

**THE DRAFTING PROCESS OF A BILL  
OF RIGHTS FOR NORTHERN IRELAND**

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## The drafting process of a Bill of Rights for Northern Ireland

Under the Belfast Agreement and s.69(7) of the Northern Ireland Act 1998 (NIA), the Northern Ireland Human Rights Commission (NIHRC) has the task of consulting and advising the British government on what rights should be included in a proposed Bill of Rights for Northern Ireland.<sup>1</sup> Neither the Agreement nor the Act spells out precisely what rights should be included. The Agreement simply states:

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

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

Furthermore the Agreement and s.69(7) of the NIA only commit the NIHRC to providing advice to the Secretary of State on the scope for such a Bill of Rights. There is no guarantee that such advice will translate into the provisions of a Bill of Rights.

Drafting a Bill of Rights is a major constitutional task and unsurprisingly it has not been an easy one for the NIHRC. Despite the high priority given to its work on a Bill of Rights, the NIHRC's activities in relation to the Bill of Rights process have generated considerable criticism from numerous people, including both the Irish and British governments, and were stated to be one of the major factors prompting the resignation of three Commissioners.<sup>2</sup> This article examines the drafting process of the Bill of Rights as ultimately the successful adoption of any Bill of Rights will depend upon it having both genuine public support and political backing within government. How then did the NIHRC handle its statutory obligation? Did the decision to ask the

<sup>1</sup> Strand three, para.4 of the Human Rights Section of the Belfast/Good Friday Agreement ("the Agreement").

<sup>2</sup> Dr Inez McCormack and Professor Christine Bell resigned on September 9, 2002, followed by Patrick Yu on July 7, 2003.

NIHRC to undertake such a formidable exercise result in a unique opportunity for the NIHRC to promote awareness and understanding of the importance of a Bill of Rights amongst the general public? Or was such a task an unwelcome distraction for the NIHRC? Before answering these questions, it is worth considering why the task of consulting and advising on a Bill of Rights was given to the NIHRC in the first place.

### **The NIHRC: the appropriate body?**

It is very odd for a Human Rights Commission, a non-departmental public body composed of non-elected appointees, to be given the task of advising and consulting on a Bill of Rights. Experience elsewhere shows that countries which have adopted a Bill of Rights, such as in South Africa and Canada, have done so within a political process and are often drafted by politicians as part of the constitution-making process. Why then the NIHRC and not politicians? During the negotiations leading to the Belfast Agreement it was clear that whilst the political parties agreed that a Bill of Rights was a good idea, they could not agree on the content of a Bill of Rights. Whilst it may have been good political dexterity at the time of the talks to leave the dialectic of Bill of Rights making to the NIHRC, questions can be legitimately asked as to whether the NIHRC was the most appropriate body to deliver advice as to the contents of a Bill of Rights, especially given the many other statutory tasks it was allocated under ss.69–70 of the NIA. The ambiguous nature of the Agreement and lack of useful guidance did not help the NIHRC.

### **The requirement to “consult and advise”**

What does “consult and advise” denote? A narrow interpretation is that the NIHRC is being invited only to advise on the “scope for defining rights” supplementary to the European Convention on Human Rights (ECHR) in a future Bill of Rights.<sup>3</sup> A broader interpretation permits the NIHRC to produce a comprehensive and strong Bill of Rights.<sup>4</sup> This is exactly how the NIHRC has interpreted its own mandate, choosing “not to confine itself to advising on the scope for defining the requisite rights but to advise on the requisite rights themselves”.<sup>5</sup> This approach is laudable as it is consistent with the Agreement’s values of securing participation and dialogue and its overall objective of protection and vindication of the human rights of all.

<sup>3</sup> One-third of the submissions to the NIHRC’s consultation document favoured this interpretation. See Northern Ireland Human Rights Commission, *Summary of Submissions on a Bill of Rights* (July 2003), p.19.

<sup>4</sup> *ibid.* p.19, two-thirds of the submissions to the NIHRC’s consultation document supported a broad interpretation.

<sup>5</sup> NIHRC, *Making a Bill of Rights for Northern Ireland. A Consultation by the Northern Ireland Human Rights Commission* (September 2001), p.14.

