

Consultation on the creation of a Bill of Rights for Northern Ireland

January 2021

Introduction

Northern Ireland Women's European Platform (NIWEP) welcomes the consultation on a Bill of Rights for Northern Ireland. NIWEP welcomes the opportunity to contribute to the early discussion.

NIWEP is a membership organisation of women's NGOs in Northern Ireland. Established as the Northern Ireland link to the European Women's Lobby, the EU's expert body on women's rights and gender equality, NIWEP also has special consultative status with the UN. A key role for NIWEP is promoting gender responsive policy and decision making at local, regional and national level taking account of the state's international obligations, while also ensuring women and girls are engaged in policy and decision making. NIWEP also works to share information and good practice at international level with local members and stakeholders, and highlight local learning and good practice internationally.

NIWEP's core objectives involve raising awareness and promoting implementation of key international human rights treaties and initiatives, including the Convention on the Elimination of All Discrimination against Women (CEDAW). NIWEP views implementing the recommendations of CEDAW as a clear roadmap and mechanism to ensuring women's human rights are fully met and upheld in Northern Ireland. The comments in this submission are made within this context.

Summary

NIWEP welcomes the process exploring a Bill of Rights, and believes that establishing a strong Bill of Rights is important for the future of Northern Ireland. NIWEP views a Bill of Rights as a vehicle for securing existing rights in legislation; the process in NIWEP's view does not involve introducing new rights, rather it is about ensuring existing rights are realised equitably for everyone in Northern Ireland through clear and comprehensive legislation.

NIWEP also endorses the responses of the Northern Ireland Human Rights Consortium and the Women's Policy Group to this consultation.

Framework based on international human rights standards

NIWEP would urge for a Bill of Rights to build on the existing international human rights framework, and take the opportunity to incorporate international human rights standards into legislation. The core UN human rights treaties form the backbone of this framework, while

the European Convention on Human Rights (ECHR) provides a European interpretation of these standards. Within the UN framework, the following (with Optional Protocols, where those have been adopted) are the core human rights instruments, which are highly relevant to the Bill of Rights:

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²
- Convention on the Rights of the Child (CRC)³
- Convention on the Rights of Persons with Disabilities (CRPD)⁴
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁵
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁶
- International Convention for the Protection of All Persons from Enforced Disappearance⁷
- International Covenant on Civil and Political Rights (ICCPR)⁸
- International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹

The initial seven frameworks set out an agenda for realising the human rights of specific population groups, deemed in international law to require specific provisions. The final two set out the core civil and political rights, and economic, social and cultural rights that include issues around health and education.

It is critical to note that the UK has ratified all of these, and therefore is already obligated in international law to implement the provisions of these frameworks. The ECHR is already incorporated in UK legislation through the Human Rights Act 1998, providing a relevant model for incorporating international instruments in domestic legislation. The UK is also monitored by the UN on the implementation of the core frameworks, through regular reporting and examination cycles. Reports and concluding observations have repeatedly recommended strengthened legislation to ensure effective implementation of the UK's international obligations. For example, the UK was examined under CEDAW in 2019, and a core recommendation in Concluding Observations from this examination was that rights and protections for women in Northern Ireland must be put on an equal footing with those for women elsewhere in the UK¹⁰. A repeated recommendation in the last several Concluding Observations by the CEDAW Committee has been incorporation of CEDAW in domestic legislation.¹¹

¹ [International Convention on the Elimination of All Forms of Racial Discrimination](#) 1965

² [Convention on the Elimination of All Forms of Discrimination against Women](#) 1979

³ [Convention on the Rights of the Child](#) 1989

⁴ [Convention on the Rights of Persons with Disabilities](#) 2006

⁵ [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) 1984

⁶ [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](#) 1990

⁷ [International Convention for the Protection of All Persons from Enforced Disappearance](#) 2006

⁸ [International Covenant on Civil and Political Rights](#) 1966

⁹ [International Covenant on Economic, Social and Cultural Rights](#) 1966

¹⁰ CEDAW Committee (March 2019) [Concluding Observations on the 8th periodic report of the UK, recommendation 15\(a\)](#)

¹¹ [Concluding Observations](#) 2019, 2013, 2008 on examinations of the UK under CEDAW

Incorporating these standards in Northern Ireland legislation would therefore not amount to introducing any new rights, but would provide a vehicle for effectively implementing international obligations locally. This would not only contribute to creating a strong and clear legislative framework locally, but would also highlight Northern Ireland as an international leader. Currently, Wales has incorporated the Convention on the Rights of the Child into Welsh legislation through, while Scotland is preparing for incorporation of CEDAW into Scottish law. By incorporating international standards into a Bill of Rights, Northern Ireland would therefore follow a direction already set by others, and indicate its commitment to a rights based approach to policy and decision making.

