

# *Respect, Protect and Fulfil*

## **A Human Rights-Based Approach to Peacebuilding and Reconciliation**

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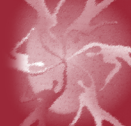
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## Preface

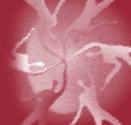
The United Nations has long recognised the centrality of human rights to securing a lasting peace. United Nations Member States have affirmed human rights, peace and security, and development as the three pillars of the Organisation's work. The Security Council now systematically considers the situation of human rights when determining its response to conflict situations. The newly established Human Rights Council is strengthening Member States' oversight of human rights, including in countries in conflict. A new United Nations Peacebuilding Commission will incorporate attention to human rights into its work. Further, the work of international criminal tribunals for Yugoslavia and Rwanda, as well as the Special Court and a Truth and Reconciliation Commission in Sierra Leone, for example, have all recognised the importance of accountability for human rights violations within a reconciliation process. Peace processes in Guatemala and Nepal are examples where human rights violations have been prominently acknowledged and addressed in peace agreements, with United Nations support. While the focus on human rights in peace processes used to emphasise only civil and political rights, there is now growing acknowledgement of the equal prominence of economic, social and cultural rights as a root cause of conflicts and intrinsic to building peace.

The use of a human rights-based approach was first fostered in the context of strengthening approaches to development, including by my Office. Its extension to peacebuilding and reconciliation is much needed.

In this context, I welcome publication of "Respect, Protect and Fulfil: a human rights-based approach to peacebuilding and reconciliation", prepared by Professor William Schabas and Peter Fitzmaurice of the Irish Centre for Human Rights, and the contribution it will make in supporting the participation of civil society in building a stable and permanent environment of peace. The report's attention to economic, social and cultural rights is especially timely.

**Louise Arbour**

**United Nations High Commissioner for Human Rights**



## Foreword

Border Action is a joint partnership structure of Pobal and Combat Poverty that implements a number of measures of the European Union's Special Support Programme for Peace and Reconciliation in Northern Ireland and the Border Counties of Ireland (the Peace II Programme) and also is involved in the implementation of some measures of the Interreg IIIA Programme. The joint partnership structure of Border Action is based in European Union House in Monaghan town, with outreach offices in Letterkenny, Sligo, Dundalk and Belfast.

Border Action aims to be a dynamic catalyst for transformation working towards an inclusive, peaceful and equitable society. One of the strategic objectives of Border Action is to "Promote tolerance and respect for difference based on a human rights approach." In the context of Border Action's ongoing involvement in the Peace programme, the Irish Centre for Human Rights, NUI Galway were commissioned to carry out research to inform the future development of actions that will support peacebuilding and reconciliation in Ireland.

The purpose of the research was to identify and assess the relationships between a human rights approach and post-conflict reconstruction, in the context of Ireland and internationally; and to suggest a framework for the implementation of a human rights approach in the context of the Peace II Programme and future programmes which may be developed following on from Peace II.

Human rights protection and promotion constitute an integral part of peacebuilding and the reconstruction of post-conflict societies. As the authors of this report explain, human rights are central to the Good Friday Agreement and the peace and reconciliation process in Northern Ireland and the border counties:

"As Northern Ireland and the border counties move further into a post conflict era we need to examine new ideas and techniques of ensuring that the ideals of peace and reconciliation become embedded into the fabric of our society so that conflict never returns. The mainstreaming of

human rights ensures that the fundamental precepts of international human rights become embedded in all aspects of community life, from individuals, voluntary and community groups to government.”

A rights-based approach is founded on the conviction that each and every human being, by virtue of being human, is a holder of rights. The Irish and British governments have obligations to respect, protect and fulfil human rights. Likewise, Border Action, as a body with responsibilities to both shape and implement public policies, and for overseeing public expenditure, is a ‘duty bearer’ in relation to human rights.

The findings of this report will bring added value to Border Action’s work as an implementing body for the Peace II Programme and also contribute to the design and delivery of future funding programmes on the island of Ireland and beyond. We welcome the findings of the report that many of the projects funded by Border Action already recognise the conceptual link between the human rights approach and the values that are fundamental to their work and that, “a human rights approach can add to existing strategies to advance the interests of the client groups served by the voluntary and community groups funded by Peace II.”

Many elements of a human rights based approach are already present in the practices and procedures of Border Action and its funded projects. Drawing upon the framework presented in this report, Border Action will be reviewing its practices and procedures to ensure that the principles of dignity, equality, empowerment and participation are made explicit at different stages of programme and project implementation.

Border Action remains committed to sharing our own learning and experience to proactively promote understanding of good practice in peacebuilding. A human rights based approach is an essential element of good peacebuilding practice and we are confident that this report will be a valuable resource, not only for community-based practitioners, but also for other public bodies at local, national and EU levels.

**Helen Johnston**  
Director,  
Combat Poverty

**Tony Crooks**  
Chief Executive Officer,  
Pobal



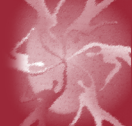
## Executive Summary

1. Human rights are central to the Good Friday Agreement and the peace and reconciliation process in Northern Ireland and the border counties. The absence of respect for human rights was one of the underlying causes of the conflict and one of the characteristics of the conflict itself. As Northern Ireland and the border counties move further into a post-conflict era we need to examine new ideas and techniques of ensuring that the ideals of peace and reconciliation become embedded into the fabric of our society and that conflict never returns. The mainstreaming of human rights ensures that the fundamental precepts of international human rights feature in all aspects of community life, from individuals, voluntary and community groups to government.
2. Recent years have seen the evolution of a global commitment towards a human rights-based approach in many areas. The human rights approach resonates in development work. A human rights-based approach has been described as the 'scaffolding of development policy'. The human rights approach offers an explicit normative framework – that of international human rights standards. It is a straightforward insistence that human rights commitments be comprehensively implemented and that their implications for how we order our societies be taken seriously. The focus encompasses the whole spectrum of the international human rights protection system: economic, social, political, judicial, educational and otherwise. One of the important features of the human rights-based approach is the recognition that economic, social and cultural rights are on a par with civil and political rights and seeks to realise this parity.
3. Peacebuilding is the term given to the processes and strategies which can be brought into play on the journey from conflict resolution to reconciliation between divided communities. Whilst peacebuilding takes place primarily in

Northern Ireland as the seat of a conflict, it also has relevance throughout the island in spite of the unspoken nature of the impact of conflict on social and political attitudes.

4. Reconciliation is a process whereby past trauma, injury and suffering is acknowledged and healing/restorative action is pursued; it is a process whereby relationship breakdown is addressed and sustainable relationships created; it is a process whereby the culture and structure which give rise to conflict and estrangement are transformed or reconstructed with a view to creating an equitable, diverse and interdependent community.
5. From the international literature on the subject we have distilled five principles of a human rights approach: legitimacy; empowerment; accountability and transparency; participation; equality, non-discrimination and attention to vulnerable groups.
6. A human rights approach to peacebuilding and reconciliation is the incorporation of international human rights standards into policies and projects established to aid the peacebuilding and reconciliation process. Human rights protection and promotion constitute an integral part of peacebuilding and the reconstruction of post-conflict societies. Such recognition is founded on the premise that sustainable peace will not be achieved unless the root causes of conflict, too often due to the absence of economic opportunities, social inequalities and structural discrimination, are addressed and justice restored. Effective peacebuilding thus presupposes concerted efforts to promote human rights in the future, retrospectively as well as in the very present.
7. A rights-based approach is founded on the conviction that each and every human being, by virtue of being human, is a holder of rights. The legal and normative character of rights and the associated governmental obligations are based on international human rights treaties and other standards, as well as on national constitutional human rights provisions. Human rights protection forms a safeguard against domination and discrimination for all communities. The introduction of an explicit human rights dimension signals a fundamental change in the nature of the state.





8. This report outlines existing human rights indicators and shows how they might be incorporated into a human rights based programme. It develops a framework for assessing human rights standards and principles in projects. It argues for understanding the capacities of individuals and groups as 'rights holders' to claim their rights as well as the capacities of state institutions as 'duty bearers' to promote, protect and fulfil human rights on the ground.
9. The adoption of a human rights-based approach to peace and reconciliation and the incorporation of international human rights standards into the policies and projects established to aid the peacebuilding and reconciliation process is particularly appropriate in the area of Peace funding. Given the centrality of human rights protections in the Good Friday Agreement, if the philosophical connection between the fundamental values for a peaceful and reconciled society and human rights-based principles can be made, there must be potential for those principles to assist in progressing such a society. A human rights approach with its universally recognised moral values, reinforced by legal obligations, provides a compelling normative framework for the formulation of national and international policies, including those of peacebuilding and reconciliation.





Respect, Protect and Fulfil



Introduction

## Introduction

The conflict of the preceding three decades in Northern Ireland has had profound effects on the protection of human rights in both the Republic of Ireland and the United Kingdom of Great Britain and Northern Ireland. It amply demonstrates the consequences for human suffering that are linked to violent conflicts, political instability and unjust policies and practices.<sup>1</sup> The Multi-Party Agreement signed in Belfast in April 1998 and the subsequent British-Irish Agreement are negotiated agreements designed to create a framework for a peaceful resolution to the conflict in Northern Ireland.<sup>2</sup> These two agreements taken together comprise what are popularly known as the 'Belfast' or 'Good Friday' Agreement and are referred to in this work as the 'Agreement'.

Human rights are central to the conflict in Northern Ireland.<sup>3</sup> Many trace its origins to the denial of human rights in Northern Ireland, from the time of partition and the setting up of the State until the civil rights protests of the late 1960s. In both Northern Ireland and the Republic of Ireland there have been periodic outbreaks of violence since partition. These were traditionally dealt with by means of security legislation, which involved limitations on human rights standards and derogation from the European Convention of Human Rights. The first case ever filed before an international human rights court was related to the conflict. Filed at the European Court of Human Rights in Strasbourg, it was directed against the Republic of Ireland, and concerned an alleged former member of the Irish Republican Army detained during the IRA border campaign of the 1950s.<sup>4</sup>

Respect for human rights concerns was central in the negotiation process that eventually led up to the Agreement. The Multi-Party Agreement requires the participants to commit themselves to the 'protection and vindication of the human rights of all' as a foundational principle.<sup>5</sup> This general commitment is fleshed out in the Multi-Party Agreement, with all of the parties agreeing to respect a set of specific listed rights. In the British-Irish Agreement, the British and Irish governments also reaffirmed their commitment to 'the principles of partnership, equality and mutual respect and to the protection of civil, political,

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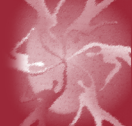
<sup>1</sup> See Christine Bell, *Peace Agreements and Human Rights*, Oxford: Oxford University Press, 2000

<sup>2</sup> Agreement Reached in the Multi-Party Negotiations (Cm 3883, 1998); (1998) 37 ILM 751.

<sup>3</sup> See Paul Mageean and Martin O'Brien, 'From the Margins to the Mainstream: Human Rights and the Good Friday Agreement', (1998) 22 *Fordham International Law Journal* 1499.

<sup>4</sup> *Lawless v. Ireland*, Series A, No.2 (*locus standi*); *Lawless v. Ireland*, Series A, No.3, paras. 5-6. See also the discussion in *Lawless v. Ireland*, Series A, No.1 (preliminary exceptions).

<sup>5</sup> Multi-Party Agreement, Declaration of Support, paras. 2 and 3. See also *Rights, Safeguards and Equality of Opportunity*, para 1. See Colin Harvey, 'Governing After the Rights Revolution', (2000) 27 *Journal of Law and Society* 61. at pp. 75-97.



social, economic and cultural rights in their respective jurisdictions'.<sup>6</sup> Human rights are mainstreamed within the Agreement. Section 6 of the Multi-Party Agreement is devoted to the subject and, at least in the period immediately following the Agreement, it was seen as a template for post-conflict situations.

In the aftermath of 'the Troubles', conditions were to be created to ensure that such a conflict never arises again on the island of Ireland. In the years following the Agreement it has become painfully clear that a number of measures need to be implemented in order to prevent a conflict situation arising again.

Some approaches developed in post-conflict situations focus on peacebuilding and reconciliation. In conjunction with these, the mainstreaming of human rights ensures that the fundamental precepts of international human rights become embedded in all aspects of community life, from individuals, voluntary and community groups to government. This is a new development and has been a slow process. There have been tensions between the priorities of human rights activists and conflict resolution practitioners. Although both share similar goals in trying to assist post-conflict societies to take steps to ensure that violence does not recur and that the rights of every human being are respected, each set of practitioners uses methods based on different underlying assumptions to achieve these goals. For example, human rights activists tend to advocate judicial solutions which may miss opportunities to use negotiation or diplomatic techniques that conflict resolution practitioners rely upon. Those practitioners of conflict resolution on the other hand may fail to give enough weight to the relevance of human rights to the long term success of negotiated settlement to conflicts. As a result, both groups occasionally adopt contradictory or even mutually exclusive approaches to the same problem.<sup>7</sup> Despite these differences in methodology and technique it is clear that rebuilding societies in the aftermath of conflict requires an approach that incorporates the perspectives of human rights advocates and conflict resolution practitioners. The human rights-based approach to peace building and reconciliation is an attempt to integrate these different approaches.

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<sup>6</sup> Multi-Party Agreement, Rights, Safeguards and Equality of Opportunity, para. 1. The mutual commitment of the parties to the base of principles is reinforced by their commitment in relation to constitutional issues that the power of the sovereign government with jurisdiction in Northern Ireland shall be founded on the 'principles of full respect for, and equality of, civil, political, social and cultural rights' and 'freedom from discrimination for all citizens', as well as 'parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities'. See Agreement, Constitutional Issues, (v).

<sup>7</sup> For example, see the debate between Christine Bell and Mari Fitzduff in *Human Rights Dialogue*, Winter 2002, Series 2, Number 7, and on the more general problems of Human Rights NGOs in transitional phases, Christine Bell and Johanna Keenan, 'Human Rights Nongovernmental Organisations and the Problems of Transition', (2004) 26 *Human Rights Quarterly* 330. Also Ellen Lurtz, Eileen Babbit and Hurst Hannum, 'Human Rights and Conflict Resolution from the Practitioner's Perspective', (2003) 27 *Fletcher Forum of World Affairs* 1.

Increasingly, both internationally and nationally, the central place of a human rights-based approach is being recognised and applied. Policies, funding and institutions for peacebuilding and reconciliation should be based explicitly on the norms and values set out in the international law of human rights. Explicit or implicit, norms and values shape both policies and institutions. The human rights-based approach offers an explicit normative framework – that of international human rights standards. Underpinned by universally recognised moral values and reinforced by legal obligations, international human rights law provides a compelling normative framework for the formulation of national and international policies, including those of peacebuilding and reconciliation.

Following the virtual cessation of political violence in Northern Ireland in 1994, the European Union (EU) established a special task force to explore how the European Commission could provide practical assistance to Northern Ireland and the border counties. The two EU Programmes for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland<sup>8</sup> are distinctive initiatives aimed at reinforcing progress towards a peaceful and stable society and at promoting reconciliation.<sup>9</sup> These programmes have been responsible for the initiation of hundreds of grassroots and middle level initiatives to redevelop, rebuild and reform areas of Ireland that have been negatively affected by the conflict of the past three decades. The Peace programmes themselves have been subject to extensive scrutiny that has highlighted the difficult conditions in which the two programmes themselves have operated and the additional value in terms of social capital that they have brought to areas without displacing or substituting existing social endeavours.<sup>10</sup>

The Peace II Programme is characterised by two specific objectives that contribute to the achievement of the overall aim. These are:

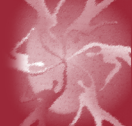
- addressing the legacy of conflict - addressing specific problems generated by the conflict in order to assist the return to a normal, peaceful and stable society;
- taking opportunities arising from peace - encouraging actions that have a stake in peace and that actively help promote a stable and normal society where opportunities for development can be grasped.

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<sup>8</sup> The southern border counties comprise Donegal, Sligo, Leitrim, Cavan, Monaghan and Louth.

<sup>9</sup> ADM/CPA (2004) *Building on Peace - Supporting Peace and Reconciliation after 2006*, Monaghan. For extensive information with regard to Border Action (formerly ADM/CPA), see [www.borderaction.ie](http://www.borderaction.ie)

<sup>10</sup> For example, PriceWaterhouseCoopers, (2003) *Special EU Programmes Body - Ex-post Evaluation of Peace I and Mid-term Evaluation of Peace II*, SEUPB, November 2003, and PSc Management Consultants, 'Building Peace and Reconciliation Post 2006', August 2003.



The legacy of the conflict in Northern Ireland and the border counties has taken many forms. The underdevelopment of economic infrastructure, the underdevelopment of cross-border/island of Ireland trade links and tourism marketing and the absence of an economic dynamic, especially in the border towns, are among the impacts of conflict which have been addressed over the last ten years.<sup>11</sup> At a social level, the conflict has bequeathed a milieu of mistrust and fear that can be a breeding ground for sectarianism.<sup>12</sup>

How then can individuals in the border counties and Northern Ireland access their human rights effectively? The project groups set up by Peace II existed to advance the interests of specific groups, namely victims of conflict and their families; people displaced as a result of the conflict and their families; politically motivated ex-prisoners and their families; and women and young people, all to advance the interest of people experiencing disadvantage and discrimination arising out of the circumstances of the conflict. They were certainly entitled to use and to invoke human rights principles in order to negotiate change in policy, practice and procedure. However, the research conducted for this study indicates that many of these project groups set up by Peace II have had express difficulty in using human rights in practice. This is demonstrated by their absence of interaction with either domestic human rights commissions or international human rights enforcement bodies.

