

## **Submission 269**

### **Sinn Féin**

#### **Executive Summary**

Sinn Féin is committed to the creation of a broad ranging Bill of Rights for the north of Ireland as the first step towards enhancing and harmonising human rights standards throughout the island as established in the Good Friday Agreement.

The formulation of a Bill of Rights is an opportunity to address the legacy of over 30 years of conflict and human rights violations. This necessitates the establishment of a free standing comprehensive Bill of Rights that is implemented impartially and has enforcement mechanisms.

This submission has been produced in response to the draft proposals contained in the Human Rights Commission's 'Making a Bill of Rights for Northern Ireland, September 2001' and it follows Sinn Féin's initial submission to the Human Rights Commission in February 2001. It is based on a broad examination of international human rights standards and models and has also drawn on the views of individuals and groups with first-hand human rights experience.

Sinn Féin notes that there are many positive aspects of the Commission's consultation document and acknowledges that much progress has already been made in relation to democratic rights, social and economic rights and children's rights.

We are, however, concerned that in several key areas, such as parity of esteem, language rights and constitutional issues, the Human Rights Commission has either ignored or misunderstood its mandate.

For instance, the British and Irish governments and all of the signatories to the Good Friday Agreement endorsed the principle of parity of esteem yet the Commission recommends that it should not be a principle in a Bill of Rights. The Irish Language was given special recognition in the Good Friday Agreement however the Commission fails to build on this and indeed turns the international standard of protecting indigenous languages on its head by appearing to equate Irish with ethnic minority languages. The Commission also avoids the inclusion of the constitutional position, as outlined in the Good Friday Agreement, in the Bill of Rights. We can only conclude that this is a deliberate omission and is something which should be rectified.

Human rights are non-negotiable and we must be clear that it is not the task of the Human Rights Commission to provide "acceptable" models for government. It is its responsibility to adhere to the mandate it was given - through the Good Friday Agreement - to produce a Bill of Rights that will comprehensively address the "particular circumstances" that pertain in the north. This is the yardstick by which Sinn Féin has analysed the consultation document and put forward the following recommendations for change.

The following is a summary of Sinn Féin's view of the Consultation Document:

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#### **1. Preamble**

Sinn Féin notes that the Preamble makes no reference to the principle of parity of esteem enshrined in the Good Friday Agreement. This principle should be explicitly contained in the Bill of Rights.

#### **2. Democratic Rights**

The right to self-determination is a human right, included in both the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights. It is the only human right for which an explicit formulation was agreed in the Good Friday Agreement, and adopted in referendums North and South, and it should be included in the Bill of Rights.

#### **3. Rights concerning identity and communities**

Sinn Féin disagrees with the Commission's approach to the principle of parity of esteem. This principle has already been agreed by the British and Irish governments and the signatories to the Good Friday Agreement but the Human Rights Commission has called on the public to endorse its view that the Bill of Rights should not contain a provision on parity of esteem for communities. In short, the Commission has decided to ignore an important section of a democratically endorsed International Treaty. This position is not sustainable and the Commission needs to carry out its task under the Good Friday Agreement and advise government and public bodies on their general obligation on parity of esteem matters.

#### **4. Equality and non-discrimination**

Sinn Féin welcomes the provisions proposed by the Human Rights Commission in relation to equality and non-discrimination but believes that the proposals also need to take into account the issue of equality and non-discrimination at community level. Given that many of the causes of the conflict were rooted in community inequality Sinn Féin believes that the Bill of Rights commitment to equality must contain a provision to deal with group inequalities and not simply single anti-discrimination cases.

Sinn Féin is also of the opinion that the Bill of Rights should contain a clause allowing for positive action and supports the inclusion of the clause proposed by the Commission's own Equality Working Group.

#### **5. The rights of women**

Sinn Féin urges the Commission to revisit the consultation process on women's rights and ensure that a comprehensive chapter in line with best practice, such as that in the South African Constitution, is produced. At the very least, the four proposed clauses dealing with equality, reproductive health care, freedom from violence and fair, full and effective participation should be strengthened.

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

Sinn Féin believes that the wording in the draft Bill should be strengthened to reflect the centrality of the right to life and that there should be a responsibility on the state to prevent the loss of life, as well as to protect the right to life, since there have been clear instances where state agents have not moved to prevent murders from occurring and where those involved were not prosecuted when there was sufficient evidence.

Sinn Féin believes that there are no circumstances that would ever justify the use of torture, cruel and inhuman or degrading treatment.

#### **7. Criminal Justice and Administrative Justice**

Sinn Féin welcomes the Commission's acknowledgement that human rights and dignity should be core values of the Criminal Justice System. It is therefore surprising that the Commission does not join the UN Human Rights Committee and other respected human rights organisations such as the Campaign for the Administration of Justice (CAJ), Liberty and British Irish Rights Watch in calling for the abolition of repressive laws. There is no justification for the existence of such laws or for the Terrorism Act 2000. Such legislation is in breach of provisions of the International Covenant on Civil and Political Rights and the ECHR.

Sinn Féin believes that the Bill of Rights needs to provide for a Criminal Justice System, which is reflective of all of society in terms of its composition and operation.

Sinn Féin is of the opinion that arrested persons have a right to consult a solicitor of their own choice and have the right to the best possible legal protection and defence.

It is Sinn Féin's position that everyone shall have the right to be tried by jury. This article shall not prevent the establishment of local community alternatives provided these abide by the general provisions of the Bill of Rights.

A special section on the rights of children and young people in the Criminal Justice System is needed. Sinn Féin advocates that the age of criminal responsibility of children should be raised to at least 14.

#### **8. The Rights of Victims and Survivors**

Sinn Féin is broadly supportive of the Human Rights Commission's proposals but notes that it contains no clear definition of victims. Sinn Féin has put forward a definition of victims and believes it should be included in the Bill of Rights. This section must be founded on the recognition that those who have suffered, whether as a direct result of the conflict or not, deserve equal treatment, whatever their status or circumstances. There must also be a recognition that people and groups were victimised within the existing law

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and that victimisation can also occur as a result of institutional, as well as individual, actions.

#### **9. Rights to family life and private life**

Sinn Féin believes that protection, which is not already guaranteed under the terms of Article 8 of the ECHR, is required and that the right to privacy must be balanced with the right to be free from violence in the home.

#### **10. The rights of children**

Sinn Féin generally welcomes the recommendations of the Commission in this chapter. However we are concerned that there is no recognition in the proposals of the fact that many of the children with whom this section is concerned are from communities that are emerging from a prolonged period of political conflict. Further consideration should be given to additional support structures/services arising from the legacy of the conflict.

The most recent case in point, the Holy Cross school, should make clear to the Human Rights Commission of the need to expand on (d) Protection rights (Page 67) to read: 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, including sectarian abuse, neglect or negligent treatment, bullying, maltreatment or exploitation, including sexual exploitation or abuse.

The Bill of Rights needs a special chapter on the Rights of Children. Children should be able to grow up in a stable, safe and loving family environment and this should be framed as a positive right.

Sinn Féin recommends that the Bill of Rights recognise the diversity of family arrangements.

#### **11. Education Rights**

Sinn Féin welcomes the majority of the rights and principles contained in these proposals. However, Sinn Féin is concerned at the failure to address life-long learning and training and the class dimension of higher education particularly in relation to fees and funding.

Sinn Féin believes the Bill of Rights must take into consideration the quality of education and training on a life-long basis: equality of access to education and training, without exception: equality of access to educational and training resources: parental and child choice and input into educational and training matters (including minority languages): restrictions on religiously segregated education and training: awareness of the all-Ireland dimension to educational rights and the promotion of a human rights culture and respect for diversity with the curriculum.

#### **12. Rights to freedom of thoughts, expression, information and association.**

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Sinn Féin believes that there are many legal instruments at the disposal of the British authorities, which serve to restrict freedom of opinion and expression. The concept of freedom of expression is incompatible with the maintenance of repressive legislation and the introduction of the Terrorism Act (2000). This must be reflected in the Bill of Rights.

