding objective of the democratic system: compulsory quotas (pp 35–36);
- the commission prescribes new rights of movement, freedom from violence, exploitation and harassment, identity and culture, language, victims, and civil and administrative justice, apparently oblivious of EU law, international treaty obligations, and domestic—including criminal—law (pp 39 to 44);
- the commission dissolves sectarian violence (paramilitaries are not mentioned<sup>29</sup>—surely NI’s particular circumstance) into violence generally, and treats the state and non-state actors as equivalent (with no concept of legitimate force) (p 40);
- the commission (evocative of the USSR during the cold war), proposes socio-economic rights, which would greatly circumscribe the mandates of elected governments, the strange concept of “progressive realisation”<sup>30</sup> imposing a teleology of socialization (pp 45 to 50 & 59);
- women have disappeared as a caste, as have all other interest groups (including travellers), the bill of rights forum having majored in such an approach, but children survive for unique sectional treatment (p 51);
- the commission proposes new concepts of limitation, derogation, amendment (with the NI assembly involved in parliament), standing and interpretation, which would have the effect of further separating NI’s human rights protection from that of the UK (pp 52 to 60); and
- the commission remains hopelessly confused about public authorities and non-state actors (so-called horizontality complementing vertical liability).

#### THE NIO AND “THE PEACE PROCESS”<sup>31</sup>

17. The commission majority, with its belatedly acknowledged advisors<sup>32</sup> (do they all the latter subscribe to the report?), evidently overdosed on aspiration. The idea of the fourth branch of government—with the NIHRC pronouncing on human rights to the executive, judiciary and legislature<sup>33</sup>—remains in the report, with a role for the commission monitoring compliance, by public bodies and private individuals, with its bill of rights.<sup>34</sup>

18. It is difficult, in London, to understand how such a legally inept, and politically utopian, report came to be produced. Clearly, the troubles badly isolated NI, not just from the mainstream of European affairs, but from Edinburgh, Cardiff and London.

19. A local precedent may well have influenced the NI human rights community, namely the Patten report on policing reform (to re-brand the Royal Ulster Constabulary as the Police Service of Northern Ireland), rushed out in September 1999. This was accepted sight unseen by Mo Mowlam MP, and implemented—as the clamour went—“in full”, contrary to the public law rule whereby a decision maker must properly apply his/her mind (leading one senior NIO official to remark, of the secretary of state’s successor, Peter Mandelson MP, that they had not “hit him hard enough with the idea of ‘Patten must be adhered to, right or wrong’”).<sup>35</sup>

20. One can see why Brice Dickson, in September 2001, might have thought everything was possible. But how did Monica McWilliams, in December 2008 (three years after IRA guns had been decommissioned), think she was going to persuade the government—in an unprecedented global recession—to put her Northern Ireland Bill of Rights Act in the queen’s speech this autumn and enact it before a general election in early 2010.

#### *What Is To Be Done or Not Done?*

21. Obviously, I favour doing nothing (other than what I suggest below) on the NIHRC’s bill of rights. However, the NIO, having colluded in the NIHRC’s distortion of the Belfast Agreement remit for over ten years, will seek to stall and play out the consultation process (as it has done many times in the past). I do not anticipate a principled and intellectually coherent response from the NIO, even for a watered-down version of the NIHRC’s bill of rights.

<sup>29</sup> There is an indirect, Mitchellesque, reference in the preamble (p 18).

<sup>30</sup> Not applied to environmental rights! (p 49).

<sup>31</sup> This is a highly ideological concept. It began life as “the Irish peace process”, being the name for the republicans’ united Ireland strategy. The Blair, and Brown, government too readily accepted any rhetoric that would rid them of the IRA.

<sup>32</sup> pp 188–9.

<sup>33</sup> Based upon an exaggerated reading of Northern Ireland Act 1998 ss 69(1), (3) & (4) & 70.

<sup>34</sup> P 59.

<sup>35</sup> Quoted in Dean Godson, *Himself Alone*, London 2004, p 639.

22. The NIO will be able to rely upon two developments to eclipse the NIHRC (in addition to the evident lack of cross-community support for this bill of rights): one, from NI, the work of the consultative group on the past; and two, in the UK generally, the evolving idea of a bill of rights and responsibilities.

23. On 22 June 2007, the NIO, wrestling still with the tribal use of the past in a new Northern Ireland, established a consultative group on the past, under Robin Eames and Denis Bradley. It reported on 23 January 2009.<sup>36</sup> There was a row, before and after publication, about the idea of paying £12,000 to the relatives of all 3,720<sup>37</sup> (plus three in 2009) killed—the clerical view of grief obliterating the concept of lawful killing by the state.<sup>38</sup> However, the NIO appears to be working seriously on the other proposals: a three-person legacy commission, under an international figure, to last for five years, and charged with reconciliation, justice and information recovery; a reconciliation forum, set up jointly with the commission for victims and survivors for Northern Ireland; and a bursary of £100 million.

24. The HRA 1998 was enacted without the support of the conservative opposition. Its operation from 2 October 2000 became the subject of media comment, not always as legally acute as the judicial decisions being criticized. On 25 June 2006, the new opposition leader, David Cameron, announced on television that he favoured a UK bill of rights and responsibilities; he would establish a commission to work on the idea in the remaining years of the 2005 parliament.

25. The Brown government pinched these opposition clothes, only, in the context of an abandoned constitutional project (consequent upon the credit crunch), to fall flat on its face: the green paper, *The Governance of Britain* (3 July 2007); and the green paper, *Rights and Responsibilities* (23 March 2009). It raised expectations, only to dash them with an insipid proposal to talk about rights and responsibilities through the next election.

26. Lord Lester of Herne Hill, of the liberal democrats, now the grandfather of the equality and human rights agendas in the UK, begun in the early 1960s, did not fall by the wayside. He welcomed the replacement of the HRA 1998 idea—with something more. And busied himself, running from body to body: Justice, *A British Bill of Rights* (September 2007); Joint Committee on Human Rights, *A Bill of Rights for the UK?* (10 August 2008). He had been appointed as an unpaid advisor to the government on 29 June 2007, only to resign, following Jack Straw, the lord chancellor's, considerable weakening on constitutional reform, on 5 November 2008.

27. With less wisdom, the metropolitan Lord Lester again sought to influence the provincial NIHRC (having done the same thing way back in 1977).<sup>39</sup> The commission, in turn, believed it must have been on its way to success.<sup>40</sup> But there is a fundamental contradiction here. The NI human rights community is part of the local culture: it wields (selected) international human rights standards, alongside a minority nationalism still challenging UK sovereignty; and it lacks even a neighbourly interest in, for example, a UK bill of rights and responsibilities project.

28. The HRA 1998 is UK wide. And, if David Cameron is to succeed, there will be a bill of rights and responsibilities for the UK, including NI.

29. What remains? I believe the NIO will find it impossible to even compromise with the NIHRC. The clever solution would be to offer the form of a NI bill, with little or no content—but that is unlikely to be acceptable to the human rights community. The obligation of the UK under the Belfast Agreement may remain, even given Mo Mowlam's letter of 23 March 1999. The NIHRC refused to undertake the work requested. The government has two choices: either to ask the third commission, to be appointed in 2011 if not earlier, to produce the advice sought; or to find an ad hoc way of getting genuine experts to see what can, and should, be done by way of supplementary NI rights—though (good) advice would include having no add-ons to a UK bill of rights and responsibilities. .

30. A UK bill of rights and responsibilities will have to set the framework: powers retained in London; but with Edinburgh, Cardiff and Belfast able to either, request, or even provide for, such supplementary rights. Personally, I think that, if there are international human rights standards, then London is best placed—with a UK bill—to provide for human rights protection, including in NI.

31. The HRA 1998 came from London. And it was the unionists in the multi-party talks (which led to the Belfast Agreement), who secured the principle of “an equivalent level of protection of human rights” for the Republic of Ireland.

32. It is not only nationalists who have something to contribute to the affairs of NI; there is considerable constitutional merit in the stance taken by unionist parties and others.

4 April 2009

<sup>36</sup> *Report of the Consultative Group on the Past* (190 pp).

<sup>37</sup> David McKittrick et al., *Lost Lives*, Edinburgh 2007.

<sup>38</sup> It also excluded non-UK (including ROI) families.

<sup>39</sup> SACHR, *The Protection of Human Rights by Law in Northern Ireland*, November 1977.

<sup>40</sup> *A Bill of Rights for Northern Ireland*, pp 15–16.

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**Written evidence from Professor Brice Dickson<sup>41</sup>**

**INTRODUCTION**

1. I come to this debate as someone who has long campaigned for a Bill of Rights for Northern Ireland. Initially I did so as a member of a Belfast-based NGO, the Committee on the Administration of Justice, which I helped to form in 1981. With several others in that organisation I worked on devising a draft Bill of Rights which we published in 1993. Then, in 1999, I was appointed as the first Chief Commissioner of the Northern Ireland Human Rights Commission, a statutory body established as a result of the Belfast (Good Friday) Agreement of 1998. In that capacity I oversaw the Commission's work on a Bill of Rights from its launch in 2000 to the handover to new Commissioners in 2005. It was under my watch that the Commission produced its first consultation document on a Bill of Rights in September 2001 (*Making a Bill of Rights for Northern Ireland*) as well as its second consultation document in April 2004 (*Progressing a Bill of Rights for Northern Ireland*). Both of those documents contained draft Bills of Rights.

2. Until I left the Commission I was firmly convinced that a broad-based Bill of Rights would be a great thing for Northern Ireland. It would symbolise the beginning of a new era for that part of the world, an era in which the very highest standards on human rights would be adhered to by every public authority and where everyone would accept that the whole of society benefits if the human rights of everyone are fully and impartially protected. Today, more than four years after leaving the Commission, I am not so sanguine.

3. This is partly because the Forum for a Bill of Rights, which sat from December 2006 until March 2008, produced such a non-consensual report, and the Human Rights Commission's advice to the Secretary of State, delivered in December 2008, met with such fierce opposition from unionist politicians. But a further reason for my change of position is that I have come to believe that the significance of having a broad-based Bill of Rights in Northern Ireland is just not as great as I once imagined it to be. I emphasise that I still want human rights to be very well protected in Northern Ireland and that I think a Bill of Rights should be put in place to help secure that protection; it's just that I do not think the Bill of Rights needs to be of the 'all singing, all dancing' variety that has been argued for by the Commission up to now.

**THE PROCESS TO DATE AND THE CUL-DE-SAC IT HAS LED TO**

4. The Belfast (Good Friday) Agreement of 1998 envisaged that the Northern Ireland Human Rights Commission would be given the task of advising the Secretary of State for Northern Ireland on the scope for defining rights supplementary to those in the European Convention on Human Rights and reflecting the particular circumstances of Northern Ireland. These rights, when taken together with Convention rights, would constitute a Bill of Rights for Northern Ireland. Ever since the Human Rights Commission began its consultation process on what should be in its advice there has been controversy over the phrase 'the scope for defining rights'. The Commission itself, and most human rights NGOs, have taken the phrase to be, in effect, an invitation to identify rights not already protected by the European Convention which it would be good for the people of Northern Ireland to have. Others, especially unionist politicians and some religious organisations, have read the phrase as a requirement that the Commission must explore what common ground exists in Northern Ireland on the additional rights that need to be protected there.

5. The result of these differing interpretations of the nature of the enterprise being demanded of the Commission has been a significant political stand-off. In my days at the Commission the unionist politicians hardly engaged with us at all. I had the impression that very few in the Ulster Unionist Party understood enough about the issues involved to be able to present a coherent position to the Commission. The Democratic Unionist Party may have been more knowledgeable about human rights but for its own political reasons it did not want to accord the issue much attention—it had bigger fish to fry and it believed, probably rightly, that the Bill of Rights was never going to be an important enough issue for nationalist political parties to justify the DUP suggesting a trade-off between progress on the Bill of Rights and progress on some part of its own political agenda.

6. The Forum on a Bill of Rights was set up to fill the gap which some said had arisen in the Human Rights Commission's work to date on preparing its advice for the Secretary of State. It was meant to give the political parties a chance to sit together in a room, along with representatives of civil society, to thrash out an agreed way forward. There was speculation that the resulting report would be such a sacrosanct document that when the Human Rights Commission received it it might not want to change a jot of what was recommended for fear of upsetting the delicate compromise that had been struck after long negotiations. Alas, the Forum did not work out like that. Despite sterling efforts by its independent chair, Mr Chris Sidoti, those attending the Forum did not work in a spirit of give and take. The Forum's report is, as a result, a most disappointing document. The only positive thing that can be said of it is that it makes explicit, if crudely at times, the vast differences of opinion that exist on this topic between the political parties in Northern Ireland (and within civil society too).

7. The Human Rights Commission's advice, which was produced eight months after the Forum's report, is certainly a much more coherent document, but it focuses on what the Commission thinks would be ideal for a Bill of Rights rather than on what it knows to be realistically achievable in view of the differing views

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<sup>41</sup> Professor of International and Comparative Law at Queen's University Belfast, and Director of the Human Rights Centre in the School of Law at that University, but submitting this evidence in a purely personal capacity.

of the local politicians. In that respect it is similar to the two previous Commission documents on a Bill of Rights. The 2008 document was based on the Commissioners' agreed methodology for interpreting its mandate, just as the 2001 and 2004 documents were based on the then Commissioners' agreed list of guiding principles. On the one hand I am flattered that the present Commissioners are largely following the lead of their predecessors. On the other hand I feel that they should have tried to move the process on by taking into account some of the objections to the 2001 and 2004 drafts and some of the *Realpolitik* of today. The Bill of Rights process has reached something of a cul-de-sac. The time has therefore come for some fresh thinking in the field.

### THREE REALITIES AND THEIR CONSEQUENCES

8. In particular, I think the time has come for the Bill of Rights process to reflect three realities, which are briefly listed here and then expanded upon in paragraphs 9 to 13:

- (a) that, whatever the position in the past, the current human rights situation in Northern Ireland is no longer markedly worse than in the rest of the United Kingdom or in the Republic of Ireland; since the coming into force of the Human Rights Act in 2000 there is no longer the human rights deficit in Northern Ireland that in some people's eyes existed at the time of the Belfast (Good Friday) Agreement;
- (b) that, even in a nation where the doctrine of Parliamentary sovereignty is the dominant constitutional principle, human rights can be adequately protected without there being a Bill of Rights in place that goes beyond the European Convention—"ordinary" legislation can do the job just as well; ordinary legislation, particularly in the fields of social security, homelessness, health care and employment can—and does already—go a very long way towards ensuring that people have basic entitlements that can be enforced in the courts, and while it would be ideal to capture those rights in general terms in a Bill of Rights, there is no guarantee that doing so would make them more real on the ground;
- (c) that Bills of Rights are easier to reach agreement on if they are restricted to general principles of human rights issues and do not descend into fine detail or trespass into issues concerning how the country in question is governed; one would expect the details to be dealt with in implementing legislation and the governance issues to be dealt with somewhere else in the country's constitution arrangements, but not in a "rights" document; probably the most comprehensive Bill of Rights in the world at present—South Africa's—makes a rigid distinction between "rights" issues and "governance" issues; the recent modern constitutions agreed in Afghanistan and Iraq do likewise.

9. The first of these three realities means that there is no pressing need for a Bill of Rights to supplement the European Convention in far-reaching ways in Northern Ireland. I well remember some critics of the Human Rights Commission's 2001 document saying that the draft Bill of Rights it contained was disproportionately long when compared with the European Convention. They had a point. Articles 1 to 18 of the European Convention, together with Articles 1 to 3 of Protocol 1 to that Convention, have a total length of 2,155 words. The Human Rights Commission's three documents (counting only those sections which set out proposals for rights, and making allowances for alternative clauses) have an estimated length of 8,300 words (2001), 4,700 words (2004) and 5,800 words (2008). South Africa's Bill of Rights (agreed in 1996) has 4,579 words, Canada's Charter (agreed in 1982) has 2,542, Afghanistan's (agreed in 2004) has 2,257 and Iraq's (agreed in 2005) has 2,066. In this context, it seems to me, less is more. The human rights situation in Northern Ireland is not so bad, or so precarious, as to require a Bill of Rights that is more penetrative than any other such document in the world.

10. Not only is there no longer a human rights deficit in Northern Ireland, there is also no plausible case to be made for saying that unless Northern Ireland obtains a comprehensive Bill of Rights the peace process there will fall apart. In years gone by I myself occasionally resorted to that last-gasp argument while never actually believing it to be a strong point. To rely upon it today is to retreat to a position of desperation. The peace process in Northern Ireland remains strong and vibrant, as the reaction of politicians from across the political divide to the recent despicable murders of two soldiers and a police officer clearly indicate. No-one can realistically suggest that the absence of a Bill of Rights is endangering peace or the development of devolved government in Northern Ireland.

11. The second reality shows us that in the Bill of Rights process to date there has been an over-emphasis on form over substance. Many have fallen into the trap of thinking that if only we could get additional human rights written into a Bill of Rights the people of Northern Ireland would be guaranteed protection against all sorts of government policies which are disliked, especially those impinging on social and economic matters. Such a belief might have some plausibility if the United Kingdom were a country where the courts could strike down legislation as invalid if it contravenes human rights, but that has not been, and is not, the case, and very few respondents to the Commission's consultation documents have stated that they wish the basic principle of Parliamentary sovereignty to be abandoned. Giving too much power to unelected judges is an intensely undemocratic and potentially unwise thing to do. At the end of the day, would people prefer the final say on what rights they have to be determined by 12 unelected justices in the UK's Supreme Court or by 647 elected MPs in the House of Commons and/or 108 MLAs in Belfast?

12. The third reality should lead us to conclude that a Bill of Rights for Northern Ireland, while addressing the human rights issues thrown up by “the particular circumstances” of the place, should not attempt to cover matters which are better left to political debate and compromise. If rights are inserted in the Bill in an attempt to address the peculiarities of Northern Ireland’s divided society, this will risk undermining the basic principle that human rights are universal norms. Historic difficulties that are special to Northern Ireland (eg that a substantial proportion of the population would rather be living in a united Ireland than in the United Kingdom) can and should be addressed through other provisions in the constitutional arrangements for Northern Ireland, but not in a Bill of Rights.

13. Thus, measures required to ensure that there is “mutual respect for the identity and ethos of both communities and parity of esteem” should not be formulated as “human rights” but as locally important constitutional principles. I know that the Belfast (Good Friday) Agreement suggests the contrary, but that only goes to show that a document drafted in relative haste more than 11 years ago should not be considered as written in tablets of stone. Besides, the campaign for a Bill of Rights for Northern Ireland long pre-dates 1998 and it would be wrong for that campaign to be now constrained by the rather fuzzy wording of a political agreement which did not even say that a Bill of Rights *should* be enacted for Northern Ireland.

#### CONCLUSIONS

14. All of this leads me to conclude that there should definitely be a Bill of Rights for Northern Ireland enacted at Westminster but that it should be one that is much less ambitious in scope than the Human Rights Commission has been arguing for since 2001. Achieving political support for such an abbreviated Bill of Rights will be much easier—and political support across the spectrum within Northern Ireland is essential, because any attempt by Westminster to impose a more broad-based Bill against the wishes of the unionist, nationalist or non-sectarian parties in Northern Ireland would be extremely destabilising for the Assembly there. If in due course the MLAs of Northern Ireland wish to go beyond Westminster’s Bill of Rights for Northern Ireland—eg in areas such as education, health and housing, for which responsibility has been devolved—that is entirely up to them.

15. The Bill of Rights is never going to be the last word on the protection of human rights in Northern Ireland, any more than the first 10 amendments to the US Constitution “solved” the human rights problems in that country for all time (the US Supreme Court was able to find slavery to be compatible with the Bill of Rights as late as 1857). There will continue to be a need for specific legislation detailing the legal rights available in particular contexts. A Bill of Rights, in other words, should be a framework. It will always need to be supplemented by various support structures.

16. Finally, a Bill of Rights for Northern Ireland should contain some provisions referring to “responsibilities”. Amazingly, this concept has hardly featured at all in the Human Rights Commission’s proposals to date, nor in the Forum’s work. This is because human rights campaigners have had a traditional fear of mentioning the word “responsibility” in case this is taken as suggesting that people should have certain human rights only if they fulfil certain responsibilities. But that is not what use of the word “responsibility” needs to entail at all. Many international documents on human rights, from the Universal Declaration of 1948 onwards, recognise that people, groups and governments have responsibilities of one kind or another. It is the proper exercise of those responsibilities that makes the world a more humane and rights-friendly environment in which to live. The UK government, in its recent green paper on a Bill of Rights and Responsibilities for the United Kingdom, has presented strong arguments for including some responsibilities in a Bill of Rights and the Conservative Party also seems to be in favour of that approach.

17. Traditional human rights campaigners will not like such a development, just as they have not liked the idea that bodies other than states can be said to have committed human rights violations. But more progressive thinkers in the human rights field, especially in Africa, do accept that there is not necessarily anything antithetical to rights in the proper use of the concept of responsibilities. I would have thought that in Northern Ireland, where individuals and groups acted very irresponsibly for years, an even stronger case can be made than elsewhere in the United Kingdom or Ireland for including responsibilities in a Bill of Rights. As I have stated elsewhere, if it takes this “concession” to entice people who would otherwise be sceptical about a Bill of Rights for Northern Ireland to begin to support the idea, I for one am happy to so concede.

18. In short, I would argue for a relatively brief Bill of Rights to be enacted at Westminster for Northern Ireland, one that the five main political parties in Northern Ireland can agree upon as a good solid starting-point for guaranteeing human rights that genuinely need further protection in Northern Ireland. The Bill should also refer to some responsibilities placed on individuals, on some groups and on public authorities. In due course thought can be given to what additional legislation should be passed—by the Northern Ireland Assembly—to protect human rights even further.

### Written evidence from South Tyrone Empowerment Programme

#### INTRODUCTION

1. This submission draws as evidence the experience and case work of the South Tyrone Empowerment Programme (STEP). STEP is a community-based organisation which takes a human rights-based and community development approach to supporting the most vulnerable people in our society. Recently, STEP has been most engaged in working with migrant workers in our communities.

