



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

IHRC

AN COIMISIÚN UM CHEARTA AN DUINE
IRISH HUMAN RIGHTS COMMISSION

**THE ADVICE OF THE JOINT COMMITTEE ON
A CHARTER OF RIGHTS FOR THE ISLAND OF IRELAND**

June 2011

Foreword

The Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights Commission was mandated by the Belfast (Good Friday) Agreement 1998 to consider the possibility of 'A Charter of Rights for the island of Ireland'. The advice contained in this document represents the response from the two Commissions in this regard. We have concluded that a Charter is justifiable on the basis that there is a commonality of rights protected in both jurisdictions and that an equivalence of human rights protections, if achieved, could assist in underpinning the peace process in both jurisdictions. A Charter could thus build upon the commitments in the Belfast (Good Friday) and St Andrews Agreements in seeking to provide an equivalent level of protection for fundamental rights both in Northern Ireland and the Republic of Ireland.

The Joint Committee was not directed as to the forum in which this advice should be presented but we have concluded that the Government of the United Kingdom and the Government of Ireland are best placed to receive the advice insofar as they are the State Parties to the Belfast Agreement and responsible for human rights protection in either jurisdiction. The Speaker of the Northern Ireland Assembly and the Ceann Comhairle of Dáil Éireann will forward this document to the political parties in their respective bodies. Both Commissions will be pleased to assist that process wherever necessary.

Professor Monica McWilliams



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Introduction

The Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights Commission (the Joint Committee) was mandated by the Belfast (Good Friday) Agreement 1998 to “consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland”.¹

The Joint Committee understands the scope of this mandate to include consideration of the possibility of a Charter and seeks to provide advice within this context. The following document outlines the origins of a Charter as established by relevant political agreements. It sets out the existing human rights provisions of both jurisdictions on the island of Ireland and details the legal foundation for creating a Charter that would maintain a level of protection for fundamental rights on a cross-jurisdictional basis.

The possibility of a ‘Charter of Rights for the island of Ireland’ is expressly acknowledged in the Belfast (Good Friday) Agreement 1998. It was a commitment entered into by the United Kingdom and Irish governments that was restated in the Joint Declaration of 2003. The founding principles of the Agreement, including those of equality and human rights, were once again acknowledged in the St Andrews Agreement 2006.

Co-operation between the two jurisdictions on the island, such as through the North-South Ministerial Council and on policing and justice matters, raises and will continue to raise human rights issues. In this document the Joint Committee demonstrates that a Charter of Rights is justifiable and could be constituted within the already established framework of human rights protections operating in both Northern Ireland and Ireland.

Creating a Charter would require agreement by political parties and would benefit from the endorsement of both the United Kingdom and Irish governments as guarantors of the peace process. A Charter, as recommended in

¹ The Belfast (Good Friday Agreement) 1998, ‘Rights, Safeguards and Equality of Opportunity’, para 10.

this document, would not provide for any new human rights protections. It would, however, allow political parties from each jurisdiction to demonstrate their continued commitment to human rights. The Joint Committee therefore encourages political parties and the two governments to explore the possibility of creating a Charter of Rights for the island of Ireland and stands ready to assist this process.

Background Context

The possibility of a 'Charter of Rights for the island of Ireland' is expressly acknowledged in the Belfast (Good Friday) Agreement 1998 and a number of cross-jurisdictional agreements.²

The genesis of a Charter can be sourced to the Joint Framework Document 1995 which states "... both Governments would encourage democratic representatives from both jurisdictions in Ireland to adopt a Charter or Covenant, which might reflect and endorse agreed measures for the protection of the fundamental rights of everyone living in Ireland".³ At that time tentative consideration was given to what a Charter might look like. It could, for example:

pledge a commitment to mutual respect and to the civil rights and religious liberties of both communities, including:

- the right of free political thought,
- the right to freedom and expression of religion,
- the right to pursue democratically national and political aspirations,
- the right to seek constitutional change by peaceful and legitimate means,
- the right to live whenever one chooses without hindrance,
- the right to equal opportunity in all social and economic activity, regardless of class, creed, gender or colour.

² See: 'The Belfast (Good Friday) Agreement 1998', especially 'Democratic Institutions', para 5 and 'Rights, Safeguards and Equality of Opportunity', para 10; Joint Framework Document, 1995, para 51 and 'Rights, Equality, Identity and Community', para 5 in the Joint Declaration by the British and Irish Governments, April 2003.

³ Joint Framework Document, 1995, para 51.

This Charter or Covenant might also contain a commitment to the principle of consent in the relationships between the two traditions in Ireland. It could incorporate also an enduring commitment on behalf of all the people of the island to guarantee and protect the rights, interests, ethos and dignity of the unionist community in any all-Ireland framework that might be developed with consent in the future, to at least the same extent as provided for the nationalist community in the context of Northern Ireland under the structures and provisions of the new Agreement.

The Covenant might also affirm on behalf of all traditions in Ireland a solemn commitment to the exclusively peaceful resolution of all differences between them including in relation to all issues of self-determination, and a solemn repudiation of all recourse to violence between them for any political end or purpose.⁴

The Belfast (Good Friday) Agreement 1998 further states:

The joint committee will consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland.⁵

The Joint Declaration 2003 sets out that:

The two Governments welcome the Joint Committee of representatives of the two Human Rights Commissions and its consideration, among other matters, of a Charter reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone in the island of Ireland.⁶

The St Andrew's Agreement 2006 does not expressly refer to a Charter, but it does reiterate the Irish and United Kingdom governments' full commitment to the fundamental principles of the Belfast (Good Friday) Agreement 1998:

⁴ Joint Framework Document, 1995, paras 52-53.

⁵ 'Rights, Safeguards and Equality of Opportunity', para 10 in 'The Belfast (Good Friday) Agreement 1998'.