The Bill of Rights also needs to reflect a commitment to make public all internal investigations into state killings which took place in disputed circumstances in line with the recommendation of the UN Special Rapporteur on Freedom of Expression.

The Bill of Rights, in line with the recommendations from the UN Human Rights Committee as expressed in November 2001, should ensure that the Official Secrets Act 1989, cannot be used to prevent journalists from publishing matters of genuine public concern.

Furthermore the Bill of Rights needs to include obligations on the state to protect against sectarian abuse. It must also bring take effective steps to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, social, political and cultural life.

### **13. Language rights**

Sinn Féin disagrees with the approach of the Commission in this section. The Good Friday Agreement recognises the special status of the Irish language and the commitment to its protection and development made by the British Government. This must be reflected in the Bill of Rights.

The Irish language is a native language of key importance to the sense of identity and parity of esteem of significant sections of the population and should be protected and promoted in the Bill of Rights in line with the Good Friday Agreement.

Additional legislation for the Irish language needs to be enacted, based on the scale and scope of the Welsh Language Act.

### **14. Social, economic and environmental rights**

Sinn Féin believes that the inclusion of social and economic rights can help ameliorate long standing social and economic rights deprivations, which are unique to the north of Ireland and flow from the conflict.

Sinn Féin believes that these rights deprivations can best be addressed in the form of substantive rights protection.

### **15. Interpretation**

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Sinn Féin believes that the Bill of Rights should fully and faithfully reflect the Good Friday Agreement.

#### **16. Limitations**

Sinn Féin believes that while limitations are inevitable, these should be severely restricted and there should be strong sanctions/censure available if breached.

#### **17. Emergencies**

Sinn Féin believes that the state of emergency and emergency laws were never justified and the emergency laws should be abolished immediately.

#### **18. Enforcement**

Sinn Féin believes that in order to imbue the maximum public confidence in legal interpretations and rulings on the Bill of Rights that an all-Ireland Constitutional Court be established. This would be in line with international best practice. The advantages of this are clear in terms of building confidence in relation to human rights and ensuring that a human rights based culture develops among the judiciary.

We are totally opposed to such matters being dealt with by the British Privy Council. Mechanisms for enforcement should be established within the island of Ireland context.

#### **19. Entrenchment and Amendment**

Sinn Féin believes that the Bill of Rights should be entrenched and amendments and improvements to the Bill should be facilitated as circumstances change through British-Irish agreements which also guarantees that neither government is able to alter the Bill of Rights without the agreement of the other, possibly with the use of external guarantors.

## **Introduction**

Sinn Féin believes that the Bill of Rights is an integral component and outworking of the Good Friday Agreement. We therefore welcome the opportunity to once again put forward recommendations for change to strengthen and build on the progress made thus far of the Human Rights Commission.

A comprehensive Bill of Rights can serve as a guarantor of the vision of parity of esteem and equality of treatment of all contained in the Agreement. However it can only do so with the support and determination of the entire community.

It is our view that the Bill of Rights, the harmonisation of human rights standards throughout Ireland within an all-Ireland Charter of Rights, and the establishment of a

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Constitutional Court are central to the consolidation of the peace building process. The Good Friday Agreement provides the basis to address the causes of conflict. Central to that conflict, since partition, was the abysmal human rights record of successive Unionist and British administrations. Republicans, as party to that conflict, also acknowledge the hurt and pain which they have caused over the past 30 years.

Sinn Féin recognises that there has been much progress made on issues such as children's rights, voting and candidacy rights, democratic rights, social and economic rights and some progress on Criminal Justice in the draft Bill of Rights. Sinn Féin will continue to focus on the issues which we believe are insufficiently addressed in the Bill but that should not mask our acknowledgment of the positive elements of the draft bill.

Whilst this submission deals with the proposed rights as contained in the consultation document, Sinn Féin must register its dismay at the remarks contained in Part 1, Section C, OThe Commissions Mandate'.

In that Section (page14, para 2) the Commission appears to be cautioning against asking for too much lest we are disappointed by the two governments, and suggesting that we set our targets lower. The Commission seems to suggest that they should take an approach that will produce a Bill of Rights that will be acceptable to the British and Irish Governments. If the creation of a Bill of Rights to reflect the particular circumstances of the north creates a problem for either government, in terms of the rights guaranteed to individuals in the Britain or the 26 Counties, then the respective governments need to get their own houses in order.

It is the responsibility of the Human Rights Commission to consult and advise on the drafting of rights supplementary to the ECHR, to reflect the particular circumstances of the north and the principles of mutual respect and parity of esteem that will constitute a Bill of Rights. It is not the responsibility of the Human Rights Commission to formulate a Bill of Rights that will win favour with either Government.

### **1. Preamble**

Sinn Féin welcomes the positive tone and the commitment in the preamble to the principles enshrined in the Good Friday Agreement however we would like to make the following observations regarding the text of the Preamble.

1.1 The Preamble of the Bill refers to 'The people of Northern Ireland'. We believe that while there are people in Northern Ireland, there is not 'a people' but two significant communities and ethnic minority communities. 'A people' under the terms of international law has the right to self-determination. We would point the Human Rights Commission to the Good Friday Agreement which recognises that the people with a right to self-determination are 'the people of the island of Ireland alone..'(Page 2, 1(ii), Constitutional Issues, Good Friday Agreement).

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1.2 The Preamble omits reference to the important concept of parity of esteem as enshrined in the Good Friday Agreement. This core principle needs to be reflected in the Preamble.

Arising from these concerns Sinn Féin proposes the following changes to the Preamble:

1. Delete 'the people of Northern Ireland'.
2. Insert after 'building on the principles enshrined in the Belfast (Good Friday) Agreement, namely:' the responsibility of the government that has jurisdiction in Northern Ireland to exercise its powers with full respect for the principle of parity of esteem' and of just and equal treatment for the identity, ethos and aspirations of all.

Sinn Féin agrees with the Commission that the Bill of Rights should be firmly entrenched in an International Treaty between the British and Irish governments with consideration also being given to possible external guarantors of the terms of the Bill.

## **2. Democratic Rights**

In accordance with the principles of the Good Friday Agreement Sinn Féin believes that this section needs to include the right to self-determination. Self-determination is a human right, included in both the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights. The right to self-determination is the only human right for which an explicit formulation was agreed in the Good Friday Agreement. Given that the formulation in the Good Friday Agreement has been adopted in referendums North and South, it should be included in the Bill of Rights.

(a) Elections Sectarian intimidation has meant that nationalists are not free to choose their place of residence. This de facto practice of restraining nationalist voters behind certain electoral boundaries means that elections are not held 'under conditions which will ensure the free expression of the opinion of the people', since there is an unnatural fetter on where nationalist voters may cast their vote.

Sinn Féin would therefore propose the following amendment to para 1. on page 21 of the consultative document:

'The High Contracting Parties further undertake to take all measures necessary to ensure that there are no legal or practical distortions of the conditions under which free elections are held.'

(b) Participation in Government Sinn Féin welcomes the text of the consultation document under this heading.

(c) Voting and Candidacy Rights Sinn Féin agrees that the voting right for all elections should be lowered from 18 to 17.

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In order to guarantee the voting and candidacy rights for (ex-) prisoners, Sinn Féin suggests the insertion of the following amendment 'All persons aged 17 or over, including persons subject to detention in a young offenders centre, a prison or any equivalent establishment, shall have the right to vote...'

### **3. Rights concerning identity and communities**

Sinn Féin has grave reservations about the Commission's approach to the principle of parity of esteem.

Parity of esteem is listed as one of the major foundation stones of the Good Friday Agreement. It appears in the first paragraph of the body of the Good Friday Agreement at para.1 (5) under the heading ``Constitutional Issues". Para.1 (5) affirms that whatever government has jurisdiction in the north shall exercise its powers with full respect for the principle of ``parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities".