#### *What do we mean by a bill of rights?*

2. A bill of rights is a charge of duty on the state. It sets out how the state will, in practice, protect the human rights and fundamental freedoms of the people who are located within their jurisdiction, whether or not those people are citizens of the state, support the state itself or form part of any particular social formation within the state or beyond it. In this respect, it differs fundamentally from a written constitution which sets out the compact between citizens embracing rights, duties, and mechanisms for government and citizen alike.

#### *Why Northern Ireland needs a Bill of Rights*

3. The particular circumstances of Northern Ireland are that, following the most recent phase of conflict, a negotiated settlement has involved the formation of a local consociational government. Such governments have been successful in bringing about negotiated settlements in conflicts around the world, but are notorious for privileging the issues and identities of conflict over social development and the discourse of integration and sharing. A Bill of Rights for Northern Ireland would ensure fundamental guarantees separate from the party political compromises of the Northern Ireland Assembly.

4. The future of this region is uncertain, as the competences of the Northern Ireland Assembly are limited. When there has been a lack of consensus in the past, government has reverted directly to London or such action mooted and, according to the terms of the Belfast Agreement 1998 and successive statements by the UK Government, should a majority be in agreement, government will pass beyond UK jurisdiction entirely. A Northern Ireland Bill of Rights incorporated into the Good Friday Agreement would guarantee certain fundamental assurances, which any person in this region should enjoy regardless of the legislative processes of either national or of any local government, and which should be specifically guaranteed in any transfer of authority.

5. Northern Ireland has been emerging from a period of manifest conflict. The issue of the respect of rights has been a major factor in the origins and course of the conflict, despite the region being located in a western democracy that is a signatory to the UN Declaration of Human Rights and Fundamental Freedoms and has a judicial system that in theory upholds the rights of its citizens. A Bill of Rights for Northern Ireland would underpin existing rights for all in the context of the region, which would contribute to the process of moving beyond conflict and reassuring those on whom the conflict has impacted that a local process for remedy is available should their rights be infringed.

6. Legislative processes are by their nature changeable and subject to prevailing political contexts. An agreed list of fundamental rights remains sacrosanct and outlives short-term legislative processes, and differentiates between civil or citizen rights which may have been added, removed or altered. A Bill of Rights for Northern Ireland would ensure that the residents of this region will have a set of rights that cannot be changed or removed and so guarantee a measure of stability in what has been in the past an unstable piece of land.

7. Northern Ireland has undergone significant demographic change in recent years, where the region had previously been less affected by inward migration. Statistically, the incidence of racism and prejudice has been higher per capita in Northern Ireland than any other region of the UK or Ireland. A Bill of Rights for Northern Ireland will guarantee basic rights to all people regardless of origin on which they can effectively rely and invoke for their protection.

#### *The rights of migrant workers*

8. The following are circumstances of the infringement of rights which have been raised as issues by STEP's clients. For a general guideline, the Covenant on Economic, Social and Cultural Rights, to which the UK and Irish governments are signatories, will be used to measure these issues according to international rights standards.

9. The Covenant states:<sup>42</sup>

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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This indicates that anyone within the jurisdiction of the UK is entitled to these rights, regardless of origin.

<sup>42</sup> Article 2.2.

10. The migrant workers are treated differently according to their status as worker and their country of origin, for example, EU nationals have different entitlements depending on whether they are EU-15 nationals,<sup>43</sup> A8 nationals<sup>44</sup> or A2 nationals.<sup>45</sup> *A Bill of Rights should guarantee that the rights of all people in Northern Ireland, regardless of origin, status or identity, will be upheld.*

11. The Workers Registration Scheme (WRS) confers residency on A8 nationals according to their status as workers. These workers are usually male, many of whom bring partners and families with them. Eligibility and access to benefits and services usually come through the male partner instead of both partners simultaneously. This means that many women supporting families do not have direct access to support, are afraid of leaving abusive relationships for fear of destitution or deportation or are left ineligible when a partner leaves them. This means that women are often denied equal access to rights.<sup>46</sup> *A Bill of Rights should guarantee that women and men are afforded the same rights and protections.*

12. Migrant workers exercise their right to work under the Covenant,<sup>47</sup> but when employment has been ended or curtailed, appropriate guidance and training for further employment is rarely provided in an appropriate form or language to assist foreign nationals to attain re-employment, with the expectation that migrants will return home with or without the expectation of work in the home country. The Covenant states:<sup>48</sup>

The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

*A Bill of Rights should guarantee the right to work to all in Northern Ireland and the equal right to assistance, guidance and training for the purposes of securing work.*

13. The Covenant guarantees fair wages,<sup>49</sup> a decent living for the worker and family,<sup>50</sup> safe and healthy working conditions,<sup>51</sup> equal opportunity for promotion and reasonable working hours.<sup>52</sup> Evidence from cases of exploitation indicate that migrant workers, particularly those working for agencies, have different levels of remuneration, sometimes being paid below the minimum wage, are exposed to poor working conditions often with safety issues, such as health and safety training or notices not being in an appropriate language and working long hours without overtime pay. The working of the Worker Registration Scheme and other such controls make migrants more vulnerable to exploitation. *A Bill of Rights for Northern Ireland should guarantee fair wages, a decent living, safe and healthy working conditions, equal opportunities within work and reasonable working hours regardless of origin, identity, status or whether working full time, part time, temporarily, for an employer or for an agency.*

14. The Covenant guarantees the right of workers to join a trades union<sup>53</sup> and the right to strike.<sup>54</sup> The prevalence of agency work for migrant workers makes joining a trades union difficult and the right to strike is impaired by the nature of agency work. The precarious nature of the contract arrangement between employers and agencies and of agencies and migrant workers means that industrial action can lead to de facto summary dismissal, thus negating the above rights. *A Bill of Rights for Northern Ireland should guarantee to all workers regardless of status, origin or type of work the rights to join a trades union and to strike.*

15. The Covenant states:<sup>55</sup>

The states Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

The restrictions on A2, A8 and third country nationals with regard to the right to reside and eligibility for social support means that this right is unattainable for many migrant workers. *A Bill of Rights for Northern Ireland should guarantee the right of everyone within this jurisdiction to social security.*

16. The Covenant protects the family as “the natural and fundamental group unit of society”.<sup>56</sup> However, right of families to be together is not honoured if one partner is a UK or EU citizen and the other is from outside the EU. Families are therefore not protected as social units, but individual status is given priority. *A Bill of Rights for Northern Ireland should guarantee the right of all people to family life regardless of status, origin, identity or nationality.*

<sup>43</sup> The Member States pre-2004.

<sup>44</sup> Eight of the 10 Member States to join in 2004.

<sup>45</sup> Bulgaria and Romania, who joined in 2007.

<sup>46</sup> Article 3.

<sup>47</sup> Article 6.1.

<sup>48</sup> Article 6.2.

<sup>49</sup> Article 7(a)(i).

<sup>50</sup> Article 7(a)(ii).

<sup>51</sup> Article 7(a)(iii).

<sup>52</sup> Article 7(a)(iv).

<sup>53</sup> Article 8.1(a).

<sup>54</sup> Article 8.1(d).

<sup>55</sup> Article 9.

<sup>56</sup> Article 10.1.

17. The Covenant states:<sup>57</sup>

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Undocumented migrants and unemployed A8 nationals who have not completed a full year's work under the Workers Registration Scheme (WRS) are not eligible for social support and are therefore not guaranteed the right to an adequate standard of living, food, clothing or housing. Migrant workers often have accommodation tied to their employment, so the loss of employment leads to the loss of accommodation. Even the majority of homeless hostel accommodation is conditional on eligibility for Housing Benefit, leaving some A8 nationals destitute and sleeping rough. *A Bill of Rights for Northern Ireland should guarantee to all people in this jurisdiction an adequate standard of living, including adequate food, clothing and housing.*

18. The Covenant states:<sup>58</sup>

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Undocumented migrants and unemployed A8 nationals who have not completed a year's WRS-registered work are not entitled to medical care under the National Health Service (NHS). Migrant workers are generally in good health when they arrive in a host country, but working conditions and housing conditions contribute to a sharper decline in physical health than the host population and factors such as migration stressors, financial concerns and the impact of racism and discrimination lead to mental health issues. For this vulnerable group, ineligibility means that medical service and medical treatment are not provided to all in the event of sickness.<sup>59</sup> *A Bill of Rights for Northern Ireland should guarantee to all people an adequate standard of health and access to medical treatment regardless of status.*

19. The Covenant guarantees the right of all to education.<sup>60</sup> The children of migrants who do not speak English do not have equal access to education in the current system in Northern Ireland, as language support is provided insufficiently at primary level<sup>61</sup> and not at all at secondary level.<sup>62</sup> Their right to education is therefore being curtailed. *A Bill of Rights for Northern Ireland should guarantee to all children regardless of origin or place of birth an adequate education.*

20. The Covenant guarantees the right of everyone to take part in cultural life.<sup>63</sup> For a balanced development of a cultural identity, migrants need access to and development of their home cultural identity as well as that of the host country. However, the education system in Northern Ireland does not provide for or assist to develop the linguistic and cultural heritage of migrant children. *A Bill of Rights for Northern Ireland should ensure that everyone has a right to cultural expression and the right to avail of the means to do so.*

April 2009

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**Written evidence from the Star Neighbourhood Centre**

1. The Star Neighbourhood Centre was opened in February 1990 and is located in the New Lodge area of Inner North Belfast with premises backing onto the Duncairn interface. Since its opening, the Star has been a focal point for the local community. The principle aim is:

“To improve the quality of life of local residents by providing much needed services to the community of the “Long Streets” area of the New Lodge”.

2. The Star Neighbourhood Centre attempts to tackle social exclusion by promoting community development in all aspects of its work. This in turn builds the confidence, self-esteem and capacity of local people to participate in neighbourhood regeneration.

3. From small beginnings in 1990, the centre now provides a number of services, programmes and facilities to the local New Lodge community within the Inner North Neighbourhood Renewal area, including:

- a crèche and registered playgroup;
- a registered after-schools project;
- a social economy childcare project supporting parents in employment or training;
- a youth outreach project;
- a third age/senior citizens women's group;

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<sup>57</sup> Article 11.1.

<sup>58</sup> Article 12.1.

<sup>59</sup> Article 12.2(d).

<sup>60</sup> Article 13.1.

<sup>61</sup> Article 13.2(a).

<sup>62</sup> Article 13.2(b).

<sup>63</sup> Article 15.1(a).

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- education and training programmes;
  - residents group support;
  - transport;
  - play park;
  - a gym facility for health and fitness programmes;
  - hosts St Patrick’s junior football club; and
  - houses Star Amateur Boxing Club.

4. The Star also acts as a local resource centre for the community offering facilities such as typing, photocopying, computer and internet access, telephone/fax, lending equipment and acts as a conduit to statutory and voluntary organisations for local people to access information on training, benefits, legislation, employment etc.

5. As well as the provision of services and facilities, the Star acts as a development catalyst for the area, advocating and campaigning on behalf of the community to attract resources and drawing the attention of resource providers and policy makers to the needs of the area. The organisation has developed immensely over the past 18 years and is not only a community development organization and service provider but a small sized employment provider in the local area, currently employing 11 paid staff with the facility for trainees, placements and volunteer involvement, underpins all areas of work.

6. Given the complex and historical nature of the area, it has suffered high population loss due to the “conflict” and suffers from the effects of social issues such as high unemployment, low educational attainment and high levels of alcohol and substance misuse.

7. Other factors include:

- housing density with large families;
- lack of green spaces;
- lack of leisure sites and facilities;
- lack of support for vulnerable young parents;
- high rates of teenage pregnancies;
- high suicide rate amongst young people;
- poor health, substance and alcohol misuse;
- joy riding (commonly referred to as death riding);
- policing issues;
- vandalism and petty crime; and
- inter-generational conflict.

8. The impact of these factors affects self esteem and confidence, encourages apathy and anti-social behaviour and ensures that young people feel marginalized from society and do not feel part of their community. It further enforces the belief system that young people are the problem rather than seeing them as potential asset to the local community.

9. The Star Neighbourhood Centre is located in the New Lodge area of North Belfast. It backs onto Duncairn Gardens and therefore is defined as an interface area, where intercommunity violence has been prevalent over the years. The majority of the population, due to social, economic and political instability have been excluded from society and unable to reach their full potential. There is poverty, high unemployment rates, poor health and markedly low educational achievement. According to Nobel indicators, out of 566 wards the New Lodge ranks: 8th by multiple deprivation, 3rd by health, 5th by degree of child poverty, 7th by income, 9th by employment 23rd by education. The area has been selected as a primary target area for Neighbourhood Renewal by the government because it falls within the top 10% of the most deprived areas of Northern Ireland. The area has not only suffered the effects of poverty and negative social and economic policies but has endured at first hand the effects of sectarian and political conflict.

10. Clearly the Star Neighbourhood Centre is located in an area that has suffered and continues to suffer from political conflict and its legacies. Decades of political, economic and cultural discrimination have created cycles of inter-generational poverty and benefit dependency, resulting in low levels of self-esteem, poor educational expectations and lack of role models provided by working parents.

11. Because of the particular circumstances of the North of Ireland people have seen a need for a new law to protect our rights and freedoms as the beginning to a fresh start for all the citizens. The people of the North are like other societies who have emerged from and survived from intense violence and conflict, we need to lay down building blocks for future generations to ensure that human rights are upheld no matter what section of society you come from.

12. A Bill of Rights for the North of Ireland should include protection of human rights, a combination of social, economic and cultural rights such as the right to education, adequate standards of healthcare and fair employment. Civil and political rights such as the right to practise your religion of choice and voting rights.

13. The Newlodge is a marginalized community suffering many forms of social and economic deprivation. A Bill of Rights, which protects and promotes people's human rights to housing, health care, leisure; education etc would be a powerful tool for our community. However not everyone in our community is aware of the the Bill of Rights debate, never mind how to influence the debate about its formulation in the forthcoming consultation. We hope that local residents and in particular young people will become informed about what is at stake with the Bill of Rights and the impact it can have by making sure public policy is developed respecting human rights. Our project can go a long way to help making this a reality but it is also essential that the government makes the consultation as widely accessible and available to all sections of the public by actively engaging with communities.

14. We would encourage the Northern Ireland Affairs Committee to support the development of the type of social and economic rights that will have a real and meaningful impact for the Newlodge and all other communities in Northern Ireland by putting whatever pressure they can on the government to deliver a strong Bill of Rights for Northern Ireland.

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### **Written evidence from British Irish RIGHTS WATCH (BIRW)**

#### **1. INTRODUCTION**

1.1 British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW takes no position on the eventual constitutional outcome of the conflict.

1.2 This submission is provided in response to the Northern Ireland Affairs Committee's decision to consider written evidence in the matter of a short inquiry into the process toward a Human Rights Bill for Northern Ireland and focus on the scope which any such Bill should take.

1.3 We welcome the interest of the Committee in the important matter of a Human Rights Bill for Northern Ireland which we refer to, in accordance with the Good Friday Agreement, as A Bill of Rights for Northern Ireland.

#### **2. THE GOOD FRIDAY AGREEMENT AND POLITICAL COMMITMENT**

2.1 We remind the Committee of the commitment made in the Good Friday Agreement of 1998 that, "The new Northern Ireland Human Rights Commission will be invited 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 of Rights for Northern Ireland".

2.2 The Northern Ireland Human Rights Commission presented its Advice to the Secretary of State on 10 December 2008 with an assurance of a three month consultation. Since then the comments of the Secretary of State to the Committee on 1 April 2009 have not been helpful and the consultation process appears stalled. We urge the Government to legislate for a Bill of Rights for Northern Ireland. This legislation should incorporate many of the proposals of the Advice which was formulated after extensive consultation with the people of Northern Ireland and which should now be subject to further consultation and discussion.

2.3 We are aware that the Government has published a Green Paper "Rights and Responsibilities; developing our constitutional framework" (Cm 7577) March 2009 and that this document and other discussions form the basis of an initial consultation on introducing a Bill of Rights for all of the UK. BIRW does not consider that this UK wide process should hinder the implementation of a Bill of Rights for Northern Ireland. We welcome the comment in the Government's Green Paper at paragraph 4.38 page 60) that "Importantly, the Government does not wish the public debate around a UK instrument to detract from the process relating to a potential Bill relating to the particular circumstances of Northern Ireland".

### 3. A BILL OF RIGHTS FOR NORTHERN IRELAND AS PRIMARY LEGISLATION

3.1 It is the opinion of BIRW that a Bill of Rights for Northern Ireland must meet certain universally-applicable criteria. These can be summarised as follows: ownership, relevance, protection of minority rights, entrenchment, enforcement, and flexibility.

3.2 BIRW stresses at the outset that a Bill of Rights for Northern Ireland must belong to as wide a cross-section of the public as possible, including in particular those who are marginalised in society and who by definition find it more difficult to access their rights. In this regard a Bill of Rights for Northern Ireland must be relevant to the population it protects. It must reflect their concerns and must deal with issues that matter to them fairly and equally. A Bill of Rights for Northern Ireland must protect the disadvantaged and it must recognise that minorities need protection from the majority, especially in a democracy, where minorities can always be outvoted. As the Committee is aware, this is especially pertinent given the demography of Northern Ireland. A Bill of Rights for Northern Ireland must be capable of delivering change on the ground, not just for groups of people but also for individuals.

3.3 Finally BIRW urges that a Bill of Rights for Northern Ireland must enjoy a statutory basis and must contain strong enforcement mechanisms whilst being capable of amendment to reflect changes for the better in society, while at the same time being protected from changes that are the result of political ideology or in response to moral panic. Therefore, a Bill of Rights for Northern should be fully enforceable through the courts.

3.4 A Bill of Rights for Northern Ireland would grant the people of Northern Ireland some fundamental rights that could not be removed, undermined or eroded by powerful institutions against which individuals have no defence. This would give everyone a tangible stake in the society of Northern Ireland, undermining those elements both within and without who would like to subvert those who are weak and disenfranchised by lack of realisable rights.

3.5 On this point BIRW argue that A Bill of Rights for Northern Ireland should not simply replicate what is contained in the Human Rights Act 1998 or in any measure reduce the level of protection provided by that Act, but in fact adds protection to the rights enshrined in the Convention. A Bill of Rights for Northern Ireland should be an instrument that builds on the platform provided by the Act and the Convention to strengthen and augment those rights. In addition, A Bill of Rights for Northern Ireland should be able to rectify defects in the Human Rights Act, such as the omission of Article 13, which provides for effective remedies.

### 4. RIGHTS AND RESPONSIBILITIES

4.1 BIRW is aware that most human rights imply some kind of responsibility. For example, the right to freedom from discrimination implies that others must not exercise discrimination. However, the responsibility for enforcing rights lies with the state and with emanations of the state. A Bill of Rights for Northern Ireland should be just that, a bill which confers rights on all the people of Northern Ireland. It should not seek to lay responsibility for upholding human rights on individual citizens by creating a set of responsibilities. In our view, the idea that with rights come responsibilities, or that rights have to be earned, are essentially questions of morality, which cannot be legislated for. Rights, in our view, belong to everyone equally. These standards are the mark of a civilized democracy, and should not be diluted by importing into rights legislation any exchange for responsibilities. For example, we do not deny criminals a fair trial because their behaviour has been irresponsible.

4.2 BIRW does not agree with the position of the Government on this matter when it states that any new constitutional instrument should encapsulate the responsibilities we owe to one another (CM 7577 paragraph 2.1 page 14). The incorporation of responsibilities was not within the mandate of the Northern Ireland Human Rights Commission. The enforcement of responsibilities would mean gross intrusions into the privacy of individuals.

### 5. THE PARTICULAR CIRCUMSTANCES OF NORTHERN IRELAND

5.1 The particular circumstances of Northern Ireland were indicated in the Good Friday Agreement of 1998 and it is important that they are stated again. The Agreement listed 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. The Committee will be aware that the Agreement also set out a number of specific rights that must be considered part of Northern Ireland's particular circumstances and which now serve to add value to the rights protected by the Convention incorporating as they do social, economic and cultural rights. 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.

5.2 The Good Friday Agreement also included 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; and
- parading and the use of symbols and emblems.

5.3 In line with the recommendations of the Northern Ireland Human Rights Commission BIRW supports the inclusion of the following additional rights:

- right to the highest standard of healthcare;
- right to a standard of living;
- right to a sustainable environment;
- right to work;
- right to social security; and
- rights of women and children.

5.4 The way in which BIRW think the Bill of Rights should reflect the particular circumstances of Northern Ireland is by laying down those rights stated above, over and above what is covered by the Convention and the Human Rights Act 1998, thus enabling people in Northern Ireland to live together normally in a just and peaceful society and in an atmosphere of mutual respect. The reflection it casts should be inspirational rather than prosaic and this is justly so given Northern Ireland's conflict ridden past and the possibility of a fully integrated rights based culture for the future.

## 6. RIGHTS, JUSTICIABILITY AND ENFORCEMENT

6.1 BIRW strongly advocate that all the rights contained in a Bill of Rights for Northern Ireland are justiciable, meaning that all rights are capable of judicial enforcement. One of the major weaknesses of the Human Rights Act 1998 lies in the area of enforceability. If a court is unable to interpret a piece of primary legislation so as to make it compatible with the Convention, it has no power to strike that legislation down, but may only declare it to be incompatible. It is then for Parliament to decide whether to repeal or amend the legislation. While this preserves the doctrine of parliamentary supremacy, it undermines the rule of law which is crucial in providing a Bill of Rights with the force to protect the individual from the vagaries of state interference.

6.2 In our view, a Bill of Rights for Northern should be fully enforceable through the courts. It should therefore be binding on the Executive and have the power to strike down incompatible legislation. A Bill of Rights for Northern Ireland should therefore be an instrument of primary legislation against which any other legislation must be measured in terms of compatibility.