⁶ 'Rights, Equality, Identity and Community', para 5 in the Joint Declaration by the British and Irish Governments, April 2003.

Both Governments remain fully committed to the fundamental principles of the Agreement: consent for constitutional change, commitment to exclusively peaceful and democratic means, stable inclusive partnership government, a balanced institutional accommodation of the key relationships within Northern Ireland, between North and South and within these islands, and *for equality and human rights at the heart of the new dispensation in Northern Ireland* [emphasis added].⁷

An overview of how human rights are dealt with in relevant political agreements and where a 'Charter of Rights for the island of Ireland' is expressly mentioned is provided in Table 1, below.

Table 1

<u>Agreement</u>	<u>Charter Expressly Mentioned</u>	<u>Calls for Human Rights Protection In General</u>	<u>Signatories</u>
Anglo-Irish Agreement 1985	X	√ (Preamble and Articles 4 and 5)	British and Irish governments
Downing Street Declaration 1993	X	√ (Paragraphs 4 and 5)	British and Irish governments
Joint Framework Document 1995	√ (Paragraphs 51 and 52)	√ (Paragraphs 50-53)	British and Irish governments
Mitchell Principles 1996	X	√ (These Principles aim to vindicate human rights)	British and Irish governments and Northern Ireland's political parties
Belfast (Good Friday) Agreement 1998	√ (Paragraph 10, Rights, Safeguards and Equality of Opportunity Section)	√ (Rights, Safeguards and Equality of Opportunity Section)	British and Irish governments and Northern Ireland's political parties

⁷ The St Andrew's Agreement, 2006, para 3.

<u>Agreement</u>	<u>Charter Expressly Mentioned</u>	<u>Calls for Human Rights Protection In General</u>	<u>Signatories</u>
Hillsborough Declaration 1999	X	√ (Vindicating individual's human rights through ending political violence - Page 1)	British and Irish governments
Joint Declaration 2003	√ (Paragraph 5, Annex 3)	√ (Annex 3)	British and Irish governments
St Andrew's Agreement 2006	X	√ (Paragraphs 3, 8 and Annex B)	British and Irish governments
Hillsborough Castle Agreement 2010	X	√ (Reform of the justice system - Section 1, paragraph 7 and section 2, paragraph 3)	Peter Robinson, First Minister and Martin McGuinness, deputy First Minister

This table demonstrates that political agreements are underpinned by a human rights based approach. The Belfast (Good Friday) Agreement 1998 is, in particular, also concerned however with ensuring an equivalence of rights protections in both jurisdictions on the island. Signatories of the Agreement affirmed:

that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities.⁸

This guarantee is one basis on which a 'Charter of Rights for the island of Ireland' might be founded.

⁸ Article 1(v), Belfast (Good Friday) Agreement 1998, 33.

A Charter Like Never Before?

Introducing a charter like that proposed is a fairly new, but not unknown, concept. There are thousands of inter-state agreements to choose from on a national, regional and global level, yet it has been difficult to identify a similar charter to that proposed for the island of Ireland – a cross-jurisdictional political party agreement. However, one example is the 'Charter of Political Parties for a Non-Racist Society'.⁹

The process for creating this Charter began with the compilation and publication of 'Principles of Good Practice for Political Parties in Non-Discrimination'.¹⁰ This was followed up with a conference attended by forty political parties from European Union member states, representatives from the main non-governmental organisations (NGOs) and independent experts.¹¹ At this conference, those political parties in attendance signed up to the 'Charter of Political Parties for a Non-Racist Society' and created a 'Code of Good Practice' setting a standard on how to address racism and xenophobia.¹² By January 1999, close to 100 signatories had endorsed the Charter¹³ and in September 2003, it was adopted by the Parliamentary Assembly of the Council of Europe.¹⁴

The existence and success of this charter assists in providing a rationale for the creation and implementation of a 'Charter of Rights for the island of Ireland'. The process adopted in delivering a non-racist society charter indicates how instrumental the Mitchell Principles, and the rights agreed in the Belfast (Good Friday) Agreement 1998 and its surrounding settlements could be in providing direction for a 'Charter of Rights for the island of Ireland'.

⁹ Available: http://www.art1.nl/artikel/2017-Charter_of_European_Political_Parties_for_a_non-racist_society [Accessed 3 March 2011].

¹⁰ Dutch National Bureau Against Racial Discrimination, 'Principles of Good Practice on Non-discrimination for Political Parties' (September 1997).

¹¹ Available: http://www.art1.nl/artikel/2017-Charter_of_European_Political_Parties_for_a_non-racist_society [Accessed 22 February 2011].

¹² 'Charter for European Political Parties for a Non-Racist Society Conference', Utrecht European Conference, 28 February 1998.

¹³ Available: http://www.migpolgroup.com/projects_milestones.php?id=32 [Accessed 22 February 2011].

¹⁴ Available: <http://www.osce.org/odihr/31164> [Accessed 4 March 2011].

A Charter of Rights for the island of Ireland is not, however, to be confused with the 2000 Charter of Fundamental Rights of the European Union which, since December 2009, has had the force of law in both jurisdictions and whose provisions are noted in Table 5, below.

Domestic Protection of Human Rights

Although the United Kingdom has no written constitution, its Courts have developed a rich jurisprudence on fundamental rights down through the centuries. Ireland, in contrast, has a written constitution in the form of the 1937 Bunreacht na hÉireann which includes a number of fundamental rights provisions, including those noted in Table 5, below.

European Convention on Human Rights

This section will assess the significance of the European Convention on Human Rights (ECHR) in Northern Ireland and Ireland. The purpose of this analysis is to demonstrate how the creation of a Charter would be crucial in reminding political parties of the legislative and political framework within which they operate.

The United Kingdom ratified the ECHR without reservation.¹⁵ Ireland ratified the ECHR with one reservation concerning Article 6(3)(c).¹⁶ Table 2 summarises the status of the ECHR and its Protocols in both jurisdictions.