The Good Friday Agreement expresses parity of esteem as a community right, i.e. a right which each community here should be accorded by whichever State exercises sovereign power within the geographical area. As such it is conceived as a right vested in a community, which is given reality by the State that exercises sovereign power within the geographic area. In the Good Friday Agreement, parity of esteem is not conceived to be about respect by communities for each other. It is a principle that the governments are obliged to respect and to enforce

Parity of esteem is already recognised by all the signatories to the Good Friday Agreement as being a founding principle underlying the exercise of any sovereign jurisdiction within Northern Ireland [see p.2 Good Friday Agreement, para.1(v)].

The Good Friday Agreement already provides for the incorporation 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'. [See p17 Good Friday Agreement para.4].

It already states that such an obligation is to be incorporated into the new Bill of Rights for the north of Ireland. The sole role of the Commission was to advise on the formulation of this general obligation.

The Human Rights Commission has misunderstood or misapplied its mandate under the Good Friday Agreement by raising a question as to whether or not the Bill of Rights should contain a provision dealing with parity of esteem.

The Commission asserts that its approach is to strike a balance between the protection of the rights of communities and protection of the cultural/identity rights of individuals within communities. Far from striking this balance the Commission simply proposes to delete the community based right of ``parity of esteem" from the Bill of Rights altogether.

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For all these background and procedural reasons the Commission's suggestion that the Bill of Rights should not contain a provision dealing with parity of esteem is wrongly conceived and is not sustainable.

It is Sinn Féin's position that the incorporation of a conceptual and legal mechanism into the Bill of Rights that is defined in terms of community inequalities may be of great value in addressing continuing wrongs and injustices which operate at community rather than at individual level;

Nor is it acceptable that the Commission uses the European Framework Convention on Minorities as a guide to ensure parity of esteem. Nationalists in the north refuse to conceptualise themselves as a minority in their own country.

#### **4. Equality and non-discrimination**

Sinn Féin welcomes the provisions proposed by the Human Rights Commission in relation to equality and non-discrimination, but would make the following suggestions to improve the preliminary proposals:

2. 'Everyone (and each community) is equal before 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, (in both private and public spaces).

4. 'Everyone, (and every community,) 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, (cultural affiliation,) 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.

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.'

Sinn Féin also recommends that a number of additions be made to the preliminary proposals, recognising the special circumstances of the north of Ireland:

1. It is recognised that all individuals and all communities have a right to be protected against harassment related to any of the grounds set out at para. 4 above.

2. 'All peoples shall be equal. They shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.'

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Sinn Féin is also of the opinion that the Bill of Rights should contain a clause allowing for positive action and supports the inclusion of the clause as drafted by the equality working group for the Human Rights Commission:

'Laws, programmes or activities aimed at achieving and sustaining full and effective equality, in particular to reduce inequalities affecting disadvantaged groups, and which may include specific measures for individuals from such groups, shall be required in furtherance of these objectives. Such laws, programmes or activities shall not constitute discrimination'.

In conclusion Sinn Féin is convinced that the Bill of Rights commitment to equality must allow provision to address group inequalities as opposed to simply single anti discrimination cases.

## **5. The rights of women**

Sinn Féin believes that the Commission's initial decision to mainstream gender-specific issues rather than create a separate working group was laudable, but ultimately deficient. While some issues concerning gender were incorporated, the importance of these tended to be overshadowed by the recommendations specific to the remit of each group and seldom found expression in the text of the working groups' proposed clauses for the Bill of Rights.

Sinn Féin agrees with the Commission that the Bill of Rights is "...a powerful medium to address the acute disadvantages women suffer by virtue of their gender." It is very disappointing then, that the consultation process failed to deliver a comprehensive set of proposals to ensure women's rights in the Bill of Rights.

While supporting the inclusion of versions of the four clauses suggested here, Sinn Féin considers it inappropriate to select a 'top four' as this suggests inclusion on the basis of who has the most resources to lobby the Commission, or who is most vocal. Sinn Féin urges the Commission to revisit the consultation process on women's rights and ensure that a comprehensive chapter in line with best practice, in particular that in the South African Constitution, is produced. At the very least, the four proposed clauses should be strengthened.

### **Equality:**

Sinn Féin proposes that 'for women and girls' be replaced with 'without regard to gender'. This would counteract the assumption that human rights belong to males and that females have to make a special claim to them. It would also ensure that transgendered people are not excluded.

### **Reproductive health care:**

Sinn Féin proposes that this should read: 'Accessible information about reproduction should be freely available, including: wider availability of family planning information

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and information on sexually transmitted infections and information and education regarding relationships as part of a holistic approach to reproduction and sexuality issues.'

#### **Freedom from violence:**

Sinn Féin proposes the replacement of 'appropriate' with 'necessary', thus strengthening the clause.

#### **Fair, full and effective participation:**

Sinn Féin considers 'all appropriate measures to promote the right' to be too weak and believes it would be strengthened by the inclusion of 'all necessary measures to ensure the right'.

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

### **The right to life**

Sinn Féin believes that the wording in the consultative document should be strengthened to reflect the centrality of the right to life and that there should exist a responsibility on the state to prevent the loss of life, as well as to protect the right to life, since there have been clear instances where state agents have not moved to prevent murders from occurring and where those involved were not prosecuted when there was sufficient evidence.

Similarly any limitations on the right to life should be severely restricted and there should be strong sanctions against those who violate this right.

Sinn Féin is also of the opinion that the option of the death penalty should be removed and there should be no extradition of individuals to countries where there is a possibility of the death penalty being carried out

As a result Sinn Féin proposes the following changes to the Commissions proposals for (a) Right to life, so that it would read as follows:

1. There shall be a core responsibility on the state to ensure that a person's right to life shall be fully protected by law.
2. No one can be condemned to the death penalty or executed.
3. The state must ensure that loss of life is avoided to the maximum extent possible. The circumstances where deprivation of life shall not be regarded as in contravention of (1) shall be restricted to the maximum extent possible on the basis of absolute necessity and where alternative remedies are demonstrably inadequate.
4. The state shall ensure that contravention of (1) and (2) is an offence under criminal law.
5. The state shall not expel, return or extradite a person to another state where there are reasonable grounds for believing that the right to life would be violated.

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#### **Prohibition of Torture**

Sinn Féin believes that there should be no limitations on this article which would ever justify the use of torture, cruel and inhuman or degrading treatment. Nor should there be any extradition of individuals to countries where there is a possibility of exposure to torture, cruel and inhuman or degrading treatment

As a result Sinn Féin proposes to make the following changes to (b) Torture, Cruel and Inhuman or Degrading Treatment, so that it would read as follows:

1. No one shall be subjected to torture or to cruel and inhuman or degrading treatment.
2. No exceptional circumstances whatsoever may be invoked as a justification for torture, cruel and inhuman or degrading treatment. The state shall ensure that any such acts are offences under criminal law.
3. There shall be a responsibility on the state to take effective measures to prevent torture, cruel and inhuman or degrading treatment.
4. The state shall not expel, return or extradite a person to another state where there are reasonable grounds for believing that he/she would be in danger of being subjected to torture, cruel and inhuman or degrading treatment.

#### **Freedom from slavery and forced labour**

Sinn Féin believes that limitations on this article must be severely restricted. As such Sinn Féin proposes to change the section on (c) Slavery, Servitude and Forced Labour, so that it reads as follows:

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 purposes of this article the term 'forced or compulsory labour' shall not apply to an activity which is demonstrably compatible with articles relating to employment conditions, human dignity
4. The state shall ensure that contravention of (1) and (2) is an offence under criminal law.
5. The state shall not expel, return or extradite a person to another state where there are reasonable grounds for believing that the right to life would be violated.

#### **The right to bodily integrity**

Sinn Féin believes that the Bill of Rights should protect the right to bodily integrity and proposes the following text:

1. The state shall take all necessary steps to ensure that everyone has the right to bodily integrity fully respected and the right to make decisions on the basis of their physical and emotional well-being and needs.

