

Bill Of Rights for Northern Ireland - A response by the Independent Loyal Orange Institution

In this response we have followed exactly the structure of the proposed Bill Of Rights. Each of the clauses for comment has been included with a general comment in response after which we have sought to answer the questions posed by the commission. For further clarity the response of the Institution has been added in Arial 13 point.

As a general introductory comment we would say that many within the community have been overwhelmed by the sheer volume of information contained in the proposed bill. Moreover the publicity surrounding the proposed bill has not penetrated to all interested parties. A number of organisations work on a calendar cycle of meetings which has not permitted adequate consultation to take place. It is therefore, necessary to facilitate a further round of consultation on the specific chapters of the proposed bill to allow for individual interest groups to comment in detail.

PART 1 Background and context

introduction

The Commission's consultation process

The Commission's mandate

General Comments

The Proposed Bill of Rights, and the Human Rights Commission have a major credibility problem in the perception of the majority of Unionists in Northern Ireland.

The current political structures have created within Northern Ireland a new minority. A majority within their own community while a minority in relation to the overall support for the Belfast Agreement. The Human Rights Commission, and the proposed Bill of Rights, springing as it does from the Belfast Agreement is automatically greeted with suspicion. It has variously been described as a "terrorists charter" and a "denial of Protestant rights."

This view is further strengthened by the reference in the Bill to the "principles enshrined in the Belfast Agreement". This is a distortion. The Belfast Agreement itself refers to these only as commitments not principles. The Bill of Rights should protect rights not just within a political context, such as that set up under the Belfast Agreement, but also beyond any particular political arrangement. Therefore the Proposed Bill of Rights should remove all references to its dependence upon political arrangements.

It is therefore of great importance that any Bill of Rights is seen to be just and fair to all sections of the community and a protection to majorities (old and new) and minorities (old and new). It would be a pointless exercise if the “new” minority in Northern Ireland felt alienated by political structures and Commissions which they believed were set up to promote a minority which was now clearly at the heart of the political establishment.

The Bill of Rights should not be dependent upon the Belfast Agreement, rather the provisions of the Belfast Agreement, and its outworking, should be subject to the Bill of Rights. Interpretation of the Agreement should be “through “ the Bill of Rights and not the Bill of Rights “through” the Agreement as is suggested in the preamble paragraph 4.

Given the new realities outlined above, it is not enough for the Bill of Rights simply to protect both “main communities”. It must go further to protect the Rights of that part of the Unionist Community alienated from the current process, and those traditionally suspicious of involvement with the state; we refer, in particular, to the Evangelical Protestant Community.

Question 1: (see C. The Commission’s mandate)

When the Belfast (Good Friday) Agreement says that the Bill of Rights is “to reflect the particular circumstances of Northern Ireland”, how should this phrase be interpreted?

Question 2: (see C)

Whichever interpretation you prefer, what are your reasons for doing so?

Question 3: (see C)

What are the consequences of your preference as far as the types of rights which are to be included in the Bill of Rights are concerned?

General Comments

It is our view that any rights not yet adopted in the rest of the United Kingdom should not be included in the Bill of Rights.

The particular circumstances of Northern Ireland are reflected in the creation of a constitutional structure unique in Europe, and perhaps the world. We would suggest that since the proposed Bill will have to progress through the Assembly, that any clause not receiving cross community support, as defined in the current rules of the assembly, should not be included.

This is the best test of support of the particular circumstances which exist in Northern Ireland. Clearly the Commission in its deliberations and consultations will also have gained some knowledge of particular issues likely to receive popular rejection. It would be irresponsible of the Commission to press ahead with subject areas which clearly do not have support in the particular circumstances of Northern Ireland.

Part 2 - The proposed rights

1. Preamble

The people of Northern Ireland :
considering that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of **freedom**, justice and peace in the world;

realising that each individual in Northern Ireland, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Bill of Rights;

recognising that the tragedies of the past have **left** a deep and profoundly regrettable legacy of suffering and that those who have died or been injured, and their families, can best be honoured through a **fresh** start dedicated to the achievement of reconciliation, tolerance, mutual trust and the protection and vindication of the human rights of **all**;

building on the principles enshrined in the Belfast (Good Friday) Agreement, namely:

a commitment to partnership, equality and mutual respect as the basis of relationships within Northern Ireland;

a total and absolute commitment to exclusively democratic and peaceful means of resolving differences on political issues and an opposition to any use or threat of force by others for any political purpose,;

an acknowledgement of the substantial differences between the competing and equally legitimate political aspirations in Northern Ireland and a commitment to strive in every practical way towards reconciliation and rapprochement within the **framework** of democratic and agreed arrangements; and

- the better protection of the human rights of all men, women and children in Northern Ireland;
- accepting therefore the need for a Bill of Rights building on the established protections under the European Convention on Human Rights, the European Union Charter of Fundamental Rights and other international human rights conventions, which **will**:
- reflect the particular circumstances of Northern Ireland;
- guarantee the rights of both main communities and all other communities in Northern Ireland;
- promote mutual tolerance and respect between all sections of the community; and

ensure the effective delivery of those rights to all people, including those suffering during the conflict and the most disadvantaged and vulnerable people in Northern Ireland; have requested the adoption of the following Bill of Rights.

Question 4: (see Chapter 1. Preamble)

Do you agree that there should be a Preamble to the Bill of Rights for Northern Ireland?

Question 5: (see Chapter 1)

If so, have you any suggestions as to how the Commission's suggested wording for the Preamble should be changed?

General Comments

We see no reason why there should not be a preamble to the Bill. We believe that the Preamble should give due recognition to the existence and governing authority of God. The right of the state is delegated by God and the responsibilities of the state are to govern in accordance with the will of God.

A term used in the USA in relation to the rights of its citizens is "under God". We would therefore suggest that the opening phrase should read, "The people of Northern Ireland, under God"

We do not agree with the opening statement in the preamble. The foundation of freedom, justice and peace in the world is not the result of the actions of man. It is as a result of the recognition of man that he is subject to the will and authority of his creator. If this cannot be agreed then the paragraph should be deleted.