¹⁵ Generally, Northern Ireland will be subject to the same laws as those signed up to and ratified by the United Kingdom. There may be differences in the domestic application and protection of these laws. If there are differences between Northern Ireland and other parts of the United Kingdom in this regard, they will be expressly indicated.

¹⁶ Ireland's reservation stated: "The Government of Ireland do hereby confirm and ratify the aforesaid Convention and undertake faithfully to perform and carry out all the stipulations therein contained, subject to the reservation that they do not interpret Article 6.3.c of the Convention as requiring the provision of free legal assistance to any wider extent than is now provided in Ireland". Available:

Table 2

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
European Convention on Human Rights 1950 (ECHR)	√ (4 November 1950)	√ (8 March 1951)	X	√ (4 November 1950)	√ (25 February 1953)	Article 6(3)(c)
Protocol 1 to the ECHR Concerning Property, Education and Free Elections 1952	√ (20 March 1952)	√ (25 February 1953)	Article 2	√ (20 March 1952)	√ (3 November 1952)	Declaration regarding Article 2
Protocol 2 to the ECHR Conferring Upon the European Court of Human Rights Competence to Give Advisory Opinions 1963	√ (6 May 1963)	√ (6 May 1963)	X	√ (6 May 1963)	√ (12 September 1963)	X
Protocol 3 to the ECHR Amending Articles 29,30 and 34 of the Convention 1963	√ (6 May 1963)	√ (6 May 1963)	X	√ (6 May 1963)	√ (12 September 1963)	X
Protocol 4 to the ECHR Concerning Imprisonment for Debt, Freedom of Movement and Expulsion 1963	√ (16 September 1963)	X	X	√ (16 September 1963)	√ (29 October 1968)	X
Protocol 5 to the ECHR Amending Articles 22 and 40 of the Convention 1966	√ (10 February 1966)	√ (24 October 1967)	X	√ (18 February 1966)	√ (18 February 1966)	X

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=22/02/2011&CL=ENG&VL=1> [Accessed 22 February 2011].

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
Protocol 6 to the ECHR Concerning the Abolition of the Death Penalty 1983	√ (27 January 1999)	√ (20 May 1999)	X	√ (24 June 1994)	√ (24 June 1994)	X
Protocol 7 to the ECHR Concerning Expulsion of Aliens, Right of Appeal, Compensation, Double Jeopardy and Equality Between Spouses 1984	X	X	X	√ (11 December 1984)	√ (3 August 2001)	X
Protocol 8 to the ECHR Amending Articles 20,21, 23, 28, 30, 31, 34, 40, 41 and 43 of the ECHR 1985	√ (19 March 1985)	√ (21 April 1986)	X	√ (20 March 1985)	√ (21 March 1988)	X
Protocol 9 to the ECHR Amending Articles 31, 44, 45, and 48 of the ECHR 1990	X	X	X	√ (24 June 1994)	√ (24 June 1994)	X
Protocol 10 to the ECHR Amending Article 32 of the ECHR 1992	√ (25 March 1992)	√ (9 March 1993)	X	√ (24 June 1994)	√ (24 June 1994)	X
Protocol 11 to the ECHR Restructuring the Control Machinery Established Thereby 1994	√ (11 May 1994)	√ (9 December 1994)	X	√ (11 May 1994)	√ (16 December 1996)	X
Protocol 12 to the ECHR Concerning Elimination of Discrimination 2000	X	X	X	√ (4 November 2000)	X	X
Protocol 13 to the ECHR Concerning the Abolition of the Death Penalty in All	√ (3 May 2002)	√ (10 October	X	√ (3 May 2002)	√ (3 May 2002)	X

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
Circumstances 2002		2003)				
Protocol 14 to the ECHR Amending the Control System of the Convention 2004	√ (13 July 2004)	√ (28 January 2005)	X	√ (13 June 2004)	√ (10 November 2004)	X
Protocol 14bis to the ECHR Amending Articles 25, 27 and 28 2009	X	X	X	√ (17 June 2009)	√ (17 June 2009)	X

Both the United Kingdom and Ireland have incorporated the majority of the ECHR and its Optional Protocols into their domestic laws: the United Kingdom has done so through the Human Rights Act 1998 and Ireland through the European Convention on Human Rights Act 2003. Public authorities within both jurisdictions must act in a manner which is compatible with the ECHR provisions. Furthermore, domestic courts now have certain remedies available to them to deal with a breach of an ECHR right without always having to rely on proceeding to the European Court of Human Rights (ECtHR). Consequently, the inclusion of the ECHR in domestic laws requires judiciaries to take account of the jurisprudence of the ECtHR, and to interpret legislation, as far as possible, in a way which is compatible with the ECHR.

There are certain aspects of the ECHR and its Optional Protocols that both the United Kingdom and Ireland have opted to not enact into their domestic law. Table 3 gives a brief overview of what is expressly provided for within each Act.

Table 3

<u>European Convention on Human Rights (ECHR)</u>	<u>Human Rights Act 1998 (HRA)</u>	<u>European Convention on Human Rights Act 2003 (ECHRA)</u>
Article 1 ¹⁷	X	X
Article 2 (Right to life)	√	√
Article 3 (Freedom from torture and inhuman or degrading treatment or punishment)	√	√
Article 4 (Freedom from slavery and servitude)	√	√
Article 5 (Right to liberty and security of person)	√	√
Article 6 (Right to fair trial)	√	√
Article 7 (Right to non-retrospectivity)	√	√
Article 8 (Right to family and privacy)	√	√
Article 9 (Freedom of thought, conscience and religion)	√	√
Article 10 (Freedom of expression)	√	√
Article 11 (Freedom of association)	√	√
Article 12	√	√

¹⁷ Article 1 is a commitment to the protection of the rights contained in the Convention, rather than a substantive right in itself.