6.3 BIRW accept that some economic and social rights cannot always impose immediate obligations on the state. Some economic and social rights frequently impose an obligation of "progressive realisation" rather than of immediate effect upon the state. We accept this as a political reality in the process of resource allocation and decision making by the organs of the state. However, progressive realisation should require that all appropriate measures be taken to achieve the full effectiveness of these economic and social rights.

6.4 A Bill of Rights for Northern Ireland needs embedded within it strong enforcement mechanisms. Rights on paper are worthless unless they can be enforced. BIRW maintain that enforcement through the judicial system is the most effective way to ensure compliance, compatibility and enforcement. A robust judicial appointments process having utmost integrity and public confidence would ensure the validity of rights enforcement through the legal system.

6.5 BIRW urges the Committee to consider the failings in the process of the incorporation of the Convention through the Human Rights Act 1998 and that the lessons of this failure be learnt in the process of introducing a Bill of Rights for Northern Ireland. You will be aware that the Human Rights Act 1998 omitted Article 13 of the Convention. Article 13 states “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” This omission must be avoided in introducing a Bill of Rights for Northern Ireland.

6.6 A Bill of Rights for Northern Ireland would therefore be an instrument fully incorporating, enhancing and supplementing the provisions of the Convention.

6.7 Finally, BIRW advocate that for full effectiveness the Human Rights Act 1998 and a Bill of Rights for Northern Ireland require the mechanisms of a written constitution incorporating a constitutional court. Admittedly this proposal goes beyond the remit of the Committee’s brief but BIRW maintains that the complexities of the contemporary state demands a written statement amounting to a covenant with its people.

## 7. CONCLUSION

7.1 The Committee is aware of the Advice to the Secretary of State for Northern Ireland on “A Bill of Rights for Northern Ireland” prepared by the Northern Ireland Human Rights Commission (10 December 2008). The Advice was prepared after an extensive period of consultation with the people of Northern Ireland. The Advice was provided in response to the commitment made in the Good Friday Agreement and under section 69(7) of the Northern Ireland Act 1998 (“The Secretary of State shall request the Commission to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the Belfast Agreement.”). BIRW contributed to the consultation process in the production of the Advice and welcomed the publication of the Advice.

7.2 BIRW reminds the Committee of the compelling nature of the Advice and urges that its recommendations, together with those made in this submission by BIRW and no doubt by others, form the core of the Committee’s consideration and informs both further consultation and its own recommendations to the Secretary of State and Parliament.

7.3 We conclude our submission by offering a summary of our advice to the Committee. First and foremost, a crucial measure of success for a Bill of Rights for Northern Ireland is that the majority of people in society, whatever their race, religion, ethnicity, or political or community affiliations, can say, “This is my Bill of Rights”. Secondly, a Bill of Rights for Northern Ireland must be relevant to the population it protects. It must reflect their concerns and must deal fairly and equally with issues that matter to them. It must be comprehensive and incorporate fundamental economic, social and cultural rights as well as vital civil and political rights. Thirdly, it must protect the disadvantaged in Northern Ireland society. Fourthly, a Bill of Rights must be capable of delivering change on the ground, for groups of people and for individuals. A Bill of Rights for Northern Ireland must enjoy a primary statutory basis and must contain strong enforcement mechanisms avoiding the mistakes made in the partial incorporation of the Convention in the Human Rights Act 1998. Finally, a Bill of Rights for Northern Ireland must be capable of amendment to reflect changes for the better in society, while also being protected from changes that are the result of the overarching exercise of executive authority, political whimsy or misplaced public pressure.

*April 2009*

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### **Written evidence from Northern Ireland Human Rights Consortium**

1. The Human Rights Consortium is a coalition of NGOs, Trade Unions and Community and Voluntary Groups which campaigns for the development of a strong and inclusive Bill of Rights for Northern Ireland. It was established in 2000 to encourage widespread community participation in the consultation process on the proposed Bill of Rights for Northern Ireland. Its membership has now grown to over one hundred and thirty organisations which represent a huge number of people from a diverse range of constituencies and communities across Northern Ireland. A list of our membership is included at the end of this submission.

2. The unifying factor in the Human Rights Consortium is a firmly-held belief that a strong and inclusive Bill of Rights can play a fundamental role in the creation of a better, more just, inclusive and shared Northern Ireland.

3. Over the last nine years, members of the Human Rights Consortium have promoted awareness of and participation in the Bill of Rights consultation process by thousands of people across Northern Ireland. Member groups have made a series of detailed submissions to the Northern Ireland Human Rights Commission, based on these consultations and on expert local and international research.

4. Following the initial Bill of Rights Consultation, the Consortium developed its role to directly campaigning for a Bill of Rights. While it does not take specific positions on the detailed content of a Bill of Rights, it campaigns for a strong and inclusive Bill of Rights. By strong, we mean no undermining of current international/regional human rights protections, recognisable gains, especially for the most

disadvantaged and effective enforcement mechanisms. By inclusive, we mean it should represent the diversity that is Northern Ireland, promote equality for all and also move beyond the European Convention on Human Rights and the Human Rights Act to include, in particular, socio-economic rights.

5. The Consortium has helped to put the Bill of Rights onto the agenda of local churches, trade unions and civic society more generally and promoted dialogue with local political parties. We are in the process of taking this support forward by mobilising widespread popular and political support behind a strong and inclusive Bill of Rights for Northern Ireland.

6. The Consortium members believe that in addition to representing the completion of commitments within the Belfast/Good Friday Agreement, the development of a Bill of Rights can help address many of the issues which are a legacy of the conflict in Northern Ireland and help underpin the current peace with a set of basic rights for everyone in Northern Ireland.

7. The remainder of this submission will focus on three issues which are at the heart of the Bill of Rights debate. Social and economic rights, the particular circumstances of Northern Ireland and cross community support for a Bill of Rights.

#### SOCIAL AND ECONOMIC RIGHTS

8. A Bill of Rights would set out a common set of rights for all communities, placing no community or section of a community above another. The Consortium members believe that the Bill of Rights debate here can allow all sections of a divided society to come together and voice their views about what rights need to be protected for everyone equally as we move forwards. The Bill of Rights in this way can help unite all communities in Northern Ireland around a common set of shared values which protect everyone.

9. It is clear that the social and economic fabric of Northern Ireland suffered greatly during the conflict and formed part of our “Particular Circumstances”. It is therefore essential that the protection of social and economic rights plays a central role in the process of rebuilding Northern Ireland. Social and economic rights also encapsulate the day to day range of issues which are of the most immediate relevance to the public, particularly during these times of financial uncertainty. Statistical data supports this.

10. Representative polling across both main communities has shown high levels of support in Northern Ireland for the development of a local Bill of Rights with even higher levels of support for social and economic rights.<sup>64</sup> Over 90% of people in both communities support rights to adequate standards of living, rights to the highest attainable standards of physical and mental health, the right to work and rights to social security.

11. Millward Brown Ulster, an independent market research company, interviewed a random sample of 1,007 adults aged 16+ in February 2009. Interviews were conducted across Northern Ireland with a representative sample of the adult population.

12. Those surveyed were asked a range of questions to assess support for the inclusion of social and economic rights in a Bill of Rights. The rights were based closely on the content of the Commission’s recommendations. They were asked:

- (a) “How important is it for the right to highest attainable standard of physical and mental health to be included in a Bill of Rights for Northern Ireland?” 94% of those surveyed thought it was quite important or very important. 95% of the Protestant and 93% of the Catholic community supported this view.
- (b) “How important is it for the right to an adequate standard of living to be included in a Bill of Rights for Northern Ireland?” 92% of those surveyed thought it was either quite important or very important. 93% of the Protestant and 93% of the Catholic community supported this view.
- (c) “How important is it for the right to work to be included in a Bill of Rights for Northern Ireland?” 93% of those surveyed thought it was either quite important or very important. 94% of the Protestant and 93% of the Catholic community supported this view.
- (d) “How important is it for the right to adequate accommodation to be included in a Bill of Rights for Northern Ireland?” 93% of those surveyed thought it was either quite important or very important. 93% of the Protestant and 94% of the Catholic community supported this view.

13. The Consortium does not see the Bill of Rights usurping the role of politicians but rather as a natural part of the checks and balances of a modern democracy that sets minimal standards for everyone and ensures a safety net for the most vulnerable in society. The Bill of Rights in the first instance would be implemented by our elected representatives who would use it as a human rights guide to the development of policy and legislation, ensuring its compliance with the Bill of Rights.

14. The implementation of social and economic rights could be progressively realised in accordance with international best practice, using benchmarks and indicators to continuously assess whether the rights in a Bill of Rights were being implemented over a period of time. At the opposite end of that spectrum, if the government consistently refuse or fail to take minimal incremental steps towards implementing those rights, individuals should have an ultimate judicial mechanism of holding the government to account.

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<sup>64</sup> Human Rights Consortium Polling carried out by Millward Brown Ulster, February 2009.

15. The Consortium believes that the Northern Ireland Human Rights Commission's recommendations to the UK government on the content of a Bill of Rights represent a positive basis for developing the Bill of Rights, being closely reflective of international standards and the particular circumstances of Northern Ireland. Its inclusion of social and economic rights are of particular importance and would be close to achieving the Consortium's aim of a strong and inclusive Bill of Rights if implemented in legislation.

#### PARTICULAR CIRCUMSTANCES

16. The term "particular circumstances" is open to interpretation but the Human Rights Consortium interprets it in the broadest sense, encompassing the political, civil, cultural and socio-economic factors that are specific to Northern Ireland.

17. It is widely agreed that a Bill of Rights for Northern Ireland needs to address the specific realities of our society. Few could disagree that Northern Ireland is a society where people have experienced an abuse of their basic human rights over a long period of time. This is a society of great inequalities and divisions.

18. Northern Ireland has the highest rate of economic inactivity in the UK. 35% of 16 year old school leavers in Northern Ireland failed to achieve 5 A–C GCSEs in 2007. As many as one in five people here has a disability and people with a disability are twice as likely to be unemployed. In addition, the areas that suffered the worst levels of violence during the conflict also had, and continue today to have, the highest levels of deprivation in Northern Ireland. The infant mortality rate among the Travelling community is unacceptably high and over 500 older people die of cold here every year. Moreover, we should not ignore the legacy of the past. In a relatively small population of one and a half million people, over 3,600 individuals have been killed and many thousands injured in the last 30 years of violence.

19. Thousands of people, mainly young males, have passed through the prison system at some point or other. At the same time, many other individuals have been excluded from the mainstream of society. Society's focus on the political conflict has meant that many vulnerable groups and individuals, for example, have suffered even greater marginalisation than they might have in more stable societies.

20. A Bill of Rights that adequately meets the needs of Northern Irish society must address all of these aspects of our society's "particular circumstances" as we emerge from conflict. A broad understanding of the "particular circumstances of Northern Ireland" would avoid creating a "hierarchy of suffering" in which some people are made to feel that their experiences have not been as bad as others, but on the contrary, that society wants to address the different human rights needs of different groups. Recognising a common set of rights in a document that all can identify with and commit to is thus an important element in building a new society. For this reason, it is important that the rights identified should not be too narrow in their focus.

21. The narrower the range identified, the less likely it is that individuals will identify with the bulk of rights on the list. In particular, the more the rights specified are seen to appeal across different communities, the more likely it will be that rights can be seen as something that binds the community together, rather than divides it.

22. For this reason, it might be misguided to focus a Northern Ireland Bill of Rights only on those rights which address specifically Northern Ireland concerns in a narrow way. Such a Bill of Rights would focus only on issues of language, discrimination, minority rights and so on, rather than providing a vision that unites across communities. It would reinforce the idea that human rights are only a trade-off between those communities. It separates rather than offering a vision of shared common values. Perhaps the broader the definition of protected rights, the more it specifically addresses Northern Ireland's circumstances.

#### CROSS COMMUNITY SUPPORT

23. The public debate about the Bill of Rights has, despite the efforts of the Consortium, too often centred on negative political debates split along traditional Unionist and Nationalist political party lines. All political parties here are positively supportive of having a Bill of Rights for Northern Ireland but have disagreed on the content. Despite the political debates on the Bill of Rights, representative polling across both main communities has shown that around three quarters of people in Northern Ireland support the development of a local Bill of Rights.

24. In the same survey mentioned above, those surveyed were also asked, "How important or not do you think it is for Northern Ireland to have a Bill of Rights?" 70% of respondents replied positively saying that it was quite important or very important. 69% of the Protestant and 72% of the Catholic community supported this view.

25. The Consortium believes that this clear support among the Northern Ireland public must be respected and transferred to the final content of a Bill of Rights. Additionally, we believe that this public opinion will be reflected in any forthcoming public consultation if the government commits to a wide reaching and engaging consultation that reaches and attracts all areas of society. We feel that this level of commitment is necessary given the government's duties under Section 75 of the Northern Ireland Act.

## CONCLUSIONS

26. We therefore wish to ask for the Northern Ireland Affairs Committee's support in a number of areas concerning the Bill of Rights for Northern Ireland.

- (1) We firstly would urge the Committee to assist in putting pressure on the government to commit to the form of wide ranging and engaging public consultation necessary to elicit the wide support that exists for a Bill of Rights among the Northern Ireland community.
- (2) We ask the Committee to recognise the need for the inclusion of the social and economic rights necessary to deliver a strong and inclusive Bill of Rights which reflects the "particular circumstances" of Northern Ireland and creates a cohesive set of rights that can unite the traditional communities in Northern Ireland.
- (3) We would ask for the Committee's support in developing the Bill of Rights into legislation within the lifetime of this government in order to finally deliver on this remaining commitment of the Belfast/Good Friday Agreement.

27. We thank the Committee for its consideration of what the Consortium believes to be one of the most pressing, relevant and meaningful issues facing Northern Ireland today. We look forward to reading the results of your inquest and hope that its conclusions reflect the clear will that exists in Northern Ireland for a strong and inclusive Bill of Rights.

May 2009

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### Written evidence from Paul Watterson

1. Three fundamentals of our democracy are the sovereignty of Westminster, the separation of the judiciary and the legislature and the inability of a current parliament to bind those which follow it. I believe the Bill under discussion, if ever adopted, would greatly weaken all three and I have chosen five specific areas within the report to illustrate this belief (relevant page numbers are listed).

2. Discrimination: pg 33

- "2. No one shall be unfairly discriminated against by any public authority on any ground such as: race, membership of the Irish Traveller community, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender, identity, age, disability, health status, genetic or other predisposition toward illness, irrelevant criminal record, property or a combination of any of these grounds, on the basis of characteristics associated with any of these grounds, or any other status."

This clause, and in particular the last "or any other status" (apart from being completely impractical), would force individual judges to be the final arbiters of what is and what is not "discrimination" within the widest of parameters delivered by the wording. For example, if I am below the approved height and strength for the Fire Service, under that last clause I would still have the right under the bill to take my case to court. It would be up to the judge, not the legislature of either the UK or the EU, to first of all define what discrimination, if any, had taken place.

3. Standard of living: pg 47

"A provision should be drafted to ensure that—

1. Everyone has the right to an adequate standard of living sufficient for that person and their dependents."

Everyone is guaranteed an "adequate" standard of living. What is an "adequate" standard of living? Neither this bill nor our legislature is capable of defining that for each separate case independently. The judiciary will not be interpreting the law in this, are but will be actually making it when compelled to give decisions on individual cases.

4. Right to work: pg 122

"A provision should be drafted to ensure that—

1. Everyone has the right to work, which includes the right to the opportunity to gain their living by work which they freely choose or accept."

What does this mean for present and any future proposed welfare reform? In reality, what this proposal is doing is guaranteeing any citizen the right to turn down work which they may not find suitable and still simultaneously continue to rely on the state for the "adequate" standard of living already mentioned above. If this Bill becomes law, therefore, future parliaments will be bound by legislation passed by a prior one.

## 5. Social Security: pg 128

“A provision should be drafted to ensure that—

1. Everyone has the right to social security, including social assistance, social insurance and pension.”

Connected with the two previous points, this measure will, of necessity, entail the judiciary deciding on the balance that needs to be struck in this area. Furthermore, future parliaments will be unable to adapt to changing social or economic circumstances, thus greatly weakening the principle of accountable and democratic governance.

## 6. Proportional Representation: pg 35

“A provision should be drafted to ensure that—

4. A Bill of Rights for Northern Ireland recognises the safeguards contained in the Belfast (Good Friday) Agreement 1998 for inclusive, proportionate and equitable participation in regional government and recommends, by means to be determined in legislation, equivalent safeguards for local government.”

Owen Paterson MP and Shadow Spokesman for Northern Ireland has argued that this clause contravenes the requirement in the Belfast Agreement to review the current voting system regularly. Again, this is the case of the present legislature bounding in perpetuity those that may follow it.

7. I have limited myself here to five examples as evidence for the assertion I made at the beginning of this submission. Members of the committee will, having read the report, undoubtedly have encountered others—in my opinion, this report, if it were ever to become law, would have serious implications for our democratic system of governance.

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### Written evidence from the Alliance for Choice

#### INTRODUCTION

1. Alliance for Choice welcomes the opportunity to provide evidence to the Northern Ireland Affairs Committee on a Human Rights Bill for Northern Ireland. Our evidence relates to reproductive rights, specifically the right to abortion in Northern Ireland. We at Alliance for Choice believe that a Human Rights Bill for Northern Ireland should be consistent with current international standards and reflect the particular circumstances of Northern Ireland. We therefore reject the Northern Ireland Human Rights Commission (Dec 2008) assertion in their advice to the Secretary of State that “*it is inappropriate for abortion to be dealt with in a Bill of Rights*”.

2. Northern Ireland continually fails to meet international human rights standards due to the failure to decriminalise abortion and provide women access to safe and free abortions similar to other women in the United Kingdom. Abortion is legal in Northern Ireland in some circumstances but access is severely restricted and abortion law is still bound by the 1861 Offences Against the Person Act. Other parts of the United Kingdom rely on the 1967 Abortion Act for abortion law.

3. Alliance for Choice is an organisation that campaigns for the extension of the 1967 Abortion Act to Northern Ireland. It is made up of women and men, from both Catholic and Protestant communities in the North of Ireland, who want to see equality and self-determination for women here. Alliance for Choice was set up in 1996, emerging from the Women’s Right to Choose Group, to encourage the incoming Labour government to implement Labour Party policy to extend the Act.

4. Much of our work has been about making heard the voices of the tens of thousands of women from NI who have had abortions in England and elsewhere since 1967—thereby exposing the hypocrisy of the politicians who say there is “no demand for abortion rights” in NI.

Ms. C:

“When I was aged 25 and my daughter Caroline was almost eight, I went for a pregnancy test at the LIFE offices. My distress at the positive test was so great, the counsellor took some time to calm me down. I explained that Caroline has severe autism and challenging behaviour. As a lone parent, I was just about managing to keep her in the community. Another child would mean that Caroline would end up in care and I wasn’t having that.

The counsellor said that maybe God was sending me this child ‘to make up for Caroline’. This insult to my darling daughter summed up the ‘pro-life’ attitude for me. Getting respite care for a few days to allow me to go to England was very difficult, although the all my friends rallied round with money, so that part wasn’t too bad.

Five years on, Caroline is still at home with me and her behaviour is greatly improved. If I had continued that pregnancy, I have no doubt that she would be in care and much, much worse in her behaviour and abilities.”

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DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY (DHSS&PS)—GUIDANCE ON THE TERMINATION OF PREGNANCY: THE LAW AND CLINICAL PRACTICE IN NORTHERN IRELAND

5. The DHSS&PS published guidance on the termination of pregnancy in Northern Ireland following a Judicial Review brought by the Family Planning Association in 2004. The Review found that the DHSS&PS had failed in its statutory duty to issue guidance in relation to the termination of pregnancy in Northern Ireland and to investigate the difficulties in obtaining services for the termination of pregnancy.

6. The Guidance was published on 13th March 2009. The Guidance produced by the DHSS&PS appears to present a number of additional barriers such as need a psychological assessment and the use of chaplaincy services.

7. Alliance for Choice believes that these additional barriers and indeed the Guidance are not compatible with international human rights standards and do not guarantee access to abortion service in Northern Ireland. It is these “particular circumstances” that should be included in a Human Rights Bill for Northern Ireland.

#### CONTEXT OF INTERNATIONAL LAW

##### *Platform for Action*

8. The Platform for Action, agreed at the Fourth World Conference on Women in Beijing in 1995, stated that:

“... the neglect of women’s reproductive rights severely limits their opportunities in public and private life, including opportunities for education and economic empowerment. The ability of women to control their own fertility forms an important basis for the enjoyment of other rights. Shared responsibility between women and men in matters related to sexual and reproductive behaviour is also essential to improving women’s health”.

##### *The Convention on the Elimination of all forms of Discrimination Against Women*

9. The United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), in Article 12 refers to “access to health care”, and specifically includes family planning. The General Recommendation 24: on Health states that, “it is discriminatory for a State Party to refuse to legally provide for the performance of certain reproductive health services for women”.<sup>65</sup> The General Recommendation points to barriers such as criminalising medical procedures only needed by women who undergo those procedures as well as high fees, requirement of spousal, parental or hospital authorisation and inaccessibility because of distance or travel.

10. The Government in its 4th (1999) and 6th Periodic Report (2007) of the United Kingdom and Great Britain and Northern Ireland (May 2007) to the CEDAW Committee states that the 1967 Abortion Act does not apply to Northern Ireland and is not devolved to the Assembly.

11. Concluding comments from the Committee on hearing the 4th Periodic Report in 1999, were highly critical of the failure to provide abortion services to women of Northern Ireland and,

“... noted with concern that the Abortion Act 1967 does not extend to Northern Ireland where, in limited exceptions, abortion continues to be illegal. It recommends a process of public consultation on reform of the abortion law”.<sup>66</sup>

12. Concluding Comments of the CEDAW Committee in July 2008 were equally damning, by calling again for a public consultation process on abortion law and in line with General Recommendation 24 and the Beijing Declaration and Platform for Action to consider amending abortion law “to remove the punitive provision imposed on women who undergo abortion”.