## **7. Criminal Justice & Administrative Justice**

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Sinn Féin welcomes the Commission's acknowledgment that human rights and dignity should be core values of the criminal justice system. It is surprising, therefore that the Commission does not join the UN Human Rights Committee and other respected human rights organisations such as CAJ, Liberty and British Irish Rights Watch in calling for the abolition of the emergency laws which have governed the north of Ireland since partition.

Sinn Féin believes that there is no justification for the existence of emergency laws or for the Terrorism Act 2000. Such legislation is in breach of provisions of the International Covenant on Civil and Political Rights and the ECHR.

Sinn Féin believes that the Bill of Rights needs to ensure that the Criminal Justice System is reflective of all of society in terms of its composition and operation.

The Human Rights Commission raises the question if a right to choose one's own solicitor. This right to choice is not specified in either ECHR or ICCPR. Sinn Féin is of opinion that arrested persons have a right to consult a solicitor of their own choice and that no limitations should be put on that right. An arrested person has the right to the best possible legal protection and defense.

Having studied the provisions proposed by the Human Rights Commission and the provisions proposed by its Working Group on Criminal Justice and Administrative Justice, Sinn Féin agrees with the suggestions of the Working Group which are more explicit and more appropriate to the particular circumstances of the north of Ireland.

Sinn Féin therefore makes the following recommendations:

#### **Arrest and detention rights**

Given the way in which these rights have on occasion been abused in the past, stronger protection than what is contained in ECHR Art 5 is needed. Sinn Féin welcomes the proposals of the Working Group to have this section read as follows:

Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, correspondence or otherwise.

Everyone who is arrested has the right -

- to consult privately and without delay, and if necessary at state expense, with a solicitor of their choice and to have that solicitor present during questioning
- to remain silent with no adverse inferences to be drawn at a later stage if this right is exercised
- to inform a relative or friend that s/he is being detained and where s/he is being held in custody
- to communicate with and be visited by their spouse, partner or next of kin, carer, doctor, or a person known to him/her who is likely to take an interest in his/her welfare.

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- to be released or charged as soon as reasonably practicable, but not later than 24 hours after the time of arrest.
- to have a competent interpreter present, if necessary during the course of any questioning.
- to be informed immediately upon arrest of the above rights in a language and manner which they understand
- No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.
- Everyone who is detained has the right to conditions of detention which are consistent with human dignity, including at least exercise and the provision of adequate accommodation, nutrition, reading material, and medical treatment.
- Anyone charged with a criminal offence is presumed to be innocent. Accordingly, any such person should be released pending trial unless his/her release would constitute a real risk to public safety.

### **Trial rights**

In relation to this section Sinn Féin supports the proposals of the Working Group, in that:

1. Everyone charged with an offence is entitled to trial within one hundred days from the date that person is charged with an offence. Any application to delay the holding of a trial beyond the one hundred day limit shall only be granted with the agreement of the accused or where the interests of justice so require.
2.
  - a. In the determination of his/her civil rights and obligations or of any criminal charge against him/her, everyone is entitled to a fair and public hearing 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 interests 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.
  - b. Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law
  - c. Everyone charged with a criminal offense has the following minimum rights
    - i. To be informed promptly, in a language, which s/he understands, and in detail, of the nature and cause of the accusation against him/her;
    - ii. To have adequate time and facilities for the preparation of his/her defense;
    - iii. To defend himself/herself in person or through legal assistance of his/her own choosing or, to be given proper and adequate legal

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- assistance, consistent with the seriousness and complexity of the charge, free when the interests of justice so require;
- iv. To examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;
  - v. To have the free assistance of a competent interpreter if s/he cannot understand or speak the language used in court.
3. Everyone charged with a criminal offence has the right
    - . To remain silent, not to testify during the proceedings and not to be compelled to give self-incriminating evidence.
      - a. If acquitted of the offence, not to be tried for it again.
      - b. To appeal to a higher court against either conviction or sentence or both.
  4. Everyone charged with an indictable criminal offence has the right to trial by jury. The defendant can waive this right if he/she wishes to do so.
  5. Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded.
  6. The prosecuting authorities and the police shall afford effective disclosure or access to the accused of all used and unused material gathered during the course of an investigation or to which the prosecuting authorities have had access, control or possession
  7. Victims have the right:
    - . To be kept informed of the timing and progress of any proceedings affecting them and of the disposition of their cases.
      - a. To have their views and concerns considered at an appropriate stage of the proceedings where their personal interests are affected consistent with the other rights in this Bill of Rights.
        - b. To proper assistance and support throughout the legal process including measures to minimise inconvenience to victims and protect their privacy, when necessary.
    8. Witnesses have the right to proper assistance and support throughout the legal process including measures to minimise inconvenience to them.
    9. Judges and other court officials shall conduct proceedings professionally, courteously and temperately and in a manner consistent with their public office.

In response to the Human Rights Commission raising the question as to whether the Bill of Rights should infer a right to jury trial it is Sinn Féin's position that everyone shall have the right to be tried by jury courts or tribunals using established legal procedures. This article shall not prevent the establishment of local community alternatives to or diversions from the justice system provided these also abide by the general provisions of the Bill of Rights.

This in turn leads to our call for the removal of repressive legislation and the immediate abolition of Diplock courts

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It is also Sinn Fein's view that the Commission should include the following:

'Everyone has the right to be tried in front of a judge/magistrate drawn from a panel which is representative of society in terms of religion, political opinion and gender.'

### **Custody and Release**

Sinn Féin believes that the Bill of Rights should contain a specific provision dealing with politically motivated offences concerned with the conflict because of the particular difficulties faced by former political ex-prisoners in exercising their right to re-integration. In this Sinn Féin is once again supportive of the proposals of the Working Group:

1.
  - a. Custodial sentences shall only be used as a measure of a last resort. The police, prosecuting authorities and judiciary shall consider alternatives to prosecution and custodial sentences at all stages of the criminal justice process.
  - b. All agencies of the criminal justice system shall develop and encourage alternative measures to prosecution and the use of custodial sentences.
2. All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.
3. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the rights contained in this Bill of Rights.
4. Everyone convicted in a court of law shall have the right to reintegration.
5. Separate Provision Dealing with those convicted of Politically Motivated Offences
6. Where a person has been convicted of any act, offence or omission associated with past conflicts any entry or record of the conviction shall be deemed to be expunged from all official documents or records. This provision shall be subject only to measures necessary for the protection of the safety of the public.

### **Non-retrospectivity of criminal laws:**

Sinn Féin agrees with the text proposed by the Commission

Sinn Féin also agrees with the Working Group that a special section on the rights of children and young people in the criminal justice system is needed.

Children represent one third of the population in the North. Along with others seeking the maximum protection of children and young people's rights, we would urge the Human Rights Commission to uphold the highest international standard in the Bill of Rights especially in circumstances where the British government has failed once again to

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comply with the recommendations of the UN Committee on the Rights of the Child to uphold the United Nations Convention on the Rights of the Child. Specifically: children are still subject to repressive legislation; are still suffering discrimination in the provision of services, e.g. the lack of access of Traveller children to services; still rarely have the opportunity to have their voices heard and are still subject to physical punishment. In addition, recently introduced legislation, namely the Criminal Justice Children's (NI) Order 1998, does not comply with the United Nations Convention on the Rights of the Child and the age of criminal responsibility has not been raised.

For these reasons, Sinn Féin advocates that the age of criminal responsibility of children should be raised to at least 14. We would also call on the Human Rights Commission to include the recommendation of its own working group on Children and Young people which clearly recommended that the strongest possible method of implementation and enforcement for the Bill was the "...creation of a constitutional court which would have the power to interpret and develop the rights and obligations under the Bill of Rights.

