

APPENDIX D

**THE CHURCH OF IRELAND RESPONSE TO
THE BILL OF RIGHTS NI CONSULTATION**

1. This submission is in response to the November 2009 Northern Ireland Office Consultation Paper: A Bill of Rights for Northern Ireland – Next Steps. The Church of Ireland welcomes the opportunity to engage in what is a critical process for the future of Northern Ireland.
2. We are indebted to and grateful for the extensive work carried out by the Northern Ireland Human Rights Commission in drafting proposals for a Bill of Rights for Northern Ireland¹. In particular we would seek to express our admiration for the way in which they have sought to identify how the legacy of the conflict in Northern Ireland has caused deep and lasting hurt across the whole of society.
3. It seems clear to us, however, that there is a considerable disparity between the views of the NIO and the NIHRC as to the purpose, extent and breadth of a Bill of Rights for Northern Ireland, especially when considered within the broader discussions in the UK on a Bill of Rights and Responsibilities. In essence, the disparity seems to lie with whether the remit for a Bill of Rights for Northern Ireland is to ‘fill in the gaps’ that remain due to the ‘*particular circumstances of Northern Ireland*’, or whether it is to be a foundational document for Northern Ireland, expressing rights alongside and in addition to those that might come to be expressed in a wider UK Bill. Three key issues appear to be of particular significance:
 - (a) How the proposed Bill is to work with existing Human Rights Protections and within a Northern Ireland context;
 - (b) The definition of what is ‘particular to Northern Ireland’;
 - (c) Whether or not rights are needed to consolidate existing protections offered by a vast array of primary and secondary legislation, codes of practices, departmental rules and regulations and so on.

We shall return to express our views on these in Section C in this response.

4. The NIO Consultation Paper sets out a series of questions to assist with any responses that might be made. However, given the considerable difference of opinion as to the very nature of a Bill of Rights for Northern Ireland, and given that the NIO Paper rules out without discussion more than half the Rights proposed by the NIHRC, we are not convinced that a reply limited to answering specific questions is the most helpful means of approaching the consultation.

¹ Northern Ireland Human Rights Commission: A Bill of Rights for Northern Ireland – Advice to the Secretary of State for Northern Ireland, 10 December 2008

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5. Further, we note the most recent response by the NIHRC to the Consultation Paper that dismisses the Consultation Paper as not being “*a genuine effort to increase human rights protections in Northern Ireland*”².
6. Given the chasm that appears to exist between Government expectations and NIHRC aspirations we propose to address our response to some fundamental issues concerning the proposal for a Bill of Rights. In so doing we hope to convey our conviction that a Christian voice is critical in gaining a proper perspective and understanding on the nature of the problems facing society in Northern Ireland that a Bill of Rights would seek to address. Further, that a Christian voice has key points to make as to whether or not a Bill of Rights is the most appropriate method of addressing these very great needs, and if appropriate what form such a Bill should take.
7. We shall therefore set out an ideological framework to engage with and critique the current debate, before expressing some views on the key issues identified in 3 (a) – (c) above, before finally offering our views and recommendations.

A. Christian belief - Identification with the concerns underpinning the proposed Bill of Rights

Identity as Human Beings

8. Christian belief asserts that all humanity is created equal in the image and likeness of God³. This is foundational for the dignity of all human beings and underpins many rights in Human Rights Conventions, Treaties and Legislation. This includes, but is not limited to, the right to life, rights on equality, rights relating to the fair treatment of others and protection against torture and so on. Christians can thus agree with the sense of ‘universality’ intrinsic to the concept of rights. We agree therefore with the aspiration towards a higher value, a universal good, that transcends sheer existence, is applicable to all, and that is not simply dependent on common agreement amongst the greater majority.
9. This foundational principle is so important that it is often too easily overlooked. To say that we are made in the image and likeness of God is to say that we are not simply here by chance, by accident, without apparent reason for existence or purpose and goal. It is to say that we are more than simply matter, a view that has contributed to the erosion of human dignity with concepts of worth determined in the main by whether or not we are producers or consumers in the global commercial village. If human beings are said to simply exist, nothing more and nothing less, then how we live would suggest that we are not satisfied with such an explanation. We live with concepts of goodness and of evil, of ‘rights’ and ‘wrongs’ that are stated in absolute terms. That we do so suggests that there is intrinsic goodness or value to the enterprise of living, whereupon we must question the

² A Bill of Rights for Northern Ireland: Next Steps – Response to the Northern Ireland Office, NIHRC: February 2010, page 40

³ Genesis 1:26-28

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source of such goodness. Christians find the source of all such meaning and goodness in the God in whose image and likeness we were created. We agree with the sense of purpose intrinsic to any system of human rights, together with the zeal of such rights in viewing human beings as being more than simple matter, and as being here for a higher cause than sheer existence.

10. This foundational principle also provides our understanding for a relational view of the world. All of humanity is said to be created in the image and likeness of God, not just a single entity. In the entire creation narrative God only states that His created order is ‘not good’ when man is alone. We were created for community. We note that rights would not exist without the presence of another and so presume the community that Christians uphold as being God’s created order. We are concerned therefore with the individualistic and adversarial aspects of human rights, often setting one human being into an assertion of their standing over and against others, as opposed to the biblical view of humanity as being alongside one another.

