



**Research Paper 05/02
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NORTHERN IRELAND BILL OF RIGHTS CONSULTATION: BACKGROUND AND COMPARATIVE INFORMATION

This research paper provides background and comparative information to help inform views on the current proposals for a Bill of Rights, which were issued by the Northern Ireland Human Rights Commission in September 2001. The paper briefly explains the general significance of a Bill of Rights. It also outlines key developments in the Bill of Rights debate in the United Kingdom. As a basis of comparison, it highlights the approaches taken in five countries, namely Canada, the United States, South Africa, the Republic of Ireland and New Zealand, to the areas addressed in the current proposals. Finally, the paper lists potential issues about the current proposals that may merit further consideration.

Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

SUMMARY OF KEY POINTS

- Pursuant to the *Belfast (Good Friday) Agreement* and the *Northern Ireland Act 1998*, the Northern Ireland Human Rights Commission (NIHRC) is to advise the Secretary of State on a Bill of Rights for Northern Ireland (NI). The *Belfast Agreement* further states that the Bill of Rights should reflect the particular circumstances of NI and the principles of mutual respect for the identity and ethos of both communities and parity of esteem.
- The NIHRC officially launched its consultation in March 2000, which continued for the following year and a half with, e.g., the provision of training, the publication of discussion pamphlets, the establishment of working groups and the issuance of the current proposals in a consultation document entitled *Making a Bill of Rights for Northern Ireland: A consultation by the Northern Ireland Human Rights Commission* (the consultation document) in September 2001.¹
- This research paper seeks to inform views on the current proposals. It provides background and comparative information concerning: the general significance of a Bill of Rights; key developments in the United Kingdom (UK) Bill of Rights debate; comparisons made between the current proposals and other approaches; and potential issues about the current proposals.
- Section one briefly explains the general significance of a Bill of Rights. It states that a Bill of Rights could be described as a contract between a state and its people. It expresses in law the basic values of a society, and typically is a statement with a fairly high level of generality so that it can adapt to the changing needs of society for generations to come. Moreover, the prescribed rights usually are not absolute, and may be restricted by a limitations clause (in the Bill of Rights) or by a court's interpretation of a particular provision, in order to balance competing interests.
- Over four decades ago, a suggestion was put forward in the House of Commons in Westminster for a Bill of Rights in the United Kingdom (UK).² Section two highlights that to a lesser or greater extent there has been an on-going debate about the enactment of a modern constitutional arrangement in the UK. One that would give a new emphasis to citizens' rights and freedoms, entrenching them in the UK legal system and declare them an important practical and symbolic part of society.³
- But when it actually comes down to drafting a Bill of Rights, it is difficult to know exactly what to include – a host of questions arise. Examining approaches adopted in other countries is a useful means to consider these questions and how they may be answered in the context of a particular country. Such comparisons obviously have limitations given that it is only in the social, political, cultural and historical context of a country that a Bill of Rights truly comes to life.⁴
- Nonetheless such comparisons merit consideration: they allow relevant lessons to be drawn from other countries' experiences, and thereby enlighten the drafting

¹ Northern Ireland Human Rights Commission (NIHRC). *Making a Bill of Rights for Northern Ireland: A consultation by the Northern Ireland Human Rights Commission*. NIHRC. Belfast: September 2001, 8-9. See www.nihrc.org for a full text of the document.

² Blackburn, Robert. 1999, 5.

³ Id.

⁴ Maddex, Robert L. *Constitutions of the World*. Routledge. London: 1996, ix.

process in a country such as Northern Ireland, which in the wake of devolution is embarking on a new era under the watchful eye of the rest of the UK.

- Section three highlights approaches taken in five countries, namely Canada, the United States, South Africa, the Republic of Ireland and New Zealand, to the areas addressed in the current Bill of Rights proposals. It examines each country's Bill of Rights or its equivalent, i.e.:
 - a. **Canada** - As a part of the British Commonwealth, the *Canadian Charter of Fundamental Rights and Freedoms* (the Canadian Charter) may provide useful guidance in this area. The relevant sections are in Schedule B of the *Canadian Act 1982*, including Sections 1-34.
 - b. **United States** – Over two hundred years old, the *Constitution of the United States of America* (the American Constitution) is the oldest written constitution still in effect. The first ten amendments constitute a Bill of Rights.
 - c. **South Africa** - Amongst the newest constitutions in the world, the *Constitution of the Republic of South Africa* (the South African Constitution), enacted in 1997, is often used as a model. It contains a Bill of Rights at Sections 7-39.
 - d. **Republic of Ireland** - Influenced by the American Bill of Rights, the *Constitution of Ireland* (the Irish Constitution), enacted in 1937, includes a Fundamental Rights Chapter at Articles 40-44.
 - e. **New Zealand** – As part of the British Commonwealth, the *New Zealand Bill of Rights Act 1990*, as amended by the *Human Rights Act 1993*, may provide further guidance in this area.
- A commentary is provided in relation to each proposed clause and the approaches taken by the five countries. It highlights general comparative points, which may provide useful insight into what a Bill of Rights for NI could or could not include.
- Section four draws on the background and comparative information contained in sections one to three and lists a number of issues concerning the current proposals that may merit further consideration, e.g. the scope of the current proposals, the inclusion of a special court, the entrenchment and amendment provisions, the hierarchy of law.

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INTRODUCTION

Pursuant to the *Belfast (Good Friday) Agreement* and the *Northern Ireland Act 1998*, the Northern Ireland Human Rights Commission (NIHRC) is to advise the Secretary of State on a Bill of Rights for Northern Ireland (NI). The *Belfast Agreement* further states that the Bill of Rights should reflect the particular circumstances of NI and the principles of mutual respect for the identity and ethos of both communities and parity of esteem.

The NIHRC officially launched its consultation in March 2000, which continued for the following year and a half with, e.g., the provision of training, the publication of discussion pamphlets, the establishment of working groups and the issuance of the current proposals in a consultation document entitled *Making a Bill of Rights for Northern Ireland: A consultation by the Northern Ireland Human Rights Commission* (the consultation document) in September 2001.⁵

This research paper seeks to inform views on the current proposals. It provides background and comparative information concerning:

- the general significance of a Bill of Rights;
- key developments in the United Kingdom (UK) Bill of Rights debate;
- comparisons made between the current proposals and other approaches; and
- potential issues about the current proposals.

SECTION ONE: GENERAL SIGNIFICANCE OF A BILL OF RIGHTS

A Bill of Rights expresses in law the basic values of a society. It typically is a statement with a fairly high level of generality so that it can adapt to the changing needs of society for generations to come. It could be described as a contract between a state and its people, setting out the minimum entitlements afforded to all individuals and possibly to particular groups, e.g. children.⁶ It may limit government's power by prescribing a list of fundamental rights belonging to state citizens or inhabitants, and possibly include a list of duties of state citizens. It also may set positive requirements for the government and public bodies.

Generally the rights prescribed by a Bill of Rights are not absolute. They may be restricted by a limitations clause (contained in the Bill of Rights) or by a court's interpretation of a particular Bill of Rights provision, in order to balance competing interests. Such restriction may advance general societal interests and or prevent the abuse of one individual's/group's rights. However, restrictions do not remove rights; rather, they limit their exercise, and the remaining right therefore cannot be violated.

A Bill of Rights often is the "supreme law"; meaning local parliaments cannot enact laws that would infringe its provisions.⁷

⁵ Northern Ireland Human Rights Commission (NIHRC). *Making a Bill of Rights for Northern Ireland: A consultation by the Northern Ireland Human Rights Commission*. NIHRC. Belfast: September 2001, 8-9. See www.nihrc.org for a full text of the document.

⁶ It should be noted that the Bill of Rights may contain implied rights, meaning there is no provision expressly stating a right, but the judiciary later may find that a provision implies a right. For example, the right to privacy under the First Amendment of the Bill of Rights in the Constitution of the United States: this right is not expressly stated, rather it is an implied (fundamental) right.

⁷ NIHRC. *Bill of Rights for Northern Ireland: A Training Manual*. August 2000, 5.

Finally, the purposes of a Bill of Rights may be fulfilled if there is:

- certainty about its legal status relative to other law;
- effective mechanisms enforcing it;
- the state protecting it; and
- individuals respecting it.

SECTION TWO: KEY DEVELOPMENTS IN THE UK BILL OF RIGHTS DEBATE

Over four decades ago, a suggestion was put forward in the House of Commons in Westminster for a Bill of Rights in the UK.⁸ Since then, there has been on-going debate within the UK about whether there is a need for a modern constitutional arrangement that gives a new emphasis to citizens' rights and freedoms: one that entrenches rights and freedoms in the UK legal system, and declares them to be an important practical and symbolic part of society.⁹

Significant developments both outside and inside UK government contributed to the Bill of Rights debate in the UK. They included the following:

- Pamphlets calling for a Bill of Rights written by Anthony Lester (now Lord Lester) in 1968 and by John MacDonald in 1969, who then were practising barristers.¹⁰
- Motions raised in the House of Lords by Lord Wade in 1969 for Parliamentary debate on the constitutional protection of human rights. Similar motions raised in the House of Commons by Emlyn Hooson in 1969 and by Sam Silkin and Peter Archer in 1971.¹¹
- Sir Leslie Scarman's (now Lord Scarman) delivery of his Hamlyn Lectures on "English Law – The New Dimension" in 1974. Therein he called for entrenched or fundamental laws protected by a Bill of Rights – a constitutional law in which it is within the court's duty to protect against Parliamentary power.¹²
- A general debate on a UK Bill of Rights took place in the House of Commons in 1975.¹³
- Lord Wade presented a Human Rights Bill in 1976, prompting a House of Lords' debate on the subject. Lords Gardiner, Harris, Hailsham, Denning and Lloyd contributed to the debate.¹⁴
- A Labour Party discussion document on *A Charter of Human Rights* was produced in 1976. It supported the incorporation of the *European Convention on Human Rights (ECHR)* into domestic law in the form of an ordinary Act of Parliament.¹⁵

⁸ Blackburn, Robert. 1999, 5.

⁹ Id.

¹⁰ Ibid, 6.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

- The Home Office released a discussion document on *Legislation on Human Rights* in 1976. It did not offer a recommendation, but provided valuable Civil Service-orientated advice on existing and alternative methods, including a Bill of Rights, by which human rights could be protected in UK law.¹⁶
- In 1979, a House of Lords Select Committee published a report about the desirability of a Bill of Rights, and if so, what form it should take. The Committee Report recommended the adoption of a Bill of Rights into UK law, initially with its contents being based on *ECHR* principles.¹⁷
- In the House of Lords, Bills to incorporate the *ECHR* into British law were approved with cross-party support on a number of occasions, i.e. 1979, 1981 and 1985.¹⁸
- In 1986 Sir Edward Gardner introduced a Human Rights Bill into debate in the House of Commons.¹⁹
- The Institute of Public Policy Research (IPPR) produced a major detailed proposal entitled *A British Bill of Rights* in 1991.²⁰
- In 1991 Liberty (the National Council for Civil Liberties) published a draft Bill of Rights entitled *A People's Charter*.²¹
- In 1993 Labour published a position paper entitled *A New Agenda for Democracy: Labour's Proposals for Constitutional Reform*, which devoted its opening section to a Bill of Rights. As a first step, the paper advocated the statutory incorporation of the *ECHR* and the creation of a Human Rights Commission. As the second step, it promised a home-grown Bill of Rights, starting with the establishment of an all-party commission.²²
- From 1996-97 the Labour Government consulted on the detailed form that legislation should take to incorporate the *ECHR* into domestic law.²³
- In March 1997, the Labour-Liberal Democrat Joint Consultative Committee on Constitutional Reform published a report that concerned the incorporation of the *ECHR*, the creation of a Human Rights Commission, and recognition of the need for a home-grown Bill of Rights to be drafted subsequent to incorporation.²⁴
- The successful passage through the UK Parliament of the *Human Rights Act 1998* provided the express legal recognition within the UK judicial, parliamentary and governmental systems of the fundamental rights and freedoms provided in the *ECHR*.²⁵

¹⁶ Id.

¹⁷ Id.

¹⁸ Ibid, 7.

¹⁹ Id.

²⁰ Id.

²¹ Ibid, 547.

²² Ibid, 12.

²³ Ibid, 13.

²⁴ Id.

²⁵ Ibid, xxxiii.

In addition to the above-stated developments, others that specifically contributed to the Bill of Rights debate in NI include the following:

- In 1977 the Northern Ireland Standing Advisory Committee on Human Rights (SACHR) published a report favouring a Charter of Human Rights, which preferably would extend to the whole of UK, and if not, at the very least, to NI.²⁶
- The Committee on the Administration of Justice (CAJ) published a draft Bill of Rights for NI and a discussion paper on how it could be implemented.²⁷
- Pursuant to paragraph four of Strand Three of the *Belfast (Good Friday) Agreement 1998*, the NIHRC was "...invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the [ECHR], to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience".²⁸ Moreover, Section 69(7) of the *Northern Ireland Act 1998* states that "[t]he Secretary of State shall request the [NIHRC] to provide advice of the kind referred to in paragraph 4 of the Human Rights section of the *Belfast Agreement*". But there is no express duty on the government to accept NIHRC advice.
- NIHRC officially commenced the Bill of Rights consultation process in March 2000, including, but not limited to, the provision of training services, the production of a training video, the production of a trainer's manual, the publication of 11 explanatory pamphlets, the establishment of nine advisory working groups on different types of rights, its attendance of meetings with political parties and with other interest groups, and its attendance at conferences and seminars.²⁹
- In September 2001, NIHRC issued its consultation document entitled *Making a Bill of Rights for Northern Ireland: A consultation by the Northern Ireland Human Rights Commission*.³⁰ The closing date for the consultation was 31 December 2001. The NIHRC also issued a consultation document entitled *Making a Bill of Rights for Northern Ireland Children and Young Peoples' Version of the Bill of Rights Consultation*.³¹ The closing date for this consultation was 31 January 2002. To date, however, the NIHRC, continues to accept submissions for both consultations.³²
- At present, the NIHRC is formulating its response to the Secretary of State, and anticipates making a submission possibly in May 2002.³³

The brief history outlined above highlights the fact that there has been an on-going Bill of Rights debate in the UK to a lesser or greater extent for about four decades.