Sinn Fein therefore. supports the proposals of the Working Group that:

1. The child's best interest shall be the paramount consideration in every matter concerning the child.
2. Child means a person under the age of 18.
3. In the event that a child is arrested, an appropriate adult must be present to represent the interests of the child during any questioning of the child. This is in addition to the right of the child to the presence of a solicitor.
4. Children who are detained under arrest or awaiting trial are presumed innocent and shall be treated as such. Detention before trial shall be used only as a last resort and must be authorised by a judge. When detention is nevertheless used, the police and the juvenile courts shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried children should be separated from untried or convicted adults and, unless it is in the best interests of the child, from convicted children.
5. All children shall be tried in an appropriate setting and manner having regard to the child's age, maturity, needs and vulnerability.
6. Every person under the age of 18 in Northern Ireland has all the rights contained in the United Nations' Convention on the Rights of the Child.

## **8. The Rights of Victims and Survivors**

Victims' rights are an important consideration and both the Working Group and the Human Rights Commission are to be congratulated for the extensive investigation into all aspects of the issue in their presentations. The Sinn Féin submission below is largely

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supportive of the draft Bill of Rights generated by the Human Rights Commission, with a number of important caveats.

The Working Group did not develop a definition of 'victim' which could conceivably satisfy all of those individuals and groups who potentially come under this category. Alternative appendages include reference to survivors or to the bereaved (as a possible distinction). It is also clear that the working group was unwilling to refer to the conflict in an explicit manner. Such an approach is lamentable as the Bill of Rights, and ultimately the Working Group itself, emerged from the Good Friday Agreement.

References to 'Perpetrators' and to 'Unlawful actions', for example, should be clarified to reflect the viewpoint that some people and groups were victimised within the existing law and that victimisation can also occur as a result of institutional, as well as individual, actions.

Those who have suffered, whether as a direct result of the conflict or not, deserve equal treatment, whatever their status or circumstances. All of the rights developed by the Working Group have to be applied on an equitable basis to all victims/survivors, take cognisance of the impact of the conflict and maintain any rights developed for the protection of alleged perpetrators.

The Human Rights Commission also avoids the requirement to develop an agreed definition of victimisation. This has the potential to further divide and demoralise those most affected by the political conflict in Ireland. Reference to the 'Violation of criminal laws' would again serve to completely de-legitimise the victimisation of some categories of individuals and groups. All other areas are non-contentious, although significantly less developed than the principles generated by the working group.

Sinn Féin is unsure if the term 'victim' is always the appropriate term to use in a political sense and would support the use of the term 'survivor' where appropriate. The Sinn Féin position on victims and survivors reflects a number of themes:

- that there should not be a hierarchy of victim-hood
- that the issue of victims and survivors has to be approached on the basis of equality
- there has to be an acknowledgement of the political conflict (on the basis of the Good Friday Agreement at least, and on an all-Ireland basis)
- that provisions need to be built into the Bill of Rights to ensure that selective victim-hood is impossible in the future

There should of course also be consideration of the rights of victims and survivors outside of this (in a non-political setting). In relation to the draft Bill Sinn Féin is largely supportive of the text developed by the working group on victims and also draws on the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (with appropriate amendments):

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#### **Definition**

Sinn Féin proposes that a possible definition of victims/survivors could be:

'Victims or survivors means persons who, individually or collectively, have suffered harm, including physical or psychological trauma, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are or may be culpable. A person may be considered a victim or survivor regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, regardless of the familial relationship between the perpetrator and the victim or survivor and regardless of any action they may have been committing at the time they suffered harm. The term victim or survivor also includes, where appropriate, the immediate family or dependants of the direct victim or survivor and persons who have suffered harm through the witnessing of a culpable act or intervening to assist victims or survivors in distress or to prevent victimisation.'

#### **Acknowledgement**

It is Sinn Féin's position that:

'Victims and survivors have the right to formal acknowledgement that their rights as citizens have been infringed.'

#### **Discrimination**

As regards discrimination Sinn Féin believes that:

'Victims and survivors, and where relevant, their immediate family, must not be discriminated against on the basis of age, gender, sexuality, disability, culture, race, religious belief, occupation, political opinion (even where that opinion includes support for unlawful actions), national allegiance, criminal conviction or the nature of their complaint.'

#### **Commemoration**

In relation to commemorations Sinn Féin believes that:

Victims and survivors have the right to individual or collective commemorations through public assembly or physical memorials. Victims and survivors have the right not to be exposed to any public celebration of their loss or suffering.

#### **Access to justice**

Victims and survivors have the right to obtain redress through formal or informal procedures or mechanisms of justice that are expeditious, fair, inexpensive and accessible. In particular, victims and survivors have the right to a full, fair and effective investigation of their complaints and the circumstances of their victimisation, a fair judgment on the culpability of any identified institution or person and an independent assessment of punishment, compensation or restitution.

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Victims and survivors have the right not to participate in any decision relating to the future of any perpetrator or institution.

Subject to the law and the human rights of every party involved, victims and survivors have the right to choose between any available methods of resolving their grievance against a perpetrator or institution. Victims and survivors have the right to be present and the right to choose not to be present at any trial, hearing or investigation at which the defendant is also present.

#### **Respect, recognition and support**

The questioning of, or discussion with victims and survivors and other witnesses at all stages of investigation, court hearings and other processes should be carried out with respect for the dignity of the individual. Special care should be taken with provisions for children and other vulnerable witnesses.

Legal advice and support should be available to all victims and survivors, regardless of their means. Legal representation should be available to all victims and survivors and their families.

Reference to Oprocesses' should also relate to political processes including consultations and negotiations about matters of relevance to victims and survivors.

#### **Receipt of information about investigations and judicial proceedings**

All victims and survivors should have the right to 'opt in' or 'opt out' of procedures for being kept informed of all developments relating to their case. Victims and survivors should be given clear information to enable them to opt in or out of being kept informed at any stage of the case.

For those victims and survivors who choose to be kept informed, all information should be provided at the earliest possible opportunity, with full and clear explanations of the decisions which have been taken, the information upon which they were based and, where relevant, any legal issues which had to be taken into account.

Victims and survivors should have the right to inspect the case file. Information should be given to victims and survivors by the authorities responsible for the decision, as they will have clearer information about the reasons. In all cases where particular distress may be expected an opportunity for a personal interview should be provided to allow the victim or survivor to fully understand the situation

Recent ECHR judgements and UN findings are critical of the failure to keep victimised families informed of the progress of investigations into the circumstances of their victimisation.

#### **Provision of information**

Victims and survivors have the right to make full statements of the whole circumstances

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surrounding their victimisation to investigating authorities or prosecutors. They also have the right to make those statements through their own legal representatives directly.

The text reflects concern with aspects of the criminal justice system and includes other less formal methods of achieving justice.

### **Privacy and protection**

Subject to the principles of justice and the public interest, victims and survivors have a general right to privacy, in particular they have:

- the right to withhold their place of residence from defendants and the public
- the rights to claim or decline anonymity in respect of the publication of their names
- the right to challenge the particular publication of any image or description of the circumstances of victimisation.
- Restitution Victims and survivors have the right to receive appropriate restitution.

### **Compensation**

A victim or survivor, as a wronged citizen, has a right to full and speedy compensation from the state, calculated on the basis of need, rather than loss.

Possession of a conviction for a political offence should not be used as a device to deny victims compensation.

### **Assistance**

Victims and survivors have the right to the highest possible level of social care in accordance with their needs, particularly in the areas of provision of advice and information, access to health care, income support, security in the home, employment, training and education. All social agencies have a duty to give priority to victims and survivors in their operations and deliver sensitive and respectful care.

## **9. Rights to family life and private life**

The main question for the Commission has been whether there are any particular circumstances in the north of Ireland which require further protection which is not already guaranteed under the terms of Article 8 of the ECHR. It recommends that for the Bill of Rights, Article 8 of the ECHR should be supplemented with Article 8 of the EU Charter on Fundamental Rights, reading as follows:

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

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Sinn Féin proposes to amend this as follows: '...legitimate basis laid down by law consistent with international human rights standards'

4. 'Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified'. Sinn Féin strongly recommends that this right includes a positive obligation on the state to protect and keep information confidential. Culturally, violence within families is protected and facilitated by the right to privacy and family life being invoked at individual, community and agency level.