Responsibility as Human Beings

11. This foundational principle must not be so stated, however, to mean that it is solely concerned with our standing in the world. There is clear rationale for understanding image and likeness of God as bestowing unto humanity the responsibility to represent God and the goodness of God towards one another and the whole created order. Humanity is created with responsibility to govern and to be stewards of God’s good gifts. The very statement ‘made in the image and likeness of God’ does not, therefore, simply point to our God-ordained intrinsic worth but also to our God-given responsibilities. Any statement of our standing as human beings without an understanding of our responsibilities will only result in an erosion of who we are as each human being will seek to exert his or her authority over another. We are not satisfied with any assertion of rights that ignores our responsibilities and obligations towards others.

Failure to live up to our Identity and Responsibilities

12. The biblical understanding of the world is also affirmed by, and in turn helps to explain, the many issues that seemingly necessitate a Bill of Rights. The catalogue of proposed rights set out by the NIHRC makes for painful reading when we consider the costs of conflict that such rights are now seeking to redress. The comprehensive approach taken by the NIHRC illustrates how the biblical concept of sin (the rebellion of human beings against their creator and against the purpose for which they are created), is correct in its assertion that sin permeates into, distorts and tarnishes every aspect of life. The whole of the created order is adversely affected, including but not limited to:

- Human relationships and the equality and dignity of all human beings;
- Fragmentation of identity and culture;
- Trust, respect and honest communication;

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- Family relationships, including an enduring legacy of hurt across generations;
- The Environment and its abuse or neglect;
- Vocational or occupational dignity and opportunity.

There is almost complete overlap between the consequences of sin identified in the biblical narrative and the hurts identified by the Human Rights Commission that are now sought to be addressed through a Bill of Rights. The relevance of the Christian worldview to the problems that present themselves is therefore undeniable. We are acutely aware not just of the problems as they have manifested themselves, but of the ideological reasons as to why this is so. In such a broken world we recognise that we have not always been part of the solution and may have been perceived by some to be part of the problem. Nevertheless, we believe that the reasons to assert the dignity of all human beings, and the consequences of not doing so are explicable by the biblical narrative. In short, our conflict, its consequences and our desire to address both make the Christian version of truth ring that little bit truer. We are thus unequivocally committed to the desire for restoration and healing of our broken community, and committed to all and any engagement, debate or discussion that might facilitate that.

A Framework for living up to our Identity and Responsibilities

13. Given this holistic understanding of our intrinsic worth and dignity, our responsibilities towards others and the whole created order, and the resultant breakdown when we lose sight of both, the Bible is consistently and profoundly concerned with restoring that which is lost. This includes, but is not limited to, such issues as:
 - Justice, particularly for those suffering under oppression from harsh and exploitative rule;
 - Poverty, particularly the responsibilities of the community to alleviate against this;
 - Distribution of property and resources, in a way that is just and equitable for all;
 - Care of the vulnerable – frequently represented biblically as the alien, the widow and the orphan, i.e. those who within biblical cultural settings were most at risk;
 - Reconciliation, accommodating both appropriate justice for those who are wronged and forgiveness for those who hurt another;
 - Shalom, or wholeness, expressed as more than simply the absence of trouble or war, but of completeness within oneself, within community and within the created order.

This is by no means exhaustive, but even with such a cursory overview it is clear to see how the biblical narrative provides a basis on which it is possible to assert, at a foundational level, many of the aspirations contained within the proposed Bill of Rights.

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We are deeply committed to the healing of the very many legitimate hurts identified in the discussions surrounding the proposed Bill of Rights.

14. In addressing these concerns the Bible provides for an ordering of human society through a wide variety of means. There are ‘foundational’ principles or laws, such as the Ten Commandments. Key biblical Covenants have been demonstrated as bearing close resemblance to the forms and structures of International Treaties of their day, indicating a biblical willingness to engage within cultural thought patterns and models for regulating society. Detailed laws to regulate life and behaviour are also to be found, along with the existence of case law to adjudicate on matters of dispute. We find no cause for concern in using the thought patterns of Universal Rights, Primary Legislation, Secondary Stipulations, Codes of Good Practice, Case Law and other such methods of ordering contemporary culture. We are, therefore, not against the sheer existence of a Bill of Rights. The biblical ordering of society or good relations is not founded, however, upon sets of rules or regulations. Even when such rules are provided these are underpinned and supplemented by the deeper relational values and aspirations of loving God and fulfilling His purposes towards others. All biblical ordering of human society works within a larger relational worldview of seeking to love God and serve him accordingly. In so doing a biblical view of a good and ordered world is one in which human beings seek to image their creator through upholding the dignity and worth of one another and all other aspects of the created order. We believe all discussions concerning the introduction of a Bill of Rights and its content must take account of this deeper and broader relational worldview.
15. Just as there is no single strict method of regulating for a just society it is also apparent that there is no one model for how the people of God should organise themselves to live out the purpose for which they are created. The biblical narrative describes the ordering of society within a familial setting⁴, within a Theocracy⁵, under Monarchical rule⁶, under the rule of foreign monarchs and rulers⁷, or monarchs and rulers who do not seek to serve the God of the Bible⁸. In circumstances in which the people of God have not been of influence over the ordering of society the bible repeatedly demands that they live orderly lives within that society. As such, early Christian believers in a world of Roman rule and Greek culture sought to organise themselves in communities of faith that sought to uphold the dignity of one another, and to work for the good of those around them. In

⁴ The call of Abraham to be the founder of God’s people Israel was always with the express purpose of representing God to the world and to be a blessing to the nations.

⁵ During which period Israel lived under the direct rule of God with the law regulating the life of the people, including rules for dealing with those foreign or alien to Israel.

⁶ The lengthy narratives of the ruling monarchs in Judah and Israel, together with the Prophetic books highlight again and again that how God’s people live in society is more important than simply being in control of society. Frequently those who ruled relied upon their standing as having authority and neglected their deeper relational responsibilities to love God, to love others and to live properly in the land God had given them.