Clear and robust information sharing

NIWEP would urge for any future consultation and engagement with the public on a Bill of Rights to focus on clarifying concepts and supporting all stakeholders to engage effectively with the process. In particular, members of the public may not be familiar with the concepts and terminology used, and may find it difficult to form and share an informed view without access to relevant resources.

The current consultation offers limited explanation of concepts, and provides very little context, which is problematic with regard to the above. Therefore, it is not clear how robust views shared by those not regularly working with human rights issues can be, and it is important that this consultation is followed up by further engagement to avoid confusion among members of the public and ensure any conclusion regarding public opinion is reliable as a basis for further decision making.

A key role for NIWEP is building capacity and sharing learning on international human rights instruments, and NIWEP would be pleased to explore this area further, should it be helpful.

1. Views on Human Rights

a. To what extent do you agree that everyone in Northern Ireland today enjoys the same basic human rights?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

b. Why do you feel this way?

The question is difficult to interpret, particularly for those who do not regularly engage with issues relating to human rights. It would be helpful if the concept of 'enjoyment' would be explained in more detail to assist in particular members of the public to engage with the consultation.

NIWEP would like to stress that the concept of 'enjoyment' includes both having a right and being able to exercise it, thus realising the right. Therefore, legislation is not sufficient in itself, all population groups must also be able to exercise the right in an equitable way, and

policy level action is required to ensure, enable and promote this. In Northern Ireland, this is not currently the case, and therefore NIWEP concludes that everyone in Northern Ireland does not enjoy the same basic human rights. In particular, people from Black, asylum seeking, migrant and ethnic minority groups are not able to exercise rights in full, and experience difficulties in accessing jobs, education and services. No recourse to public funds is a specific example limiting people's rights, and directly puts people with no recourse to public funds at risk of violence and exploitation. The risk is particularly significant for women with no recourse to public funds, whose immigration status often also is dependent on their partner and who therefore fear deportation should they need support from public services. The issue is particularly serious for women subjected to violence, as they often feel unable to flee abusive relationships. Trans people face very severe limitations and difficulties in accessing support and services. As a core example, the single gender clinic in Northern Ireland has not accepted new clients for a number of year, thus preventing trans people seeking care from enjoying their full human rights. LGBTIQ+ people also face difficulties in accessing services, as do people with disabilities.

For women, there are multiple barriers to the enjoyment of full human rights. A key role for NIWEP is coordinating the civil society response to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as one of the seven core international human rights treaties. NIWEP has in numerous shadow reports highlighted the multiple ways in which women do not enjoy the same basic human rights as men, including protection from violence, equal pay for equal work and an equal role in decision making (see [shadow reports](#), including most recent Shadow report to CEDAW, January 2019). The CEDAW Committee has also [repeatedly underlined](#) the importance of incorporating CEDAW in domestic law, which now is [underway in Scotland](#) and is being prepared in Wales.

NIWEP would like to emphasise that CEDAW, along with other [international human rights standards](#) such as the Convention on the Rights of People with Disabilities (CRPD), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) and the Convention against Torture (CAT), are binding on the UK as a State Party to these conventions, and as such on devolved administrations. Therefore, the rights embodied in these international standards should be implemented through legislation as a way of upholding basic human rights. As this is not currently the case, it cannot be argued that people in Northern Ireland enjoy full human rights.

2. Protections

In your view, do people in Northern Ireland need more protection for their human rights in relation to any of the following areas?