²⁶ Ibid, 7.

²⁷ Committee on the Administration of Justice. Belfast.

²⁸ *Belfast (Good Friday) Agreement 1998*, Strand Three, para 4.17.

²⁹ NIHRC. September 2001, 8-9.

³⁰ Id.

³¹ NIHRC. *Making a Bill of Rights for Northern Ireland Children and Young Peoples' Version of the Bill of Rights Consultation*. NIHRC. Belfast: 2001. See www.nihrc.org for a full text of the document.

³² Telephone conversation with NIHRC representative and the writer on 18 February 2002.

³³ Id. Note that the May 2002 submission date is not official.

SECTION THREE : A COMPARATIVE PERSPECTIVE

Drafting a Bill of Rights is an extremely challenging task. It raises a host of important questions that require close attention, e.g.:³⁴

- (i) the selection and wording of the exact individual rights and freedoms to be protected; and
- (ii) the legal status and priority that the document is to possess in relation to other laws and legislative enactments.

Examining approaches adopted in other countries is a useful means to considering these questions and how they may be answered in the context of NI given other countries' experiences. Such comparisons obviously have limitations given that it is only in the social, political, cultural and historical context of a country that a Bill of Rights truly comes to life.³⁵

Nonetheless such comparisons merit consideration. They allow relevant lessons to be drawn from other countries' experiences, and thereby enlighten the drafting process in a country such as NI, which in the wake of devolution, is embarking on a new era under the watchful eye of the rest of the UK.

This section highlights approaches taken in five countries, namely Canada, the United States, South Africa, the Republic of Ireland and New Zealand, to the areas addressed in the current Bill of Rights proposals. It examines the express provisions of each country's Bill of Rights or its equivalent, i.e.:

- a. **Canada** - As a part of the British Commonwealth, the *Canadian Charter of Fundamental Rights and Freedoms* (the Canadian Charter) may provide useful guidance in this area. The relevant sections are in Schedule B of the *Canadian Act 1982*, including Sections 1-34.
- b. **United States** – Over two hundred years old, the *Constitution of the United States of America* (the American Constitution) is the oldest written constitution still in effect. The first ten amendments constitute a Bill of Rights.
- c. **South Africa** - Amongst the newest constitutions in the world, the *Constitution of the Republic of South Africa* (the South African Constitution), enacted in 1997, is often used as a model. It contains a Bill of Rights at Sections 7-39.
- d. **Republic of Ireland** - Influenced by the American Bill of Rights, the *Constitution of Ireland* (the Irish Constitution), enacted in 1937, includes a Fundamental Rights Chapter at Articles 40-44.
- e. **New Zealand** – As part of the British Commonwealth, the *New Zealand Bill of Rights Act 1990*, as amended by the *Human Rights Act 1993*, may provide further guidance in this area.

Each of the following sub-sections is structured in accordance with Clauses 1-19 of the current NIHRC proposals. It highlights the relevant proposed clause and refers the reader to Appendix 1, where its full text appears. This is followed by an outline of comparable provisions expressly stated in the Bill of

³⁴ Blackburn, Robert. 1999, xxxi.

³⁵ Maddex, Robert L. *Constitutions of the World*. Routledge. London:1996, ix.

Rights or its equivalent of the above-stated five countries. Thereafter, a brief commentary makes comparisons between the two.

CLAUSE 1 - PREAMBLE

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not include a Preamble.

UNITED STATES

The America Bill of Rights contains a Preamble as follows:

The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Moreover, there is a Preamble at the start of the American Constitution, which states:

We the people of the United States, in order to form a more perfect union, establish justice, insure the domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

SOUTH AFRICA

The South African Bill of Rights does not contain a Preamble *per se*. Nonetheless at Section 7 it opens as follows:

7(1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

7(2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

7(3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Moreover, there is a Preamble to the South African Constitution that states:

In humble submission to almighty God..." and continues "and whereas it is necessary...for the promotion of national unity and the restructuring and

continued governance of South Africa while an elected constitutional assembly draws up a final constitution....

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not contain a Preamble. But there is a Preamble to the Irish Constitution which acknowledges the religious sentiments of the Irish people, and declares their commitment to "...adopt, enact and give [them]selves to th[e] constitution".

NEW ZEALAND

The Preamble of the *New Zealand Bill of Rights Act 1990*, as amended, states as follows:

An Act

- a. To affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and*
- b. To affirm New Zealand's commitment to the International Covenant on Civil and Political Rights.*

COMMENTARY

Customarily significant legal documents contain a Preamble; but not all do. A Preamble may reveal the motive underlying a given document. It also may provide a clue about the inspiration and sources of principles that informed the drafters of the document.³⁶ Such information generally influences how the document is interpreted and applied in the future.

Most of the approaches adopted by the five countries include a statement resembling a Preamble; but these statements generally are much shorter than the one contained in Clause 1 of the current proposals.

Nonetheless the approaches taken by the five countries seem, in spirit, broadly similar to Clause 1.

CLAUSE 2 – DEMOCRATIC RIGHTS

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter includes democratic rights concerning voting and candidacy rights. Section 3 provides every Canadian citizen with two rights, namely (i) a right to vote in an election of members of the House of Commons or of a legislative assembly and (ii) a right to be qualified for membership therein.

UNITED STATES

The American Bill of Rights does not include democratic rights. But elsewhere in the Constitution, there are democratic rights concerning voting, i.e.:

- The Fifteenth Amendment provides that a citizen's right to vote shall not be denied or abridged by the United States or by any state on grounds of race, colour or previous conditions of servitude. It further empowers the Congress to introduce appropriate legislation to ensure this right.

³⁶ Maddex, Robert L. 1996, ix.

- The Nineteenth Amendment provided that the right of citizens to vote "... shall not be denied or abridged [on] account of sex".
- The Twenty-fourth Amendment provides a further right to vote in any election for President, Vice-President and Congress, irrespective of the citizen having a tax violation.
- The Twenty-sixth Amendment provides that the right to vote belongs to every adult citizen aged 18 years and older.

SOUTH AFRICA

The South African Bill of Rights includes democratic rights concerning voting and candidacy rights as well as citizenship guarantees, i.e.:

- Section 19(1) provides every citizen with the freedom to make political choices, including:
 - to form a political party;
 - to participate in the activities of, or recruit members for, a political party; and
 - to campaign for a political party or cause.
- Section 19(2) provides every citizen with the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- Section 19(3) provides every adult citizen with the right to vote in secret in the elections of any legislative body established in terms of the Constitution, and the right to stand for public office and if elected to hold office.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not include express democratic rights. But elsewhere in the Constitution, there are democratic rights concerning voting and candidacy, i.e.:

- Articles 12, 16 and 18 respectively provide a right to vote for citizens over 18 years for the President, the Dail and the Senedd.

NEW ZEALAND

The *New Zealand Bill of Rights Act 1990* includes electoral rights at Section 12, i.e.:

- the right of every adult citizen (aged 18 years and older) to vote in genuine periodic elections for House of Representative membership; and
- the right of each adult citizen to qualify for House of Representative memberships.

COMMENTARY

The five countries take different approaches to democratic rights. But none of them seem to expressly include the full scope of democratic rights set out in Clause 2 of the current proposals, i.e. Clause 2(a), the right to free elections, Clause 2(b), the right to participation in government and Clause 2(c), the right to vote and candidacy.

Amongst key differences between the five countries and Clause 2 are:

- The five countries generally seem to take a less detailed approach than Clause 2, making them less prescriptive.

- The five countries do not include express provisions to promote the “full and equal participation in public life” of females; whereas Clause 2(b)(2) does.
- The United States, the Republic of Ireland and New Zealand expressly afford citizenship, voting or candidacy rights to all persons aged 18 years and older; whereas Clause 2(c)(1) affords such rights to persons aged 17 years and over.

CLAUSE 3 – RIGHTS CONCERNING IDENTITY AND COMMUNITIES

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter provides general freedoms and guarantees concerning identity and communities, i.e.:

- Section 2 provides, *inter alia*, freedom of conscience and religion.
- Section 25 guarantees protection from abrogation and derogation of aboriginal rights and freedoms prescribed under Canadian law, including:
 - Any rights and freedoms recognised by the Royal Proclamation of 7 October 1763.
 - Any rights and freedoms now in existence by way of land claims arguments or that may be so acquired.
- Section 27 seeks to protect multi-cultural heritage, providing that “... [the] Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians”.

UNITED STATES

The American Constitution, including the Bill of Rights, does not provide an express section concerning rights of identity and communities. But the First Amendment provides that “...the Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;...”. Moreover, the Fourteenth Amendment provides citizenship guarantees.

SOUTH AFRICA

The South African Bill of Rights includes identity and community rights and protections, i.e.:

- Section 15 provides that:
 - Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
 - Religious observances may be conducted at state or state-aided institutions, provided that -
 1. those observances follow rules made by the appropriate public authorities;
 2. they are conducted on an equitable basis; and
 3. attendance at them is free and voluntary.

(The above-stated rights do not prevent legislation recognising (i) marriages concluded under any tradition, or a system of religious, personal or family

law; or (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.)

- Section 20 states that no citizen may be deprived of citizenship.
- Section 30 provides everyone with the rights to use the language and to participate in the cultural life of his or her choice. But these rights cannot be exercised in a manner inconsistent with the provisions contained in the Bill of Rights.
- Section 31 provides a right for a person belonging to a cultural, religious or linguistic community, with his or her community members to enjoy his or her culture, practise his or her religion and use his or her language.
- Section 31 further provides him or her with rights to form, join and maintain cultural, religious and linguistic associations and other organisations of cultural society. But these rights cannot be exercised in a manner inconsistent with the Bill of Rights.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not provide an express section concerning rights of identity and communities. But Article 44 provides rights concerning religion, i.e.:

- The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.
- Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
- The State guarantees not to endow any religion.
- The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.
- Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.
- Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
- The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

Moreover, elsewhere in the Irish Constitution are citizenship guarantees, i.e. in Article 9.

NEW ZEALAND

The *New Zealand Bill of Rights Act 1990* includes identity and community rights and protections, i.e.:

- Section 13 states, *inter alia*, that everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and hold opinions without interference.
- Section 20 includes express rights for minorities, namely the right of every person belonging to an ethnic, religious or linguistic minority in New Zealand, in community with other members of that minority, to enjoy the culture, to profess and practise the religion or to use the language of that minority.

COMMENTARY

The approaches taken by Canada, South Africa and New Zealand to rights of identity and communities seem broadly similar to the current proposals contained in Clause 3. But the approaches taken by the United States and the Republic of Ireland do not.

Amongst key differences between the five countries and Clause 3 are:

- The five countries' rights of identity and communities seem more general; whereas Clause 3 appears more specific, e.g. Clause 3(b).
- The five countries do not include an express right to be nomadic or sedentary and to change from one mode of living, which is accompanied by a positive obligation on government and public bodies to adopt effective and appropriate measures. Whereas Clauses 3(b)(3) and (5) respectively do.
- The five countries do not provide a choice of citizenship; whereas Clause 3(a)(1) does.
- The five countries do not include an express provision like Clause 3(b)(1). Instead they seem to rely on general equality and non-discrimination protections, which are outlined in the next sub-section concerning Clause 4.
- Canada provides an express protection for multicultural heritage at Section 27; whereas Clause 3 seems not to include such protection.

CLAUSE 4 – EQUALITY AND NON-DISCRIMINATION

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter provides equality rights, i.e.:

- Section 15 generally guarantees that every individual is equal before and under the law and provides a right to equal protection and equal benefit of the law without discrimination, particularly on grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- Section 15 further allows affirmative action, (which in NI may be referred to as "positive action"),³⁷ in the form of a law, programme or activity that has:

³⁷ The concepts of "affirmative action" and "positive action" are lawful under prevailing NI law: they are not considered "positive discrimination", which is unlawful.

... 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.

UNITED STATES

The American Bill of Rights does not include equality or non-discrimination provisions. But elsewhere in the American Constitution, at the Fourteenth Amendment, is an Equal Protection Clause, which states that: "No State shall...deny to any person within its jurisdiction the equal protection of the laws".

SOUTH AFRICA

The South African Bill of Rights provides equality provisions at Section 9, i.e.:

- Everyone is equal before the law and has the right to equal protection and benefit of the law.
- Equality is explained as including the full and equal enjoyment of all rights and freedoms.
- Protection is guaranteed against the state's unfair, indirect or direct discrimination on grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. It describes discrimination on one or more of these grounds as unfair, unless it can be established that the alleged discrimination is fair.
- The enactment of national legislation to prevent or prohibit unfair discrimination is required.
- Authorisation is provided for the use of legislation and other measures to promote the achievement of equality that are "designed to protect or advance persons, or categories of persons, disadvantaged by unfair," and thereby promote the achievement of equality.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution provides at Article 40 that all citizens are held equal before the law. But it specifies that "[t]his shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

NEW ZEALAND

The *New Zealand Bill of Rights Act* provides freedom from discrimination at Section 19, i.e.:

- Guarantees the right to freedom from discrimination on the grounds prescribed in the *Human Rights Act 1993*, including sex, marital status, religious belief, ethical belief, colour, ethnic or national origin, disability, age, political opinion, employment status and sexual orientation.
- Authorises "[m]easures taken in good faith for the purposes of assisting or advancing persons or groups of person disadvantaged because of [unlawful] discrimination [as prescribed by] ... Part II of the *Human Rights Act 1993* does not constitute discrimination."

COMMENTARY

The five countries take broadly similar approaches to equality and non-discrimination, making general provision. But Clause 4 of the current proposals seems to include both general and specific provisions.

