

THE BILL OF RIGHTS

WOMEN

SHOULD A BILL OF RIGHTS FOR NORTHERN IRELAND PROTECT WOMEN'S RIGHTS?

Under the Belfast (Good Friday) Agreement and the Northern Ireland Act 1998, the Northern Ireland Human Rights Commission has been given the task of advising the Secretary of State on a Bill of Rights for Northern Ireland. The Agreement also says that the Bill should 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 exact wording of the relevant paragraph from the Agreement is set out on the next page.

EXTRACT FROM THE BELFAST (GOOD FRIDAY) AGREEMENT, 1998

'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:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and*
- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.'*

The Human Rights Commission is concerned to engage women in the Bill of Rights debate, and to make sure that we consult effectively with women and women's groups. As far as possible the Commission's approach in the Bill of Rights consultation has been to mainstream women's issues and so working groups and events have been arranged largely around themes rather than specific identities. We acknowledge however, that there is also a need to specifically target and facilitate groups with a view to accessing their particular experience and expertise. To assist us in doing this, we have produced this pamphlet to try to raise some of the issues which particularly affect women, and to point out the special relevance to women of some of the debates over the content of a new Bill of Rights. Of course, these debates do not affect just women, and neither do they cover all those areas of concern to women.

This pamphlet includes extracts from Bills of Rights in other countries and from relevant international treaties. Where appropriate it refers to other pamphlets in our series on a Bill of Rights. Please see the full list at the end of this pamphlet.

WHY THE BILL OF RIGHTS DEBATE CAN BE OFF-PUTTING TO WOMEN

The term 'Bill of Rights' can seem very legalistic, abstract and removed from the day-to-day concerns of women. Bills of Rights in other countries have not always been particularly 'women-friendly'. Bills of Rights often set up adversarial court processes which can be inaccessible and based on 'male' ways of working, with men dominating the court room as well. The benefits of winning a case can seem very remote and difficult to access. Given that women's organisations in Northern Ireland are often under-funded, lobbying for a Bill of Rights can understandably take second place to the difficult demands placed on these organisations as regards their core mandate.

WHY SHOULD WOMEN BE CONCERNED TO INFLUENCE THE CONTENT OF THE BILL OF RIGHTS?

There are many reasons why women should and do want to contribute to the bill of rights debate despite reservations. In particular the contribution of women can ensure that:

- The bill of rights addresses issues of particular concern to women in a satisfactory way;
- The experience and expertise of women with regard to this debate are heard; and
- Women themselves are empowered as regards the peace process and law-making processes more generally.

WHAT PARTICULAR RELEVANCE DOES THE BILL OF RIGHTS HAVE FOR WOMEN?

The Commission has identified the main gaps in the European Convention on Human Rights which a Northern Ireland Bill of Rights might address. These are: equality rights, education rights, children's and young people's rights, language rights, culture and identity rights, social and economic rights, victims' rights, criminal justice rights and women's rights. Pamphlets have been produced on all of these areas raising questions which people might want to respond to. These pamphlets should be of use to women's groups wanting to think more about these specific issues. Women of course will have interests across the entire spectrum of rights being discussed. Their views on these rights will be diverse and often contradictory, as will men's.

This pamphlet seeks to highlight issues particularly relevant to women. Further information can be obtained from our other pamphlets. For general information on what a Bill of Rights is see the first pamphlet in our series: *Bill of Rights: Introduction* which looks at some of the issues relating to making a Bill of Rights for Northern Ireland.

SOME ISSUES FOR CONSIDERATION

- a] Debate on socio-economic rights
- b] Discrimination issues
- c] Protection for affirmative action
- d] Violence against women
- e] Reproductive rights
- f] Complex overlapping identities
- g] Implementation issues

a] Debate on Socio-Economic Rights

One of the gaps in the European Convention on Human Rights (ECHR) identified by the Commission is with regard to socio-economic rights. The ECHR and the Human Rights Act 1998 which incorporates it into the law in Northern Ireland, deal almost exclusively with civil and political rights, such as rights to freedom of assembly and speech and rights to fair trial. This leaves a gap with regard to socio-economic rights such as the right to housing or to an adequate standard of health care. Often the issues which women grapple with at a day-to-day level are socio-economic issues, rather than civil and political (although women's civil and political rights can of course also be violated). Internationally human rights conventions have often been criticised by women for creating a hierarchy of rights whereby civil and political rights are treated more seriously and have clearer enforcement mechanisms than socio-economic rights. Women have argued that this hierarchy has a gender dimension and relegates many women's concerns to a lower level or leaves them without effective remedies.