### “Rights supplementary to those in the European Convention on Human Rights”

This requirement is straightforward. Although the ECHR has been pervasive and has acted as a catalyst for change in a number of areas of law and policy,<sup>6</sup> some have argued that there is still a need for a Bill of Rights for Northern Ireland to extend beyond the guarantees of the ECHR.<sup>7</sup> Furthermore, the Agreement itself presupposes the Bill of Rights comprising the rights in the ECHR *plus* the supplementary rights. As the ECHR is over 50 years old, its scope is narrow and is confined primarily to rights of a civil and political nature. It contains few social, economic and cultural rights, other than the right to education and property and is certainly not aimed at securing these rights. It says little about children's rights and the rights of minorities. Its focus is on individual rights to the detriment of communal rights. In a divided society such as Northern Ireland, effective protection of communal rights such as language, citizenship, flags, marches and education are pivotal.

Whilst everyone in the United Kingdom is entitled to have their rights secured, the peculiar circumstances of Northern Ireland (see below) warrant special protection to be provided for vulnerable groups such as children and the inclusion of socio-economic rights. As Kilkelly argues, “it is children who have suffered the most by growing up knowing only a divided and conflict ridden society”.<sup>8</sup> There is evidence that people in Northern Ireland suffer from high levels of social deprivation, including poor health standards such as life expectancy rates and there is a high level of unemployment as a result of the violent conflict.<sup>9</sup> The Agreement also recognises the need to deal with the economic and social inequalities in Northern Ireland. Their inclusion is further strengthened by the fact that out of the 340 submissions to the NIHRC on the proposed Bill of Rights for Northern Ireland, approximately three-quarters of the responses supported their inclusion of such rights. Moreover as the Agreement requires the NIHRC to draw on international experience (see below), international law has recognised the indivisibility of civil/political and social/economic and cultural rights. The interdependence of all human rights is reflected in the most recent United Nations statement on human rights, the Vienna Declaration and Programme of Action in 1993.

A further limitation of the ECHR is its equality provision, Art.14, which does not confer a free-standing protection against discrimination, but only one that must be linked to another Convention right. A large number of economic rights such as employment fall outside this anti-discriminatory measure. Even when Art.14 is relied upon in conjunction with another Convention right, the European Court of Human Rights often grants states a broad margin of

<sup>6</sup> *Goodwin v United Kingdom* (2002) 35 E.H.R.R. 447; *Golder v United Kingdom* (1975) 1 E.H.R.R. 524; and *Dudgeon v United Kingdom* (1981) 4 E.H.R.R. 149.

<sup>7</sup> S. Livingstone, “The Need for a Bill of Rights in Northern Ireland” (2001) 52 N.I.L.Q. 269.

<sup>8</sup> U. Kilkelly, “Children's Rights in the Bill of Rights: Meeting or Exceeding International Standards?” (2001) 52 N.I.L.Q. 286–295 at 286.

<sup>9</sup> *Making a Bill of Rights for Northern Ireland*, n.5 above, p.84.

appreciation in proffering reasons for the different treatment.<sup>10</sup> The Council of Europe has introduced Protocol 12 which would make the anti-discrimination provision an independent right, but the UK Government has not yet ratified it. The importance of providing a stronger provision beyond Art.14 is also clearly evident in the Agreement and in a Bill of Rights. Indeed whilst the Agreement is arguably ambiguous about the overall nature and remit of any Bill of Rights for Northern Ireland, it specifically requires the NIHRC to consider “a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors”.

### **“The particular circumstances of Northern Ireland”**

This phrase is more problematic. What these “particular circumstances” are is not specified. The most likely interpretation is related to the position of Northern Ireland emerging from a long violent conflict. Accordingly, the rights should reflect the needs and experiences of people that are related to the conflict. However this in itself raises problems because there is no consensus on what were the causes and the consequences of the conflict.<sup>11</sup> As this ambiguous phrase was drawn up by the Ulster Unionist Party (UUP) during the negotiations, it is disappointing that they have not made specific proposals on this and other issues.

Due to the complexity of distilling a clear meaning of what are “the particular circumstances of Northern Ireland”, there are different schools of thought. On the one hand, NGOs, community groups, trade unions, political parties such as Northern Ireland Women’s Coalition, Social Democratic Labour Party, Sinn Féin and Alliance Party favoured an expansive approach. On the other hand there were those who favoured a more narrow approach. Proponents of this view tend to be associated to unionist politics and culture including the Democratic Unionist Party, the UUP, the Cadogan Group, faith groups and churches.<sup>12</sup>

### **“Drawing as appropriate on international instruments and experience”**

Drawing on international experience and instruments can be helpful in guiding the NIHRC in considering what rights to include. However whilst international experience is instructive, care needs to be taken that international instruments are not simply reproduced and applied. In order to be effective, a Bill of Rights must reflect the particular needs and problems of the society it is trying to protect.