Amongst key differences between the five countries and Clause 4 are:

- The five countries specify rights and protections for individuals belonging to specific classes, which generally do not change for different rights and protections; whereas Clause 4 alters them, dependant on types of rights and protections, e.g. Clauses 4(1) and (4).
- The five countries do not provide express definitions for the concepts of direct discrimination, indirect discrimination, harassment and bullying as Clauses 4(4), (5), (6) and (7) do.
- The five countries do not provide an express defence/exception to direct discrimination or indirect discrimination as Clause 4(8) does.
- The five countries do not provide express protection for, e.g., residence, possession of a criminal conviction and other status.
- Canada, South Africa and New Zealand include a single express provision that allows for affirmative action/positive action for any of the prescribed protected classes. Similarly Clause 4 includes a general affirmative action/positive action provision at Clause 4(8) (on Clause 4(4) grounds); but Clause 4(3) further provides female-specific affirmative action/positive action.
- New Zealand provides express protection against discrimination at Section 19 on the ground of employment status; whereas Clause 4 seems not to provide such protection. Although Clause 4(4) does include the ground of “other status”.

CLAUSE 5 – THE RIGHTS OF WOMEN

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not include a rights section exclusively for women, or rights exclusively for women. Although it does include an express right at Section 28, which guarantees the equal application of the rights and freedoms contained in the Charter to male and female persons.

UNITED STATES

The American Bill of Rights does not include a rights section exclusively for women, or rights exclusively for women.

SOUTH AFRICA

The South African Bill of Rights does not include a rights section exclusively for women, or rights exclusively for women.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not include a rights section exclusively for women. Although at Articles 41(2.1) and (2.2), there is special mention of women, specifically State recognition that a woman’s life within the home “... gives to the State a support without which the common good cannot be achieved,” and consequently that the State will “... endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.”

NEW ZEALAND

The *New Zealand Bill of Rights Act* does not include a rights section exclusively for women, or rights exclusively for women.

COMMENTARY

Amongst key differences between the five countries and Clause 5 of the current NIHRC proposals are:

- The five countries generally do not include a rights section exclusively for females, nor rights exclusively for women; whereas Clause 5 appears to set out a rights section exclusively for women, or at the very least, lists rights exclusively for women, e.g. Clauses 2(b)(2), 4(3) and 8(c)(1).
- The five countries do not include provisions relating to violence against women; whereas Clause 5 does, referring to Clause 8(c)(1). Although it should be noted that the South African Bill of Rights includes an express right to be free from all forms of violence from either public or private sources at Section 12, which is outlined below in the sub-section concerning Clause 7.
- The five countries do not include provisions relating to female participation in public life; whereas Clause 5 does, referring to Clause 2(b)(2).
- There appears to be a further relevant difference concerning the reference in Clause 5 to Clause 14(c)(5), the general right to reproductive health. It is outlined below in the sub-section concerning Clause 14.

CLAUSE 6 – RIGHTS TO LIFE, FREEDOM OF TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, FREEDOM FROM SLAVERY AND FREEDOM FROM FORCED LABOUR

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text in the relevant clause in Appendix 1.

CANADA

The Canadian Charter affords rights and protections in these areas, i.e.:

- Section 7 provides everyone, *inter alia*, with the right to life and the right not to be deprived thereof, except in accordance with the principles of fundamental justice.
- Section 12 provides everyone with the right not to be subjected to any cruel and unusual treatment or punishment.

UNITED STATES

The American Bill of Rights does not provide an express right to life, nor does the rest of the Constitution.

But there are express rights regarding inhuman or degrading treatment or punishment and freedoms from slavery and from forced labour, i.e.:

- The Eighth Amendment protects individuals against the implication of cruel and unusual punishments.
- The Thirteenth Amendment protects individuals against slavery and involuntary servitude, except as a punishment for a criminal conviction. Congress is authorised to ensure this protection by appropriate legislation.

SOUTH AFRICA

The South African Bill of Rights includes rights and protections in these areas, i.e.:

- Section 10 acknowledges everyone's inherent dignity and provides a right to have his or her dignity respected and protected.
- Section 11 provides everyone with an express right to life.
- Section 12 provides everyone with the right to freedom and security of person, which includes, *inter alia*, the following rights:
 - To be free from all forms of violence from either public or private sources;
 - Not to be tortured in any way; and
 - Not to be treated or punished in a cruel, inhuman or degrading way.
- Section 13 guarantees that no one is subjected to slavery, servitude or forced labour.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution includes a right to life, i.e.:

- Article 40(3.3) of the Irish Constitution "... acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right".
- Qualifications on this right prevent - (i) limitations on freedom to travel between the State and another State and (ii) limitations on freedom to obtain or make available in the State information relating to services lawfully available in another State - but subject it to such conditions as may be laid down by law.

NEW ZEALAND

The *New Zealand Bill of Rights Act 1990* provides:

- Guarantees that "... no one will be deprived life except on such grounds as are established by law and are consistent with the principles of fundamental justice" at Section 8.
- Everyone with "... the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment" at Section 9.

COMMENTARY

The five countries take varied approaches to the rights and protections afforded in these areas.

Amongst key differences between the five countries and the current proposals contained in Clause 6 are:

- The five countries generally seem less prescriptive than Clause 6, e.g. Clause 6(a) in its entirety and Clauses 6(c)(2) and (3).
- The United States and New Zealand do not have an express right to life; whereas Clause 6 does. But note that Canada and South Africa provide such a right. The Republic of Ireland also does; although it is different. It acknowledges "...a right to life of the unborn child, and with due regard to the equal right to life of the mother..." with specific qualifications. Whereas Clause 6 provides a general right to life, subject to general limitations under Clause 16. *It also is relevant to note that the issue of abortion has been one of the most controversial in the NIHR*

consultation and the NIHRC consequently concluded that "...it would be inappropriate for it to suggest that the issue should be resolved by the Bill of Rights; [rather,] it is best dealt with by specific legislation drafted by democratically elected representatives".³⁸

- South Africa provides a right to be free from all forms of violence from either public or private sources at Section 12. Whereas Clause 6(a) concerns only state force. But it should be noted that Clause 5 also provides protection against violence; it refers to Clause 8(c)(1), which provides protection for women against all forms of violence.
- Canada, the United States, South Africa and the Republic of Ireland do not have an express provision concerning the death penalty. But the *New Zealand Bill of Rights* at Section 8 guarantees that "... no one will be deprived life except on such grounds as are established by law and are consistent with the principles of fundamental justice". Whereas Clauses 6(a)(4) and (5) expressly provide a general abolition of the death penalty; but allows its use for acts committed in time of war or imminent threat of war, and then only in prescribed circumstances.

CLAUSE 7 - CRIMINAL JUSTICE AND ADMINISTRATIVE JUSTICE

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter provides rights and protections concerning criminal justice and administrative justice, i.e.:

- Section 7 provides, *inter alia*, the right to liberty and security of a person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice.
- Section 8 provides everyone with the right to be secure against unreasonable search or seizure.
- Section 9 provides everyone with the right not to be arbitrarily detained or imprisoned.
- Section 10 provides everyone with the right on arrest or detention to the following:
 - To be informed promptly of the reasons thereof;
 - To retain and instruct counsel without delay and to be informed of that right; and
 - To have the validity of the detention determined by the way of habeas corpus and to be released if the detention is not lawful.
- Section 11 concerns proceedings in criminal and penal matters. It specifically provides any person charged with an offence the rights:
 - To be informed without unreasonable delay of the specific offence;

³⁸ NIHRC. *Making a Bill of Rights for Northern Ireland: A Consultation By the Northern Ireland Human Rights Commission – A Summary*. NIHRC. Belfast: September 2001, 11.

- To be tried within a reasonable time;
 - Not to be compelled to be a witness in proceedings against that person in respect of the offence;
 - Not to be presumed innocent until proven guilty according to the law in a fair and public hearing by an independent and impartial tribunal;
 - Not to be denied reasonable bail without just cause;
 - To the benefit of jury trial where the maximum punishment for the offence is imprisonment for five years or a more severe punishment, except in the case of an offence under military law tried before a military tribunal;
 - Not to be found guilty on account of any act or omission unless at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognised by the community of nations; and
 - Not to be tried or punished for an offence more than once, if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing.
- Section 13 provides a right against self-incrimination for a witness who testifies in any proceedings: any of his or her incriminating evidence cannot be used against him or her in any other proceedings, except in a prosecution for perjury or for giving contradictory evidence.

UNITED STATES

The American Bill of Rights provides rights and protections in this area, i.e.:

- The Fourth Amendment provides a general right for individuals to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, unless there is a warrant based on probable cause, and supported by an oath or affirmation, and particular description of the place to be searched and the person or things to be seized.
- The Fifth Amendment guarantees a number of rights in this area:
 - no person will be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger;
 - a person will not be subject to the same offence on more than one occasion: this is known as “double jeopardy”;
 - a person will not be compelled in any criminal case to be a witness against him- or herself: this is known as a right against self-incrimination;
 - a person will not be deprived of life, liberty or property without due process of law; and
 - a person will not have his or her property taken for public use, without just compensation.
- The Sixth Amendment provides the accused in all criminal prosecutions with the following rights:
 - the right to a speedy, public and impartial trial in the relevant jurisdiction;

- the right to be informed of the nature and cause of the accusation he or she faces;
 - the right to be confronted by the witnesses against him or her;
 - the right by compulsory process to obtain witnesses in his or her favour; and
 - the right to be represented by counsel in his or her defence.
- The Seventh Amendment provides everyone in a common law suit concerning a controversy that is valued over \$20,000, with the right to a jury trial. It also provides such individuals with the right not to have any fact tried by the jury re-examined in any American court in violation of the common law rules.
- The Eighth Amendment guarantees that excessive bails will not be required, nor excessive fines imposed.

SOUTH AFRICA

The South African Bill of Rights provides rights concerning freedom and security of person, i.e.:

- Section 10 acknowledges everyone's inherent dignity and provides a right to have his or her dignity respected and protected.
- Section 12 provides everyone, *inter alia*, with the right to freedom and security of person, which includes the following rights:
 - Not to be deprived of freedom arbitrarily or without just cause; and
 - Not to be detained without trial.
- Section 14 provides everyone with the right to privacy, which includes the following rights:
 - Not to have his or her person or home searched;
 - Not to have his or her property searched;
 - Not to have his or her possessions seized; and
 - Not to have the privacy of his or her communications infringed.
- Section 32 concerns access to information, including the following:
 - Everyone has the right to access any information held by the state and by another person and that is required for the exercise or protection of any rights.
 - National legislation must be enacted to affect this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.
- Section 33 provides a just administration right as follows:
 - Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
 - Everyone whose rights already have been adversely affected by administrative action has the right to be given written reasons.

- National legislation must be enacted to give effect to these rights, and must provide for the review of administrative action by a court or where appropriate by an independent and impartial tribunal.
 - National legislation also must impose a duty of care on the state to give effect to these rights and promote an efficient administration.
- Section 34 provides everyone with the right to have any dispute that can be resolved by the application of law, to be decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.
 - Section 35 provides rights for arrested, detained and accused persons, including the following:
 - **Arrestees:** Everyone who is arrested for having allegedly committed an offence, has the right to the following:
 - (i) to remain silent and to be informed promptly of the right to remain silent and of the consequences of not remaining silent;
 - (ii) not to be compelled to make any confession or admission that could be used in evidence against him or her;
 - (iii) to be brought before a court as soon as reasonably possible, but no later than 48 hours after arrest or the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - (iv) to be charged or to be informed of the reason for the detention to continue or to be released at the first court appearance after being arrested;
 - (v) to be released from detention if the interests of justice permit, subject to reasonable conditions.
 - **Detainees:** Everyone who is detained, including every sentenced prisoner, has the right to the following:
 - (i) to be informed promptly of the reason for being detained;
 - (ii) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - (iii) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (iv) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - (v) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and

- (vi) to communicate with, and be visited by, that person's - spouse or partner; next of kin; chosen religious counsellor; and chosen medical practitioner.
- **Accusees:** Every accused person has a right to a fair trial, which includes the right to the following:
 - (i) to be informed of the charge with sufficient detail to answer it;
 - (ii) to have adequate time and facilities to prepare a defence;
 - (iii) to a public trial before an ordinary court;
 - (iv) to have their trial begin and conclude without unreasonable delay;
 - (v) to be present when being tried;
 - (vi) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - (vii) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (viii) to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - (ix) to adduce and challenge evidence;
 - (x) not to be compelled to give self-incriminating evidence;
 - (xi) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - (xii) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - (xiii) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - (xiv) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (xv) to an appeal to, or review by, a higher court.
- Whenever any of the above rights require the provision of information to a person, such information must be provided in a language that the arrestee/detainee/accusee understands.
- Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution affords the following rights and protections concerning criminal justice and administrative justice:

- Article 40 (3)(1) states that the State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
- Article 40(3)(2) states that the State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.
- Article 40(5) states that:
 - Article 40(5.1) - No citizen shall be deprived of his personal liberty save in accordance with law.
 - Article 40(5.2) - Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.
 - Article 40(5.3) - Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.
 - Article 40(5.4) - The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.
 - Article 40(5.5) - Where an order is made under this section by the High Court or a judge thereof for the production of the body of a person who is under sentence of death, the High Court or such judge thereof shall further order that the execution of the said sentence of death shall be deferred until after the body of such person has been produced before the High Court and the lawfulness of his detention has been determined and if, after such deferment, the detention of such person is determined to be lawful,

the High Court shall appoint a day for the execution of the said sentence of death and that sentence shall have effect with the substitution of the day so appointed for the day originally fixed for the execution thereof.

- Article 40(5.6) - Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion.
- Article 40(5.7) - Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.

NEW ZEALAND

The *New Zealand Bill of Rights* guarantees a number of rights concerning criminal justice and administrative justice, i.e.:

- Section 21 provides everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence, or otherwise.
- Section 22 provides that everyone has the right not to be arbitrarily arrested or detained.
- Section 23 provides that:
 - Section 23(1) - Everyone who is arrested or who is detained under any enactment-
 - (a) Shall be informed at the time of the arrest or detention of the reason for it; and
 - (b) Shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
 - (c) Shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.
 - Section 23(2) - Everyone who is arrested for an offence has the right to be charged promptly or to be released.
 - Section 23(3) - Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.
 - Section 23(4) - Everyone who is-
 - (a) Arrested; or
 - (b) Detained under any enactmentfor any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.