A human rights-based approach - bringing human rights standards and values to the core of *everything* we do — offers the best prospect of leveraging our influence to *empower* people to advance their own claims, to *prevent discrimination* and marginalisation, and to bridge the *accountability* deficits that have chronically crippled development progress. Under a rights-based approach, participation in development is a matter of *right* rather than charity. Essential to the very definition of human rights is the existence of claims and corresponding obligations at various levels of government and society.

• Office of the High Commissioner for Human Rights

The human rights-based approach that this study examines has its origins in the world's poorest countries. It was first applied in the field of development. In the developing world, disparities of wealth and opportunity and patterns of discrimination have been far more prevalent than on the island of Ireland. In putting forward a human rights-based approach to peacebuilding and

<sup>11</sup> See ADM/CPA *Briefing Paper on Socio-Economic Development, Reconciliation and Cross Border Work in the Southern Border Counties of Ireland* (1999); D. Boland, 'A long way down the road less travelled', *Sunday Tribune*, 26 September 2004, Peace and Prosperity Supplement, p.3.

<sup>12</sup> See Brian Harvey *et al.*, *The Emerald Curtain - The Social Impact of the Irish Border*, Monaghan: Triskele Community Training & Development, 2005.

reconciliation, we are essentially exploring methods that have been developed and tested internationally. In addition we have examined the practice of peacebuilding and reconciliation in a number of different areas where there has been post-conflict work.

Fundamentally, human rights-based approaches are a straightforward insistence that human rights commitments be comprehensively implemented and that their implications for how we order our societies be taken seriously. They focus on the entire spectrum of the international human rights protection system: economic, social, political, judicial, educational and other. It is their focus on the links between human rights and every aspect of national governance – from the development of policy and the budgeting process to the implementation of state programmes – that makes them distinctive.

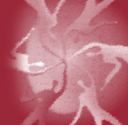
Although both the Republic of Ireland and the United Kingdom have a relatively laudable record in signing and ratifying international human rights instruments, at least in recent years, neither country automatically incorporates human rights treaties explicitly into domestic law by the mere fact of ratification. Essentially, incorporation of international treaties into domestic law, under the constitutional systems of Ireland and the United Kingdom, requires that legislation be enacted by the Oireachtas or Parliament, as the case may be. Recently, both the Republic of Ireland and the United Kingdom, albeit in somewhat different modes, have incorporated the European Convention in Human Rights into domestic law.<sup>13</sup> This welcome development was dictated by the Agreement, although the consequences have not been particularly dramatic. Possibly the main product of this process has been symbolic.

As a general rule, Ireland and the United Kingdom claim that they honour human rights treaties by making the national law and practice compliant with them, rather than by formal legislation similar to that for the European Convention legislation. The general approach is inefficient and ensures that the treaties themselves remain obscure – far from the consciousness of the public or even relevant professionals such as lawyers and judges. One of the unintended but inexorable results of incorporation of the European Convention has been to marginalise the many other treaties and conventions, as well as many ‘soft law’ documents such as declarations, standards and codes of conduct that have been adopted by international organisations in the field of human rights over the years. The results of the research for this report demonstrate that there is a low recognition of the international human rights treaties outside the European Convention of Human Rights by the groups surveyed in this research.

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<sup>13</sup> See chapter 4 below, from p.48





Although the human rights-based approach offers peacebuilding and reconciliation a normative framework for implementation, there is no 'one size fits all' rights-based approach. Instead there is an absolute need to localise the techniques and tools – albeit always in compliance with universal human rights standards.

This study is intended to:

- identify and assess the relationships between a human rights-based approach and post-conflict reconstruction, in the context of Ireland and internationally; and
- suggest a framework for the implementation of a human rights-based approach in the context of the Peace II Programme and future programmes that may be developed following on from Peace II. This framework should address economic, social, cultural, civil and political rights.

The terms of reference of this study are to:

- review the international literature about the relationship between human rights, development, post-conflict reconstruction and development aid programmes;
- review the literature about the impact of the Northern Ireland conflict on human rights in the island of Ireland; with specific attention to the Peace II 'target groups' – victims of conflict and their families; people displaced as a result of the conflict and their families; politically motivated ex-prisoners and their families; women and young people;
- review and assess the international experience and the experience in Ireland in the implementation of programmes linking human rights and regeneration, development and/or post conflict reconstruction;
- develop a framework for the implementation of a human rights-based approach in the Peace II Programme and programmes that may be developed following on from Peace II with specific attention to the different operational contexts in Northern Ireland and the border counties of Ireland.

The objectives of the study are to:

- define the principles of a 'human rights-based approach' to development and post conflict reconstruction;

- provide examples – some of which should be specifically drawn from the work of the Peace II programmes – of where such an approach has been effectively implemented, examples of where and why such an approach has failed, and examples of where they could have been addressed but where not;
- consider how the Northern Ireland conflict has impacted on the human rights environment on the island of Ireland with particular attention to social, economic and cultural rights;
- discuss what is needed – e.g., policy instruments, legislative and political contexts – for the successful implementation of a human rights approach to development and post conflict reconstruction in Northern Ireland/the border counties/the island of Ireland;
- develop a framework for the implementation of a human rights approach in the Peace II programme and programmes that may be developed following on from Peace II, with specific attention to the different operational contexts in Northern Ireland and the border counties of Ireland.



Respect, Protect and Fulfil



**A New Approach  
- The Human Rights-Based Approach**

## A New Approach – The Human Rights-Based Approach.

Recent years have seen the evolution of a global commitment towards a human rights-based approach.<sup>14</sup> This began with regard to development issues. The most prominent initial introduction of a human rights-based approach to development in the 1990s came from the Human Rights Council of Australia (HRCA) and its publication, “The Rights Way to Development: A Human Rights Approach to Development.”<sup>15</sup> This was a groundbreaking step towards a human rights-based approach to development. The principle that the enjoyment of all human rights is both the means and the goal of development is a long-standing one. A human rights-based approach has been described as the ‘scaffolding of development policy’.<sup>16</sup>

Although the human rights-based approach originated in development work and is heavily associated with the nature of overseas development programmes, there is an emerging view that it is equally relevant to wealthier, more developed countries. The human rights-based approach is now being expanded into other areas, such as education,<sup>17</sup> food,<sup>18</sup> health,<sup>19</sup> refugee assistance,<sup>20</sup> democratic development,<sup>21</sup> and sentencing by international criminal tribunals,<sup>22</sup> in addition to peacebuilding and reconciliation. Recently, Amnesty International Irish Section and the International Human Rights

<sup>14</sup> See Julia Hausermann, *A Human Rights Approach To Development*, London: Rights and Humanity, 1998.

<sup>15</sup> Andre Frankovits and Patrick Earle *The Rights Way to Development: A Human Rights Approach to Development Assistance*. Sydney: Human Rights Council of Australia, 1995.

<sup>16</sup> ODI Briefing Paper 3, ‘What can we do with a rights-based approach to development?’, September 1999.

<sup>17</sup> George Andreopoulos and Richard Pierre Claude, *Human Rights Education for the Twenty First Century*, Philadelphia: University of Pennsylvania Press, 1997. More recently the UN World Programme of Action for Human Rights Education 2005 advocated a rights based approach to education. See [www.ohchr.org/english/issues/education/](http://www.ohchr.org/english/issues/education/)

<sup>18</sup> See World Health Organisation, ‘Nutrition – a human rights perspective’, at [www.who.int/nut/rights.htm](http://www.who.int/nut/rights.htm).

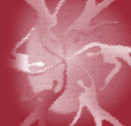
<sup>19</sup> See World Health Organisation, ‘Health and human rights’, at [www.who.int/hhr/en](http://www.who.int/hhr/en).

<sup>20</sup> Michael Posner and Dierdre Clancy, ‘A Human Rights Approach to Refugee Assistance’, Human Rights Watch, 2001.

<sup>21</sup> See United Nations Development Programme, ‘Primer on Parliaments and Human Rights’, March 2004.

<sup>22</sup> William A. Schabas, ‘Sentencing by International Tribunals: A Human Rights Approach’, (2005) 7 *Duke Journal of Comparative and International Law* 461

<sup>23</sup> Amnesty International Irish Section and the International Human Rights Network, *Our Rights, Our Future, Human rights-based Approaches in Ireland: Principles, Policies and Practice*, 2005. In addition for more general information on the rights based approach and economic, social and cultural rights see the website of the International Network for Economic Social and Cultural Rights at [www.escr-net.org](http://www.escr-net.org)



Network published an informative guide to human rights-based approaches in Ireland.<sup>23</sup>

More recently the “Participation and the Practice of Rights Project” has been set up by a coalition of groups and organisations working on social justice issues in Ireland which is promoting a rights-based approach to economic, social and cultural rights.<sup>24</sup>

Before analysing the evolution of the human rights-based approach, it is important to specify the human rights values under discussion. The term ‘human rights’ can mean different things to different people.

### **International Obligations as a Basis for the Human Rights-Based Approach**

The modern era of human rights began after the Second World War with the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly on 10 December 1948. The fundamental significance of the Universal Declaration of Human Rights was re-affirmed in 1993 in the Vienna Declaration and Plan of Action and, most recently, in the

The first is freedom of speech and expression — everywhere in the world.

The second is freedom of every person to worship God in his own way - everywhere in the world.

The third is freedom from want — which, translated into world terms, means economic understandings which will secure to every nation everywhere a healthy peacetime life for its inhabitants everywhere in the world.

The fourth is freedom from fear — which, translated into international terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour - anywhere in the world.

• F.D. Roosevelt, January 1941

March 2006 General Assembly resolution reforming the human rights structures of the United Nations.<sup>25</sup> The Universal Declaration of Human Rights was also the underpinning of two major treaties adopted to give it binding legal effect, namely the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The three

<sup>24</sup> See [www.pprproject.org](http://www.pprproject.org) for further information

<sup>25</sup> ‘Human Rights Council’, UN Doc. A/RES/60/251 (15 March 2006).

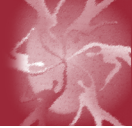
instruments, the Universal Declaration and the two Covenants, are often spoken of collectively as the 'International Bill of Rights'.<sup>26</sup> Over 150 countries, including the Republic of Ireland and the United Kingdom, have ratified or acceded to both of these Covenants. Since their entry into force, in 1976, they have become increasingly universal in scope, and now bind a large majority of countries in the world.

The existence of separate treaties suggests a compartmentalisation of rights. To a large extent, this is reflected in the existence of two Covenants, one for civil and political rights, the other for economic, social and cultural rights. The Universal Declaration of Human Rights, adopted in 1948, made no such distinction, and treated all categories of rights on the same footing. Controversy in the early years of the Cold War led to the awkward and inexplicable division between the two broad groups of rights. But today, international bodies proclaim the indivisibility of human rights, in the spirit of the Universal Declaration of Human Rights. The Vienna Declaration and Plan of Action, adopted at the international conference held in 1993, affirms: 'All human rights are universal, indivisible and interdependent and interrelated'. With a few exceptions, all States sign and ratify both of the International Covenants at the same time, as if they are part of a package, testifying to their indivisibility. Only a small handful of States have chosen to ratify only one or the other of the treaties. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.'

The term 'human rights' must be considered as encompassing the full spectrum of internationally recognised human rights, be they civil, political, economic, social and cultural. The concept was eloquently expressed in words drawn from a January 1941 speech by Franklin D. Roosevelt and that are reproduced in the preambles of the Universal Declaration and the two Covenants: 'freedom of speech and belief and freedom from fear and want'. The Universal Declaration proclaims that the 'four freedoms' are the 'highest aspiration of the common people'. But in the development of international human rights law and practice over the past half-century, economic, social and cultural rights have been consistently relegated to a secondary and even marginal status. One of the important features of the human rights-based approach is to put economic, social and cultural rights on the same footing as civil and political rights.

The 'International Bill of Rights' is complemented by several specialised human rights treaties that focus on specific issues, areas and problems. Three of them

<sup>26</sup> Two additional protocols to the International Covenant on Civil and Political Rights, the first concerning individual petitions or 'communications' to the Human Rights Committee and the second concerning abolition of the death penalty are also comprised within the rubric of the 'International Bill of Rights'.



are of especial relevance to development practitioners in Ireland and the United Kingdom: the International Convention for the Elimination of All Forms of Racial Discrimination (170 States parties); the Convention on the Elimination of Discrimination against Women (180 States parties); the Convention on the Rights of the Child (192 States parties).<sup>27</sup> The 'package' is completed with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (140 States parties). Indeed, the rates of ratification of these Conventions are even higher than those of the two Covenants, and approach near-universal status. Increasingly, they are viewed as codifying norms and standards that are customary in nature, the evidence for this being their general acceptance by States. Both the Republic of Ireland and the United Kingdom have ratified all of these instruments.

A recent United Nations treaty, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, only entered into force in 2003, and currently has 31 States parties. Ratifying States are almost entirely those of emigration. Member States of the European Union, concerned about immigration, have shown no interest in accepting binding legal norms that protect migrant workers and their families, and neither the United Kingdom nor Ireland has signed or ratified the Convention. Historically, of course, Ireland was a country of emigration, but its own understanding of its position within the international migration system has shifted, and it now behaves, at least as far as international law is concerned, as a country of immigration. Within the United Nations, efforts continue to develop additional treaties as part of this system of human rights instruments. On 27 August 2006 the text for the new UN Convention on Rights of Persons with Disabilities was agreed and this was adopted by the UN General Assembly on the 13 December 2006. The convention is the most rapidly negotiated human rights treaty in the history of international law — as well as the first such treaty in the 21st Century. A convention on enforced disappearance was also adopted by the General Assembly in December 2006, and is now open for signature and ratification.

All of the major human rights treaties within the United Nations are associated with monitoring committees, known as 'treaty bodies', made up of international experts in the field. The seven committees receive periodic reports from States parties to the treaties that are then examined and critiqued by their members. A vigorous practice involving consultation with human rights non-governmental organisations, both national and international, is now an integral part of the process. It ensures that States provide a relatively honest and self-critical

<sup>27</sup> The 'package' is completed with the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (140 States parties), a treaty of limited relevance to this study. For up to date list of signature and ratification of these instruments see [www.ochchr.org/english](http://www.ochchr.org/english)

picture of the human rights situation within their borders. Some of the committees also enable individuals to file petitions alleging specific breaches of their rights. The committee system has attracted criticism due to delays in reaching and the powers of enforcement of their decisions. Although this has been important to human rights practitioners in many countries, advocates in the Republic of Ireland and the United Kingdom have made very infrequent use of these opportunities for international litigation, principally because of the availability of the better-known and more robust petition mechanisms of the European regional system for the protection of human rights.

Within the United Nations, the promotion and protection of human rights is also guaranteed through a complex network of what are known as 'special procedures', which have operated mainly under the aegis of the Commission on Human Rights, which was replaced in June 2006 by the Human Rights Council. There are literally dozens of 'special rapporteurs', 'special experts', 'special representatives', 'special advisors' and 'working groups', consisting of individuals assigned to monitor specific human rights issues, such as the right to food, the right to education, violence against women, the prohibition of torture and the right to a fair trial.

Historically, however, it has been the regional human rights system set up by the Council of Europe that has proven to be the most dynamic in terms of promoting and protecting human rights within the Republic of Ireland and the United Kingdom. The centrepiece of the system is the European Convention of Human Rights establishing the European Court of Human Rights, which is located in Strasbourg. In accordance with the obligation assumed under the Agreement, both the Republic of Ireland<sup>28</sup> and the United Kingdom<sup>29</sup> have incorporated the European Convention into their domestic legal systems. And, as will be seen in Chapter 4, both countries also have long standing protections of human rights in their domestic legal systems.

### **Commitments to a Human Rights-Based Approach**

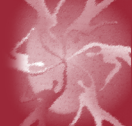
A wide range of international actors have made explicit their legal and policy commitment to base their work on human rights. Human rights-based programming, while building on the strengths of traditional programming, can be seen as a new way of acting and not merely a change in terminology. The former Secretary-General of the United Nations, Mr. Kofi Annan, in a number of speeches, has ordered the entire organisation to integrate or 'mainstream' human rights in all its work. To apply the principles of a human rights-based

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<sup>28</sup> European Convention on Human Rights Act 2003.

<sup>29</sup> Human Rights Act 1998.





approach to development in their work is a legal commitment undertaken by the Member States of the United Nations as well as by the United Nations organisation itself. The policy commitment was reaffirmed by the United Nations system as a whole in its 1997 Programme of Reform.<sup>30</sup> It drew on the United Nations General Assembly's Declaration on the Right to Development of 1986, which indicated that a human rights framework is needed for effective development. This principle was also reflected in the world conferences on social development, gender, human rights and racism, held during the 1990s, and more recently in the Millennium Development Goals. According to Mary Robinson, in a speech to the World Summit on Sustainable Development in Johannesburg in 2002: 'A human rights approach adds value because it provides a normative framework of obligations that has legal power to render governments accountable.'

