

Discussion paper on the particular circumstances of Northern Ireland and the particular rights affected by these circumstances

This discussion paper collates submissions on the particular circumstances of Northern Ireland and the particular rights affected by these circumstances from sectoral and political representatives/organisations on the Northern Ireland Bill of Rights Forum (the Forum).¹ It served as the base document for discussion on the particular circumstances of Northern Ireland at the ninth plenary session of the Forum on 7 December 2007.

This paper is divided into nine sections. Each of the Forum's seven working groups is allocated a section, under which relevant rights and particular circumstances identified in submissions are grouped. The eighth section collates submissions on equality, non-discrimination and other specific groups. The paper's ninth and final section groups remaining submissions into two subsections: general and interpretive comments on Northern Ireland's particular circumstances; and interpretive statements on the Belfast (Good Friday) Agreement (the Agreement).

Organisational submissions are ordered alphabetically in each section. An annex to this document collates statements by organisations that chose not to submit papers on Northern Ireland's particular circumstances².

¹ Papers were submitted by the: Alliance Party, business sector (two papers by Neil Faris), human rights NGO sector (CAJ), Catholic Church (Father Tim Bartlett and a submission from the Catholic Bishops), children's sector, DUP, trade unions sector (ICTU), Irish Council of Churches (the Very Reverend Dr Samuel Hutchinson), SDLP, sexual orientation sector (CoSO), Sinn Féin, UUP, and the women's sector.

² Including the disability sector, ethnic minorities sector, older persons sector,

For conciseness, only sections of submissions that directly address the particular circumstances of Northern Ireland and/or the particular rights affected by these circumstances have been reproduced in this paper. Page references for extracts taken from submissions are indicated in parentheses.³

1. Children's rights

The submission of the Catholic Bishops⁴ states that '(a)s Catholic Bishops we are wholly supportive of the general principle of promoting and defending the rights of children... (t)here is, however, some doubt as to whether the interests of children are best served through the presentation of a new and discrete section in the Bill of Rights on the Rights of Children' (at 5). The Catholic Bishops 'propose instead the direct incorporation and operation of the operative provisions of the UN Convention on the Rights of the Child as the best method of ensuring the effective protection in National Law of current international standards' (at 5).

The submission of the Catholic Bishops also 'suggest[s]' that the issue of the age of criminal responsibility 'does not properly belong to a Bill of Rights' (at 5) (see also economic and social rights for the Catholic Bishops' comments on children's education).

³ With the exception of Father Tim Bartlett's personal submission and the submission of the women's sector, both of which were submitted in email form.

⁴ Entitled 'A Response to the NIHRC Consultative Document, 'Malting a Bill of Rights for Northern Ireland' by the Catholic Bishops of Northern Ireland' [sic].

The children's sector⁵ states that the Bill of Rights: must meet the standards set out in the United Nations (UN) Convention on the Rights of the Child (CRC); should adapt CRC principles and provisions to ensure the highest standards of children's rights are incorporated into law; should both mainstream children's rights and contain a dedicated children's rights provision with child specific rights; should include socio-economic and civil and political rights; should make all children's rights justiciable; should place positive obligations on public authorities to prioritise children's rights when taking decisions, including budgetary decisions; should recognise rights rather than responsibilities; and should recognise the right of children to have their rights protected in the private sphere (at 20). The children's sector also states that the 'enumeration of children's rights should not be construed as a denial of children's rights set out elsewhere'; that CRC provisions should be tailored to the special circumstances of Northern Ireland; and that full incorporation of children's rights should take place at a constitutional level in the Bill of Rights (at 20).⁶

Specific rights identified by the children's sector⁷ (drawn from the CRC) include children's right to: enjoy their rights without discrimination; have their best interests made a paramount consideration in actions concerning them (including children's services, education, justice and health); appropriate legislative, administrative and other measures for implementation of their rights

⁵ Two submissions: 'Protecting children and young people's rights in the Bill of Rights for Northern Ireland – Why? How?'; and 'How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland – Learnings from international law and the experience of other jurisdictions' (Goretti Horgan and Dr Ursula Kelly), commissioned by Save the Children and the Children's Law Centre for the Children and Young People's Sector Bill of Rights Group.

⁶ 'How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland'.

⁷ 'Protecting children and young people's rights in the Bill of Rights for Northern Ireland'.

(including necessary resources); channels and a means to enable them to express their views; be aware of their rights; be detained only as a last resort; be treated in a manner consistent with their dignity and human rights; play and have access to space and leisure facilities; the highest attainable standard of health (along with the right of access to health facilities and services); justiciable social and economic rights (starting with a standard of living adequate to physical, mental, spiritual and social development); life and survival; and the right to realise their full potential (at 14).

CoSO⁸ states that the particular circumstances of Northern Ireland are such that the CRC 'should be acknowledged in the Bill of Rights so that public authorities, but also community and voluntary groups and private sector bodies, are subject to its terms, particularly the 'voice of the child'' (at 2).

The SDLP⁹ identifies lawlessness, violence, a questioning of the legitimacy of the State, sectarianism and intolerance as 'particular circumstances [that] should be reflected in a progressive statement of rights in relation to children's rights' in the Bill of Rights (at 6). To the SDLP 'the particular circumstances of our young people reinforce the argument for a comprehensive bill of rights generally, as a tool for delivering the fresh start promised by the Agreement, to educate our children, helping them come to an understanding of their rights and responsibilities, of difference and diversity... to ensure that no future generation of children will suffer as before' (at 6).

2. Civil and Political Rights

⁸ Submission entitled 'SO rights which are particular to NI'

⁹ Submission entitled 'SDLP Draft Position Paper – The "Particular Circumstances" of Northern Ireland – Implications for a Bill of Rights', October 2007.

Father Tim Bartlett¹⁰ supports 'the inclusion of and elaboration on the meaning and consequences' of civil and political rights, including freedom of conscience and religion (including issues around marching and protection of places of worship and religious gathering) and 'some creative thinking on community rights'. The submission of the Catholic Bishops also calls for the Bill of Rights to protect religious freedom and 'to recognize the right of individuals and religious institutions not to be obliged by State legislation to promote a view of fundamental human rights or values, such as the right to life or the value of heterosexual marriage and the family, which are contrary to their deeply held philosophical and religious convictions' (at 2). Addressing the right to life, the submission of the Catholic Bishops states that there 'should be no provisos or exceptions to the right to Life, from the moment of conception to natural death' (at 5). The submission of the Catholic Bishops also argues that it is not appropriate to deal with voting age in the Bill of Rights.