- Section 23(5) - Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.
- Section 24 provides that everyone who is charged with an offence has the following rights:
 - (a) Shall be informed promptly and in detail of the nature and cause of the charge; and
 - (b) Shall be released on reasonable terms and conditions unless there is just cause for continued detention; and
 - (c) Shall have the right to consult and instruct a lawyer; and
 - (d) Shall have the right to adequate time and facilities to prepare a defence; and
 - (e) Shall have the right, except in the case of an offence under military law tried before a military tribunal, to the benefit of a trial by jury when the penalty for the offence is or includes imprisonment for more than 3 months; and
 - (f) Shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance; and
 - (g) Shall have the right to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.
- Section 25 provides that everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:
 - (a) The right to a fair and public hearing by an independent and impartial court;
 - (b) The right to be tried without undue delay;
 - (c) The right to be presumed innocent until proved guilty according to law;
 - (d) The right not to be compelled to be a witness or to confess guilt;
 - (e) The right to be present at the trial and to present a defence;
 - (f) The right to examine the witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as the prosecution;
 - (g) The right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty;
 - (h) The right, if convicted of the offence, to appeal according to the law to a higher court against the conviction or against the sentence or against both;
 - (i) The right, in the case of a child, to be dealt with in a manner that takes account of the child's age.
- Section 26 provides that:
 - No one shall be liable to conviction of any offence on account of any act or omission, which did not constitute an offence by such person under the law of New Zealand at the time it, occurred.
 - No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again.

- Section 27 provides that:
 - Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority, which has the power to make a determination in respect of that person's right, obligations, or interests protected or recognised by law.
 - Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority, which has the power to make a determination in respect of that person's right, obligations, or interests protected or recognised by law.
 - Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.
- Section 28 provides that an existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Bill of Rights or is included only in part.

COMMENTARY

There appears to be a considerable amount of similarity in the approaches taken by the five countries to criminal and administrative justice, and that taken in Clause 7 of the current proposals.

However, amongst key distinctions between the five countries and Clause 7 are:

- The five countries do not include an express enforceable right to compensation like Clause 7(a)(5).
- The five countries do not appear to include an express exception/limitation to search and seizure like Clause 7(a)(7), i.e. where reasonable and proportionate procedure prescribed by law.
- The five countries do not include express provisions like Clause 7(a)(1)(e) concerning the detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants, or Clause 7(a)(6), which qualifies Clause 7(a)(1)(e).
- The five countries do not include an express right to audio and video recording like Clause 7(a)(12).
- The five countries do not include an express provision like Clause 7(b)(10), which commits the Government to making certain assurances for lawyers representing clients.
- The American Bill of Rights provides a right to a jury trial in a common law suit that is valued over \$20,000 in the Seventh Amendment; whereas Clause 7 does not.
- The American Bill of Rights guarantees that excessive bails will not be required, nor excessive fines imposed under the Eighth Amendment; whereas Clause 7 seems not to include such a guarantee.

- The South African Bill of Rights provides a general right concerning dignity at Section 10, and specifically in relation to detainees at Section 35; whereas Clause 7 provides a dignity right at Clause 7(11) only in what appears to be the context of a detainee.
- The South African Bill of Rights includes an express right of access to information at Section 32; whereas Clause 7 seems not to include such a right.
- The South African Bill of Rights includes an express exclusion from evidence rule at Section 35; whereas Clause 7 seems not to include such a rule.
- The Fundamental Rights Chapter of the Irish Constitution imposes positive obligations on the State to guarantee personal rights and protect citizens; whereas Clause 7 seems not to include such express obligations.
- The *New Zealand Bill of Rights Act* includes an express right for children at Section 25(i). Whereas Clause 7 seems not to include such a right; but Clause 10(e) includes rights for children in conflict with the law which provides similar protection.

CLAUSE 8 - THE RIGHTS OF VICTIMS

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not provide a rights section exclusively for victims, nor rights exclusively for victims.

UNITED STATES

The American Bill of Rights does not provide a rights section exclusively for victims, nor rights exclusively for victims.

SOUTH AFRICA

The South African Bill of Rights does not provide a rights section exclusively for victims, nor rights exclusively for victims.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not provide a rights section exclusively for victims, nor rights exclusively for victims.

NEW ZEALAND

The *New Zealand Bill of Rights 1990* does not provide a rights section exclusively for victims, nor rights exclusively for victims.

COMMENTARY

Unlike Clause 8 of the current proposals, none of the five countries include a rights section exclusively for victims, or rights exclusively for victims.

CLAUSE 9 - RIGHTS TO FAMILY LIFE AND PRIVATE LIFE

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not include express rights to family life, to private life and to marry. But it does include:

- Section 7, which provides, *inter alia*, the right to liberty and security of a person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice.
- Section 8, which provides everyone with the right to be secure against unreasonable search or seizure.

UNITED STATES

The American Bill of Rights does not include express rights to family life, to private life and to marry.

But the Fourth Amendment provides an express right to be free from unreasonable searches and seizures.

SOUTH AFRICA

The South African Bill of Rights at Section 14 provides everyone with the right to privacy, which includes the right not to have:

- their person or home searched;
- their property searched;
- their possessions seized; or
- the privacy of their communications infringed.

Moreover, Section 32 concerns access to information, including the following:

- Everyone has the right to access any information held by the state and by another person and that is required for the exercise or protection of any rights.
- National legislation must be enacted to affect this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution includes express family and marriage rights, i.e.:

- Article 41, which states as follows:
 - The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.
 - The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
 - The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.
 - A Court designated by law may grant of a dissolution of marriage where, but only where, it is satisfied that-

1. at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,
 2. there is no reasonable prospect of a reconciliation between the spouses,
 3. such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
 4. any further conditions prescribed by law are complied with.
- No person whose marriage has been dissolved under the civil law of any other State, but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

NEW ZEALAND

The *New Zealand Bill of Rights 1990* does not include express rights to family life, to private life and to marry.

But Section 21 provides everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence, or otherwise.

COMMENTARY

The approaches taken by the five countries are varied and generally appear less prescriptive than Clause 9 of the current proposals.

Amongst key differences between the five countries and Clause 9 are:

- Most of the five countries do not include express family and marriage-related rights like Clauses 9(a) and (b), i.e. Canada, the United States, South Africa and New Zealand. But the Republic of Ireland does provide similar rights at Article 41, but they do not appear as detailed as Clause 9.
- The United States and the Republic of Ireland seem not to include express privacy rights like Clause 9(a).³⁹ But the United States includes an express right against unreasonable searches and seizures; Canada and New Zealand do as well. South Africa appears to have privacy rights most similar to Clause 9(a).

CLAUSE 10 - THE RIGHTS OF CHILDREN

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not include a rights section exclusively for children, or rights exclusively for children.

³⁹ But it should be noted that the First Amendment includes an *implied* fundamental right to privacy, as found by the United States Supreme Court. Implied rights, however, are not discussed in this paper as they are beyond its scope.

UNITED STATES

The American Bill of Rights does not include a rights section exclusively for children, or rights exclusively for children.

SOUTH AFRICA

The South African Bill of Rights includes a rights section exclusively for children (persons under the age of 18 years) at Section 28, stating that every child has the right to:

- to a name and a nationality from birth;
- to family care or parental care, or to appropriate alternative care when removed from the family environment;
- to basic nutrition, shelter, basic health care services and social services;
- to be protected from maltreatment, neglect, abuse or degradation;
- to be protected from exploitative labour practices;
- not to be required or permitted to perform work or provide services that-
 - are inappropriate for a person of that child's age; or
 - place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under Sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be-
 - kept separately from detained persons over the age of 18 years; and
 - treated in a manner, and kept in conditions, that takes account of the child's age;
- to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- not to be used directly in armed conflict, and to be protected in times of armed conflict.

Section 28 further states that a child's best interests are of paramount importance in every matter concerning the child.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution includes rights that specifically concern children and education, i.e.:

- Article 42
 - Article 42(1) states that the State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

- Article 42(2) states that parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
 - Article 42(3.1) states that the State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
 - Article 42(3.2) states that the State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
 - Article 42(4) states that the State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
 - Article 42(5) states that in exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.
- Article 44
 - Article 44(2)(4) states that legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

NEW ZEALAND

The *New Zealand Bill of Rights Act* does not include a rights section exclusively for children, or rights exclusively for children.

COMMENTARY

Most of the approaches taken by the five countries do not provide a rights section exclusively for children, nor rights exclusively for children, i.e. Canada, the United States and New Zealand. Whereas South Africa does have a children's rights section and the Republic of Ireland provides rights that specifically concern children and education.

Amongst key differences between the five countries and Clause 10 are:

- The South African Bill of Rights includes many children's rights that are broadly similar to those contained in Clause 10. Overall, however, Clause 10 seems more detailed than the South African provisions, e.g. Clauses 10(a), (b), (c), (d), (h), (i) and (j) as well as parts of 10(e).

- The South African Bill of Rights does not include a children's right like Clause 10(e)(6)(e), which concerns access to education and training subsequent to release. But it does include an education right for all at Section 29(1), which gives everyone the right to a basic education, including adult basic education and further education. This Section is outlined and discussed in the next sub-section concerning Clause 11, which outlines general education rights.
- The South African Bill of Rights does not include express provisions like: Clause 10(f), which concerns children with disabilities; Clause 10(g) right to play; or Clause 10(k), which concerns awareness about rights. Although it does have an express provision at Section 28 that states that the best interests of the child are of paramount importance; whereas Clause 10 does not. Similarly it has provisions about child detainees and treatment of children during conflict; whereas Clause 10 has a general provision at Clause 10(d) apparently pertaining to such matters.
- The Irish Constitution includes express provisions that concern children and education at Articles 42 and 44, specifically about the family's and the state's roles in providing education, parental choice, and state funding. There is some general similarity with Clause 10(i), but the actual wording of the provisions is different.
- The Irish Constitution at Article 42(4) expressly authorises the State to intervene in exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children; but Clause 10 seems not to include such a provision.

CLAUSE 11 – EDUCATION RIGHTS

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter includes education rights, i.e.:

- Section 23(1) concerns Citizens of Canada and states:
 - those whose first language learned and still understood is that of the English or French linguistic minority of the province in which they reside, or
 - those who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,
 - those who have the right to have their children receive primary and secondary school instruction in that language in that province.
- Section 23(2) states that Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary language instruction in the same language.
- Section 23(3) states that the right of citizens of Canada under Sub-sections (1) and (2) to have their children receive primary and secondary

school instruction in the language of the English or French linguistic minority population of a province-

- applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
 - includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.
- Section 29 includes rights respecting certain schools being preserved. It states that: "Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools".

UNITED STATES

The American Bill of Rights does not include a rights section that exclusively concerns education, or rights that exclusively concern education.

SOUTH AFRICA

The South African Bill of Rights includes education rights, i.e.:

- Section 29.(1) states that everyone has the right -
 - to a basic education, including adult basic education; and
 - to further education, which the state, through reasonable measures, must make progressively available and accessible.
- Section 29(2) states that everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account-
 - equity;
 - practicability; and
 - the need to redress the results of past racially discriminatory laws and practices.
- Section 29(3) states that everyone has the right to establish and maintain, at their own expense, independent educational institutions that-
 - do not discriminate on the basis of race;
 - are registered with the state; and
 - maintain standards that are not inferior to standards at comparable public educational institutions.
- Section 29(4) states that Section 29(3) does not preclude state subsidies for independent educational institutions.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution includes rights concerning education at Article 42 and 44, i.e.:

- Article 42
 - Article 42(1) states that the State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
 - Article 42(2) states that parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
 - Article 42(3)(i) states that the State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
 - Article 42(3)(ii) states that the State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
 - Article 42(4) states that the State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
 - Article 42(5) states that in exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.
- Article 44
 - Article 44(2)(4) states that legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.
 - Article 44(2)(5) states that every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
 - Article 44(2)(6) states that the property of any religious denomination or any educational institution shall not be diverted

save for necessary works of public utility and on payment of compensation.

NEW ZEALAND

The *New Zealand Bill of Rights Act* does not include a rights section that exclusively concerns education, nor rights exclusively for education.

COMMENTARY

Most of the five countries provide express education rights in some form, i.e. Canada, South Africa and the Republic of Ireland; although the United States and New Zealand do not. Overall, these countries' provisions seem less comprehensive to those contained in Clause 11 of the current proposals.

Amongst key differences between the five countries and Clause 11 are:

- The five countries seem not to have an express provision like Clause 11(c), which prescribes human rights education.
- The Canadian Charter has detailed rights regarding language and education; whereas Clause 11 does not, but Clause 13 (outlined in a later sub-section) provides general language rights, and Clause 3(b)(5)(c) (outlined in a previous sub-section) prescribes the Government's and public bodies' role in relation to language and education.
- The South African Bill of Rights at Section 29(3) requires those who open schools, to do so at their own expense; although Section 29(4) does not preclude state subsidy. This is unlike Clause 11(a), especially Clause 11(a)(4).
- The Irish Constitution at Articles 42(2) and (3) concern parental choice, similar to Clause 11(a)(3). But at Article 42(1) it prescribes the Family as the child's primary and natural educator, unlike Clause 11.
- The Irish Constitution at Article 42(3)(ii) is comparable with Clause 11(a)(2); but the former provides the right to an effective education for everyone, whereas the latter sets a minimum level for children.
- The Irish Constitution at Article 42(5) allows the state to intervene in exceptional circumstances when parents fail in their duty for their children, unlike Clause 11, (and Clause 10).

CLAUSE 12 – RIGHTS TO FREEDOM OF THOUGHT, EXPRESSION, INFORMATION AND ASSOCIATION

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter includes, *inter alia*, the following freedoms at Section 2, i.e.:

- freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- freedom of peaceful assembly; and
- freedom of association.

UNITED STATES

The American Bill of Rights states at the First Amendment that:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.