##### *The European Convention on Human Rights*

13. The European Convention on Human Rights (ECHR) has also been tested on the issue of abortion. Recently in *Tysiac v Poland*,<sup>67</sup> the European Court (ECrHR) held that failure to provide an abortion to a woman where her pregnancy threatened her health was a violation of Article 8, “Right to Respect for Private and Family Life”. The Court held that the “chilling effect” on doctors due to the uncertainty of the law and the possibility of them incurring criminal responsibility must be alleviated. The legal framework, “... must first and foremost, ensure clarity of the pregnant woman’s position”.

14. In June 1993, the Standing Advisory Commission on Human Rights (SACHR) issued a public consultation document on the issue of abortion. Written by Simon Lee, Professor of Law at the Queen’s University of Belfast, it observed that: “The law on abortion in Northern Ireland is so uncertain that it violates the standards of international human rights law. It could not withstand a challenge before the European Court of Human Rights at Strasbourg.”

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<sup>65</sup> General Recommendation 24, “Health,” 1999 CEDAW Committee.

<sup>66</sup> Committee on Elimination of Discrimination Against Women concludes Consideration of UK Reports, WOM/1132, 10 June 1999.

<sup>67</sup> *Tysiac v Poland* 5410/03 20 March 2007.

15. A pamphlet produced by the NIHRC in 2001, “The Bill of Rights: Women”<sup>68</sup> states that it is probable that the current law in Northern Ireland is likely to be in violation of the European Convention on Human Rights, for failing to provide for abortion and for not being clear as to the legality of the current situation.

#### *Foetal Rights?*

16. The concentration of foetal rights in medical discourse and social conscience reinforces the notion of foetal rights, despite no basis in law. However, the ECHR has been tested on whether it covers foetal rights through Article 2, “Right to Life”, in *Vo v France*.<sup>69</sup> The patient was six months pregnant and as a result of confusion with another patient who was to have a coil removed, the applicant lost her unborn child. In attempting to remove the coil, the doctor ruptured the amniotic sac causing loss of fluid, which resulted in her losing her unborn child. Under French law, she could not bring criminal proceedings, as the foetus cannot be the victim of unintentional homicide. The ECtHR held that it was not practicable to answer in the abstract whether the unborn child is a person for the purposes of Article 2 (Overy and White, 2006).

17. Whilst the ECtHR has not expressly recognised the right to abortion, the Grand Chamber judgement in *Vo* stressed that any right to life enjoyed by the foetus is “*implicitly limited by the mother’s rights and interests*”.<sup>70</sup>

18. The Republic of Ireland has however codified foetal rights within its constitution. Article 40.3.3 of the Constitution provides:

“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right”.<sup>71</sup>

19. A series of challenges have been made to this, notably the *X* case,<sup>72</sup> *D* case,<sup>73</sup> where the competing rights of the woman and the foetus were discussed in terms of foetal rights and the right to travel.

20. Samiloff (2007) in considering whether Irish abortion law breaches human rights law argues that the right to travel has now been established, but the rights of the foetus remain open to challenge. He suggests that it is likely that Article 40.3.3 of the Constitution is in breach of the European Convention on Human Rights.

#### *International Law*

21. O’Rourke (2007) in her Shadow Report submission to the 6th Periodic Report of the UK, notes that the provision of non-directive information and advice on healthcare is integral to Article 12, “Right to Health”, of CEDAW and points to the difficulty of availing of this service in Northern Ireland. She notes how the Brook Advisory Clinic, which provides free confidential advice to young people, does not include referral services for abortion; and the Fpa offices in Belfast and Derry are frequently picketed by anti-abortion campaigners and religious groups. Women and staff are harassed and intimidated as they enter these premises, which she argues, goes beyond the freedom of assembly guaranteed under international human rights treaties.

Ms. A:

“It was 1993 and my youngest child was eight years old when I found myself pregnant again. My marriage had broken up a few years before and my husband had left me to raise our five children alone with no support, financial or emotional. I had returned to education as a mature student and I was in the final year of my degree.

All the struggling to keep up with home and University was about to pay off. I was just months away from my final exams. When I told the man I was seeing that I was pregnant, he just didn’t want to know. He had children of his own from a previous relationship and wouldn’t be around to help, no matter what I decided to do.

Even though I was raised a Catholic and I didn’t agree with abortion, when I was faced with these circumstances, I felt I had no other choice. It took five weeks from when I decided to have a termination to raise the money to travel over. I borrowed money from friends, lying to some and trusting others with my secret. I had to use the phone-bill money as well, so we got cut off just before I left for London. Northern Ireland is part of the UK, so I don’t understand why I couldn’t have the abortion here”.

<sup>68</sup> NIHRC, January 2001, “The Bill of Rights: Women”; p 13.

<sup>69</sup> (App. 53924/00), Judgement of the Grand Chamber 8 July 2004;(2005) 40 EHHR 259.

<sup>70</sup> Plomer, 2005, p 332.

<sup>71</sup> Constitution of Ireland, July 1937.

<sup>72</sup> *Attorney General v X* [1992] I.R.1. A young girl was raped and as a result of this became pregnant and was restrained from travelling to England to obtain a termination. An appeal to the Supreme Court in Ireland held that the young girl had a right to an abortion under Article 40.3.3 if there was a “real and substantial risk” to her life.

<sup>73</sup> *D v Ireland* (App 26499/02) 28 June 2006. A young woman (*D*), pregnant with a foetus with anencephaly, a condition where a major part of the brain is missing, was being refused the right to travel to obtain an abortion in England.

#### PUBLIC OPINION

22. It is assumed that there is strong opposition to abortion in Northern Ireland. However, the evidence that does exist suggests that public opinion is broadly sympathetic to a liberalisation of abortion law:

- The Ulster Marketing Surveys conducted in May 1992, February 1993 and August 1994 show significant increases in the number of people who supported abortion at the request of the woman.
- In 2000–01 a survey of women attending British abortion clinics, carried out by Marie Stopes International found that 95% would have preferred to have their abortion in Northern Ireland—44% had to borrow money, 68% knew of other women who also had abortions and 95% supported the extension of the 1967 Abortion Act to Northern Ireland.<sup>74</sup>
- The Northern Ireland Assembly on 20 June 2000 debated a motion on abortion and a poll by the Belfast Telegraph on the day of the debate reported that fifty eight percent of respondents felt that abortion on demand should be legalised.<sup>75</sup>

23. The British Medical Association has called for the extension of the 1967 Abortion Act to Northern Ireland as have the majority of Trade Unions.

#### COSTS

24. This service for women in England and Wales is provided under the National Health Service, in that it is provided free of charge. Women from Northern Ireland have to access abortion services through the private sector and pay for travel and accommodation. For women on low incomes and women in rural areas, these barriers can have serious implications.

25. The cost of an abortion from Marie Stopes International is in the region of £550 to £670 depending on gestation period and choice of anaesthetic. For women from the island of Ireland, this is reduced to £410 to £500, to acknowledge the restrictions and limitations in terms of the legislative, public policy and service provision arenas. In addition to the cost of the procedure, flights and accommodation need to be factored in (approximately £250 to £350). This does not take account of the emotional and distressing nature of having to travel in secret and often alone.

26. Issues of the provision of information, non-directive counselling and follow-up care for women who have undergone abortions need to be considered also:

Ms. G:

“I really thought felt so close to insanity when I discovered I was pregnant. It should have been an ideal time—my son was just two years old, the perfect time to conceive a sibling. But Michael has severe brain damage and the prognosis was that he would never walk, talk, see, hear, get out of nappies. I was already traumatised by that knowledge and the idea of having another baby—with the danger that the same thing might happen again—it just terrified me in a way that I can’t describe. I can say that I understood for the first time how women can risk their lives using knitting needles or coat hangers to cause an abortion, because I felt desperate enough to do that. I had nightmares that somehow I would be stopped before I got to England and forced to continue the pregnancy. I was unable to function for the five weeks I had to wait until I was far enough along to have a termination. Although I needed him with me, my partner couldn’t accompany me although he wanted to because someone had to look after our son; if I had been able to have the termination in our local hospital, it would have been far easier for the whole family. From what I understand now about the law here, I think I was certainly entitled to an abortion in my local hospital because ‘nervous wreck’ underestimates how traumatised I was”.

#### BARRIERS

27. The “*Other Irish Journey*”, published by Marie Stopes International in 2001, outlines the findings of a survey of Northern Irish women attending abortion clinics in GB. The report reveals the nature of the barriers faced by women from Northern Ireland in assessing abortion services:

- that there was widespread mistrust of GPs with some women feeling that they were legally entitled to an abortion in Northern Ireland but found that their GP was confused about their rights;
- only 11% of the sample contacted their GP for information on clinics;
- interviews revealed confusion amongst GPs about abortion provision; and
- almost half had to borrow money to finance their abortion.

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<sup>74</sup> Rossiter and Sexton (2001) *The Other Irish Journey*. MSI.

<sup>75</sup> Fegan, E, Rebouche, R (2003) “Northern Ireland’s Abortion Law: The Morality of Silence and the Censure of Agency”. *Feminist Legal Studies* No 11 pp 221–254.

28. The Fpa in its response to the DHSS&PS Draft Guidance argue that it is not uncommon in Northern Ireland for all doctors in a group practice to object to abortion on conscientious objection grounds. The legal right for health professionals to opt out of providing treatment or care for pregnant women comes under the provisions of Article 4 of the 1967 Abortion Act, “conscientious objection to participation in treatment”. As this does not apply to Northern Ireland, health professionals are not protected in this instance.

#### CONCLUSIONS

29. Alliance for Choice believes that the current situation in Northern Ireland in relation to abortion is unacceptable and it is important that a Human Rights Bill for Northern Ireland locates this as a human rights issue for women. It is no longer right that in the 21st Century and in a modern democracy, that women, in one part of the United Kingdom are denied access to abortion services close to home. The need to travel and pay for abortion places unacceptable financial and emotional burdens on women in addition to unnecessary health risks.

30. Alliance for Choice believes that the essence of a Human Rights Bill for Northern Ireland should be to put the emphasis on the protection and promotion of women’s human rights in relation to health and well-being, allowing for the exercise of personal conscience at individual level.

April 2009

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### Written evidence from Evangelical Alliance Northern Ireland

#### 1 INTRODUCTION

1.1 The Evangelical Alliance,<sup>76</sup> formed in 1846, is the largest body serving evangelical Christians in the UK and has a membership which includes denominations, churches, organisations and individuals. The mission of the Evangelical Alliance is to unite evangelicals to present Christ credibly as good news for spiritual and social transformation. There are around two million evangelical Christians in the UK.<sup>77</sup>

1.2 The Evangelical Alliance endeavours to maintain a strong voice in the Human Rights & Responsibilities debate and to date has made significant contributions to the discussion on rights in the UK as a whole and in Northern Ireland. Submissions have been made to key government consultation papers on the topic, most recently those from the Joint Committee on Human Rights (2006)<sup>78</sup> and the Northern Ireland Human Rights Commission (NIHRC) (2007 & 2008).<sup>79</sup> A response was also made to the NIHRC’s advice to the Secretary of State (2009).

1.3 Furthermore the Revd Joel Edwards, former General Director of the Evangelical Alliance, has recently been appointed as a Commissioner to the Equality and Human Rights Commission. In taking up such an important role, Revd Edwards believes that one of his primary responsibilities will be to ensure that Christian values, including respect and tolerance, will play an effective role in the commission.<sup>80</sup>

#### 2 A BRIEF CHRISTIAN PERSPECTIVE ON HUMAN RIGHTS

2.1 The Christian motive and theological justification for engaging in the Human Rights debate is found primarily in the concept of *imago dei*, in effect, that all humans are created in God’s image.<sup>81</sup> Among Christians the manner and degree to which this informs our understanding may vary slightly. However there is general consensus that the concept forges the foundation for our belief in a God who desires us to be in relationship to him, each other and creation, ultimately requiring of us to respect and value that which God has made. It is in terms of this latter point that the dignity of humans—so widely quoted as the source of all human rights—is understood by most evangelical Christians.

2.2 In light of this Christians broadly support attempts to protect human beings from being de-valued or treated with a lack of respect. The Bible further states that we are created equal in God’s eyes<sup>82</sup> and therefore one individual does not deserve any more or less respect than another “...irrespective of any additional quality such as nationality, intelligence, age or social status.”<sup>83</sup>

2.3 In addition, the deeply relational nature of God and His creation is an integral part of Christians’ daily interactions with others. Where wrongs are committed, as they undoubtedly will be, Christians believe that rather than focusing on an infringement of rights we would be better to recognise the breakdown and violation of human relationships and where possible make appropriate steps towards reconciliation. Indeed,

<sup>76</sup> [www.eauk.org](http://www.eauk.org)

<sup>77</sup> Statistics from Tearfund’s *Churchgoing in the UK*, April 2007

<sup>78</sup> [www.eauk.org/public-affairs/humanrights/](http://www.eauk.org/public-affairs/humanrights/)

<sup>79</sup> [www.eauk.org/northern-ireland/public-affairs/consultations](http://www.eauk.org/northern-ireland/public-affairs/consultations)

<sup>80</sup> [www.eauk.org/media/ehrc-appointment](http://www.eauk.org/media/ehrc-appointment)

<sup>81</sup> Centre for Contemporary Christianity in Ireland, 2000, *A Shared Vision? Human Rights and the Church*, p30 & Evangelical Alliance UK, 2007, *Faith and Nation—Report of a Commission of Inquiry to the UK Evangelical Alliance*, Appendix 3 p147

<sup>82</sup> Luke 10:25–37, Galatians 3:28

<sup>83</sup> Matthis de Blois, “The Foundation of Human Rights: A Christian Perspective”, in Paul R. Beaumont (ed.), 1998, *Christian Perspectives on Human Rights and Legal Philosophy*

rights and freedoms flourish most clearly in an environment where a focus on the responsibilities intrinsic to successful relationships exists. This is most explicitly encouraged by Jesus when He “delves into the heart of the Torah to define what must surely be a universal moral code—the so-called ‘Golden Rule’”.<sup>84</sup>

2.4 The “Golden Rule” is part of Jesus’ response to the question “What must I do to inherit eternal life?”<sup>85</sup> He simply re-affirms two existing Old Testament laws, with which his listeners would have been familiar, and explains that we must love God and love our neighbour as ourselves. This strong emphasis on respecting others and treating them as we would wish to be treated can be seen through out Jesus’ teachings.

2.5 Alongside the biblical and theological precedence for a Christian involvement in the Human Rights debate there is a strong historical association with the World Council of Churches being key contributors to the Universal Declaration of Human Rights document.<sup>86</sup> Having established these precedents it is, however, important to highlight a few areas where evangelicals find themselves in conflict with the current popular discourse.

2.6 Major concerns have been raised over the current trend towards fierce individuality<sup>87</sup> at the expense of the relational vision which God has laid down for his creation and how it is repositioning the human rights debate firmly within a liberal humanistic arena. Focusing too exclusively on “rights” does nothing to enrich our understanding of society. Indeed, it can lead one to appreciate humankind merely in terms of the sum of those rights, thus grossly under-valuing the individuals whom the system seeks to protect.

2.7 Liberal individualism holds great faith in humanity suggesting that education and protected freedoms (ie human rights) can produce individuals who together make up a healthy society. History gives us a less optimistic view, however, with many well educated “tyrants” and wars/war crimes persisting despite international human rights laws being in place to protect victims from such brutality. The Bible foresees such a tendency towards disorder and injustice whilst humankind’s relationship with God and each other is broken.<sup>88</sup> This relational component to society, as created by God, is therefore critical to any understanding of a free and healthy society. A relational society does not allow for the possibility of isolation from responsibility towards others.<sup>89</sup>

2.8 Indeed this link has been evident since the conception of the debate on rights and appears, without negative effect, in both the Universal Declaration on Human Rights<sup>90</sup> and the European Convention on Human Rights.<sup>91</sup> Christians are *not* against the protection of a person’s God given value, in essence their “human rights”. However, individual Christians motivated by their beliefs aim to hold their personal responsibilities above that of their personal rights.<sup>92</sup> The positive outcomes associated with such behaviour can only benefit society and hence we would strongly call for responsibilities to be more widely acknowledged and encouraged in the current rights discourse.

2.9 By engaging with Human Rights, Christians are not trying to hijack a fashionable concept or put a spiritual spin on a secular philosophy. The very theory behind Human Rights has its origins in Judeo-Christian thinking. It is the comparatively recent move away from intrinsic responsibility towards individualism that has put distance between the approaches. Indeed, there is a critical duty to maintain a Christian voice on this issue.

### 3 BILL OF RIGHTS FOR NORTHERN IRELAND: THE PROCESS

3.1 The Bill of Rights Forum, set up to prepare detailed recommendations for the NIHRC on which they would base their advice for the Secretary of State, was made up of representatives from the political parties, voluntary/community sector, private sector, and the churches. Nonetheless, given the nature of the voluntary/community sector in Northern Ireland this apparently broad group was in fact characterised by the under-representation of unionist perspectives and a lack of breadth from the Christian community.

3.2 We also raised questions about the Forum’s almost immediate creation of working groups to examine and report on areas of Human Rights including Children and Young People, Women, Criminal Justice and Victims, Economic and Social Rights, Culture, Identity and Language, Civil and Political Rights, and Preamble, Enforcement and Implementation. This highlighted an assumption regarding the scope for the Bill, in our view far in excess of the original remit, right from the outset.

3.3 Despite an outreach programme being established during the latter stages of the Forum’s process, even the Chairperson for the Human Rights Consortium admitted that they had concerns over the effectiveness of engagement with the public.

<sup>84</sup> Evangelical Alliance UK, 2007, Faith and Nation—Report of a Commission of Inquiry to the UK Evangelical Alliance, Appendix 3 p148

<sup>85</sup> Luke 10: 25–37 (NIV)

<sup>86</sup> www.wcc-coe.org/wcc/assembly/hr-e.html

<sup>87</sup> Centre for Contemporary Christianity in Ireland, 2000, A Shared Vision? Human Rights and the Church, p33

<sup>88</sup> Jeremiah 17:9, Proverbs 29:18, Romans 7:18–25 (NIV)

<sup>89</sup> Jeremy Ive, “Relationships in the Christian Tradition” in Schluter, M. & Ashcroft, J. 2005, Jubilee Manifesto—A frame work, agenda and strategy for Christian social reform, IVP

<sup>90</sup> UDHR, ffiticle 1

<sup>91</sup> ECHR, Article 10

<sup>92</sup> Centre for Contemporary Christianity in Ireland, 2000, A Shared Vision? Human Rights and the Church, p31

3.4 The Forum presented its advice in March which the NIHRC subsequently took as the basis for its recommendations to the Secretary of State on a Bill of Rights for Northern Ireland which it symbolically handed over on 10 December 2008—60 years after the signing of the Universal Declaration of Human Rights. However the Forum’s lengthy report containing over 200 proposals failed to gain cross-community support even from within the Forum thus placing serious doubts over its suitability to be used in such a way by the NIHRC.

3.5 Polls have used during the process to endorse a “strong and inclusive” Bill of Rights such as the one carried out by the Human Rights Consortium which documented 75% public support. We believe that caution must be taken when applying such figures as this particular survey merely measured the backing for a Bill of Rights not guidance on what it should contain or how far it should go.

#### 4 BILL OF RIGHTS FOR NORTHERN IRELAND: THE SCOPE

4.1 As already discussed, responsibilities strengthen rights. Responsibilities have the power to place rights in the most conducive context for creating a free and healthy society. Failure to recognise this will only serve to undermine the effectiveness of the Bill. It is with this in mind that we believe the omission of any reference to responsibility from the NIHRC advice is of grave concern.

4.2 Once the right foundation has been laid establishing the appropriate scope of such a Bill will be vital in order to gain cross-party and community support. A maximalist approach, like that taken by the NIHRC, embraces with great zeal several issues including: cultural expression and identity, social and economic rights, criminal justice, and rights of victims, women, children, the elderly, disabled people and minority groups. At times, passions have run so high that it is implied that those opposing this broad interpretation of the Bill’s remit do not care about inequality, deprivation, the vulnerable and even peace in Northern Ireland. It is crucial to state that this is far from the truth; many objectors to the maximalist interpretation are ardent advocates for peace, equality and social justice in Northern Ireland. Whilst the Belfast Agreement did raise many of these same matters in the context of “rights, safeguards and equality of opportunity”<sup>93</sup> they were not specifically discussed with reference to the Bill of Rights but in terms of other political measures being/to be taken.

4.3 Despite great efforts on behalf of the NIHRC to argue to the contrary, some of the proposed rights have, at best, tenuous links to the “particular circumstances of Northern Ireland”. It is possible (as the NIHRC have demonstrated) to highlight certain current differences in the areas of education, health and the environment between Northern Ireland and England. However, these and similar disparities can be found within and between various regions through out the UK and most could be addressed by a UK wide Bill of Rights, if not already covered by existing legislation.

4.4 In contrast there are a number of issues/rights—very “particular” to Northern Ireland’s circumstances—that have been addressed with surprising brevity considering the maximalist approach adopted by the NIHRC. For example, no additional rights or amendments to existing rights were proposed for the areas of “Freedom of thought, conscience and religion”, “Freedom of expression” and “Freedom of assembly and association”. Religious rights were only added to with reference to minority groups. Further, whilst there is one recommendation regarding assemblies and parades, NIHRC advise that it is not for inclusion in a Bill of Rights.

4.5 It appears special effort has been made throughout the document to make reference to particular groups who have previously faced discrimination; however this can create problems of its own. Part 2 of “The Right to Equality and Prohibition of Discrimination” lists over thirty specific grounds/status groups and whilst it leaves open the possibility for others it potentially weakens their case due to the lack of inclusion in such an extensive list. Also, in the desire to make reference to some minority groups, unnecessary rights such as those to terminate civil partnerships (and marriages) which already exist in law have been included.

4.6 The purpose of a Bill of Rights for any country, including Northern Ireland, is to promote and protect the fundamental rights of the people of that country. This applies to *all* people and should never be limited to a certain group or groups. Caution must be taken to avoid language that suggests a return to “group rights”, even when recognising the “two communities” culture present in the Northern Irish population.