CoSO, addressing political representation and democratic rights and, drawing from the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (Yogyakarta Principles), states that 'the full enjoyment of the right to participate in public and political life and affairs...sould be "without discrimination on the basis of, and with full respect for, each person's sexual orientation and gender identity"' (at 2). CoSO wants 'respect for civil partnerships to be acknowledged in NI' (at 2) and for the Bill of Rights to contain a broad formulation of the right to found a family, mirroring language contained in the Yogyakarta Principles, which provides (at principle 24) '(e)veryone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or

¹⁰ Email entitled 'Material on Particular Circumstances', 29 October 2007, accompanying submission by the Catholic Bishops of Northern Ireland.

gender identity of any of its members' (at 2). CoSO also states that 'in light of unprecedented remarks made by public representatives in NI... representation/democratic rights must include respect of all sections of the community without any discrimination or harassment' (at 2).

The DUP supports addressing emergency laws in the Bill of Rights, considering this issue to fall within the particular circumstances of Northern Ireland (at 1).

ICTU's¹¹ submission addresses, in the context of trade union rights, freedom of association including the right to form and join trade unions.

The Very Reverend Dr Samuel Hutchinson¹² (writing as a member of the Forum) identifies the Northern Ireland conflict as neither ordinary criminality nor a conventional war, but a third thing 'that the criminal justice system was not designed to deal with' (at 1). He links this circumstance to the 'right to live free from paramilitary threat' (at 1).

The SDLP believes that the right to proportionate representation of the two main communities in elected bodies and the right to protection from coercive cultural assimilation by public bodies or as a result of public policy 'can be deduced from the general principles of the Agreement' (at 4). The SDLP also states that the Bill of Rights is instructed by the Agreement 'specifically to include' the rights to: free political thought; freedom and expression of religion; pursue democratically national and political aspirations; seek constitutional change by peaceful and legitimate means; and freely choose one's

¹¹ Submission entitled 'ICTU Submission to the Bill of Rights Forum - 'Trade Union Rights and the Particular Circumstances of Northern Ireland'', 29 October 2007.

¹² Submission entitled 'Particular Rights Affected by the Particular Circumstances of Northern Ireland'.

place of residence. The SDLP also supports addressing freedom of information in the Bill of Rights (at 7).

Sinn Féin¹³ identifies 'a system of local government, with severely, and exceptionally, restricted powers, remit, and participatory structures of governance, or engagement with NGO and community sectors [which]... continues, in many areas, to run, and legitimise exclusive, majoritarian governance' as a particular circumstance characterising Northern Ireland's society (at 2). Drawing directly from the Agreement¹⁴, Sinn Féin states that the following rights should be incorporated into the Bill of Rights: free political thought; freedom and expression of religion; and the rights to pursue democratically national and political aspirations, seek constitutional change by peaceful and legitimate means, and freely choose one's place of residence (at 3).

The women's sector¹⁵ states that in the Bill of Rights debate to date '(t)here is no acknowledgement that the conflict has impacted on women's lives in many ways'. Addressing democratic rights, the women's sector states that '(i)n the political and public sphere women are seriously under-represented. 18 of our newly elected Assembly of 108 members are women. By any measure women do not have full and equal participation in political and public life and access to power and decision making'. The women's sector continues: 'A commitment to positive action could have compelled political parties to select equal numbers of male and female candidates. No positive action measures have been introduced to deal with this and at the present rate we will all be into the next century before a critical mass of women in politics is reached... this situation is so fundamentally undemocratic

¹³ Submission entitled 'Note on Particular Circumstances', November 2007

¹⁴ Section 6 of the Agreement: 'Rights Safeguards & Equality'

¹⁵ Submission entitled 'The particular circumstances of Northern Ireland', 5 November 2007.

that the Bill of Rights must promote and protect women's rights in this sphere'.

In an address of violence against women and the right of women to dignity and physical integrity, the women's sector states that '(w)ithin the debate to date the gender-specific nature of domestic violence and sexual violence has been obscured. There is no 'gender parity' in terms of who is most affected by gender-based violence... Women are currently at threat of violence in the home, and society at large and little recognition or resources have gone into dealing with this onslaught. We need an acknowledgment of the problem and its impact on the lives of women and girls and an explicit commitment to eliminate gender-based violence. This should reflect the standard laid down in the 1993 UN Declaration on the Elimination of Violence Against Women, asking states to pursue by all appropriate means and without delay, a policy of eliminating violence against women'.

3. Criminal Justice and Victims

The Alliance Party¹⁶ identifies 'three imperatives' for the recognition of rights additional to those contained in the European Convention on Human Rights (ECHR)¹⁷: to address the factors that led to division and conflict in the past; to address the legacy of conflict and division in order to avoid the mistakes of the past, and to move Northern Ireland forward; and to address and build those aspects of society in Northern Ireland that could have mitigated or prevented the descent into division and conflict (at 2/3). Alliance also identifies victims and survivors of the conflict as part of Northern Ireland's particular circumstances (at 3).

¹⁶ Submission entitled "The Particular Circumstances of Northern Ireland" – Perspective of the Alliance Party'.

¹⁷ Full title the Convention for the Protection of Human Rights and Fundamental Freedoms.

Tim Bartlett supports 'the inclusion of and elaboration on the meaning and consequences' of criminal justice, victims, and rights to do with healing, reconciliation and truth telling.

CoSO, addressing homophobic violence, abuse and hate crime in Northern Ireland, states that it 'accepts that 'degrading treatment' under Article 3 ECHR provides some protection in these circumstances but considers that a harassment provision, possibly modified to accommodate other rights, or a right against violence and abuse, must be included in the Bill of Rights' (at 2).

The DUP supports an address of victims and inter-communal violence in the Bill of Rights, considering these issues to fall within the particular circumstances of Northern Ireland (at 1).

Samuel Hutchinson, acknowledging that "victim" is an emotionally charged term, states that '(w)e need to consider the rights of those who suffered bereavement, injury or loss as a result of the conflict, such rights to include entitlement e.g. to compensation, access to support services, health care, etc' (at 1).