Paragraph two should qualify the responsibility of individuals in the following terms, "so far as it does not conflict with the individuals conscience and responsibility of God."

The lengthy reference to the Belfast Agreement should be removed to ensure that, from the outset, the Bill of Rights has a fair chance of receiving support from the Majority of Unionists. The reference to "equally legitimate political aspirations" should be removed. This is a divisive statement. The Union is not an aspiration it is a reality. Nationalists may aspire to a United Ireland.

The Preamble of the Bill should outline that Human Rights are best protected under democratic government. There should be a further recognition that democracy needs to be protected from terrorism. There should be a clear statement that those involved in or condoning terrorism should have no place in the Government of Northern Ireland.

The seeming fear of the Commission to confront the terrorist threat, or to refer to the damage caused directly by terrorism of the past thirty years does not create confidence in the commission to uphold human rights against terrorism in the future. The Bill prefers to refer to a mythical "conflict". The vast majority of people in Northern Ireland have not been in conflict with anyone. Rather a small band of dedicated terrorists have waged a vicious campaign of genocide against ordinary people and have sought to destroy the legitimate security services of the state. It would be appropriate for the Bill to give due recognition to those who have been the victims of terrorism.

A clear denunciation of terrorism for political ends should be included in the Preamble. After all one of the greatest threats to Human Rights is a terrorist group prepared to

remove the fundamental right to life.

2. Democratic rights

(a) Elections

Right to free elections

[1] The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

2. Elections to the European Parliament, the Westminster Parliament, the Northern Ireland Assembly and local government shall be by a system of proportional representation to be determined by legislation.

(b) Participation in government

1. Elected representatives shall be entitled to fair, full and effective participation in the governance of Northern Ireland.

2. The State shall take all appropriate measures to promote the right of women to fair, full and equal participation in public life, including participation in decision-making processes and access to power.

[3] Nothing in Articles 10, 11 and 14 [of the European Convention on Human Rights] shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

(c) Voting and candidacy rights

1. All persons aged 17 or over shall have the right to vote in elections to local and regional Government bodies and referendums at local and regional level within Northern Ireland, provided that they satisfy the requirements of legislation as to residence or other local connection. All persons who are entitled to vote are also entitled to present themselves as candidates for election and to nominate, second or support candidates.

Question 6: (see Chapter 2. Democratic rights)

Do you agree that elected representatives in Northern Ireland should have the right to fair, full and effective participation in the governance of Northern Ireland?

Comments

Elected representatives should have the right to participation in the legislature of Northern Ireland but only those representatives fully committed to democratic and peaceful means should have the right to be involved in the governance of Northern Ireland.

Political parties should have the right to coalesce, or not to coalesce, as they see fit.

The current political arrangements are a contravention of that basic political right.

Question 7: (see Chapter 2)

Do you agree that the voting age in Northern Ireland for local and Assembly elections should be reduced **from** 18 to 17 or lower?

Comments

No. In accordance with your own definition this would leave children voting! The voting age should be consistent with all elections in NI ie 18 in line with the age for European and Westminster Elections.

Question 8: (see Chapter 2)

Do you think that the Bill of Rights should contain a right to accountable and transparent government? If so, how would you word such a right?

Comments

Yes, accountable and transparent government should be included. This should include the publication of the minutes of every committee, from Executive Committee down, in the NI Assembly. Similarly all actions taken by parties in the implementation of the agreement should only be acceptable when clearly quantified and dealt with in an open and transparent manner.

3. Rights concerning identity and communities

(a) The right to a national identity

1. Individuals born in Northern Ireland have the right to identify themselves and be accepted as Irish or British citizens, or both, as they may so choose.

(b) The rights of members of communities

1. Nothing in this section shall be used to negate equality commitments, including positive action provisions in the Bill of Rights or in legislation. [Nor shall anything in this section negate voting mechanisms designed to ensure representivity in political institutions and decision-making.]

2. Everyone belonging to a national, ethnic, religious or linguistic community shall have the right in common with other members **of that** community to enjoy his or her own culture, to profess and practise his or her own religion and to use his or her own language.

3. Everyone has the right to be nomadic or sedentary and a right to change from one mode of living to the other.

4. Everyone has the right freely to choose to be treated or not to be treated as a member of what might otherwise be perceived to be their national, ethnic, religious or linguistic community and no disadvantage shall result from this choice or from the exercise of the rights which are connected to this choice.

5. The Government and public bodies shall, without prejudice to existing legal requirements and

to the positive action clause 4(8) of this Bill, adopt effective and appropriate measures to:

(a) promote equality in all areas of economic, social, cultural and political life among and between persons belonging to national, ethnic, religious or linguistic communities and the conditions necessary for them to maintain and develop their culture;

(b) preserve the essential elements of the identity of such persons, namely their religion, language, traditions and cultural heritage; and

(a) promote tolerance, mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of their cultural, ethnic, religious or linguistic identity, in particular in the fields of education, culture and the media.

The following clause is offered as an alternative to clauses 2 to 4, above:

2. The Government and public bodies shall adopt effective and appropriate measures to ensure:

(a) mutual respect for all people in the diversity of their identities and traditions; and

(b) parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities; the programmatic standards in the Framework Convention shall provide a guide as to how this is to be achieved.

Question 9: (see Chapter 3. Rights concerning identity and communities)

Do you agree that the Bill of Rights should not contain a provision dealing with parity of esteem?

Comments

Yes. Parity of Esteem should be the result of the accumulation of rights not a right in itself

Question 10: (see Chapter 3)

Do you think the Bill of Rights should confer a right on individuals not to be treated as a member of a particular community? If so, how should such a right be worded?

Comments

Individuals should have the right to be included in any clearly defined community. This may not be the simple Protestant or Roman Catholic but should include for example Evangelical Protestant.

Question 11: (see Chapter 3)

With which of the proposed clauses dealing with the rights of persons as members of **different** communities in Northern Ireland do you agree? Do you have any further suggestions to make in this area?

Comments

We prefer the inclusion of the clauses 1 through 5 and not the additional clause two.