⁷ The tales of Daniel and Joseph in the Babylonian and Egyptians Courts show how those who worship God can seek to serve and uphold civic government in geo-political regions that neither seek to serve nor worship the God of the Bible.

⁸ From the tales of Nehemiah right through to the gospel period the people of God were never in control of what they considered to be their own land, living under various foreign rulers and having to learn how to accommodate religious practices and beliefs in ‘secular’ states.

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such vastly differing cultural and social norms the people of God have been and are called to work for the good ordering of society. The overriding principle is that this is God's world, that everything is subject to Him, yet being God's people in the world demands speaking up for God's values. So there has always been critical engagement by the people of God with the policies and ideologies of the prevailing culture, calling it to live according to biblical standards. On very few occasions has this engagement led to seeking to overthrow by human strength or physical force the power of the age.

16. Whether or not God's people have been able to live in a context that legislates for the ordering of their lives in line with biblical rules and values, they have sought to live according to biblical principles for the good of one another and for the world around them. As such, those who profess Christian faith can have no fundamental objection to the taking of steps necessary to uphold the dignity of others, and to promote a better world for all. It is incumbent upon the people of God, now represented by the church, to seek to work towards this regardless of the structure of civic Government and rule that prevails. Within modern Western culture the prevailing structure is that of democracy and we seek to work within that structure, acknowledging that it is not for us to enforce our will on others. It is the case, however, that any assertions of our views, expressions of opinion, belief systems and practices also require the fullest protections that such democracy can provide. It is entirely in keeping with this that we reserve the 'right' to disagree with some of the rights proposed by the NIHRC, together with the underlying rationale for such proposals, to have our view considered and incorporated with whatever final statement is agreed.

Conclusion – Human Identity, Responsibility and the Commitment to restoring both by the Church

17. The Bible establishes a narrative in which there is foundational belief in the dignity of all human beings, the responsibility of all human beings, that the world was created to be good and to function in a way that serves all of creation and its creator. Any aspiration for a 'Bill of Rights' that seeks to uphold these values is to be welcomed.
18. The Bible establishes a narrative that understands the cause of brokenness within society (human rebellion) and the consequences of that brokenness as we now experience and understand it. The biblical view is very holistic, seeing breakdown at every level of culture and creation. The deep levels of hurt that require redress through the proposed Bill of Rights bear witness to the breakdown in our society as a result of human rebellion against the will of God.
19. The Bible establishes that how we live in the world is more important than the structure of rule or government that we live under. This is consistent with the belief that all life, including government, is under God (see further below). This view of the world is multi-relational and not limited to rights that might be enforced by private individuals against public authorities. These relationships are with God, with one another as individuals, as

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communities, with those in authority, and indeed relationship with the created order in which we all live and move and have our being.

20. The Bible teaches that how these relationships are ordered may take a variety of forms. It is possible to envisage biblical engagement within democratic structures and incorporating a Bill of Rights. The Church seeks to do this at every level and has been and will continue to be actively engaged in all aspects of how best to govern and live within civic life.

B. Christian belief and the role and concept of a Bill of Rights

It is important to acknowledge that all concerns raised are secondary to the fundamental assertions on the dignity and responsibilities of all humanity, and the commitment to restoring that which is broken in society. Based on her biblical convictions the Church is passionately committed to the needs of all peoples in Northern Ireland. The Church's commitment to the concerns highlighted by the overall debate is absolute. The question remains, however as to whether or not a Bill of Rights, such as the one proposed, is the most appropriate way of addressing these concerns.

It is appropriate, therefore, to address some fundamental issues on the concept of a Bill of Rights.

Questionable ideological basis for, and limitations of, a Bill of Rights

21. The biblical worldview sees God as the highest authority over all cultures and contexts. This raises some issues when considering a Bill of Rights. The paradox for how we are to live in society can be seen in the response by Jesus' teaching that we '*Give unto Caesar what is Caesar's and give unto God what is God's*'.⁹ The right and proper attitude is to be respectful of and to comply with the rules of good government, yet not at the expense of relegating or side-lining God to a different or private sphere only. The biblical narrative sees all Civic Rulers and Authorities as being under God and so, the irony goes, therefore so too is Caesar¹⁰.
22. As a consequence it is an error to presume that the establishment of Human Rights is a panacea in and of itself, especially when founded upon a secular ideology. It has already been established that the foundational principles of the dignity of humanity, our responsibilities towards one another, and the consequences of the erosion of both – all of which the proposed Bill of Rights seeks to address – are deeply rooted within a biblical view of the world. Indeed, without appeal to some broader or higher ideology or narrative it is difficult to see how such rights might be established or, once established, protected.

⁹ Matthew 22:21

¹⁰ This includes the recognition that that for which the state may need to legislate may not always be in accord with Christian moral values.