The SDLP states that '(i)ssues of rights in the justice system were central to the conflict... The Criminal Justice Review has addressed many related issues but there remains a strong argument for including in our Bill of Rights, commitments consistent with international standards' (at 6). Addressing the rights of prisoners, the SDLP states that '(t)he Agreement includes a section in which the government commits itself to addressing the needs of prisoners in terms of rehabilitation and reintegration and this should be reflected in the Bill... the prison population includes many mental health sufferers and those with learning difficulties, who are arguably in prison, merely due to the inadequacy of other public services' (at 6).

Sinn Féin states that the Forum needs to look at 'the rights of victims of the conflict and truth... and at the rights of those accused with regard to the criminal justice system' (at 3).

The women's sector states that the 'gender specific nature of domestic violence and sexual violence' has been 'obscured' within the Bill of Rights debate to date. The women's sector also states that '(w)omen are currently at threat of violence in the home, and society at large and little recognition or resources have gone into dealing with this onslaught'.

4. Culture, Language and Identity

To the Alliance Party 'the most clear-cut additional rights for recognition [in the Bill of Rights] are those with specific application to deeply divided societies with clashes of identity on grounds of religion, language, culture or ethno-national identity' (at 3). Addressing identity, Alliance states that the adoption of 'an open, mixed and multiple approach to identity rather than institutionalising two exclusive identities can serve as an aid to peace and stability' (at 3). Alliance also states that the terms of the European Framework Convention on the Protection of National Minorities (the Framework Convention) should apply to all sections of society not just indigenous groups.

Neil Faris¹⁸ lends conditional support to the list of issues developed by Professor Stephen Livingstone¹⁹, which, Neil Faris states, is 'correctly focused in terms of the Agreement' (at 4). This list of issues includes language, citizenship, flags and marches.

Tim Bartlett supports 'the inclusion of and elaboration on the meaning and consequences' of cultural and linguistic rights, and equality and parity of esteem. He states that it

¹⁸ Submission entitled "Particular Circumstances?" – A Further Note', 29 October 2007.

¹⁹ The Need for a Bill of Rights in Northern Ireland (2001) 52 NILQ.

is 'manifestly more difficult to justify under the current terms of reference' debate on the Yogyakarta Principles or debate on minority rights which do not fall within the collective issues that the Church has identified. The submission of the Catholic Bishops states that 'in our view it is important in a pluralist society such as Northern Ireland to recognise that difference in culture, or religious or political beliefs is not of itself the sole or primary source of our communal difficulties but our failure to accommodate and celebrate such difference' (at 2). The Catholic Bishops also 'recognise the rights of all to have their language respected' (at 8).

The DUP²⁰ supports addressing parading in the Bill of Rights, stating that it falls within the particular circumstances of Northern Ireland (at 1).

Samuel Hutchinson states that '(t)he right to parade and the right to protest against parades are obviously part of our "particular circumstances". The former NIHRC seemed to ignore this issue; the Forum cannot avoid it' (at 1). He also states that, if the Forum's terms of reference permit proposals on such issues and family values and sexual orientation (see also section on economic and social rights), then such proposals should be fair and balanced, protecting 'the rights of all reasonable viewpoints... including the right to reasonable freedom of expression, and the right of individuals and corporate bodies like Churches not to be forced into accepting and promoting any particular set of beliefs, standards and values as a pre-condition for receiving grants from the public purse for the various charitable services they provide' (at 1).

The SDLP identifies and calls for, as central to Northern Ireland's particular circumstances, an 'express recognition of the conflict of national identity which underlies our historic problems, through the incorporation of community

²⁰ Submission entitled 'Particular Circumstances of Northern Ireland'.

rights' (at 3). To the SDLP, the following rights 'must be given specific protection by the Bill of Rights: the right of all people to identify themselves and be accepted as Irish or British or both, as they may so choose; the right to hold British or Irish citizenship, or both; and parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities' (at 3). The SDLP also states that the Bill of Rights is instructed by the Agreement 'specifically to include' the rights to freedom and expression of religion and freedom from sectarian harassment (at 4).

Sinn Féin, addressing Northern Ireland's particular circumstances, states that a 'society dominated by a single identity based on majoritarianism produced a unionist state for a unionist people' with resulting discrimination against minority and disadvantaged groups (at 2). To Sinn Féin, '(t)he North is a state which has been based on majoritarianism and domination by a single identity culture. This has fed a culture of systematic discrimination often reinforced by violent attack and fear, against any and all minority groups, and the socio-economically disadvantaged' (at 2). Drawing directly from the Agreement²¹, Sinn Féin states that the rights to freedom and expression of religion, freedom from sectarian harassment, and respect for culture, language, and the use of symbols and emblems for public purposes should be incorporated into the Bill of Rights (at 3). Sinn Féin also states that the Forum needs to look at marching with regard to the rights of host communities, language rights, and 'environmental and developmental rights which affect our communities rights to meaningful participation in decision-making [sic]' (at 3).

The UUP²², discussing the Framework Convention, endorses the view that '(a)ny entrenched bill of rights for

²¹ Section 6 of the Agreement: 'Rights Safeguards & Equality'.

²² Submission entitled 'Bill of Rights for Northern Ireland – 'The Particular Circumstances – The Ulster Unionist Party's Position', Dermot Nesbitt.

Northern Ireland or other parts of the United Kingdom or for Ireland as a whole should include provisions to ensure that communal rights are effectively guaranteed' (at 4). To the UUP, 'the best approach may be to incorporate the major provisions of the European Framework Convention on the Protection of National Minorities into any new bill of rights leaving the detailed provisions to be worked out in ordinary legislation' (at 4/5).²³ Further, addressing the nationalist 'aspiration for a united Ireland', the UUP 'notes that the 'aspiration' dimension of the nationalist position has already been accommodated within the terms of The Belfast Agreement and needs no further accommodation by way of consideration of 'the particular circumstances'.' (At 6)

5. Economic and Social Rights

The Alliance Party states that 'there was clearly an economic and social aspect to conflict in Northern Ireland, and there is also a clear economic and social legacy from the past, not least in terms of the distortions with respect to public expenditure and a legacy of lack of inward investment' (at 3). Alliance recognises 'some scope for economic and social rights arising out of the 'particular circumstances'', but also urges caution, suggesting the following draft language for inclusion in the Bill of Rights:

'Legislation shall be enacted to secure the protection of social and economic rights in line with the commitments made by the United Kingdom government when it ratified the International Covenant on Civil and Political Rights' (at 3).

