

Submission to the Bill of Rights Forum on the “particular
circumstances of Northern Ireland”

Committee on the Administration of Justice (CAJ)

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There has long been a consensus on the need for a Bill of Rights for Northern Ireland. All the political parties, and many other organisations, have consistently expressed support for the idea. While the current Bill of Rights process springs from the Agreement, the idea long pre-dates it. It is widely accepted that a Bill of Rights is something which Northern Ireland should have.

The terms of reference given to the Forum flow from the Good Friday Agreement. The clear emphasis in the Agreement is on new beginnings and a fresh start. The Declaration of Support states:

‘The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.’ (emphasis added)

Reference to the Bill of Rights is included in the section on 'Rights, Safeguards and Equality of Opportunity' and is mirrored in the terms of reference of the Forum

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

This section of the Agreement structures the current debate. As argued, CAJ contends that this section 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. While 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. There are several factors which support this reasoning.

The reference to the “human rights of all” has already been mentioned. The Agreement refers to rights supplementary to the European Convention on Human Rights, and the importance of drawing when appropriate on international instruments and experience. The instrument 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. The two listed elements are among the matters for consideration. In CAJ’s view, 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.

The Agreement clearly envisaged the Bill of Rights as a building block in the process of resolving conflict in Northern Ireland. In our view, the Bill of Rights should be an attempt to identify the basic values that we are all committed to. This is particularly important in the context of a radically divided society like Northern Ireland. Recognising a common set of rights in a document that all can commit to is thus an important element in building a new society, providing the possibility of common identification by all with the basic document.

For this reason, it is important that the rights identified should not be too narrow in their focus. The narrower the range identified, the less likely it is that individuals will identify with

the bulk of rights on the list. In particular, the more the rights specified are seen to appeal across the communities, the more likely it will be that rights can be seen as something that binds the communities together rather than divides them. There is now extensive international experience of this function of a Bill of Rights.

For this reason, we believe it could be misguided to focus a Northern Ireland Bill of Rights only on those rights that address specifically Northern Ireland concerns in a narrow way. Such a Bill of Rights would focus on issues of language, discrimination, minority rights, and so on. Such a Bill of Rights, rather than providing a vision that unites across the communities, reinforces the idea that human rights are narrowly concerned as part of a trade-off between those communities. It separates rather than offering a vision of shared common values. Paradoxically, therefore, the broader the definition of protected rights, the more it addresses specifically Northern Ireland concerns successfully.

To put this in the language of the terms of reference: the more that the Bill of Rights reflects a broad-based view of what rights are protected, one that appeals across communities, the more the Bill of Rights will "reflect the principle of mutual respect for the identity and ethos of both communities and parity of esteem." In doing that, it will address "the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience." Too often, in the past, rights have been thought to generate antagonism and

division. We miss something valuable, however, if we do not take advantage of the opportunity for rights to encourage trust and co-operation between groups that have previously been enemies. By setting out a common vision, a shared set of ideals in a Bill of Rights, we enable ownership of an important element of the Agreement across communities.