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- (a) For instance, in the NIO Consultation Document the Rt Hon Shaun Woodward states that *It is a sign of a maturing democracy that issues of rights and responsibilities which once would inevitably have been a source of conflict can now be discussed and resolved in an atmosphere of mutual respect and understanding*¹¹. A tension within the whole issue of rights is captured in this statement. On the one hand ‘the conflict’ is the catalyst for the need for a discussion on rights and responsibilities, yet the discussion on rights and responsibilities itself can be a potential source of conflict on the other. The variable seems to be mutual respect and understanding, without which the discussion cannot take place and common accord reached. The sheer existence of rights, therefore, does not guarantee the end of conflict. Indeed, without mutual respect and understanding, rights become the very springboard for future conflict as each community seeks to assert its rights over and above the other. The mere provision of Human Rights is not a panacea for human community. It is the values permeating our relationships that provide the basis for rights.
- (b) The Bill of Rights seeks to be the lens or filter through which all other legal duties and obligations are to be interpreted. The Bill of Rights as proposed will be foundational for all aspects of society with appeal being made to Human Rights as the highest and final standard in an issue or dispute. It is very difficult for any Bill of Rights to bear this weight, and certainly the proposed Bill, which is subsidiary or supplementary in intention, can not bear this weight for numerous reasons:
- i. The proposed Bill of Rights admits to the fact that very few rights are absolutes and most, if not all, may be subject to limitation on the grounds of, for instance, public policy. Therefore ‘public policy’, left open to interpretation in any given time and circumstance, becomes the highest value. What if public policy is shaped by a different political ideology? What rights would then become obsolete and, if capable of being rendered obsolete, does this mean they were never really a human right after all but rather a political mechanism for the governance of society? If so, many of the proposed rights can be understood to be derivative from and secondary to the primary decision of what sort of society should we have and what steps must then be taken to see this vision realised. Once again this is a less individualistic and more relational view of how human beings live together, being shaped by a higher vision of the sort of community that is desired, our responsibilities within and to that community and towards one another¹².
 - ii. Rights may also be limited to the extent that they need to be in order to protect the rights of others. Therefore, rights compete with one another and one right will

¹¹ NIO Consultation Paper: A Bill of Rights for Northern Ireland – Next Steps. November 2009, Foreword by Rt Hon Shaun Woodward MP, Secretary of State for Northern Ireland, page 6.

¹² A society that is shaped by God’s created purpose will cause individuals to ask the question: “*So what kind of person must I be, and what kind of behaviour is required of me, if my life is to be shaped by, and be consistent with...God’s purpose?*”. Wright, Christopher J.H. *Old Testament Ethics and the People of God*, Inter-Varsity Press. Leicester, England. 2004, p.52

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eventually trump the other. Appeal to this lower ‘right’ is therefore not an appeal to the highest standard.

- iii. Some rights are expressly stated to be subject to other rights. Of interest to the church is that the right to religious belief and practice is subject to limitations necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others. In this context the concepts of democracy and (undefined) morals both are superior to the right to religious belief. This is a triumph for a belief in democracy not just as a system of organising Government but also as an ideal. The variable is not that one believes in something and another believes in nothing, the variable is what one chooses to believe in. In this instance, belief in democracy is a higher standard than whatever religious persuasions one might hold. Non-religious belief is presumed to be preferable to and superior over religious belief. Likewise, religious belief is secondary to ‘public morals’, however they are defined. In this context we express our concern that as a religious body the Church’s integrity and right to assert her beliefs might be considered secondary to ‘public’ policy, especially if the Church is considered a public body if in receipt of public funding. We seek clarification on this issue.
- iv. In defining public policy, public morals or principles of democracy, appeal cannot simply be made to the majority view. For instance, on grounds of pure logic alone, and without prejudice to the underlying issue, the death penalty is seen as objectionable to Human Rights advocates and observers and is guarded against by the Right to Life. In the UK the subject of whether or not the death penalty should be re-introduced is a matter of ongoing popular debate with many observers indicating public support for its reintroduction. In this context it is clear that the necessary and worthy protection afforded by the Human ‘Right to Life’ is set over and above the possible will and wishes of the majority of people who make up the community that a Bill of Rights seeks to serve. Appeal is therefore made to a higher or truer value that is in itself left undefined, but which is assumed to be for the benefit of all.
- v. Similar appeal is made by the NIHRC in justifying the inclusion of Civil Partnerships against the particular circumstances of Northern Ireland. It is expressly stated that such a Right is necessary because of the significant opposition to such partnerships that exists in Northern Ireland. It is not stated as to how such opposition might be said to arise out of conflict, nor is there statistical evidence of the levels of opposition. Over and against opposition that is stated to be significant a Right is advocated. Again on grounds of logic and without commenting on the different views of this issue, we would highlight that appeal is being made to something that is aspirational about the sort of society it is envisaged we should be, with the right being a mechanism within public policy to ensure that this vision is realised. Who gets to state what that society should look like and on what value

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basis? Moreover, whose views get excluded from any final determination and at what cost to their ‘rights’?

From the perspective of the Church what is often objectionable is the view that a Bill of Rights represents or expresses an objective view of the world, set against subjective, privatised religious belief that is, at best, of lesser significance within the public sphere. This is especially the case when it has been argued that the public sphere as we now understand it is entirely, and perhaps most accurately, explicable by a biblical worldview.

Questionable Acceptance of Religious Rights

23. In addition to the concerns raised in 22(b)(iv) above we also find objectionable the impression given of recognition of religious beliefs in theory, when they are often pilloried in practice. The NIHRC response to the NIO’s Consultation Documents takes exception to the use by the Government of Sharia Law in the framing of the debate¹³. The NIHRC state that Islamophobic sentiment is well documented in Western Europe and that the Government might be preying on fears and xenophobic sentiments in claiming, as an example, that Sharia law is incompatible with European law and culture. The NIHRC state that this view is, at best, contestable. It would be interesting to see how the Bill of Rights as proposed by the NIHRC could even begin to accommodate in practice those who wished to operate under Sharia law in Northern Ireland, especially in relation to matters of equality, gender, and sexual orientation. Recent experience would suggest, along with the NIHRC’s own assertion (identified above) of the significant opposition to Civil Partnerships necessitating the introduction of a right to safeguard the same, that acceptance of religious beliefs and practices (without prejudice to the discussion within religious groups on human sexuality and gender orientation) is stated in theory but ideologically vilified in practice. The current debate has great difficulty in accommodating certain beliefs deeply held within the Judaeo-Christian tradition that has existed on the island for over 1700 years without pretending that it is willing to accommodate the introduction of, for example, Sharia law.