²³ Forum for Peace and Reconciliation, Dublin (Boyle, Campbell and Hadden): 'The Protection of Human Rights in the context of Peace and reconciliation in Ireland'; Consultancy Studies Number Two, May 1996, at 6.

Neil Faris lends conditional support to the list of issues developed by Professor Stephen Livingstone²⁴, which includes education.

The submission of the Catholic Bishops states its support for the inclusion of economic and social rights in the Bill of Rights, holding that 'the inclusion of such rights is wholly in keeping with a reasonable interpretation of the clause 'to reflect the particular circumstances of Northern Ireland' prescribed by the Belfast Agreement' (at 8). The submission of the Catholic Bishops also identifies and welcomes the rights to 'property, health care, an adequate standard of living, housing, work and to a healthy and sustainable environment' (at 8) which appeared in the NIHRC's 2001 consultative Document Making a Bill of Rights for Northern Ireland. However, the Catholic Bishops strongly object to the inclusion of sexual and reproductive health care in the Bill of Rights (at 8/9).

Addressing children's education, the submission of the Catholic Bishops states that the 'Catholic Church fully supports the rights of all parents to send their children to schools of their choice' (at 7). They also call for the Bill of Rights to recognise the entitlement of 'schools promoting certain religious values' to exemptions in relation to the recruitment of teachers and the termination of their employment (at 7). Addressing the right to a healthy and sustainable environment, the Catholic Bishops consider that 'it would be appropriate for the Bill to seek to address the increasing environmental phenomenon of 'marking out territory' along sectarian lines through the unsolicited use of public or private property' (at 9).

Tim Bartlett supports 'the inclusion of and elaboration on the meaning and consequences' of economic and social rights, namely housing and education. Tim Bartlett states, however, that it is 'manifestly more difficult to justify under the current terms of reference' debate on

²⁴ See footnote 18.

reproductive rights, or debate on age, disability and health that do not fall within the collective issues that the Church has identified.

CoSO states that 'socio-economic rights must be included in Bill of Rights' (at 3). It also states that an address of education rights in the Bill of Rights 'cannot be parent focused' and should adequately account for 'the voice of the child' (at 3). CoSO also supports the inclusion of a strong equality provision in the Bill of Rights (at 3).

The DUP, applying the test that it has devised to determine which rights should fall within the remit of the Bill of Rights (see final section of paper), states that 'a wide range of issues such as many of those contained in the economic and social field, will have a very steep hill to climb to persuade us, or indeed be seen objectively as being particular to the circumstances of Northern Ireland' (at 2).

ICTU identifies three 'minimum core international standards' of trade union rights: the right to organise (the right of trade unions to freely establish their own constitutions, rules and elect their own representatives and the right of trade unions to freely organise their administration, activities and programmes, including political activity); the right to collective bargaining (the right of trade unions to engage in collective bargaining on behalf of their members and others, and the right of trade unions to engage in collective bargaining in all workplaces and in all matters relating to employment); and the right to strike (the right of trade unions to organise industrial action in defence of their social and economic interests, and the right of trade unions to organise industrial action in solidarity with other workers) (at 7).

Samuel Hutchinson states that, if the Forum's terms of reference permit proposals on such issues as abortion (see also culture, language and identity), then such proposals should be fair and balanced, protecting 'the rights of all reasonable viewpoints... including the right to

reasonable freedom of expression, and the right of individuals and corporate bodies like Churches not to be forced into accepting and promoting any particular set of beliefs, standards and values as a pre-condition for receiving grants from the public purse for the various charitable services they provide' (at 1).

The SDLP states that the Agreement stipulates that the Bill of Rights is 'specifically to include' the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity. The SDLP also calls for the Bill of Rights to address housing, employment rights, health, education, and the environment (at 7/8). Addressing the implementation of economic and social rights, the SDLP states: 'consistent with the approaches in other international instruments... we would anticipate that such rights would be referred to in the context of a reference to "available resources" and should not therefore, give rise to fears about unrealistic or unenforceable expectations, particularly in light of emerging international jurisprudence' (at 4).

Sinn Féin identifies as particular circumstances characterising Northern Ireland's society: 'housing, health and other public institutions run by mostly un-elected Quangos which have no democratic mandate or accountability to the people, which maintain sectarian policies, including continuing ghettoisation of communities'; discriminatory aspects of the education system; a 'predominantly satellite economy, dependent upon and run for and by, the needs of Westminster', lacking fiscal and monetary autonomy and powers to regulate commerce and trading agreements; particularly high economic inactivity rates, low investment growth, low expenditure on research and development and a non-productive service sector; 'systematic in-built rejection of opportunities to engage with the rest of the island, in joint economic development to mutual advantage'; and 'exceptionally high pockets of persistent disadvantage' (at 2).

Sinn Féin states that 'the Bill of Rights must reflect the need to ensure that socio-economic rights are defined as they have played a key role within our particular circumstances and can play a significant role in transforming our society if defined in a Bill of Rights'. Drawing directly from the Agreement²⁵, Sinn Féin also states that the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity should be incorporated into the Bill of Rights (at 3). It also states that the Forum needs to look at rights with regard to health, education, environment rights, housing, and employment, including trade unions rights and employers' rights (at 3).

The women's sector states that in the Bill of Rights debate to date '(t)here is no acknowledgement that the conflict has impacted on women's lives in many ways', including mental health issues, and women's life opportunities in education, employment and training. In a particular address of economic and social rights, the women's sector states that '(w)omen view the inclusion of socio-economic rights generally within a Bill of Rights as essential. There has been an abject failure in this society to promote the equality of women in society in socio-economic terms e.g. pensions, pay, social security etc. Much of this inequality stems from the lack of acknowledgement and (financial) value attached to the 'caring role' appropriated to women leading to blatant inequalities being faced by lone parents, carers and women pensioners, e.g. lack of affordable childcare'. The women's sector continues: '(t)he establishment of a culture of socio-economic rights could fundamentally lift the position of women in society - and thereby also lift many of the families and groups in society who are suffering from the dual nightmare of poverty and inequality'.