- | | |
|------------------------------|-------------------------------------|
| A. Age | <input checked="" type="checkbox"/> |
| B. Caring responsibilities | <input checked="" type="checkbox"/> |
| C. Community background | <input type="checkbox"/> |
| D. Criminal record | <input checked="" type="checkbox"/> |
| E. Cultural background | <input checked="" type="checkbox"/> |
| F. Disability | <input checked="" type="checkbox"/> |
| G. Economic status or income | <input checked="" type="checkbox"/> |
| H. Ethnic group | <input checked="" type="checkbox"/> |
| I. Family or civil status | <input checked="" type="checkbox"/> |

- J. Gender
- K. Health status
- L. Language
- M. National identity
- N. Political or other opinion
- O. Pregnancy and maternity
- P. Property
- Q. Religion or belief
- R. Sexual orientation
- S. Don't know
- T. None of the above
- U. Other

If you selected 'Other', please let us know what other areas you think should be included:

NIWEP believes that it is essential that any Bill of Rights in Northern Ireland is based on existing human rights frameworks, including international human rights standards as well as domestic legislation, to ensure that any areas covered and protected align with such frameworks. Critically, any Bill of Rights should align with the European Convention on Human Rights, which is integrated in the Human Rights Act 1998. This is also in line with the Belfast/Good Friday Agreement, which includes the mandate to constitute a Bill of Rights 'taken together with the ECHR'.

Many of the areas covered above have some protection in domestic law, under ECHR through incorporation in the Human Rights Act 1998. The Bill of Rights provides an important opportunity to incorporate key international human rights standards into domestic legislation, and NIWEP would urge for this opportunity to be taken. This would not only provide a strong basis for a Bill of Rights, but would also give Northern Ireland a strong position internationally. Incorporation of key international human standards in domestic legislation would also provide a clear roadmap for policy, and would enable appropriate enforcement through the judicial system, where necessary.

The 'community background' area is not covered in any current human rights standard or instrument, and therefore NIWEP feels it should not be included. In addition, NIWEP believes it is superfluous, as many of the characteristics that may be associated with 'community background', including religious belief, political opinion and race, are already included in the list of proposed areas and in existing legislative frameworks.

3. Values

In your view, which of the following values, if any, would make appropriate foundations for rights in Northern Ireland?

Choose as many as you like.

- A. Community
- B. Human dignity (everyone deserves respect)

- C. Fairness
- D. Freedom and democracy
- E. Justice
- F. Mutual respect (respect for each other)
- G. Parity of esteem (valuing all traditions equally)

- H. Respect for culture, identity, traditions and aspirations

- I. Peace and reconciliation
- J. Don't know
- K. Other

If you selected 'Other', please let us know what other foundations you think should be included:

NIWEP believe that a number of values are important to frame a Bill of Rights. The list of values proposed in the list above includes many of these, and NIWEP supports the inclusion of the principles embodied by these values in a Bill of Rights. However, NIWEP would stress that values are not rights in themselves, and these concepts should not be confused. It is, in particular, vital that a Bill of Rights is based on a strong framework of rights, backed by international human rights standards and current legislation including the ECHR and supported by appropriate enforcement, rather than stopping at setting out aspirational values. This is essential to ensure that the Bill of Rights can effectively fulfil the function mandated in the Belfast/Good Friday Agreement, and that people across Northern Ireland can have confidence in it and the commitment to uphold everyone's human rights.

While values provide an important context for a Bill of Rights, a strong Bill of Rights needs to include both rights themselves and provision for the implementation and exercise of these rights. This should be made clear within the consultation, to ensure all stakeholders engaging with the process can have a shared understanding of the foundations used in the discussion. For example, while 'mutual respect' is a value, the rights translating this into practice include equality, non discrimination, the right to participate in public life, the right to live free from violence, and others including the right to health, accommodation and freedom of expression and peaceful assembly. In practice, the implementation of such rights will also need to include measures to ensure all population groups can enjoy the right, including capacity building, resourcing relevant support and enforcing relevant protection and enforcement. It will also require practical support such as ensuring affordable and accessible childcare and public transport, for example to enable people of all backgrounds to participate in public life.

NIWEP would also welcome clarification of how values and rights differ, in any future engagement on a Bill of Rights. The difference is not necessarily clear to the lay reader, and therefore members of the public may not be able to make an informed response without additional information. As noted above, an aspirational list of values does not constitute a Bill of Rights, and therefore clarification is important to ensure public opinion is not misled or distorted. This is particularly relevant to question 4B below.

4. Bill of Rights

Human rights are freedoms and protections belonging to everyone. A bill of rights contains human rights protections for everyone - it is a list of the laws a country agrees to make to protect all the people who live there.

a. How important, if at all, do you think a bill of rights is for Northern Ireland?