Conclusion

24. What cannot be accepted, therefore, is that any particular expression of democratic structure or the introduction of a Bill of Rights is somehow a panacea that will deliver, in and of itself, an ordered and healthy society for all. This is especially so when such a Bill seeks to make religious beliefs, that can provide a foundation for life and existence, subject to a secular ideology that erroneously presents itself as objective, yet is based upon an unidentified set of higher values that are simply presumed to exist.
25. A Bill of Rights is not, and indeed can never be, the highest value. Therefore, it loses potency as the right that is stated to be intrinsic to our individual humanity is subject to the broader concerns and higher ideals of public policy and aspirations. Once again this

¹³ A Bill of Rights for Northern Ireland: Next Steps – Response to the Northern Ireland Office, NIHRC: February 2010, page 30

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correlates reasonably well to the realities of human existence expressed with the biblical narrative.

26. It is when such broader concerns or higher ideals of public policy and aspirations set themselves over and against God's vision for His created order, without consistent reference to either majority opinion and collective will or to a coherent ideological basis, that the Church must express her objections and raise the question – who or what is now the final arbiter on matters of value and truth?
27. The Church has an ideological basis for understanding the highest values of goodness, love and truth, a realistic assessment of the problems facing society within Northern Ireland, yet also a commitment to work within the existing functional yet flawed structures that 'Caesar' can provide on the understanding that it is how we relate to one another and to God's created order that will be key for rebuilding Northern Ireland.

C. Specific Response to NIO Consultation & Debate with NIHRC

28. As outlined in our introduction it seems clear to us that there is a considerable difference of opinion between the Government and the NIHRC as to what type of Bill is required or necessary for Northern Ireland. In reviewing the debate, we have taken into consideration:
 - a) The ECHR Right or Rights, incorporated into UK law through the Human Rights act 1998 to be included in the proposed Bill of Rights;
 - b) The supplemental right(s) proposed by the NIHRC to be included in the Bill of Rights for NI;
 - c) The reasons provided for the supplemental right(s) as to why such a right is, in the view of the NIHRC, justifiable on the grounds of being particular to Northern Ireland;
 - d) The mechanisms that currently exist to meet the underlying need giving rise to the proposal of such a right as identified by the Government in its Consultation Paper;
 - e) Further considerations raised by the Government as to the nature of the proposed right and the mechanisms that already exist to meet the need identified.
29. Three key areas of debate that we believe emerge are:
 - (a) **How the proposed Bill is to work with existing Human Rights Protections and within a Northern Ireland context;**
 - (b) **The definition of what is 'particular to Northern Ireland';**
 - (c) **Whether or not rights are needed to consolidate existing protections offered by a vast array of primary and secondary legislation, codes of practices, departmental rules and regulations and so on.**

We shall address each of these in turn.

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The proposed Bill and existing Human Rights Protections, chiefly the ECHR and the HRA 1998

30. The Human Rights Act 1998 gave domestic effect to the ECHR, and was fully applicable in NI. However, it did not incorporate the whole of the Convention and its protocols. The NIHRC interpreted the ECHR to include the main body of the Convention, but not its protocols, recognising that these should be given domestic effect on a UK-wide basis. The NIHRC has been working with the Equality and Human Rights Commission (in Great Britain) and the Scottish Human Rights Commission on this and other matters. Notwithstanding this, the NIHRC identified a number of Convention Rights not yet given domestic effect that do fall within the mandate of advising on a Bill of Rights to reflect the particular circumstances of NI. Therefore the proposals include but are wider than the ECHR and the HRA 1998.
31. As we understand it therefore the Bill of Rights seeks to
- a) Include all existing Rights currently covered by the ECHR that are stated in schedule 1 to the Human Rights Act 1998;
 - b) Include some rights covered by the ECHR that are not incorporated in the HRA 1998;
 - c) Provide for supplementary rights to be included in the Bill of Rights (NI) based on International Instruments and Experience. International Experience in some instances refers to the Experience of implementing the ECHR and seeks to provide clarity within a Bill of Rights (NI) based on such experience.

There are numerous ECHR Articles, already incorporated in the HRA 1998, that are proposed to be included in the Bill of Rights for Northern Ireland without any supplementary provisions being made. We note at this stage that if such Articles are included in a Bill of Rights specifically created for Northern Ireland, as well as in the Human Rights Act 1998, then this does seem to weaken any argument that rights must be unique to Northern Ireland before they can be included in a Bill of Rights. If, however, such rights already apply to Northern Ireland through existing Westminster Legislation then we would ask the question why they should be included in a Bill for Northern Ireland.

32. The Commission states that in its discussions and deliberations, in particular with political parties at Westminster¹⁴:
- a) The parties have stated they see no contradiction between Bill of Rights for NI whilst pursuing Bill of Rights for UK;

¹⁴ Northern Ireland Human Rights Commission: A Bill of Rights for Northern Ireland – Advice to the Secretary of State for Northern Ireland, 10 December 2008, p.15-16

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- b) The Government has assured the Commission (during deliberations) that it acknowledges the separate Northern Ireland process and its distinct origins arising from a peace agreement;
- c) Local political parties agree that there should be a Bill of Rights for NI, though they disagree on content.