Addressing women's health, the women's sector states that '(b)ecause of women's particular reproductive

²⁵ Section 6 of the Agreement: 'Rights Safeguards & Equality'.

capacities, access to sexual and reproductive health services is critical to their health and well-being. Adequate resources for sexual health services, including family planning and reproductive rights is essential. Without a guarantee of access to these rights all other rights for women become contingent'.

6. Preamble, Enforceability and Implementation

The submission of the Catholic Bishops calls for the possible attachment of a preamble to each section of the Bill of Rights to ensure that the 'achievement of reconciliation, tolerance, mutual trust and the protection and vindication of the human rights of all', 'concepts of interdependence, mutual responsibility and the common good' and 'responsibility... for the promotion and observance of the rights recognised' in the Bill of Rights are 'overtly and consistently presented throughout the document' (at 3). Addressing enforcement, the submission of the Catholic Bishops expresses 'reservation' at the potential establishment of a new Human Rights Court (at 9).

The children's sector provides a series of child-specific recommendations toward the enforcement and implementation of the Bill of Rights, stating that: a provision for enforcing and implementing is central to the potential of the Bill of Rights to protect and promote children's rights; a comprehensive and effective review procedure should be established to ensure that the protection and promotion of children's rights is a continuous and comprehensive process; a comprehensive and meaningful review of the extent to which the law and policy complies with the Bill of Rights should be undertaken before it comes into force; a constitutional court should be established to hear complaints from individuals and groups regarding breaches of the Bill of Rights; children and those representing them must enjoy access to the court to have their rights indicated; support, including financial support, and advocacy programmes should be established to assist children in this regard; and

the court should have the power to supervise the implementation of the Bill of Rights and should have the power to strike down legislation that is inconsistent with the Bill of Rights.

The children's sector also states that the Bill of Rights must contain a meaningful system for ensuring that all law and policy is compliant with children's rights principles and provisions in the Bill; must contain strong interpretive principles compelling those charged with interpreting its provisions to take children's rights into account; and should be accompanied by a widespread campaign to educate and raise awareness among children and young people, and adults, about the rights protected (at 20).²⁶

The SDLP, discussing the implementation of economic and social rights, states: 'consistent with the approaches in other international instruments...we would anticipate that such rights would be referred to in the context of a reference to "available resources" and should not therefore, give rise to fears about unrealistic or unenforceable expectations, particularly in light of emerging international jurisprudence' (at 4).

7. Women's rights

The submission of the Catholic Bishops condemns discrimination and violence against women. It also states that it is 'less certain, however, how an extensive treatment of the 'Rights of Women' as a specific category within the proposed Bill of Rights for Northern Ireland can be justified within the limits imposed on the scope of such a Bill by the Belfast Agreement. Rights in regard to equality and discrimination apply to every person, irrespective of gender. This fundamental principle of equality also mitigates against the proposed elaboration of Women's Rights as a distinct section within the Bill' (at 4/5). Tim Bartlett also states that it is 'manifestly more

²⁶ 'How the Bill of Rights should protect and promote the rights of children and young people in Northern Ireland'.

difficult to justify under the current terms of reference' debate on women's rights that do not fall within the collective issues that the Church has identified.

The SDLP states that the Agreement stipulates that the Bill of Rights is 'specifically to include' the right of women to full and equal political participation. The SDLP also states that '(t)he Agreement includes a specific commitment to address women's right to participation in public life. The particular circumstances of women in Northern Ireland today cannot be separated from the conflict and the pressures that it created for families. Many women were left struggling to hold families together following injury, bereavement and imprisonment which affected more men than women... While there have been advances in workers' rights over recent years, women still occupy the bulk of badly paid, part-time jobs' (at 7).

Sinn Féin, drawing from the Agreement²⁷, states that the right of women to full and equal political participation should be incorporated into the Bill of Rights.

The women's sector identifies a range of issues affecting women as a product of Northern Ireland's particular circumstances (see preceding sections). These include: women's under-representation in political and public life; violence against women; health, including mental health issues in communities and women's access to sexual and reproductive health services; and women's life opportunities in education, employment and training.

8. Equality, non-discrimination and other specific groups

The submission of the Catholic Bishops, in addressing women's rights, states that '(r)ights in regard to equality and discrimination apply to every person, irrespective of gender' (at 5).

²⁷ Section 6 of the Agreement: 'Rights Safeguards & Equality'.

CoSO supports the inclusion of a 'strong equality provision in the Bill of Rights and the mainstreaming of that clause throughout the Bill' (at 3). While 'not convinced that the list of equality grounds should be too exhaustive [in the Bill of Rights] as this would put pressure on the equality law system', CoSO 'wishes to see the equality provisions reflect multi-identity issues' (at 3). CoSO also states that 'in light of unprecedented remarks made by public representatives in NI... representation/democratic rights must include respect of all sections of the community without any discrimination or harassment' (at 2).

The SDLP presses that 'principles of universal entitlement to rights and equality before the law underpin all international human rights instruments' (at 2). The SDLP also states that the Agreement 'specifically requires us to draft new clauses relating to equality and non-discrimination... which is important given the importance of these issues locally, and given the acknowledged limitations of the ECHR on these matters. The SDLP wishes to see all 9 of the section 75 categories acknowledged in this regard' (at 3). The SDLP also calls on the Bill of Rights to address carers, disability, older people, and migrants and asylum seekers (at 7/8).

Sinn Féin identifies as particular circumstances characterising Northern Ireland's society, 'exceptionally high pockets of persistent disadvantage, within geographical areas, as in cross cutting disadvantaged sectors, such as women, lone parents, gays and homosexuals, migrant workers, rural dwellers, disabled, aged and youth' (at 2). Sinn Féin states that areas of the Agreement in relation to 'equality and non-discrimination, to parity of esteem between the two main communities and to the development of a culture of equality and human rights for all' should also be reflected in the Bill of Rights (at 3). Sinn Féin also calls on the Forum 'to identify how the rights of older people in our society, of carers, women, children and young people; of the

disabled, ex-prisoners, travellers, LGBT and of our new communities are to be protected' (at 3).

