

# What is a Bill of Rights?

Is it:

- A set of broad principles
- A “gap-filler” to add rights only relevant in NI
- The Fundamental Law of the new society here

Whatever about the philosophy, is it:

A legal document, fully justiciable, which must be clear and exact?

If so, it can also include “social rights” – the obligation then is to “respect, protect and fulfil”

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# Victims needs and rights

Victims of unlawful acts obviously have needs. Do they have rights? For you to say, but some arguments for including in a Bill of Rights:

A right in such a Bill has the force of law and the courts will enforce its implementation. This is different level to an administrative procedure or a Charter pledge.

Even where legislation guarantees a right in practice, its inclusion in a *fundamental law* gives it added weight and importance.

The Bill will act as a public declaration of the significance and priority that the new Northern Ireland gives to victims' rights.

To proclaim a right does not mean that it does not yet exist – it is as important to state that it should continue to exist.

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# Victims of the conflict or victims in general or both?

Problems with defining victims of the conflict:

No legal definition of the conflict – war, internal war, terrorism, crime wave

Various hierarchies of victim, depending on view of conflict

Legally, harm done to victim must be unlawful – creates problems, e.g. suicide of policeman brought on by stress; non-combatant lawfully shot by soldier

If a broad “social” definition adopted, what “rights” could you legally grant to this large category?

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# Old Commission's view

Formulation in draft BoR: *“to ensure that the loss and suffering of all victims of that conflict and the responsibility of State and non-State participants are appropriately and independently established and/or acknowledged.”*

A huge task – many initiatives attempting aspects, but should it be made a legal requirement?

In Victims' Rights Report (June 2003) Commission accepted “in view of the lack of clarity and consensus around a truth process and the impossibility of developing an acceptable legal definition of ‘victims of the conflict’” a reference in the BoR was not appropriate.

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# What Rights?

Various formulations of needs and rights of victims e.g.

“Guide for Policymakers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1999),”

Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to member states on assistance to crime victims

Web-site: [www.victimology.nl](http://www.victimology.nl) - portal for much material

One of the best is European Forum for Victim Services at [www.euvictimservices.org](http://www.euvictimservices.org) 3 Declarations – on social rights, rights during legal proceedings and standards of assistance

Following are formulations in first two Declarations:

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# Social Rights of Victims

The right to:

- receive recognition by society of the effects of crime and not to be discriminated against
- receive information regarding their rights and the services available
- have access to health care services
- receive financial compensation where the crime results in a loss of income
- have access to appropriate home security measures
- receive support and protection in the workplace
- receive support and protection in educational establishments
- compensation
- have access to free victim support services
- have their privacy protected

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# Rights in Criminal Justice Process

The right to:

- respect and recognition at all stages of the criminal justice proceedings
- receive information and explanation about the progress of their case
- provide information to officials responsible for decisions relating to the
- offender
- have legal advice available, regardless of their means
- protection both for their privacy and for their physical safety
- compensation both from the offender and from the State

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## **Acknowledgement**

**Victims have the right to formal acknowledgement that their rights as citizens have been infringed.**

## **Discrimination**

**Victims, 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.**

## **Access to Justice**

**Victims 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 have the right to a full, fair and effective investigation of their complaints and the circumstances of their victimisation, a fair judgement on the culpability of any identified person and an independent assessment of punishment, compensation or restitution.**

**Victims have the right not to participate in any decision on the future of perpetrator.**

**Subject to the law and the human rights of every party involved, victims have the right to choose between any available methods of resolving their grievance against a perpetrator.**

**Victims have the right to be present at any trial, hearing or investigation at which the defendant is also present.**

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## **Respect, Recognition and Support**

**Victims have a right to be recognised and acknowledged as having legitimate interests which must be taken into account at all stages of criminal justice proceedings or any other form of investigation or process.**

**In particular, the rights of victims of crime must be accorded the same priority as those of the defendant or alleged perpetrator.**

## **Right to Receive Information**

**Victims have the right to receive continuing information about any investigation, enquiry or other judicial proceedings arising out of the circumstances of their victimisation.**

## **Right to Provide Information**

**Victims have the right to make full statements of the whole circumstances surrounding their victimisation to police, other investigators or prosecutors.**

**In any judicial proceedings, or in any forum deciding the future of a perpetrator or the repair of harm done, after guilt has been admitted or decided, a victim shall have the right to make a statement, in person or through a representative or through the prosecution, concerning the impact of the crime or other wrong upon them.**

## **Privacy and Protection**

**Subject to the principles of justice and the public interest, victims 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.**

**Victims have the right to protection from intimidation and harassment.**

## **Right to Restitution**

**Victims have the right to receive appropriate restitution from offenders, subject to the latter's means and circumstances.**

## **Right to Compensation**

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

## **Right to Assistance**

**Victims 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 their victims in their operations.**

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## **Rights of Child Victims**

**All the rights and principles of protection of children contained in this Bill apply at every level and in every particular to child victims as substantive and enforceable rights.**

**Child victims are to be given priority by all agencies in upholding their rights and giving them protection and assistance.**

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