

THE BILL OF RIGHTS

VICTIMS

SHOULD A BILL OF RIGHTS FOR NORTHERN IRELAND PROTECT VICTIMS' RIGHTS?

Under the Belfast (Good Friday Agreement) and the Northern Ireland Act 1998, the Northern Ireland Human Rights Commission has been given the task of advising the Secretary of State on a Bill of Rights for Northern Ireland. The Agreement also says that the Bill should reflect the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities and parity of esteem. The exact wording of the relevant paragraph from the Agreement is reproduced in the box below.

EXTRACT FROM THE BELFAST (GOOD FRIDAY) AGREEMENT, 1998

'The new Northern Ireland Human Rights Commission will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and — taken together with the ECHR — to constitute a Bill of Rights for Northern Ireland.

Among the issues for consideration by the Commission will be:

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

One of the questions which the Human Rights Commission has to ask itself is whether and, if so, how the rights of victims should be protected in a new Bill of Rights. This pamphlet tries to deal with some of the issues which arise for consideration in this context. The pamphlet also includes extracts from relevant international standards.

The issues and options set out in this pamphlet are not exclusive and the Commission would welcome other suggestions and proposals on this aspect of its work. The ways in which you can make your views known are set out at the end of the pamphlet.

EUROPEAN DEVELOPMENTS

Throughout its consultation period the Commission will have to keep up to date with developments in human rights law in Europe. There is currently a proposal for a new European Union Charter of Fundamental Rights, which may address a broad range of civil, political, economic, social and cultural rights. However, whether and how such a Charter will be enforceable locally is at present unclear. The European Union is also in the process of producing new Directives aimed at protecting people more effectively against discrimination, particularly racial discrimination and discrimination within the sphere of employment. The Council of Europe, likewise, has drafted a new Protocol to the European Convention which will provide additional protection against discrimination. If a coherent human rights framework is to be provided for Northern Ireland, a Bill of Rights for Northern Ireland must clearly take into account not only the existing European Convention but also the potential developments mentioned here.

SOME ISSUES FOR CONSIDERATION

- (a) Who should be treated as a victim?*
- (b) What special rights should victims have?*
- (c) What does the European Convention on Human Rights have to say about victims?*
- (d) What do other international documents on human rights say about victims?*

(a) Who should be treated as a victim?

If a Bill of Rights for Northern Ireland is going to confer special rights on victims it will need to define clearly who qualifies as a victim for this purpose. Is the term to embrace only those who have suffered as a result of the troubles in Northern Ireland? If so, when are we to say those troubles started, and what causal link does there have to be between the troubles and the suffering experienced? What kind of suffering needs to have occurred? Would bereavement be required? Or continuing pain? Or sadness? If the term victim is to embrace people other than those who have suffered as a result of the troubles, does it include victims of property damage, of car accidents or even of illnesses? Are people to be excluded from the category of victim because of their own background or what they were doing when they experienced the suffering?

(b) What special rights should victims have?

Should victims be given special rights to be informed about the progress being made with any official investigation into the incident in question? Should they be entitled to compensation, and how should the amount of compensation be calculated? Should victims have a say in the punishment meted out to those persons found guilty in a court of law of causing the suffering in question? Is something like a Truth Commission called for in Northern Ireland and, if so, what should its terms of reference be?

(c) What does the European Convention on Human Rights have to say about victims?

The European Convention on Human Rights guarantees a range of civil and political rights, such as the rights to life, liberty, a fair trial, privacy, freedom of religion, freedom of speech, freedom of association and freedom from discrimination. In Article 5 it says that everyone has the right to “security of person” and that everyone who has been the victim of detention in breach of the Convention has a right to compensation.

The Convention also says that every person whose rights and freedoms set forth in the Convention are violated must have an effective remedy before a national authority (Article 13 of the Convention). Although this provision has not been made part of the law in the United Kingdom under the Human Rights Act 1998, section 8 of that Act confers on British judges a discretion to give whatever remedy they think is appropriate in the circumstances to a person whose Convention rights have been violated. The European Convention does not otherwise specify what the nature of the remedy given to victims should be; it does not, for example, say that victims of violent crimes should be given information about the prosecution of those crimes or that they should be allowed to tell a court what effect the crime has had on their lives.