We believe this clause should be added to, to protect the rights of new minorities by applying voting mechanisms in the assembly, which are deemed necessary to protect minorities there, to the rules for border plebiscite in Northern Ireland. Clearly voting mechanisms to protect minority interests should apply equally and in all circumstances of controversial or contentious votes!

4. Equality and non-discrimination

Prohibition of discrimination

[1] The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. Everyone is equal before and under the law and has the right to equal protection and equal benefit of the law. Equality includes the **full** and equal access to and enjoyment of all rights and freedoms.

3. Equality between men and women must be ensured in all areas. The State shall take all necessary measures to promote the equal enjoyment, benefit and protection of all human rights and fundamental **freedoms** for women and girls.

4. Everyone has the right to be protected against any direct or indirect discrimination whatsoever on any ground (or combination of grounds) such as race or ethnic origin nationality, colour, gender, marital or **family** status, residence, language, religion or **belief**, political or other opinion, possession of a criminal conviction, national or social origin birth, disability, age, parentage, sexual orientation, status as a victim or any other status.

5. Direct discrimination shall be taken to occur when a person has suffered, will suffer or would **suffer** disadvantage on the basis of any of the grounds in clause **4(4)** (the non-discrimination clause).

6. Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put any persons at a disadvantage by virtue of their status, as **defined** by clause **4(4)** (the non-discrimination clause) and as limited by clause **4(9)** (the exceptions clause).

7. Harassment or bullying shall be deemed to be a form of discrimination when unwanted conduct related to any of the grounds referred to in clause **4(4)** (the non-discrimination clause) takes place with the purpose or effect of violating the physical integrity or dignity of a person, or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

8. Laws, policies, programmes or activities aimed at achieving and sustaining full and effective equality, in particular by reducing inequalities **affecting** groups disadvantaged on the grounds specified in clause **4(4)** (the non-discrimination clause) or on socio-economic grounds, and which may include specific measures for individuals **from** such groups, shall be required [or may be adopted]. Such laws, policies, programmes or activities shall not constitute unlawful discrimination.

9. A difference of treatment which is based on a characteristic related to any of the grounds

referred to **in** the non-discrimination clause **4(4)** shall not constitute **discrimination** where, by reason of the nature of the particular activities concerned, or of the context in which they are carried out, such a characteristic constitutes a genuine and determining requirement, provided that the objective is legitimate and the requirement is proportionate.

General Comments

In Clause 4.4 the reference to sexual orientation should be removed to take account of the particular circumstances of Northern Ireland.

The Combination of the non discrimination clause (4.4) and clause 4.8 allows us to believe that terrorist led resident groups will be able to request the adoption of laws, policies, programmes and activities aimed at strengthening their position. I this the case?

Question 12: (see Chapter 4. Equality and non-discrimination)

Should ““status of victim”” be a ground for protecting individuals against discrimination?

Comments

Yes. Subject to qualifications in Section 8

Question 13: (see Chapter 4)

Should the clause in the Bill of Rights dealing with positive action require or permit such action?

Comments

Subject to the comment on Clause 4.4, and our General Comments, above, the bill should require such action.

5. The rights of women

Equality between men and women:
see Clause **4(3)**

Equality between men and women must be ensured in all areas. The State shall take all necessary measures to promote the equal enjoyment, benefit and protection of all human rights and fundamental **freedoms** for women and girls.

Right to reproductive health:
see Clause **14b(5)**

Everyone has the right to have equal and **free** access to sexual and reproductive health care and to information and education relating to sexual and reproductive matters at all levels, free of coercion, discrimination or violence.

Freedom **from** gender-based violence:
see Clause **8c(1)**

The State shall **take** all appropriate measures to prevent and eliminate all forms of violence against women and girls whether physical, mental or emotional.

Right to fair, full and effective participation:
see Clause 2b(2)

The State shall take all appropriate measures to promote the right of women to fair, full and equal participation in public life, including participation in decision-making processes and access to power.

Question 14: (see Chapter 5. The rights of women)

Where would the rights of women be best placed in the Bill of Rights — within a special chapter on women?' rights or allocated as appropriate to relevant chapters in the Bill?

General Comments

This matter should be in a separate section specifically referring to women. It is also very important that the general right to information provides for the provision of balanced information reflecting fairly all viewpoints, and that the general right to information does not infringe the religious right of an individual to hold and promote particular views.

6. Rights to life, freedom from torture, inhuman or degrading treatment or punishment, freedom from slavery and freedom from forced labour

(a) Right to **life**

[1] Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

[2] Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person **from** unlawful violence;
- (b) in order to effect a **lawful** arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

3. No one shall be deprived of life by a law enforcement official except:

- (a) when the official is acting in self-defence or defence of others or when there is an imminent threat of death or serious injury;
- (b) to prevent the perpetration of a particularly serious crime involving grave threat to life; or
- (c) to arrest a person who is presenting such a danger as in (b) and who is resisting the arrest; but only when less extreme means are insufficient to achieve these objectives.

[4] The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

[5] A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

(b) Freedom from torture, inhuman or degrading treatment or punishment

[1] No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

(c) Freedom from slavery or forced labour

[1] No one shall be held in slavery or servitude.

[2] No one shall be required to perform forced or compulsory labour.

[3] For the purpose of this Article the term “forced or compulsory labour” shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

General Comments

We do not support the outright ban on the use of the death penalty. The death penalty is clearly taught in Scripture as a punishment for capital crimes. It is an infringement of our religious rights to impose a Bill of rights upon us which denies to us the political aspiration of laws reflecting the will of God.

Similarly we believe that the right to life should be afforded to an individual from the moment of conception.

Question 15: (see Chapter 6. Rights to life)

Should the right to life be more strictly protected than in the way suggested by the Commission through its proposed addition to Article 2 of the European Convention on Human Rights?

See comment above.

Question 16: (see Chapter 6)

Should the Bill of Rights protect the right to personal and/or physical integrity? If so, how should

the provision be worded?

If a physical integrity clause is to be included, it is our view that morality must be defined with reference to the Word of God. To do otherwise is to allow for moral relativism or a morality based upon the collective notions of individuals. This is not acceptable.