SOUTH AFRICA

The South African Bill of Rights includes the following rights and freedoms in this area:

- Section 15 provides that:
 - Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
 - Religious observances may be conducted at state or state-aided institutions, provided that -
 1. those observances follow rules made by the appropriate public authorities;
 2. they are conducted on an equitable basis; and
 3. attendance at them is free and voluntary.(The above-stated rights do not prevent legislation recognising (i) marriages concluded under any tradition, or a system of religious, personal or family law; or (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.)
- Section 16 provides that everyone has the right to freedom of expression, which includes:
 - freedom of the press and other media;
 - freedom to receive or impart information or ideas;
 - freedom of artistic creativity; and
 - academic freedom and freedom of scientific research.(The above right does not extend to: propaganda for war; incitement of imminent violence; or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.)
- Section 17 provides that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.
- Section 18 provides that everyone has the right to freedom of association.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution includes the following rights and freedoms in this area:

- Article 40(6.1) states that the State guarantees liberty for the exercise of the following rights, subject to public order and morality:

- The right of the citizens to express freely their convictions and opinions.
 - The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.
 - The publication or utterance of blasphemous, seditious, or indecent matter is an offence that shall be punishable in accordance with law.
- Article 40(6.1) also provides the right of the citizens to assemble peaceably and without arms. (Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.)
 - Article 40(6.1) further provides the right of the citizens to form associations and unions.
 - Article 40(6.2) states, however, that laws may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.
 - Article 40(6)(2) also states that laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.
 - Article 44 provides the following rights and freedoms concerning religion:
 - The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.
 - Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
 - The State guarantees not to endow any religion.
 - The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.
 - Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.
 - Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
 - The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

The *New Zealand Bill of Rights* includes the following rights and freedoms in this area:

- Section 13 states that everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and hold opinions without interference.
- Section 14 states that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
- Section 15 states that every person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.
- Section 16 states that everyone has the right of peaceful assembly.
- Section 17 states that everyone has the right to freedom of association.

COMMENTARY

The five countries generally provide rights and freedoms concerning thought, expression, information and association that appear broadly similar to those contained in Clause 12 of the current proposals. Although Article 44 of the Irish Constitution seems to include more detailed provisions concerning religion than Clause 12.

It appears that the restrictions in Clauses 12(a)(2), (b)(2) and (c)(2) appear more prescriptive than the five countries, apart from the Irish Constitution's limitation at Article 40(6.1), which includes more detailed limitations regarding morality.

CLAUSE 13 – LANGUAGE RIGHTS

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter includes language rights, i.e.:

- Section 16(1) - English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
- Section 16(2) - English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.
- Section 16(3) - Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.
- Section 16.1(1) - The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such

distinct cultural institutions as are necessary for the preservation and promotion of those communities.

- Section 16.1(2) - The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.
- Section 17(1) - Everyone has the right to use English or French in any debates and other proceedings of Parliament.
- Section 17(2) - Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.
- Section 18(1) - The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.
- Section 18(2) - The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.
- Section 19(1) - Either English or French may be used by any person in, or any pleading in or process issuing from, any court established by Parliament.
- Section 19(2) - Either English or French may be used by any person in, or any pleading in or process issuing from, any court of New Brunswick.
- Section 20(1) - Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where-
 - there is a significant demand for communications with and services from that office in such language; or
 - due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.
- Section 20(2) - Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.
- Section 21 - Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.
- Section 22 - Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

- Section 23. (1) Citizens of Canada –
 - whose first language learned and still understood is that of the English or French linguistic minority of the province in which they reside, or
 - who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
 - who has any child who has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary language instruction in the same language.
- Section 23(3) - The right of citizens of Canada under Sub-sections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province-
 - applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
 - includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

UNITED STATES

The American Bill of Rights does not provide an exclusive section on language rights, nor rights exclusively concerning language.

SOUTH AFRICA

The South African Bill of Rights provides rights concerning language and culture, i.e.:

- Section 30 - Everyone has the right to use the language and to participate in the cultural life of his or her choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.
- Section 31.(1) - Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community to enjoy their culture, practise their religion and use their language; and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- Section 31.(2) - The rights in Section 31.(1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not provide express language rights. But elsewhere in the Constitution, at Article 8, Irish is acknowledged as the first language, and English as the second; and the law may make provision for exclusive use of either.

NEW ZEALAND

The *New Zealand Bill of Rights Act* includes language rights at Section 20, which states that a person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

COMMENTARY

Most of the five countries provide some language rights. Canada has the most detailed list, and South Africa thereafter. There are some similarities between these countries' language rights and those contained in Clause 13 of the current proposals, but there also are differences.

Amongst the key differences between the five countries and Clause 13 are:

- The five countries seem not to include the detail provided in Clauses 13(5)(a)-(f), e.g. the sufficient demand requirement.
- The five countries appear not to include express provisions like Clauses 13(2) and (3) that respectively concern the provision of interpreters and communication assistance.
- The Canadian Charter provides detailed equal status rights for English and French at Section 16; whereas Clause 13 seems to have general provisions at Clauses 13(4) and (5).
- The Canadian Charter provides detailed language rights that are specifically related to education at Section 23, and to use in government at Sections 16, 17, 18, 19, 20, 21 and 22; whereas Clause 13 does not appear to include such express provisions, but does include general provisions at Clauses 13(4) and (5).
- The Irish Constitution expressly designates Irish as the first language and English as the second at Article 8; whereas Clause 13 does not expressly designate languages, and instead at Clause 13(4) leaves it to legislation to implement commitments made about language.

CLAUSE 14 – SOCIAL, ECONOMIC AND ENVIRONMENTAL RIGHTS

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter provides social and economic rights, i.e.:

- Section 6(1) states that every citizen of Canada has the right to enter, remain in and leave Canada.
- Section 6(2) states that every citizen of Canada and every person who has the status of a permanent resident of Canada has the right –
 - to move to and take up residence in any province; and
 - to pursue the gaining of a livelihood in any province.
- Section 6(3) states that the rights specified in Section 6(2) are subject to-

- any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
 - any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.
- Section 6(4) states that Sections 6(2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who were socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

UNITED STATES

The American Bill of Rights does not include an express section on social, economic or cultural rights. But the Fifth Amendment provides, *inter alia*, that:

No person...shall be compelled in any criminal case...deprived of ...property without due process of law; nor shall private property be taken for public use, without just compensation.

SOUTH AFRICA

The South African Bill of Rights includes rights concerning freedom of trade, occupation and profession as well as labour relations rights, the environment, property, housing, health care, food, water and social security i.e.:

- Section 12 provides, *inter alia*, everyone with the right to bodily and psychological integrity, which includes the following rights:
 - To make decisions concerning reproduction;
 - To security in and control over his or her body; and
 - Not to be subjected to medical or scientific experiments without his or her informed consent.
- Section 22 provides that every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.
- Section 23(1) provides that everyone has the right to fair labour practices.
- Section 23(2) provides that every worker has the right:
 - to form and join a trade union;
 - to participate in the activities and programmes of a trade union; and
 - to strike.
- Section 23(3) provides that every employer has the right:
 - to form and join an employers' organisation; and
 - to participate in the activities and programmes of an employers' organisation.
- Section 23(4) provides that every trade union and every employers' organisation has the right:

- to determine its own administration, programmes and activities;
 - to organise; and
 - to form and join a federation.
- Section 23(5) provides that every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with Section 36(1), which is outlined in the subsection concerning Clause 14.
- Section 23(6) states that national legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with Section 36(1), which is outlined in the subsection concerning Clause 14.
- Section 24 provides that everyone has the right :
 - to an environment that is not harmful to their health or well-being; and
 - to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation;
 - to promote conservation; and
 - to secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
- Section 25(1) states that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- Section 25(2) provides that property may be expropriated only in terms of law of general application for a public purpose or in the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- Section 25(3) states that the amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:
 - the current use of the property;
 - the history of the acquisition and use of the property;
 - the market value of the property;
 - the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - the purpose of the expropriation.
- Section 25(4) states that under Section 25, the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and property is not limited to land.

- Section 25(5) states that the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- Section 25(6) provides that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- Section 25(7) provides that a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- Section 25(8) states that no provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of Section 36(1).
- Section 25(9) states that Parliament must enact the legislation referred to in Section 25(6).
- Section 26(1) provides that everyone has the right to have access to adequate housing.
- Section 26(2) states that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- Section 26(3) states that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. Moreover, no legislation may permit arbitrary evictions.
- Section 27(1) provides that everyone has the right to have access to:
 - health care services, including reproductive health care;
 - sufficient food and water; and
 - social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- Section 27(2) requires the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- Section 27(3) states that no one may be refused emergency medical treatment.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution includes private property rights, i.e.:

- Article 43 which states that:

- Article 43(1.1) - The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.
- Article 43(1.2) - The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.
- Article 43(2.1) - The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.
- Article 43(2.2) - The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

NEW ZEALAND

The *New Zealand Bill of Rights Act* does not include a section exclusively entitled social, economic and environmental rights. But it does include the following:

- Section 10, which provides everyone with "... the right not to be subjected to medical or scientific experimentation without that person's consent".
- Section 11, which provides everyone with the right to refuse to undergo any medical treatment.

COMMENTARY

Two countries, namely Canada and South Africa, seem to include some social, property and or economic rights that seem broadly similar to Clause 14 of the current proposals. South Africa appears to have the most comprehensive list, and also includes environmental rights like Clause 14(g). Whereas the Republic of Ireland make general provision regarding economic and property rights; the United States makes some provision regarding property rights; and New Zealand provides medical treatment rights.

Amongst key distinctions between the five countries and Clause 14 are:

- The Canadian Charter includes rights for its citizens to enter, remain and leave Canada, as well as residency rights respectively at Sections 6(1) and (2); whereas Clause 14 appears not to provide such protection.
- The South African Bill of Rights expressly provides its citizens with a right to fair labour practises, a number of trade union-related rights and workers' rights, e.g. the right to strike, in Section 23; whereas Clause 14(f) appears not to provide such protections.
- The South African Bill of Rights expressly includes detailed environment-related rights in Section 24; whereas Clause 14(g) appears not to provide such detailed protection.
- The South African Bill of Rights expressly provides a number of land-related rights in Section 25; whereas Clause 14(b) appears not to provide such detailed protection.

- The South African Bill of Rights includes an express guarantee against arbitrary eviction in Section 25; whereas Clauses 14(b) and (e) appear not to provide such protection.
- The South African Bill of Rights includes an express right to sufficient food and water at Section 27(1) and a requirement on the state to take reasonable legislative or other measures to achieve the progressive realisation of this right at Section 27(2); whereas Clause 14(d) appears not to provide such a protection or requirement.
- The South African Bill of Rights includes an express guarantee that no one may be refused emergency medical treatment at Section 27(3); whereas Clause 14(c) appears not to include such protection.
- The South African Bill of Rights provides a right to bodily and psychological integrity at Section 12, which includes a right to make decisions concerning reproduction, to security in and over his or her body, and not to be subjected to medical or scientific experiments without his or her informed consent. Similarly the *New Zealand Bill of Rights Bill* provides "... the right not to be subjected to medical or scientific experimentation without that person's consent" at Section 10, and specifically states that everyone has the right to refuse to undergo any medical treatment at Section 11. Whereas Clause 14(c)(4) states that "[e]veryone has the right to be consulted about decisions which affect his or her physical or mental health". *It also is relevant to note that the issue of abortion has been one of the most controversial in the NIHRC consultation and the NIHRC consequently concluded that "...it would be inappropriate for it to suggest that the issue should be resolved by the Bill of Rights; [rather,] it is best dealt with by specific legislation drafted by democratically elected representatives".*⁴⁰
- Article 40(3.3) of the Irish Constitution also is relevant to Clause 14(c). (It is outlined about in the sub-section concerning Clause 6.) It acknowledges "...a right to life of the unborn child, and with due regard to the equal right to life of the mother..." with specific qualifications. Whereas the current provisions do not provide such an express right. It provides a general right to life under Clause 6, subject to general limitations under Clause 16. But there is no express provision under Clause 14. Again, the NIHRC's approach to the issue of abortion, (which is outlined in the above paragraph), should be noted.

CLAUSE 15 - INTERPRETATION

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not include an interpretation section. But there are provisions throughout it that concern interpretation, e.g. Article 27 which states that the Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

UNITED STATES

⁴⁰ NIHRC. *Making a Bill of Rights for Northern Ireland: A Consultation By the Northern Ireland Human Rights Commission – A Summary*. NIHRC. Belfast: September 2001, 11.

The American Bill of Rights does not include an interpretation section, or provisions specifically concerning interpretation.

SOUTH AFRICA

The South African Bill of Rights includes a section entitled “Interpretation of Bill of Rights”, i.e.:

- Section 39, which states:
 - When interpreting the Bill of Rights, a court, tribunal or forum:
 - (i) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; must consider international law; and
 - (ii) may consider foreign law.
 - When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
 - The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not include an interpretation section. But there are provisions throughout it that concern interpretation, e.g. Article 40(5.6) as outlined in the sub-section concerning Clause 7.

NEW ZEALAND

The *New Zealand Bill of Rights Act* includes interpretation provisions, i.e.:

- Section 6 - Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.
- Section 28 - An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Bill of Rights or is included only in part.
- Section 29 - Except where the provisions of this Bill of Rights otherwise provide, the provisions of this Bill of Rights apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons.

COMMENTARY

Only South Africa includes an interpretation section like Clause 15 of the current proposals. Canada, the Republic of Ireland and New Zealand include provisions that concern interpretation, also similar to the current proposals. But the United States seems not to include such provisions.

One key distinction in this area is the specific acknowledgement in the *New Zealand Bill of Rights Act*, i.e. the scope of the Bill of Rights extends to legal persons and natural persons as far as practicable; whereas Clause 15 does not include such a provision.

CLAUSE 16 - LIMITATIONS

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter includes limitation provisions, i.e.:

- Section 1 guarantees the Canadian Charter's rights and freedoms, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- Section 26 states that the guarantee in this Charter of rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.
- Section 35 states that the guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal people of Canada including:
 - any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
 - any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

UNITED STATES

The American Bill of Rights provides the following limitations:

- The Ninth Amendment states that the enumeration in the Constitution of certain rights should not be construed to deny or disparage others retained by the people.
- The Tenth Amendment states that the powers not delegated to the US federal government by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

SOUTH AFRICA

The South African Bill of Rights includes limitation provisions, i.e.:

- Section 36(1) - The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including:
 - the nature of the right;
 - the importance of the purpose of the limitation;
 - the nature and extent of the limitation;
 - the relation between the limitation and its purpose; and
 - less restrictive means to achieve the purpose.
- Section 36(2) - Except as provided in Section 36(1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not include a limitations section. But there are provisions throughout that concern limitations, e.g. Article 40(3.3).