The UUP²⁸, addressing equality, states that 'there has been neither a clearly established baseline for the equality problem, or an effective measurement methodology to gauge the level of policy success' (at 2). Accordingly, the UUP states that '(s)ince both the 'values' of equality and justice are central to human rights and also Economic and Social rights are viewed as central to the discussion, the Bill of Rights Forum must play its part in this assessment' (at 2). Continuing its discussion of equality in the context of economic and social rights, the UUP states that, in strongly supporting fairness for all, it 'realises that equality is a sensitive issue and disadvantage must be addressed by Government and others who have such responsibility. The challenge to government and by implication the Bill of Rights Forum...is to address accurately the issues of equality that are of concern to people in Northern Ireland' (at 17).

9.1. General and interpretive comments on Northern Ireland's particular circumstances

To the Alliance Party, the phrase 'particular circumstances' is 'effectively meaningless' – open to both broad and narrow interpretations (at 1). Alliance also draws a distinction between 'particular' circumstances and 'unique' circumstances, pressing that the 'particular circumstances of Northern Ireland are... not necessarily exclusive to Northern Ireland' (at 1). For Alliance, any interpretation of the phrase must address Northern Ireland's deep societal divisions and legacy of violence, and must account for continuing changes to Northern Ireland's circumstances.

²⁸ Submission entitled 'Bill of Rights for Northern Ireland – Equality – Rights and Differentials – The Ulster Unionist Party's Position', Dermot Nesbitt.

The submission of the Catholic Bishops acknowledges 'the intimate connection between social disadvantage and exclusion and the history of physical conflict in Northern Ireland' (at 8).

The children's sector²⁹ identifies among Northern Ireland's particular circumstances: the legacy of the conflict; segregation in housing, education, health and leisure services; the high level of child poverty and low level of family support; inadequate provision of support for children and young people with additional needs; and the relationship between poverty, segregation and conflict. The Children's sector³⁰ states that 'maximum protections in the Bill of Rights for children and young people would be a powerful tool to address the realities of the past and present and help prevent these from happening in the future' (at 14).

CoSO, addressing the particular circumstances of lesbian, gay, bisexual and transgender (LGBT) people in Northern Ireland, states that Northern Ireland 'in part remains a deeply conservative society and there is still a gulf between advances in legal protection and the practical realities of the lives of many LGBTs in NI. In this context, it is essential that LGBT rights in NI are underpinned by the Bill of Rights' (at 1).

CoSO identifies the following issues affecting LGBT persons: enforced invisibility (imposed by society and self imposed through fear, discrimination, prejudice and practice); homophobic attacks (physical and verbal/personal and property; hate crime/intimidation; bullying and harassment in schools and invisibility and hostility within the school environment; bullying and harassment in the workplace; marginalisation in society/communities; marginalisation/exclusion from religious institutions; mental and physical ill health;

²⁹ 'Protecting children and young people's rights in the Bill of Rights for Northern Ireland'.

³⁰ Ibid.

political representatives making homophobic remarks; public representatives having lack of knowledge, insensitivity to and/or prejudice against LGBT people); institutionalised homophobia; non-reporting of incidents/attacks; and family estrangement (at 1/2).

ICTU states that 'a Bill of Rights which reflects the 'particular circumstances' of Northern Ireland implies a Bill of Rights that both deals with the legacy of the past and looks to a fair and inclusive future for all our citizens' (at 1). To ICTU, 'trade union rights are a vital component in the Bill of Rights for Northern Ireland; the workplace is where equality and fairness are tested, it is where workers can secure for themselves the fairness and equal treatment that is promised by all sections of civil society, state and government' (at 2).

Sinn Féin identifies a collection of particular circumstances that 'characterise' Northern Ireland's society. These include³¹: the 'undemocratic partitioning of the Irish nation by Britain'; 'the effects of 50 years of unionist party political and cultural dominance and discrimination'; 'the effects of the 40 years armed conflict which arose from this'; 'the effects of almost two decades of governance by direct rule from Westminster which was neither accountable to, nor responsive to, the needs of the people'; the entrenchment of sectarian discrimination in 'many key areas of society despite the legislative and other equality frameworks in place'; the 'social fabric in communities is increasingly decimated by gangsterism, intimidation, drug dealing and racketeering by armed gangs'; widespread 'sectarian, indiscriminate and violent attacks on minorities'; a 'highly polarised society in which the political parties draw their support primarily on the basis of where they stand on the constitutional issue' and patterns of racism and racist attacks linked to 'substantial immigration, from both EU and non-EU countries' (at 1/2).

³¹ Other particular circumstances identified by Sinn Féin are addressed in preceding working group sections.

The women's sector states that '(w)ithin the Bill of Rights debate to date there has been little acknowledgement of the particular circumstances of Northern Ireland in terms of the material reality of women's lives. There is no acknowledgement that the conflict has impacted on women's lives in many ways, affecting their under-representation in public and political life; violence against women; mental health issues in communities; the impact on women's life opportunities in education, employment and training opportunities'.

The women's sector continues: '(i)t is generally accepted that most international instruments reflect the minimum consensus of agreement between State parties who ratify any subsequent agreement. As a result of this, we would greatly welcome recognition of the international importance and overall ethos of CEDAW [Convention on the Elimination of All Forms of Discrimination against Women] coupled with a determination to both reflect and build upon the standards laid down by the Convention'.

9.2. Interpretive statements on the Belfast (Good Friday) Agreement

The Alliance Party states that the Bill of Rights process should not be 'hide-bound by an overly strict interpretation' of the Agreement (at 2).

Neil Farris presses that any 'additional rights to reflect the particular circumstances of Northern Ireland must be such as reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem' (at 1). He fleshes out his understanding of the phrase 'parity of esteem', and traces its development and application, stating: 'the phrase 'parity of esteem' between the two communities in the particular and specific context of the Agreement has a distinct and discrete meaning from the phrase 'parity of esteem between all communities' as it may be understood in the general context apart from the Agreement' (at 1). To Neil Farris, Taoiseach Bertie Ahern captured the essential elements of the phrase in the

context of the Agreement in a speech delivered in 2000.³² Neil Faris also encourages further Forum debate on the proper scope of the Bill of Rights (at 3) and on the ethical framework that would underpin it (at 3/4).³³

CAJ³⁴ recalls that the Bill of Rights ‘must ‘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’ (at 1), and calls for a Bill of Rights that is not too narrow in its range of rights (at 2), that offers a ‘vision of shared common values’ (at 2) and that can attract cross-community ownership.³⁵

CAJ also states that the ‘clear emphasis’ of the Agreement is ‘new beginnings and a fresh start’ (page 1) .