Whilst the NIHRC has drawn heavily on international instruments and treaties, it is evident that even in interpreting some of the international

<sup>10</sup> *Rekvenyi v Hungary* (2000) 30 E.H.R.R. 519.

<sup>11</sup> See J. Whyte, *Interpreting Northern Ireland* (Clarendon Press, Oxford, 1990).

<sup>12</sup> This issue was debated in the Assembly. See Northern Ireland Assembly, *Official Report 2001–2002* (September 25, 2001).

instruments, there is a divergence of opinion within the NIHRC as to what they actually mean. This is illuminated in the NIHRC's interpretation of a "national minority" in the European Framework Convention on the Protection of National Minorities. This was one of the major reasons for the resignation of Patrick Yu from the NIHRC.<sup>13</sup>

The Agreement further requires the additional rights to reflect the "principles of mutual respect for the identity and ethos of both communities and parity of esteem" and provide two areas to consider. The first is a statutory obligation on public bodies to respect the identity and ethos of the two communities. The second is a clear formulation of non-discrimination and equality of opportunity, in the public and private sectors. These too have proved to be controversial.<sup>14</sup>

### The consultation process

The NIHRC's consultation process fell into three phases. "Phase One" involved the official launch of the NIHRC's consultation process on March 1, 2000 at dual events in Belfast and Derry. From this period to August 2001, the NIHRC embarked on a number of activities designed to encourage debate and ownership of any future Bill of Rights. These included carrying out an initial survey in July 1999 which showed overwhelming support for social and economic rights; identifying sub-issues which the NIHRC thought merited particular attention<sup>15</sup> and establishing nine advisory working groups to look at these particular sub-issues; the publication of Bill of Rights Discussion Pamphlets; producing a training video and trainers' manual; a small booklet; placing advertisements in newspapers and on billboards; running a series of "Training for Trainers" programmes where 400 facilitators were trained; developing a website on the Bill of Rights; producing a newsletter; holding many information events with organisations, individuals and some political representatives, and hosting conferences to consider the experience of other countries who have a Bill of Rights. The NIHRC also encouraged organisations to host meetings consulting their own members, which Commissioners and staff attended.

In "Phase Two" the NIHRC published a lengthy consultation document, *Making a Bill of Rights for Northern Ireland*. This was partly based on the

<sup>13</sup> In the NIHRC's consultation paper of 2001 "minorities" is replaced with "communities" which caused considerable controversy. After further deliberations, the NIHRC's latest thinking on this and other controversial issues is outlined in NIHRC, *Progressing A Bill of Rights for Northern Ireland, An Update* (April 2004).

<sup>14</sup> See C. McCrudden, "Not the Way Forward: Some Comments on the Northern Ireland Human Rights Commission's Consultation Document on a Bill of Rights for Northern Ireland" (2001) 52 N.I.L.Q. 372 at 379-380. After considerable discussion on these issues, the NIHRC has made a number of changes to the 2001 draft provisions. See *ibid.* for the NIHRC's recent proposals.

<sup>15</sup> The NIHRC's Bill of Rights Committee identified these as key "gaps": children's and young people's rights; criminal justice; culture and identity; education; equality; implementation rights; language; social and economic rights and victims' rights.

submissions<sup>16</sup> made to the NIHRC on what people thought should be in a Bill of Rights for Northern Ireland coupled with the Working Group reports. The NIHRC gave December 1, 2001 as a deadline for responses to their proposals. This tight deadline was acknowledged by the Chief Commissioner and was motivated by a desire that the existing commissioners would see this process through, in case some were not reappointed the second time around. However the deadline created pressure for organisations wishing to participate in the process. As with the publication of the draft document, this was extended to the summer of 2002 and even in 2003 the NIHRC was still receiving submissions.