NEW ZEALAND

The *New Zealand Bill of Rights Act* includes a limitation provision at Section 5, which states that:

Subject to Section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

COMMENTARY

Canada, the United States, South Africa and New Zealand include some form of limitation provisions. South Africa's and New Zealand's appears most similar to those contained in Clause 16 of the current proposals.

Amongst key distinctions between the five countries and Clause 16 are:

- The Canadian Charter guarantees that its rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. Similarly the American Constitution states that the enumeration in the Constitution of certain rights should not be construed to deny or disparage others retained by the people. But Clause 16 seems not to include such provisions.
- The South African Bill of Rights and the *New Zealand Bill of Rights Act* do not contain provisions like Clauses 16(2) and (3).

CLAUSE 17 - EMERGENCIES

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not include an express emergencies section.

UNITED STATES

The American Bill of Rights does not include an express emergencies section.

SOUTH AFRICA

The South African Bill of Rights includes a comprehensive emergencies section, i.e.:

- Section 37 which states the following:
 - Section 37(1) - A state of emergency may be declared only in terms of an Act of Parliament, and only when the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and the declaration is necessary to restore peace and order.
 - Section 37(2) - A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that

declaration, may be effective only prospectively; and for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.

- Section 37(3) - Any competent court may decide on the validity of:
 - (i) a declaration of a state of emergency;
 - (ii) any extension of a declaration of a state of emergency; or
 - (iii) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- Section 37(4) - Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that the derogation is strictly required by the emergency; and the legislation is consistent with the Republic's obligations under international law applicable to states of emergency; conforms to Sub-section (5); and is published in the national Government Gazette as soon as reasonably possible after being enacted.
- Section 37(5) - No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise indemnifying the state, or any person, in respect of any unlawful act; any derogation from this section; or any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

1 Section Number	2 Section Title	3 Extent to which the right is protected
9	Equality	With respect to <u>unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex religion or language</u>
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1)(d) and (e) and (2)(c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude
28	Children	With respect to:

35	Arrested, detained and accused persons	<p>subsection (1)(d) and (e); the rights in subparagraphs (i) and (ii) of subsection (1)(g); and subsection 1(i) in respect of children of 15 years and younger</p> <p>With respect to: subsections (1)(a), (b) and (c) and (2)(d); <u>the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) subsection (4); and subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.</u></p>
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- Section 37(6) - Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:

- (i) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
- (ii) A notice must be published in the national Government Gazette within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
- (iii) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
- (iv) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
- (v) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
- (vi) A detainee who is not released in compliance with specified review terms, or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
- (vii) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
- (viii) The state must present written reasons to the court to justify the continued detention of the

detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.

- Section 37(7) - If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.
- Section 37(8) - Sub-sections 37(6) and 37(7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution at Article 40(4.4) appears to contain a quasi-emergency provision in relation to personal rights. It states that: "Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion".

NEW ZEALAND

The *New Zealand Bill of Rights Act* does not include an express emergencies section.

COMMENTARY

Canada, the United States and New Zealand do not provide an express emergencies section. The Republic of Ireland seems to provide a quasi-emergency provision at Article 40(4.4). Whereas South Africa has emergency provisions that seem most detailed and broadly similar to those contained in Clause 17 of the current proposals.

Amongst key distinctions between the five countries and Clause 17 are:

- The South African Bill of Rights at Section 37 includes a longer list of non-derogable rights during states of emergency than Clause 17, e.g. children's rights such as the right to be protected from maltreatment, neglect, abuse or degradation and the right to be protected from exploitative labour practices.
- The South African Bill of Rights at Sections 37(6), (7) and (8) includes a comprehensive list of detainee provisions that apply when detainees without trial due to a derogation of rights resulting from a state of emergency; whereas Clause 17 appears not to include such provisions.

CLAUSE 18 - ENFORCEMENT

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter includes enforcement provisions as follows:

- Section 24(1) - Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of

competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

- Section 24(2) - Where, in proceedings under Sub-section (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

UNITED STATES

The American Bill of Rights does not include enforcement provisions. But elsewhere in the Constitution are the following:

- Article III, Section 1

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

- Article III, Section 2

Original jurisdiction of Supreme Court Appellate. Trial by Jury, etc. Trial, where the judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; [to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.]

SOUTH AFRICA

The South African Bill of Rights includes enforcement provisions as follows:

- Section 38 - Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:
 - anyone acting in their own interest;
 - anyone acting on behalf of another person who cannot act in their own name;
 - anyone acting as a member of, or in the interest of, a group or class of persons;
 - anyone acting in the public interest; and
 - an association acting in the interest of its members.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not include an enforcement section. But elsewhere in the Constitution, there is such a section at Article 34, which includes the following:

- Save as otherwise provided by Article 34, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.
- No Court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26 of this Constitution, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26.
- No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases that involve questions as to the validity of any law having regard to the provisions of this Constitution.
- The decision of the Supreme Court on a question as to the validity of a law having regard to the provisions of this Constitution shall be pronounced by such one of the judges of that Court as that Court shall direct, and no other opinion on such question, whether assenting or dissenting, shall be pronounced, nor shall the existence of any such other opinion be disclosed.
- The decision of the Supreme Court shall in all cases be final and conclusive.

NEW ZEALAND

The *New Zealand Bill of Rights Act* includes enforcement provisions as follows:

- Section 27(1) - Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority, which has the power to make a determination in respect of that person's right, obligations, or interests protected or recognised by law.
- Section 27(2) - Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority, which has the power to make a determination in respect of that person's right, obligations, or interests protected or recognised by law.
- Section 27(3) - Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.

COMMENTARY

The approaches taken by the five countries to enforcement appear to a lesser or a greater extent similar to those contained in Clause 18 of the current proposals.

Amongst key distinctions between the five countries and Clause 18 are:

- The American and the Irish Constitutions establish special constitutional courts; whereas Clause 18 seems not to create such a court.

- The Canadian Charter includes an express exclusionary rule in relation to tainted evidence; whereas Clause 18 seems not to do this.
- The South African Bill of Rights affords the right to approach a competent court where there is an interest; whereas Clause 18 requires “legitimate” interest to do so.

CLAUSE 19 – ENTRENCHMENT AND AMENDMENT

CURRENT NIHRC BILL OF RIGHTS PROPOSALS

See the full text of the relevant clause in Appendix 1.

CANADA

The Canadian Charter does not appear to have entrenchment or amendment provisions.

UNITED STATES

The American Bill of Rights does not include entrenchment and amendment provisions. But elsewhere in the Constitution, there are the following provisions:

- Article V
The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.
- Article VI
This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

SOUTH AFRICA

The South African Bill of Rights includes the following provisions in relation to entrenchment and amendment:

- Section 8(1) - The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
- Section 8(2) - A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- Section 8(3) - When applying a provision of the Bill of Rights to a natural or juristic person in terms of sub-section (2), a court:

- in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
 - may develop rules of the common law to limit the right, provided that the limitation is in accordance with Section 36(1).
- Section 8(4) - A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

REPUBLIC OF IRELAND

The Fundamental Rights Chapter of the Irish Constitution does not include entrenchment and amendment provisions. But elsewhere in the Constitution, there are such provisions:

- Article 46(1) - Any provision of this Constitution may be amended, whether by way of variation, addition, or repeal, in the manner provided by this Article.
- Article 46(2) - Every proposal for an amendment of this Constitution shall be initiated in Dáil Éireann as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.
- Article 46(3) - Every such Bill shall be expressed to be "An Act to amend the Constitution".
- Article 46(4) - A Bill containing a proposal or proposals for the amendment of this Constitution shall not contain any other proposal.
- Article 46(5) - A Bill containing a proposal for the amendment of this Constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this Article have been complied with in respect thereof and that such proposal has been duly approved by the people in accordance with the provisions of section 1 of Article 47 of this Constitution and shall be duly promulgated by the President as a law.
- Article 47(1) - Every proposal for an amendment of this Constitution which is submitted by Referendum to the decision of the people shall, for the purpose of Article 46 of this Constitution, be held to have been approved by the people, if, upon having been so submitted, a majority of the votes cast at such Referendum shall have been cast in favour of its enactment into law.
- Article 47(3) - Every citizen who has the right to vote at an election for members of Dáil Éireann shall have the right to vote at a Referendum.
- Article 47(4) - Subject as aforesaid, the Referendum shall be regulated by law.

NEW ZEALAND

The *New Zealand Bill of Rights Act* includes the following entrenchment and amendment provisions:

- Section 4

No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights),

(a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or

(b) Decline to apply any provision of this enactment by reason only that the provision is inconsistent with any provision of this Bill of Rights.

- Section 7

Where any Bill is introduced into the House of Representatives, the Attorney-General shall,

(a) In the case of a Government Bill, on the introduction of that Bill; or

(b) In any other case, as soon as practicable after the introduction of the Bill, bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms in this Bill of Rights.

COMMENTARY

Most of the countries, with the exception of Canada, provide more detailed approaches than Clause 19 of the current proposals, which requires a cross-community vote of the Northern Ireland Assembly to amend the Bill of Rights.

Amongst key distinctions between the five countries and Clause 19 are:

- The American and Irish Constitutions include express provisions about the supremacy of their provisions; whereas Clause 19 and the rest of the current proposals do not appear to include a comparable provision.
- The *New Zealand Bill of Rights Act* states that any enactment cannot be struck down by a court if found inconsistent with any of its provisions, but the Attorney General may bring it to the attention of the legislature; whereas the current proposals do not appear to include such provisions.

SECTION FOUR: POTENTIAL ISSUES

The background and comparative information highlighted throughout sections one to three raise a number of general and specific issues about the current proposals that may merit further consideration, e.g.:

- **The scope of the current proposals** – Whether the current proposals collectively provide adequate and appropriate protection for all relevant aspects of an individual's life, given existing protections under prevailing law in NI?
- **The apparent prescriptive nature of the current proposals** - Whether the current proposals generally are too detailed, making them too prescriptive for a Bill of Rights, when compared to the approaches taken by the five countries, and the fact that a Bill of Rights typically is a statement of a fairly high level of generality? Or whether this is the case for individual proposals, e.g. the rights of children as prescribed in Clause 10?
- **Express rights exclusively for specific groups** – Whether the current proposals should include express rights specifically for females, children and victims in light of the approaches taken by the five countries to such rights?

Whether other groups should be specifically provided for in the current proposals? Or should all specific groups rely on general protections?

- **A special court** – Whether the current proposals should establish a special court to address Bill of Rights issues, similar to the United States and the Republic of Ireland?
- **Entrenchment** – The principle of parliamentary sovereignty is central to the unwritten UK constitution. Nonetheless the mechanism for entrenchment is well established in UK constitutional practice.⁴¹ Does Clause 19 adequately provide for entrenchment of the Bill of Rights, i.e. make it a permanent feature of NI law? Could the Bill of Rights be better entrenched within the current rules of the unwritten UK constitution; and, in the event of a change in the constitutional arrangements of NI, which could result in a change of sovereignty, within the Irish Constitution? What would happen if the Bill of Rights was not entrenched?
- **Amendment** - Are the amendment provisions sufficiently rigorous? What are alternative procedures for amending or developing the Bill of Rights in future, e.g. in relation to Westminster-enacted Parliamentary Acts and developments under European Union law?
- **Hierarchy of law: A supremacy clause** – Once enacted, it appears from NIHRC materials that a Bill of Rights will be the supreme law in relation to laws enacted by the Assembly, but not those enacted by the Westminster Parliament,⁴² nor European Union law. But the current proposals are unclear, particularly in light of the present constitutional arrangements of NI and European Union considerations.

This raises a question about the hierarchy of NI law if a Bill of Rights is enacted, specifically in relation to: (i) Assembly-enacted legislation and court decisions made there under; (ii) Westminster-enacted Parliamentary Acts and court decisions made there under, e.g. the *Human Rights Act 1998* and the *Northern Ireland Act 1998*; and (iii) European Union law? What about (iii), particularly in light of the new Charter of Fundamental Rights?

Will the current proposals be amended to clarify these issues, e.g. include some form of a supremacy clause which explains the hierarchy of the law, i.e. the legal status of the Bill of Rights relative to other law, as is included in the American Constitution and the Irish Constitution? Also, the entrenched position of the Republic of Ireland given the constitutional framework of NI under the *Belfast (Good Friday) Agreement* potentially should be considered in this context. It appears that the afore-stated factors should be addressed and clearly dealt with if the purposes of the NI Bill of Rights are to be fulfilled.

Could the Bill of Rights be enacted by Westminster in a similar way to the *Human Rights Act 1998*, such that it takes precedent only in NI over domestic UK law, irrespective of the law having been enacted in Westminster or the

⁴¹ NIHRC. September 2001, 107. Entrenchment was used, e.g., when the UK Parliament granted a form of self-governance to the then dominions of Australia, Canada and the Irish Free State under the Statute Westminster in 1931, and has been formally recognised ever since, notably in the process by which the new Canadian Charter of Rights was adopted in 1982.

⁴² NIHRC. August 2000, 5.

Assembly, but still subject it to the *Human Rights Act 1998* and ultimately to the *ECHR*, as well as European Union law?

- **Environmental rights** – Whether the current proposals should include environmental rights in light of the approaches taken by the five countries to such rights?

APPENDIX 1 –

THE CURRENT BILL OF RIGHTS PROPOSALS FOR NORTHERN IRELAND

This appendix contains Appendix 1 of the NIHRC consultation document. It quotes its contents in full, i.e.:

CLAUSES FOR CONSULTATION

This appendix brings together all the clauses which the Commission is proposing for inclusion in a Bill of Rights for Northern Ireland. The numbers in square brackets indicate Articles of the European Convention on Human Rights.