Sinn Féin proposes to amend Art 8.2 with: 'the right to be free from violence in the home'.

Sinn Féin proposes in the formulation that is put forward for comment, to insert 'Men and women of marriageable age, including those of the same sex, have the equal right to marry and to found a family'.

Sinn Féin believes that ex-prisoners should have the right to foster and adopt children and this should be included in the right to family life.

## **10. The rights of Children**

Sinn Féin generally welcomes the recommendations of the Commission in this chapter. However, one main area of concern remains. There exists no recognition in the proposals of the fact that many of the children with whom this section is concerned are from communities that are emerging from a prolonged period of political conflict. The most recent case in point, the Holy Cross school, should illustrate to the Human Rights Commission the need to expand on (d) Protection rights (Page 67) to read: 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, including sectarian abuse, neglect or negligent treatment, bullying, maltreatment or exploitation, including sexual exploitation or abuse.

Further consideration should be given to additional support structures/services arising from the legacy of the conflict.

Sinn Féin agrees with the Commission that a combined approach, with a general provision requiring state authorities to comply with the provisions in the UN's Convention, together with a list of more specific rights, is the best way to progress.

It is our belief that the Bill of Rights needs a special chapter on the Rights of Children. The Bill of Rights should include, and indeed encourage, the right of children to play a constructive role in society.

Sinn Féin is also of the opinion that support for children to enable them to grow up in a stable, safe and loving family environment, should be framed as a positive right. Sinn

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Féin recognises at the same time that here also exists an obligation on the state to ensure that adequate support and assistance is available.

Sinn Féin is also keen that the Bill of Rights explicitly recognises the diversity of family arrangements.

Sinn Féin believes that the age of criminal responsibility should be raised to 14 years of age. Whilst it is reasonable that the state reviews the age of criminal responsibility, stringent safeguards need to be introduced to ensure that the age is not lowered.

## **11. Education Rights**

Sinn Féin welcomes the majority of the rights and principles developed for consideration by both the Working Group on Education and the Human Rights Commission. They were extremely well researched and thoughtfully presented. The overall approach for both could be characterised as attempting to frame rights applicable to the individual (whether parent or child) in relation to the educational system. One of the difficulties with this approach is that the educational system in the north of Ireland is polarised on a community basis. The WG/Human Rights Commission are right to avoid reinforcing this polarity by developing collective rights on the basis of ethnicity or national identity/religiosity, but they could have gone further in an attempt to undermine the undoubtedly corrosive nature of the state/maintained dimension to education. Other criticisms relate to the absence of an overt concern with life-long learning and training, and a lack of emphasis on the class dimension to higher education in relation to fees and funding.

Sinn Féin undertook a consultation process with a range of students representative of most of the applicable categories.

From a political perspective they wished to see a phased end to (religiously) segregated education in the north with an associated emphasis on all-Ireland educational strategies in order to facilitate the greater all-Ireland co-operation envisaged in the Good Friday Agreement. The students were also highly critical of the almost exclusively 'British' nature of the curriculum content, especially in relation to History, Geography, Languages and Politics and they felt that religion should no longer be a compulsory subject in schools. The treatment of Irish language schools and students was a constant theme, as was the desire to see the establishment of a third-level institution for Irish language students.

They also believed that the conflict was being ignored in all aspects of education and there should be encouragement to discuss and analyse all aspects of the conflict with a view to reaching accommodation and understanding. In general, they were keen to emphasise that education should be viewed as a worthwhile life experience outside of a purely academic definition. They thought it necessary to reinforce this aspect of education to emphasise the value and worth of non-academic experience and aptitude.

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More specifically, the students also held that the eventual abolition of segregated education in the north should be accompanied with greater student input into the educational system and there was a recognition that the current system over-pressurised teachers at the expense of teaching quality and teaching methods.

Finally, they were highly critical of the class disparities evident in all aspects of educational choice and attainment and felt that a core right to education, and training, related to equality of access and provision regardless of personal or family income. A related issue concerned the number of students at all levels engaging in work in order to contribute financially (directly or indirectly) to their educational situation.

The Sinn Féin position on education as pertaining to the draft Bill of Rights is based on the following considerations:

- The quality of education and training (on a life-long basis)
- Equality of access to education and training (without exception)
- Equality of access to educational and training resources
- Parental and child choice and input into educational and training matters (including minority languages)
- Restrictions on religiously segregated education and training
- Awareness of the all-Ireland dimension to educational rights
- The promotion of a human rights culture and respect for diversity

Sinn Féin promotes the following wording for the section on the Right to Education:

1. The state shall facilitate, without exception, the right to effective education or training for all 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.
2. The state shall ensure that no-one, at any stage, shall be deprived of their right to effective education or training on the basis of financial need.
3. The state shall ensure that the criteria for admission to all educational and training establishments are such as to ensure access to effective education for all on the basis of section (1).
4. The state shall ensure that education and training in all its forms shall be directed to the promotion of human rights, equality, dignity of the person, respect for diversity and tolerance on the basis of recognised international standards and in the context of the Belfast Agreement.
5. The state shall, to the greatest extent possible, ensure the right of individuals to receive education and training in conformity with their religious, cultural, philosophical and pedagogical convictions, subject to sections (1) - (4) and to the competence of the individual

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to decide for him or herself in accordance with his or her age and maturity. The state shall provide financial and other support to all educational and training establishments subject to sections (1) - (4) on an equitable and transparent basis.

The nature and extent of education has been defined more widely to include all types of education and training without exceptions. A denial of access to education or training on the basis of financial need is prohibited. Anyone can access an educational or training establishment on the basis of minimum standards and the provision of an effective service, including an emphasis on the promotion of human rights and consideration of the Good Friday Agreement in order to give expression to all-Ireland provisions and the need for equality on an all-Ireland basis. Finally, the inclusion of 'cultural' convictions in (5) is designed to cover Irish language education at all levels. Segregated education on the basis of choice is permitted in this wording but only in a context where all other non-discrimination provisions are catered for and there cannot be financial discrimination on the basis of this choice. The current legal exemptions in relation to the employment of teachers and the selection procedures for schools are not provided for in the above article.

## **12. Rights to freedom of thoughts, expression, information and association.**

Sinn Féin generally welcomes the proposals of the Human Rights Commission in this section. However, Sinn Féin believes that there are many legal instruments at the disposal of the British authorities, which serve to restrict freedom of opinion and expression. The concept of freedom of expression is incompatible with the maintenance of emergency legislation and the introduction of the Terrorism Act (2000). This must be reflected in the Bill of Rights.

The UN Special Rapporteur held that the British government was failing to investigate independently and fully, allegations concerning human rights violations in the north of Ireland. The Bill of Rights needs to reflect a commitment to make public all internal investigations into state killings in disputed circumstances in line with the recommendation of the UN Special Rapporteur on Freedom of Expression.

Sinn Féin believes that the Bill of Rights, in line with the recommendations from the UN Human Rights Committee as expressed in November 2001, should ensure that the Official Secrets Act 1989, cannot be used to prevent journalists from publishing matters of genuine public concern.

The Commission poses the question whether the Bill of Rights should supplement the rights to freedom of thought, expression and to receive and impart information as protected by Article 10 of the European Convention. Sinn Féin's position on this is that yes, there is a need here for supplementary rights reflecting the particular situation in the north of Ireland.

These supplementary rights need to cover:

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1. The obligation of the state to protect against sectarian abuse, and
2. To take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, social, political and cultural life.

### **13. Language rights**

Sinn Féin strongly disagrees with the approach of the Commission in this section. The Good Friday Agreement recognises the special status of the Irish language and the commitment to its protection and development made by the British government. This must be reflected in the Bill of Rights.

As the proposals of the Working Group make clear, the Irish language is a native language and should be protected and promoted in the Bill of Rights according to the commitments made in the Good Friday Agreement.

Sinn Féin believes that the Bill of Rights needs to reflect the unique circumstances of the Irish language; its key importance for the sense of identity and parity of esteem for significant sections of the population and the centrality of the issue of recognition for the Irish language in the process of conflict resolution.