In the period from September to December 2001 and beyond there was further public engagement with a series of meetings with individuals, voluntary organisations, political parties, faith organisations, trade unions and statutory bodies. Information and training events took place where the NIHRC representatives spoke and/or facilitated; there were television and radio advertisements, billboards on bus shelters and supplements produced in local newspapers; articles written for a range of community publications. The NIHRC also organised a number of events on specific issues such as disability, women's rights and sexual orientation. There was also a concrete effort to involve children in the consultation process with the publication of a specially designed version of the draft document for children and a number of events were held which were specifically for the youth. A second opinion poll was carried out in October 2001 to assess public feeling about the draft Bill of Rights. The results show that the majority of people agreed that there was a need for a Bill of Rights.<sup>17</sup> At the time of writing the NIHRC had received 340 submissions from organisations and individuals on its draft proposal. Recently the responses have been summarised in an extensive document.<sup>18</sup>

The third and final stage of the process continues with the theme of public participation by holding consultative meetings but particularly by deepening its work with local politicians. To this end it has met with politicians, held fringe workshops at some of the parties' annual party conferences and proposed to set up a cross-party round-table on a Bill of Rights. To date there have been a number of sessions on "key" issues, which were identified at an event in December 2002 in Belfast aimed at bringing people together to debate and raise awareness about these issues. In 2004 the NIHRC produced a progress report on the Bill of Rights.<sup>19</sup> The NIHRC carried out a third opinion survey showing strong support for the need for a Bill of Rights for Northern Ireland. The NIHRC hopes to publish a further report towards the end of the year, but the exact date and purpose of that report will depend on external factors such as the political environment at the time and whether the Northern Ireland Office has appointed additional Commissioners by then. The NIHRC will

<sup>16</sup> Publication was originally to be in June, with submission of preliminary advice to the Secretary of State by the summer of 2001. However the process was more difficult and time-consuming than the NIHRC had expected and the deadlines were extended.

<sup>17</sup> Northern Ireland Social Omnibus Survey, RES, October 2001.

<sup>18</sup> *Summary of Submissions on a Bill of Rights*, n.3 above.

<sup>19</sup> *Progressing a Bill of Rights for Northern Ireland, An Update*, n.13 above.

work thereafter to have its advice implemented as soon as possible. This will be the litmus test for the NIHRC as the government is under no obligation to accept their proposals. If the final advice does not have a widespread consensus of public and political support then there will be no Bill of Rights. Does such consensus exist at the moment?

### Role of public participation

A number of NGOs, community groups, statutory organisations, trade unions, academics, faith organisations and some political parties have stated that there was a genuine effort from the NIHRC to make the process as inclusive as possible:

I think they've tried to be as inclusive as possible and we've had a lot of advertisements about it and they really have tried to reach as many people as possible. I mean they have been very supportive and they have offered us to help . . . in ways in which we can raise the profile.<sup>20</sup>

If the public feel they have ownership and have participated in helping to draft a Bill of Rights, then it is likely to increase its legitimacy. This idea of public participative democracy has helped countries that have adopted a Bill of Rights to secure its acceptance among the judiciary, politicians, administrators and public bodies.<sup>21</sup>

The South African process is just one paradigm of how a "participatory formulation of rights"<sup>22</sup> can increase the support and legitimacy of the resulting document. The negotiation and drafting process of the Canadian Charter of Rights and Freedoms 1982 was also the result of a broad and active participation programme. According to commentators, the Canadian judiciary gave the Charter "real substance because the people took it up".<sup>23</sup> The drafting of the recent EU Charter of Fundamental Rights was also open and participative with open invitations to everybody to make representations or submissions, publications of papers on the internet and open meetings with civil society.<sup>24</sup>

Some in Northern Ireland have, however, expressed concern that the consultation had not been particularly effective in reaching beyond the community and voluntary sector, most of whom were already aware of the Bill

<sup>20</sup> Interview with Geraldine Campbell, HIV Support Centre.

<sup>21</sup> An evaluation conducted by the Community Agency for Social Enquiry in South Africa showed that the public participation strategy pursued by the Constitutional Assembly resulted in an increased awareness of the Constitution and people felt that they were a part of the constitution-making process.

<sup>22</sup> A. Sachs, *Protecting Human Rights in a New South Africa* (Oxford University Press, Cape Town, 1990).

<sup>23</sup> R. Penner, "The Canadian Experience with the Charter of Rights: Are there Lessons for the United Kingdom?" [1996] P.L. 104 at 107.