The commitment to mainstream human rights arose largely out of the failure of the United Nations in the Great Lakes region of Africa and the Balkans in the early 1990s. The United Nations has been described as frustrated in its search for effective integration and application to human rights law in its intervention in Rwanda. According to Todd Howland, '[i]t seemed unable to prioritise human rights principles above the interests of individuals states and blocs of states. Secondly the UN appeared mired in its own compartmentalization and individual departmental or agency self-interest.'<sup>31</sup>

The major United Nations development and humanitarian agencies have responded by studying, experimenting with and designing a rights-based approach to their programming.<sup>32</sup> The United Nations Children's Fund, the United Nations Development Fund for Women, the United Nations High Commissioner for Refugees, the World Food Programme and the other United Nations agencies have assembled several times to exchange experiences and identify best practices with respect to a rights-based approach for development. Likewise, many national organisations that are bilateral donors – e.g., the Canadian International Development Agency, the Swedish International Development Agency, the United Kingdom's Department for International Development, Danish International Development Assistance – have made

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<sup>30</sup> Designed to streamline the UN's work while improving its coordination and management structures, it acknowledged human rights as both a principal goal of the organisation and a means by which its other goals could be advanced. *Renewing the United Nations: A Programme for Reform*, UN Doc. A/51/950, July 1997, paras. 78-79.

<sup>31</sup> Todd Howland, 'Mirage, Magic or Mixed Bag ? The United Nations High Commissioner for Human Rights Field Operation in Rwanda', (1999) 21 *Human Rights Quarterly* 1.

<sup>32</sup> For example, the United Nations Development Programme (UNDP) has published a summary of how human rights are integral to all its development work. See Bibliography for further information.

rights-based development programming a priority.<sup>33</sup> Much of the early work in encouraging international donors to adopt a rights-based approach to development was driven by international non-governmental organisations (NGOs) like CARE and OXFAM and Action Aid. The European Union, bilateral donor States as well as regional organisations and leading NGOs active in development and humanitarian response have also adopted or begun to adopt human rights-based programmes.

Various definitions of a rights-based approach to development exist.<sup>34</sup> One of the more concise has been proposed by the International Human Rights Internship Programme and Asia Forum for Human Rights and Development:

A rights-based approach is founded on the conviction that each and every human being, by virtue of being human, is a holder of rights. A right entails an obligation on the part of the government to respect, promote, protect, and fulfil it. The legal and normative character of rights and the associated governmental obligations are based on international human rights treaties and other standards, as well as on national constitutional human rights provisions. Thus a rights-based approach involves not charity or simple economic development, but a process of enabling and empowering those not enjoying their economic, social and cultural rights to *claim* their rights.<sup>35</sup>

Within the United Nations, the High Commissioner for Human Rights has put forward several elements of such a definition:

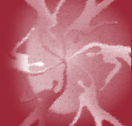
The rights-based definition of development in article 1 of the Declaration on the Right to Development sees it as a comprehensive economic, social, cultural and political process. Its object is the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the resulting benefits. The human rights approach to development is therefore integrated and multidisciplinary. The norms and standards are those contained in the wealth on international treaties and declarations. The principles include equality and equity, accountability, empowerment and participation.

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<sup>33</sup> See [www.oxfam.org.uk](http://www.oxfam.org.uk), [www.actionaid.org](http://www.actionaid.org), [www.care.org](http://www.care.org)

<sup>34</sup> See Chapter three for discussion of the various definitions that have been put forward..

<sup>35</sup> International Human Rights Internship Program and Asia Forum for Human Rights and Development, Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource (2000).



A human rights-based approach – bringing human rights standards and values to the core of *everything* we do – offers the best prospect of leveraging our influence to empower people to advance their own claims, to *prevent discrimination* and marginalisation, and to bridge the *accountability* deficits that have chronically crippled development progress. Under a rights-based approach, participation in development is a matter of *right* rather than charity. Essential to the very definition of human rights is the existence of *claims* and corresponding *obligations* at various levels of government and society. In each situation we confront, a rights-based approach requires us to ask:

- *What* is the content of the right?
- *Who* are the human rights *claim-holders*?
- *Who* are the corresponding *duty-bearers*?
- Are claim-holders and duty-bearers *able to claim their rights and fulfil their responsibilities*?

If not, *how can we help* them to do so?

This is the heart of a human rights-based approach.<sup>36</sup>

As States have primary responsibility for fulfilling the human rights of the people living in their respective jurisdiction, it follows that any poverty reduction strategy must be a country-driven process. The strategy has to be owned by all relevant stakeholders within the country, including the poor. This can only be possible, however, when all stakeholders, including the poor, participate effectively in all stages of the process. Active and informed participation by the poor is not only consistent with, but also demanded by, the rights-based approach because the international human rights normative framework affirms the right to take part in the conduct of public affairs. One may distinguish four stages of participation: preference revelation; policy choice; implementation; and monitoring, assessment and accountability.<sup>37</sup>

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<sup>36</sup> High Commissioner for Human Rights, comments made at 2nd Interagency Workshop on Implementing a Rights-based Approach in the Context of UN Reform, May 2003.

<sup>37</sup> United Nations High Commissioner for Human Rights, Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies', 2002.

In a human rights-based approach to programming and development cooperation, the aim of all activities is to contribute directly to the realization of one or several human rights... In a [human rights-based approach] human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies *rights-holders* (and their entitlements) and corresponding *duty-bearers* (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.<sup>38</sup>

The human rights approach may be regarded as a programming methodology that derives from the Sustainable Human Rights Development paradigm. [T]he approach proposes the use of human rights concepts and standards in the analysis of development problems and in the design of projects and programmes, including mechanisms to assess the impact of these programs, and the process by which they are developed and implemented. The human rights approach proposes that our understanding of development and our strategies to achieve it, are considerably enhanced by the use of rights based programming tools and methodologies.<sup>39</sup>

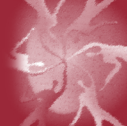
The United Nations Development Programme, in its Statement of Common Understanding in May 2003, explained that 'in a human rights-based approach human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.'<sup>40</sup>

Amartya Sen, in his work *Development as Freedom*,<sup>41</sup> put forward the idea that development is essentially the expansion of human freedoms: freedoms embodied in civil and political rights (participation in public life, voting, associations) and economic, social and cultural rights (access to health care, education, shelter, work and nourishment). The expansion of these human freedoms enhances the capacity of all individuals to fully lead the 'kind of lives

<sup>39</sup> Workshop on the Implementation of a Rights-Based Approach to Development: Training Manual, UN Office of the Resident Co-ordinator, Philippines, 2002.

<sup>40</sup> Interagency Workshop on a Human Rights-Based Approach in the Context of UN Reform, 3-5 May, 2003.

<sup>41</sup> Amartya Sen, *Development as Freedom*, Oxford: Oxford University Press, 2001.



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• Amartya Sen, *Development as Freedom*

they value' by ensuring the environment necessary for them to realize their own choices and opportunities.

International human rights law is based on the principle that the State is the primary entity obligated to respect, protect and fulfil the rights of those in its territory. Therefore the State undertakes to ensure that its constitution, laws, policies and practices reflect these legal obligations and help achieve, rather than undermine, the enjoyment of the full spectrum of human rights. This applies to all branches of the State and to all levels, including regional assemblies and local authorities. In addition to this primary duty imposed upon State organs, the State also undertakes to regulate behaviour of third parties (or 'non-State actors') – corporations, international organisations, etc. – to ensure that human rights are effectively enjoyed.

A human rights-based approach seeks to ensure that human rights are a central frame of reference in policymaking, resource allocation and political choices by ensuring that people have the political, institutional and material means to demand, exercise and monitor their human rights, and to actively participate in decision-making processes. It entails more than formal commitment to respect human rights norms and standards. Therefore, by definition a human rights approach is as concerned with the process as with the outcome.

### **Five Principles of a Human Rights-Based Approach**

The main principles in the application of human rights-based approaches to development can be distilled. These core principles can then be extended to other areas where a human rights-based approach can be implemented. A commonly expressed confusion flows from the mistaken assumption that there is one human rights-based approach. The reality is that there are principles to be applied to achieve human rights standards and we may expect to use different approaches for different areas of work in different contexts. The approach that is likely to be most effective varies according to the circumstances, such as the particular sector being addressed, the social and

political context, and the different actors seeking to employ a human rights-based approach.<sup>42</sup>

The five principles are:

- legitimacy;
- empowerment,
- accountability and transparency
- participation,
- equality, non-discrimination and attention to vulnerable groups.

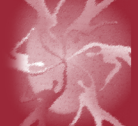
**Legitimacy:** Human rights-based solutions are grounded in and gain legitimacy from the human rights recognised in international law. These are minimum agreed standards. The human rights framework must be applied expressly. States are always encouraged to attain higher standards of respect for human rights, and the law itself is continually evolving through the recognition and codification of new human rights or clarification and expansion of the content of existing standards. The goals of all development are defined in terms of the relevant international human rights commitments of the State – as legally enforceable entitlements on the national level. This includes: addressing the full spectrum of interdependent and inter-related rights, civil, cultural, economic, political and social; explicitly taking human rights obligations into account at every stage of national and local development problems; capacity building for public representatives, civil servant and local officials so that they apply the human rights framework in their work.

Economic, social and cultural human rights involve immediate obligations in three ways, regardless of resources (non-discrimination; an obligation 'to take steps' and to ensure the core minimum of the right). It is important for community and voluntary groups to realise that the people that they represent have the right to demand these standards from their government.

The relevance to ordinary people of universal human rights, and their formulation in international treaties, is sometimes questioned. However, all States have exercised their sovereignty in becoming parties to human rights

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<sup>42</sup> For example, see the definition and principles enunciated by the United Nations Office of the High Commissioner for Human Rights, at [www.unhchr.ch/development/approaches-04.html](http://www.unhchr.ch/development/approaches-04.html) and compare and contrast with the International Human Rights Network, at [www.ihrnetwork.org/hr-based-approaches.htm](http://www.ihrnetwork.org/hr-based-approaches.htm), or the Draft Guidelines: A human rights approach to poverty reduction at [www.unhchr.ch/development/povertyfinal.html](http://www.unhchr.ch/development/povertyfinal.html). We have used these definitions and principles as well as the Amnesty International Irish Section and the International Human Rights Network, *Our Rights, Our Future, Human Rights-Based Approaches in Ireland: Principles, Policies and Practice*, 2005 in formulating the five principles of a human rights approach to peace building and reconciliation.



treaties. Any State is entirely free to decide for itself whether or not to adhere to a human rights treaty. However once a State has decided to adhere to a human rights treaty it is governed by international accountability.

**Empowerment:** A human rights-based approach shifts the focus from the fact that people have needs to the fact that people have rights. It involves the equitable distribution of power and resources, and requires that root causes of developmental issues be addressed. The inherent dignity of human beings

People may choose not to participate in processes that affect their rights, but if they are not empowered to participate, then this cannot be seen as a genuine choice. Ensuring that people have power, capacities and access needed to improve their communities and their own lives is essential. This includes identifying those responsible – legally or morally – for respecting, protecting and fulfilling their human rights, and holding them accountable for such responsibilities.

entitles them to a core set of human rights that can neither be given nor taken away. This contrasts with a more charity-oriented approach by challenging vested interests and power structures, demonstrating that development is an inherently political process. Human rights discourse is used where appropriate.

A key element of empowerment is human rights education. A human rights-based approach can play an important role in establishing human rights principles among governments, NGOs, donors, and people affected by development projects. Human rights education and training are needed as people have to know their rights so as to be able to hold duty-bearers to account. Awareness of human rights is a prerequisite for the achievement of rights-based approach.

Human rights-based development serves to empower communities and individuals to know, claim and defend their rights and to know their correlative responsibilities. The principle of empowerment refers to the extent to which people are aware of the scope and nature of their human rights and how to effectively demand them through legal and political action. This requires access to information, awareness of decision-making processes and the confidence to claim rights. The core principle of empowerment is addressed here, in advance of participation and accountability, as it is the foundation on which both human rights-based approach principles are built. People may choose not to participate in processes that affect their rights, but if they are not empowered to

participate, then this cannot be seen as a genuine choice. Ensuring that people have the power, capacities and access needed to improve their communities and their own lives is essential. This includes identifying those responsible – legally or morally – for respecting, protecting and fulfilling their human rights, and holding them accountable for such responsibilities. It ensures that right holders and duty bearers share a common understanding of human rights goals and their duties to respect, protect and fulfil them.

Within the framework of the United Nations Decade for Human Rights Education (1995-2004), the General Assembly and the Commission on Human Rights called upon States to develop *comprehensive, effective and sustainable national plans of action for human rights education*. United Nations Guidelines emphasise the importance of co-operation by State and non-State actors in this endeavour, as well as the importance of ensuring that monitoring and evaluation mechanisms are included in the national human rights education plan.<sup>43</sup>

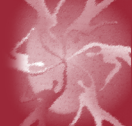
**Transparency and Accountability:** Human rights-based solutions also involve engaging in awareness-raising with government, local authorities, ‘service providers’ and other duty bearers. These actors must understand their obligations to respect, protect and fulfil the human rights of all. Accountability is a concept which includes rights to due process, to effective remedies and to equal treatment. While it is not exclusively about prosecution or punishment, there may be some circumstances that require this. Generally, this principle includes accountability for transparent decision-making, clarity and awareness of the responsibilities of those involved as duty-bearers or rights-holders.

A holistic approach to human rights awareness requires that rights holders and duty bearers share the same understanding of human rights. There must be identification of both the positive obligations of duty holders (to protect, promote and provide) and negative obligations (to abstain from violations) of the full range of relevant actors, including local authorities and private companies. Governments must develop effective laws, policies, institutions, administrative procedures and mechanisms of address that ensure delivery of entitlements, respond to denial and violations and ensure accountability.

All areas of an organisation's work need to be premised on human rights: whether strategic planning, marketing, policy, priorities, programmes and partnerships – or the conditions of work, selection, training, management and promotion of the organisation's own staff. Human rights impact assessments

<sup>43</sup> For a list of training notes and guides on human rights and human rights-based approaches workshops, see Bibliography.





need to be applied to all plans, proposals, policies, budgets and programmes to determine progress in human rights terms. They require human rights-based benchmarks by which progress is measured, as well as reward and sanction for success and failure in achieving positive human rights impact.

Accountability encompasses both political and administrative decision-making. In the shift from welfare/charity to a human rights framework, empowerment and participation are fundamental requirements to ensure accountability.

A key aspect of accountability is effective legal incorporation of international commitments so that remedies are available on the national level. This is required by the human rights treaties themselves.

The Draft Guidelines on A Human Rights Approach to Poverty Reduction Strategies, prepared by the Office of the High Commissioner for Human Rights, state:

An accountability procedure depends on, but goes beyond, monitoring. It is a mechanism or device by which duty-bearers are answerable for their acts or omissions in relation to their duties. An accountability procedure provides right-holders with an opportunity to understand how duty-bearers have discharged, or failed to discharge, their obligations, and it also provides duty-bearers with an opportunity to explain their conduct. While accountability implies some form of remedy and reparation, it does not necessarily imply punishment. ...

Broadly speaking, there are four categories of accountability mechanism:

- judicial, *e.g.*, judicial review of executive acts and omissions;
- quasi-judicial, *e.g.*, Ombuds institutions, international human rights Treaty-bodies;
- administrative, *e.g.*, the preparation, publication and scrutiny of human rights impact assessments;
- political, *e.g.*, parliamentary processes.<sup>44</sup>

Although individuals and non-State actors, such as community groups, voluntary groups and NGOs, also have duties and responsibilities for the protection of the human rights of others, the primary focus of a human rights-

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<sup>44</sup> United Nations Commission for Human Rights, 'Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies', 2002.

based approach remains the State. It is the party bound by its treaty commitments to regulate the behaviour of others. Accountability (in particular for socio-economic rights) faces specific challenges in a globalised world. More and more State functions are privatised or delegated, and economic actors are increasingly linked with complex international structures. Thus, making the connection between the State's human rights treaty obligations and the range of non-State forces that impact on daily life is increasingly acknowledged. But it remains the case that, for accountability purposes, the State remains the primary duty-holder.

**Participation:** Human rights-based solutions maximise the participation of a community (participation itself being a human right), enhancing the impact of development work as well as its sustainability. Participation must be active, free and meaningful. Mere consultation is not sufficient. Participation in all aspects of national development is itself a human right requiring the State to create an

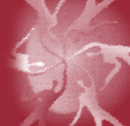
**'Ireland is amongst the most unequal countries in the EU, with one of the highest rates of relative income poverty'.**

• Combat Poverty Agency

enabling environment for participation of all stakeholders. The right to participation is referred to in specific ways in the international instruments: the Universal Declaration of Human Rights (article 21 – the right to take part in the government, the will of the people as the basis of the authority of government, the right to vote); the International Covenant on Civil and Political Rights (article 25 — the right to take part in the conduct of public affairs, to vote); the Convention on the Rights of the Child (article 12 — one of its basic principles is respect for the views of the child; and article 15 — 'safe spaces' in which they can be expressed); the Convention on the Elimination of Discrimination Against Women (participation of girls is a principle of 'paramount consideration' while article 14 refers to participation of rural women in the public and political life of their communities, and in particular in the design and implementation of development planning).<sup>45</sup> Participation also requires human rights education. Human rights education is essential for decision makers so that staff can be familiar with human rights standards, including human right laws and their monitoring and implementation mechanisms.

Participation, to be active, free and meaningful, requires vindication of a range of other rights – freedom of expression, association, assembly, the right to

<sup>45</sup> See Karen Kenny, *The Right to Participate in International Human Rights Fieldwork*, International Human Rights Network, 1995, p.18.



education, the right to receive and impart information and is under-pinned by the principle of non-discrimination.