(d) What do other international documents on human rights say about victims?

There are not many documents drawn up by inter-governmental bodies dealing with victims' rights. The most comprehensive is the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

Victims of Crime

Paragraph 3

The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

Paragraph 4

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

Paragraph 5

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

Paragraph 6

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

- (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
- (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
- (c) Providing proper assistance to victims throughout the legal process;
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
- (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

Paragraph 7

Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

Paragraph 8

Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

Paragraph 9

Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

Paragraph 10

In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

Paragraph 11

Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

Paragraph 12

When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

Paragraph 13

The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

Paragraph 14

Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

Paragraph 15

Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

Paragraph 16

Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

Paragraph 17

In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in *paragraph 3* above.

WHAT CAN I DO TO MAKE SURE THAT MY VIEWS ARE TAKEN INTO ACCOUNT BY THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION WHEN IT IS DRAWING UP ITS RECOMMENDATIONS ON THESE ISSUES?

You can contact the Commission at any time to express your views. The address, telephone, fax and email numbers are set out below. You can use the response sheet in this pamphlet to record your views. If you have a special interest in any of the issues identified above, you can also ask to be included in the arrangements for more detailed discussion on that issue. The Commission has established a working group of individuals and representatives with a special interest in this area to advise it on more detailed formulations which might be considered for adoption. That working group can also be contacted through the Commission; it would be interested in hearing from you. A Victims' Rights Project has been set up to look in particular at the position of victims of violence as regards compensation, access to information, accountability mechanisms and truth. The project worker, Mary Waldron, will be compiling a report for the Commission in March 2001.

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BILL OF RIGHTS PAMPHLETS

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| 1. <i>A Bill of Rights for Northern Ireland</i> | March 2000 |
| 2. <i>The Bill of Rights: Introduction</i> | September 2000 |
| 3. <i>The Bill of Rights: Children and Young People</i> | September 2000 |
| 4. <i>The Bill of Rights: Criminal Justice</i> | September 2000 |
| 5. <i>The Bill of Rights: Culture and Identity</i> | September 2000 |
| 6. <i>The Bill of Rights: Education Rights</i> | September 2000 |
| 7. <i>The Bill of Rights: Equality</i> | September 2000 |
| 8. <i>The Bill of Rights: Language</i> | September 2000 |
| 9. <i>The Bill of Rights: Social and Economic Rights</i> | September 2000 |
| 10. <i>The Bill of Rights: Victims</i> | September 2000 |
| 11. <i>The Bill of Rights: Women</i> | November 2000 |
| 12. <i>The Bill of Rights: Implementation</i> | September 2000 |

Any or all of the pamphlets are available from the Northern Ireland Human Rights Commission.

BILL OF RIGHTS RESPONSE SHEET

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The Northern Ireland Human Rights Commission welcomes responses on the proposed Bill of Rights in any form. It would be particularly helpful to have your comments and suggestions on the various issues raised in this pamphlet. This response sheet is intended to make it easy for you to do so.

1. *Do you think that special provisions on victims' rights should be included in the Bill of Rights?*

Yes

No

Don't Know

2. *Please add the reasons why you think some special provision on victims' rights may be needed:*

3. *What particular rights for victims do you think should be included? If possible give your reasons.*

4. *Can you suggest how these rights might be formulated – would any of the examples given in the pamphlet be a good model?*

If there is not sufficient space on this sheet please use extra sheets. You can if you wish enter your response on this form on the Commission's website at www.nihrc.org.

PLEASE RETURN TO: NORTHERN IRELAND HUMAN RIGHTS COMMISSION, TEMPLE COURT, 39 NORTH STREET, BELFAST, BT1 1NA; FAX: 028 9024 7844, EMAIL: NIHRC@BELFAST.ORG.UK