4.7 Some of the advice given by the NIHRC has, in places, much wider implications than is immediately obvious. One example is seen in the significant number of services provided by faith based organisations (eg churches) within our communities. If, in line with the recommendations, all bodies accepting public funding were to come under the legal requirements of official public authorities many faith based organisation may feel compelled to cease their activities due to a perception that such requirements may be incompatible with their ethos.

4.8 The Evangelical Alliance greatly desires to see the Assembly, currently in its infancy, develop into a robust legislature that sets the agenda for our country. Yet, in giving feedback to the Human Rights Consortium Conference working groups from the Bill of Rights Forum admitted that they found themselves “straying into policy and getting the lines blurred between what were substantive rights and what [they]

<sup>93</sup> The Agreement, 1998, Section 6

wanted to do in order to change policy”.<sup>94</sup> Social and economic rights are most subject to this confusion. However the difficulty lies not with the actual concepts being suggested but with the medium in which they are being carried forward. The advice from the NIHRC contains many constructive proposals<sup>95</sup> for dealing with problems faced in Northern Ireland, but some are proposals that should be put through the rigours of our democratic political process not enshrined in a Bill of Rights. This has the potential to undermine the newly formed democracy in Northern Ireland and ultimately reduce the trust placed in our elected representatives.

4.9 Additionally, with major policy changes planned in certain areas, for example education and language, it would be premature for a Bill of Rights to make detailed judgements that might later affect the plans already in progress. If these issues are to be included in a Bill in any detail it would be prudent to, at the very least, wait upon the outcome of political decisions before proceeding. Better still; seek more favourable legislative and strategic planning avenues for dealing with many of these pressing issues.

4.10 Whilst those supporting a maximalist interpretation would likely favour detailed clauses and prescriptive language leaving very little room for non-compliance and abuse of “loop-holes”, the reality has been proposals of the opposite extreme. In an attempt to gain greater support for a document that otherwise would have been an impossible noose around the government’s neck, phrases like “progressive realisation” and “margin of discretion” have been included alongside many other qualifying clauses. However this has caused the language to become confusing and hugely subjective, open to multiple interpretations thus weakening the enforceability.<sup>96</sup>

4.11 In the process of compiling this and preceding documents very little reference has been made to the wider political context in which the debate takes place, including proposed reform to UK Human Rights legislation. The discussion has frequently become an academic mêlée between highly skilled political, legal and ethical minds devoid of true application to the realities in which the Northern Irish political engine functions.

4.12 A Bill of Rights may help substantiate a commitment to a positive and “just” future for Northern Ireland, however it *will not*, indeed, *can not* heal the many problems and hurts of the past. All the iniquities and injustices resulting from the years of conflict cannot be set straight in one piece of legislation—especially a Bill of Rights. Any attempts to achieve such an aim through this Bill will lead only to disappointment and further political disagreement.

## 5 RECOMMENDATIONS

5.1 The Evangelical Alliance is strongly committed to building a positive future for Northern Ireland. We believe in a shared responsibility for achieving a society that is transformed by hope, imagination and active citizenship.<sup>97</sup>

5.2 If a Bill of Rights for Northern Ireland is to be part of that future we believe certain points must be considered:

- The Bill should be set within the context of a relational society where rights are protected and exercised whilst recognising responsibility towards others. Guidance on the relationship between rights and responsibility for Northern Ireland must therefore appear within the Preamble.
- The current trend to equate only a maximalist Bill of Rights with a commitment to poverty, the vulnerable and peace in Northern Ireland is both distracting and divisive and should be addressed with great urgency.
- By giving much greater priority to achieving political and cross-community consensus, a natural filter could be placed upon rights with arguably more tenuous links to the “particular circumstances of Northern Ireland”.
- If a Bill of Rights is to be put in place religious freedom for *all* in Northern Ireland must be emphasised.
- The shift in Northern Ireland’s political and ethnic make-up should be reflected in the wording of the document. Very great care should be taken to avoid exclusive or out-dated language. A Bill of Rights for Northern Ireland must reflect, but not be confined by, the shift in make-up and circumstances of the population.
- The boundary between issues that can be dealt with within a Bill of Rights and those that should remain in the domain of the democratic political process must not be ignored. This is especially important given the infancy of shared power for devolved matters in Northern Ireland.

<sup>94</sup> Patricia McKeown, “Getting the Bill Right—An Update, Panel 6:Economic & Social Rights” p2 [www.billofrightsnri.org/documents/members/9\\_-\\_Economic\\_\\_Social\\_Rights.pdf](http://www.billofrightsnri.org/documents/members/9_-_Economic__Social_Rights.pdf)

<sup>95</sup> Especially regarding children in the criminal justice system, see *The Right to Liberty and Security* (pp24–27). Less constructive policy style proposals include ones that either require non-devolved powers (eg p50 part 1) or are simply impossible to establish as a right (eg p 46 part 2).

<sup>96</sup> For example “Everyone has the right to adequate accommodation appropriate to their needs. Public authorities must take appropriate measures including legislative measures, to the maximum of their available resources, with a view to achieving progressively the full realisation of this right.” (Italics added) from *The Right to Accommodation*, Part 1 (p47)

<sup>97</sup> [www.renewing-hope.org](http://www.renewing-hope.org)

- More “joined-up” thinking and planning that keeps wider practicalities and political context in mind is essential if this Bill is to leave the realms of isolated intellectual debate and truly benefit the people of Northern Ireland.
- Clarity should be given to the aims of the Bill, highlighting its potential as an aspirational document for a society committed to change rather than one to deal with the hurts of the past. A Bill of Rights for Northern Ireland must not be treated as a panacea.

April 2009

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### Written evidence from Northern Ireland Public Service Alliance

#### 1. INTRODUCTION

1.1 NIPSA is the largest trade union in Northern Ireland representing over 46,000 members employed across the public service including the NI Civil Service and its Agencies, Local Government, Education and Library Boards, the Health and Personal Social Services, the NI Housing Executive as well as a host of Non-Departmental Public Bodies (NDPBs). NIPSA also represents a significant number of members in the voluntary and community sector.

1.2 NIPSA has campaigned for a strong and inclusive Bill of Rights for Northern Ireland since some of the most troubled days of the conflict. We therefore welcome the Human Rights Commission’s (NIHRC) proposals for a Bill of Rights for Northern Ireland and especially the inclusion of socio-economic rights.

1.3 We therefore call on the Northern Ireland Affairs Committee to fully endorse the inclusion of these rights to ensure that the rights and needs of the most disadvantaged in our society are not overlooked and that the human rights abuses of the past never re-occur.

#### 2. THE CASE FOR INCLUSION OF SOCIAL AND ECONOMIC RIGHTS IN A BILL OF RIGHTS FOR NORTHERN IRELAND

2.1 There is little doubt that Northern Ireland has suffered particularly in economic and social terms as a result of the Troubles over the last 30 years. An obvious way to tackle these inequalities is explicitly to protect economic and social rights in a Bill of Rights. Doing so would reflect a real commitment on the part of Government to ridding Northern Ireland of the serious socio-economic inequalities that have plagued it for so long.

2.2 For NIPSA’s part enforceable social and economic rights meet the criteria of being supplementary to the civil and political rights already protected in the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA).

2.3 They also meet the “*Particular Circumstances of Northern Ireland*” test. We understand that a Bill of Rights which reflect the “particular circumstances” of Northern Ireland implies a Bill that both deals with the legacy of the past and looks to a fair and inclusive future for all our citizens. The path to this future is a process in which all must be included and in which all have a role to play. Work is part of that process.

2.4 We need a society in which all workers are free from discrimination, a society in which all can access opportunities and win for themselves good jobs at a fair remuneration, a society in which we can be both caring parents and productive workers. The Bill of Rights ensures that fairness, inclusivity and prosperity are everyone’s, by ensuring that trade unions are in a position to represent those workers in the first place.

2.5 In Europe and across the globe trade union rights are central to functioning democracies. Societies which seek a healthy and well educated population, that seek to deliver high quality public services, that provide more and better jobs and who share a commitment to use prosperity to tackle disadvantage, all have strong and modernising trade unions at their core. Workers who are in trade unions are better paid and better treated than those who are not. There are no exceptions, anywhere, to this rule. Strong trade unions stabilise democracies and create societies in which a commitment to fairness and inclusion is evidenced in practice.

2.6 This is why trade union rights and social and economic rights are a vital component in the Bill of Rights; 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.

2.7 We have a historic opportunity in Northern Ireland to lead the way, to be a society in which social justice and equality sit alongside prosperity and innovation.

2.8 The Bill of Rights for Northern Ireland cannot be allowed to emerge as a weak and ineffectual covenant that demeans and insults the people of Northern Ireland by denying them their fundamental rights as the world looks on. No party to the Bill of Rights process should have the right to define alone, what is and what isn’t a fundamental right of the citizens of Northern Ireland.

2.9 If a Bill of Rights emerges without the inclusion of social and economic and trade union rights then the working people of Northern Ireland will continue to remain second class bearers of minimal rights in a modern Europe. Northern Ireland and its people want the normality of a modern, fair, inclusive and prosperous Europe. The rights its working people seek are consistent with the European social model.

2.10 This is evidenced by the widespread support across both main communities for the inclusion of economic and social rights in a Bill of Rights. In a survey carried out for the NI Human Rights Commission in 2004, as many as 72% of respondents in both main communities supported the inclusion of rights in respect of health, housing, education and employment. In the history of our divided society, there have been few issues that have united people. The opportunity to adopt a Bill of Rights which will protect human dignity and equality, and in doing so bring communities together, should not be allowed to slip away amidst arguments that these rights are too difficult to enforce. Countries such as South Africa have been able to implement them and in doing so help to create a better society.

2.11 In addition to this, rather than replacing the role of MLAs and the Assembly as distributors of finite resources, enforceable social and economic rights in a Bill of Rights could potentially have a complementary role to play in the administration of good governance, perhaps acting in the first instance as a blueprint or road map for the rights that MLAs would have a responsibility to protect in the course of their work.

### 3. CONSULTATION

3.1 The Government have already gave a clear commitment to carrying out a public consultation. We would impress upon the Northern Ireland Affairs Committee that the Government respond to the Commission's advice in a comprehensive and urgent fashion and ensure that proper time and resources are allocated to ensure that people of Northern Ireland have the opportunity to absorb and respond effectively to the consultation.

### 4. CONCLUSION

4.1 Social and economic rights remain firmly at the heart of the Bill of Rights debate and at the centre of what NIPSA and the 46,000 members it represents wishes to see emerge from this process.

April 2009

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## Written evidence from Women's sector organisations within Northern Ireland<sup>98</sup>

### 1. BACKGROUND

1.1 Women's sector organisations within Northern Ireland welcome the interest of the Northern Ireland Affairs Committee regarding a Bill of Rights for Northern Ireland. Collectively, we have been engaged in the process of consultation around a Bill of Rights over many years. We were a recognised sectoral group within the Bill of Rights Forum which was established by the Westminster Government following the St Andrew's Agreement and chaired the Working Group on Women within the Forum. In broad terms we support the submission given by the Northern Ireland Human Rights Commission to the Northern Ireland Office, although on a few issues we would have wished it to have gone further.

1.2 We would like to take this opportunity to outline what we consider to be the main issues of concern to women in Northern Ireland that we believe must be included in a strong and inclusive Bill of Rights. Our evidence for this derives from many years of consultation within our member organisations and from the responses we have received from events organised to inform women's groups about the Bill of Rights process. We have also taken into consideration the provisions the Belfast (Good Friday) Agreement (the Agreement) and relevant International Standards, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and UN Resolution 1325.

1.3 Women in Northern Ireland constitute a diverse group in terms of age, social class, life experience, racial and ethnic background, sexual orientation, disability and religious and political belief. We respect that diversity.

1.4 Our hope for the Bill of Rights is that it will become a living instrument whereby the most marginalised, the most overlooked and oppressed groups are protected and empowered to flourish in a new Northern Ireland.

1.5 There has been little acknowledgement of the particular circumstances of Northern Ireland in terms of the material reality of women's lives. The report by the Women's Centres Regional Partnership, *Women and the Conflict: talking about the troubles and planning for the future* (which was endorsed by Jeffrey

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<sup>98</sup> Women's Resource and Development Agency;  
Northern Ireland Women's European Platform;  
Women's Support Network;  
Northern Ireland Women's Rural Network;  
Northern Ireland Women's Aid Federation;  
Centre for the Advancement of Women in Politics, Queen's University of Belfast;  
WOMEN'STEC;  
Lesbian Line;  
Foyle Women's Information Network;  
Women's Forum;  
First Steps Women's Centre, Dungannon; and  
The Women's Centre, Derry.

Donaldson, MLA, MP) made visible the impact of the conflict on women's lives, 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. Our hope is that a Bill of Rights will address these issues and will help strengthen the case for full and equal representation of women in all areas of Northern Irish society.

The following are the main areas of concern for women in Northern Ireland:

## 2. DEMOCRATIC RIGHTS

2.1 In the political and public sphere women are seriously under-represented. Only 18 of our 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. This is undoubtedly a legacy of the conflict, when political life was a dangerous road to take, as the murder of several prominent women would attest. The "particular circumstances" of Northern Ireland has created a sectarian and adversarial political culture that has been off-putting for many women, alienating them from a political process that did not address their concerns. We would draw attention to the pledge contained in the Good Friday/Belfast Agreement on "the right of women to full and equal political participation" (p 16; to UN SCR 1325 on "Women, Peace and Security" which calls for an increase in the number of women at decision-making levels in national, regional and international institutions involved in preventing, managing, and resolving conflicts and for the increased participation of women at decision-making levels in conflict resolution and peace processes. We would also draw the attention of the Committee to the Concluding Observations of the Committee on the Elimination of Discrimination against Women: United Kingdom of Great Britain and Northern Ireland (para 37) "In view of its particular relevance to Northern Ireland, the Committee notes with regret the lack of information provided on the implementation of Security Council resolution 1325 on women, peace and security. It also notes the under representation of women in public office . . . and in key institutions established directly as a result of the peace process."

2.2 Positive action measures in the devolved institutions of Scotland and Wales have helped to transform the political landscape in terms of the representation of women. In Northern Ireland, our situation of under representation of women can only be redressed through a commitment to positive action such as that recommended by Article 7 of CEDAW which requires states to take all appropriate measures to eliminate discrimination against women in political and public life. Legislation exists in the form of the Sex Discrimination (Election Candidates) Act 2002 permitting all-female short lists but none of the political parties in Northern Ireland have made use of this mechanism to improve the gender balance of political life.

2.3 The women's sector believes that this situation is so fundamentally undemocratic that the Bill of Rights must promote and protect women's rights in this sphere.

## 3. VIOLENCE AGAINST WOMEN: THE RIGHT TO DIGNITY AND PHYSICAL INTEGRITY

3.1 Women have been particularly affected by the culture of violence that has been created as a result of decades of civil strife and a rise in violent crime. Incidents of violence against women have increased, trafficking of women is a new issue, but it is one that appears to be facilitated as a result of our particular culture. While women have been joining the Police Service of Northern Ireland, on-going threats by dissident republicans to nationalists joining PSNI are impacting upon the representation of Catholic women, with severe repercussions for the overall representation within the police service. In addition, 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 violence. In her report to the Economic and Social Council of the United Nations, 2 February 1996, the Special Rapporteur on Violence Against Women stated very clearly that "the language of law must be clear and unambiguous in protecting women victims from gender-specific violence within the family and intimate relationships."

3.2 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.

3.3 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.

## 4. HEALTH ISSUES

4.1 Women do not have access to abortion services in Northern Ireland, except in the most limited of circumstances, and it is estimated that at least 1,300 women from Northern Ireland travel to Great Britain every year to access abortion. Apart from the financial costs involved (fees for the abortion, travel and accommodation), the lack of such facilities in Northern Ireland leads to later abortions, which can impact adversely on the health of the women concerned. We call for a Bill of Rights to guarantee to women the right to access the full range of reproductive services as enjoyed by women in the rest of the United Kingdom. We also draw the Committee's attention to the fact that United Nation's Committee on the Elimination of Discrimination against Women has directed the UK government to consult widely on this issue in Northern Ireland (para 42).

## 5. SOCIAL AND ECONOMIC RIGHTS

5.1 It is officially recognised that grievances among large sections of the population in Northern Ireland in relation to discrimination, exclusion and poverty, particularly in the areas of employment and housing, were prime factors in the conflict. There are continuing high levels of socio-economic disadvantage and deprivation in Northern Ireland. While this may also be the case in other parts of the UK, there is a crucial difference, namely the distinct manner in which socio-economic rights have been abused, neglected and restricted by state and non-state actors in Northern Ireland and their close relationship to both the causes and impact of 30 years of conflict. Given this, we believe that the inclusion of social and economic rights within a Bill of Rights for Northern Ireland is essential.

5.2 There has been an abject failure in this society to promote the equality of women in society in socio-economic terms eg. pensions, pay, social security etc. The 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.

## 6. A SECTION ON WOMEN'S RIGHTS

6.1 The women's sector in Northern Ireland is of the firm opinion that a separate section on women's rights within a Bill of Rights is vital in order to send out a strong and legally enforceable message that discrimination against women is wrong. As the South African Bill of Rights succeeded in addressing the particular issues facing that country, so must a Bill of Rights for Northern Ireland address the gender inequalities and discrimination that exists.

## 7. ENFORCEMENT OF A BILL OF RIGHTS

7.1 We consider it essential that the gender inequality within the judiciary in Northern Ireland charged with enforcing any provisions within the Bill of Rights should be addressed. There are currently no women at High Court level or above in Northern Ireland. A court charged with enforcing a Bill of Rights must be reflective of the whole of the population in Northern Ireland. For this to be achieved, we consider that affirmative action measures will be necessary.

Additionally, we would urge that the system for appointing and training judges be reformed to ensure that those appointed in Northern Ireland are committed to the obligations imposed on them by a Bill of Rights. One point we would make is that commitment must be a criterion for appointment rather than a matter for training.

*April 2009*

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### **Written evidence from the Rural Community Network**

1. Rural Community Network (RCN) is a regional voluntary organisation established by community groups from rural areas in 1991 to articulate the voice of rural communities on issues relating to poverty, disadvantage and equality. We are part of a wider rural community development networking infrastructure that includes Rural Support Networks (RSNs) covering the whole of rural Northern Ireland and the Northern Ireland Rural Women's Network (NIRWN).

2. RCN is committed to a rural community and networking approach to the planning and development of sustainable rural communities in order to address poverty, social exclusion and inequality and to support work towards a shared future. As a community development organisation, we believe that a Bill of Rights for Northern Ireland is critical in achieving these goals. As with many other groups and organisations across Northern Ireland, we have contributed to numerous consultations and discussions around a Bill of Rights since the commitments made under the Belfast/Good Friday Agreement.

3. In RCN's day-to-day work the constitutional issue rarely features. Rather, people we work with have to deal with issues around housing, fuel poverty, access to basic services and lack of transport which impact on everyone regardless of political affiliation.

4. RCN believes that a Bill of Rights will provide a shared set of values and expectations of each other and of local and central government which will lead to a better, more just, inclusive and shared Northern Ireland. RCN believes that A Bill of Rights is critical to effective community development work.

“Community development is a way of strengthening civil society by prioritising the actions of communities and their perspectives in the development of social, economic and environmental policy. It seeks the empowerment of local communities, taken to mean both geographical communities, communities of interest or identity and communities organising around specific themes or policy initiatives. It strengthens the capacity of people as active citizens through their community groups, organisations and networks; and the capacity of institutions and agencies (public, private and non-governmental) to work in dialogue with citizens to shape and determine change in their communities. It plays a crucial role in supporting active democratic life by

promoting the autonomous voice of disadvantaged and vulnerable communities. It has a set of core values/social principles covering human rights, social inclusion, equality and respect for diversity; and a specific skills and knowledge base". [Budapest Declaration 2004]

5. Inevitably rights are more meaningful for those who are most vulnerable and disadvantaged. However, the reality is that any one of us could become vulnerable at any stage in our lives and could need the protection of a safety net like a Bill of Rights. However, it is critical that any Bill of Rights is premised on the concept of a shared humanity and is a project shared across all ages, abilities, political interests and backgrounds.

6. We therefore wish to ask for the Northern Ireland Affairs Committee's support in a number of areas concerning the Bill of Rights for Northern Ireland.

- (1) We firstly would urge the Committee to assist in putting pressure on the government to commit to the form of wide ranging and engaging public consultation necessary to elicit the wide support that exists for a Bill of Rights among the Northern Ireland community.
- (2) We ask the Committee to recognise the need for the inclusion of the social and economic rights necessary to deliver a strong and inclusive Bill of Rights which reflects the "particular circumstances" of Northern Ireland and creates a cohesive set of rights that can unite the traditional communities in Northern Ireland.
- (3) We would ask for the Committee's support in developing the Bill of Rights into legislation within the lifetime of this government in order to finally deliver on this remaining commitment of the Belfast/Good Friday Agreement.

7. We thank the Committee for its consideration of what Rural Community Network believes to be one of the most pressing, relevant and meaningful issues facing Northern Ireland today. We look forward to reading the results of your inquest and hope that its conclusions reflect the clear will that exists in Northern Ireland for a strong and inclusive Bill of Rights.

*1 May 2009*

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#### **Written evidence from Signature**

1. We are a charity which promotes excellence in communication with deaf people. Our vision is one of a society in which deaf people have full access. It's this vision that drives our work to achieve a society in which deaf people experience no communication barriers.

2. Our primary work is as a recognised awarding body offering nationally accredited qualifications that cover the whole range of languages and communication methods used by deaf and deafblind people. We have developed qualifications, established professional registers for people working as communicators with deaf and deafblind people, and achieved some major public policy shifts leading to better service access for deaf and deafblind people.

3. Signature has been an active member of the Human Rights Consortium. The Consortium is a coalition of over 130 NGOs, Trade Unions and Community and Voluntary Groups which campaigns for the development of a strong and inclusive Bill of Rights for Northern Ireland.