7. Criminal justice and administrative justice

(a) Right to liberty and security

[1] Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

[2] Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

[3] Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

[4] Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

[5] Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

6. No-one shall be detained solely on the ground that he or she is a member of one of the categories in Article 5(1)(e) of the European Convention on Human Rights.
7. Everyone has the right not to be subjected to search or seizure, whether of the person, property, correspondence or otherwise, unless it is in accordance with a reasonable and proportionate procedure prescribed by law.
8. Everyone who is arrested has the right to consult privately, without unreasonable delay and if necessary at State expense, with a solicitor [of his or her choice] before being questioned by the police.
9. Everyone who is detained has the right to inform a relative or **friend** without unreasonable delay that he or she is being detained and where this is occurring.
10. Everyone who is detained has the right to be visited without unreasonable delay by and to correspond with in particular, members of his or her family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law in accordance with Principle 19 of the UN's Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.
11. Everyone who is detained has the right to conditions of detention which are consistent with human dignity and in particular has the right to adequate accommodation, association and protection, as well as regular exercise, nutritious food, reading material, medical treatment and spiritual counselling.
12. Everyone who is questioned while under arrest has the right to have a solicitor present during the questioning and to have the questioning audio-recorded and video-recorded.
13. Everyone who is questioned while under arrest has the right if he or she needs it to have a competent interpreter present during the questioning.
14. Everyone who is questioned while under arrest has the right to remain silent and to have no adverse inferences drawn at a later stage if this right is exercised.
15. Everyone who is detained has the right to be charged or to be released within 24 hours unless a court orders an extension to the detention for exceptional reasons.
16. Everyone who is charged with a criminal offence has the right to be released pending trial unless the prosecution can produce admissible evidence to show that there are relevant and sufficient reasons to **justify** continued detention.
17. Everyone has the right to be informed immediately upon arrest of his or her rights as an arrested person in a language and manner which he or she understands.

(b) Right to a **fair** trial

[1] In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a **fair** and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and

public may be excluded **from** all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

[2] Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

[3] Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against **him**;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not **sufficient** means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him,

(e) to have the **free** assistance of an interpreter if he cannot understand or speak the language used in court.

4. Everyone remanded in custody pending trial for an indictable offence has the right to spend no more than 110 days in custody before the commencement of the trial and everyone remanded in custody pending trial for a summary offence has the right to spend no more than 40 days in custody before the commencement of the trial. These rights can be waived or can be removed where the interests of justice clearly require this.

5. Everyone charged with a criminal offence has the right to remain silent at the trial and to have no adverse inferences drawn if this right is exercised.

6. Everyone charged with a serious criminal offence has the right to be tried by a judge sitting with a jury unless he or she waives this right.

7. Everyone charged with a criminal offence has the right to have excluded from consideration by the court any evidence which has been obtained as a result of the violation of any right in the Bill of Rights for Northern Ireland.

8. Everyone convicted of a criminal offence has the right to appeal to a higher court against the conviction, the sentence or both.

9. Every witness in a court case has the right to reasonable protection, assistance, and support throughout the legal process.

10. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to

travel and to consult with their clients **freely** both within their own country and abroad; and (c) shall not suffer, or **be** threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

11. Judges and other court officials shall conduct proceedings professionally, courteously and temperately and in a manner consistent with their public office.

12. A person convicted of a crime shall be given a custodial sentence only as a measure of last resort. The State shall develop and encourage the use of alternatives to prosecution and custodial sentences.

13. Every prisoner has the right to be treated humanely, with dignity and with the objective of enabling him or her to re-enter society safely and effectively.

14. Every prisoner retains the rights conferred by the Bill of Rights for Northern Ireland unless there are clearly justifiable reasons for denying the prisoner those rights.

15. The State shall take effective measures to ensure that favourable conditions are created for the reintegration of ex-prisoners into society.

(c) Non-retrospectivity of criminal laws

[1] No one shall **be** held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the **time** the criminal offence was committed.

[2] This Article shall not prejudice the trial and punishment of any person for any act or omission **which**, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

(d) Fair trials in administrative law proceedings

1. Everyone has the right to administrative action that is **lawful**, reasonable and procedurally fair.

2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons for that action.

General Comments

We do not believe that prison should only be considered as a matter of last resort. Crime should be punished. Prison is not only about rehabilitation it is about punishment and should be a punitive regime.

These provisions cover only the rights of individuals. There would seem to be no provision on the rights of groups in relation to justice. A group of victims, for example, may feel aggrieved by the actions of the state or courts. Currently their access to law is dependent upon enough money being gathered by the group. Consequently many

matters which could be challenged on points of law go unchallenged because of a lack of resources. Access to law for groups of individuals should not be subject to a wealth restriction.

Question 17: (see Chapter 7. Criminal justice and administrative justice)

Should the Bill of Rights confer a right on persons who have been arrested to consult with a solicitor of their choice?

Yes

Question 18: (see Chapter 7)

Should the Bill of Rights confer a right to jury trial? If so, when precisely should this right apply?

Yes, and in all circumstances.

Question 19: (see Chapter 7)

Should the Bill of Rights include a provision protecting people **from** being tried twice for the same offence?

Yes.

8. The rights of victims

(a) Victims of the **conflict**

1. With a view to promoting the principles of truth and reconciliation in the aftermath of a lengthy period of conflict, the Government shall take legislative and other measures to ensure that the loss and suffering of all victims of that conflict and the responsibility of State and non-State participants are appropriately and independently established and/or acknowledged.

2. All victims of the conflict have the right to the highest possible level of social care and support in accordance with their needs, particularly in respect of personal security and access to health care, income support, employment, training and education and for those purposes to be protected **from** any unfair or discriminatory treatment.

(b) The rights of victims for the future

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws. A person may be considered a victim regardless of whether the perpetrator is apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term also includes, where appropriate, their family, their dependants, those with whom they have a close relationship and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

2. Legislation shall be introduced to give effect to the following rights:

(a) the right of every victim to be treated with compassion and respect for his or her dignity.

(b) the right of every victim to obtain redress by way of restitution or compensation through formal or **informal** procedures that are expeditious, fair, inexpensive and accessible.