As such the Bill of Rights should reflect the highest international standards in relation to the treatment of indigenous languages. Additional legislation for the Irish language needs to be enacted, based on the scale and scope of the Welsh Language Act.

In order to address the weaknesses in the draft proposals Sinn Féin proposes the following wording to amend this section:

'No citizen will be placed at a disadvantage as a result of having Irish as their first language or as their language of choice. Therefore, every citizen and every organisation has the right to obtain all the services of every state organisation and every state funded organisation through Irish, free from any impediment or extra cost to themselves and that those services shall be of equal standard and congruent with similar services provided through English'

'Everyone has the right to use the language of their choice and to participate in their chosen social, economic, religious and cultural life but no-one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights'

'The State recognises the importance of respect, understanding and tolerance in relation to linguistic diversity, including Irish, Ulster-Scots, the languages of the deaf community and the languages of the various minority ethnic communities, all of which are part of the cultural wealth of the island of Ireland'.

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'Every person belonging to a linguistic community shall have the right to use their language in public and in private life with no unjustified distinction, exclusion, restriction or preference intended to discourage or endanger the maintenance or development of the language'

It will also be necessary for the Bill to empower the making of further statutory orders or regulations and to further define citizens' rights in relation to the Irish language, as may be appropriate in line with the future positive development of the Irish language.

## **14. Social, economic & environmental rights**

Sinn Féin broadly welcomes the Commission's proposed rights in this section.

We agree that inclusion of social, economic and environmental rights in the proposed Bill of Rights reflects current international practice and is in line with other international instruments to which the British government has already signed up.

The inclusion of social and economic rights can help ameliorate long standing social and economic rights deprivations, which are unique to the north of Ireland and flow from the conflict.

Sinn Féin believes that these rights deprivations can best be addressed in the form of substantive rights protection. Sinn Féin agrees in this regard with the analysis of the Working Group that in this way the Bill of Rights could provide a concrete means to address the social and economic consequences of the conflict.

As a result Sinn Féin suggests the following amendments:

(c) Rights to health care, point 2, to read as follows: 'Government shall take all necessary steps to promote good health and well-being, and to ensure adequate prevention and treatment of ill-health'.

Sinn Féin also strongly proposes to add the following right, taken from the South African Constitution, to improve and strengthen the fairly weak environmental aspect of this section:

Everyone has the right:

- a. To an environment that is not harmful to their health or well being;
- b. To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
  - i. prevent pollution and ecological degradation;
  - ii. promote conservation and
  - iii. secure ecologically sustainable developments and use of natural resources while promoting justifiable economic and social development.

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Sinn Féin strongly contests certain erroneous arguments being made against the inclusion of economic and social rights in the Bill of Rights on the grounds that none of these rights are specific or unique to the north. The main thrust of that debate is that in certain parts of Britain, there are similar levels of deprivation. Such arguments miss the fundamental point: there has been no political conflict in Britain whereas in the north, the very denial of economic and social rights served to fuel the conflict. Economic and social rights can no more be divorced from the political conflict than political rights. Clearly, the entrenchment of social and economic rights into the Bill of Rights can serve as a catalyst for change in this area of human rights standards whether in Britain or countries worldwide.

### **15. Interpretation**

Sinn Féin believes that the Bill of Rights should fully and faithfully reflect the Good Friday Agreement.

### **16. Limitations**

Sinn Féin believes that while limitations are inevitable, they should be severely restricted and there should be strong sanctions/censure available if breached. Sinn Féin welcomes the wording of the general clause on limitations on page 95, based on the South African example.

### **17. Emergencies**

Sinn Féin believes that the state of emergency and the emergency laws were never justified and that emergency laws should be abolished immediately

Aside from the unionist interpretation of the reasoning behind emergency legislation Sinn Féin agrees with the remainder of the state of emergency clause (pages 97-98). It must be passed by the legislature, there is a time limitation and it can be tested in the courts.

However, Sinn Féin does not accept that Westminster can have overarching powers in relation to the north.

### **18. Enforcement**

In relation to the enforcement of the Bill of Rights Sinn Féin believes that the Commission should again refer back to the Good Friday Agreement and the clear direction it gave to the harmonisation of rights standards in an all-Ireland context. Internationally, Constitutional Courts are accepted as independent mechanisms to interpret and adjudicate on matters relating to Bills of Rights. The advantages of this model are many, not least in terms of building confidence in relation to human rights and ensuring that a human rights based culture develops among the judiciary. Sinn Féin is opposed to the idea that the Privy Council, as proposed by the Human Rights Commission could be used as a constitutional court.

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It is our opinion that a clause on remedies should be included in the Bill of Rights and that lower courts should refer up to higher courts if legislation is incompatible with the Bill of Rights.

Sinn Féin also believes that anyone with a legitimate interest should be able to bring forward a case on the basis of reasonableness and that it is sensible that there should be a mechanism whereby the compatibility of legislation is tested before it becomes law (as is the case in the 26 Counties).

## **19. Entrenchment and Amendment**

Sinn Féin believes that the Bill of Rights should be entrenched regardless of the political circumstances/sovereignty over the north. Amendments and improvements to the Bill should be facilitated as circumstances change through British-Irish agreements with neither government able to alter the Bill of Rights without the agreement of the other, possibly with the use of external guarantors.

It is also Sinn Féin's position that rights can only be improved upon, not deleted or diluted.

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### **Sinn Féin response to 'Making a Bill of Rights' - Executive Summary**

Sinn Féin is committed to the creation of a broad ranging Bill of Rights for the north of Ireland as the first step towards enhancing and harmonising human rights standards throughout the island as established in the Good Friday Agreement.

The formulation of a Bill of Rights is an opportunity to address the legacy of over 30 years of conflict and human rights violations. This necessitates the establishment of a free standing comprehensive Bill of Rights that is implemented impartially and has enforcement mechanisms.

This submission has been produced in response to the draft proposals contained in the Human Rights Commission's 'Making a Bill of Rights for Northern Ireland, September 2001' and it follows Sinn Féin's initial submission to the Human Rights Commission in February 2001. It is based on a broad examination of international human rights standards and models and has also drawn on the views of individuals and groups with first-hand human rights experience.

Sinn Féin notes that there are many positive aspects of the Commission's consultation document and acknowledges that much progress has already been made in relation to democratic rights, social and economic rights and children's rights.

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We are, however, concerned that in several key areas, such as parity of esteem, language rights and constitutional issues, the Human Rights Commission has either ignored or misunderstood it's mandate.

For instance, the British and Irish governments and all of the signatories to the Good Friday Agreement endorsed the principle of parity of esteem yet the Commission recommends that it should not be a principle in a Bill of Rights. The Irish Language was given special recognition in the Good Friday Agreement however the Commission fails to build on this and indeed turns the international standard of protecting indigenous languages on it's head by appearing to equate Irish with ethnic minority languages. The Commission also avoids the inclusion of the constitutional position, as outlined in the Good Friday Agreement, in the Bill of Rights. We can only conclude that this is a deliberate omission and is something which should be rectified.

Human rights are non-negotiable and we must be clear that it is not the task of the Human Rights Commission to provide "acceptable" models for government. It is it's responsibility to adhere to the mandate it was given - through the Good Friday Agreement - to produce a Bill of Rights that will comprehensively address the "particular circumstances" that pertain in the north. This is the yardstick by which Sinn Fein has analysed the consultation document and put forward the following recommendations for change.

The following is a summary of Sinn Fein's view of the Consultation Document:

#### **1. Preamble**

Sinn Féin notes that the Preamble makes no reference to the principle of parity of esteem enshrined in the Good Friday Agreement. This principle should be explicitly contained in the Bill of Rights.

#### **2. Democratic Rights**

The right to self-determination is a human right, included in both the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights. It is the only human right for which an explicit formulation was agreed in the Good Friday Agreement, and adopted in referendums North and South, and it should be included in the Bill of Rights.