European Convention on Human Rights (ECHR)	Human Rights Act 1998 (HRA)	European Convention on Human Rights Act 2003 (ECHRA)
(Right to marry)		
Article 13 (Right to effective remedy)	√ (covered by section 8)	√
Article 14 (Right to equality and non-discrimination)	√	√
Article 15	√ (covered by section 14 and schedule 3 of the Act)	√
Article 16	√	√
Article 17	√	√
Article 18	√	√
Articles 19-66	X	X
Protocol 1, Article 1	√	√
Protocol 1, Article 2	√	√
Protocol 1, Article 3	√	√
Protocol 1, Articles 4-6	X	√
Protocol 2	Superseded by Protocol 11	Superseded by Protocol 11
Protocol 3	Superseded by Protocol 11	Superseded by Protocol 11
Protocol 4	X	√
Protocol 5	Superseded by Protocol 11	Superseded by Protocol 11
Protocol 6	√	√
Protocol 7	X	√
Protocol 8	Superseded by Protocol 11	Superseded by Protocol 11
Protocol 9	Superseded by Protocol 11	Superseded by Protocol 11
Protocol 10	Superseded by Protocol 11	Superseded by Protocol 11
Protocol 11	Procedural Protocol	Procedural Protocol
Protocol 12	X	X
Protocol 13, Article 1	√	X
Protocol 13, Articles 2-8	X	X

<u>European Convention on Human Rights (ECHR)</u>	<u>Human Rights Act 1998 (HRA)</u>	<u>European Convention on Human Rights Act 2003 (ECHRA)</u>
Protocol 14	Procedural Protocol	Procedural Protocol
Protocol 14b	Procedural Protocol	Procedural Protocol

The following provides an explanation as to why the United Kingdom and Ireland omitted certain ECHR articles and protocols from their domestic laws.

Protocol 4: UK

The United Kingdom has signed but not ratified Protocol 4 of the ECHR, which provides additional rights not contained within the body of the ECHR; namely, freedom from imprisonment for civil debt, free movement and freedom from expulsion.

The Department of Constitutional Affairs commissioned a review of the United Kingdom's human rights obligations.¹⁸ This review concluded in 2004 and was followed by a report from the Joint Committee on Human Rights (JCHR) at Westminster.¹⁹

The JCHR explained concerns held over ratification of the Protocol. It was felt that articles 2 and 3 may confer rights "in relation to passports and a right of abode on categories of British nationals who do not currently have that right".²⁰ Furthermore, it suggested that article 2 is viewed as incompatible with armed forces discipline. However, the JCHR commented that the text of the Protocol is similar to that contained within article 12 International Covenant on Civil and Political Rights (ICCPR) which has been ratified by the United Kingdom subject

¹⁸ Department for Constitutional Affairs, 'Report on the UK Government's Inter-Departmental Review of the UK's Position under various International Human Rights Instruments', July 2004.

¹⁹ Joint Committee on Human Rights, '17th Report Session: Review of International Human Rights Instruments' (2004-2005).

²⁰ *Ibid*, para 37.

to reservation. As a consequence of its findings the JCHR recommended that the United Kingdom ratify the Protocol and enter the relevant reservations to account for the issues raised.²¹

Non-ratification of this Protocol has resulted in its exclusion from the Human Rights Act 1998.

Protocol 7: UK

The United Kingdom's decision not to sign or ratify Protocol 7 is based on a number of anomalies which exist in domestic law, which would be incompatible with the terms of the protocol. These are:

1. At common law a husband has a duty to maintain his wife, but not vice versa;
2. Under Section 1 of the Married Women's Property Act 1964, if the wife gives her husband a housekeeping allowance any goods bought with it remain his wife's, but if the husband gives his wife a housekeeping allowance it belongs to them in equal shares unless they agree otherwise;
3. A common law presumption of 'advancement' – where a husband makes a payment or puts property in his wife's name it is presumed to be a gift to her, but if the wife does the same the presumption does not apply.²²

These issues will be dealt with under the new Equality Act 2010²³ however; Part 15 of the Act is not yet in force. As this has only been a recent legislative progression, the Protocol was not included under the Human Rights Act 1998.

²¹ *Ibid*, para 38.

²² Home Office, 'Review of Human Rights Instruments' (1999). Available:
<http://www.nationalarchives.gov.uk/ERORecords/HO/421/2/hract/amrevrhi.htm> [Accessed 28 February 2011].

²³ Sections 198-200, Equality Act 2010.

Protocol 12: UK

Protocol 12 establishes a free-standing right to non-discrimination, "providing a clear legal basis for examining discrimination issues not covered by Article 14".²⁴ The Protocol has not been signed or ratified by the United Kingdom. There are three principal reasons for this decision:

1. The drafting of the Protocol is very wide, covering any difference in treatment. It would apply to everything done by a public authority, and its application to 'rights set forth by law' would cover many, perhaps almost all, provisions in statute or common law. This could lead to an explosion of litigation as people sought to clarify the extent of the new law.
2. Moreover, the coverage of 'rights set forth by law' as cited in the Protocol may have the unintended effect of including other international instruments to which the UK is a party.
3. Finally, until the European Court of Human Rights addresses the new Protocol, there cannot be complete certainty that it permits a defence of objective and reasonable justification on the same basis as under Article 14 ECHR.²⁵

The JCHR notes that the United Kingdom is subject to similar obligations under the ICCPR, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Ratifying and bringing Protocol 12 under the Human Rights Act 1998 will provide domestic protection equivalent to the existing obligations of the United Kingdom.²⁶ The JCHR has further recommended that the United Kingdom government ratify the Protocol on the grounds that its concerns are unwarranted and failure to do so is giving insufficient effect to human rights obligations.²⁷

As a consequence of non-ratification, this Protocol is not included under the Human Rights Act 1998.

²⁴ CDDH/2000/48, 'Council of Europe Steering Committee for Human Rights, Strasbourg', 1 February 2000.