4. Whilst the Consortium as a group does not take any view on the content of the Bill of Rights for Northern Ireland, campaigning for the Bill to be strong and inclusive, upholding current protections recognised under international and regional law, and promoting recognisable gains for the most disadvantaged, we as an individual organisation welcome the opportunity to detail some of the advantages a Bill of Rights for Northern Ireland would have for the deaf and hard of hearing community here.

5. In doing so, we welcome the advice handed over from the Human Rights Commission to the Secretary of State for Northern Ireland in December 2008 and believe it to be a positive and comprehensive document. We particularly welcome its recommendation that social and economic rights are included in a Bill of Rights for Northern Ireland.

6. Whilst we believe that a Bills of Rights for Northern Ireland would help create a culture, and a policy making environment where human rights considerations are at the forefront, and that this "culture of rights" will benefit Northern Ireland society in general, the detail of the advice handed over by the Commission has the potential to deliver clear and tangible benefits to the deaf and hard of hearing community in particular.

7. Very specifically we welcome the recommendation that the right of every child to have access to the Northern Ireland education curriculum. A report by NIDYA ( the Northern Ireland Deaf Youth Association ( Big D Little D, 2001) highlighted the fact that at that stage, nearly 40% of Deaf children in Northern Ireland were transferring to Post Primary education in England (or in some cases Dublin) in order to access and undertake a full range of GCSEs. This clearly has an implication in the child's right to family life as well. The recommendation from the Commission could be used directly to challenge this. It would also stem the "brain drain" of bright young deaf people from Northern Ireland, benefitting the deaf and hard of hearing community here as a whole.

8. We also welcome the recommendation that “everyone has the right to access services essential to life, health or security through communication with a public authority, assisted by interpretation or other help where necessary, in a language (including sign language) and a medium that they understand.” Deaf BSL and ISL users depend on communication support from interpreters to access basic rights such as housing, healthcare, work and education and the justice system. In Northern Ireland 11 registered interpreters are available to support the needs of 5,000 Deaf people who use sign language (either BSL or ISL) as their first language and may not have the facility available when it is needed. This impacts on other basic rights too. For example the right to privacy could be easily violated by a Deaf person being dependant on a family member to interpret for them in a doctors appointment, when they may not wish the family member to know of their medical details at that point.

9. We would urge the Committee to put pressure on the government to commit to the form of wide ranging and engaging public consultation necessary to elicit the wide support that exists for a Bill of Rights among the Northern Ireland community and we would ask for the Committee’s support in developing the Bill of Rights into legislation within the lifetime of this government in order to finally deliver on this remaining commitment of the Belfast/Good Friday Agreement.

10. We thank the Committee for its consideration of what the Consortium believes to be one of the most pressing, relevant and meaningful issues facing Northern Ireland today. We look forward to reading the results of your inquest and hope that its conclusions reflect the clear will that exists in Northern Ireland for a strong and inclusive Bill of Rights.

1 May 2009

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#### **Written evidence from Lady Trimble, member of the Northern Ireland Human Rights Commission**

##### INTRODUCTION

1. I am a strong supporter of the Belfast Agreement which contains the mandate for the proposal for a Northern Ireland Bill of Rights.

2. I am personally committed to human rights.

3. I remain a loyal member of the Northern Ireland Human Rights Commission.

4. But overarching these commitments is my commitment to the rule of law.

5. I believe that we must all respect the rule of law: that all are equal under the law and that the law applies equally to all.

6. So I cannot support any proposal for a Bill of Rights for Northern Ireland that ignores or seeks to subvert the terms of reference as contained in the Agreement.

7. Not only is such wrong in principle: it seems to me that any proposal to ignore or misinterpret the terms of the Agreement on this issue opens a dangerous door to those who would wish—on one side or the other—to subvert other parts, or the whole of the Agreement.

8. The Agreement represents an historic compromise between the two communities in Northern Ireland and represents a chance for everyone in Northern Ireland to live in peace with respect for everyone’s point of view. But if the Agreement is subverted for any reason or for any cause, then that—still fragile—peace is in danger.

##### THE PROPOSALS OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION

9. The Commission proposes an “all inclusive” Bill of Rights for Northern Ireland. It seems to me that such proposal simply ignores the terms of reference in the Agreement which says that the rights proposed to be in any Bill of Rights for Northern Ireland under the Agreement and which are not already contained in the ECHR must (inter alia) “*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.*”

In my view the Commission report wrongly treats this section as if it is a separate test rather than something plainly integral to any additional rights and that this was so understood by the original negotiators (and which has been so vouched to me).

10. But an “all inclusive” Bill of Rights goes far beyond that mandate and so is not a project contemplated by or authorised in the Agreement.

11. I am prepared in Commission or elsewhere to consider proposals for an “all inclusive” Bill of Rights (though if that were being proposed I would prefer to consider it on a basis of something for the whole of the United Kingdom).

12. But if there is to be a Northern Ireland specific Bill of Rights then we must consider it only within the terms of the Agreement which gives us authority for the project.

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**MY ROLE AS COMMISSIONER**

13. Since my appointment on 1 December 2007 I have been fully committed to my work on the Commission. In particular I calculate I have attended over 50 meetings on the Project: both here in Belfast, in London and at residential weekends—a cumulative total of over 250 hours work. And this is in addition to my other work on the Commission.

14. As the Project developed I began to have increasing doubts about the direction we were taking as it seemed to me that seeking an all inclusive Bill with rights of all categories (environmental rights for instance) simply ignored our terms of reference, whatever merit the proposals might have.

15. Last September I raised within the Commission my serious concerns about the direction we were taking and how wrong and dangerous this in my view was for respect for the Agreement. Sadly, apart from one member, I did not receive any support and members did not seem willing to take my concerns seriously or to engage in debate or discussion with me. Accordingly, after a residential meeting at the end of October I indicated within the Commission that in conscience I did not feel that I could sign up to the proposals which the majority of members wished to put into our Report.

16. I expected that the Commission would respect my position and that my Note of Dissent would be published in the Report, as is usual. So I was shocked when at a meeting on 17 November the Commission attempted to use the Commission Standing Orders to stifle even the fact that I (and another member) were dissenting. The most the other Commissioners would agree, at this and a subsequent meeting, was that we could have a note of our dissent (the wording to be agreed by other commissioners) in the minutes of the meeting. But I felt that I could not properly accept such suppression of my views. Accordingly I have to dispute the version of events given by Commissioner Duncan on this to your meeting on 16 March last. I also dispute the version given by our Chief Commissioner to a meeting of the Joint Committee on Human Rights.

17. It was only in this context that I felt I had no alternative to seek independent publication of my views. I would have much preferred that my Note of Dissent had been published as part of the Report. That would have respected both my right of conscience and the principle of collegiality.

*1 May 2009*

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**Written evidence from Amnesty International UK**

Amnesty International is a worldwide movement of people who campaign for internationally recognised human rights to be respected and protected. Our vision is for every person to enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. Our vision is to conduct research and take action to prevent and end grave abuses of all rights—civil, political, social, cultural and economic. From freedom of expression and association to physical and mental integrity, from discrimination to the right to shelter—these rights are indivisible.

1. Amnesty International UK is a member of the Human Rights Consortium, a coalition of NGOs, Trade Unions and Community and Voluntary Groups campaigning for a strong and inclusive Bill of Rights for Northern Ireland. We share the view that such a Bill of Rights can play a fundamental role in the creation of a better, more just, inclusive and shared Northern Ireland.

2. We endorse the submission being made to you by the Human Rights Consortium and this Amnesty International submission should be considered supplementary to that received from the Consortium.

3. Amnesty International has been involved in this process since 1999 and has made several submissions to the Northern Ireland Human Rights Commission (NIHRC) on the Bill of Rights, supported the establishment of the Bill of Rights Forum, on which we were represented via the “human rights sector” agreed representative, and has continued a long-running dialogue on the matter with political party representatives.

4. Amnesty International broadly welcomes the advice presented to Government by the Northern Ireland Human Rights Commission, notwithstanding a small number of concerns.

5. In keeping with the fact that all human rights are universal and indivisible, Amnesty International welcomes the fact that the NIHRC advice recommends provisions guaranteeing justiciable economic, social and cultural rights, as well as civil and political rights. However, we have some concerns as regards the level of protection for socio-economic rights, and particularly whether the language used regarding “taking appropriate measures” meets the international standard established by International Covenant on Economic, Social and Cultural Rights.

6. Amnesty International is concerned that the NIHRC advice on implementation of the Bill fall short of the recommendations broadly agreed by the Bill of Rights Forum, which recognised explicitly the primary and fundamental responsibility for implementation lying with the Government, particularly in terms of funding. This should be corrected in any final proposals from Government.

7. Overall, Amnesty International is satisfied that the NIHRC has carried out an effective job, in line with the mandate established in the Multi-Party Agreement of 1998, in providing advice to Government on appropriate:

“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 of Rights for Northern Ireland.”

8. Amnesty International is disappointed that the Secretary of State for Northern Ireland, in his comments to the Committee on April 1st 2009, acted precipitately in stating his view that the NIHRC has gone beyond their remit in their recommendations, before he has provided the opportunity to bring forth and consider the views of the people of Northern Ireland by means of a public consultation.

9. The Secretary of State’s action in this respect is all the more regrettable given the polling evidence, over a period of the last 10 years, which has shown very significant public support—from across the traditional political/religious community divisions—for a strong and broad Bill of Rights (see submission from the Human Rights Consortium for more information on the latest such polling and the NIHRC dedicated website [www.borini.info](http://www.borini.info) for earlier poll findings).

10. Amnesty International now calls upon the Government to build upon the advice of the NIHRC and to ensure that Government recommendations for the proposed Bill of Rights will closely reflect the advice of the Commission and offer guarantees for the highest level of protection for all people in Northern Ireland.

11. Amnesty International asks for the support of the Committee in ensuring:

- a wide-ranging public consultation in Northern Ireland on the Bill of Rights;
- substantive proposals from Government which reflect the NIHRC advice;
- legislation within the lifetime of this government in order to finally deliver on this outstanding commitment from the Multi-Party Agreement.

1 May 2009

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#### **Written evidence from Action on Medical Negligence Association**

1. AMNA was established in January 1998, as a voluntary organization to support victims, and campaign for a change in the culture surrounding clinical errors and the treatment of iatrogenically damaged patients and their relatives/bereaved relatives. From the outset, we came to the conclusion that the key to protecting the rights of damaged patients and also improving patient safety is open disclosure, admission, reporting, investigation, and recording of individual errors and systemic failings.

2. In recent times, the importance of openness, transparency and accountability in government and public service has taken centre stage. Last July the N.I. Department of Finance and Personnel revealed that they are working with the U.K. “whistle blowing charity” Public Concern at Work, to produce a “policy model template” for NI public officials seeking to “blow the whistle” on malpractice in their organizations. It is of note that PCaW have been given the job of providing support to the NHS in England [“In the NHS, more than in any other organization, whistle blowing can be a matter of life and death”. said Anna Myers, [PCaW Dep. Dir.]

We do have, of course, the 1998 Public Interest disclosure Act:

43B Disclosures qualifying for protection

- (1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

[d] that the health or safety of any individual has been or is likely to be endangered.

3. Across the world, in recent years there has been a remarkable growth of organizations, with a similar remit to change the culture from one of blame, denial and cover up to a collaborative effort involving providers and patients in dealing fairly with victims and their families and away from a confrontational complaints/legal scenario. In 2004 the WHO formed the World Alliance for Patient Safety [WAPS], and in October of that year was formed Patients for Patient Safety Alliance, which has triggered a worldwide movement for change involving organizations and “patient champions”. The following statement appears in their London Declaration of March 2006. “There is a right to safe healthcare and we will not let the current culture of error and denial continue. We call for honesty, openness and transparency. We will make the reduction of healthcare errors a basic human right that preserves life around the world.” The agenda for change is being driven by a few key individuals, notably Liam Donaldson, CMO for England and chair of WAPS [“to err is human, to cover up is unforgivable, and to fail to learn is inexcusable”, Lucian Leape, Professor Albert W.Wu of John Hopkins, Professor Hughes CEO, Clinical Excellence Commission, N.S.Wales and Susan Sheridan of CAPS [Consumers Advancing Patient Safety].

4 In all discussions on patient safety there exists a “black hole”, a topic which is usually avoided, and that is the treatment of victims after a medical mistake or iatrogenic event. When AMNA uses the phrase “medical negligence”, we are more likely to be referring to the ,quite disturbing, mistreatment of damaged patients/relatives, where the injury is often compounded by delayed or inappropriate or no intervention and damaged patients die or are left disabled ,when those outcomes were avoidable. This aspect of patient safety is ignored, as is the ongoing abuse, blacklisting, and denial of routine healthcare, which may characterize their medical treatment for the rest of their lives. In the recent NHS Constitution [for England 21 January 2009], this scenario is recognized in the Pledge that “the fact that you have complained will not adversely affect your future treatment” and “when mistakes happen, to acknowledge them , apologize , explain what went wrong and put things right quickly and effectively”. AMNA have highlighted this area in a 21 page submission to the NIHRC in February 2001, and presented some 20 cases over two meetings with NIHRC in April and May 2001, which demonstrated our thesis. When AMNA met up with similar organizations from across Europe , in Dormagen in November 2004, this subject of secondary neglect was found to be a widespread phenomenon and forms the core of the agreed Dormagen Declaration ,which can be accessed on the Iatrogenic Europe Unite Alliance website at [www.ieu-alliance.org/](http://www.ieu-alliance.org/)

5. There is no longer dissent about whether full disclosure is essential to the safe running of any healthcare system, necessary in informing and driving any patient safety programme and protecting damaged patients and their relatives/bereaved relatives. The debate is now about how it can be achieved. The options are to:

- A] Continue with a voluntary system relying on the goodwill and cooperation of health professionals and providers to be open and candid, when things go wrong, with a corresponding understanding and forgiving response from patients and their families.

We would argue that such life and death situations are too serious to be left to a voluntary code, and though there are success stories, there is also evidence of failure.

The confidential reporting and recording of incidents introduced by the National Patient Safety Agency [NPSA] in England some years ago is now shown to be largely revealing only “near misses”, non—clinical accidents and minor patient safety breaches. In recent months, the “duty of candour,” as set out in “Safety First” document has been countered by contrary advice from the NHSLA[ Litigation Authority] in England.

- B] A statutory obligation for health professionals to disclose and report medical errors and in particular any medical error that has harmed a patient. This is in line with others who are obliged to make such reports eg motor vehicle drivers or factory managers.
- C] A human right enshrined in a Bill of Rights, which could be:

Specific: A Disclosure Clause compelling health service providers to make disclosure of all medical errors, patient safety breaches and near misses, in order to protect the rights of the damaged patient and improve safety for future patients.

General: The concealment by officials of the facts and circumstances posing a threat to the life and health of people shall entail responsibility according to the federal law.

Russian Federation Article 41 [3]

6. In conclusion, it is rather difficult to encapsulate all we would want to convey to you in this short submission. There is now a vast amount of literature on the subject. Our sister organizations in England have similar objectives:

Sufferers of Iatrogenic Neglect at [www.sin-medicalmistakes.org/](http://www.sin-medicalmistakes.org/)

AvMA Action against Medical Accidents at [www.avma.org.uk](http://www.avma.org.uk)

1 May 2009

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### Written evidence from the Irish Congress of Trade Unions

#### INTRODUCTION

1. The Irish Congress of Trade Unions is the single umbrella organisation for trade unions in Ireland representing almost 750,000 working people, both in the Republic and in Northern Ireland. There are 64 unions affiliated to Congress, 48 unions with 543,882 members in the Republic of Ireland and 36 unions with 215,478 members in Northern Ireland. Congress is the largest representative body in civil society in Northern Ireland and the only body which can claim almost a quarter of a million members drawn from all communities and all shades of political opinion.

2. For more than three decades the trade union movement has actively promoted a Bill of Rights for Northern Ireland and has emphasised the importance of equality and human rights to creating right relationships and tackling division and discrimination within our deeply divided society.

3. It is our firmly held belief that a strong and inclusive Bill of Rights can play a fundamental role in the creation of a better, more just, fair and inclusive society. To this end we lobbied for the inclusion of equality and human rights commitments in the Good Friday Agreement including a Bill of Rights for Northern Ireland. We lobbied to ensure that the NI Act properly reflected those commitments in the legislation governing our statutory duty on equality of opportunity and those governing human rights including the powers of the NI Human Rights Commission. We have made detailed submissions on the Bill of Rights with strong emphasis on socio-economic rights and have played a key role in the discussion and consultation structures established over the past nine years. Most recently we participated in the Bill of Rights Forum and convened the working group on socio-economic rights.

4. In the course of our work we have involved trade union members in awareness, promotion and participation. Consequently, there is strong support from our membership for a Bill of Rights which also encompasses socio-economic rights. From our involvement as members of the Human Rights Consortium we are clear that this level of commitment is reflected right across society in Northern Ireland. There is particularly strong support for the inclusion of social and economic rights.

5. Alongside our allies in the equality, human rights and community/voluntary sectors we continue to argue that any Bill of Rights for Northern Ireland must be as strong and inclusive as possible. This means that:

- the Bill of Rights must not undermine current international human rights protections;
- the most disadvantaged in our communities must achieve recognisable gains as a result;
- there must be effective enforcement mechanisms;
- the Bill of Rights must promote equality and represent the diversity of all those living in Northern Ireland; and
- the Bill of Rights must reflect the “particular circumstances” of Northern Ireland by having at its heart the protection of social and economic rights.

#### SOCIAL AND ECONOMIC RIGHTS

5. Congress believes it is imperative that the Bill of Rights encompasses not only civil and political rights but also strong social and economic rights. These rights are mutually reinforcing and fundamental to dealing with the economic and social inequalities which are at the heart of many of the problems particular to Northern Ireland.

6. On social and economic rights we start from a disturbingly low and unequal base. This is evidenced not only by the thousands of submissions which have been made by local communities over the past decade but also by the UK Government’s own data. The inclusion of such rights can help build alliances across communities on the day to day issues impacting on all our lives. They are a practical way to create real structural and progressive change in the lives of the people who need it the most.

7. Public opinion polls have consistently shown cross community support for social and economic rights in a Bill of Rights. The Human Rights Commission’s initial survey in 2001 showed that well over 80% of the public were in favour of including rights relating to areas such as health, housing, education, jobs, workers rights and poverty. Recent independent polling by the Human Rights Consortium also shows over 90% support from both communities for the inclusion of such rights.

8. In our view it is of particular significance that 90% of the people across a deeply divided society share a common view on the need for social and economic rights. Congress believes that this forms key building blocks for a future Northern Ireland in which all sections can come together around a common set of shared values.

9. The trade union movement has demonstrated consistently throughout the “troubles” and beyond that it is a key driver in Northern Ireland society for bringing people together in pursuit of a just cause. Our role in peace building has been universally acknowledged. However, our day to day role in building a new society remains hampered by the absence of worker and trade union rights which recognize and respect the fundamental role we have played in this society. It therefore becomes imperative that socio-economic rights encompass workers rights and trade union rights. We submitted extensively on these matters to the Bill of Rights Forum. Strong trade unions stabilise democracies and create societies in which a commitment to fairness and inclusion is evidenced in practice. That is why trade union rights and social and economic rights are a vital component in the Bill of Rights for Northern Ireland.

10. To underpin the Peace Process we need a society in which all workers are free from discrimination, where equality is actively promoted and where workers can access decent jobs and fair and equal pay. Every worker in Northern Ireland needs the right to join and participate in a union without the threat of sanction and unions in Northern Ireland need the unfettered right to bargain and influence.

11. We have consistently expressed the view that the Bill of Rights does not usurp the role of politicians but is rather a natural part of the checks and balances of a modern democracy that sets minimal standards for everyone and ensures a safety net for the most vulnerable in society. The Bill of Rights in the first instance would be implemented by our elected representatives who would use it as a human rights guide to the development of policy and legislation, ensuring its compliance with the Bill of Rights.

12. The implementation of social and economic rights could be progressively realised in accordance with international best practice, using benchmarks and indicators to continuously assess whether the rights in a Bill of Rights were being implemented over a period of time. At the opposite end of that spectrum, if the government consistently refuse or fail to take minimal incremental steps towards implementing those rights, individuals should have an ultimate judicial mechanism of holding the government to account.

13. Congress believes that the Northern Ireland Human Rights Commission's recommendations to the UK government on the content of a Bill of Rights represent a positive basis for developing the Bill of Rights, being closely reflective of international standards and the particular circumstances of Northern Ireland. Its inclusion of social and economic rights are of particular importance and would be close to achieving the Consortium's aim of a strong and inclusive Bill of Rights if implemented in legislation.  
Particular circumstances of Northern Ireland

14. The Trade Union movement has argued strenuously that the term "particular circumstances" encompasses the political, civil, cultural and socio-economic factors that are specific to Northern Ireland.

15. We have already referred to the evidence base which exists on our deeply divided and ill-divided society. Some of our key inequalities include the following.

- (a) At 27.7%, NI has the highest economic inactivity rate in the UK. By definition, the economically inactive have been ignored by government employment policies such as New Deal (replaced recently by Steps to Work). This grouping occupy 80% of Northern Ireland's social housing and are statistically and emotionally, more likely to have been directly affected by the "troubles".
- (b) The NI employment rate remains lower than that of any other UK region and there exists a higher share of workless households (21% compared to the UK average of 16%).<sup>99</sup>
- (c) Catholics continue to have lower levels of employment, lower levels of economic activity and higher representation in workless households.
- (d) People living in households, whether Catholic or Protestant where nobody is in employment, have missed out on the economic boom of the last 10 years. The proportion of people living in workless households has remained relatively stable for Catholics falling from 20% in 1997 to 19% in 2004, and increased for Protestants from 14% to 16% in the same period. Protestants are moving closer to the same level of exclusion as their Catholic counterparts; a reality which should please no-one! Jobs created over the last decade have largely gone to households in which there is already someone in employment. This trend is also cyclical in nature, affecting generation upon generation, and is closely linked to patterns of poor education. The trade union movement has long argued that such disadvantage left unaddressed increases the ability of those who would destabilise the peace process to draw a new generation into their ranks.
- (e) In the health sector there is a marked under-representation of Protestants, especially at professional grades. The same is true of the education sector, where Protestants are under-represented, apart from jobs at the highest levels.
- (f) Women in NI faced particularly profound gender inequalities. For example:
  - (i) 32.1% of men are located in the higher "managerial" SOC groups compared with 27% of women.<sup>100</sup>
  - (ii) In the retail sector<sup>101</sup> a 30% gender pay gap remains reflecting complex factors such as occupational segregation, under-representation of women in management and the higher proportion of women working part-time (39% of female employees work part-time<sup>102</sup> compared with 6% of male employees);<sup>103</sup>
  - (iii) The unequal sharing of care responsibilities in NI means that of those females who are economically inactive, almost half (45%) are unavailable for work due to family/home commitments;<sup>104</sup>

<sup>99</sup> DETNI (2007) *The Northern Ireland Economic Bulletin*.

