



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**A BRIEFING ON THE METHODOLOGY USED IN
PREPARING THE ADVICE OF THE NIHRC TO
GOVERNMENT ON A BILL OF RIGHTS**

In the course of its work, the Commission has reviewed its mandate, under the Northern Ireland Act 1998, to advise the Secretary of State for Northern Ireland on the scope for defining rights, supplementary to the European Convention of Human Rights, to reflect the particular circumstances of Northern Ireland, which, taken together with the Convention, would constitute a Bill of Rights for Northern Ireland.

The Commission has consulted widely on this process and fully considered the Final Report of the Bill of Rights Forum. In fulfilling its mandate the Commission has developed guidelines to inform its discussion on what rights should be included in its advice to the Secretary of State. These guidelines have been informed by the experience and work of the Commission since its inception, recent submissions¹, the Final Report of the Bill of Rights Forum² and further discussions, including legal advice, around the process of discharging its statutory duty to advise the Secretary of State on a Bill of Rights for Northern Ireland. This paper describes these guidelines.

¹ See the Submission to the proposed Round Table on a Bill of Rights for Northern Ireland, (which subsequently became the Forum), available on www.nihrc.org

² Including reference to the reports of the Working Groups of the Forum where appropriate.

The guidelines for discussion of each proposed right

In the case of each proposed right, the Commission has applied the following guidelines in its discussion:³

The particular circumstances

1. Is the case made that the need for this proposed right arises out of the particular circumstances of Northern Ireland?⁴

The legal aspects

2. Is the proposed right:
 - a) supplementary to the Human Rights Act 1998
 - b) supplementary to those provisions of the European Convention on Human Rights not reproduced in schedule 1 to the Human Rights Act 1998 and
 - c) compatible with their existing provisions?
3. Is the case made that the right is not adequately protected under the European Convention on Human Rights and the Human Rights Act?
4. Is the proposed right in line with best practice according to international instruments and experience?

The principles of mutual respect and parity of esteem

5. Will the proposed right help to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem?⁵

The interests of the people of Northern Ireland

6. In light of the above, taking into account what the consequences might be (positive and negative) of including this proposal in the Bill of Rights, the content of the Forum's Final Report, the support and opposition regarding the proposal, the context of

³ With the exception of the last two questions, the enumeration is for convenience and does not imply a sequential process.

⁴ See below for supplementary guidelines for the discussion of the "particular circumstances of Northern Ireland" to which the Commission may have regard.

⁵ See below for an interpretation of this formulation.

human rights in the UK and on the island of Ireland and any submissions made to the Commission on the subject, does the Commission believe it would be in the interests of the people of Northern Ireland?

The content of the Commission's advice

7. Taking into account all the above and having regard to the totality of rights considered for inclusion in a Bill of Rights, does the Commission consider a) that this proposed right should be included in its advice to the Secretary of State and b) that any amendments or additions are necessary or desirable in order to ensure the coherence and effectiveness of the Bill of Rights as a whole?

Particular elements of the guidelines to which the Commission may have regard in its discussions

Whether a proposed right answers a need for extra protection arising out of the particular circumstances of Northern Ireland⁶

- A. Are there grounds for the belief that the right has been abused, neglected or restricted by state or non-state actors in Northern Ireland to an extent greater than or in a manner distinct from any abuse, neglect or restriction in other parts of the UK?
- B. Has the area of political, social, cultural or economic life that the proposed right covers been a cause, source or location of conflict and division between the two main communities in Northern Ireland?
- C. Is there a reasonable apprehension that the proposed right might be violated in the future to a particularly significant extent or in a particular way compared to other parts of the UK?
- D. Is the proposed right considered necessary or beneficial in enhancing mutual respect for the identity and ethos of both main communities and parity of esteem between them?

⁶ In its submission to the Forum, the Commission recognised that "its mandate rises from a peace agreement reached after a period of protracted conflict and a political process which established a set of principles and structures for the future governance of Northern Ireland. The mandate, when read in this general context, provides helpful guidance on the circumstances which are particular to Northern Ireland."

- E. Does the proposed right fall under the “issues for consideration by the Commission” listed in the Belfast (Good Friday) Agreement? These are: “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.”⁷
- F. Is the proposed right one of those which “against the background of the recent history of communal conflict,” the parties affirmed in particular in the Agreement?⁸
- G. Is the proposed right relevant to:
- i. a matter to which significant reference is made in the Agreement or
 - ii. one of the “general references to issues that have a human rights basis” in the Agreement?⁹

An interpretation of “reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem”

The Belfast (Good Friday) Agreement says: “These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem.” The text does not say “each additional right,” but nor does it say “these additional rights taken as a whole.” The Commission believes, therefore, that the test for any particular proposed right is, first, that it does reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem or, second, that it could make a contribution, with other additional rights, to the expression of these principles.

The principles themselves are not defined in the Agreement. The following points indicate an interpretation of the principles to which the Commission may have regard:

⁷ Belfast (Good Friday) Agreement, page 17.

⁸ Belfast (Good Friday) Agreement, page 16.

⁹ Final Report of the Forum, page 13 - the summary of the Chair’s Analysis of the Agreement.

- The identity and ethos of each community, including their distinctive elements, should be considered, recognised and respected
- Mutual respect and parity of esteem should be ensured – in so far as it is possible in a rights context – through a common commitment to fairness, equality and justice in all circumstances
- Government and public bodies have an obligation fully to respect, on the basis of equality of treatment, the identity and ethos of both communities

9 June 2008