²⁵ Department for Constitutional Affairs, 'Report on the UK Government's Inter-Departmental Review of the UK's Position under various International Human Rights Instruments', July 2004, 41.

²⁶ Joint Committee on Human Rights, '17th Report Session: Review of International Human Rights Instruments' (2004-2005), para 33.

²⁷ *Ibid*, para 34.

Protocol 12: Ireland

Ireland has signed but not ratified Protocol 12, making it the only Protocol not to have been adopted by the Irish government.

The Council of Europe's Commissioner for Human Rights has explained the reluctance in terms of the Protocol referring to a general prohibition, rather than a prescriptive list of grounds as exists in the Irish Constitution and domestic law.²⁸ The Irish Human Rights Commission identified that Ireland has already accepted the value of a non-exhaustive list of grounds by its ratification of the ICCPR and ICESCR.²⁹

The reason given for its non-inclusion in the European Convention on Human Rights Act 2003 was that it was not yet in force as it had not yet been ratified.³⁰

Protocol 13: Ireland

Ireland has signed and ratified Protocol 13 which provides for the complete abolition of the death penalty. However, it has not been incorporated into domestic law by the European Convention on Human Rights Act 2003. The issue of inclusion was discussed at both the Committee and Reporting stages of the Bill,³¹ but was not included as it was thought that the State already conforms to United Nations practice and Protocol 13 under the

²⁸ Council of Europe, 'Report by the Commissioner for Human Rights on his visit to Ireland' (2008). Available: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1283555&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLgged=FFC679#P487_128361 [Accessed 10 March 2011].

²⁹ Irish Human Rights Commission, 'Extending the Scope of Employment Equality Legislation' (2005), 3. Available: http://www.ihrc.ie/download/doc/sub_extending_scope_emp_legislation.doc [Accessed 28 February 2011].

³⁰ Seanad Eireann, 'European Convention on Human Rights Bill: Second Stage' (18 June 2003) 173(10) *Seanad Eireann Debates*, 6.

³¹ Seanad Eireann, 'European Convention on Human Rights Bill: Report and Final Stages' (24 June 2003) 173(12) *Seanad Eireann Debates*, 5.

Irish Constitution 1937. The 21st Amendment inserted article 15.5.2 which states that “the Oireachtas shall not enact any law providing for the imposition of the death penalty”.

Other International Treaties

International law provides a legislative framework within which political parties from both Ireland and Northern Ireland work. There are two possibilities available to a State when it is considering an international treaty – signature and/or ratification.

When a State ‘signs’ a treaty it is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. Ratification establishes consent to be bound by the instrument. Signature usually indicates an intention to ratify at a later date, but a delay in ratification can occur for a number of reasons. Sometimes a delay is justified in order to allow the national parliament to debate and approve the treaty. Alternatively, the State may be in a situation where a number of domestic laws and policies have the potential to violate the treaty and thus a delay can occur while legislative reforms are introduced to ensure compliance with the adopted international standards.

If a State is in favour of the treaty as a whole, but has issues that it cannot resolve in the short to medium term then it can choose to ratify the instrument with reservations. Reservations are statements which purport to exclude or modify some of the legal obligations contained within the treaty and their effect within the State.

There are a number of international treaties that the United Kingdom and Ireland have signed up to, and in many cases have ratified. These treaties may not be awarded the same status as the ECHR within domestic laws, but the commitments still remain and are to be honoured. A summary of relevant international treaties is set out in Table 4.

Table 4

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
Charter of the United Nations and Statute of the International Court of Justice 1945	√ (20 October 1945)	√ (20 October 1945)	X	X	X	X
Universal Declaration of Human Rights 1948	√ (10 December 1948)	√ (10 December 1948)	X	X	N/A ³²	X
Convention Relating to the Status of Refugees 1951	√ (28 July 1951)	√ (11 March 1954)	Articles 8, 9, 17(2), 24(1), 24(2), 25(1), and 25(2)	√ (29 November 1956)	√ (29 November 1956)	X
Protocol to the Convention Relating to the Status of Refugees 1967	√ (4 September 1968)	√ (4 September 1968)	Article 7(4)	√ (6 November 1968)	√ (6 November 1968)	X
European Social Charter 1961	√ (18 October 1961)	√ (11 July 1962)	X	√ (18 October 1961)	√ (7 October 1964)	X
International Convention on the Elimination of All Forms of Racial Discrimination 1966	√ (11 October 1966)	√ (7 March 1969)	Articles 2, 3 and 4	√ (21 March 1968)	√ (29 December 2000)	Article 4

³² Ireland joined the United Nations in 1955 and so was not a member at the time the Declaration was passed, but feels its ratification of the United Nation's 6 core treaties is enough to make up for this. Available: <http://www.dfa.ie/home/index.aspx?id=80802> [Accessed 10 March 2010].

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
International Covenant on Economic, Social and Cultural Rights 1966	√ (16 September 1968)	√ (20 May 1976)	Articles 6, 7(i)(a), 8(1)(b), 10(1), 10(2), 13(2)(a) and 14	√ (1 October 1973)	√ (8 December 1989)	Articles 2(2) and 13(2)(a)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2008	X	X	X	X	X	X
International Covenant on Civil and Political Rights 1966	√ (16 September 1968)	√ (20 May 1976)	Articles 10(2), 10(3), 11, 12(1), 12(4), 13, 14(3), 19(2), 20(1), 24(3), 23(3), and 25	√ (1 October 1973)	√ (8 December 1989)	Articles 10(2), 14, 19(2) and 20(1)
Optional Protocol to the International Covenant on Civil and Political Rights 1966	X	X	X	√ (8 December 1989)	√ (8 December 1989)	X
Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty 1989	√ (31 March 1999)	√ (10 December 1999)	X	√ (18 June 1993)	√ (18 June 1993)	X