The Government has also stated in its Consultation Paper (para. 3.7) that it '*sees no incompatibility between a possible UK Bill of Rights and Responsibilities and a Bill of Rights for Northern Ireland, reflecting the particular circumstances of Northern Ireland ...it is also important that decisions reached in respect of Northern Ireland are taken with full awareness of the developing national debate about the best way of protecting our rights and discharging our mutual responsibilities*'.

All parties seem to agree that there should be a Bill of Rights and that it might exist alongside the wider UK debate. However, defining what is 'particular to Northern Ireland' seems to be the area over which there is no agreement and that has a critical bearing on what the actual relationship will be between a NI Bill, if accepted, and a wider UK Bill.

Circumstances Particular to Northern Ireland

- 33. The NIHRC went to considerable lengths to establish both a methodology to define what is meant by circumstances particular to NI, and further to provide reasons why each supplemental right is justifiable. For the sake of completion we have replicated the methodology from the NIHRC advice to the Secretary of State in Appendix One attached.
- 34. The NIHRC adopted the following approach:
 - (a) Providing for a generous interpretation of the phrase – recognising that there are many shared aspects of life, history, culture and politics that are shared with other parts of the UK and Ireland and yet there are also aspects of life that are distinct;
 - (b) There must, however, be limits placed on this interpretation if agreement is to be reached on what supplementary rights should be contained within a Bill of Rights;
 - (c) The Commission noted that the mandate arose from a peace agreement reached after a period of protracted conflict and a political process establishing a set of principles and structures for the governance of Northern Ireland;
 - (d) Thus the Commission was mandated to consider principles of mutual respect and parity of esteem;
 - (e) The Commission viewed this as requiring due recognition of the identity, ethos and aspirations of the two main communities in Northern Ireland;
 - (f) It was also recognised that the rights and needs of others must be protected.
- 35. The response of the Government in the NIO Consultation Paper (November 2009) consistently refers to the 'particular circumstances of Northern Ireland' or the 'particular

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application in the Northern Ireland context'. However, there is some confusion on a number of grounds:

- a) The Government does not provide a definition of what these particular circumstances are. Rather, the Consultation assumes that such rights are necessary:
 - i) In a society that has emerged from a long period of conflict and division (para. 1.1);
 - ii) To deal with the legacy of Northern Ireland's past that can still be traced in many aspects of life today (para 1.2).
 - b) The conflict, the division it caused and the enduring legacy of both, seem to be uppermost in the Government's thinking and, certainly, the NIHRC sought to justify the particular circumstances of NI in reference to the enduring legacy of the conflict on the whole of life in Northern Ireland – health, education, environment, justice, prisoners and so on. There is considerable merit in defining 'particular circumstances' to be those arising out of and attributable to, this period of conflict; yet
 - c) The foreword from the Secretary of State seems to point towards a movement that is aspirational regarding the future rather than remedial in simply addressing the consequences of past conflict. The Rt Hon Shaun Woodward states, '*As Northern Ireland emerges from conflict it is important that the terms of the debate change*'. Is the debate over the Bill of Rights to be considered within the terms of emerging from conflict or are the terms of the debate in our new environment now necessarily different?
36. We acknowledge that this need not be 'either-or'. However, if it is 'both-and' then the door is legitimately opened for proposals for rights that need not have as a point of reference the emergence from conflict. The overall trajectory of the debate would therefore move towards a wider expression of rights, not just a set of very narrowly defined rights limited to a particular moment in Northern Ireland's history, and only acceptable if they are not already mentioned in any other UK or European Instrument. In our opinion there needs to be greater clarity and certainty as to the purpose of any Bill of Rights. At this stage it seems that two options present themselves:
- a) A 'both-and' approach that encompasses all that has gone before – culturally within Northern Ireland and legally in terms of the ECHR and the HRA – and the future we want to see; or
 - b) An 'either-or' approach that focuses solely on the context of Northern Ireland, acknowledging the rights that already exist under ECHR and the HRA without having to duplicate these protections, and dealing purely with issues in Northern Ireland.

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37. We have already questioned the necessity of enacting in Westminster Legislation those rights that are already afforded to the people of Northern Ireland in Westminster Legislation. We must now question:
- (a) Whether or not being ‘particular to Northern Ireland’ means being solely and purely relevant to Northern Ireland, i.e. a very narrow understanding of the purpose of the Bill of Rights; and
 - (b) Whether or not the issues that are particular to Northern Ireland are best addressed by the introduction of ‘rights’.
38. In dealing with the first of these two questions we again note some confusion on the matter:
- (a) As noted on several occasions, the NIHRC has, in our view, presented a very considered and thought-provoking assessment of how the conflict has tarnished all aspects of life in Northern Ireland. We agree with this assessment. The NIHRC has frequently relied upon this broad assessment to justify why rights are now necessary to guard against the abuses of the past.
 - (b) However, the NIHRC also observes quite vehemently that it fails to see the significance of the Government’s assertion that some recommendations are equally applicable to England, Scotland and Wales and thus, even if addressing the particular circumstances of NI, are not unique to NI and therefore should not be included within a Bill of Rights for NI.¹⁵ The NIHRC argues that its mandate was to present proposals based on the particular circumstances of NI, regardless of whether or not the need for protections is unique, greater than or different from the rest of the UK.
- In our view this represents an inconsistent line of reasoning, being prepared to use either argument to achieve a desired outcome.
39. It is our opinion, therefore, that on the issue of what rights must be included that are particular to Northern Ireland, neither the Government nor the NIHRC have provided the debate with clarity. It is regrettable that at this stage of the discussion and consultation, no clear rationale has emerged for the underlying basis of such a Bill as any final determination must be in line with a clearly defined mandate. Before expressing our own view on the matter we now turn to the issue of whether or not the issues identified by the NIHRC, currently addressed through a wide range of existing mechanisms, should be protected by the introduction of rights.