Reflecting the importance of the right to participate, it is increasingly recognised in international development practice that public debate, open decision-making, and the organisation of interest groups is essential for combating corruption, ensuring accountable policy-making and effective functioning of institutions. This experience suggests that people participate more effectively if institutions and decision-making processes are located closer to their community. This means that local government must have the authority and resources to function as a participatory institution, responsive and accountable to the concerns and needs of individuals affected by its decisions.

At the heart of participation on the island of Ireland is the ever-increasing number of representative groups and consultation processes engaged in a range of policy areas. One example of this is the 6,000 submissions received by the Oireachtas Committee examining proposed changes to the Constitution regarding the family.<sup>46</sup> The voluntary sector has emerged as a key player in ensuring participation although, as Brian Harvey has noted, 'rights and justice organisations are relatively poorly resourced'.<sup>47</sup> Another example is the wide ranging Bill of Rights consultation process undertaken by the Northern Ireland Commission for Human Rights.<sup>48</sup> Consultation processes now also take place around the preparation by States of periodic human rights reports to the United Nations treaty bodies – this is seen as highlighting the potency of international scrutiny.

**Equality, non discrimination and prioritisation of vulnerable groups:** Human rights approaches prioritise vulnerable groups and practice non-discrimination. This is a cross-cutting issue for all human rights as reflected by its express inclusion in all human rights treaties. This ensures that gender proofing is part of the wider human rights proofing of all programmes. Gender proofing assesses the implications for women and men of any planned action. It is important that official data is disaggregated by religion, ethnicity, language, sex, migrant status, age, sexual orientation and any other category of human concern. Sustained international efforts on these issues have recorded successes. Changes regarding the status of women globally were recorded in the ten-year review of the Beijing Declaration and Platform for Action (Beijing+10 Review) in March 2005, including narrowing gender gaps in

<sup>46</sup> Amnesty International Irish Section and the International Human Rights Network 'Our Rights, Our Future: Human Rights-Based Approaches in Ireland: Principles, Policies and Practice' 2005, p. 49.

<sup>47</sup> Brian Harvey, 'Rights and Justice Work in Ireland: A New Base Line Report', Joseph Rowntree Charitable Trust, 2001.

<sup>48</sup> See [www.nihrc.org/](http://www.nihrc.org/).

education and health, greater participation of women in the workforce and in decision-making, and a greater number of 'focal points for women or gender equality in government offices'.<sup>49</sup> However, 'this review called attention to the many areas where women's equality is still not a reality – continuing high rates of violence against women in all parts of the world including in armed conflict, increasing incidence of HIV/AIDS among women, gender inequality in employment, lack of sexual and reproductive health rights and a lack of equal access under the law to land and property'.<sup>50</sup>

A range of other groups in society are vulnerable to human rights violations by virtue of their status, their difference or their exclusion from power. Ultimately, the test of success of a human rights-based approach is the extent to which it encompasses and addresses as priorities the human rights of such groups. The annual reports of the Equality Authority and the Equality Commission of Northern Ireland confirm the persistence of discrimination on the island of Ireland. Indeed, with regard to poverty: 'Ireland is amongst the most unequal countries in the EU, with one of the highest rates of relative income poverty'.<sup>51</sup>

Application of these principles ultimately leads to greater empowerment, accountability and transparency and in turn to greater fulfilment of human rights. The human rights-based approach demonstrates that human rights are not limited to 'rights' recognised under national law. International human rights law has been made by States agreeing the standard to be achieved on the international level. Human rights commitments undertaken in international treaties are recognised as inherent to the human being and cannot be undermined by a Constitution or other national law. In practice, where national law or practice fails to respect human rights, advocates will propose that the national law be changed. The means by which this is fulfilled are largely left to the discretion of each individual State, however.

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<sup>49</sup> Review of the implementation of the Beijing Platform for Action and the outcome documents of the special session of the General Assembly entitled 'Women 2000: gender equality, development and peace for the twenty-first century, Report of the Secretary-General', UN Doc. E/CN.6/2005/2. See generally [www.un.org/womenwatch/daw/Review](http://www.un.org/womenwatch/daw/Review).

<sup>50</sup> 'Governments pledge to accelerate efforts to achieve equality for women and fulfil Beijing commitments, as UN Commission concludes', press release, UN Department of Public Information, DPI/2383F, March 2005.

<sup>51</sup> Combat Poverty Agency, 'An Analysis of the Distributive and Poverty Impacts of Budget 2002'.



*Respect, Protect and Fulfil*



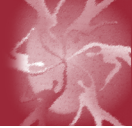
**Principles of a 'Human Rights-Based Approach'  
to Peacebuilding and Reconciliation**

### Principles of a ‘Human Rights-Based Approach’ to Peacebuilding and Reconciliation

The international legal system sets the context for a rights-based approach to development by placing human rights law at the centre of development practice. Under this system, the ‘rights holders’ have the right to demand from the ‘duty-bearer’, which is generally the State, that it meet its obligations under international law to respect, protect and fulfil people’s rights. The duty-bearer can also be a private entity such as a multi-national company, a local governmental agency or a family. Human rights transforms people from being merely ‘inhabitants’ of a territory dependent on government largesse into fully engaged citizens of a State, capable of demanding and receiving fulfilment of the full panoply of human rights necessary to live a dignified life.

The International Covenant on Economic, Social, and Cultural Rights provides that every State take steps ‘individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means’. Therefore, a State must make maximum use of its available resources to honour these rights, which include rights to housing, medical care, employment and education. Rights-based programming includes close monitoring of State budgets to assess whether ‘maximum available resources’ are allocated to improve rights observance as required under the International Covenant on Economic, Social, and Cultural Rights. Honouring rights is often realised through the ‘progressive realisation’ of these rights. This means that states are allowed to achieve progressively the full realisation of the rights recognised in the Covenant, to the maximum of its available resources and by all appropriate means, including particularly the adoption of legislative measures. There is a core minimum of each right and there must not be discrimination in allocation of limited resources. In addition, the International Covenant on Economic, Social, and Cultural Rights makes explicit that States may seek international assistance and cooperation to help them meet their obligations to respect, protect and fulfil the rights spelled out in the treaty.

Human rights-based approaches represent an evolution in development programming. Utilising a rights-based approach requires NGOs and community groups to engage more fully with policies and practices, which deny the fulfilment of human rights. Development and human rights practitioners have identified several implications of adopting human rights-based approaches for their work.



## Defining 'Peacebuilding'

Like the terminology of a human rights-based approach, we need to take a close look at what exactly we mean when we talk about peacebuilding. The term 'peacebuilding' entered the wider lexicon when Boutros Boutros-Ghali, then United Nations Secretary-General, announced his *Agenda for Peace* in 1992.<sup>52</sup> Since then, 'peacebuilding' has become a broadly used but often ill-defined term, connoting activities that go beyond crisis intervention, such as longer-term development, and building of governance structures and institutions. Peacebuilding involves a full range of approaches, processes, and stages needed for transformation toward more sustainable, peaceful relationships and governance modes and structures. Boutros-Ghali's definition of peacebuilding is 'action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict'.<sup>53</sup>

As we can see from a variety of conflicts throughout the world, and indeed from the example of Northern Ireland, the ending of overt violence via a peace agreement does not mean the achievement of peace. The post-conflict situation is one that provides 'a new set of opportunities that can be grasped or thrown away'.<sup>54</sup>

As Wendy Lambourne has pointed out, peacebuilding is difficult to define and even more difficult to achieve in practice. She has explained peacebuilding as 'strategies designed to promote a secure and stable lasting peace in which the basic needs of the population are met and violent conflicts do not recur'.<sup>55</sup> Her definition takes a long term view and incorporates the goals of negative peace (that is the absence of physical violence) and positive peace (the absence of structural violence).

Human rights protection and promotion constitute an integral part of peacebuilding and the reconstruction of post-conflict societies. Such recognition is founded on the premise that sustainable peace will not be achieved unless the root causes of conflict, too often due to the absence of economic opportunities, social inequalities and structural discrimination, are addressed and justice restored.<sup>56</sup> Effective peacebuilding thus presupposes

<sup>52</sup> Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, UN Doc. A/47/277 - S/241111.

<sup>53</sup> Boutros Boutros-Ghali, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping* UN Doc A/47/277 - S/241111, 17 June 1992 (New York: Department of Public Information, United Nations) 1992, para. 21.

<sup>54</sup> Robert Rothstein, 'Fragile Peace and its Aftermath', in *After the Peace: Resistance and Reconciliation*, Boulder: Lynne Rienner, 1999, at p. 224.

<sup>55</sup> Wendy Lambourne, *Peace, Conflict and Development* – Issue 4, April 2004.

<sup>56</sup> *Supplement to An Agenda for Peace*, UN Doc. A/50/60-S/1995/1, para. 103.

concerted efforts to promote human rights prospectively, retrospectively as well as in the present. At the international level, the interdependency of human rights and peacebuilding is illustrated by, for instance, the inclusion of human rights provisions in peace agreements, the deployment of human rights field monitors in peacekeeping operations and the establishment of international criminal tribunals where perpetrators of human rights abuses are held accountable.

Most recently, 'peacebuilding' was highlighted in the Outcome Document adopted at the summit of heads of State and government held in New York City in September 2005. An entire section in this decisive document is entitled 'peacebuilding'. The Outcome Document speaks of 'post-conflict peacebuilding and reconciliation', emphasizing its association with the achievement of sustainable peace, and with establishment of a foundation for sustainable development. The Outcome Document proposed a major structural reform within the United Nations, calling for establishment of a 'Peacebuilding Commission'.<sup>57</sup> The concept was accepted at the September 2005 Summit of heads of state and government, and entrenched in a General Assembly Resolution.<sup>58</sup> The first activities of the new Peacebuilding Commissions began in June 2006.

Peacebuilding has been defined within the terms of Peace II as;

Peacebuilding is the term given to the processes and strategies which can be brought into play on the journey from conflict resolution to reconciliation between divided communities. Peacebuilding is definitely not the soft option; as it attempts to address both causes and effects of conflict simultaneously. Professor Jean Paul Lederach has pointed out the dangers of what he calls the 'justice gap' and notes that expectations for change on a variety of fronts are likely to be frustrated. Whilst peacebuilding takes place primarily in Northern Ireland as the seat of a conflict, it also has relevance throughout the island in spite of the unspoken nature of the impact on conflict on social and political attitudes.<sup>59</sup>

## Defining 'Reconciliation'

The importance of promoting reconciliation is well recognised, but few actually

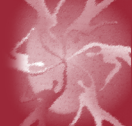
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<sup>57</sup> 'Outcome Document', 13 September 2005, para. 97.

<sup>58</sup> 'The Peacebuilding Commission', UN Doc. A/RES/60/180.

<sup>59</sup> PSc Consulting. 'Building Peace and Reconciliation Post 2006', EU Cross-border Management Committee, 2003 quoting Paddy Logue, 'Towards a conceptual framework of peace-building', ADM/CPA (unpublished).





define what they mean by it. The word arises in a large number of contexts but does not seem to have a common definition.<sup>60</sup> Much of the literature on international law and transitional justice does not include any analysis of the various types of justice and their relationship to reconciliation or conflict resolution.<sup>61</sup> There may be difficulty in addressing issues of peacebuilding and reconciliation because precise definitions are not readily available. Definitions and approaches are often dictated by the inherent political assumptions of practitioners and policymakers, and by their social context. The term 'reconciliation' has primarily been sited within Northern Ireland in the education system and has been framed as 'community relations.'<sup>62</sup>

**'Reconciliation is a process whereby past trauma, injury and suffering is acknowledged and healing/restorative action is pursued; it is a process whereby relationship breakdown is addressed and sustainable relationships created; it is a process whereby the culture and structure which gives rise to conflict and estrangement are transformed or reconstructed with a view to creating an equitable, diverse and independent community.'**

**• ADM/CPA Programme for Peace and Reconciliation  
'Reconciliation Report', 2000**

In the context of Peace I and Peace II, ADM/CPA began a Reconciliation Education and Awareness Initiative in July 1998. This resulted in the 'Reconciliation Report, Southern Border Counties of Ireland'. The main issues addressed in the report were;

- the lack of confidence in promoting reconciliation;
- confusion about what reconciliation means in the southern borders context;
- a lack of agreement about the differences and similarities between social inclusion and reconciliation;

<sup>60</sup> For a discussion of the problems brought about by the meaning of reconciliation see Lorna McGregor, 'Reconciliation: I know it when I see it' *Contemporary Justice Review* Vol. 9 No.2. (2006) 155.

<sup>61</sup> For example: Steven Ratner and Jason Abrams, *Accountability for Human Rights Atrocities in International law: Beyond the Nuremberg Legacy*, London: Clarendon Press, 1997.

<sup>62</sup> For a critical analysis of the community relations model of reconciliation in which it is argued that the peace process has led to a sidelining of a significant reconciliation industry see Lesly McEvoy, Kieran McEvoy and Kirsten McConnachie, 'Reconciliation As A Dirty Word: Conflict Community Relations and Education in Northern Ireland' (2006) 60 *Journal of International Affairs*.

- a danger of the community sector assuming responsibility for reconciliation to the exclusion of other sectors in civil society;
- the need to ensure inclusion of minority groups/religions in the southern border counties.

This research resulted in creation of a Reconciliation Matrix. A definition of reconciliation is proposed by ADM/CPA in its Reconciliation Report: 'Reconciliation is a process whereby past trauma, injury and suffering is acknowledged and healing/restorative action is pursued; it is a process whereby relationship breakdown is addressed and sustainable relationships created; it is a process whereby the culture and structure which give rise to conflict and estrangement are transformed or reconstructed with a view to creating an equitable, diverse and interdependent community.'<sup>63</sup>

The most relevant research on reconciliation has been by Brandon Hamber and Grainne Kelly in a study prepared for Democratic Dialogue.<sup>64</sup> Reconciliation is presented as five interwoven and related strands:

**1. *Developing a shared vision of an interdependent and fair society* –**

The articulation of a common vision of an interdependent, just, equitable, open and diverse society. The development of a vision of a shared future requiring the involvement of the whole society, at all levels.

**2. *Acknowledging and dealing with the past* –**

Acknowledging the hurt, losses, truths and suffering of the past. Providing the mechanisms for justice, healing, restitution or reparation, and restoration (including apologies if necessary and steps aimed at redress). Individuals and institutions acknowledge their own role in the conflicts of the past, accepting and learning from it in a constructive way so as to guarantee non-repetition.

**3. *Building positive relationships* –**

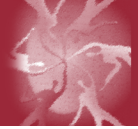
Relationship building or renewal following violent conflict addressing issues of trust, prejudice and intolerance in this process, resulting in accepting commonalities and differences, and embracing and engaging with those who are different to us.

**4. *Significant cultural and attitudinal change* –**

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<sup>63</sup> See ADM/CPA Programme for Peace and Reconciliation, 'Reconciliation Report', 2000.

<sup>64</sup> See for example Brandon Hamber and Grainne Kelly, 'A working definition of reconciliation', Democratic Dialogue, 2004.



people relate to, and their attitudes towards, one another. The culture of suspicion, fear, mistrust and violence is broken down and opportunities and space opened up in which people can hear and be heard. A culture of respect for human rights and human difference is developed creating a context where each citizen becomes an active participant in society and feels a sense of belonging.

**5. Substantial social, economic and political change** – The social, economic and political structures which gave rise to the conflict and estrangement are identified, reconstructed or addressed, and transformed.

Reconciliation involves a paradox; e.g., reconciliation promotes an encounter between the open expression of the painful past but at the same time seeks a long-term, interdependent future. Reconciliation as a concept is always influenced by an individual's underlying assumptions. There are different ideologies of reconciliation, e.g., a religious ideology often emphasises the re-discovering of a new conscience of individuals and society through moral reflection, repentance, confession and rebirth, but a human rights approach might see it as a process only achieved by regulating social interaction through the rule of law and preventing certain forms of violations of rights from happening again.<sup>65</sup>

The Hamber and Kelly definition has been fitted into peacebuilding theory and practice. It subsequently became a benchmark for the Peace II Extension.

From a human rights perspective, reconciliation can be achieved through the establishment of such mechanisms as truth and reconciliation commissions, where both victims and perpetrators of human rights violations are given the opportunity to be heard.<sup>66</sup> They offer a degree of accountability, and fill the enormous 'impunity gap' left by criminal justice, which is often unable to address serious human rights violations because of political expediency, resource issues and the sheer scale of the atrocities. Criminal justice, as part of a reconciliation process, now takes many forms. In addition to classic national criminal courts, over the past decade a number of other mechanisms

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<sup>65</sup> See for example Brandon Hamber and Grainne Kelly, 'A working definition of reconciliation', Democratic Dialogue, 2004.

<sup>66</sup> *Ibid.*, p. 4.