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
Vienna Convention on the Law of Treaties 1969	√ (20 April 1970)	√ (25 June 1971)	X	√ (7 August 2006)	√ (7 August 2006)	X
Convention on the Elimination of All Forms of Discrimination Against Women 1979	√ (22 July 1981)	√ (7 April 1986)	Articles 9, 11, 15 and 16	√ (23 December 1985)	√ (23 December 1985)	Articles 16(1)(d), 16(1)(f), 11(1) and 13(a)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women 1999	√ (17 December 2004)	√ (17 December 2004)	X	√ (7 September 2000)	√ (7 September 2000)	X
Amendment to Article 20(1) of the Convention on All Forms of Discrimination Against Women 1995	√ (19 November 1996)	√ (19 November 1996)	X	√ (11 June 2004)	√ (11 June 2004)	X
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984	√ (15 March 1985)	√ (8 December 1988)	X	√ (28 September 1992)	√ (11 April 2002)	X
Optional Protocol to the Convention Against Torture 2002	√ (26 June 2003)	√ (10 December 2003)	X	√ (2 October 2007)	X	X

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987	√ (26 November 1987)	√ (24 June 1988)	X	√ (14 March 1988)	√ (14 March 1988)	X
Protocol No 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1993	√ (9 December 1993)	√ (11 April 1996)	X	√ (10 April 1996)	√ (10 April 1996)	X
Protocol No 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1993	√ (9 December 1993)	√ (11 April 1996)	X	√ (10 April 1966)	√ (10 April 1996)	X
Convention on the Rights of the Child 1989	√ (19 April 1990)	√ (16 December 1991)	Article 32	√ (30 September 1990)	√ (28 September 1992)	X
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000	√ (7 September 2000)	√ (20 February 2009)	X	√ (7 September 2000)	X	X

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000	√ (7 September 2000)	√ (24 June 2003)	X	√ (7 September 2000)	√ (18 November 2002)	X
Framework Convention for the Protection of National Minorities 1995	√ (1 February 1995)	√ (15 January 1998)	X	√ (1 February 1995)	√ (7 May 1999)	X
European Social Charter (Revised) 1996	√ (7 November 1997)	X	X	√ (4 November 2000)	√ (4 November 2000)	X
Rome Statute of the International Criminal Court 1998	√ (4 October 2001)	√ (4 October 2001)	X	√ (11 April 2002)	√ (11 April 2002)	X
Charter of Fundamental Rights of the European Union 2000	√ (December 2000)	√ (16 July 2008)	UK and Poland sought an opt-out which sought to prevent the Charter being interpreted in a way that creates rights additional to those already provided for in domestic law	√ (December 2000)	√ (15 October 2009)	X

<u>Treaty</u>	<u>UK Signed</u>	<u>UK Ratified</u>	<u>UK Reservations</u>	<u>Ireland Signed</u>	<u>Ireland Ratified</u>	<u>Ireland Reservations</u>
Protocol 30 on the Application of the Charter of Fundamental Rights to Poland and the UK 2007	√ (14 December 2007)	√ (16 July 2008)	X	X	X	X
Convention on the Rights of Persons with Disabilities 2006	√ (30 March 2007)	√ (8 June 2009)	Articles 12(4), 24(2)(a), 24(2)(b) and 27	√ (30 March 2007)	X	X
Optional Protocol to the Convention on the Rights of Persons with Disabilities 2006	√ (26 February 2009)	√ (7 August 2009)	X	X	X	X

The Belfast (Good Friday) Agreement 1998

The Belfast (Good Friday) Agreement 1998 sets out the minimum protection that governments and political parties from both jurisdictions have signed up to. While not all the political parties in Northern Ireland have signed the Agreement, the principles of the Agreement underpin Northern Ireland's political framework and create the basis on which the Northern Ireland Assembly functions.

Table 5 seeks to highlight that the rights enumerated in the Agreement are provided for elsewhere within the ECHR and international law and should be adhered to regardless of a party's stance where the Agreement is concerned. This table provides an example therefore of the rights that could be included in a Charter by simply

reaffirming existing commitments. This table is not exhaustive but is rather illustrative of the commonality of human rights protected in both jurisdictions.

Table 5

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
Right to fair and impartial policing – human rights based approach to policing (Pages 26-28)	√	√	Article 40	Article 5	Article 3, Universal Declaration of Human Rights 1948 (UDHR) Article 9(1), International Covenant on Civil and Political Rights (ICCPR) 1966 Article 6, European Charter of Fundamental Rights of the European Union 2000 Article 14, United Nations Convention on the Rights of People with Disabilities 2006 (UNCRPD)
Prisoners rights/ right to liberty (Page 30)	√	√	Articles 40.3 and 40.4	Articles 3 and 5	Four Geneva Conventions 1949 Article 3, UDHR 1948 Article 7, 9(1), and 10 ICCPR 1966 Articles 10, 11 United Nations Convention Against Torture and Other, Cruel, Inhuman or Degrading

³³ Any reservations concerning these international treaties have been highlighted in Table 4.