(c) the right of every victim to have the crime in question investigated thoroughly, promptly and impartially.

(d) the right of every victim to be informed of the progress of any relevant investigation and to have his or her concerns taken into account in the conduct of any relevant legal proceedings.

(e) the right of every victim to reasonable assistance during the trial of any person charged in connection with the **crime** in question.

(c) Violence against women

1. The State shall take **all** appropriate measures to prevent and eliminate all forms of violence against women and girls whether physical, mental or emotional.

General Comments

Question 20: (see Chapter 8. The rights of victims)

Should the Bill of Rights include a provision which confers rights on all victims of past crimes or one which limits the rights to people who were victims of the conflict?

It is our view that the definition should be more closely defined to refer to the identified victims of terrorists and victims of criminal activity. The term “victims of the past” is a nonsense.

Question 2 1: (see Chapter 8)

Should the definition of “victim” in the Bill of Rights include people who are not victims of crimes?

There should be a requirement to clearly “identify” the crime or outrage of which they are a “victim”.

9. Rights to family life and private life

(a) Rights to **family** and private life

[1] Everyone has the right to respect for his private and family life, his home and his correspondence.

[2] There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and **freedoms** of others.

3. Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.

4. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

(b) Right to marry

[1] Men and women of marriageable age have the right to marry and to found a family, according to the laws governing the exercise of this right.

2. The State shall adopt legislation to recognise and guarantee equality of rights and responsibilities of a private law character for persons living together in marriage and in long-term domestic partnerships. Such legislation shall provide for the formal recognition of the relationship and the rights and responsibilities of the partners during the relationship and in the event of its dissolution.

3. Everyone who is married has the right to have the marriage terminated in accordance with the law.

General Comments

Enshrined within the right to family life should be the recognition that the ideal for family life is a heterosexual married relationship. Men and women have the right to marry members of the opposite sex. All consequent rights should be subject to that provision.

Homosexual relationships and alliances can never be regarded as a normal family rather the Biblical view, and consequently our view, is that such an alliance is an abomination. To ask Evangelical Protestants to accept such a proposed right is a direct infringement of our religious belief.

In this section there is a reference to “morals”. Morality must be “normed” against the Word of God. To do otherwise is to allow for moral relativism or a morality based upon the collective notions of individuals. This is not acceptable.

10. The rights of children

(a) General provisions

1. For the purposes of this Bill of Rights, a child means every human being below the age of 18 years.

2. In all actions concerning children, whether undertaken by public or private institutions, individuals or bodies, courts of law, administrative or legislative authorities, the best interests of the child shall be the paramount consideration and the following rights shall be interpreted as subject to that requirement.

3. Public bodies shall carry out their functions in relation to children in accordance with the

provisions of the UN's Convention on the Rights of the Child and shall in addition take all reasonable steps to ensure for all children the following rights.

(b) Participation rights

1. The State shall ensure to every child the right to express his or her views freely in all matters concerning him or her. The State undertakes to consider such views and to give them due weight in accordance with the age and maturity of the **child**.
2. Every child has the right to participate effectively, either directly or indirectly through an independent representative, in all proceedings affecting him or her, whether administrative or judicial, in public or private law. Every child has the right of access to the law and to legal representation.
3. Every child has the right to participate and play a constructive role in society and in the future of Northern Ireland. Without prejudice to duties imposed by domestic law, the State shall promote and encourage all those working with and for children to collaborate, co-operate and form partnerships with children to further the protection of their rights.

(c) The family

I. Every child has the right to grow up in a stable and safe family environment and to this end the State shall provide adequate support and assistance to parents and other primary carers.

or

The State shall provide adequate support and assistance to parents and other primary carers to enable every child in so far as is possible to grow up in a stable and safe family environment.

2. Every child who is denied a stable, safe and loving family environment is entitled to special protection and support from the State in the best interests of the child within a reasonable time. The State's obligation to protect and support shall end only when it is no longer required. Children leaving care shall be prepared for and supported in the transition **from** care to independent living.
3. Every child who is separated **from** one or both parents has the right to maintain personal relations and direct and/or indirect contact with them and with his or her family on a regular basis except where it is contrary to his or her best interests.

(d) Protection rights

1. Every child has the right to be protected from all forms of physical, emotional or mental violence, inhuman or degrading treatment or punishment, injury or abuse, neglect or negligent treatment, bullying, maltreatment or exploitation, including sexual exploitation or abuse.
2. Such protection shall include the taking of all necessary legislative, administrative, social and educational measures, the establishment of effective programmes for the identification, reporting, referral and investigation of such abuse and for the care and treatment of victims, and the independent monitoring of those programmes.

(e) **Children** in conflict with the law

1. No child below the age of 12 years shall be criminally responsible. The State undertakes to keep the age of criminal responsibility under review and to continue to develop measures for dealing with children in conflict with the law without resorting to judicial proceedings and in a way which removes them from the criminal process, provided that their human rights and legal safeguards are fully respected.

2. Every child suspected or accused of having **infringed** the criminal law, or found to have **infringed** it, has the right to be treated in a manner consistent with respect for his or her dignity and human rights and in accordance with his or her age and understanding.

3. The following minimum rights **shall** be guaranteed to every child:

(a) the right to have criminal charges explained promptly and in appropriate language;

(b) the right to have access to appropriate legal and other assistance in the preparation of a defence;

(c) the right to have any criminal charge determined without delay by a competent, independent and impartial tribunal in a **fair** hearing according to law, in the presence of legal or other appropriate assistance and, unless it is contrary to his or her best interests and taking into account his or her age or situation, of his or her parents or legal guardians;

(d) the right to have an appropriate adult present to represent the interests of the child even if a solicitor is also present;

(e) the right to be tried for a criminal offence in an appropriate setting and manner, having regard to the child's age, maturity, needs, vulnerability and understanding;

(f) the right to have measures taken to ensure his or her participation in and understanding of the criminal proceedings;

(g) the right to have his or her privacy respected before, during and **after** the proceedings.