<sup>66</sup> Priscilla B. Hayner, *Unspeakable Truths, Facing the Challenge of Truth Commissions*, Routledge: New York & London, 2002; Richard J. Goldstone, 'Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals', (1996) 28 *New York University Journal of International Law and Policy* 485.

have been established, including international criminal tribunals like those for the former Yugoslavia and Rwanda, so-called 'hybrid' courts which incorporate features of international law into national prosecutions, and traditional forms of criminal accountability such as the gacaca process currently underway in Rwanda.<sup>67</sup>

In Sierra Leone and East Timor, the international community supported the establishment of criminal tribunals and truth commissions, operating essentially in parallel, to deal with the aftermath of violent conflict and gross human rights violations. A national tribunal – this time with little international support because it applies the death penalty – has been established to prosecute the former leaders of the Ba'athist regime in Iraq. In March 2006, the Security Council authorised the establishment of an additional international criminal tribunal, similar to the one in Sierra Leone, in order to deal with terrorism in Lebanon.

However, justice and reconciliation have often been seen as conflicting objectives in the process of making and building peace.<sup>68</sup> This tension was apparent in the work of the United Nations in Sierra Leone, where there were competing agendas of the UN Department of Political Affairs, based in New York City, and the UN Office of the High Commissioner for Human Rights, located in Geneva. In the interests of reaching political settlement, alleged

**A peace agreement which allows power sharing with violators of human rights and amnesties can be perceived as an 'unjust peace' and therefore detrimental to stability and reconciliation.**

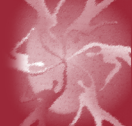
perpetrators of human rights abuses have been included in negotiations and even in new governments. One of the most obvious examples of this is the post-conflict peacebuilding situation in Cambodia, when former members of the Khmer Rouge were in government. This process can fail to promote a just peace by perpetuating a culture of impunity.

A peace agreement which allows power sharing with violators of human rights and amnesties can be perceived as an 'unjust peace' and therefore detrimental to stability and reconciliation.<sup>69</sup> This is clear in the context of Northern Ireland, with the release of politically-motivated prisoners under the Agreement. In the

<sup>67</sup> See, generally, M. Cherif Bassiouni, ed., *Post-Conflict Justice*, Ardsley, New York: Transnational Publishers, 2002.

<sup>68</sup> For a discussion on the theoretical difficulties under-pining notions of peace building reconciliation and a rights based approach see Lorna McGregor, 'Reconciliation: I know it when I see it' (2006) 9 *a Contemporary Justice Review*. 155.

<sup>69</sup> Adhoc, Licadho and Human Rights Watch, *Impunity in Cambodia: How Human Rights Offenders Escape Justice*, June 1999.



'Without doubt, the major difficulty in Northern Ireland has been achieving sufficient dialogue between politicians and communities to engender enough understanding and trust to find solutions to issues of equality and political choice'

• Mari Fitzduff

case of the former Yugoslavia, there has been a 'reconciliation through justice' approach predicated on the belief that there can be no peace and reconciliation until those indicted with human rights violation are brought to justice. The main tool for this approach has been the International Criminal Tribunal for the former Yugoslavia.<sup>70</sup>

Paramount to any human rights-based approach to peacebuilding and reconciliation is that it involve actors and institutions from both the State and civil society. This is because 'without demand from civil society, rights will not be realized. Without increased capacity of the state to respond appropriately, demand will not produce the desired change'.<sup>71</sup> In the context of Track I and Track II in Northern Ireland, this double-faceted aspect of peace processes has been characterised by diplomatic efforts, where recognition of the other's hardships and efforts is rare, although they are mutually reinforcing.<sup>72</sup>

The usual context for discussion of peacebuilding and reconciliation in Northern Ireland is the Peace II programme, which sees peace and reconciliation resulting from increased economic opportunity. The need to bring a human rights dimension to the peace process is pivotal and was recognised in the Agreement, which called for establishment of the two human rights commissions. While it is perhaps too early to assess the contribution of the two human rights commissions in Ireland, both of whose establishment can best be described as somewhat 'rocky', it is acknowledged that the two-track diplomacy has failed to bring about effective reconciliation. As Mari Fitzduff has observed, '[w]ithout doubt, the major difficulty in Northern Ireland has been achieving sufficient dialogue between politicians and communities to engender enough understanding and trust to find solutions to issues of equality and political choices'.<sup>73</sup>

<sup>70</sup> See Ann-Sofi Jakobsson Hatay, *Peacebuilding and Reconciliation in Bosnia and Herzegovina, Kosovo and Macedonia 1995 – 2004*, Uppsala University, 2005; William Schabas, *The UN International Criminal Tribunals, The former Yugoslavia, Rwanda, Sierra Leone*, Cambridge: Cambridge University Press, 2006.

<sup>71</sup> Todd Howland, 'UN Human Rights Field Presence as Proactive Instrument of Peace and Social Change', (2004) 26 *Human Rights Quarterly* 17.

<sup>72</sup> See Mari Fitzduff, 'First- and Second-Track Diplomacy in Northern Ireland', *Peacebuilding A Field Guide*, 2001, pp. 111-120.

<sup>73</sup> *Ibid*, p. 119 (emphasis added).

## The Normative Framework

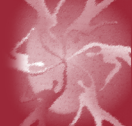
Most of the salient features of the human rights normative framework can contribute to peacebuilding and reconciliation. These features include notions of accountability and transparency, principles of legitimacy, non-discrimination and equality, participatory decision-making processes, and recognition of the interdependence of rights. They are all essential characteristics of a human rights-based approach to peace building and reconciliation. The human rights tools referred to above may not all be applicable to the situation arising out of the conflict in Northern Ireland, as each conflict is unique in its political and social context.

Rights and obligations demand *accountability*. Accordingly, the human rights-based approach to peacebuilding and reconciliation emphasises obligations and requires that all duty-holders, including States and intergovernmental organisations, be held to account for their conduct in relation to international human rights. While duty-holders must determine for themselves which mechanisms of accountability are most appropriate, in their particular case, all mechanisms must be accessible, transparent and effective.

The principles of *equality, non-discrimination and special measures* are fundamental elements of international human rights law. It follows that the international human rights normative framework has a particular preoccupation with individuals and groups who are vulnerable, marginal, disadvantaged or socially excluded. Thus, the human rights approach to peacebuilding and reconciliation requires that laws and institutions that foster discrimination against specific individuals and groups be eliminated.

The international human rights framework recognises the *interdependence* of rights – the fact that the enjoyment of some rights may be dependent on or contribute to the enjoyment of others. The human rights framework reflects the crucial interdependence of economic, social and cultural rights, on the one hand, and civil and political rights, on the other. A human rights-based approach to reconciliation and peacebuilding is thus holistic in nature, encompassing economic, social and cultural rights as well as civil and political rights.

A basic political right is the right to take part in the conduct of public affairs. It is inextricably linked to fundamental democratic principles. The right to equal opportunity in all social and economic activity is a key social right. Both are examples of rights enshrined in provisions of the Agreement. The very advantage of a human rights-based approach is thus that it permeates all



aspects of society and has the benefit of depoliticising the overall context by focussing on individual right-holders. In a deeply divided society such as Northern Ireland this is especially fundamental.

Yet another feature of the human rights-based approach is a growing sense of universal responsibility for peacebuilding and reconciliation. For example, under international law, States are obliged to prosecute perpetrators of such international crimes as genocide and crimes against humanity, even if there is no jurisdictional link with the State itself, under principles of universal jurisdiction. While a State is primarily responsible for realising the human rights of the people living within its jurisdiction, other States and non-state actors are also obliged to contribute to, or at the very least not to violate, human rights.<sup>74</sup>

The human rights-based approach attaches as much importance to the processes whereby goals are achieved as to the goals themselves. In particular, it emphasises the importance of ensuring participation by otherwise marginalised groups, in all aspects of decision-making. The importance of political participation is being increasingly recognised. The human rights approach reinforces this recognition by drawing attention to the fact that participation is valuable not just as a means to other ends but also as a fundamental human right that should be realised for its own sake. For example, gender equality in political processes as a means to consolidate peace and social stability has received particular acknowledgment in the context of the Northern Ireland peace process.<sup>75</sup>

## **Applying the Human Rights-Based Approach**

We can therefore define a human rights-based approach to peacebuilding and reconciliation as follows:

A human rights-based approach to peacebuilding and reconciliation is at its simplest, the incorporation on international human rights standards into the policies and projects established to aid the peacebuilding and reconciliation process. This human rights-based approach offers an explicit normative framework underpinned by universally recognised moral values and underpinned by legal obligations. The features of the human rights framework are crucial to peace building and reconciliation in post-conflict situations. These features include legitimacy, accountability and transparency, participation, equality non-discrimination and prioritisation of vulnerable

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<sup>74</sup> Luc Reydam, *Universal Jurisdiction*, Oxford: Oxford University Press, 2003.

<sup>75</sup> In section 6(1) of the Multi-Party Agreement, the Governments of Ireland and the United Kingdom commit themselves to respect the right of women to full and equal political participation.

groups, empowerment and the recognition of the interdependence of rights. The promotion and protection of both civil and political rights and economic, social and cultural rights is fundamental to redressing inequalities and dispelling disillusion in a post-conflict situation. Human rights protection forms a safeguard against domination and discrimination for all communities and the human rights dimension signals a fundamental change in the nature of the state.

Or more succinctly:

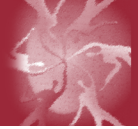
A human rights-based approach to peace and reconciliation is the incorporation of international human rights standards into the policies and projects established to aid the peacebuilding and reconciliation process.

**A human rights-based approach to peace and reconciliation is the incorporation of international human rights standards into the policies and projects established to aid the peacebuilding and reconciliation process.**

In conclusion, then, the human rights approach has the potential to advance the goal of peacebuilding and reconciliation in a variety of ways:

- by urging speedy adoption of a peacebuilding and reconciliation strategy, underpinned by human rights, as a matter of legal obligation;
- by urging the increased realisation of civil and political rights, which can play a crucial instrumental role in advancing the cause of peacebuilding and reconciliation;
- by confirming that economic, social and cultural rights are binding international human rights, not just programmatic aspirations;
- by adding legitimacy to the demand for ensuring meaningful participation of the marginalised in decision-making processes;
- by cautioning against retrogression and non-fulfilment of minimum core obligations in the name of making trade-offs; and
- by creating and strengthening the institutions through which policy-makers can be held accountable for their actions.



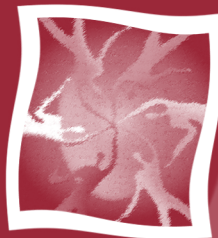


The normative framework of human rights remains of little use if the necessary enforcement mechanisms are inadequate. Recent improvements in the British and Irish legal systems, aiming at 'bringing rights home', have brought these legal individual entitlements closer to the right-holders. In both the Republic of Ireland and the United Kingdom, the European Convention of Human Rights has been incorporated into domestic legislation.<sup>76</sup> There has been the setting up a variety of statutory bodies since the Agreement, institutions such as the Irish Human Rights Commission and the Northern Ireland Human Rights Commission, a Garda Ombudsman Commission and a Police Ombudsman in Northern Ireland. The next chapter outlines the remedies available in both legal systems.

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<sup>76</sup> Albeit in slightly different modes of incorporation. For a comparison and critical evaluation of the Irish mode of incorporation see Ray Murphy, 'The incorporation of the ECHR into Irish Domestic law', (2001) 6 *European Human Rights Law Review* 622.





*Respect, Protect and Fulfil*



**International and Domestic Human Rights Law, Post-Conflict  
Peacebuilding and Reconciliation on the Island of Ireland**

## International and Domestic Human Rights Law, Post Conflict Peacebuilding and Reconciliation on the Island of Ireland

The Belfast Agreement can rightly be seen as putting human rights at the centre of a post-conflict agreement. Mary Robinson, when High Commissioner for Human Rights, described the Agreement as:

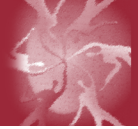
...conspicuous by the centrality it gives to equality and human rights concerns. Few documents emerging from the divisive and difficult political negotiations have so well captured the importance in fairness in creating right relationships. In its preambular paragraphs and throughout the text, and indeed in all the new institutions and mechanisms established as a result of the Agreement, concerns around fairness and justice are a recurring theme.<sup>77</sup>

The Agreement was concluded following multi-party negotiations, including the British and Irish governments, at Belfast on Good Friday, 10 April 1998, and provides the framework for the current peace process in Northern Ireland. The first Multi-Party Agreement<sup>78</sup> is broken into three strands: Strand 1 – Democratic Institutions in Northern Ireland, including a devolved Northern Ireland Assembly with power-sharing and proportionality; Strand 2 – North/South Ministerial Council, established under a British-Irish Agreement and establishing national and cross-border implementation bodies to consult, co-operate and act on matters of mutual interest; Strand 3 – British-Irish Council and British-Irish Intergovernmental Conference to work on matters of mutual interest including, but not limited to, transport, agriculture, cultural, health and educational issues, and security. The Agreement further delineates principles relating to Decommissioning, Security, Policing and Justice, Prisoners, and Human Rights, including provision for the establishment of human rights commissions north and south of the border.

The fundamental principle of co-ordination between north and south, and the principles of ‘partnership, equality and respect’ and cross-community relations are the foundation for all three strands of the Agreement. The re-establishment of the Northern Ireland Assembly under Strand 1, and the creation of a North-South Ministerial Council under Strand 2 to co-ordinate the Northern Ireland

<sup>77</sup> Mary Robinson, ‘Equality and Human Rights – Their role in Peace Building’, Speech at the Stormont Hotel, 2 December 1998, cited in Paul Mageen and Martin O’Brien, ‘From the Margins to the Mainstream: Human Rights and the Good Friday Agreement’, (1998) 22 *Fordham International Law Journal* 1499.

<sup>78</sup> Agreement Reached in the Multi-Party Negotiations, 10 April 1998.



Assembly and Irish Parliament, reflect the necessity of self-government and the principle of co-management of the conflict, enshrined in earlier agreements. The co-dependence of the bodies established by the Agreement is underlined by the requirement that for the Ministerial Council to be operational, the Northern Ireland Assembly must continue to function.

The second Agreement,<sup>79</sup> between the British and Irish governments, recognises the principles embodied in the primary agreement, including the principle of self-determination of Northern Ireland, and provision by the Irish Government for amendment to the Constitution to reflect such a principle. Both governments have undertaken the following obligations:

- recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status;
- recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland;
- acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union;
- affirm that, if in the future, the people of the island of Ireland exercise their right of self-determination to bring about a united Ireland, it will be a binding obligation on both governments to introduce and support in their respective Parliaments legislation to give effect to that wish;
- affirm that whatever choice is freely exercised by the 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 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 right, and;

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<sup>79</sup> Agreement Reached Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, 10 April 1998 [the 'British-Irish Agreement'].

- recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both.<sup>80</sup>

The Agreement enunciates principles of human rights to which each of the parties commit; including the rights to free political thought, freedom of expression and religion, freedom to seek constitutional change, equal opportunity, and freedom from sectarian harassment. Each of the governments also committed itself to strengthening of national human rights guarantees: in the case of the United Kingdom, by incorporation of the European Convention on Human Rights into domestic law and, in the Irish case, by strengthening constitutional protections and examining the question of incorporation of the European Convention on Human Rights.<sup>81</sup> Furthermore, each of the current human rights commissions, the Irish Human Rights Commission and the Northern Ireland Human Rights Commission, has been created pursuant to the provisions of the agreement with a mandate to 'ensure that the human rights of all people in the State are fully realized and protected in law, in policy and practice'.<sup>82</sup>

Human rights can therefore be seen as being mainstreamed within the Agreement,<sup>83</sup> and all the signing parties have committed themselves to respect and uphold this core element of the Agreement. The civil, political, socio-economic, cultural and minority rights thus recognised in the Agreement reflect the contents of the international human rights instruments that both governments have already ratified and accepted as binding in international law. In this way, the Agreement provides that basic human rights obligations should be taken seriously, given real effect and reflected in the implementation of the Agreement in Northern Ireland and Ireland and that this general commitment applies to all the signatory parties.<sup>84</sup>

These specific provision are a core element of the commitments that all the

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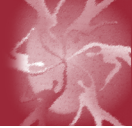
<sup>80</sup> *Ibid.*, article 1. For a thorough examination of the self determination and minority rights aspects of the Belfast Agreement, see Christine Bell and Kathleen Cavanaugh, 'Constructive Ambiguity or Internal Self-determination? Self-determination, Group Accommodation, and the Belfast Agreement', (1998) 22 *Fordham International Law Journal* 1345.

<sup>81</sup> However for an up to date analysis of the extent that this has been complied with see Colm O'Cinneide, *Equivalence in Promoting Equality – The Implications of the Multi-Party Agreement for the Further Development of Equality Measures for Northern Ireland and Ireland*, Equality Authority, 2006.

<sup>82</sup> Irish Human Rights Commission, Annual Report, 2003, at 72.

<sup>83</sup> See P. Mageean and M. O'Brien, 'From the Margins to the Mainstream', (1999) 22 *Fordham International Law Journal* 1389.

<sup>84</sup> This interpretation of the Agreement as meshing with international human rights law is supported by the explicit statement in the *Constitutional Issues* provisions recognising the 'equality' of civil, political, social and economic rights, which reflects the position adopted in the UN Vienna Declaration.



parties to the Agreement have entered into, and therefore this element of the Agreement should not be seen as secondary. All of the specific provisions of the Agreement<sup>85</sup> should be interpreted and applied in a purposive manner in line with the general human rights commitments it contains, as should all implementing legislation. These are integral provisions of the Agreement. All of the specific human rights-related commitments set down in the Agreement are binding, and need to be fully implemented.