Women may well therefore be particularly interested in the question of whether or not to include socio-economic rights in the bill of rights, and how socio-economic rights might be made enforceable and accessible to women. For further information see: *The Bill of Rights: Social and Economic Rights* and *The Bill of Rights: Education*.

Example – The Constitution of South Africa (1996)

Section 27: Health care, food, water and social security

- 1] Everyone has the right to have access to -
 - (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

2] The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

3] No one may be refused emergency medical treatment.

b] Discrimination Issues

The Belfast (Good Friday) Agreement says that the Commission should specifically look at:

'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:

- *the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and*
- *a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.'*

The issue of discrimination against women crosses a lot of areas, from jobs to social security entitlements, to accessing public decision-making. Women might therefore have a particular concern as to how the bill of rights approaches discrimination issues. In particular women have often debated the extent to which anti-discrimination measures should treat everyone the same, and the extent to which achieving equality for women requires acknowledging differences between men and women in certain cases. Women should have a large amount of expertise in this area to contribute. For further information see the pamphlets: *The Bill of Rights: Equality* and *The Bill of Rights: Culture & Identity*.

c] Protection for affirmative action

The issue of affirmative action is clearly also part of the anti-discrimination area. Often when the issue of affirmative action has not been addressed in the text of a bill of rights (as it is not in the United States), it has led to a large amount of litigation. More modern constitutions have often provided specific protection for affirmative action as the example below illustrates. For further information see: *above pamphlets*.

Example – Canadian Charter of Rights and Freedoms (1982)

Section 15

- 1] Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

2] Subsection (1) does not preclude any law, programme or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

d] Violence against women

Internationally violence against women has become a key human rights issue. Many women argue that violence against women is itself a discrimination issue, as it contributes to a situation of inequality for women. Special international mechanisms have been set up to address the issue. For example the United Nations has created a 'Special Rapporteur on Violence Against Women' who provides guidelines on how to deal with this area. The issue of violence against women raises particular implementation issues, such as: should obligations be put on government only to do more to address violence against women? If so, how proactive should their obligations be? Or should obligations also be put directly on individuals? Normally bills of rights address only state action, but more recently bills of rights have also addressed the actions of others. For further information see the pamphlets: *The Bill of Rights: Victims* and *The Bill of Rights: Criminal Justice*.

Particular issues arise as regards violence against girl (and boy) children, such as criminalisation of prostitution, the particular needs of children in the criminal justice system, needs as regards treatment, and the right of children to be heard. For further information see the pamphlet: *The Bill of Rights: Children & Young People*.

Example – Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994)

Article 3

Every woman has the right to be free from violence in both the public and private spheres.

Example – General Recommendation 19 on Violence Against Women (United Nations Committee on the Elimination of All Forms of Discrimination Against Women)

[The] definition of discrimination includes gender-based violence, that is, violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention [on the Elimination of All Forms of Discrimination Against Women], regardless of whether those provisions expressly mention violence.

Example – United Nations Convention on the Rights of the Child (1989)

Article 12

- 1] State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- 2] For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

e] Reproductive Rights

(i) Abortion/termination of pregnancy

The Northern Ireland Human Rights Commission has not developed a policy on abortion/termination of pregnancy. However, the issue is one which has relevance for the Bill of Rights debate. The issue of who makes the decision as to whether and when a pregnancy can be lawfully terminated has been controversial in almost all places, including Northern Ireland. Like many other matters, the question of abortion is not just a legal one, but also for many has both cultural and religious significance. The Commission is aware from submissions already received of strong views taking different perspectives. It is also aware that the ethos of different communities within Northern Ireland needs to be borne in mind in this context. The following is an attempt to set out the current *legal* position and related practical implications to inform the debate. This is not to deny the many other aspects to the issue which others may seek to bring to the consultation process and which the Commission will consider. A central question around which debate could focus, is: is the Bill of Rights a suitable forum for addressing this issue, and if so, how should it best address the issue?