#### **3. Rights concerning identity and communities**

Sinn Féin disagrees with the Commission's approach to the principle of parity of esteem. This principle has already been agreed by the British and Irish governments and the signatories to the Good Friday Agreement but the Human Rights Commission has called on the public to endorse it's view that the Bill of Rights should not contain a provision on parity of esteem for communities. In short, the Commission has decided to ignore an important section of a democratically endorsed International Treaty. This position is not

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sustainable and the Commission needs to carry out its task under the Good Friday Agreement and advise government and public bodies on their general obligation on parity of esteem matters.

#### **4. Equality and non-discrimination**

Sinn Féin welcomes the provisions proposed by the Human Rights Commission in relation to equality and non-discrimination but believes that the proposals also need to take into account the issue of equality and non-discrimination at community level. Given that many of the causes of the conflict were rooted in community inequality Sinn Féin believes that the Bill of Rights commitment to equality must contain a provision to deal with group inequalities and not simply single anti-discrimination cases.

Sinn Féin is also of the opinion that the Bill of Rights should contain a clause allowing for positive action and supports the inclusion of the clause proposed by the Commission's own Equality Working Group.

#### **5. The rights of women**

Sinn Féin urges the Commission to revisit the consultation process on women's rights and ensure that a comprehensive chapter in line with best practice, such as that in the South African Constitution, is produced. At the very least, the four proposed clauses dealing with equality, reproductive health care, freedom from violence and fair, full and effective participation should be strengthened.

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

Sinn Féin believes that the wording in the draft Bill should be strengthened to reflect the centrality of the right to life and that there should be a responsibility on the state to prevent the loss of life, as well as to protect the right to life, since there have been clear instances where state agents have not moved to prevent murders from occurring and where those involved were not prosecuted when there was sufficient evidence.

Sinn Féin believes that there are no circumstances that would ever justify the use of torture, cruel and inhuman or degrading treatment.

#### **7. Criminal Justice and Administrative Justice**

Sinn Féin welcomes the Commission's acknowledgement that human rights and dignity should be core values of the Criminal Justice System. It is therefore surprising that the Commission does not join the UN Human Rights Committee and other respected human rights organisations such as the Campaign for the Administration of Justice (CAJ), Liberty and British Irish Rights Watch in calling for the abolition of repressive laws. There is no justification for the existence of such laws or for the Terrorism Act 2000.

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Such legislation is in breach of provisions of the International Covenant on Civil and Political Rights and the ECHR.

Sinn Féin believes that the Bill of Rights needs to provide for a Criminal Justice System, which is reflective of all of society in terms of its composition and operation.

Sinn Féin is of the opinion that arrested persons have a right to consult a solicitor of their own choice and have the right to the best possible legal protection and defence.

It is Sinn Féin's position that everyone shall have the right to be tried by jury. This article shall not prevent the establishment of local community alternatives provided these abide by the general provisions of the Bill of Rights.

A special section on the rights of children and young people in the Criminal Justice System is needed. Sinn Féin advocates that the age of criminal responsibility of children should be raised to at least 14.

### **8. The Rights of Victims and Survivors**

Sinn Féin is broadly supportive of the Human Rights Commission's proposals but notes that it contains no clear definition of victims. Sinn Féin has put forward a definition of victims and believes it should be included in the Bill of Rights. This section must be founded on the recognition that those who have suffered, whether as a direct result of the conflict or not, deserve equal treatment, whatever their status or circumstances. There must also be a recognition that people and groups were victimised within the existing law and that victimisation can also occur as a result of institutional, as well as individual, actions.

### **9. Rights to family life and private life**

Sinn Féin believes that protection, which is not already guaranteed under the terms of Article 8 of the ECHR, is required and that the right to privacy must be balanced with the right to be free from violence in the home.

### **10. The rights of children**

Sinn Féin generally welcomes the recommendations of the Commission in this chapter. However we are concerned that there is no recognition in the proposals of the fact that many of the children with whom this section is concerned are from communities that are emerging from a prolonged period of political conflict. Further consideration should be given to additional support structures/services arising from the legacy of the conflict.

The most recent case in point, the Holy Cross school, should make clear to the Human Rights Commission of the need to expand on (d) Protection rights (Page 67) to read: 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, including

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sectarian abuse, neglect or negligent treatment, bullying, maltreatment or exploitation, including sexual exploitation or abuse.

The Bill of Rights needs a special chapter on the Rights of Children. Children should be able to grow up in a stable, safe and loving family environment and this should be framed as a positive right.

Sinn Féin recommends that the Bill of Rights recognise the diversity of family arrangements.

### **11. Education Rights**

Sinn Féin welcomes the majority of the rights and principles contained in these proposals. However, Sinn Féin is concerned at the failure to address life-long learning and training and the class dimension of higher education particularly in relation to fees and funding.

Sinn Féin believes the Bill of Rights must take into consideration the quality of education and training on a life-long basis: equality of access to education and training, without exception: equality of access to educational and training resources: parental and child choice and input into educational and training matters (including minority languages): restrictions on religiously segregated education and training: awareness of the all-Ireland dimension to educational rights and the promotion of a human rights culture and respect for diversity with the curriculum.

### **12. Rights to freedom of thoughts, expression, information and association.**

Sinn Féin believes that there are many legal instruments at the disposal of the British authorities, which serve to restrict freedom of opinion and expression. The concept of freedom of expression is incompatible with the maintenance of repressive legislation and the introduction of the Terrorism Act (2000). This must be reflected in the Bill of Rights.

The Bill of Rights also needs to reflect a commitment to make public all internal investigations into state killings which took place in disputed circumstances in line with the recommendation of the UN Special Rapporteur on Freedom of Expression.

The Bill of Rights, in line with the recommendations from the UN Human Rights Committee as expressed in November 2001, should ensure that the Official Secrets Act 1989, cannot be used to prevent journalists from publishing matters of genuine public concern.

Furthermore the Bill of Rights needs to include obligations on the state to protect against sectarian abuse. It must also bring take effective steps to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, social, political and cultural life.

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#### **13. Language rights**

Sinn Féin disagrees with the approach of the Commission in this section. The Good Friday Agreement recognises the special status of the Irish language and the commitment to its protection and development made by the British Government. This must be reflected in the Bill of Rights.

The Irish language is a native language of key importance to the sense of identity and parity of esteem of significant sections of the population and should be protected and promoted in the Bill of Rights in line with the Good Friday Agreement.

Additional legislation for the Irish language needs to be enacted, based on the scale and scope of the Welsh Language Act.

#### **14. Social, economic and environmental rights**

Sinn Féin believes that the inclusion of social and economic rights can help ameliorate long standing social and economic rights deprivations, which are unique to the north of Ireland and flow from the conflict.

Sinn Féin believes that these rights deprivations can best be addressed in the form of substantive rights protection.

#### **15. Interpretation**

Sinn Féin believes that the Bill of Rights should fully and faithfully reflect the Good Friday Agreement.

#### **16. Limitations**

Sinn Féin believes that while limitations are inevitable, these should be severely restricted and there should be strong sanctions/censure available if breached.

#### **17. Emergencies**

Sinn Féin believes that the state of emergency and emergency laws were never justified and the emergency laws should be abolished immediately.

#### **18. Enforcement**

Sinn Féin believes that in order to imbue the maximum public confidence in legal interpretations and rulings on the Bill of Rights that an all-Ireland Constitutional Court be established. This would be in line with international best practice. The advantages of this are clear in terms of building confidence in relation to human rights and ensuring that a human rights based culture develops among the judiciary.

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We are totally opposed to such matters being dealt with by the British Privy Council. Mechanisms for enforcement should be established within the island of Ireland context.

#### **19. Entrenchment and Amendment**

Sinn Féin believes that the Bill of Rights should be entrenched and amendments and improvements to the Bill should be facilitated as circumstances change through British-Irish agreements which also guarantees that neither government is able to alter the Bill of Rights without the agreement of the other, possibly with the use of external guarantors.

It is also Sinn Fein's position that rights can only be improved upon, not deleted or diluted.