When the Multi-Party Agreement was put to referenda in Northern Ireland and the Republic on 22 May 1998, it received the backing of 71% of the population of the North and 94% of the population in the South. Subsequently, the process of instituting the agreement was started, by virtue of the Northern Ireland Act 1998. This led to the re-establishment of the Stormont government and the election of the Northern Ireland Executive, in November 1999. Pursuant to the terms of the Agreement, the Royal Ulster Constabulary was overhauled and the Police Service of Northern Ireland has been created. The Northern Ireland Executive was suspended in 2000<sup>86</sup> and is yet to be re-established.

The Agreement contains significant commitments on the part of both the Irish and United Kingdom governments, as well as the other parties to the document, to implement measures to ensure the protection of human rights and in particular to promote equality of opportunity. However in practice what the Agreement requires of its parties is a source of considerable debate, and its meaning and interpretation continues to be contested at both the academic and the political level. There is an absence of political consensus in Northern Ireland as to the status and contents of the Agreement.<sup>87</sup>

Academic analysis has attempted to identify the core elements of the Agreement and to describe its impact and scope. Professor Colin Harvey has described the Agreement as embodying the principle of deliberative democracy within Northern Ireland's constitutional arrangements and as reconstituting the fundamental constitutional basis of its relationship with both the United Kingdom and Ireland. Professor Brendan O'Leary has characterised the Agreement as essentially a 'consociational agreement' with external and cross-border

<sup>85</sup> See Colin Harvey, 'Governing After the Rights Revolution', (2000) 27 *Journal of Law and Society* 61, at pp. 86-87.

<sup>86</sup> Northern Ireland Act 2000, section 1.

<sup>87</sup> See Colin Harvey, 'Governing After the Rights Revolution', (2000) 27 *Journal of Law and Society* 61, at p. 79.

<sup>88</sup> See C. Harvey, 'The New Beginning: Reconstructing Constitutional Law and Democracy in Northern Ireland', in C. Harvey, ed., *Human Rights, Equality and Democratic Renewal in Northern Ireland*, Oxford: Hart, 2001, at pp. 9-53; B. O'Leary, 'The Nature of the Agreement', (1999) 22 *Fordham International Law Journal* 1628, and B. O'Leary, 'Comparative Political Science and the British-Irish Agreement', in J. McGarry, ed., *Northern Ireland in a Divided World*, Oxford: Oxford University Press, 2001, at p. 53.

dimensions, providing for internal and cross-border political arrangements permitting cross-community power-sharing within a human rights framework.<sup>88</sup>

## **Domestic Human Rights Law**

Human rights obligations within the United Kingdom of Great Britain and Northern Ireland consist of a combination of domestic and international law. They comprise provisions of universal and regional international instruments, protecting civil and political rights as well as economic, social and cultural rights, which are binding on the State, although they are not necessarily enforceable before domestic courts.

No single written document can be identified as the constitution in the United Kingdom. The traditional view of the protection of human rights<sup>89</sup> in the United Kingdom was that a person was free to do anything he or she wanted unless expressly forbidden by law. Accordingly, legislation adopted by Parliament need not conform to pre-existing, over-arching norms. That is not to say, however, that British law does not offer human rights protection, and it has been argued that 'in practice fundamental human rights are better protected under ordinary legislation and common law in Britain than under constitutional guarantees in some other countries'.<sup>90</sup>

The Human Rights Act 1998 incorporated the European Convention on Human Rights into the domestic law of the United Kingdom, making the rights enumerated within it enforceable in United Kingdom courts and directly applicable to the activities of public bodies. The 1998 Act and any subsequent legislation guarantees a foundational basis for civil and political rights within the United Kingdom including Northern Ireland, and safeguards against legislation endangering or violating such rights. As part of the wider programme of devolution within the United Kingdom, the European Convention on Human Rights was directly incorporated into Northern Irish law by virtue of the Northern Ireland Act 1998, which 'in effect amounts to a Northern Ireland Constitution'.<sup>91</sup>

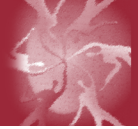
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<sup>89</sup> Sometimes the terminology of civil liberties or fundamental rights is used. This notion was considerable influenced by the Victorian jurist A.V. Dicey. See A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*. (12th edn.), London: Longmans, 1997.

<sup>90</sup> Kevin Boyle, Colm Campbell and Tom Hadden / Forum for Peace and Reconciliation, *The Protection of Human Rights in the Context of Peace and Reconciliation in Ireland*, 1996, at p. 41.

<sup>91</sup> Christine Bell, *Peace Agreements and Human Rights*, Oxford: Oxford University Press, 2003, at p. 307. Section 6(2)(c) of the Northern Ireland Act 1998 provides that legislative acts of the Assembly must not be incompatible with the European Convention on Human Rights. Also the discussion of *Robinson v Secretary of State for Northern Ireland and Others* (2002) N.I. 390. in Kieran McEvoy and John Morrison 'Beyond the Constitutional Moment' 2003 27 *Fordham International Law Journal* 961.





The Human Rights Act came into force on 2 October 2000. This legislation incorporates the European Convention on Human Rights (European Convention on Human Rights) into United Kingdom law and enables, for the first time, victims of human rights abuses to obtain remedies in local (domestic) courts rather than having to go to the European Court of Human Rights in Strasbourg. Domestic courts are now required to interpret legislation so as to uphold the Convention rights. The only qualification to this is where the High Court or Court of Appeal decides that the legislation itself (or a part of it) is incompatible with the European Convention. In such instances, the Court can make a 'declaration of incompatibility', although this does not affect the validity or continued operation and enforcement of the legislation. The Act also imposes a duty on all public authorities to act in a way that is compatible with the Convention.

The British legislation was followed by a similar initiative in Ireland, the European Convention on Human Rights Act 2003. It entered into force in January 2004. Ironically, Ireland was the last State in the now 46-member Council of Europe to incorporate the European Convention into its national law. Yet Ireland was among the first countries to accept the European Convention, in the 1950s, the first to submit itself to the jurisdiction of the European Court of Human Rights, and the respondent in the initial case at the European Court of Human Rights, in 1960.<sup>92</sup>

In contrast to the situation in the United Kingdom, the basic law of the Republic of Ireland and the primary document for human rights protection is the Irish Constitution (*Bunreacht na hÉireann*),<sup>93</sup> in which are entrenched a number of fundamental civil and political rights, and principles from which may be derived social and economic rights. These rights can generally be categorized under five groupings: Personal Rights, the Family, Education, Private Property and Religion. Accordingly, the Constitution – which is founded upon the principle of self-determination and government on the basis of the will of the people – protects such rights and liberties as equality before the law, the right to liberty, freedom of expression, assembly and association, the right to private property, freedom of conscience and religion, and fair trial rights. Furthermore, economic and social rights are recognised such as the right to education and the right to earn a livelihood,<sup>94</sup> as well as recognition of the obligation of the state towards protection of the 'economic interests of the weaker sections of the community'.

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<sup>92</sup> See William A. Schabas, 'Ireland, the European Convention on Human Rights and the personal contribution of Sean MacBride', in John Morison, Kieran McEvoy and Gordon Anthony, eds., *Human Rights, Democracy and Transition: Essays in Honour of Stephen Livingstone*, Oxford, Oxford University Press, 2006.

<sup>93</sup> *Bunreacht na hÉireann*, Constitution Of Ireland, Enacted by the People 1st July, 1937, in operation as from 29 December 1937.

## The International Legal Framework

The United Kingdom is subject to both customary and conventional (or treaty) international law. Customary international law consists of a body of legal norms and principles that have been accepted by States as binding upon them, as reflected in their own practice. There is much authority in the courts of the United Kingdom for the recognition of customary international law. A recent acknowledgement of the relevance of customary international law was provided in the legal opinion prepared by Attorney-General Lord Goldsmith in the build-up to the Iraq war. Noting the theoretical possibility that British leaders might be prosecuted for crimes against peace, Lord Goldsmith referred to 'customary international law which automatically forms part of domestic law'.<sup>95</sup>

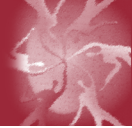
It is often said that the provisions of the Universal Declaration of Human Rights may be taken as a codification of human rights standards that make up customary international law. Customary international law is made up of principles so widely accepted by nations that they are binding. The United Nations Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights, has proposed a non-exhaustive list of norms of customary international law: the prohibitions of slavery and of torture, as well as cruel, inhuman or degrading treatment or punishment; protection against arbitrary deprivation of life, and from arbitrary arrest and detention; freedom of thought, conscience and religion, the presumption of innocence, the prohibition of the execution of pregnant women or children, and of the advocacy of national, racial or religious hatred; the right of persons of marriageable age to marry; the right of minorities to enjoy their own culture, profess their own religion, or use their own language.<sup>96</sup> Faithful to its mandate, the Committee confined its analysis to civil and political rights. But many if not all of the economic, social and cultural rights set out in articles 22 to 27 of the Universal Declaration of Human Rights can also claim customary legal status.

By and large, customary legal norms of human rights are also codified in applicable treaties. Indeed, the fact that States have accepted such norms in treaties or conventions provides evidence of their customary status. Often, they will declare, at the time of negotiation of a treaty, that they consider the

<sup>94</sup> *Ibid.*, art. 45.2. This takes the form of a Directive of Social Policy and provides for the right of 'citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs', which was interpreted by the courts as an implied constitutional right to earn a livelihood (*Murtagh Properties v. Cleary*, (1972) I.R. 330).

<sup>95</sup> Legal opinion of Lord Goldsmith dated 7 March 2003, para. 34.

<sup>96</sup> General Comment 24, para. 8.



provision to reflect customary international law. Because customary international law and treaty law overlap, it might be argued that customary international law is of little practical concern. But customary international law has the great strength of being directly applicable before the courts, as Lord Goldsmith recalled in his legal opinion. In an often cited reference, British judge Lord Denning said that customary norms of international law are incorporated into the common law automatically, and apply to the extent they are not incompatible with a statute.<sup>97</sup> Moreover, customary international legal norms may continue to apply to a State even when it has derogated from international treaties. This is not an insignificant issue for a State like the United Kingdom, which has regularly derogated from important human rights treaty provisions.

Both the Republic of Ireland and the United Kingdom are parties to a plethora of international and regional human rights instruments. These are only directly applicable before national courts when they have been incorporated by legislation, as was the case with the European Convention on Human Rights. Most human rights treaties, however, have not been directly incorporated into the laws of the United Kingdom or Ireland.

Both States have ratified the International Covenant on Civil and Political Rights,<sup>98</sup> the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child,<sup>99</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>100</sup> the Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women,<sup>101</sup> the European Convention for the Protection of Human Rights and Fundamental Freedoms (more commonly known as the European Convention of Human Rights), the European Social Charter and its amending Protocol<sup>102</sup> and the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its protocols.

The Framework Convention for the Protection of National Minorities has also

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<sup>97</sup> *Trendtex Trading Corporation v. Central Bank of Nigeria*, [1977] 1 All ER 881 (HL).

<sup>98</sup> In addition, Ireland and the United Kingdom have ratified the Second Optional Protocol, which amends the Covenant so as to abolish capital punishment. Only Ireland has ratified the first Optional Protocol, which allows the filing of individual petitions or 'communications' to the Human Rights Committee, although this remedy has been rarely used in Irish human rights litigation.

<sup>99</sup> Both have also ratified the Optional Protocol on Children in Armed Conflict, but not the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

<sup>100</sup> The United Kingdom, but not Ireland, has also ratified the Optional Protocol to the Convention, allowing for on-site inspections by the Committee Against Torture.

<sup>101</sup> In addition, both have accepted the Optional Protocol allowing for individual petitions to the Committee for the Elimination of Discrimination Against Women.

<sup>102</sup> The United Kingdom has signed but not yet ratified the revised European Social Charter.

been ratified by the United Kingdom and Ireland. Only the United Kingdom has accepted the European Charter for Regional or Minority Languages, pursuant to an undertaking in the Belfast Agreement to consider such ratification as part of a commitment to linguistic diversity, including Irish and Ulster-Scots. Ireland has not signed or ratified the European Charter for Regional or Minority Languages. However, the Constitution provides that the Irish language be the national and first language, with English the second official tongue.<sup>103</sup> It is considered that '[a]lthough Irish speakers are a minority of the population as a whole, the constitutional position of Irish as the first official language and the continued policy of successive Governments to revive the Irish language ensures that their rights are protected'.<sup>104</sup>

The United Kingdom and Ireland are also to be guided by declaratory instruments in international law (sometimes called 'soft law') such as the Code of Conduct for Law Enforcement Officials,<sup>105</sup> the Basic Principles for the Use of Force and Firearms by Law Enforcement Officials,<sup>106</sup> and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. In consideration of the human rights obligations of the State and the best-practice models for fulfilment of such obligations, State actors such as military forces and police authorities, including the Police Service of Northern Ireland (PSNI), should make reference to such international instruments.

Parliament in the United Kingdom has introduced specific legislation which protects human rights and prevents against discrimination, building upon the human rights provisions of many of the international instruments: Equal Pay Act 1970, Race Relations Act 1976, Sex Discrimination Act 1976, Data Protection Act 1984, Disability Discrimination Act 1995, Access to Health Records Act 1989, Children Act 1989, Freedom of Information Act 2000. Within the context of Northern Ireland, such anti-discrimination measures have been implemented as the Sex Discrimination (Northern Ireland) Order 1976, Fair Employment Act 1989, Fair Employment and Treatment (Northern Ireland) Order 1997, Regulation of Investigatory Powers Act 2000, Race Relations (Northern Ireland) Order 1997.

However, although it is provided that 'Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States',<sup>107</sup> like the United Kingdom, Ireland has a dualist legal system in which international law set out in treaties is not directly applicable and enforceable

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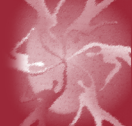
<sup>103</sup> Constitution of Ireland, art. 8.1 and 8.2.

<sup>103</sup> Core document forming part of the reports of States Parties: Ireland. 01/07/98, UN Doc.HRI/CORE/1/Add.15/Rev.1

<sup>105</sup> UN Doc. A/34/169.

<sup>106</sup> UN Doc. A/45/121.

<sup>107</sup> Constitution of Ireland, art. 29.3.



before the courts until it has been incorporated into domestic law.<sup>108</sup> Of the human rights instruments enumerated above, only the European Convention on Human Rights<sup>109</sup> has been directly incorporated into Irish law.<sup>110</sup>

There are some discrepancies between Ireland's constitutional principles and the principles of major human rights instruments, and some notable absences. Of particular note is the absence within the Constitution of any provisions dealing with racial discrimination or minority rights. Ireland has not incorporated the International Convention on the Elimination of All Forms of Racial Discrimination, which it only ratified in 2000, despite the fact that the Convention was adopted thirty-five years earlier. Accordingly, the only provision on the subject within Irish law is article 14 of the European Convention on Human Rights, which includes a proscription on discrimination on the basis of race with respect to rights enshrined elsewhere in the Convention. With regards to protection of minorities, there is no provision in Irish law aside from the European Convention on Human Rights non-discrimination provision, which also prohibits discrimination on the grounds of association with a national minority.<sup>111</sup> As for discrimination, especially in the workplace, rights enumerated in the Constitution have been expanded upon in specific legislative acts, including the Employment Equality Act 1998 and the Equal Status Act 2000.

Generally, human rights obligations are not absolute but States may suspend such rights on a limited, temporary basis. The primary instruments, such as the European Convention on Human Rights, as incorporated into domestic law, and the International Covenant on Civil and Political Rights, allow for a system of derogation.<sup>112</sup> In the event of a public emergency, the State may suspend its obligations, and take measures pursuant to such suspension, which would otherwise be in violation of the suspended rights. This is intended to be a truly exceptional measure. States are, however, restricted in the measures that may be taken and the rights that may be suspended. Certain rights are deemed non-derogable, i.e., their protection may not be suspended even in case of a state of emergency. Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights, there may be no suspension of the right to life<sup>113</sup> and the prohibitions on torture, inhuman or degrading treatment or punishment, on slavery or servitude and on retroactive criminal penalties.

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<sup>108</sup> Article 29.3 provides that 'No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas [legislature].'

<sup>109</sup> Incorporated formally into Irish law by the European Convention on Human Rights Act 2003.

<sup>110</sup> The Geneva Conventions have also been incorporated in domestic law.

<sup>111</sup> Ibid.

<sup>112</sup> Derogations are authorised by article 4 of the International Covenant on Civil and Political Rights, article 15 of the European Convention on Human Rights.

<sup>113</sup> Although the European Convention on Human Rights makes this subject to its own exception in the case of 'lawful acts of war' (see art. 15(2)).

During the course of the conflict in Northern Ireland, the United Kingdom derogated from its international human rights obligations on a number of occasions in order to shelter measures taken with respect to Northern Ireland. Compliance with the International Covenant on Civil and Political Rights was abrogated by derogation on 17 May 1976 and again on 23 December 1988. In the latter case, the United Kingdom derogated on the basis of a finding by the European Court of Human Rights that internment pursuant to the Prevention of Terrorism (Temporary Provisions) Act 1973 constituted a violation of article 5(3) of the European Convention.<sup>114</sup> For the same reason, the United Kingdom derogated from this specific European Convention on Human Rights obligation on 23 December 1988. Further derogations under article 15 of the European Convention on Human Rights have been taken throughout the course of the conflict.<sup>115</sup>

The events of 11 September 2001 have impacted greatly upon human rights discourse and protection within the United Kingdom. The government has formulated derogations from its human rights obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights so as to facilitate implementation of stringent anti-terror legislation.<sup>116</sup> Additionally, the United Kingdom has put in place a series of derogations under national anti-terror legislation since 2001.