Legal Position

The law in Northern Ireland currently criminalises women or others who seek to 'procure a miscarriage'. However the courts have interpreted this law to have implicit exceptions. Under current case law in Northern Ireland a single doctor can make the decision to terminate a pregnancy (with the consent of the woman) in situations where to continue with the pregnancy would mean that the woman would become a physical or mental wreck. In practice a large number of women (an estimated 2000) travel to England every year for abortions/terminations either because they are unable to obtain them legally in Northern Ireland, or for reasons of confidentiality. Travelling to England entails additional expense, stress and limitations on the available pre and post abortion counselling.

A number of terminations do take place in Northern Ireland, but medical information suggests that the majority of these are on grounds of foetal abnormality, a ground that is arguably not clearly permitted under present interpretations of the law. Indeed it was argued by the Standing Advisory Commission on Human Rights (a body which existed prior to the Human Rights Commission being established), that the present law governing abortion in

Northern Ireland was so uncertain as to violate the ECHR requirement that criminal laws be clear and prospective.

On Tuesday 20 June 2000 the Northern Ireland Assembly adopted a motion essentially rejecting the extension to Northern Ireland of England's Abortion Act 1967 providing for abortion/termination in certain circumstances. A clear majority of politicians therefore seem opposed to any legal change.

Women clearly have diverse views on this subject. While the NIHRC has not developed a policy on abortion/termination, the following points can be stated to inform any discussion of how a Bill of Rights should or should not deal with abortion/termination of pregnancy.

- There is no clear international human rights standard dealing with abortion/termination of pregnancy, although domestic constitutions often deal with it in one way or another.
 - The current law in Northern Ireland may well be in violation of the ECHR and, after 2 October 1998, the Human Rights Act 1998, not for failing to provide for abortion, but for not being sufficiently clear to allow doctors and women to distinguish between legal and illegal action.
 - The European Commission and Court on Human Rights and other international human rights bodies have consistently refused to find that the foetus has an absolute right to life under the right to life provisions of international conventions.
 - The European Commission and Court on Human Rights and other international human rights bodies have never articulated an absolute 'right to choose' for women.
 - In practice putting a provision providing for rights relating to abortion (either for the foetus or the woman, or other relatives) will leave the interpretation of that provision, and decision-making in hard cases, to a small group of unelected judges.
- (ii) Equality in access to fertility treatment, family planning and reproductive healthcare (for example support for pregnant and breast-feeding women). A number of issues of equality between women and men with regard to fertility and other treatment may be relevant to the equality debate and the issue of socio-economic rights.
- (iii) Developments in medical science will confront society in general with ever more difficult problems concerning the ethics of certain forms of treatment, equal access to that treatment, the data protection implications of the treatment, and the rights of child-bearers as opposed to children themselves. The Genome Project, in particular, means that the prospect of genetic engineering is coming ever closer, and may raise human rights issues, some of which we cannot even anticipate at present.

f] Complex overlapping identities

Women from different backgrounds with particular experience of exclusion and human rights violations may have a particular contribution to make to the Bill of Rights debate. Lesbian and bi-sexual women, disabled women, women from minority groups, loyalist women, nationalist women, republican women, unionist women, carers – all these groups and others, may want to ensure that the Bill of Rights addresses their concerns.

g] Implementation issues

One of the most technical debates which the Commission will have to engage in is the debate around implementation. There is no point in having a good Bill of Rights which is difficult to enforce, or can be easily removed or 'got round'. Women often have frustrating experience of trying to access legal remedies. This is an experience which they should bring to the implementation debate. What are women-friendly processes of implementation? What options would women suggest to make rights accessible? For further information see the pamphlet: *The Bill of Rights: Implementation*.

HOW IS THE NIHRC CONSULTING WITH PEOPLE?

- *Education:* The NIHRC has set up and continues to run training courses for facilitators. Between September and December 2000 at least 400 people were trained on Bill of Rights issues. These people will provide in turn provide training within their own communities and work places. Educational materials have been produced and are available from the Commission including a 150-page *Bill of Rights: Training Manual* and an education video for use in training sessions.
- *Advertising:* Billboards advertising the consultation process were placed on over 40 sites across Northern Ireland during October and November 2000. Postcards will be produced and we also hope to impact on television and radio programmes.
- *Meetings:* In addition to providing speakers at locally organised events and encouraging groups to hold their own events the Commission has written to the local councils and hopes to hold public meetings in as many districts as possible.
- *Working Groups:* During 2000 the Commission established nine working groups having first taken steps to ensure that in doing so it was complying with the equality of opportunity duty imposed on all public authorities in Northern Ireland. These groups were invited to produce expert advice on identifiable gaps in the European Convention on Human Rights. The groups focused on: criminal justice; children and young people's rights; culture and identity; education rights; equality; implementation issues; language rights; socio-economic rights; and victims' rights.
- *Receiving submissions:* The Commission is currently and will continue to receive submissions from groups and individuals on the Bill of Rights and is committed to being flexible as to the form of submission.