1. Preamble

The people of Northern Ireland

considering that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

realising that each individual in Northern Ireland, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Bill of Rights;

recognising that the tragedies of the past have left a deep and profoundly regrettable legacy of suffering and that those who have died or been injured, and their families, can best be honoured through a fresh start dedicated to the achievement of reconciliation, tolerance, mutual trust and the protection and vindication of the human rights of all;

building on the principles enshrined in the Belfast (Good Friday) Agreement, namely:

a commitment to partnership, equality and mutual respect as the basis of relationships within Northern Ireland;

a total and absolute commitment to exclusively democratic and peaceful means of resolving differences on political issues and an opposition to any use or threat of force by others for any political purpose;;

an acknowledgement of the substantial differences between the competing and equally legitimate political aspirations in Northern Ireland and a commitment to strive in every practical way towards reconciliation and rapprochement within the framework of democratic and agreed arrangements; and

the better protection of the human rights of all men, women and children in Northern Ireland;

accepting therefore the need for a Bill of Rights building on the established protections under the European Convention on Human Rights, the European Union Charter of Fundamental Rights and other international human rights conventions, which will:

reflect the particular circumstances of Northern Ireland;

guarantee the rights of both main communities and all other communities in Northern Ireland;

promote mutual tolerance and respect between all sections of the community; and

ensure the effective delivery of those rights to all people, including those suffering during the conflict and the most disadvantaged and vulnerable people in Northern Ireland;

have requested the adoption of the following Bill of Rights.

2. Democratic rights

(a) Elections

Right to free elections

[1] The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

2. Elections to the European Parliament, the Westminster Parliament, the Northern Ireland Assembly and local government shall be by a system of proportional representation to be determined by legislation.

(b) Participation in government

1. Elected representatives shall be entitled to fair, full and effective participation in the governance of Northern Ireland.

2. The State shall take all appropriate measures to promote the right of women to fair, full and equal participation in public life, including participation in decision-making processes and access to power.

[3] Nothing in Articles 10, 11 and 14 [of the European Convention on Human Rights] shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

(c) Voting and candidacy rights

1. All persons aged 17 or over shall have the right to vote in elections to local and regional Government bodies and referendums at local and regional level within Northern Ireland, provided that they satisfy the requirements of legislation as to residence or other local connection. All persons who are entitled to vote are also entitled to present themselves as candidates for election and to nominate, second or support candidates.

3. Rights concerning identity and communities

(a) The right to a national identity

1. Individuals born in Northern Ireland have the right to identify themselves and be accepted as Irish or British citizens, or both, as they may so choose.

(b) The rights of members of communities

1. Nothing in this section shall be used to negate equality commitments, including positive action provisions in the Bill of Rights or in legislation. [Nor shall anything in this section negate voting mechanisms designed to ensure representivity in political institutions and decision-making.]

2. Everyone belonging to a national, ethnic, religious or linguistic community shall have the right in common with other members of that community to enjoy his or her own culture, to profess and practise his or her own religion and to use his or her own language.

3. Everyone has the right to be nomadic or sedentary and a right to change from one mode of living to the other.

4. Everyone has the right freely to choose to be treated or not to be treated as a member of what might otherwise be perceived to be their national, ethnic, religious or linguistic community and no disadvantage shall result from this choice or from the exercise of the rights which are connected to this choice.

5. The Government and public bodies shall, without prejudice to existing legal requirements and to the positive action clause 4(8) of this Bill, adopt effective and appropriate measures to:

(a) promote equality in all areas of economic, social, cultural and political life among and between persons belonging to national, ethnic, religious or linguistic communities and the conditions necessary for them to maintain and develop their culture;

(b) preserve the essential elements of the identity of such persons, namely their religion, language, traditions and cultural heritage; and

(a) promote tolerance, mutual respect, understanding and co-operation among all persons living in Northern Ireland, irrespective of their cultural, ethnic, religious or linguistic identity, in particular in the fields of education, culture and the media.

The following clause is offered as an alternative to clauses 2 to 4, above:

2. The Government and public bodies shall adopt effective and appropriate measures to ensure:

(a) mutual respect for all people in the diversity of their identities and traditions; and

(b) parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities; the programmatic standards in the Framework Convention shall provide a guide as to how this is to be achieved.

4. Equality and non-discrimination

Prohibition of discrimination

[1] The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. Everyone is equal before and under the law and has the right to equal protection and equal benefit of the law. Equality includes the full and equal access to and enjoyment of all rights and freedoms.

3. Equality between men and women must be ensured in all areas. The State shall take all necessary measures to promote the equal enjoyment, benefit and protection of all human rights and fundamental freedoms for women and girls.

4. Everyone has the right to be protected against any direct or indirect discrimination whatsoever on any ground (or combination of grounds) such as race or ethnic origin, nationality, colour, gender, marital or family status, residence, language, religion or belief, political or other opinion, possession of a criminal conviction, national or social origin, birth, disability, age, parentage, sexual orientation, status as a victim or any other status.

5. Direct discrimination shall be taken to occur when a person has suffered, will suffer or would suffer disadvantage on the basis of any of the grounds in clause 4(4) (the non-discrimination clause).

6. 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, as defined by clause 4(4) (the non-discrimination clause) and as limited by clause 4(9) (the exceptions clause).

7. Harassment or bullying shall be deemed to be a form of discrimination when unwanted conduct related to any of the grounds referred to in clause 4(4) (the non-discrimination clause) 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.

8. Laws, policies, programmes or activities aimed at achieving and sustaining full and effective equality, in particular by reducing inequalities affecting groups disadvantaged on the grounds specified in clause 4(4) (the non-discrimination clause) or on socio-economic grounds, and which may include specific measures for individuals from such groups, shall be required [or may be adopted]. Such laws, policies, programmes or activities shall not constitute unlawful discrimination.

9. A difference of treatment which is based on a characteristic related to any of the grounds referred to in the non-discrimination clause 4(4) 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.

5. The rights of women

Equality between men and women:

see Clause 4(3)

Equality between men and women must be ensured in all areas. The State shall take all necessary measures to promote the equal enjoyment, benefit and protection of all human rights and fundamental freedoms for women and girls.

Right to reproductive health:

see Clause 14c(5)

Everyone has the right to have equal and free access to sexual and reproductive health care and to information and education relating to sexual and reproductive matters at all levels, free of coercion, discrimination or violence.

Freedom from gender-based violence:

see Clause 8c(1)

The State shall take all appropriate measures to prevent and eliminate all forms of violence against women and girls whether physical, mental or emotional.

Right to fair, full and effective participation:

see Clause 2b(2)

The State shall take all appropriate measures to promote the right of women to fair, full and equal participation in public life, including participation in decision-making processes and access to power.

6. Rights to life, freedom from torture, inhuman or degrading treatment or punishment, freedom from slavery and freedom from forced labour

(a) Right to life

[1] Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

[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.*

3. No one shall be deprived of life by a law enforcement official except:

- (a) when the official is acting in self-defence or defence of others or when there is an imminent threat of death or serious injury;*
 - (b) to prevent the perpetration of a particularly serious crime involving grave threat to life; or*
 - (c) to arrest a person who is presenting such a danger as in (b) and who is resisting the arrest;*
- but only when less extreme means are insufficient to achieve these objectives.*

[4] The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

[5] A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

(b) Freedom from torture, inhuman or degrading treatment or punishment

[1] No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

(c) Freedom from slavery or 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;

(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.

7. Criminal justice and administrative justice

(a) 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, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(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.

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

[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.

[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.

6. No-one shall be detained solely on the ground that he or she is a member of one of the categories in Article 5(1)(e) of the European Convention on Human Rights.

7. Everyone has the right not to be subjected to search or seizure, whether of the person, property, correspondence or otherwise, unless it is in accordance with a reasonable and proportionate procedure prescribed by law.

8. Everyone who is arrested has the right to consult privately, without unreasonable delay and if necessary at State expense, with a solicitor [of his or her choice] before being questioned by the police.

9. Everyone who is detained has the right to inform a relative or friend without unreasonable delay that he or she is being detained and where this is occurring.

10. Everyone who is detained has the right to be visited without unreasonable delay by and to correspond with, in particular, members of his or her family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law in accordance with Principle 19 of the UN's Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

11. Everyone who is detained has the right to conditions of detention which are consistent with human dignity and in particular has the right to adequate accommodation, association and protection, as well as regular exercise, nutritious food, reading material, medical treatment and spiritual counselling.

12. Everyone who is questioned while under arrest has the right to have a solicitor present during the questioning and to have the questioning audio-recorded and video-recorded.

13. Everyone who is questioned while under arrest has the right if he or she needs it to have a competent interpreter present during the questioning.

14. Everyone who is questioned while under arrest has the right to remain silent and to have no adverse inferences drawn at a later stage if this right is exercised.

15. Everyone who is detained has the right to be charged or to be released within 24 hours unless a court orders an extension to the detention for exceptional reasons.

16. Everyone who is charged with a criminal offence has the right to be released pending trial unless the prosecution can produce admissible evidence to show that there are relevant and sufficient reasons to justify continued detention.

17. Everyone has the right to be informed immediately upon arrest of his or her rights as an arrested person in a language and manner which he or she understands.

(b) Right to a fair trial

[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 within a reasonable time 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 interest 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.

4. Everyone remanded in custody pending trial for an indictable offence has the right to spend no more than 110 days in custody before the commencement of the trial and everyone remanded in custody pending trial for a summary offence has the right to spend no more than 40 days in custody before the commencement of the trial. These rights can be waived or can be removed where the interests of justice clearly require this.

5. Everyone charged with a criminal offence has the right to remain silent at the trial and to have no adverse inferences drawn if this right is exercised.

6. Everyone charged with a serious criminal offence has the right to be tried by a judge sitting with a jury unless he or she waives this right.

7. Everyone charged with a criminal offence has the right to have excluded from consideration by the court any evidence which has been obtained as a result of the violation of any right in the Bill of Rights for Northern Ireland.

8. Everyone convicted of a criminal offence has the right to appeal to a higher court against the conviction, the sentence or both.

9. Every witness in a court case has the right to reasonable protection, assistance, and support throughout the legal process.

10. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.

11. Judges and other court officials shall conduct proceedings professionally, courteously and temperately and in a manner consistent with their public office.

12. A person convicted of a crime shall be given a custodial sentence only as a measure of last resort. The State shall develop and encourage the use of alternatives to prosecution and custodial sentences.

13. Every prisoner has the right to be treated humanely, with dignity and with the objective of enabling him or her to re-enter society safely and effectively.

14. Every prisoner retains the rights conferred by the Bill of Rights for Northern Ireland unless there are clearly justifiable reasons for denying the prisoner those rights.

15. The State shall take effective measures to ensure that favourable conditions are created for the reintegration of ex-prisoners into society.

(c) Non-retrospectivity of criminal laws

[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 criminal according to the general principles of law recognised by civilised nations.

(d) Fair trials in administrative law proceedings

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons for that action.

8. The rights of victims

(a) Victims of the conflict

1. With a view to promoting the principles of truth and reconciliation in the aftermath of a lengthy period of conflict, the Government shall take legislative and other measures to ensure that the loss and suffering of all victims of that conflict and the responsibility of State and non-State participants are appropriately and independently established and/or acknowledged.

2. All victims of the conflict have the right to the highest possible level of social care and support in accordance with their needs, particularly in respect of personal security and access to health care, income support, employment, training and education and for those purposes to be protected from any unfair or discriminatory treatment.

(b) The rights of victims for the future

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws. A person may be considered a victim regardless of whether the perpetrator is apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term also includes, where appropriate, their family, their dependants, those with whom they have a close relationship and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

2. Legislation shall be introduced to give effect to the following rights:

(a) the right of every victim to be treated with compassion and respect for his or her dignity.

(b) the right of every victim to obtain redress by way of restitution or compensation through formal or informal procedures that are expeditious, fair, inexpensive and accessible.

(c) the right of every victim to have the crime in question investigated thoroughly, promptly and impartially.

(d) the right of every victim to be informed of the progress of any relevant investigation and to have his or her concerns taken into account in the conduct of any relevant legal proceedings.

(e) the right of every victim to reasonable assistance during the trial of any person charged in connection with the crime in question.

(c) Violence against women

1. The State shall take all appropriate measures to prevent and eliminate all forms of violence against women and girls whether physical, mental or emotional.

9. Rights to family life and private life

(a) Rights to family and private life

[1] Everyone has the right to respect for his private and family life, his home and his correspondence.

[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.

3. Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.

4. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

(b) Right to marry

[1] Men and women of marriageable age have the right to marry and to found a family, according to the laws governing the exercise of this right.

2. The State shall adopt legislation to recognise and guarantee equality of rights and responsibilities of a private law character for persons living together in marriage and in long-term domestic partnerships. Such legislation shall provide for the formal recognition of the relationship and the rights and responsibilities of the partners during the relationship and in the event of its dissolution.

3. Everyone who is married has the right to have the marriage terminated in accordance with the law.

10. The rights of children

(a) General provisions

1. For the purposes of this Bill of Rights, a child means every human being below the age of 18 years.

2. In all actions concerning children, whether undertaken by public or private institutions, individuals or bodies, courts of law, administrative or legislative authorities, the best interests of the child shall be the paramount consideration and the following rights shall be interpreted as subject to that requirement.

3. Public bodies shall carry out their functions in relation to children in accordance with the provisions of the UN's Convention on the Rights of the Child and shall in addition take all reasonable steps to ensure for all children the following rights.

(b) Participation rights

1. The State shall ensure to every child the right to express his or her views freely in all matters concerning him or her. The State undertakes to consider such views and to give them due weight in accordance with the age and maturity of the child.

2. Every child has the right to participate effectively, either directly or indirectly through an independent representative, in all proceedings affecting him or her, whether administrative or judicial, in public or private law. Every child has the right of access to the law and to legal representation.

3. Every child has the right to participate and play a constructive role in society and in the future of Northern Ireland. Without prejudice to duties imposed by domestic law, the State shall promote and encourage all those working with and for children to collaborate, co-operate and form partnerships with children to further the protection of their rights.

(c) The family

1. Every child has the right to grow up in a stable and safe family environment and to this end the State shall provide adequate support and assistance to parents and other primary carers.

or

The State shall provide adequate support and assistance to parents and other primary carers to enable every child in so far as is possible to grow up in a stable and safe family environment.