- A. Very Important
- B. Important
- C. Moderately important
- D. Slightly important
- E. Not important at all
- F. Don't know

b. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should set out an aspirational vision based on guiding or foundational values?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

c. Civil and political rights can include freedom from discrimination; the right to privacy; freedom of expression, assembly, religion and movement; and the right to a fair trial. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should include civil and political rights?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree

F. Don't know

d. What, if any, political and civil rights would you like to see in a bill of rights for Northern Ireland?

As outlined in answers to previous questions, NIWEP believes that a Bill of Rights should be based on international human rights standards, and fundamentally serve to replicate ECHR rights in domestic legislation. With regard to international standards, the UN International Covenant on Civil and Political Rights sets out internationally agreed political and civil rights, and therefore provides the relevant context for a Bill of Rights in Northern Ireland. NIWEP would urge and recommend that a Bill of Rights incorporates these rights into domestic legislation.

e. Social and economic and cultural rights can include rights around standards of living, health, social security, victims, education and language. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should include social, economic and cultural rights?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

f. What, if any, social, economic and cultural rights would you like to see in a bill of rights for Northern Ireland?

As with our answer to 4d above, NIWEP believe that current International Standards should be incorporated domestically in a Bill of Rights. That includes the economic and social rights protections outlined in International Covenant on Economic, Social and Cultural Rights (ICESCR). The core international human rights treaties, which include CERD, CEDAW, CRC, CAT and CRPD also give expression to core economic and social rights, and should be included in a Bill of Rights. For gender equality, inclusion of provisions in CEDAW is essential; this will ensure people of all genders in Northern Ireland are entitled to the same rights and protections such as equal pay for equal work with associated social protections, protection from violence, discrimination and harm, the right and ability to participate in public life, the right to healthcare and the right to education.

Given the Committees remit in looking at the role that a Bill of Rights might play in potentially replacing rights that may be lost as a direct result of the UK leaving the EU we would recommend that the provisions of the Charter of Fundamental Rights (many of which are social and economic rights protections) which will no longer be available in Northern Ireland are incorporated in a Bill of Rights.

As noted above with regard to question 3, further information and guidance regarding the concepts of civil and political, as well as social, economic and cultural, rights is important to ensure that lay readers and members of the public engaging with the consultation can form an opinion and give an informed response to this question. These concepts are complex, and an information campaign will be vital if responses are to be held as a reliable expression of public opinion. NIWEP would be pleased to assist with regard to information on CEDAW, should this be helpful.

g. To what extent, if at all, do you agree that a bill of rights for Northern Ireland should include the right to a healthy environment?

- A. Strongly agree
- B. Agree
- C. Neither agree nor disagree
- D. Disagree
- E. Strongly disagree
- F. Don't know

The right to a safe, clean, healthy and sustainable environment is a right that has been given legal effect by over than 150 nations across the world and there is ongoing work to develop this as a recognised right at a United Nations level. Many rights, particularly social and economic rights, are clearly dependent upon the right to a healthy environment. This is already recognised in Article 12(2) of ICESCR which sites environmental measures as essential in the realisation of the rights to the enjoyment of the highest standard of physical and mental health.

In the current climate where our response to the ongoing climate emergency is a challenge that will cross into all spheres of human life, it would be very appropriate to protect the rights to a safe, clean, healthy and sustainable environment in a Bill of Rights for Northern Ireland.

h. Do you have any other comments?

NIWEP believes that a Bill of Rights can play a very positive and important role in shaping a future Northern Ireland. It will provide a robust and clear basis for human rights, which sets enables everyone in Northern Ireland to be clear about their rights and have confidence that they can fully realise and enjoy these rights, in an equitable manner.

From a gender equality perspective, a Bill of Rights provides an opportunity to streamline existing gender equality provisions, as well as strengthen full and effective implementation. A key issue with regard to gender equality in Northern Ireland is that while *de jure* equality is achieved in relation to non discrimination and equality in front of the law, this does not translate to *de facto* equality, as current policy and practice does not fully address the barriers women and girls face eg. in accessing employment and securing equal pay, participating in public life, accessing the full range of health care and being protected from violence. NIWEP believes that a clear Bill of Rights can help address this, by creating the

context within which strengthened gender competence training, gender sensitive policy analysis and effective implementation of existing protections can take place.

NIWEP would welcome particular attention to women's participation in public life, closing the gender pay gap, tackling gender based violence and ensuring policy and decision making is based on adequate, gender disaggregated data and evidence.