### The Human Rights Commissions

Pursuant to the terms of the Belfast Agreement, the Northern Ireland Human Rights Commission was created with responsibility for 'keeping under review the adequacy and effectiveness of laws and practices, making recommendations to Government as necessary; providing information and promoting awareness of human rights; considering draft legislation referred to them by the Assembly; and, in appropriate cases, bringing court proceedings or providing assistance to individuals doing so'.<sup>117</sup> The ongoing independence of the Commission from government, as foreseen in the Belfast Agreement, is highlighted by the Commission's criticism in its 2004 Annual Report of the failure of the Government to support the work of the Northern Ireland Human Rights Commission and its treatment of the 'Commission as a "political"'

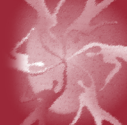
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<sup>114</sup> *Brogan et al. v. United Kingdom*, Series A, Vol. 145B.

<sup>115</sup> Derogations were instituted on 27 June 1957, 25 June 1969, 20 August 1971, 23 January 1973, 16 August 1973, 19 September 1975, 12 December 1975 and 18 December 1978.

<sup>116</sup> The United Kingdom undertook a derogation under article 15(3) of the European Convention on Human Rights on 18 December 2001 in order to implement provisions of the Anti-Terror, Crime and Security Act 2001, providing for extended powers of arrest and detention of foreign nationals.

<sup>117</sup> Belfast Agreement, Section 6 Rights, Safeguards and Equality of Opportunity, Para 5 (New Institutions in Northern Ireland).



institution, rather than as a completely independent body whose sole concern is the promotion and protection of human rights'.<sup>118</sup>

The Commission has carried out research into such subjects as death investigation systems, the rights of older people, the rights of transsexuals, women in prison, children in custody, and racism.<sup>119</sup> Further work has been undertaken on victims' rights, human rights education through the national school curriculum, scrutiny of legislation by the Commission's Legislation and Policy Committee, and ongoing work with the Joint Committee of Human Rights Commissions, including the Bill of Rights Project.

Also established as part of the commitments undertaken in the Belfast Agreement, the Irish Human Rights Commission was created by the Human Rights Commission Acts of 2000 and 2001. Operational since 2003, its mandate is to 'speak fearlessly and clearly where human rights are concerned, to pursue and promote best practice and to do this whether scrutinising legislative proposals, examining the law in practice, conducting research, promoting debate, examining individual complaints or working with...colleagues in Northern Ireland on human rights issues of common concern'.<sup>120</sup> These responsibilities are derived from section 8 of the Human Rights Commission Act 2001 and include authority to prepare and publish reports, make recommendations to government as to the protection of human rights, and act as *amicus curiae* (friend of the Court) in relevant legal proceedings before the High Court or Supreme Court. To date the Commission has looked at questions such as the administration of justice, economic, social and cultural rights, racism, persons with disabilities, gender and, equality and difference.

Additionally, members of the Commission work alongside their counterparts from the Northern Ireland Human Rights Commission, in the Joint Committee, as envisioned by sub-section 6(10) of the Belfast Agreement, to consider human rights issues north and south of the border. As well as the full Joint Committee, sub-Committees have been created to examine issues such as racism, and a Charter of Rights for the Island of Ireland. Thus the Agreement makes provision for a linked approach to fundamental rights across the whole island of Ireland by stating that the joint committee formed by the Irish Human Rights Commission and the Northern Ireland Human Rights Commission would consider amongst other matters the possibility of establishing a charter:

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<sup>118</sup> Northern Ireland Human Rights Commission, Annual Report 2004, Chief Commissioner's Overview, at 7.

<sup>119</sup> *Ibid.*, at 44-47.

<sup>120</sup> Irish Human Rights Commission, Annual Report, 2003, at 4.

‘reflecting and endorsing agreed measures for the protection of fundamental rights for everyone in the island of Ireland.’<sup>121</sup>

It cannot be gainsaid that the agreement has changed the legal landscape of the island of Ireland with regard to human rights. As we have seen the Agreement has put human rights at the centre of a post-conflict agreement. Notwithstanding the considerable human rights protections in each of the domestic legal systems the national governments have strengthened national human rights guarantees. In addition the human rights commissions have been created with a mandate to ‘ensure that the human rights of all people in the State are fully realized and protected in law, in policy and practice’. Civil, political, socio-economic, cultural and minority rights recognised in the Agreement reflects the contents of the international human rights instruments that both governments have already ratified and accepted as binding in international law.

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<sup>121</sup> See Multi-Party Agreement, Rights, Safeguards and Equality of Opportunity, para. 10.





*Respect, Protect and Fulfil*



**Peace II in the Border Regions and Northern Ireland,  
Analysis and Questionnaires**

## Peace I and Peace II in the Border Regions and Northern Ireland

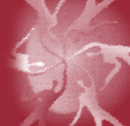
Since the end of the 1980s, Northern Ireland has benefited from special financial supports in favour of peace and reconciliation. This is now the most concrete expression of European solidarity towards the peace process established by the Belfast Agreement.

In 1989, the European Community became one of the main sources of funding for the International Fund for Ireland (IFI), an international organisation established by a treaty between the United Kingdom and Irish governments, 'to promote economic and social development, and to encourage contact, dialogue and reconciliation between nationalists and unionists throughout Ireland'. The European Union contributes €15 million per year to the IFI.

In addition, in 1995, the European Union set up a special Programme for Peace and Reconciliation (the 'Peace Programme'), which operates in Northern Ireland and in the border region of Ireland. This unique and very innovative Structural Funds programme aims 'to reinforce progress towards a peaceful and stable society and to promote reconciliation in the region'.<sup>122</sup> It aims to 'reinforce progress towards a peaceful and stable society and promote reconciliation'. In contributing towards this overall strategic aim, Peace II has two specific objectives that seek to make the programme distinctive from other Structural Fund interventions operating in Northern Ireland and Ireland. They are:

- **Address the legacy of the conflict;** the programme is intended to address specific problems generated by the conflict in order to assist the return to a normal, peaceful and stable society. Projects and actions will be supported which address the economic and social patterns which have grown as a result of the Troubles'; and
- **Take opportunities arising from peace;** to encourage actions which have a stake in peace and which actively help promote a stable and normal society where opportunities can be grasped. Projects and actions will be supported which have a remedial effect on sectors, areas or groups which have been hindered in their economic and social development by the conflict and for which the prospect of a more stable society is a new opportunity.<sup>123</sup>

<sup>122</sup> See ADM/CPA, *Programme for Peace and Reconciliation, Socio-Economic Development and Cross Border Work in the Southern Border Counties of Ireland*, 1999, and ADM/CPA, *On the Road to Peace*, 2002.



Successful projects have needed to fulfil one or both of these objectives to meet the 'distinctiveness criteria'. In addition, projects must state how they are 'paving the way to reconciliation' through the promotion of mutual understanding and respect between and within communities and traditions in Northern Ireland and/or North and South.

The Peace II Programme was originally allocated €531 million for a five year programme period (2000-2004) but a two year programme extension (2005 and 2006) was formally agreed at the beginning of 2005. The programme has been structured around five priorities:

- economic renewal;
- social integration; inclusion and reconciliation;
- locally based regeneration and development strategies;
- outward and forward looking region; and
- cross border co-operation.

The Managing Authority for Peace II is the Special EU Programmes Body (SEUPB), a cross border institution established under the Belfast Agreement. The Programme is implemented by various bodies including government departments, non-governmental organizations known as Intermediary Funding Bodies (IFBs), Local Strategy Partnerships (LSPs) and County Council Led Task Forces.

Pobal, formerly Area Development Management Ltd (ADM), is an intermediary company established by the Irish Government in agreement with the European Commission to support local social and economic development in Ireland. The Combat Poverty Agency (CPA) is a statutory body that works to prevent and eliminate poverty in Ireland. In 1995, ADM and CPA were awarded responsibility for the implementation of a substantial part of the EU Special Support Programme for Peace and Reconciliation in the Border Region of Ireland (1995-1999). This Programme was established to provide practical assistance to the region after the autumn ceasefires of 1994. To implement the Programme efficiently and effectively, a joint implementing body, ADM/CPA, was established in 1996. In November 2005 ADM changed its name to Pobal and ADM/CPA changed its name to Border Action.

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<sup>123</sup> See ADM/CPA, *Building on Peace – Supporting Peace and Reconciliation after 2006*, 2004.

Peace II is aimed at a number of specific groups that have been affected by the violence due to the conflict in Northern Ireland, namely: victims of conflict and their families; people displaced as a result of the conflict and their families; politically motivated ex-prisoners and their families; women and young people.

There is a considerable body of research devoted to each of these groups in the context of the Northern Ireland conflict.<sup>124</sup> There has been controversy over the issues of funding for politically motivated ex-prisoners and also the definition of victims. The Agreement indicated that the participants believed that it was essential that as a necessary element of reconciliation that the suffering of victims be recognised. A Report was produced by Sir Kenneth Bloomfield, as Victims Commissioner, entitled: *We will remember them*.<sup>125</sup> In this report, despite a clearly wide definition of victim, a hierarchy of victimhood was reinforced, as Mageean and O'Brien have explained:

He devoted a great deal of time and attention to the needs of police officers injured in the conflict and the relatives of those officers who were killed and also to the relatives of those who disappeared due to acts of paramilitary groups. However he is not as sympathetic to the concerns of the relatives of those killed by the state. Here he simply recorded their concerns that he agreed to report on them.<sup>126</sup>

The legal position of ex-prisoners is still unresolved with regard to a substantial set of issues. This group faces difficulty in accessing employment due to both legal and unlawful discrimination.<sup>127</sup> However, Harvey has posited that both Peace Programmes have had positive outcomes in giving ex-prisoners a sense of re-belonging to their communities, at least in the border counties.<sup>128</sup>

The position of politically motivated prisoners and their re-integration into the

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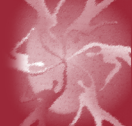
<sup>124</sup> For an overview, see Marie Smyth and Marie-Therese Fay, eds., *Personal Accounts from Northern Ireland's Troubles: Public Conflict, Private Loss*, London: Pluto Press, 2000. For the effects of the conflict on children, see Erin Lovell and Mark Cummings, 'Conflict, Conflict Resolution and the Children of Northern Ireland: Towards Understanding the Impact on Children and Families', Kroc Institute, 2001. With regard to prisoners, see Kieran McEvoy, 'Prisoners, the Agreement and the Political Character of the Northern Ireland Conflict,' (1998) 22 *Fordham International Law Journal* 1539.

<sup>125</sup> Sir Kenneth Bloomfield, *We Will Remember Them*, Report of the Northern Ireland Victims Commissioner, Northern Ireland Stationary Office, 1998.

<sup>126</sup> Paul Mageean and Martin O'Brien, 'From the Margins to the Mainstream: Human Rights and the Good Friday Agreement', (1998) 22 *Fordham International Law Journal* 1499 at 1531.

<sup>127</sup> See Ruth Jamieson and Adrian Grounds, *No Sense of a Ending – The effects of long term imprisonment amongst Republican prisoners and their families*, Expac, Seesy Street Publishing, Monaghan, 2002.

<sup>128</sup> Brian Harvey et al, *The Emerald Curtain-The Social Impact of the Irish Border*, Triskele Community Training and Development, 2005.



community was always going to be one of the most difficult aspects of peace process in Northern Ireland. According to Gormally:

It is clear that the aspirations as well as the contradictions and ambiguities, of the Northern Ireland peace process are reflected in the issues and debates surrounding ex-prisoner release and reintegration. It is similarly clear that release and reintegration have a vital contribution to make to that peace process itself.<sup>129</sup>

## **Survey and Methodology**

In order to assess the status of a human rights approach with respect to various peacebuilding and reconciliation projects in Northern Ireland and the border regions, a survey was conducted. This was done by means of a questionnaire, which in some cases was followed up with interviews and correspondence. The questionnaire itself encouraged respondents to comment after answering a number of positive or negative answers to questions. The questionnaire used for data collection can be found in Appendix 1. The questionnaire was drawn up after extensive consultation with the Area Development Management Limited and Combat Poverty. The advice of Dr. Jane Walsh of the Department of Psychology in the National University of Ireland, Galway was also obtained.

The target groups of Peace II are victims of conflict-related violence and their families; people displaced as a result of conflict and their families; politically motivated ex-prisoners and their families; women and young people. The questionnaire asked specific projects to identify their target group. Most projects answered that they had a mixture of target groups.

A sample of 150 projects was chosen to take part in this research. These were a random selection from over 350 projects identified by Border Action that had received Peace II funding. They were both from the border counties and Northern Ireland. Some 71 projects returned completed questionnaires.

Each project in the sample was sent a questionnaire by post. A letter by the monitoring body of the projects explaining the objectives of the research was enclosed. Also enclosed was a letter indicating the willingness of those conducting the research to answer any questions that might have arisen for those completing the questionnaire. A number of projects took up this offer and contacted the Irish Centre for Human Rights in regard to the questionnaire. Ten projects were identified from the answers to the questionnaires and interviews

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<sup>129</sup> Brian Gormally, 'Conversion from War to Peace: Reintegration of Ex Prisoners in Northern Ireland', BICC, Bonn, 2001.

in person or telephone interviews were held with these projects. In addition there were a number of interviews with projects and stakeholders in Peace II.

## Detailed Identification of Respondents

Just over half of the projects that responded to the survey (37) involved victims of conflict-related violence and their families. Thirty-one projects are working with people displaced as a result of the conflict and just over a third of respondents – 26 projects – involve former prisoners. The overwhelming majority of respondent groups said that their participants include women and a majority also involved young people; who of course, may also be victims, displaced people or former prisoners (or family members of these Peace II 'target groups'). Sixty groups (85%) were working with women and total of 44 projects (62%) reported that young people were part of their project. The question regarding participation in the project allowed for overlap between the target groups.

The questionnaire then gave the projects an opportunity to describe the issues that the project aimed to address in the community and was followed by an open question as to the extent that the project involved rights and responsibilities. These questions allowed the projects to elaborate on their role in the community. Many of the projects gave detailed expositions of their target issues. Here are some examples:

Young people at risk, class, gender, age ethnic divisions within this community, the religious north-south divide, education, culture, career issues... Young people involved in the project are involved in groups and clubs, cross border exchanges in which human rights are discussed and kept in clear focus and assuming responsibility ... – Ramelton Community Youth Project.<sup>130</sup>

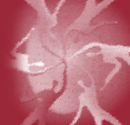
Louth Craftmark described itself as striving;

to increase the economic wealth of the target group and local community by increasing living standards and providing an outlet for self and cultural expression.<sup>131</sup>

Employment, education, culture, common history. Discussions around

<sup>130</sup> The Ramelton Community Youth Project supports the expansion of the Cross-Community Youth Initiative in Ramelton and has developed an outreach project for the surrounding schools and the Milford area. Funding was provided to employ a Youth Worker, Outreach Worker and an Administrator.

<sup>131</sup> Louth Craftmark received funding for the employment of a Craft Development Officer to assist craft enterprises carry out a specific programme of activities including the creation of, and support for, a craft cross border network.



everyone's right to remember and to celebrate their history and express their religious beliefs. - Foyle Training towards Reconciliation.<sup>132</sup>

Progress – a Monaghan based low income small farm-holders initiative aimed to address the following issues:

The legacy of the conflict; border road closures; family and farm business development. The restoration of normal neighbourly relations between those of different religious persuasions.

When then asked a general question of whether the project addressed human rights issues, almost two-thirds – 46 projects – said that they deal with human rights issues.

Before proceeding to examine specific human rights in more detail, the questionnaire provided space for the respondent project to articulate which human rights issues the project addressed. Respondents gave a wide variety of answers on the human rights issue(s) that the project addressed. Some of the answers from those respondent projects that did deal with human rights were as follows:

'Peace and reconciliation from the perspective of young people living in the cross border area.' – Rapid Programme.

'Right to work' – Clones Business Technology Park.

'Freedom of religion and self expression' – Sorry for Your Troubles.<sup>133</sup>

'The right of women to full and equal participation' – Women in Enterprise.<sup>134</sup>

'The basic human right to choosing ones own identity and being free to express it' – Border Minority Group.<sup>135</sup>

<sup>132</sup> The Foyle Training towards Reconciliation Project seeks to contribute to the realisation of reconciliation between diverse communities in Derry and Donegal by means of joint accredited training programmes.

<sup>133</sup> Project run by Quare Hawks Theatre Company to create and present a piece of thought provoking drama supporting peace building, by running a series of community arts workshops with target sector groups in target areas for the Peace II Programme.

<sup>134</sup> Project designed to contribute to the provision of information, support and training to women from Louth and Newry and Mourne. Delivery of specific additional training programmes for self-employed women and women considering entering self employment.

<sup>135</sup> Project designed to carry out a piece of action research needs assessment with the 40 group members of the Border Minority Group so as to advance the practice and capacity of community development, cooperation and communication through engagement in adult education and lifelong learning programmes operational within the region.