³² In which the Taoiseach stated: “The validity of both the Nationalist and Unionist identities in Ireland must be accepted; both of these identities must have equally satisfactory, secure and durable, political, administrative and symbolic expression and identity”/ “I and my Government stand by that principle, and it is reflected in the Good Friday Agreement. Each community’s sense of their own identity is one of the building blocks of the Agreement, and was throughout all of the discussions” (at 2).

³³ In an email sent on 6 December 2007, Neil Faris stated that this paragraph is not a full reflection of his position. He states: ‘(m)y point in both my papers is that this is what the text of the Agreement requires. I press the point because I believe we must all - in respect for the rule of law - apply legal texts for what they say - not what we might wish them to say. For what it is worth I am not an enthusiast for looking at Northern Ireland and rights issues in terms of the ‘two communities’. But that is what the people in the two jurisdictions in Ireland voted for by quite clear majorities - and that is what we must all respect and apply in this exercise in the Forum’.

³⁴ Submission entitled ‘Submission to the Bill of Rights Forum on the “particular circumstances of Northern Ireland” – Committee on the Administration of Justice (CAJ)’, October 2007.

³⁵ In an email sent on 11 December 2007, CAJ stated: ‘CAJ has worked extensively on potential rights to be included in a Bill of Rights, and its proposals are a matter of public record. However, for the purposes of this paper we have concentrated on the interpretation of the particular circumstances and will contribute on specific rights as and when appropriate’.

It extends to this point, stating that section 6 of the Agreement (Rights, Safeguards and Equality of Opportunity) 'must be approached as part of the overall emphasis on a fresh start and the fundamental importance of the protection of the human rights of all' (at 1). CAJ continues, '(w)hile it is clearly essential to justify the adoption of rights within the terms of the Agreement, an equally important issue in this debate must be which rights a modern Bill of Rights should contain, given comparative experience and international developments' (at 1).

To CAJ, 'the best way to ensure that the identity and ethos of both communities is respected, given the particular circumstances of Northern Ireland, is the creation of an inclusive Bill of Rights dedicated to the protection and vindication of the human rights of all' (at 1), and that is not reduced to only... those rights that address specifically Northern Ireland concerns in a narrow way' (at 2).

Tim Bartlett states that 'the broad intention of the parameters established by the Agreement are both clear and have legal authority. It has been the consistent view of the Church that the wording clearly infers that the 'additional rights' beyond the ECHR to be considered for a BOR(NI) are those which relate directly (as opposed to indirectly or loosely) in some way to the history, causes and consequences of the conflict here'. To Tim Bartlett 'the sword of Damocles hangs over all that we are doing as a Forum if we do not stay within a reasonable and legally sustainable interpretation of the parameters established by Agreement. We could be legally challenged at any point on this issue'. This augments the Catholic Bishops' submission, which states 'it is our view that any issue which falls outside the reconciling objectives and the specific terms of the Belfast Agreement should not be included in the Bill' (at 1).

The DUP, considering how to interpret the phrase 'the particular circumstances of Northern Ireland' states that it

'holds to the straightforward view that this must be answered using both the context of the phrase and the application of it in terms of our remit' (at 1). While expressing its 'distaste' for the Agreement, the DUP states that 'there is no escaping the fact' that the Forum's remit and the entire Bill of Rights process lies with the Agreement. From this the DUP draws two points: '(f)irstly, the need for a Bill of Rights is clearly put in the context of the incorporation of the ECHR into domestic law... (t)hus any need for a local Bill of Rights was put in the context of supplementary rights to the ECHR'; and '(s)econdly, and crucially the additional need for a Bill of Rights is framed within the context of the particular circumstances of Northern Ireland' (at 1).

To the DUP, the particular circumstances of Northern Ireland are 'further refined by the reference to it relating to the problems that have arisen by the clash between the two main communities in Northern Ireland', including issues such as victims, emergency laws and inter-communal violence, and, while the DUP 'is prepared to accept a wider definition of community in Northern Ireland, to include those who include the ethnic minorities', it considers that 'any wider interpretation would clearly go against the intention of the draftsmen' (at 1).

In determining which rights, then, may fall within the remit of the Bill of Rights, the DUP devises the following test: does the proposed right have a particular applicability to Northern Ireland which would not apply to other parts of the British Isles? Is it uniquely beneficial to someone in Northern Ireland? To the DUP, '(i)f the same additional right was given to an individual in Birmingham, Banff or even Bantry in their respective jurisdiction, and it would similarly benefit them as well as the individual in Belfast, then it could not be argued that this was a right particular to Northern Ireland' (at 1).

Samuel Hutchinson addresses the particular circumstances of Northern Ireland specific to criminal

justice and victims. In opening his submission, he states that Neil Fari's first submission on Northern Ireland's particular circumstances³⁶ is deserving of further consideration (at 1). Drawing from this submission, Samuel Hutchinson frames his discussion around the following construction: "The 'particular circumstances' [of Northern Ireland] are those concerning the lack of mutual respect and parity of esteem as pertaining between both communities in and before 1998" (at 1), and, in drawing a distinction between 'needs' and 'rights', he asks whether the Forum and its working groups should draw their own 'conclusions on this issue', or whether the Forum should seek advice from legal counsel on its terms of reference.

The SDLP states that the Agreement 'is widely accepted as a framework for the resolution of conflict and the development of our society based on parity of esteem, tolerance, equality and human rights' (at 1). To the SDLP, '(t)he particular circumstances are reflected in the content of the Good Friday Agreement... (t)he Agreement is the principal 'particular circumstance' we should have in mind. The architecture of the Agreement must be fully respected and reflected in the Bill of Rights' (at 1). The SDLP also identifies the 'fact that a majority of both unionists and nationalists support the creation of a Bill of Rights' as a 'feature of our particular circumstances' (at 2) and submits that Northern Ireland's 'particular circumstances extend to our international context' (at 8).