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					Treatment or Punishment 1975 Article 6, European Charter of Fundamental Rights of the European Union 2000
Right to fair and impartial justice system (Pages 27 & 29)	√	√	Article 38	Articles 5 and 6	Articles 10 and 11, UDHR 1948 Articles 14 and 15, ICCPR 1966 Chapter VI, European Charter of Fundamental Rights of the European Union 2000
Right to equality before the law (Pages 27 & 29)	√	√	Article 40.1	Article 6(3)	Article 7, UDHR 1948 Article 14, ICCPR 1966 Article 15, Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) Articles 12, 37 and 40, Convention on the Rights of the Child 1989 (CRC) Articles 16, 18 and 83, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 Article 20, European Charter of Fundamental Rights of the European Union 2000

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
Freedom and expression of religion (Page 20)	√	√	Article 44.2.1	Article 9	<p>Article 12, UNCRPD 2006</p> <p>Article 18, UDHR 1948</p> <p>Article 5, International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD)</p> <p>Articles 18 and 27, ICCPR 1966</p> <p>Articles 2(2) and 13, International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)</p> <p>Articles 1, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981</p> <p>Articles 14 and 30, CRC 1989</p> <p>Article 12(4), International Migrant Workers Convention 1990</p> <p>Article 7, Framework Convention for the Protection of National Minorities 1995</p> <p>Articles 10 and 22, European Charter of Fundamental Rights of the European Union 2000</p> <p>Article 21, UNCRPD 2006</p>

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
Freedom of Expression (Page 20, 22 and 24)	√	√	Article 40.6.1.i	Article 10	Article 19, UDHR 1948 Article 19, ICCPR 1966 Article 13, CRC 1989 Article 11, European Charter of Fundamental Rights of the European Union 2000 Article 21, UNCRPD 2006
Freedom of information (Pages 13, 14, 18, 20, 21)	√	√	X	Article 10	Article 19, UDHR 1948 Article 19, ICCPR 1966 Article 13, CRC 1989 Article 11, European Charter of Fundamental Rights of the European Union 2000 Article 21, UNCRPD 2006
Right of free political thought (Page 20)	√	√	Article 40.6.1.i	Articles 10 and 11	Article 19, UDHR 1948 Article 5, ICERD 1965 Article 19, ICCPR 1966 Article 7, CEDAW 1979

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					<p>Article 13, CRC 1989</p> <p>Article 7, Framework Convention for the Protection of National Minorities 1995</p> <p>Articles 11 and 12, European Charter of Fundamental Rights of the European Union 2000</p> <p>Article 21, UNCRPD 2006</p>
<p>Right to effective remedy</p> <p>(Pages 10 20 and 21)</p>	√	√	X	<p>Article 13</p> <p>Article 41</p> <p>Protocol No 7 of the ECHR 1984</p>	<p>Articles 2(3)(a) and 14(6), ICCPR 1966</p> <p>Article 47, European Charter of Fundamental Rights of the European Union 2000</p>
<p>Right to equality and non-discrimination</p> <p>(Pages 2, 4, 12, 13, 20, 21, 22, 23, 32, 33)</p>	√	√	Article 40.1	<p>Article 14</p> <p>Articles 1 and 2, Protocol No 12 to the ECHR 2000</p>	<p>Articles 1(2), 1(3), 2(1), 13(1)(b), 55(c) and 76(c), Charter of United Nations 1945</p> <p>Articles 1, 2 and 7, UDHR 1948</p> <p>Articles 2 and 3, Convention on the Prevention and Punishment of the Crime of Genocide 1948</p> <p>Four Geneva Conventions 1949</p>

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					<p>Preamble, European Social Charter 1961</p> <p>Articles 1(1) and 5, ICERD 1965</p> <p>Articles 2(1), 14, 20(2), 25, 26 and 27, ICCPR 1966</p> <p>Articles 2(2), 3 and 7, ICESCR 1966</p> <p>Article 1, CEDAW 1979</p> <p>Articles 1, 2 and 4(2), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981</p> <p>Articles 2(1), 2(2), 29 and 30, CRC 1989</p> <p>Articles 1-3, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992</p> <p>Articles 4 and 6(2), Framework Convention for the Protection of National Minorities 1995</p> <p>Part V Article E, Revised European Social Charter 1996</p> <p>Article 6, Rome Statute of the International Criminal Court 1998</p>

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					Chapter III, European Charter of Fundamental Rights of the European Union 2000 Article 5, UNCRPD 2006
Right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity (Page 20)	√	√	Article 40.1	Article 14 Protocol No 12 of the ECHR 2000	Article 23, UDHR 1948 Parts I and II, European Social Charter 1961 Article 3, ICESCR 1966 Article 11, CEDAW 1979 Parts I and II, European Social Charter 1996 Articles 15, 21, 23, 25 and 26, European Charter of Fundamental Rights of the European Union 2000 Articles 27 and 30, UNCRPD 2006
Right to freedom from sectarian harassment (Page 20)	√	√	Article 44.2	Article 14 Articles 1 and 2, Protocol No 12 to the ECHR 2000	Article 1, United Nations Charter 1945 Articles 2 and 5, UDHR 1948 Articles 2, 7 and 20(2), ICCPR 1966 Article 2, ICESCR 1966 Articles 1 and 4, Declaration on the Elimination of All

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					Forms of Intolerance and of Discrimination Based on Religion or Belief 1981 Article 2, CRC 1989 Article 4, Framework Convention for the Protection of National Minorities 1995 Articles 4 and 22, European Charter of Fundamental Rights of the European Union 2000
Right of women to full and equal political participation (Page 20)	√	X	Article 16	Article 3, Protocol No 1 of the ECHR 1952	Article 25, ICCPR 1966 Article 7, CEDAW 1979 Article 23, European Charter of Fundamental Rights of the European Union 2000 Articles 6 and 29, UNCRPD 2006
Right to democratically elect representatives (Page 7 and 20)	√	X	Articles 16.2 and 28A.4	Article 3, Protocol No 1 of the ECHR 1952	Article 21, UDHR 1948 Article 25, ICCPR 1966 Article 7, CEDAW 1979 Article 29, UNCRPD 2006

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
Right to self-determination (Pages 3 and 33)	X	X	Article 1	X	Article 1, United Nations Charter 1945 Article 1, ICCPR 1966 Article 1, ICESCR 1966 Article 3, UNCRPD 2006
Right to pursue democratically national and political aspirations (Page 20)	X	X	Article 16	X	Article 25, ICCPR 1966 Article 7, CEDAW 1979 Articles 39 and 40, European Charter of Fundamental Rights of the European Union 2000 Article 29, UNCRPD 2006
Right to seek constitutional change by peaceful and legitimate means (Page 20)	√	X	Article 46	Article 3, Protocol No 1 of the ECHR 1952	Article 21, UDHR 1948 Article 25, ICCPR 1966
Right to freely choose one's place of residence (Page 20)	X	√	X	Article 2, Protocol No 4 of the ECHR 1963	Article 13, UDHR 1948 Article 5, ICERD 1965 Article 12, ICCPR 1966

