**MY QUESTIONS:**

**Legitimising – is that what it is all about now?**

**Out of synch with the interests of ordinary people**

**Public safety concern absence.**

**Failure of law schools/TJI**

**Where were the efforts on – teacher exception and fair employment, defamation act, assembly extension, equality act, gay rights in the 1980s**

**A Discussion Paper**

**Enhancing the protection of human rights and equality in Northern Ireland:**

**Options for the Way Forward**

**INTRODUCTION**

The aim of this paper is to sketch options on possible ways forward for the enhanced protection of human rights in Northern Ireland. Our intention is to offer a basis for further discussion, recognising that there is scope for reasonable disagreement and that party political consensus on human rights probably remains elusive. Our objective is to facilitate a constructive conversation on defensible ways forward with a view to providing clarity and thus avoiding the perpetuation of myths and misunderstandings.

Some human rights are already fairly well protected by law in Northern Ireland. The Human Rights Act 1998 is regularly applied by the courts, there is a Northern Ireland Human Rights Commission, and civil society has many experienced and successful human rights-focused organisations. Bills brought to the Assembly are human rights proofed, the PSNI work to a code of ethics which is largely drawn from international human rights treaties, and our local universities are nationally and internationally respected for their human rights programmes.

Nevertheless, it would be easy to develop a culture of complacency, and for Northern Ireland to fall behind the human rights standards favoured by other progressive countries. In a world where human rights standards evolve, and where ideas of justice, fairness and equality are contested, every society can benefit from taking stock of where it sits on the human rights spectrum and how it might ensure that it guarantees to all of its people the freedoms and rights that they reasonably ask for. In our view, politicians and others should continually reflect on how life could be made better for everyone by encouraging open and honest dialogue on what respect for rights and appreciation of the value of freedoms really means.

In Northern Ireland, where there is still unacceptable inequality, gaps in accountability gaps, institutional inertia, neglect of rights guarantees, and human rights abuses threatened and perpetrated by all sorts of bodies, it is clear that, for the benefit of all and to no-one’s detriment, further steps could be taken to entrench a human rights culture.

For the first decade of this century the Northern Ireland Human Rights Commission sought to persuade political representatives from across the community – and the British government as well – of the value there would be in enacting a Bill of Rights for Northern Ireland. This process was itself the culmination of sustained efforts that started decades earlier to ensure that human rights guarantees were given full recognition in law. As persistent advocates for a Bill of Rights down the years, we wait with interest to see if all those efforts will be brought to fruition. As a prelude to further progress, it is worth considering what we believe are the three main options now available.

**OPTION 1: DO NOTHING**

A case can be made for doing nothing in terms of further law reform. Northern Ireland already has a range of human rights and equality guarantees. While there is room for improvement, and evident gaps, it could be argued that in the current political context a drive to enhance human rights and equality should not be a priority issue for the British and Irish governments or for the Northern Ireland Executive. This might combine with a cautious and conservative approach that is aware of the strategic risks of pushing for reform at moments when the political environment is uncertain, and where real risks exist of backward steps being taken. This approach is essentially ‘hold what you have’ and ‘work with what you have got’ for now. It is not an argument against full and effective implementation of existing standards – advocacy should continue. It is an argument for strategic caution and recognition that the time may not be right just now for advancement. It could be pushed further to include the claim (which has its problems when applied to the particular circumstances of Northern Ireland) that the Human Rights Act 1998 – which applies throughout the UK – is a UK Bill of Rights already and is already reflective of the commitment within the Good Friday/Belfast Agreement to ‘incorporation’ of Convention rights.

What are the implications of selecting Option 1? It focuses on the defence of existing human rights protections and on robustly resisting repeal of the Human Rights Act 1998. It entails arguing positively for the effective implementation of ‘Convention rights’ in Northern Ireland, which is still a work in progress. It would also mean retaining and working with existing equality guarantees. Are we sure, for example, that the protections are being interpreted and applied as rigorously and effectively as possible?

## Option 1 would also mean ensuring that existing institutions, including the Human Rights Commission and the Equality Commission, are operating at maximum effectiveness.

Although Option 1 may appear unduly cautious, it need not perpetuate complacency. There remains unfinished business connected with the implementation of existing law and policy. Option 1 stresses the need to maximise the potential of what is already there.

**OPTION 2: PUSH FOR A NORTHERN IRELAND BILL OF RIGHTS TO BE ENACTED BY THE UK PARLIAMENT**

After an extensive process of debate, engagement and consultation, the Northern Ireland Human Rights Commission submitted its final advice to the Northern Ireland Office (NIO) on 10th December 2008, in fulfilment of its statutory mandate. The carefully crafted document reflected all the Commission’s detailed consideration of the issues and, although it did not gain cross-party support, it was generally viewed as a credible and substantial contribution to the debate. The Good Friday/Belfast Agreement 1998 is clear that work on a Bill of Rights, if it is advanced, should be undertaken at Westminster (a view which the St Andrews Agreement 2006 did nothing to alter). Option 2 therefore focuses on insisting that the British Government retains principal responsibility for taking the project forward as outlined in the 1998 Agreement. As a co-guarantor of the Agreement, the Irish Government also has responsibilities with respect to its full implementation. Option 2 insists that, whatever arguments exist about the precise scope of the obligation on the British Government, there is no doubt that this is where responsibilities still rests. The additional implication is that the lack of party political consensus in Northern Ireland need not be an obstacle to progress. Advocates of Option 2 express some anxiety about any political community in Northern Ireland having a ‘veto’ on progress. The outcome of the recent Bill of Rights Commission process in London has explicitly confirmed that any UK-wide discussion should not stand in the way of the Northern Ireland process.