4. The detention of a child must occur only in exceptional circumstances and in accordance with the law. Detention shall be used only as a measure of last resort and for the shortest appropriate period of time. A variety of dispositions and alternatives to institutional care shall be available to ensure that children are always dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the alleged offence.

5. Every child deprived of liberty shall be treated with respect for his or her dignity and human rights and in a manner which takes into account his or her age and particular needs.

6. Every child deprived of liberty shall have the following minimum rights:

(a) the right to be separated from adults in detention and **(if not yet found guilty) from children** who have already been found guilty;

- (b) the right to prompt access to appropriate legal and medical assistance and pastoral care;
- (c) the right to privacy and respect for his or her correspondence;
- (d) the right to maintain regular and direct contact with parents, siblings or other family members and **friends**, save in exceptional circumstances;
- (e) the right to access the Northern Ireland Curriculum and/or educational and vocational training necessary to prepare for his or her re-integration and constructive participation in society following release.

(f) Children with disabilities

1. Every child living with a disability has the right to the greatest extent possible to enjoy an independent and fulfilling life in conditions which ensure dignity, promote self-reliance and facilitate his or her active participation in the community. He or she has the right to special care and assistance, to assessment and appropriate services, and to effective education, which allows the child, to the greatest extent possible, to maximise his or her potential for personal development, independence and social inclusion.

(g) Right to play

1. Every child has the right to play and leisure which is appropriate to his or her age and ability and which contributes to his or her social, physical, emotional, creative and intellectual development. The State shall promote the right of all children to participate in sport, cultural, recreational and artistic activities.

(h) Health care

1. Every child has the right to enjoy the highest attainable standard of health and to enjoy access to all appropriate health care services, including dedicated psychiatric services.

2. The State shall take appropriate measures to address health problems specific to children and to promote the health and health care of children. Every child has the right to receive information, material and guidance from a range of sources on issues relating to the child's well-being, including reproductive health, sex and sexuality.

3. Every child has the right to a standard of living adequate to the child's physical, mental, spiritual and social development. The State shall provide material assistance and support to enable the full implementation of this right to be achieved.

(i) Education

1. Every child has the right to an effective education.

2. The State shall take appropriate measures to ensure that education respects the rights and needs of all children, especially children with disabilities, pregnant children, children in care, children in juvenile justice centres and children of other disadvantaged groups.

3. School exclusions shall be imposed only as a measure of last resort. Every child excluded **from** school has the right to be informed promptly of the grounds for the exclusion, to receive all documentation relating to the school's decision to exclude and to have the right to participate in an independent appeal procedure, together with his or her parents, guardians or other independent representative.

4. The State shall take measures to protect the safety of children in school, to respect their right to privacy and human dignity, and to guarantee their effective participation in matters **affecting** his or her education.

(j) Children's economic rights

1. The State shall take appropriate measures to protect every child **from** economic exploitation and **from** performing any work that is hazardous, interferes with the **child's** education, is harmful to the **child's** health or is otherwise prejudicial to any aspect of the child's welfare.

2. Children working below school leaving age shall enjoy the same rights and protection as other workers in relation to the right to just conditions of work, the right to safe and healthy working conditions, the right to a fair remuneration, the right to organise, the right to bargain collectively, and the right to equal opportunities and equal treatment without discrimination on any of the grounds specified **in** clause **4(8)**. Persons in full-time employment between school leaving age and the age of 18 shall enjoy all of these rights and all other rights available to workers over the age of 18.

(k) Awareness about rights

1. The State undertakes to make the rights of **children** widely known and accessible to all. To this end, the State undertakes to include human rights on the school, youth service and training curricula, as well as on the training programmes for all those working for, in connection with or on behalf of children.

General Comments

Children belong to God they do not belong to the State. They have been placed by God into the care of their parents. The primary responsibility with regard to children lies with the parents. Roles within society, parental guidance and appropriate discipline must remain the decision of the parent.

Question 22: (see Chapter 10. The rights of **children**)

Which approach would you prefer for the protection of children's rights in the Bill of Rights?

Comments

Separately Formulated Rights - this facilitates openness and transparency since individuals will be able to examine the specific individual rights and comment upon them before the rights are formally introduced.

Question 23: (see Chapter 10)

Where would the rights of **children** be best placed in the Bill of Rights — within a special chapter on children's rights or allocated as appropriate to relevant chapters in the Bill?

Comments

Separate Chapter to facilitate comment and consultation on specific rights.

Question 24: (see Chapter 10)

Should the enhanced right of children to play a constructive role in society be included in the Bill of Rights?

Comments

The role of children in society is subject to parental rights and control. Not the view of the State.

Question 25: (see Chapter 10)

If so, how should this right be enforceable?

Comments

As above

Question 26: (see Chapter 10)

Should state support for children to enable them to grow up in a stable, safe and loving **family** environment be **framed** as a positive right or as a state obligation?

Comments

This should be framed as a positive right and not a state obligation

Question 27: (see Chapter 10)

Should the age of criminal responsibility be raised **from** 10 to 12 years?

Comments

No.

Question 28: (see Chapter 10)

Should the Bill of Rights include an obligation on the state to keep the age of criminal responsibility under review?

Comments

Yes.

11. Education Rights

(a) The right of effective and appropriate education for all

[1] No-one shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

2. Everyone has the right to an effective education which is to the greatest extent possible directed towards the **full** development of the person, including his or her talents, mental and

physical abilities and sense of dignity and which enables all persons to participate effectively in the life of the community.

3. The State shall, to the greatest extent possible, ensure the right of parents to have education and teaching for their children in conformity with their religious, philosophical and pedagogical convictions, subject to the competence of the child to decide for him- or herself in accordance with his or her age and maturity. The State shall respect the right of parents to choose for their children education in schools with a particular religious ethos, education in integrated schools and education in Irish-medium schools.

4. The State shall provide financial and other support to all schools established in accordance with need and with clause (b) above on an equitable and transparent basis, subject to reasonable requirements, including minimum numbers of pupils in any area and without prejudice to the need to redress inequalities.

(b) Protection from discrimination

1. No individual shall be denied admission to any educational establishment receiving State funding on any of the grounds specified in the non-discrimination clause in this Bill of Rights.