- *Networking:* The NIHRC has been working to develop its networks in particular with the community and voluntary sector to promote the consultation process.
- The consultation process is under way and will continue during 2001. The Commission hopes to have preliminary advice ready in April/May 2001 which will be published for further consultation. A final submission to the Secretary of State will be made early in 2002.

WHAT CAN I DO TO ENGAGE IN, AND DEVELOP THE CONSULTATION PROCESS?

- Send your views on issues, or even formulations of rights, as an individual or as a group, to the Northern Ireland Human Rights Commission. The address, fax and email numbers are set out below. You can use the response sheet in this pamphlet to record your views.
- Encourage other women to do the same.
- Organise a meeting informing those within your organisation and those women with whom you work about the consultation process, or any of the issues which you think we should address. We will be happy to send a representative and advise you on content.
- Run your own training session. Training to do this is available in the form of our Training for Facilitator's course. For further information contact Edel Teague, the Commission's Education Worker or Roisin Carlin, Administrator. They will advise on the availability of courses.
- Run a conference (again with Commission participation if you wish) on any of the 'gap' issues, or other issues which concern you, and how they might affect women.
- In early 2001 the Commission intends to hold a Bill of Rights event designed to inform and assist women to contribute views on a Bill of Rights for Northern Ireland. The Commission will be actively seeking to involve women in planning the event.
- Finally, you might wish to suggest to other ways in which you would like the Commission to consult, which we will then consider.

The Commission can be contacted at:

Northern Ireland Human Rights Commission

Temple Court
 39 North Street
 Belfast BT1 1NA
Tel: 028 9024 3987
Fax: 028 9024 7844
Email: nihrc@belfast.org.uk
Website: www.nihrc.org

BILL OF RIGHTS PAMPHLETS

<i>1. A Bill of Rights for Northern Ireland</i>	March 2000
<i>2. The Bill of Rights: Introduction</i>	September 2000
<i>3. The Bill of Rights: Children and Young People</i>	September 2000
<i>4. The Bill of Rights: Criminal Justice</i>	September 2000
<i>5. The Bill of Rights: Culture and Identity</i>	September 2000
<i>6. The Bill of Rights: Education Rights</i>	September 2000
<i>7. The Bill of Rights: Equality</i>	September 2000
<i>8. The Bill of Rights: Language</i>	September 2000
<i>9. The Bill of Rights: Social and Economic Rights</i>	September 2000
<i>10. The Bill of Rights: Victims</i>	September 2000
<i>11. The Bill of Rights: Women</i>	January 2001
<i>12. The Bill of Rights: Implementation</i>	September 2000

Any or all of the pamphlets are available from the Northern Ireland Human Rights Commission.

BILL OF RIGHTS RESPONSE SHEET

WOMEN

The Northern Ireland Human Rights Commission welcomes responses on the proposed Bill of Rights in any form. It would be particularly helpful to have your comments and suggestions on the various issues raised in this pamphlet. This response sheet is intended to make it easy for you to do so.

1. *Do you think that special provisions on women's rights should be included in the Bill of Rights?*

Yes

No

Don't Know

2. *Please add the reasons why you think some special provision on women's rights may be needed:*

3. *What particular rights on women's rights do you think should be included? If possible give your reasons.*

4. *Can you suggest how these rights might be formulated – would any of the examples given in the pamphlet be a good model?*

If there is not sufficient space on this sheet please use extra sheets. You can if you wish enter your response on this form on the Commission's website at www.nihrc.org.

PLEASE RETURN TO: NORTHERN IRELAND HUMAN RIGHTS COMMISSION, TEMPLE COURT, 39 NORTH STREET, BELFAST, BT1 1NA; FAX: 028 9024 7844, EMAIL: NIHRC@BELFAST.ORG.UK