<sup>24</sup> Significant as the drafting process was, commentators have questioned its true open nature. See G. de Burca, "The drafting of the European Union Charter of Fundamental Rights" (2001) 26 E.L.Rev. 126.

of Rights, to reach the general public. The two surveys also substantiate these

### **Lack of awareness**

A number of reasons can be put forward to explain the lack of awareness amongst the general public. First, from the outset, the NIHRC suffered from limited resources. The NIHRC does recognise that more could have been done in communicating the message of a Bill of Rights. Their efforts to have a public advertising campaign were delayed until the Northern Ireland Office agreed an increased budget. Secondly, there will always be a certain degree of apathy and even suspicion especially amongst the Unionist/Protestant community.<sup>26</sup> This has subsequently hindered the NIHRC in promoting an awareness of the Bill of Rights.

### **Role of the working groups**

One aspect of the broader consultation process was the establishment of the nine Working Groups by the NIHRC. These Working Groups were asked within a period of three to four months to produce a report of no more than 3,000 words on what should be contained in the NIHRC's advice to the Secretary of State concerning the nine identified areas. This aspect of the NIHRC's consultation is laudable as it brought together a number of experts within a particular field and the final reports produced were documents of consensus. However a number of issues marred the operation of the Working Groups. First, there was the contested issue of membership. Each group had approximately 20 members, (the Implementation Group had less), with a Chair who was almost entirely drawn from outside the NIHRC (except the Working Group on Implementation Issues). The membership as stipulated in the guidelines drawn up by the NIHRC in August 2000, was intended to "broadly reflect the gender and community balances within NI". However like the NIHRC's own composition, a number of organisations were critical of the method of appointment and the membership. Bob Stronge, the Director from the Association of Independent Advice Centres said: "I think we would express a little bit of disappointment not to have been included in some of the working groups that were established particularly those that focused on social and economic rights issues".<sup>27</sup>

Secondly, confusion arose about the status and remit of the Working Groups despite the NIHRC being careful to produce guidelines. The guidelines stated that the members of the Working Groups were there as experts in their personal capacity to provide independent advice. If they happened to be members of an organisation which also had knowledge of and interest in the

<sup>25</sup> Northern Ireland Social Omnibus Survey, RES, July 1999, October 2001.

<sup>26</sup> For discussion on Unionism and human rights see A. Foster, "Protestants Needs Rights Explained to Them" No.411 *Fortnight*, February 2003, pp.12-13.

<sup>27</sup> Interview with Bob Stronge, AIAC.

right in question, the members were not there as representatives of any organisation. However according to one member of the Language Working Group, their members viewed "themselves as representatives of the organisations that had been asked to nominate them. This was never resolved."<sup>28</sup>

Another ambiguous area was their remit. Whilst the Working Groups were requested to submit a report of 3,000 words there was a lack of guidance as to what form the report should take. Should it be idealistic or pragmatic? Should it produce explicit drafts of a Bill of Rights, or merely a collection of views? As Murray states, the "former would presume some legal drafting . . . the latter would suggest that some public consultation by the groups were required".<sup>29</sup> However most of the Working Groups were not lawyers and given their limited budget of £2,000 coupled with the fact that members joined the Groups on a voluntary basis, the latter option was not practical.

Fourthly, the working methods of the Working Groups also caused problems. Each Working Group had at least one Commissioner who was an ordinary member of the Working Group contributing to the discussion and one member of staff from the NIHRC with responsibility for servicing the group. However as there was only one commissioner to each group, confusion arose amongst some organisations as to the NIHRC's overall view on the particular issue.

Finally there is the question of what happened after the reports were submitted and how influential were the Working Groups' final reports in the draft consultation document? Before publishing the draft Bill of Rights, the NIHRC had agreed on a set of specific principles to help guide them in producing advice on what should be included in a Bill of Rights. One of these principles included that such advice should reflect consideration of Working Group reports and submissions. However after submitting the reports no meetings were held for any discussion or the group reports. Three of the Working Groups in particular were disappointed that the NIHRC's draft proposals did not wholly reflect their advice.<sup>30</sup>

The NIHRC is an independent body entitled to reject the advice given by those who submitted proposals to them and by the Working Groups, but arguably the NIHRC should at least have explained what had happened to them. This is one of the paradoxes of public participation. Whilst it helps to create a sense of ownership and legitimacy, it also raises a number of practical and normative questions. Regarding the former, how do you take on board the numerous submissions to ensure that the public efforts and their submissions are reflected? At the same time there is then the normative problem of how seriously do you treat the submissions? Do you take the political parties' views more seriously than the community and voluntary groups? For after all political

<sup>28</sup> L. Reynolds, "A Bill of Rights for Northern Ireland—Language Issues in Context" (2001) 52 N.I.L.Q. 309. The method of appointment of this Working Group differed from the others as the NIHRC approached a number of organisations asking them to nominate members.