2. Every child who is denied a stable, safe and loving family environment is entitled to special protection and support from the State in the best interests of the child within a reasonable time. The State's obligation to protect and support shall end only when it is no longer required. Children leaving care shall be prepared for and supported in the transition from care to independent living.

3. Every child who is separated from one or both parents has the right to maintain personal relations and direct and/or indirect contact with them and with his or her family on a regular basis except where it is contrary to his or her best interests.

(d) Protection rights

1. Every child has the right to be protected from all forms of physical, emotional or mental violence, inhuman or degrading treatment or punishment, injury or abuse, neglect or negligent treatment, bullying, maltreatment or exploitation, including sexual exploitation or abuse.

2. Such protection shall include the taking of all necessary legislative, administrative, social and educational measures, the establishment of effective programmes for the identification, reporting, referral and investigation of such abuse and for the care and treatment of victims, and the independent monitoring of those programmes.

(e) Children in conflict with the law

1. No child below the age of 12 years shall be criminally responsible. The State undertakes to keep the age of criminal responsibility under review and to continue to develop measures for dealing with children in conflict with the law without resorting to judicial proceedings and in a way which removes them from the criminal process, provided that their human rights and legal safeguards are fully respected.

2. Every child suspected or accused of having infringed the criminal law, or found to have infringed it, has the right to be treated in a manner consistent with respect for his or her dignity and human rights and in accordance with his or her age and understanding.

3. The following minimum rights shall be guaranteed to every child:

(a) the right to have criminal charges explained promptly and in appropriate language;

(b) the right to have access to appropriate legal and other assistance in the preparation of a defence;

(c) the right to have any criminal charge determined without delay by a competent, independent and impartial tribunal in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is contrary to his or her best interests and taking into account his or her age or situation, of his or her parents or legal guardians;

(d) the right to have an appropriate adult present to represent the interests of the child even if a solicitor is also present;

(e) the right to be tried for a criminal offence in an appropriate setting and manner, having regard to the child's age, maturity, needs, vulnerability and understanding;

(f) the right to have measures taken to ensure his or her participation in and understanding of the criminal proceedings;

(g) the right to have his or her privacy respected before, during and after the proceedings.

4. *The detention of a child must occur only in exceptional circumstances and in accordance with the law. Detention shall be used only as a measure of last resort and for the shortest appropriate period of time. A variety of dispositions and alternatives to institutional care shall be available to ensure that children are always dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the alleged offence.*

5. *Every child deprived of liberty shall be treated with respect for his or her dignity and human rights and in a manner which takes into account his or her age and particular needs.*

6. *Every child deprived of liberty shall have the following minimum rights:*

(a) *the right to be separated from adults in detention and (if not yet found guilty) from children who have already been found guilty;*

(b) *the right to prompt access to appropriate legal and medical assistance and pastoral care;*

(c) *the right to privacy and respect for his or her correspondence;*

(d) *the right to maintain regular and direct contact with parents, siblings or other family members and friends, save in exceptional circumstances;*

(e) *the right to access the Northern Ireland Curriculum and/or educational and vocational training necessary to prepare for his or her re-integration and constructive participation in society following release.*

(f) *Children with disabilities*

1. *Every child living with a disability has the right to the greatest extent possible to enjoy an independent and fulfilling life in conditions which ensure dignity, promote self-reliance and facilitate his or her active participation in the community. He or she has the right to special care and assistance, to assessment and appropriate services, and to effective education, which allows the child, to the greatest extent possible, to maximise his or her potential for personal development, independence and social inclusion.*

(g) *Right to play*

1. *Every child has the right to play and leisure which is appropriate to his or her age and ability and which contributes to his or her social, physical, emotional, creative and intellectual development. The State shall promote the right of all children to participate in sport, cultural, recreational and artistic activities.*

(h) *Health care*

1. *Every child has the right to enjoy the highest attainable standard of health and to enjoy access to all appropriate health care services, including dedicated psychiatric services.*

2. *The State shall take appropriate measures to address health problems specific to children and to promote the health and health care of children. Every child has the right to receive information, material and guidance from a range of sources on issues relating to the child's well-being, including reproductive health, sex and sexuality.*

3. *Every child has the right to a standard of living adequate to the child's physical, mental, spiritual and social development. The State shall provide material assistance and support to enable the full implementation of this right to be achieved.*

(i) *Education*

1. *Every child has the right to an effective education.*

2. *The State shall take appropriate measures to ensure that education respects the rights and needs of all children, especially children with disabilities, pregnant children, children in care, children in juvenile justice centres and children of other disadvantaged groups.*

3. *School exclusions shall be imposed only as a measure of last resort. Every child excluded from school has the right to be informed promptly of the grounds for the exclusion, to receive all documentation relating to the school's decision to exclude and to have the right to participate in*

an independent appeal procedure, together with his or her parents, guardians or other independent representative.

4. The State shall take measures to protect the safety of children in school, to respect their right to privacy and human dignity, and to guarantee their effective participation in matters affecting his or her education.

(j) Children's economic rights

1. The State shall take appropriate measures to protect every child from economic exploitation and from performing any work that is hazardous, interferes with the child's education, is harmful to the child's health or is otherwise prejudicial to any aspect of the child's welfare.

2. Children working below school leaving age shall enjoy the same rights and protection as other workers in relation to the right to just conditions of work, the right to safe and healthy working conditions, the right to a fair remuneration, the right to organise, the right to bargain collectively, and the right to equal opportunities and equal treatment without discrimination on any of the grounds specified in clause 4(8). Persons in full-time employment between school leaving age and the age of 18 shall enjoy all of these rights and all other rights available to workers over the age of 18.

(k) Awareness about rights

1. The State undertakes to make the rights of children widely known and accessible to all. To this end, the State undertakes to include human rights on the school, youth service and training curricula, as well as on the training programmes for all those working for, in connection with or on behalf of children.

11. Education Rights

(a) The right of effective and appropriate education for all

[1] No-one shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

2. Everyone has the right to an effective education which is to the greatest extent possible directed towards the full development of the person, including his or her talents, mental and physical abilities and sense of dignity and which enables all persons to participate effectively in the life of the community.

3. The State shall, to the greatest extent possible, ensure the right of parents to have education and teaching for their children in conformity with their religious, philosophical and pedagogical convictions, subject to the competence of the child to decide for him- or herself in accordance with his or her age and maturity. The State shall respect the right of parents to choose for their children education in schools with a particular religious ethos, education in integrated schools and education in Irish-medium schools.

4. The State shall provide financial and other support to all schools established in accordance with need and with clause (b) above on an equitable and transparent basis, subject to reasonable requirements, including minimum numbers of pupils in any area and without prejudice to the need to redress inequalities.

(b) Protection from discrimination

1. No individual shall be denied admission to any educational establishment receiving State funding on any of the grounds specified in the non-discrimination clause in this Bill of Rights.

2. The State shall ensure that the criteria for admission to all such educational establishments are such as to ensure access to effective and appropriate education for all.

(c) Human rights Education

1. The State shall ensure that education in all its forms shall be directed to the promotion of human rights, equality, dignity of the person, respect for diversity and tolerance.

12. Rights to freedom of thought, expression, information and association

(a) Freedom of thought

[1] Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his or her 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 the protection of the rights and freedoms of others.

(b) 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. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

[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 national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(c) Freedom of assembly

[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.

[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 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 the administration of the State.

13. Language rights

1. Everyone has the right to use his or her own language for private purposes and all languages, dialects and other forms of communication are entitled to respect.

2. Everyone has the right to communicate with any public body through an interpreter, translator or facilitator when this is necessary for the purposes of accessing, in a language that he or she understands, information or services essential to his or her life, health, security or enjoyment of other essential services.

3. The State shall make suitable provision for assisting communication between members of different linguistic communities.

1. In relation to the Irish language and Ulster-Scots, legislation shall be introduced to implement the commitments made under the Belfast (Good Friday) Agreement and the European Charter for Regional or Minority Languages.

2. Without prejudice to the foregoing provisions, legislation shall be introduced to ensure for members of all linguistic communities, where there is sufficient demand, the following rights in respect of their language or dialect:

(a) the promotion of conditions necessary to maintain and develop it;

- (b) *the right to use it in dealings with public bodies;*
- (c) *the right to use one's name in it and to be officially recognised under it;*
- (d) *the right to display signs and other information in it;*
- (e) *the right to display local street and other place names in it;*
- (f) *the right to learn it and to be educated in and through it.*

14. Social, economic and environmental rights

(a) A general provision to govern social and economic rights

1. Since poverty and social exclusion represent a fundamental denial of human dignity, the protection of social and economic rights is an integral part of the delivery of effective human rights. All public bodies through which any of the legislative, executive or judicial powers of the State are exercised in Northern Ireland (in particular the Northern Ireland Executive and Northern Ireland Assembly) shall therefore take legislative and/or other measures to develop and enforce programmatic responses to the social and economic rights set out below. In doing so, all public bodies will allocate resources in a proportionate and non-discriminatory manner, as set out in the non-discrimination clause 4(4) of this Bill of Rights. All public bodies shall be required to consult and to create mechanisms which facilitate and promote the development of policies and programmes to ensure social and economic inclusion for all citizens. Legal remedies shall protect the due process and equality rights of all citizens in respect of social and economic rights.

(b) Protection of property

[1] 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.

(c) The right to health care

1. Everyone is entitled to the highest attainable standard of physical and mental health and well-being.

2. Government shall take all reasonable steps to promote good health and well-being, and to ensure adequate prevention and treatment of ill-health.

3. Equality of access to health promotion, treatment and prevention of ill-health shall be assured.

4. Everyone has the right to be consulted about decisions which affect his or her physical or mental health.

5. Everyone has the right to have equal and free access to sexual and reproductive health care and to information and education relating to sexual and reproductive matters at all levels, free of coercion, discrimination or violence.

(d) The right to an adequate standard of living

1. Everyone is entitled to an adequate standard of living sufficient for that person and those dependent upon him or her.

2. Material provision for each person should be sufficient to ensure esteem for his or her health and dignity.

3. Everyone has the right to social and civic care.

4. Persons receiving assistance from the State shall be accorded respect. The State shall endeavour to accommodate the particular needs of ethnic and minority groups in the provision of material needs.

5. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided to ensure the enforcement of these rights.

(e) The right to housing

- 1. Everyone has the right to adequate housing.*
- 2. Housing should be appropriate to the material, social and mobility needs of the person.*
- 3. Everyone is entitled to secure establishment in his or her home. Limitations on secure establishment must be subject to fair legal process.*

(f) The right to work

- 1. Everyone has the right to contribute to the economic and social life of society, including the right of access to work and the right to choose and practice a trade or profession.*
- 2. The State shall provide for, support and encourage the continuous development of skills, knowledge and understanding that are essential for employability and fulfilment.*
- 3. Everyone has the right to just and favourable conditions of work.*

(g) The right to a healthy and sustainable environment

- 1. Everyone has the right to a healthy, safe and sustainable environment.*
- 2. The State has a duty to provide accurate and timely information and to communicate, consult and foster participation in planning and decision-making on matters which concern the environment.*

15. Interpretation

(a) General interpretation

- 1. Without prejudice to any more specific provisions on interpretation contained in this Bill of Rights, a court, tribunal or other body, when interpreting the Bill of Rights for Northern Ireland;*

must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

must have due regard to the content of the Belfast Agreement of 10 April 1998 and to the Preamble to the Bill of Rights;

must have due regard to international law and practice; and

may have due regard to the law and practice of other countries.

- 2. When interpreting any legislation, and when developing the common law, a court, tribunal or other body must promote the spirit, purpose and objectives of the Bill of Rights.*

- 3. The Bill of Rights does not deny the existence of any other rights or freedoms which are recognised or conferred by legislation or the common law, to the extent that they are consistent with the Bill.*

16. Limitations

- 1. The non-Convention rights in the Bill of Rights may be limited only to the extent that the limitation is prescribed by law, reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:*

(a) the nature of the right;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relation between the limitation and its purpose; and

(e) less restrictive means to achieve the purpose.

[2] Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

[3] The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

17. Emergencies

(a) Derogation in time of emergency

[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.

(b) States of emergency

1. No derogation from the Bill of Rights for Northern Ireland shall be lawful in Northern Ireland unless a state of emergency in Northern Ireland has been declared prior to the derogation.

2. A state of emergency in Northern Ireland may be declared only by an Act of the relevant legislative authority and only after the legislative body has passed a resolution that –

(a) the life of the people of Northern Ireland is seriously threatened by war, invasion, general insurrection, natural disaster, or other public emergency; and

(b) a declaration of a state of emergency is strictly required by the exigencies of the situation.

3. A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, is effective only –

(a) prospectively from the date of the declaration; and

(b) for no more than 21 days from the date of the declaration, unless the relevant legislative body extends the declaration of a state of emergency.

4. Any extension of a state of emergency can be valid for no longer than three months and must be made by a resolution of the relevant legislative body supported by a cross-community vote of at least 60 per cent of the members of the legislative body in Northern Ireland.

5. On an application from any interested person, a competent court may decide on the validity of –

(a) a declaration of a state of emergency;

(b) any extension of a declaration of a state of emergency; or

(c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.

6. No Act of the relevant legislative body which authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise:

- (a) indemnifying the state, or any person, in respect of any unlawful act; or*
- (b) any derogation from this section.*

18. Enforcement

- 1. Courts shall grant to any person or body whose rights and freedoms under this Bill of Rights have been or may be violated an effective remedy and for this purpose may grant such relief or remedy, including compensation, or make such order, as they consider just and appropriate.*
- 2. Any person or body who has a legitimate interest in the matter may bring proceedings concerning the alleged breach of any provision in this Bill of Rights.*
- 3. Proposed legislation may be referred to the courts for a decision as to whether it is at that time compatible with the Bill of Rights for Northern Ireland.*

19. Entrenchment and amendment

- 1. No amendment shall be made to this Bill of Rights without the consent of the Northern Ireland Assembly in a resolution adopted by a cross-community vote. The Assembly may at any time adopt a resolution by a cross-community vote requesting the amendment of the Bill. Any such resolution shall specify the amendment to be made.*

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