Interpreting the Agreement, the SDLP states that 'there is nothing in the language of the Agreement which would justify an excessively restrictive instrument. A timid approach to the Bill of Rights would in practice run counter to the spirit of the Agreement, which promises a fresh start' (at 2). Further, the SDLP states that the 'preamble and comprehensive nature of the Agreement's content and the references to a wide range of rights... make it clear that lasting resolution of conflict necessarily requires a focus on issues from civil and political rights to

³⁶ 'Particular Circumstances? A Note for the Residential Conference'.

economic, social and cultural matters, justice, policing and victims' rights' (at 4). Similarly, in addressing parity of esteem between the 'two main communities', the SDLP states '(t)here is no justification... for interpreting this reference as suggesting somehow that there should be parity of esteem only between these two communities... Any statement of rights would obviously be entirely lacking integrity and credibility if it were to apply only to certain sections of society' (at 2).

Sinn Féin, while identifying rights that it believes should be included in the Bill of Rights (see preceding sections), states that 'it would be premature to put forward definitive lists of rights as the Working Groups, political parties and representatives of civic society, are still engaged in their deliberations' (at 3). However, Sinn Féin calls for the Bill of Rights to define socio-economic rights and states that, in its view, 'the Agreement does not restrict us to formulating a narrow set of rights but charges us with building a new society where everyone's rights are enhanced and protected' (at 3). Sinn Féin also 'welcomes the Forum's collective agreement to produce recommendations/advice to the North's Human Rights Commission that will protect the rights of all in the Bill of Rights' (at 4).

The UUP traces the background to the Agreement in examining the particular circumstances of Northern Ireland. The UUP, stating that it 'bases its approach squarely on the principles of international law and practice' (at 5), also explores the Framework Convention and the treatment of the 'aspiration for a united Ireland' in the Agreement (at 6).

The UUP states that it 'is clear as to the meaning of the 'particular circumstances' with regard to consideration of a Bill of Rights, as contained in The Belfast Agreement' and that '(t)he boundaries for any discussion and agreement are clear'. To the UUP, the 'widening of the deliberation [on the Bill of Rights] has had a detrimental effect on the timescale and in turn proceeding to a conclusion by the

Northern Ireland Human Rights Commission as to any advice it may give on the “scope for defining in Westminster legislation rights supplementary to those of the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland” (at 10/11).

The UUP makes three further points on the Agreement. Firstly, while the UUP ‘has been understanding of those who wish to consider a wider perspective and has responded positively... there is a limit to this understanding and the party does not support ‘mission creep’ becoming, as it has tended to do, ‘mission gallop’’.³⁷

Secondly, the UUP ‘sees merit in any Bill of Rights, but strongly believes that any short-term benefits have been over-emphasised. Any benefits are likely to be long-term in that a Bill of Rights could act as a catalyst from: an educational perspective; attitudinal perspective; and, providing guidelines to assist decision makers while at the same time assisting in making the decision process more clear’. Thirdly, the UUP ‘believes in the authority vested in the elected democratic process and [that] any Bill of Rights should act as a guide to decision makers but not supplant the democratic process. The decision as to the degree of application of rights and to the prioritising of competing rights is a political choice’ (at 11).

³⁷ This point is linked to the UUP’s examination of the role of the NIHRC in the previous Bill of Rights process (in which, to the UUP, the Commission ‘went beyond the intention of The Belfast Agreement and also the law based on this Agreement’ (at 8)), as well as the UUP’s examination of the Human Rights Consortium’s treatment of ‘what The Belfast Agreement considered were the particular circumstances’ (at 8) and the ‘wide-ranging set of circumstances that [the Consortium] believed should comprise a Bill of Rights’ (at 9).

Annex: Statements by organisations that chose not to make submissions on Northern Ireland's particular circumstances

Older persons sector

'The older person's sector did not submit a paper on particular circumstances. We believe that an attempt to divide each part of the Forum into component parts actually dilutes the effect of the Forum's work and attempts to divide the indivisible, at least in the case of older people. Older people are not a stand-alone category. Older people are men, women, unionists, nationalists, people with disabilities, Catholics, Anglicans, Presbyterians, Hindus, Muslims, agnostics, carers, ex-prisoners, victims, parents, volunteers, health care professionals, etc. There are particular circumstances for older people - higher rates of poverty, higher rates of disability, but we would like to understand particular circumstances from a broader, more inclusive view which encompasses the community as a whole'.³⁸

Ethnic minorities sector

'The Ethnic Minority Sector did not submit our view on "particular circumstances". We understand that at the third meeting the Forum agreed the Terms of References which is an inclusive one (extend beyond the two communities). This is the best approach in developing the Bill of Rights within the Forum. Whereas the request for each sector to submit their view will push individual sector to use the victimhood approach to prove their existence in that particular circumstances which is counter-productive and will dilute the cohesion within the Forum that has been established over the last 11 months. Moreover the Bill of Rights is not a zero-sum game between communities but it is a collective effort to accommodate

³⁸ Email entitled 'Particular Circumstances', 13 December 2007.

differences with a good will to decide the best interests for the society'.³⁹

Disability sector

'There are many circumstances particular to Northern Ireland with respect to people with disabilities, including higher levels of disability due to the conflict. Those thousands of people disabled as a result of conflict join with other disabled people in Northern Ireland in experiencing

- Ø Lower educational attainment (twice as likely to have no qualifications)
- Ø Lower levels of employment (four times as likely to be unemployed as their non-disabled peers)
- Ø An economic inactivity rate of 64%
- Ø High levels of poverty (70% living on or about the poverty level)
- Ø Lack of, or reduced, access to a range of public services including transport housing, the built environment

There is no single interpretation among people with disabilities of the phrase 'particular circumstances' in the Agreement. This is a politically contentious issue and the political views of people with disabilities are at least as wide as those political views represented on the Bill of Rights Forum.

Consequently, the Disability Sector representatives felt that it would be inappropriate to put forward here [i.e. Forum document BORF 18] an account of those particular circumstances of people's real lives in a way that would in practice amount to an interpretation of the Belfast/Good Friday Agreement.

Those representatives have already hosted a meeting attended by over 70 individuals with disability to discuss

³⁹ Email entitled 'Particular Circumstances', 14 December 2007.

the potential contents of a Bill of Rights. The disability sector will continue to engage constructively in debates on this issue, seeking to forward the work of the Forum.

We will consider any proposals on this issue in terms of their general reasonableness and coherence, rather than their conformity with any particular contested interpretation of the Agreement'.⁴⁰

⁴⁰ Email sent 11 December 2007.