

## CIVIL AND POLITICAL RIGHTS WORKING GROUP PROPOSED PROVISIONS FOR INCLUSION IN A BILL OF RIGHTS

This document represents the outcome of the six meetings of the Working Group on Civil and Political Rights. Meetings were held every fortnight in October and November at which the Group went through the European Convention on Human Rights, noting that this standard could not be fallen below, but that there may be additional protection that could be added. Where necessary, certain provisions have been passed to the other working groups for their consideration. In addition, some issues have been sent to us from other Working Groups for our consideration and inclusion and we have endeavoured to address these in the course of our discussions. The legal advisors of all the Working Groups have also been in contact with each other to discuss various issues. The document below contains the provisions which had the agreement of all members of the Working Group present at the meetings. Where there is lack of consensus on a particular provision, this is noted in a footnote next to the relevant clause.

### 1. Preambular paragraph on equality

To honour those who have gone before, we commit ourselves to a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance and mutual trust; to the protection and vindication of the human rights of all; and to partnership, equality and mutual respect

and dignity as being the proper basis of all human relationships.

2. General equality clause

All persons are equal before and under the law and have the right to equal protection and equal benefit of the law.

3. Positive Action clause

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

4. General non-discrimination clause

All persons have the right to be protected from any direct or indirect discrimination whatsoever on grounds of age, birth, culture, disability, ethnic origin, colour, gender, language, marital or family status, national or social or economic origin,

political or other opinion, possession of a criminal or politically motivated conviction, race, religion or belief, sex, sexual orientation, socio-economic status, status as a victim, or other status.

Comment [Unp1]: The inclusion of the reference to possession of a criminal or politically motivated conviction' is not agreed by the UUP and Alliance.

## 5. Clause defining direct discrimination

Direct discrimination shall be taken to occur when a person has suffered, will or would suffer disadvantage on the basis of any of the grounds in clause (4 - see above), unless permitted by the provisions of this Bill of Rights as stated in clause 8 below.

## 6. Clause defining harassment as a form of discrimination

Everyone has a right to live free from all forms of harassment including on the basis of an individual's race, religion, sexual orientation and disability.

Harassment shall be deemed to be a form of discrimination within the meaning of paragraph (see clause 4 above), when unwanted conduct related to any of the grounds referred to in clause (see clause 4 above) takes place with the purpose or effect of violating the physical integrity or dignity of a person, or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

7. Clause defining indirect discrimination

Comment [RHM2]: UUP would like to reserve their position on this.

Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put any persons at a disadvantage by virtue of their status under clause (see 4 above), unless that provision, criterion or practice is objectively justified by a necessary aim, and the means of achieving that aim are appropriate and proportionate.

8. Clause defining exceptions

A difference of treatment which is based on a characteristic related to any of the grounds referred to in clause (4 above) shall not constitute discrimination where, by reason of the nature of the particular activities concerned, or of the context in which they are carried out, such a characteristic constitutes a genuine and determining requirement, provided that the objective is legitimate and the requirement is proportionate.



9. Right to life

- 1 Everyone's right to life shall be protected by law. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and

summary executions, suspicious deaths or deaths in custody including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

- 2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - a in defence of any person from unlawful violence;
  - b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c in action lawfully taken for the purpose of quelling a riot or insurrection.

The state shall prohibit by law all extra-legal, arbitrary and summary executions. Law enforcement officials may use force only when absolutely necessary and to the extent required for the performance of their duty.

The state should not practice, permit or tolerate enforced disappearances and should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to **life**.

No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

Comment [RHM3]: REFERRED TO CJ WORKING GROUP AND GENERAL SO COVER ALL GROUPS INCLUDING THE STATE. CJ group is considering the issue of disappearances

## 10. Prohibition of torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of torture or cruel, inhuman or degrading treatment or punishment.

The state must enact legislative provisions to prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.

## 11. Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term "forced or compulsory labour" shall not include:
  - a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention. Prison work shall be approached as a positive element of the rehabilitation of the individual and shall never be used as a punishment
  - b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d any work or service which forms part of normal civic

obligations.

4. Traffic in and exploitation of human beings and other similar forms of forced labour are prohibited and shall be offences punishable by law. The state shall protect and assist victims of such trafficking and exploitation with full respect for their human rights, taking into account in particular the age, gender and special needs of victims.

## 12. Right to dignity

Everyone has inherent dignity and the right to have their dignity respected and protected.

## 13. Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a the lawful detention of a person after conviction by a competent court;
  - b the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - e the lawful detention of persons for the prevention of the spreading of infectious diseases ; where it can be

reliably shown by objective medical expertise that a person has a mental disorder of a kind or degree that warrants compulsory confinement.

- f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

REST OF THIS SECTION TO BE DEALT WITH BY CRIMINAL JUSTICE GROUP

2 Everyone who is arrested and detained shall be informed promptly, in a language which he understands, of the reasons for his detention or arrest and of any charge against him.

Every individual arrested or detained has the right to communicate promptly with, and to be visited by a medical practitioner, a legal representative of their choice, and, under appropriate supervision when the investigation so requires, by a family member. Should we insert a clause here in relation to children to have an appropriate adult present to represent their interests ?

- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. Should there be some greater reference here to the particular needs of children ?
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation and an effective remedy.

No one shall be deprived of their liberty on the ground of failure to pay maintenance or a debt, fine or tax, unless the court considers that the person has wilfully refused to pay despite having the means to do so.

A woman shall have the right to keep her child with her in prison until the child reaches the age of one.

Comment [Unp4]: Sent to children's group.