<sup>100</sup> Equality Commission (2006) Monitoring Report No 16 *A Profile of the Northern Ireland Workforce: Summary of Monitoring Returns*.

<sup>101</sup> Dignan, T. (2003) *Gender and Pay in the Information Technology and Retail sectors in Northern Ireland*. Equality Commission: Belfast.

<sup>102</sup> Defined as less than 16 hours per week.

<sup>103</sup> DETNI (2007), *Women in Northern Ireland: Labour Market Statistics Bulletin*, Belfast (p 7). Available at: <http://www.detini.gov.uk/cgi-bin/downdoc?id=3173>

<sup>104</sup> DETNI (2007), *Women in Northern Ireland: Labour Market Statistics Bulletin*, Belfast (p 3). Available at: <http://www.detini.gov.uk/cgi-bin/downdoc?id=3173>

- (iv) There is emerging evidence<sup>105</sup> of high job exit rates among lone parents, the majority of whom are women, particularly in their first year of employment;
- (v) Women are more likely to be reliant on means tested benefits, and experience greater barriers to economic independence and employment, resulting in more women working part time, in less skilled work, with poorer access to training and progression and ultimately poorer access to pensions and contributions based benefits.<sup>106</sup>
- (f) Difficulties in accessing affordable, quality childcare further exacerbates the difficulties experienced by those (predominately women) who wish to re-enter the labour market. Despite a 7% increase in the number of places available since 1996, Northern Ireland continues to have one of the lowest levels of childcare provision in Europe with only 92.5 day nursery places per 1,000 children aged 0–4 years (based on 2005 mid-year estimates), compared with 195.5 in England in 2006.<sup>107</sup>
- (g) The employment rate for those without disabilities (79%) is over twice that of people with disabilities (32%).<sup>108</sup>
- (h) Only 35% of Travellers aged 16–74 in Northern Ireland are economically active (compared with 62% of all economically active people in that age group).<sup>109</sup>
- (i) Within the past few years what was essentially a mono-cultural deeply divided society has experienced a major increase in people, particularly workers, from other countries. Congress through its research,<sup>110</sup> its migrant workers unit and from the direct experience of our affiliates can attest to widespread and increasing exploitation and abuse of migrant workers across Northern Ireland. There is ample evidence of unlawful discriminatory practice by some companies in the recruitment agency sector. There is a disturbing body of evidence on the rise of racism and race hate crimes.
- (j) Northern Ireland has also sustained compared to GB:
  - (i) the lowest average gross weekly earnings per household and per person; a much greater reliance on social security benefits;
  - (ii) greater differentials in health status between rich and poor and according to factors such as gender, age, ethnicity, disability, religion, sexual orientation and location;
  - (iii) higher prices paid for food and heating with a particular impact on disadvantaged groups who do not benefit from lower house prices;
  - (iv) higher rates of work-related ill health and accidents;
  - (v) greater homelessness, poor housing, poor infrastructure and poor environment; and
  - (vi) the greater exposure of our children to sectarian conflict and discrimination and poverty.

16. These are only some of the statistics which make Northern Ireland distinctive from other regions in the UK. They have contributed to serious problems in areas such health, education, employment, criminal justice and equality, particularly for disadvantaged groups such as women, children, older people, people with disabilities, persons of differing sexual orientations, and ethnic minority communities.

#### CONCLUSION

17. We therefore urge the Northern Ireland Affairs Committee:

- (a) to support a strong and inclusive Bill of Rights as an essential tool to underpin the peace process, particularly at a time when there are attempts to destabilise the process;
- (b) to assist in putting pressure on the government to commit to the form of wide ranging and engaging public consultation which will demonstrate the strong public support for a Bill of Rights and for socio-economic rights in particular, and will continue to assist divided communities with common cause to engage with each other;
- (c) to recognise the need for the inclusion of the social and economic rights necessary to deliver a strong and inclusive Bill of Rights which reflects the “particular circumstances” of Northern Ireland and creates a cohesive set of rights that can unite the traditional communities in Northern Ireland; and
- (d) to support the pressing need to bring forward legislation on the Bill of Rights for Northern Ireland within the lifetime of this parliament in order to finally deliver on this essential commitment of the Belfast/Good Friday Agreement.

<sup>105</sup> Evans, M, Harkness, S, Ortiz, R (2004). *Lone Parents Cycling Between Work and Benefits*. London: Department of Work and Pensions.

<sup>106</sup> Evason, E, Spence, L (2002). *Women and Pensions*. Belfast. Equality Commission for Northern Ireland.

<sup>107</sup> DETINI (2007), *Women in Northern Ireland: Labour Market Statistics Bulletin*, Belfast (p 17). Available at: <http://www.detini.gov.uk/cgi-bin/downdoc?id=3173>.

<sup>108</sup> DETINI (2007) *Northern Ireland Labour Force Survey April to June 2007*.

<sup>109</sup> NISRA (2001) *2001 Census of Population*. Available at: [www.nisra.gov.uk](http://www.nisra.gov.uk)

<sup>110</sup> McVeigh, R (2006), *Migrant Workers and their Families in Northern Ireland—A Trade Union Response*.

18. We thank the Committee for its consideration of what the Irish Congress of Trade Unions believes to be one of the most pressing, relevant and meaningful issues facing Northern Ireland today. We stress the pressing need for fulfilment of the commitments of the Good Friday Agreement now more than ever. We remain available to provide any further information which the Committee may wish to consider.

1 May 2009

#### Written evidence from Jeffrey Dudgeon

1. I have been a longstanding and fierce critic of the Northern Ireland Human Rights Commission (NIHRC) and this despite being a successful applicant at the European Court of Human Rights at Strasbourg and campaigning for many years to get the Labour Party to organise in Northern Ireland.

2. Briefly, I might add that there can be very few denials of basic civil and human rights more extreme than a prohibition against participation in the political party that governs you. The then NIHRC chief commissioner told me however that as there was no “internationally recognised human rights standard” on such an issue (it is of course unique) he did not include it in their first draft bill of rights.

3. No engaging there on the “particular circumstances of Northern Ireland.”

4. And so it has continued for a decade with ultra-left, statist and Nationalist opinions predominating. This of course is largely the result of not having the reality and discipline of the Labour Party, at times in government, as the left alternative in Northern Ireland. Instead we have the inevitable and consequent option of politics being undertaken, particularly by the funded voluntary and community sector, through human rights agencies and judicial avenues.

5. This also explains why a remit reading, “*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 of Rights for Northern Ireland*” became shamelessly a licence to include anything you felt like.

6. However once you ignore the text of a law you are on the road to lawlessness. This is a particular danger in partisan Northern Ireland and must be guarded against, as it can seep into the rest of the country.

7. The issue on which I took a case to the Strasbourg Court in 1976 was the decriminalisation of male homosexuality in Northern Ireland. This with the possibility of life imprisonment for something legal in England was of course a grotesque and discriminatory denial of human rights.

8. After a six-year struggle, fought every inch of the way by the Northern Ireland Office (and its counsel Mr Brian Kerr), and the Foreign Office who queried every penny of my £4,605 costs, the Court found in my favour in 1981. The Conservative government a year later was obliged to change the law. All Unionist and SDLP MPs voted against the Order in Council or abstained—even the gay ones.

9. My case was groundbreaking in many ways. It was the first successful gay case, only the thirty-fifth case judged by the Court, and the fifth violation found against the UK. There have since been ten thousand cases judged at Strasbourg.

10. It taught me the value of European-wide human rights instruments and proved that Westminster was increasingly failing in its job by leaving the European Court of Human Rights to reform the UK’s unfair and backward laws. The introduction of the Human Rights Act in 1998, which I long argued for, has meant such concerns are at least being met judicially.

11. Ironically one of the main drafters of the European Convention was Sir David Maxwell Fyfe, a former Conservative Lord Chancellor, who as Lord Kilmuir, was perhaps the most vociferous opponent of homosexual law reform in the 1960s. I imagine him turning in his grave if, in 1981, he had found out that the Convention was going to provide “Buggers Rights,” as he would have put it. But the value and virtue of the Convention is that it has modernised and modernises along with broad European society.

12. To return to the question of NIHRC and a provincial Bill of Rights for Northern Ireland, I have to say I was astounded in 1999 when Brice Dickson, then Chief Commissioner, first announced (at an *Irish Association* meeting I had organised) that he did not feel obliged to and would not stick to the Belfast Agreement remit on a possible Bill, neither in its limitations nor in interpretation of the phrase “both communities.”

13. This was unfortunate but consistent with a Commission which had neither Unionist nor liberal nor secular members. (I applied and was not even interviewed.) Almost everything that has flowed since from that source and its travelling companion the Bill of Rights Forum has been in the same vein.

14. NIHRC's outlook was one which barely gave recognition (and rarely thought) to being in the United Kingdom. The Commission was instead colonised by those who saw Northern Ireland as a seedbed for advancing progressive ideology (paid for by the British taxpayer). No effort was made to extend its role to consider the activities of non-state human rights violators as Amnesty had done.

15. Practically, for gay people, it was vital that we obtained the benefit of further equalising reforms being put through by the Labour Government. However at every turn the NIO was keener to develop what it hoped was a possible alliance of Catholic and Protestant fundamentalists than adhere to European human rights standards.

16. So reforms like the age of consent reduction, the introduction of civil partnerships, and the 2003 Sexual Offences Act which equalised heterosexual and homosexual actions and penalties under the criminal law, had to be fought for to ensure their immediate extension to Northern Ireland. Those that did not fight like women's groups had to wait five years for the reform of the rape laws in a 2008 Order in Council.

17. Despite pleas for assistance, NIHRC was unable to grasp the importance of getting such UK human rights standards effected across the country. Gay organisations had again to do the necessary campaigning to include Northern Ireland, alone.

18. It is for this reason also that even if the Belfast Agreement permitted a Bill of Rights of the extensive scope proposed by NIHRC, it would set us apart from further advantageous reforms coming out of Westminster. We would be in a different legal world reliant on a devolved parliament which may not go backwards legislatively but will certainly not agree to go forward. (I note already that concerns are being vainly expressed about Northern Ireland's exclusion from the Single Equality Bill just published.)

19. There was some hope that the Bill of Rights Forum of 2006–08 would address the key remit and extent problems that meant there could be no cross-community support for any Bill of Rights. The Forum supposedly gave the political parties equal representation with nine representatives to some nine voluntary and community "sectors" including the gay Coalition on Sexual Orientation (CoSO).

20. When CoSO (which has since collapsed and disbanded) came to choose its nominees for the Forum, the transparent soviet-style selection process consisted of confirming the names of those who had already attended the opening meeting (before others were advised of that meeting even happening or indeed of the NIO's invitation).

21. Happily, the UUP asked me to join the Forum's Economic and Social Rights Working Group and made me a substitute on the Forum proper. I was therefore able to argue for restraint in a group which proposed to trammel political parties in their spending allocations. None the less, the slightly slimmer group report that went forward to the main Forum retained most of the sectoral proposals such as "Progressive Realisation" that have found their way into the NIHRC's advice to the Secretary of State.

22. Compromise was not in the air as the sectors almost invariably argued for new rights outwith the remit. Although no voting system was ever agreed, the chairman Chris Sidoti effectively introduced one in the last weekend which gave the nine sectoral groups equal standing to the five political parties despite their nine members. The inevitable then occurred.

23. The DUP Forum member, Peter Weir MLA, compiled these telling statistics on the Forum's report: "The main recommendations are contained in Chapter 4 of the report. That chapter contains 41 substantive proposals. None of these proposals were passed unanimously and none of them have cross community support. There are 216 secondary recommendations. None of them was passed unanimously and a mere seven have cross-community support. During the discussions it emerged that if we excepted the representatives of the churches and business community, the other civil society representatives and the trade unions were on average 56 times more likely to endorse a position espoused by Nationalists in opposition to Unionists."

24. NIHRC chose not to recognise that the Forum had failed despite its report being voted down in the Assembly on 8 April 2008 by the UUP, the DUP, and the Alliance Party. This was on a par with the earlier ostrich-like ignoring of the guidance given to NIHRC in 2003 by the Northern Ireland Office Minister, Des Browne (see attached). He said politely, amongst other criticisms, that their interpretation of the remit was too wide.

25. I append my response to NIHRC's draft strategic plan in 1999 which proves consistency if nothing else, and below a short letter to *The News Letter* in December 2008 after the publication of NIHRC's advice on some of its particular proposals (or lack of same). They are examples of alternatives being provided never to be considered. Counsel's opinion sought by NIHRC in 2008 on how to effect the remit was also apparently not followed.

26. In conclusion, I would recommend to this Northern Ireland Affairs Committee that the matter of a Bill of Rights for Northern Ireland is now exhausted. Not only can cross-community agreement not be reached but the large sums of money expended have not even turned up anything by way of particular Northern Ireland-rights to put into legislation.

27. UK-wide arrangements remain a preferable option, both to avoid human rights tourism and to prevent intra-state inequalities. The Belfast Agreement did not promise a Bill of Rights. The NIO's statutory job was done when it sought advice from the Commission. Although it must consider it, it certainly is not required to follow it.

28. Should this submission perhaps be thought too personal, I believe we have reached the point where legal argument is no longer capable of advancing the matter and only an historical account can properly illustrate the decade-long dispute and needless waste of resources.

1 May 2009

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### Written evidence from NICEM

1. NICEM is an umbrella organisation representing the interests of black and minority ethnic people in Northern Ireland, member groups include settled ethnic minorities, migrant workers, asylum seekers and refugees, Currently we have 27 affiliated groups as our full members, such a composition is representative of most of the ethnic minority communities in Northern Ireland.

#### GENERAL COMMENTS

2. NICEM asserts that a strong inclusive Bill of Rights is essential for enshrining the principles of human rights as the cornerstone of peacebuilding in Northern Ireland. A high profile Bill of Rights with rigorous enforcement mechanisms would give a voice to those most marginalized. We welcome the opportunity that the creation of a Bill of Rights presents as a key step in acknowledging the conflict whilst moving beyond the traditional “two communities” approach in building a more inclusive society. We hope that a strong, succinct accessible and inclusive Bill of Rights for Northern Ireland can be fully realized in the foreseeable future.

3. NICEM has been campaigning for a meaningful and all encompassing Bill of rights for Northern Ireland for more than 10 years along with other civil society organisations, we are in support of the advise contained within the promising proposal that the Northern Ireland Human Rights Commission presented to you in December 2008.

#### SUBSTANTIVE COMMENTS

4. We believe that a strong and inclusive Bill of Rights specific to “the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience” in accordance with obligations in the Good Friday Agreement would enable all people to fully assert their rights and access the justice system.

5. It is vital that the Bill be concise, robust and open to change in interpretation in order to make it constantly relevant and applicable to society whilst being grounded in a strong Human Rights Framework that positively promotes the protection of the rights of all human beings to the highest possible standard. In order to ensure brevity and coherence NICEM believes that the rights of vulnerable groups should be mainstreamed where appropriate.

6. It is essential that the Bill is implemented effectively, with all rights fully enforceable and justiciable. The Bill of Rights must apply to all aspects of government activity regardless of their status as devolved, reserved or accepted. In order to ensure such importance we support the establishment of a Human Rights Court in addition to the enforcement of the Bill across all levels of the judicial system.

7. The Bill of Rights should not undermine existing levels of international protection, specifically in relation to the rights of minorities. In line with such obligations as outlined in the Council of Europe’s Framework Convention for the protection of national minorities the term “communities” should not be equated with the term “minorities”.

8. NICEM asserts that Social and Economic Rights are a critical element of a strong and inclusive bill of rights and such rights should be fully enforceable inline with the international principle of progressive realisation.

#### CONSULTATION

9. We would also like to emphasise the importance of a meaningful and participatory consultation process in compliance with obligations contained in section 75 of the Good Friday agreement. We would urge the government to hold such consultations as soon as possible, before the summer break, so that a comprehensive and engaging process can be achieved. It is of paramount importance that no delays in the process occur as this could jeopardise the delivery of the Bill of Rights through legislation within the lifetime of the current parliament.

We trust that you will give our comments full consideration.

May 2009

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### Written evidence from the Committee on the Administration of Justice (CAJ)

Please find enclosed a series of papers and articles relevant to the Northern Ireland Affairs Committee request for evidence on the Bill of Rights for NI. CAJ would like to clearly state our disappointment that the Secretary of State for Northern Ireland has been so dismissive of the Northern Ireland Human Rights Commission's advice and ruled so much out of contention before the consultation has even begun. Such an approach raises the question as to whether the government was ever intending to fulfill its commitments as laid out in the Good Friday Agreement.

*"The new Northern Ireland Human Rights Commission... will be invited 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 of Rights for Northern Ireland."*

CAJ has been working towards the creation of a Bill of Rights for NI since the mid-1980's and has done so with the belief that a Bill of Rights specifically for Northern Ireland will form part of a process for ensuring that the human rights abuses committed in the past will not be repeated. As such, a Northern Ireland Bill of Rights is a fundamental building block for peace, hope and security in an area tainted by conflict.

CAJ has sought international expertise on this issue in recent years and has invited many eminent scholars and politicians from around the world to discuss the benefits of this such as Professor Kader Asmal as a member of Parliament for the South African National Assembly, Mary Robinson in her capacity as UN High Commissioner for Human Rights, Justice Albie Sachs of the Constitutional Court of South Africa and Chief Justice Beverly McLachlin of the Canadian Supreme Court, along with many other politicians, academics and activists who have voiced clear support for such a Bill, noting in particular the contribution such a document would play in helping to contribute to peace and stability.

CAJ has also met regularly with local politicians and government ministers in NI and beyond to discuss and encourage debate on a Northern Ireland Bill of Rights. As such we are well placed to deliver accurate and well researched evidence to the Northern Ireland Affairs Committee and hope that this evidence is given due regard in this light. We have also delivered extensive training and awareness raising exercises to community groups and civil society. The overwhelming response to this work, from all backgrounds in Northern Ireland has been in support for a strong Bill of Rights for Northern Ireland that reflects protected and enforceable social and economic rights. It can not (and should not) be underestimated the feelings of alienation and neglect that ordinary people in Northern Ireland still feel who have suffered long-term from the conflict and as a direct consequence of this conflict, joblessness, poor housing, poor schooling, poor healthcare and both physical and mental impairments. This is an opportunity for the government to rectify these problems. To implement real and meaningful change. To lead in the process of securing rights for the most vulnerable in our communities.

Attached are a series of papers which we believe the NIAC will find useful:

#### 1) PARTICULAR CIRCUMSTANCES, OCTOBER 2007

This paper was produced for the Bill of Rights Forum and outlines the clear meaning of the term as depicted in The Declaration of Support in the Good Friday Agreement:

*"The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all."*  
(emphasis added)

#### 2) CAJ'S RESPONSE TO THE NIHRC'S ADVICE, MARCH 2009

This outlines CAJ's position on the NIHRC's Bill of Rights advice. Overall CAJ found that the proposals were strong and robust and particularly welcomed the inclusion of justiciable social and economic rights and strong equality protections. Overall CAJ was impressed with the advice produced by the Commission, and particularly their foundation in international human rights standards which the government is already obliged to protect. We now call on the government to respond to this advice in a comprehensive and timely fashion and allow time and resources for people in Northern Ireland to properly absorb and respond to the consultation. We particularly urge them to use the Commission's recommendations as a base upon which to build, rather than a point from which to roll back.

## 3) BEST BILL OF RIGHTS GUIDE, JUNE 2008

This paper spells out the absolute minimum that would be acceptable in a Bill of Rights for Northern Ireland, making anything less a futile and pointless exercise.

In conclusion, civil society has made inexhaustible attempts to redress discrimination and protect rights in NI and overwhelmingly supports a Bill of Rights for Northern Ireland. This strong and vibrant civil society work should be welcomed by the government and every attempt should be made to ensure that the people of Northern Ireland, as they have clearly stated, get what they deserve—a Bill of Rights to be proud of.

Please do not hesitate to contact us for any further information or explanation with regards your request for evidence on a Bill of Rights for Northern Ireland.

*Mike Ritchie*  
Director

6 May 2009

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**Written evidence from Family Planning Association (FPA)**

1. **fpa** submits this report to highlight the exclusion of reproductive rights in a Bill of Rights for Northern Ireland, and demonstrates the need for women’s reproductive rights to be included in a Bill of Rights.

2. The Northern Ireland Human Rights Commission in their report to the Secretary of State in December 2008 stated:

The issue of women’s rights in respect of reproduction, and especially the issue of termination of pregnancy, has been one of the most controversial in the Commission’s consultations on a Bill of Rights for Northern Ireland. Forceful and deeply felt submissions have been made, in respect of a right to life for unborn children and in respect of a right of choice for women. There is no clear widely accepted international standard in respect of the underlying issues. The United Nations’ Committee on the Elimination of Discrimination against Women has directed the UK to consult widely on this issue in Northern Ireland. The Commission has, therefore, concluded that it would be inappropriate for it to suggest that the matter can be resolved by a Bill of Rights. The Commission recommends that the Government responds to the concluding observations of the United Nations’ Committee on the Elimination of Discrimination against Women.<sup>111</sup>

3. **fpa** believes that the statement made by the NIHRC that “there is no clear widely accepted international standard in respect of the underlying issues” is unfounded. There is clear international legal precedent that the fetus has no right to life protected by international human rights law until born. In addition, there is clear legal precedent that women do in fact have reproductive rights protected by international human rights law.