¹⁵ See NIO consultation Document, para 3.14 and NIHRC Response, February 2010 p. 38-39

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Existing Mechanisms dealing with the issues identified – are ‘Rights’ necessary?

40. The consultation document goes to great lengths to discuss the existing pieces of legislation, codes of practice, policy initiatives and so on that currently address the particular circumstances identified by the NIHRC for which the NIHRC now wish to see rights enacted.
41. In its Response in February 2010 the NIHRC highlights many areas in relation to Liberty, Policing, Justice, Imprisonment and seeks to differentiate between Codes of Practice, Orders and Statutes that may be amended easily and a Constitutional document such as a Bill of Rights against which all Legislation, Primary and Secondary, Codes of Practice and Procedures must then comply¹⁶. The issue is once again whether the goal is a foundational document covering all aspects of Northern Ireland society, past, present and future, incorporating all existing protections at every level (including other foundational documents ECHR and HRA), or if this is very ‘case specific’ and bespoke to Northern Ireland.
42. If it is the foundational approach we once again raise the issue of duplicating protections that already exist. Having established this we further question the merit of incorporating within such a foundational document matters that are in some instances so case-specific as to border on being mechanisms to implement policy rather than policy itself. If it is the latter approach then we must question what, if anything, will be left as to merit the title ‘Bill of Rights’? With the possible exception of the right to dual British and Irish nationality, confirmed by the Belfast Agreement, most other areas are, upon consideration, issues of general concern, or are so confined to Northern Ireland as to merit bespoke legislation for that particular issue as opposed to the establishment of a Human Right. Such a narrow Bill, being so parochial to the circumstances of Northern Ireland, will hardly merit the title ‘Bill of Rights’ or the claim to be an international exemplar.
43. In our opinion many of the proposed Rights do appear to lapse into areas that a devolved Government should be making determinations upon. There are many areas that appear to be policy initiatives and there appears a certain zeal to ensure that if a prior mechanism was required to protect against an abuse arising out of the conflict, then such a mechanism must become a ‘right’. In such circumstances, we would observe that a legacy of the conflict might, in itself, be a heightened sensitivity to such issues, resulting in their incorporation into a Bill of Rights, when perhaps good practice and procedures already exist to deal with such matters.
44. The NIHRC notes that such legal instruments may be amended and codes of practice changed, whereas rights are foundational and are necessary to protect individuals from such changes. The protection afforded by such rights will be actionable in law, and any

¹⁶ NIHRC Response, February 2010 p. 9-13

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changes to secondary legislation or practices also capable of being subject to objection in law. This raises a number of concerns:

- a) The fact that rights will be enforceable which should ensure that these rights do not lapse into being simply a wish-list for good behaviour. This is understandable. However, such individualism seems to fall short of the relational vision laid down by God for His creation. It has already been asserted that without such a relational vision individualism has the greater potential to increase conflict, not to heal it.
- b) Further, when rights are expressed in tightly defined terms rather than as aspirational goals, it is arguable that such rights will lead to services being provided with the desire to minimise complaint and litigation, rather than in serving the individual. The individual is devalued in such circumstances and defined by their potential cost if a service is not provided in accordance with the established terms.
- c) It is the opinion of the NIHRC that the introduction of such rights will not lead to an increase in court cases. The reason stated for this is that the same fear was stated when the HRA was introduced and it never materialised. Once again we are moved to observe that the NIHRC is being somewhat disingenuous in its reasoning. The bill is felt to be necessary by the NIHRC as it is particular to NI given the legacy of the conflict and a history of division. The context is, therefore, not the same as the context behind the HRA in the UK and a divided society is exactly the sort of society that will seek to enforce its rights, especially when the NIHRC argues that existing mechanisms are not sufficient as they are subject to change without any recourse to the courts.

It is our fear that by making these many areas the subject matter of human rights that the burden on already scarce public resources the amount of litigation will increase unjustifiably.

45. We are not convinced that enshrining many of the existing mechanisms for addressing clearly identifiable needs into a Bill of Rights, expressed in such individualistic, legalistic and detailed terms, will result in the fulfilment of many of our shared hopes and aspirations for the future of Northern Ireland. Furthermore, as a cross-border body we are concerned as to the impact of using Human Rights to protect against some issues bespoke to Northern Ireland on our relationship with the Republic of Ireland. We would urge that any consultation on how we proceed seeks agreement at a broader, more aspirational level with the consensus of opinion in both the UK and the Republic of Ireland.