The state has an obligation to recognise that custody for pregnant mothers and mothers of young children should only ever be used as a last resort for those women convicted of the

most serious offences and who represent a danger to the community. The state has an obligation to develop and use community based penalties for mothers of young children and to avoid the use of prison **custody**.

Comment [RHM5]: REFERRE D and being considered by CJ group

Where the defendant has child caring responsibilities, the principle of the best interests of the child must be carefully and independently considered by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the **child**.

Comment [RHM6]: REFERRE D TO CHILDREN'S GROUP

Where the courts are considering the seriousness of an offence, an offence will be considered to be aggravated by hostility if hostility was based on the victim's actual or perceived race, ethnic origin, colour, sex, gender, marital or family status, language, religion or belief, political or other opinion, possession of a criminal or political conviction, national or social or economic origin, birth, disability, age, sexual **orientation**.

Comment [RHM7]: REFERRE D TO CJ GROUP.

Comments received back from the children's rights group are that they are considering a range of issues including the following. Do you want to insert these provisions in here :

- age of criminal responsibility
- best interests of child to be paramount consideration in administratin of youth justice ?

#### 14. Right to a fair trial : TO BE DISCUSSED BY CRIMINAL JUSTICE WORKING GROUP

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing without undue delay by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
  - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b to have adequate time and facilities for the preparation of his defence;
  - c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Should we also include here some specific provisions on children's rights including the need for a criminal offence to be tried within an appropriate setting, participation in criminal proceedings and privacy, that detention should only occur in exceptional circumstances, the need to maintain contact with their parents, separation from adults in places of detention, particular attention to girls in places of detention, certain punishments being prohibited (such as dark cells, solitary confinement) and use of force only in exceptional circumstances ?

Other issues

- expand to include duty on state to give reasons for administrative decisions and a right to just administrative action ?
- Right to an appeal, ICCPR Article 14(5)
- Right to trial by jury, or same procedure apply to all,

Human Rights Committee concluding observations on UK report, para 18.

- Not testify against self, ICCPR General Comment No.13, para 14.
- Provisions on lawyers, Basic Principles on Role of Lawyers, para 1, access

Comment [Unp8]: No agreement on right to silence.

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## 15. No punishment without law

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was a war crime, crime against humanity or genocide.

## 16. Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence. Families exist in diverse forms. No family may be subjected to discrimination on any of the grounds as identified in section 4 above. Everyone has the right to found a family.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health [or **morals,**] or for the protection of the rights and freedoms of others.

Comment [RHM9]: The majority of the Working Group felt that this term 'or morals' should be removed. However, three members of the working group requested it remain.

## 17. Freedom of thought, conscience and religion

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law

and are necessary in a democratic society in the interests of public safety, for the protection of public order, health [or **morals**,] or for the protection of the rights and freedoms of others.

Comment [RHM10]: The majority of the Working Group felt that this term 'or morals' should be removed. However, three members of the working group requested it remain.

A person must not be compelled to take an oath, or to take an oath in a manner that is contrary to his or her religion or belief or that requires him or her to express a belief that he or she does not hold.

## 18. Freedom of expression

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Everyone has the right to **information**. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Comment [RHM11]: Regarding the right to information, UUP did not agree on the inclusion of this provision.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of public safety, for the prevention of disorder or crime, for the protection of health [or **morals**,] for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Comment [RHM12]: The majority of the Working Group felt that this term 'or morals' should be removed. However, three members of the working group requested it remain.

## 19. Freedom of assembly and association

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. Everyone has a right to form and to join a political party.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of, in particular, the right to live free from all forms of harassment including on the basis of an individual's race, religion, sexual orientation and disability, national security or public safety, for the prevention of disorder or crime, for the protection of health [or morals] or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Comment [RHM13]: This has not been agreed upon by the UUP.

Comment [RHM14]: The majority of the Working Group felt that this term 'or morals' should be removed. However, three members of the working group requested it remain.

## 20. Right to marry and form civil partnerships

Individuals of marriageable age have the right to marry or enter into civil partnerships according to the laws governing the exercise of this right.

## 21. Right to an effective remedy PASSED TO IMPLEMENTATION GROUP

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

## 22. Derogation in time of emergency PASSED TO IMPLEMENTATION GROUP

- 1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- 2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
- 3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

### 23. Right to participation

Comment [RHM15]: UUP do not agree with the inclusion of this right

Everyone shall have the right and the opportunity without discrimination:

1. to participate freely in public and political life and affairs, either directly or through freely chosen representatives;
2. the right to vote and to be elected at periodic genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
3. the right to access public service without discrimination, as defined in section 4 above.

### 24. Right to Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

## 25. Freedom of movement: ]

1. Everyone has a right to freedom of movement and freedom to choose his residence.
- 2 Everyone shall be free to leave any country, including his own.
3. No one shall be arbitrarily deprived of the right to enter his own country.
4. Every citizen has the right to a passport.
5. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
6. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health [or **morals**] or the rights and freedoms of others.

Comment [Unp16]: UUP reserve their position on the inclusion of this right

## 26. Right to nationality]

1. Everyone has a right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
3. Neither marriage or civil partnership nor the dissolution of a marriage or civil partnership between a national and an alien, nor the change of nationality by one of the spouses during marriage or partners during the civil partnership, shall automatically affect the nationality of the other spouse or partner.
4. The laws on nationality shall not contain distinctions or include any practice which amount to discrimination.

Comment [RHM17]: The majority of the Working Group felt that this term 'or morals' should be removed. However, three members of the working group requested it remain.

Comment [Unp18]: UUP are not agreed on inclusion of this right.