4. It is generally recognised that international human rights conventions are not applicable before birth of a human being. The major international treaties do not extend the right to life to fetuses. Article 3 of the UDHR (Universal Declaration of Human Rights 1948) specifically limits the right to life to those that have been “born”. The European Commission on Human Rights confirmed in *Paton v United Kingdom*, that the use of the term “everyone” does not include fetuses.<sup>112</sup> The European Court of Human Rights reaffirmed in *Vo v France* that the fetus is not regarded as a “person” directly protected by article 2 of the Convention.<sup>113</sup> Furthermore, in *Evans v United Kingdom*, the European Court declined to extend Article 2 protection to embryos.<sup>114</sup> Arguments have been put forward based on the Convention on the Rights of the Child’s preamble, that the fetus has a right to life protected by international law. At most, all the wording suggests is that states who have signed up to the Convention have a duty to promote a child’s capacity to survive and thrive after its birth, by offering prenatal and essential obstetric care, and by targeting pregnant women’s nutrition and health. In addition, the provisions of the Convention are widely understood that legally protected status begins at birth.

5. The Committee on the Elimination of Discrimination against Women in their concluding observations on the UK and Northern Ireland, who were examined in July 2008, have made a number of recommendations about abortion in Northern Ireland:

- A process of public consultation on abortion should be initiated.
- Abortion law should be amended so as to remove punitive provisions imposed on women who undergo abortion.
- Health services should be delivered in a gender-sensitive manner to all health concerns of women.<sup>115</sup>

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<sup>111</sup> Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland Advice to the Secretary of State for Northern Ireland* (Belfast: NIHRC: 10 December 2008), at p 116.

<sup>112</sup> *Paton v United Kingdom (X v United Kingdom)* (1980) 19 DR 244; (1981) 3 EHRR 48, at paras 7, 9 and 23.

<sup>113</sup> *Vo v France* (2005) 40 EHRR 12, at paras 80–82.

<sup>114</sup> *Evans v United Kingdom* (2008) 46 EHRR 728, at paras 54–56.

<sup>115</sup> Concluding Observation of CEDAW regarding: The United Kingdom of Great Britain and Northern Ireland, 18 July 2008, C/GBR/CO/6, at paras 41 and 42.

In addition, Northern Ireland, as part of the UK, has made international commitments on human rights which affect women's access to abortion:

- **The right to privacy**—article 17 of the International Covenant on Civil and Political Rights (ICCPR) and article 8 of the European Convention on Human Rights (ECHR). Arbitrary restrictions on abortion means that women are denied the right to make private decisions that affect their bodily autonomy and are refused the right to self-determination.
- **The right to liberty and security of the person**—article 5 of the ECHR and article 9 of the ICCPR. Forcing a woman, by threat of criminal sanction, to carry a fetus to full term is a profound interference with a woman's body and thus an infringement of security of the person.
- **The right to the highest attainable standard of health**—article 12.1 of the International Covenant on Economic, Social and Cultural Rights. The restriction of abortion services in Northern Ireland denies women the right to full enjoyment of the highest attainable standard of physical and mental health.
- **The right to be free from discrimination in health care**—article 12.1 of the Convention on the Elimination of Discrimination Against Women. Denying women access to medical services that enable them to regulate their fertility and make their own private decisions on matters concerning their body amounts to a refusal to provide health care that only women need. Consequently, women are exposed to health risks that are not experienced by men, and thus, the denial of safe abortion services constitutes sex discrimination.

Northern Ireland, as part of the UK, has signed up to and ratified all these international human rights documents, and therefore is legally bound to put all provisions into practice.

6. It is unacceptable that the NIHRC have ignored the reproductive rights of women in Northern Ireland and have chosen to sidestep the issue by passing responsibility on to the CEDAW committee. There is clear international precedent in support of women's reproductive rights. Women in Northern Ireland at present do not have adequate protection of their human rights, and would significantly benefit from an inclusion of the protection of their reproductive rights in a Bill of Rights for Northern Ireland. This would afford women in Northern Ireland better legal protection of their rights in relation to their reproductive health.

7. The legal provision of abortion services in Northern Ireland is very restricted, with abortions only legally performed for exceptional circumstances. The current legal position in Northern Ireland is incompatible with many International Human Rights obligations. It is important that the lack of provision of abortion services and ultimately reproductive rights is granted recognition as a human rights issue for the women of Northern Ireland, and located in the Bill of Rights for Northern Ireland.

May 2009

#### **Written evidence from Liam Kennedy, Northern Ireland Human Rights Association**

I am writing, partly as an academic historian of Ireland but primarily as the founder of the Northern Ireland Human Rights Association, a voluntary organisation without State or large-scale philanthropic funding. From 1997 onwards members of NIHRA campaigned against the major human rights' abuses in Northern Ireland, those perpetrated by paramilitary organisations. We hardly need reminding of the scale of these activities: **between 1973 and 2008 the police recorded well over 3,000 "punishment" shootings in Northern Ireland and two and a half thousand "punishment" assaults**, carried out by loyalist and republican paramilitary organisations. These attacks actually increased in the wake of the Good Friday Agreement before shifting to a lower plane in more recent years (though there are worrying signs of renewed activity).

It was a constant source of amazement to us that those who spoke the language of human rights had nothing to say about these, the most pervasive human rights abuses in our society. NIHRA condemned state violations but we also highlighted and opposed human rights abuses by the IRA, the UVF, the UDA and other illegal organisations. The Nelsonian blind eye extended by well-funded groups like the Committee on the Administration of Justice and the Children's Law Centre to "punishment" beatings, shootings, mutilations and "exiling" caused us to develop a sceptical view of these organisations.

That silence is one of the most shameful chapters in the history of human rights activism in the UK and Ireland. Our view, to use a rather unkind term, is that the "human rights industry" in Northern Ireland has been wrong in its focus and its principal concerns. Because it has been self-regarding and somewhat self-serving, it has forfeited the trust to speak with any kind of authority or representative voice on a Bill of Rights for Northern Ireland. The unwieldy proposals emanating from the Human Rights Commission, influenced heavily by various vested interest groups, serve to underline the selective and partisan concerns of the self-styled human rights community.

Various attempts on the part of my colleagues and I, to engage the CAJ and the Children's Law Centre in discussions of the physical and mental torture of young people by paramilitary organisations fell largely on deaf ears. When we carefully documented some of the appalling cases that were part and parcel of everyday life in disadvantaged working class communities, and published these in a trilogy of reports entitled

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*They Shoot Children, Don't They?*, not a single one of these organisations, with the notable exception of the N.I. Children's Commissioner, came out in public to champion the rights of child victims of paramilitary violence.

Our view is that human rights are universal. There are no specifically "Northern Ireland" human rights, nor is there merit in using the selective definition of human rights employed by the kinds of organisations mentioned above. As noted, paramilitary and terrorist groups, as well as the state, can be perpetrators of human rights' abuses, hence the need to adopt a holistic rather than a restricted view of people's rights. But with the adoption of a United Kingdom human rights act, there is simply no case for any particularistic legislation relating to Northern Ireland. Time and scarce resources have been lavished on a parochial project that has all the appearances of having produced a white elephant, though over a gestation period that exceeds that of elephants in the natural world. It is high time to wind up the pursuit of a flawed process and an irrelevant objective.

*"They never said what he had done wrong. They just dragged Eamon from the bed, threw him all the way down the stairs, lay him on his back and beat him with sticks embedded with huge nails while my parents pleaded with them to leave him alone because of his age. He only turned 14 in July."*<sup>1</sup>

<sup>1</sup> "Sister's anguish over night the IRA 'beat up my little brother'", *The Times*, 15 September 1999.

May 2009

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#### Written evidence from the Police Service of Northern Ireland

Respect for, and protection of, human rights is a core principle of policing in any democratic society. In the context of policing in Northern Ireland this ideal was given increased impetus in 1999 by the report of the Independent Commission for Policing in Northern Ireland—the *Patten Report*—and by the advent of the Human Rights Act 1998. The Patten Report made recommendations relating to Human Rights that the Police Service of Northern Ireland has worked hard to implement.

The Police Service of Northern Ireland (PSNI) is perhaps unique among public services in Northern Ireland in terms of the amount of oversight and external examination it has received. The Policing Board has a statutory responsibility to monitor our performance with the Human Rights Act. This is a rigorous examination with which we have fully engaged.

The Oversight Commissioner, who reviewed implementation of the Patten Report, stated in his final report in 2007: "a consciousness of human rights has taken route in a way that is unique among polices services. It informs thinking throughout the organisation, from planners to investigators, to beat officers to public-order units, and to support personnel. This consciousness has been institutionalised in people with explicit responsibility for human rights and in operational procedures. This is a remarkable achievement of which the police service and the people of Northern Ireland should be proud."

It is within this context that I make the following remarks to the Northern Ireland Affairs Committee's Inquiry into a Human Rights Bill for Northern Ireland.

We understand the impetus for, and the background of, a Bill of Rights for Northern Ireland. Whilst by no means a recent concept it has gained notable momentum through recent political agreements. The resultant advice by the Northern Ireland Human Rights Commission (NIHRC) to the Secretary of State in it's report: "A Bill of Rights for Northern Ireland—Advice to the Secretary of State", sets out a number of recommendations to be considered. These recommendations include both content and form.

It is the view of PSNI that any Bill of Rights is essentially a matter for Government and the Northern Ireland Assembly to agree. There are, however, a number of the recommendations that, if implemented, would impact PSNI in a practical way with the potential to affect policing and the administration of justice in Northern Ireland.

The attached submission considers, and is limited to, these proposals. I trust you will find them of some assistance to your Inquiry.

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### Written evidence from the Police Service of Northern Ireland

This submission considers and is limited to the recommendations of the Northern Ireland Human Rights Commission to the Secretary of State for Northern Ireland in its report; A Bill of Rights for Northern Ireland—Advise to the Secretary of State.

1. PAGE 20—RECOMMENDATION 1

A provision should be drafted to ensure that—

Legislation must be enacted to ensure that all violations of the right to life relating to the conflict in Northern Ireland are effectively investigated. Any mechanisms established must be fully in compliance with international human rights law.

2. The Committee will be aware of the efforts PSNI has made, with the support of Government, to re-examine all deaths that can be attributed to the security situation between 1968 and 1998. The Historical Enquiries Team (HET) was established to carry out this role. It was devised as an organised and comprehensive way of dealing with the past. Its sole job is to carry out these re-examinations. This is a difficult and sensitive task. The impact of such tragedies does not fade for bereaved family members. The scale of the task is enormous. This brings issues of resource allocation, both in personnel and finance. Whilst I am not, and do not wish to appear to be, complacent, it is my view that the process adopted by HET is the appropriate method of re-examining these deaths.

3. The Report of the Consultative Group on the Past, the “Eames-Bradley Report”, has considered this issue. It has proposed that the work of HET, along with that of the Police Ombudsman’s unit dealing with historical cases, would be taken over by a new independent Review and Investigation Unit.

4. However, if there are to be new requirements it is important that any obligations placed on PSNI in the area of investigation of past crime are fully resourced and do not have an adverse impact on our ability to deliver the professional service of the present and the future. It is also important that any future process takes due account of the work of HET so that there is no unnecessary duplication.

5. PAGE 24—RECOMMENDATION 2

Everyone who is arrested or detained has the right to be visited by a family member under appropriate supervision.

6. The arrest and detention of people is provided for by the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) and the associated Codes of Practice. Currently the right of a detained person to visits by a family member is at the discretion of the Custody Officer who will take into consideration the resources available to him or her and the needs of the investigation. PACE also provides that in certain exceptional and specified circumstances concerned with interfering with evidence, alerting other suspects and hindering recovery of property, a delay in notifying others of a person’s detention may be authorised. This is an important provision to maintain.

7. It is important to note that a person’s detention before charge is subject to strict time limits that are not altered to make allowances for visits. To make it obligatory to permit such visits could have a detrimental effect on the time available for the investigation and would also raise issues around resources to facilitate the visits.

8. PAGE 27—RECOMMENDATION 1

Provisions should be drafted to ensure that—

1. Everyone has the right to trial by jury for serious offences and the right to waive it.

9. The Justice and Security (Northern Ireland) Act 2007 makes provision that the Director of Public Prosecutions for Northern Ireland (DPP) may issue a certificate for a person charged with one, or more indictable offence(s) to be tried without a jury if he suspects that any of one of four conditions specified in the Act is met, and he is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

10. This is different from the previous position where all “scheduled offences” were tried without a jury unless they were “descheduled”.

11. The Act makes provision for the review and renewal of this power so that if it is not required in future it can be dispensed with.

12. Unfortunately there is still a significant level of threat posed to the community in Northern Ireland by dissident terrorist factions that has the potential to impact on the safety of jurors in a small number of cases. As such I believe that it is currently necessary to retain the ability to hold a trial without a jury in this small number of cases.

## 13. PAGE 27—RECOMMENDATION 2

Provisions should be drafted to ensure that—

2. Evidence obtained through torture or inhuman and degrading treatment must be excluded. Evidence obtained through breach of any other right in a Bill of Rights for Northern Ireland must be excluded, unless it is established that the admission of the evidence would not render the trial unfair or otherwise be detrimental to the administration of justice.

14. PSNI fully supports this recommendation that evidence obtained through torture or inhuman or degrading treatment must be excluded and would never seek to obtain evidence in such a manner. The exclusion of unfair evidence is currently dealt with by PACE. The proposal appears to be stricter than that provided for by PACE. As the scope of a Bill of Rights has yet to be established it is difficult to assess the impact this recommendation may have. A more detailed response can be made when we have a better idea of what the Bill will contain.

## 15. PAGE 27—RECOMMENDATIONS 4–6

Provisions should be drafted to ensure that—

4. Every witness has the right, prior to and after giving evidence, to such protection and support as is appropriate to their needs as witnesses.
5. Every juror has the right to such protection and support as to allow them to fulfill their role properly.
6. Every member of the judiciary and legal profession has the right to such protection as to allow them to perform their duties properly.

16. PSNI currently takes measures to give protection and support to these categories of people. If these recommendations were to be implemented it would be important to be clear as to the extent of the responsibility, and therefore liability, of police and all other Criminal Justice Organisations.

## 17. PAGE 40—RECOMMENDATIONS 1–3

Provisions should be drafted to ensure that—

1. Everyone has the right to be free from all forms of violence and harassment, from either public or private sources, including but not limited to:
  - (a) domestic violence or harassment;
  - (b) sexual violence or harassment;
  - (c) gender-related violence or harassment;
  - (d) sectarian violence or harassment; and
  - (e) violence or harassment motivated by hate on any prohibited ground of discrimination.
2. Everyone has the right to be protected from sexual exploitation and sexual and other forms of trafficking.
3. Public authorities must take all appropriate measures to ensure protection of the rights in Recommendations 1 and 2.

18. The issues raised by these recommendations are recognised by PSNI and we have devised strategies to tackle them. These strategies and our performance are kept under review to ensure that we are doing all that is possible. The Northern Ireland Policing Board (NIPB) holds us to account and recently carried out a Thematic Inquiry on Domestic Abuse that concluded: ...the PSNI is playing its part and has made significant progress to date.” whilst acknowledging that this is an ongoing work.

19. As with my earlier comments, it is important that the role and responsibility of police, and in particular the extent of that role and responsibility, is clearly understood. Similarly it is important that the roles and responsibilities of other public authorities are clearly established. The obligation should be limited to situations where we knew, or should have known, of the offences.

## 20. PAGE 51—RECOMMENDATION 8

Public authorities must take all appropriate measures to ensure the right of every child to be protected from direct involvement in any capacity in armed conflicts or civil hostilities including their use as intelligence sources.

21. Recommendation 1 at Page 51 defines a child as “every human being below the age of 18 years.”

22. The Code of Practice on Covert Human Intelligence Sources issued under Regulation of Investigatory Powers Act 2000 strictly controls the obtaining of intelligence from persons under the age of 18 years. It is my view that the use of persons under the age of 18 is appropriately governed by the Code.

23. PAGE 48—RECOMMENDATION 3

Provisions should be drafted to ensure that—

Workers have the right to strike and the right to engage in collective bargaining.

24. PSNI supports fair employment conditions within the law for all staff. As the Committee will be aware Police Officers are not permitted to strike. This is an important provision that provides the community with reassurance in respect of its safety and security. We would not support a change in this position.

14 May 2009

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**Written evidence from the Northern Ireland Human Rights Commission**

Human Rights Bill for Northern Ireland Inquiry: Clarification of issues relating to the handling of dissent on the Northern Ireland Human Rights Commission's advice on a Bill of Rights for Northern Ireland.

I have been requested by a number of our Commissioners to provide additional information in relation to an issue raised by Lady Trimble in her evidence to your committee on a Human Rights Bill for Northern Ireland.

In her memorandum to the committee dated 1 May 2009, Lady Trimble states:

*I expected that the Commission would respect my position and that my Note of Dissent would be published in the Report, as is usual. So I was shocked when at a meeting on 17 November the Commission attempted to use the Commission Standing Orders to stifle even the fact that I (and another member) were dissenting. The most the other Commissioners would agree, at this and a subsequent meeting, was that we could have a note of our dissent (the wording to be agreed by other commissioners) in the minutes of the meeting. But I felt that I could not properly accept such suppression of my views. Accordingly I have to dispute the version of events given by Commissioner Duncan on this to your meeting on 16 March last. I also dispute the version given by our Chief Commissioner to a meeting of the Joint Committee on Human Rights. (Paragraph 16)*

The publication of “notes of dissent”, minority reports or the individual views of Commissioners in NIHRC reports is not provided for in NIHRC standing orders and would not be construed as usual practice. The minutes of the Commission meeting held on 17 November 2008 confirm that any dissent from the content of the Commission's advice on a Bill of Rights could be recorded in minutes and this dissent was included in the minutes of the meeting held on 29 November 2008. The wording of the dissent in the minutes is agreed between the person wishing the minute to note their views and the Chairperson of the Committee with the minute taker accurately recording the outcome. This is the standard practice for all Commission meetings and would not have been altered for the minute of this meeting. Relevant extracts from these minutes are as follows:

EXTRACT FROM THE MINUTES OF THE COMMISSION MEETING HELD ON 17 NOVEMBER 2008

The two descriptions given by Tom Duncan and Monica McWilliams are, in my view, accurately supported by the agreed minutes of the relevant Commission meetings. Their descriptions do not seem however to deviate from the version of events outlined by Lady Trimble in her memorandum to your committee.

- 2.1 Commissioners discussed the process for approving the Commission's advice on the Bill of Rights. Commissioners noted the process for decision-making in the Standing Orders for Commission meetings and considered how disagreement might be accommodated if one or more Commissioners dissent with aspects of the advice in respect of the Bill of Rights.
- 2.2 Daphne Trimble requested the inclusion of a minority report as part of the Commission's advice to government on a Bill of Rights. Commissioners considered the request but decided that Standing Orders did not allow for the publication of a minority report. Jonathan Bell and Daphne Trimble asked that their dissent from this decision be formally noted.
- 2.3 It was agreed that a special Commission meeting will be convened to approve the Commission's advice on the Bill of Rights. Commissioners noted that any dissent from the content of the advice will be recorded in the minutes of this meeting.

EXTRACT FROM THE MINUTES OF THE SPECIAL COMMISSION MEETING HELD ON 29 NOVEMBER 2008

- 1.8 In accordance with Standing Order 22, the Commission recorded a consensus decision (8 out of 10 Commissioners) supporting the report, with two Commissioners, Jonathan Bell and Daphne Trimble dissenting from the report as a whole.

Lady Trimble does not explain why she disputes the version of events given by Commissioner Duncan and the Chief Commissioner relating to the treatment of her dissent by other Commissioners. I have extracted therefore the relevant transcripts of Commissioner Tom Duncan's evidence to NIAC on 16 March and the Chief

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Commissioner's evidence to the JCHR on 24 February and copied them below.

The two descriptions given by Tom Duncan and Monica McWilliams are, in my view, accurately supported by the agreed minutes of the relevant Commission

meetings. Their descriptions do not seem however to deviate from the version of events outlined by Lady Trimble in her memorandum to your committee.

TOM DUNCAN (RELEVANT EXTRACT FROM NIAC EVIDENCE DELIVERED 16 MARCH 2009)

*Discussion after 54 meetings of the Working Group was concluded at the end of November 2008. At almost the final stage, two of the Commission members indicated that they wished to record their dissent from the report. There was, in fact, no minority report presented at the conclusion of the final meeting of the Working Group and both dissenting Commissioners declined the offer to have their views included in the minutes of the meeting when their dissent was first voiced, the minutes which would be available before the handover date for the advice of the Commission. The views of the two dissenting Commissioners are, however, in the public domain.*

*Monica McWilliams (relevant extract from JCHR evidence 24 February 2009)*

*Let me explain the process. I am very much aware of Lady Trimble's note of dissent and I did address the issue of a diversity of opinion. First, the Commission is representative of the community. Second, it was an option Lady Trimble wishes to have a minority report but it is important for the record that there never was a minority report.*

Q11 Earl of Onslow: *I know, because you did not allow it.*

*Professor McWilliams: No, that is not the case. We actually asked if there was a minority report and could we see it. There was not a minority report but there was a note of dissent. It is also important to note that I proposed, as Chair, that we read the note of dissent or we take the note of dissent and we were more than happy to have any dissenting opinion recorded in the minutes; indeed, we said we would go as far as to have the minutes published before the advice so that that dissent could be widely disseminated. Lady Trimble did not take up that option. I would also wish not to mislead you in that we did not wish the entire note of dissent to be read into the minutes. What we said was that we would take the issues of dissent and the points of dissent and we would record them in the minutes. (Qs 10 and 11, A Bill of Rights for the UK and the work of the Northern Ireland Human Rights Commission)*

June 2009

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