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					<p>Article 15(4), CEDAW 1979</p> <p>Articles 8 and 39, International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families 1990</p> <p>Article 45, European Charter of Fundamental Rights of the European Union 2000</p> <p>Article 19, UNCPRD 2006</p>
Rights of victims (Pages 22 and 23)	X	X	X	X	<p>United Nations Declaration of Basic Principles of Justice of Victims of Crime and Abuse of Power 1985</p> <p>Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure 1985</p> <p>Council Framework Decision on the Standing of Victims in Criminal Proceedings 2001</p>
Right to fair employment (Pages 21, 22, 23 and 30)	X	X	X	X	<p>Article 23, UDHR 1948</p> <p>Parts I and II, European Social Charter 1961</p> <p>Article 6, ICESCR 1966</p> <p>Article 11, CEDAW 1979</p>

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
					Parts I and II, European Social Charter 1996 Articles 15, European Charter of Fundamental Rights of the European Union 2000 Articles 27, UNCRPD 2006
Respect for culture (Pages 23, 24 and 28)	X	X	X	X	Article 27(1), UDHR 1948 Article 15(1), ICCPR 1966 Article 15, ICESCR 1966 Article 30, CRC 1989 Article 22, European Charter of Fundamental Rights of the European Union 2000 Article 30, UNCRPD 2006
Respect, understanding and tolerance in relation to linguistic diversity (Page 24)	X	X	Provision for Irish and English is provided for within Article 8	X	European Charter for Regional or Minority Languages 1992 Articles 5, 9 , 10, 11, 12, 14, Framework Convention for the Protection of National Minorities 1995 Article 22, European Charter of Fundamental Rights of the European Union 2000

<u>Right</u>	<u>Human Rights Act 1998</u>	<u>European Convention on Human Rights Act 2003</u>	<u>Irish Constitution 1937 (as amended)</u>	<u>European Convention on Human Rights 1950</u>	<u>Other International Treaties</u> ³³
Protecting and enhancing the environment (Page 23)	X	X	X	X	Article 12(2)(b), ICESCR 1966 Preamble, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998 Article 27, European Charter of Fundamental Rights of the European Union 2000

Conclusion

Although not exhaustive, this document illustrates the commonality of human rights standards that Northern Ireland and Ireland are obliged to satisfy as set out in political agreements, the ECHR and other international treaties. It demonstrates where the concept of creating and implementing a 'Charter of Rights for the island of Ireland' originated and presents a foundation from which to identify rights that could be included in such a Charter. An example of these rights can be drawn from the ECHR and the Belfast (Good Friday) Agreement 1998, which are supported by a range of other international treaties.

Based on the comprehensive study undertaken by the Joint Committee, the Northern Ireland Human Rights Commission and Irish Human Rights Commission recommend that as a minimum a 'Charter of Rights for the Island of Ireland' should reaffirm the political parties' commitment to the rights set out in the ECHR:

- Right to life
- Freedom from torture and inhuman or degrading treatment and punishment
- Freedom from slavery and servitude
- Right to liberty and security of person
- Right to fair trial
- Right to no punishment without law
- Right to family and privacy
- Freedom of thought, conscience and religion
- Freedom of expression
- Freedom of association
- Right to marry
- Right to effective remedy, and
- Right to equality and non-discrimination.

The rights set out in the Protocols of the ECHR:

- Right to freely enjoy possessions (including property)
- Right to education, and
- Right to free elections.³⁴

The rights which are expressly set out in the Belfast (Good Friday) Agreement 1998:

- Right to free and political thought
- Freedom and expression of religion
- Right to pursue democratically national and political aspirations
- Right to seek constitutional change by peaceful and legitimate means
- Right to freely choose one's place of residence
- Right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity
- Right to freedom from sectarian harassment, and
- Right of women to full and equal political participation.

The rights which can be derived from the text of the Agreement:

- Right to fair and impartial policing – human rights based approach to policing
- Prisoners rights
- Right to fair and impartial justice system
- Right to equality before the law

³⁴ The aim of this paper is to set out the minimum human rights protection that both jurisdictions have signed up to in an unequivocal manner. It is for this purpose that only the ECHR Protocol rights which have been incorporated into the domestic law of *both* jurisdictions have been included in this section. The omission of Protocol rights incorporated by only one jurisdiction does not rule out consideration of those additional rights when drafting a 'Charter of Rights for the Island of Ireland'.

- Freedom of information
- Right to democratically elect representatives
- Right to self-determination
- Rights of victims
- Right to fair employment
- Respect for culture
- Respect, understanding and tolerance in relation to linguistic diversity, and
- Protecting and enhancing the environment.

To conclude, all of the rights set out above have been signed up to either by political parties themselves or through the sovereign governments of Ireland and the United Kingdom and thus are to be adhered to. Consequently, a minimum protection structure has been created. It is this structure that could be used to either create the basis of a substantive framework, or to derive a set of general principles from which a 'Charter of Rights for the island of Ireland' might be developed should the political parties and governments wish to do so.

Next Steps

Both the Northern Ireland Human Rights Commission and the Irish Human Rights Commission encourage political parties and the governments of the United Kingdom and Ireland to finalise the context of a 'Charter of Rights for the island of Ireland' on the basis of this document and to state their commitment to such a Charter. Based on the evidence gathered and the current protections in both jurisdictions there is a secure basis for the political parties and both governments to take forward this work. The Commissions stand ready to provide assistance and support in this process.