2. The State shall ensure that the criteria for admission to all such educational establishments are such as to ensure access to effective and appropriate education for all.

(c) Human rights Education

1. The State shall ensure that education in all its forms shall be directed to the promotion of human rights, equality, dignity of the person, respect for diversity and tolerance.

General Comments

Article 2 Protocol 1 rights should, in the particular circumstances of Northern Ireland, ensure that the right to education in accordance with religious and philosophical convictions is not simply respected, but the state should ensure that appropriate resources are made available to deliver the right.

Additionally every religious group, or combination of groups, should have the right to educate their children in faith based education, fully funded by the state without feeling that the state is seeking to control their right.

Question 29: (see Chapter 11. Education rights)

Should the Bill of Rights require the state to ensure that admission criteria for educational establishments ensure access to effective education?

Comments

Admissions criteria for educational establishments should ensure access to effective education in accordance with the religious and philosophical viewpoints of parents.

Question 30: (see Chapter 11)

Should the Bill of Rights remove the specific exemption of teachers **from** the laws on religious and political discrimination **in Northern Ireland**, leaving the matter to be regulated in the same way as in other employment fields?

Comments

No.

12. Rights to freedom of thought, expression, information and association

(a) Freedom of thought

[1] Everyone has the right to **freedom** of thought, conscience and religion; this right includes freedom to change his or her religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance.

[2] Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

(b) Freedom of expression

[1] Everyone has the right to **freedom** of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of **frontiers**. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

[2] The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(c) Freedom of assembly

[1] Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

[2] No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police

or the administration of the State.

General Comments

How is a threat to public order to be defined? Is the threat of fomenting violence against a particular individual or group to be considered as an attempt to deny the rights of the group, and dealt with accordingly, or will those threatening violence be allowed to dictate the application of rights?

Question 3 1: (see Chapter 12. Rights to freedom of thought)

Should the Bill of Rights supplement the rights to freedom of expression and to receive and impart information as protected by Article 10 of the European Convention?

See General Comment above.

13. Language rights

1. Everyone has the right to use his or her own language for private purposes and all languages, dialects and other forms of communication are entitled to respect.
2. Everyone has the right to communicate with any public body through an interpreter, translator or facilitator when this is necessary for the purposes of accessing, in a language that he or she understands, information or services essential to his or her **life**, health, security or enjoyment of other essential services.
3. The State shall make suitable provision for assisting communication between members of different linguistic communities.
 1. In relation to the Irish language and Ulster-Scots, legislation shall be introduced to implement the commitments made under the Belfast (Good Friday) Agreement and the European Charter for Regional or Minority Languages.
 2. Without prejudice to the foregoing provisions, legislation shall be introduced to ensure for members of all linguistic communities, where there is sufficient demand, the following rights in respect of their language or dialect:
 - (a) the promotion of conditions necessary to maintain and develop it;
 - (b) the right to use it in dealings with public bodies;
 - (c) the right to use one's name in it and to be officially recognised under it;
 - (d) the right to display signs and other information in it;
 - (e) the right to display local street and other place names in it;
 - (f) the right to learn it and to be educated in and through it.

General Comments

Question 32: (see Chapter 13. Language rights)

Do you agree with the **Commission's** approach to the protection of language rights?

No. The approach could lead to a financial nightmare for Northern Ireland.

Question 33: (see Chapter 13)

If you do not, what greater degree of protection would you support?

The state has a responsibility to communicate with its citizens. It should therefore be a requirement of the education system that all children be educated to an acceptable standard in the English Language. This does not conflict in any way with the right to be educated through one's chosen language any more than the teaching of French or German in schools would conflict with the general use of English in those schools.

Communication by the state in minority languages should be directed towards those who cannot understand the language primarily used in the area.

14. Social, economic and environmental rights

(a) A general provision to govern social and economic rights

1. Since poverty and social exclusion represent a fundamental denial of human dignity, the protection of social and economic rights is an integral part of the delivery of effective human rights. All public bodies through which any of the legislative, executive or judicial powers of the State are exercised **in Northern Ireland** (in particular the **Northern Ireland** Executive and Northern Ireland Assembly) shall therefore take legislative and/or other measures to develop and enforce programmatic responses to the social and economic rights set out below. In doing so, all public bodies will allocate resources in a proportionate and non-discriminatory manner, as set out in the non-discrimination clause **4(4)** of this Bill of Rights. All public bodies shall be required to consult and to create mechanisms which facilitate and promote the development of policies and programmes to ensure social and economic inclusion for all citizens. Legal remedies shall protect the due process and equality rights of all citizens in respect of social and economic rights.

(b) Protection of property

[1] Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

(c) The right to health care

1. Everyone is entitled to the highest attainable standard of physical and mental health and well-being.

2. Government shall take all reasonable steps to promote good health and well-being, and to ensure adequate prevention and treatment of ill-health.
3. Equality of access to health promotion, treatment and prevention of ill-health shall be assured.
4. Everyone has the right to be consulted about decisions which affect his or her physical or mental health
5. Everyone has the right to have equal and free access to sexual and reproductive health care and to information and education relating to sexual and reproductive matters at all levels, **free** of coercion, discrimination or violence.

(d) The right to an adequate standard of living

1. Everyone is entitled to an adequate standard of living sufficient for that person and those dependent upon him or her.
2. Material provision for each person should be **sufficient** to ensure esteem for his or her health and dignity.
3. Everyone has the right to social and civic care.
4. Persons receiving assistance from the State shall be accorded respect. The State shall endeavour to accommodate the particular needs of ethnic and minority groups in the provision of material needs.
5. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided to ensure the enforcement of these rights.

(e) The right to housing

1. Everyone has the right to adequate housing.
2. Housing should be appropriate to the material, social and mobility needs of the person.
3. Everyone is entitled to secure establishment in his or her home. Limitations on secure establishment must be subject to fair legal process.

(f) The right to work

1. Everyone has the right to contribute to the economic and social **life** of society, including the right of access to work and the right to choose and practice a trade or profession.
2. The State shall provide for, support and encourage the continuous development of skills, knowledge and understanding that are essential for employability and fulfilment.
3. Everyone has the right to just and favourable conditions of work.