The promotion of Option 2, however, need not impede constructive efforts to assess the scope of agreement and/or disagreement. As the Bill of Rights will have to function in Northern Ireland, a shared sense of ownership (respectful too of the realities of cross-community power-sharing) may be wise – if only to assess current levels of support. Option 2 therefore need not rule out constructive governmental attempts to establish current levels of agreement, or intergovernmental work to advance a Bill of Rights.

What are the implications of selecting Option 2? One straightforward response would be for the British Government to legislate now for the proposals contained in the Human Rights Commission’s final advice. On this reading, the process of consultation and consideration is complete and the proposals should now be enacted.

While the implications might end there, a question that can be posed is whether some further process should be established to assess the current position before legislation is tabled, and to determine if any negotiated way forward can be achieved. While such a process may have the merit of ‘realism’ – the British Government has always insisted on the significance of cross-community support – it might be viewed by some as undermining the strategic focus on the Agreement’s provisions. Whatever view is taken, clarity could be sought now as to where this process rests and, if Option 2 is the preferred approach, how it will be operationalised. Is there scope, for example, for a political process that might dissolve the current gridlock?

**OPTION 3: PUSH FOR A HUMAN RIGHTS (MISCELLANEOUS PROVISIONS) BILL TO BE ENACTED BY THE NORTHERN IRELAND ASSEMBLY**

Option 3 is a rejection of Option 1, but is not necessarily inconsistent with Option 2. It could be favoured in place of or in addition to Option 2. Option 3 rests on the pragmatic and principled view that something could be done now to improve things for people in Northern Ireland without re-igniting differences of opinion over what some see as attempts to secure a new constitutional beginning to rights protection.

The Northern Ireland Assembly could, if it wished, do more to ‘bring home’ international rights standards. The devolution settlement specifically allows for that. When in 2003 it agreed to the establishment of NICCY – the Northern Ireland Commissioner for Children and Young People – it accepted that the Commissioner should always ‘have regard to’ the UN’s Convention on the Rights of the Child. Likewise, when it created the post of Commissioner for Older People in 2011 it insisted that the person appointed should ‘have regard to’ the UN’s Principles for Older Persons. Why then should the Assembly not insist that other bodies – such as the proposed Education and Skills Authority, or existing Health Trusts, or housing associations or whatever body is created to replace the Housing Executive – should be required to ‘have regard to’ the pertinent UN principles on rights to do with education, health and housing? As just one example, in light of the popular support for more integrated education, why should the right to such integrated education not be better protected by law in Northern Ireland?

The OFMDFM has announced that it wishes to merge the two Ombudsman roles – the Assembly Ombudsman and the Commissioner for Complaints – into a single Northern Ireland Public Services Ombudsman. Is this an opportunity to ensure that when investigating maladministration the Ombudsman should take account of relevant human rights principles?

Northern Ireland used to be the lead jurisdiction in these islands as regards equality law, but recent developments in England, Scotland and Wales have caused us to lag behind. The right for carers not to be discriminated against in the workplace, for instance, is still not firmly protected here. And older people, unlike their counterparts in Great Britain or the Republic, cannot claim discrimination if they are denied access to facilities or services merely on the basis of their age. The section 75 equality duties have since been surpassed by more sophisticated equality duties imposed in GB.

These are just some of the human rights and equality ‘gaps’ which could easily be filled by a Human Rights (Miscellaneous Provisions) Bill passed by the Northern Ireland Assembly, to be read in conjunction with the Human Rights Act 1998. Other, more controversial, matters that might be included in such a Bill are the right to parade and the right to use Irish. We wonder which of the political parties would be opposed to the *principle* of such a Bill?

What are the implications of selecting Option 3? An immediate outcome might be a start to work on a new Human Rights Bill for future discussion and debate within the Northern Ireland Assembly – one that builds on the Human Rights Act 1998 and reflects the reality of devolved regional political power. The ‘work’ on this new legislation could include an open and participative community-wide discussion of which rights people would like to see in any new Assembly legislation. Such a process could ensure that there is a deeper sense of local ownership of human rights, and that a meaningful debate takes place in Northern Ireland about additional rights. Such a process would also place Northern Ireland back in the ‘lead’, with Scotland and elsewhere, in advancing the rights and equality debate. Such a process might even have the consequence of prompting more profound reflection on a ‘constitutional’ Bill of Rights for Northern Ireland. For example, one outcome might be that people regard a ‘constitutional’ document adopted at Westminster – and perhaps even underpinned inter-governmentally – as a better way forward. Option 3 is the one that, arguably, has the most immediate implications for advancing the human rights debate in Northern Ireland in the short term.

**CONCLUSION**

We have both long campaigned for first class human rights protections in Northern Ireland. The premise of this paper is that there should be no backward steps in the promotion and protection of human rights here. While we are not exclusively advocating any one of the three options above, we are concerned to ensure that everyone in Northern Ireland enjoys better protection than is currently the case.

We believe the time is now right to pose hard questions about how we can make advances. Our primary concern in this work is to ensure that Northern Ireland continues to build a culture of respect for human rights and equality as well as a better recognition of the responsibilities we all owe to one another.

This discussion paper is our attempt to present in a very preliminary fashion possible options on the way forward. We believe that achievements on rights and equality here must be acknowledged. It is not credible to claim that no progress has been made in recent times, and advances must be recognised as such. However, we are concerned that Northern Ireland may be falling behind its neighbouring jurisdictions and we perceive a real risk that a culture of complacency could be taking hold. As a result, we share a desire to facilitate dialogue on ways forward for enhanced human rights and equality protection as one part of building a shared and better future here.

**Brice Dickson and Colin Harvey**

**Human Rights Centre, School of Law, Queen’s University Belfast**