D. Conclusion and Recommendations

46. We affirm the dignity of all human beings, assert that we are created to live in relationship and community, and that we all bear responsibilities towards one another. We acknowledge the pain suffered by the people of Northern Ireland and welcome the holistic assessment of this by the NIHRC. As a church we unequivocally commit ourselves to working for a more just, peaceful and loving society. We undertake to engage constructively in the steps that must be taken towards this goal, realising that such engagement will always necessitate justifiable critique of those policies and ideologies that fail to properly grasp the fundamental brokenness of human beings, our relationships with one another, and what might be done to address these.
47. We respect the right of Civic Authorities to govern and to propose a Bill of Rights as a means of ordering society. However, while attempting to answer the issues raised by conflict, such a Bill may also itself be a source of conflict. It fails to bear its own weight as being the final or highest arbiter of values being subject to higher public policy limitations, containing differing rights that are afforded unequal status, being driven by ill-defined and at times contradictory ideological assumptions that are presented, without justification, as being objectively true or 'right'. We assert that a properly understood biblical perspective provides a better explanation of, and ideological foundation for, the current state of our society and the measures that need to be taken as a result. Such a vision takes into account the whole human person, living in community with others, and seeks to promote not only individual rights but our shared duties and responsibilities.
48. We believe there to be considerable difference of opinion and confusion as to the purpose and scope of a Bill of Rights for Northern Ireland. We raise attention to the following areas of concern:
 - (a) A Bill of Rights that is particular to Northern Ireland does not need to replicate in Westminster Legislation rights that are already afforded to the people of Northern Ireland by existing Westminster Legislation.
 - (b) The Government seems uncertain as to whether any Bill should be particular to Northern Ireland in reference to the conflict and its legacy or if the terms of the debate for such a Bill have now changed, though this also is unhelpfully not defined. The NIHRC have gone to great lengths to justify very many areas as being particular to Northern Ireland, referring frequently to the impact of the conflict that was unique to Northern Ireland, yet seem quite happy to also declare that such rights do not have to be unique to Northern Ireland. It is wholly unsatisfactory that clear terms of reference for this debate have yet to be defined.
 - (c) The Bill proposed is in many areas not particular to the circumstances of Northern Ireland thus calling into question the need for a specific Northern Ireland Bill, or, so particular to the circumstances of Northern Ireland as to call into question the legitimacy of creating rights to address case-specific situations. A considerable body of existing legislation and secondary mechanisms is in place to address many

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of the important issues raised and, being addressed to specific circumstances, may be adapted to circumstance as required in the future. The establishment of highly sensitive rights in a society as divided as that of Northern Ireland is to invite a series of legal conflicts over the enforcement of and encroachment on such rights. This may place an unhealthy burden on scarce public resources and paradoxically undermine the relationships needed between the various communities in Northern Ireland.

49. We would conclude the following:

- a) That any proposed rights be stated in broad and general terms. In proposing this we acknowledge that there may be very little that can be stated to be particular to Northern Ireland.
- b) Therefore, that those rights particular to Northern Ireland be made additional to existing Human Rights legislation or encompassed within any proposals in the UK wide review of Rights and Responsibilities.
- c) That any such additions be made after careful assessment of the position in the Republic of Ireland, ensuring that both jurisdictions have a high degree of consensus in the area of Human Rights.
- d) That we regret the absence of the language of responsibilities in respect of the proposed Bill, and look forward to Northern Ireland playing its full part in the debate around reform of the existing UK legislation in terms of rights and responsibilities and we therefore conclude that this should precede further work to develop a Bill of Rights for Northern Ireland.

Appendix One – Defining Circumstances Particular to Northern Ireland: Approach by NIHRC

The Methodology in identifying Rights to be included in a Bill of Rights

In the case of each proposed right, the Commission applied the following guidelines:

The particular circumstances

1. Is the case made that the need for this proposed right arises out of the particular circumstances of Northern Ireland?

The legal aspects

2. Is the proposed right:
 - a) supplementary to the Human Rights Act 1998
 - b) supplementary to those provisions of the European Convention on Human Rights not reproduced in schedule 1 to the *Human Rights Act 1998*, and
 - c) compatible with their existing provisions?
3. Is the case made that the right is not adequately protected under the European Convention on Human Rights and the Human Rights Act?
4. Is the proposed right in line with best practice according to international instruments and experience?

The principles of mutual respect and parity of esteem

5. Will the proposed right help to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem?

The interests of the people of Northern Ireland

6. In light of the above, taking into account what the consequences might be (positive and negative) of including this proposal in the Bill of Rights, the content of the Forum's Final Report, the support and opposition regarding the proposal, the context of human rights in the UK and on the island of Ireland and any submissions made to the Commission on the subject, does the Commission believe it would be in the interests of the people of Northern Ireland?

The content of the Commission's advice

7. Taking into account all the above and having regard to the totality of rights considered for inclusion in a Bill of Rights, does the Commission consider:
 - a) that this proposed right should be included in its advice to the Secretary of State and,
 - b) that any amendments or additions are necessary or desirable in order to ensure the coherence and effectiveness of the Bill of Rights as a whole?

Whether a proposed right answers a need for extra protection arising out of the particular circumstances of Northern Ireland.

- A. Are there grounds for the belief that the right has been abused, neglected or restricted by state or non-state actors in Northern Ireland to an extent greater than or in a manner distinct from any abuse, neglect or restriction in other parts of the UK?
- B. Has the area of political, social, cultural or economic life that the proposed right covers been a cause, source or location of conflict and division between the two main communities in Northern Ireland?
- C. Is there a reasonable apprehension that the proposed right might be violated in the future to a particularly significant extent or in a particular way compared to other parts of the UK?
- D. Is the proposed right considered necessary or beneficial in enhancing mutual respect for the identity and ethos of both main communities and parity of esteem between them?
- E. Does the proposed right fall under the ‘issues for consideration by the Commission’ listed in the Belfast (Good Friday) Agreement? These are: ‘The formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland;’ and ‘A clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors’.
- F. Is the proposed right one of those which ‘against the background of the recent history of communal conflict’, the parties affirmed in particular in the Agreement?
- G. Is the proposed right relevant to:
 - i. a matter to which significant reference is made in the Agreement, or
 - ii. one of the ‘general references to issues that have a human rights basis’ in the Agreement?