(g) The right to a healthy and sustainable environment

1. Everyone has the right to a healthy, safe and sustainable environment.

2. The State has a duty to provide accurate and timely information and to communicate, consult and foster participation in planning and decision-making on matters which concern the environment.

Question 34: (see Chapter 14. Social, economic and environmental rights)

Is the proposed general clause, when interpreted in the light of the principles mentioned in the text above, an effective way of protecting social and economic rights in Northern Ireland?

It would seem adequate.

15. Interpretation

(a) General interpretation

1. Without prejudice to any more specific provisions on interpretation contained in this Bill of Rights, a court, tribunal or other body, when interpreting the Bill of Rights for Northern Ireland;

must promote the values that underlie an open and democratic society based on human dignity, equality and freedom,

must have due regard to the content of the Belfast Agreement of 10 April 1998 and to the Preamble to the Bill of Rights;

must have due regard to international law and practice; and

may have due regard to the law and practice of other countries.

2. When interpreting any legislation, and when developing the common law, a court, tribunal or other body must promote the spirit, purpose and objectives of the Bill of Rights.

3. The Bill of Rights does not deny the existence of any other rights or freedoms which are recognised or conferred by legislation or the common law, to the extent that they are consistent with the Bill.

General Comments

We do not believe that the Belfast Agreement should be regarded when interpreting the proposed Bill of Rights. It is our view that the Belfast Agreement should be subject to the Bill of Rights.

16. Limitations

1. The non-Convention rights in the Bill of Rights may be limited only to the extent that the limitation is prescribed by law, reasonable and justifiable in an open and democratic society based on human dignity, equality and **freedom**, taking into account all relevant factors including:

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

[2] Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

[3] The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

General Comments

Question 35: (see Chapter 16. Limitations)

Do you think that there should be a general limitations clause in the Bill of Rights or would you prefer **specific** limitations to be drafted for particular clauses?

General Limitation only.

Question 36: (see Chapter 16)

Whichever you prefer, have you any suggestions as to how the limitation clause(s) should be worded?

No

17. Emergencies

(a) Derogation in time of emergency

[1] In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

[2] No derogation from Article 2, except in respect of deaths resulting **from** lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

[3] Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

(b) States of emergency

1. No derogation **from** the Bill of Rights for Northern Ireland shall be lawful in Northern Ireland unless a state of emergency in Northern Ireland has been declared prior to the derogation.

2. A state of emergency in Northern Ireland may be declared only by an Act of the relevant legislative authority and only **after** the legislative body has passed a resolution that –

(a) the life of the people of Northern Ireland is seriously threatened by war, invasion, general insurrection, natural disaster, or other public emergency; and

(b) a declaration of a state of emergency is strictly required by the exigencies of the situation.

3. A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only –

(a) prospectively **from** the date of the declaration; and

(b) for no more than 21 days **from** the date of the declaration, unless the relevant legislative body extends the declaration of a state of emergency.

4. Any extension of a state of emergency can be valid for no longer than three months and must be made by a resolution of the relevant legislative body supported by a cross-community vote of at least 60 per cent of the members of the legislative body in Northern Ireland.

5. On an application **from** any interested person, a competent court may decide on the validity of-

(a) a declaration of a state of emergency;

(b) any extension of a declaration of a state of emergency; or

(c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

6. No Act of the relevant legislative body which authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise:

(a) **indemnifying** the state, or any person, in respect of any unlawful act; or

(b) any derogation **from** this section.

18. Enforcement

1. Courts shall grant to any person or body whose rights and **freedoms** under this Bill of Rights have been or may be violated an effective remedy and for this purpose may grant such relief or remedy, including compensation, or make such order, as they consider just and appropriate.

2. Any person or body who has a legitimate interest in the matter may bring proceedings concerning the alleged breach of any provision in this Bill of Rights.

3. Proposed legislation may be referred to the courts for a decision as to whether it is at that time compatible with the Bill of Rights for Northern Ireland.

General Comments

Legal protection should be afforded to groups of individuals working together. There should be no wealth restriction on such access to law.

Question 37: (see Chapter 18. Enforcement)

Should the proposed Bill of Rights create a special court to deal with alleged human rights violations in Northern Ireland?

No

Question 38: (see Chapter 18)

Do you agree that a clause on remedies, as worded above, should be included in the Bill of Rights?

Subject to general comments above

Question 39: (see Chapter 18)

Should the Bill of Rights impose a duty on lower courts to refer cases to higher courts if they believe that the relevant legislation is incompatible with the Bill of Rights?

Yes

Question 40: (see Chapter 18)

Should any interested individual or body be able to bring a case under the Bill of Rights?

Yes

Question 41: (see Chapter 18)

If so, what test should be applied when deciding whether an individual or body has the requisite "interest"?

Anyone who may be affected.

Question 42: (see Chapter 18)

Should there be a mechanism whereby the compatibility of proposed legislation with the Bill of Rights can be referred to the courts?

Yes

Question 43: (see Chapter 18)

If so, what kind of mechanism would you propose?

Political parties or interested groups-should be able to refer.

19. Entrenchment and amendment

1. No amendment shall be made to this Bill of Rights without the consent of the Northern Ireland Assembly in a resolution adopted by a cross-community vote. The Assembly may at any time adopt a resolution by a cross-community vote requesting the amendment of the Bill. Any such resolution shall **specify** the amendment to be made,

General Comments

Each section of the proposed bill should now be subject to a wider and representative consultation. Special efforts should be made to engage with all interested parties and groups. When this process is complete a cross community assembly vote should be required for each clause of the Bill of Rights on its first introduction. Subsequently the entire document should be put to referendum,

Question 44: (see Chapter 19. Entrenchment and amendment)

What method or combination of methods should be adopted for entrenching and amending the Bill of Rights?

Proper and complete consultation with interested parties on each proposed amendment, cross community vote at assembly and referendum.

Question 45: (see Chapter 19)

Should amendments to the Bill of Rights be voted on by some form of referendum and, if so, how should the options be selected and how should the votes be counted?

Normal electoral procedures.