<sup>29</sup> R. Murray, "The Importance of a Bill of Rights in Northern Ireland as a Process: Comparative Reflections from South Africa" (2001) 52 N.I.L.Q. 385 at 397.

<sup>30</sup> These were the Cultural and Identity Working Group; Economic, Social and Cultural Rights Working Group and the Language Rights Working Group.

support is essential for the ultimate success of a Bill of Rights. Therefore in one respect the wide consultation has made the issue more difficult for the NIHRC as it has raised peoples' expectations, especially those who are not lawyers and may not understand the process. In this respect it was disappointing that although a summary of submissions was published, this was not until July 2003, well after the Working Groups had reported and indeed after the NIHRC had produced its draft advice. Had this been published earlier, perhaps there would not have been the sense of disillusionment that patently existed after people handed in their submissions.

The observations above indicate that while there was a sincere effort from the NIHRC to use a consultative forum to engage the public, it seems as if this did not reach beyond the "usual suspects". Even within that circle, feelings of enthusiasm and excitement have been replaced with despondency and disillusionment. This is unfortunate as this support is essential to the legitimacy of a Bill of Rights. The NIHRC does not have the widespread political support of most of the Northern Ireland's political parties and even the Irish and British governments have expressed consternation regarding the NIHRC's draft proposals of 2001. Both governments have emphasised that the contents of a Bill of Rights should be entirely consistent with the arrangements under the Agreement and should reflect fully the fundamental principles that underpin it. It remains to be seen whether the NIHRC's latest proposals assuage the concerns and serious reservations many articulated about its 2001 consultation paper.

## Conclusion

The UK and Irish governments have indicated in the Joint Declaration of April 2003 that they will now facilitate a round-table forum of Northern Irish political parties and representatives of civil society to consider the Bill of Rights. The forum's views will be forwarded to the NIHRC before it gives its advice. Unfortunately progress in establishing such a forum has been slow and the modalities are unclear. The NIHRC's recent 2004 document is doubtful whether such a forum can be taken forward while the review of the Agreement is under way. However it has been reported that "there is no sense that the political parties are uninterested in exploring with civil society the parameters of a Bill of Rights".<sup>31</sup>

This article began with asking the question of whether the obligation to advise the Secretary of State on a Bill of Rights was a unique opportunity for the NIHRC to enhance public awareness of and confidence in human rights? Or was it an unwelcome distraction for the NIHRC as it detracted time, resources and effort from its other statutory duties. Paradoxically, the answer is both. It was a unique opportunity in the sense that the NIHRC, through its training and information exercises, did promote awareness and an understanding of human rights, albeit only to those constituencies that it reached out to. There was certainly a reservoir of interest and enthusiasm at the beginning

<sup>31</sup> CAJ, "Progressing a Bill of Rights?" *Just News*, April 2004, p.3.

of the consultation process. This is evidenced by the 340 submissions submitted to the NIHRC. However despite the strenuous efforts to popularise the process, there are still very many ordinary people who are unaware that the debate about a Bill of Rights is underway, still less aware of how and why they might participate in it. In this context it can be described both as a unique opportunity but also a missed opportunity. Giving the onerous task to the NIHRC has also resulted in an unwelcome distraction. Undoubtedly the Bill of Rights is the NIHRC's central priority and was one of the reasons why some of the commissioners joined the NIHRC. However other aspects of its work have suffered from the lack of resources or attention that might not have happened if the NIHRC had not been tasked with this duty.

All in all what may have been political expediency at the time of the negotiations—to give a major constitutional task to a statutory body—has in the end proved to be very problematic. The NIHRC itself has acknowledged, in its recent Action Plan of October 2003, that there is a need to instil greater confidence both among the general public and the political parties in the Bill of Rights. Only when these are secured will the prospect of achieving a Bill of Rights for Northern Ireland become tangible.

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\* School of Law, The Queen's University, Belfast. This article is devoted to Professor Stephen Livingstone. The quotations from the interviews are part of an 18-month long project in association with Professor Livingstone, Dr Rachel Murray and Anne Smith, funded by the Nuffield Foundation, evaluating the NIHRC with comparative reference to the South African Human Rights Commission. Although this article draws upon the research, the views in the article are those of the author.