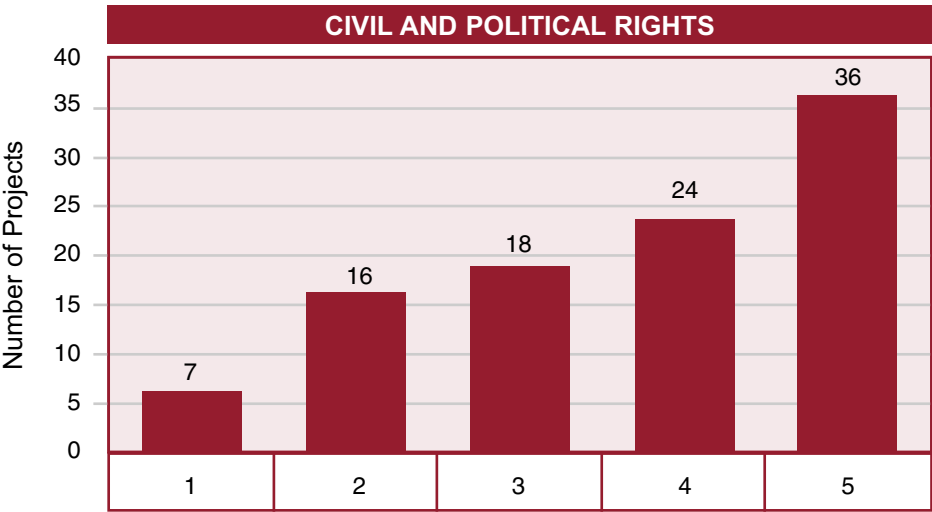
Ill treatment of people while in custody in the past is often an issue. Travel rights for ex-prisoners and rights of employment – La Nua Project.<sup>136</sup>

One of the respondent projects that answered negatively to this question framed a written answer to the question in human rights terms, despite the initial answer rejecting the proposition that the project addressed human rights issues:

Environmental and community related human rights but only in the wide sense – Robert Shearman Conservation Volunteers.

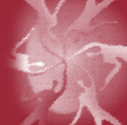
Civil and Political Rights

Although 32 groups said that they addressed civil and political rights, when asked a further series of questions about specific civil and political rights, a slightly larger number (36, or half of all respondent projects), said that their



1. Fair trial rights such as right to liberty, the right to be informed of reason for arrest, the right not to be arbitrarily detained.
2. Freedom from torture or inhuman or degrading treatment.
3. Freedom of association or peaceful assembly.
4. Issues of political participation.
5. Issues of freedom of thought, religion or opinion.





project addresses issues of freedom of thought, religion or opinion. Examples provided included 'engagement with members of the Orange Order with society at large' and 'freedom of religious expression without discrimination'.

Twenty-four projects address issues of political participation. When asked to elaborate, one respondent explained that '[t]he project attempts to encourage participation by community organisations in local political structures'.

Another said that they did so 'by encouraging community groups to engage with the political process in pursuit of their economic needs'.

There were 18 groups working on issues related to freedom of association or peaceful assembly. One example cited was the facilitation of 'sessions which touched on associations through communities'.

Sixteen respondent projects address issues of torture and degrading treatment. Interestingly, a group working on issues of violence in the home recognised that this right applied to their work; perhaps as a result of campaigning by women's groups to raise awareness that 'women's rights are human rights'.

When asked about fair trial rights, only seven projects said that they addressed these.

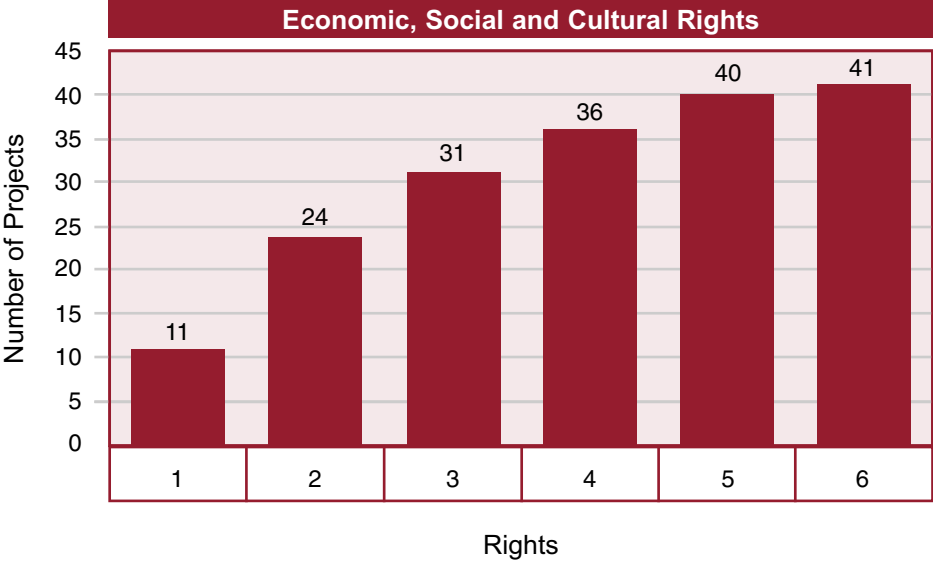
As we can note from the above information, civil and political rights were not as well represented in the respondents' projects as economic, social and cultural rights (see below). Freedom of thought, religion or opinion was the civil or political right that the majority of projects dealt with or perceived themselves as dealing with.

## **Economic, Social and Cultural Rights**

Perhaps not surprisingly, given the Peace Programme's focus on economic regeneration and social inclusion, more groups reported an involvement with economic, cultural and social rights than involvement with civil and political rights. Whereas less than half said they addressed issues of civil and political rights, three-quarters of the groups – 54 in all – report that they are working in the area of economic, social and cultural rights. The right to work was addressed by just over half of all projects (36) and the right to education by 41 projects. Along with this high identification with the right to education was the

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<sup>136</sup> Programme run by Iar Cimi Liatroma Teoranta to support the employment of a project co-ordinator, a development worker and an administrator to assist ex-political prisoners, their families and others access education, training, advice and mentoring as a progression to employment, equality and full integration.



1. Right to join a trade union

2. Right to health

3. Right to adequate standard of living

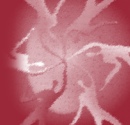
4. Right to work

5. Right to practice one's culture

6. Right to education

freedom to practice one’s culture, something addressed by over half of the projects surveyed (40). The right to earn an adequate standard of living was addressed by 31 projects. However the right to health and the right to join a trade union were comparatively low, scoring at 24 and 11 projects respectively.

Several written comments were provided in relation to economic, social and cultural rights. For example, concerning the right to work: ‘Participants need now to join workforce without prejudice’; ‘We are working towards increasing the employability of women’. With respect to the right to an adequate standard of living: ‘Yes in terms of a “richer” life through education.’ On the right to join a trade union: ‘We have informed our employees of their right to join a trade union’. With respect to the right to health: ‘Community health education course is also on offer.’ On the right to education: ‘As the project was a training programme it gave the participants an opportunity to access education in conflict resolution not available elsewhere.’ And concerning the freedom to practice one’s culture: ‘Through developing understanding between different



cultures'; 'This is a major need for the Protestant community in this region'; 'We are a cultural centre which promoted different cultures.'

## Discrimination Issues

The questionnaire then addressed the issue of discrimination. The projects were asked if they addressed different categories of prohibited discrimination. Most of the projects addressed at least one of the issues of discrimination. In ascending order of the most common were: discrimination on the grounds of age, with forty three projects, discrimination on the grounds of disability and on the grounds of sexual orientation (45), racism (49), discrimination on the grounds of political opinion (50) and finally equality of men and women (52).

The projects were also given the opportunity to comment on whether the project dealt with the challenges that arise from discrimination. Some of the replies were as follows: 'Through activities we openly challenge attitudes around difference and deal with problems that arise around sectarianism and racism

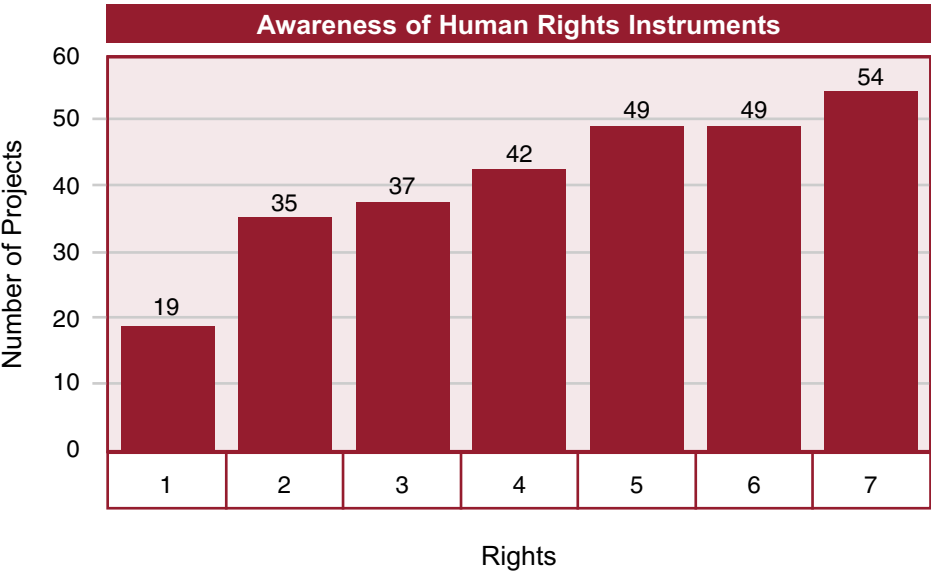


1. Discrimination based on age
2. Disability discrimination
3. Discrimination based on sexual orientation
4. Racism
5. Discrimination based on political opinion
6. Discrimination based on gender

locally'; 'Sessions dealing with historical instances of discrimination. Resulting discussion brought out individual experiences'; 'Participants have voiced their experiences of being discriminated against in the social and sporting spheres'; 'Participants have voiced their experiences of being discriminated against in the social and sporting spheres'.

### Awareness of Human Rights Legislation

More than two-thirds of projects (49 out of 71) responded positively when asked about their awareness of domestic human rights legislation. When asked specifically about their awareness of the two bodies set up under the Good Friday Agreement, the great majority (58 of 71) were aware of the Irish Human Rights Commission and a majority (38) were also aware of the NI Human Rights Commission. Despite this high level of awareness, however, only 11 projects had ever been in contact with either of these bodies.



1. International Covenant on Economic, Social and Cultural Rights

2. International Covenant of the elimination of Racial Discrimination

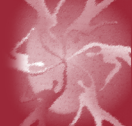
3. International Covenant on the Elimination of Discrimination against Women

4. International Covenant on Civil and Political Rights

5. European Social Charter

6. European Convention on Human Rights

7. Convention on the Rights of the Child



Asked if they were aware of the UK and Republic of Ireland's international human rights obligations, only 27 projects replied in the affirmative. They were also asked specific questions about the most important international treaties.

Although there was a relatively low level in response to the general question about awareness of international human rights obligations, there was generally a reasonable awareness of the international instruments when the questionnaire listed them. Predictably, there was a high recognition of the European Convention of Human Rights. However there was a lower recognition rate with respect to the United Nations Conventions and Covenants. There was generally a reasonable recognition rate of the anti-discrimination conventions, namely the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of Discrimination Against Women. There was also a high level of recognition on the Convention on the Rights of the Child.

Worryingly, with respect to the protection of economic, social and cultural rights, the treaty that was least recognised was the International Covenant on Economic, Social and Cultural Rights.

However even these numbers dropped significantly when respondents were asked about their awareness of the enforcement mechanisms: the European Court of Human Rights (33), the Human Rights Committee (16), the Committee on Economic, Social and Cultural Rights (17), the Committee on the Elimination of Racial Discrimination (15), the Committee on the Elimination of Discrimination Against Women (14) and the Committee on the Rights of the Child (20).

This number fell again when questioned on contact with enforcement bodies. In fact only one project had contacted any of the enforcement bodies.

## **Human Rights Training**

Surprisingly, although more than half (41) of the projects said that they helped to raise awareness of human rights and 31 said that they educated project participants about human rights, only 14 groups reported that anyone overseeing the project had received training in human rights. Respondents were questioned about human rights training. A surprisingly low number of respondent projects reported that they had received human rights training. There was in fact a smaller number than those which claimed to educate participants in human rights. A number of respondents actually requested human rights training in their comments on the questionnaire.

When asked whether the views of all participants are taken into account when decisions are made about the running of their project, the overwhelming majority (60) said that they were. An even higher number (65 of 71), claimed that their project is run in a transparent manner. Finally, after defining a human rights-based approach, the projects were asked if they had set out with the aim of embracing a human rights approach. More than half (39 projects) said that they had.

There were several comments as to the use of a human rights approach by respondent projects. Some information about the project is included:

Did the project set out with the aim of embracing a human rights approach?

The status of an international standard of human rights is useful in aiding people because it means needs and rights are often the same thing. – La Nua Project.

Adult education, rights and responsibilities for staff and participants, training in conflict resolution, peace building and reconciliation, modules on the training programmes highlight human rights and are aimed at raising awareness of the need for universal respect for human rights – Smashing Times Theatre Company.<sup>137</sup>

Participants feel respected and that justice is being done. This has led to trust building and greater participation in the project leading to the ownership of the project by participants – Supporting Minorities in the Border Regions Cavan.

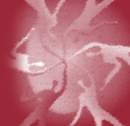
The benefits of human rights-based approach were seen as follows:

It made the project user friendly. When it was obvious that if there was any discrimination it was positive, participants came on side. It is the only way to treat our fellow human beings. It is a principle that underpins all our work – Supporting Minorities in the Border Regions Cavan.

A human rights approach involves GROW's work. If an organisation is known for its transparent human rights approach it becomes more accessible and attractive to those seeking help – GROW Cavan and Monaghan.

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<sup>137</sup> The Smashing Times Theatre Company was set up to provide Creative Training in Community Drama and fund the delivery of two accredited courses in creative community drama on a cross community and cross border basis. The two courses are a Certificate in Community Drama and a Certificate in Community Drama Facilitation Skills. Funding was provided to employ a Project Co-ordinator.



Another quarter (18 projects) said that the project had evolved over time to have a human rights-based approach. Projects which considered that they had evolved a human rights-based approach:

We found discussions on human rights helpful when working with groups. Adopting a human rights approach brought the spirit of the programme home more to participants and helped to develop this thinking. We believe that adopting (a human rights approach) the work can be furthered and more effective – Maydown Youth Training.<sup>138</sup>

Interestingly, some projects said that they did *not* adopt a human rights approach. The 'Towards Achieving Social Change' project in Donegal, for example, said by way of elaboration that: 'Our project addressed social exclusion of the Protestant Community.' These comments do not, however, explain why they did not think a human rights-based approach was not deemed appropriate.

If we examine more closely one of the projects that *did not* see itself as adopting a human rights-based approach, the Border Minority Group which is based in counties Cavan, Leitrim and Monaghan received funding for a Project entitled 'Planning for the future,' is an example.

The Border Minority Group was formed in 2001 to facilitate community and cultural development within the minority Protestant community in Cavan, Leitrim and Monaghan and to work for human rights, and equality. Since its formation approximately 40 community, cultural and church organisations, youth groups and sports clubs scattered across the three counties have affiliated to Border Minority Group. The organization is committed to documenting the Protestant community's views on its place in border society and the state of community and cultural development on the ground, identifying areas of social exclusion and weak community infrastructure, and formulating a programme to address these issues.<sup>139</sup>

Border Minority group works with all the victims groups identified in Peace II with the exception of politically motivated ex-prisoners and their families. The issues that the project addresses are 'social exclusion of the Protestant community.' It is clear from the answers in the questionnaire that public silence and the inability to express the identity of border Protestants is the central issue of the group. The answer in regard to discrimination stated:

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<sup>138</sup> Maydown Youth Training Programme Limited Foyle Training Towards Reconciliation contribute to the realization of reconciliation between diverse communities in Derry and Donegal by means of joint accredited training programme.

<sup>139</sup> See [www.borderminoritygroup.ie](http://www.borderminoritygroup.ie)

We identified and are working to address anti-British, anti-Unionist and anti-Orange, anti-Protestant bias by educating others about different historical backgrounds and identity.

The Border Minority Group identifies social inclusion as follows:

An inclusive society must be based on respect for all human rights and fundamental freedoms, cultural and religious diversity, social justice and the special needs of vulnerable and disadvantaged groups, democratic participation and the rule of law.

The Border Minority Group did not identify itself as pursuing a human rights-based approach to peacebuilding. But all five principles of a human rights-based approach are present in its work

This project had taken on some of the language of human rights, especially in relation to cultural rights and freedom of expression. The group is concerned with some of the difficulties faced in expressing Protestant culture in the border areas. All five principles of a human rights-based approach to peace building and reconciliation are evident in its work:

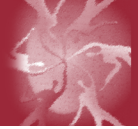
*Legitimacy* – Despite the absence of overt reference to international human rights instruments the Border Minority Group clearly sees itself as articulating religious, cultural and political rights of the Protestant community in the border counties. There has been contact with the Equality Authority in the Republic of Ireland. There have been contacts with cultural groups in Northern Ireland and an exchange of information on rights and obligations.

*Empowerment* – The universality of human rights has been acknowledged and the Border Minority Group has been working with its constituent groups to see the cultural expression of the border counties Protestants in terms of rights.

*Accountability and Transparency* – The Border Minority Group through its regular meeting and annual meeting is open to all its members. Overall control of the organisation is through a management committee which is made of members of its constituent groups.

*Participation* – The Border Minority Group sees one of its primary roles as ensuring that Protestants in the border counties are entitled to active, participation in of their social, cultural and political rights.





*Equality, Non-discrimination and attention to vulnerable groups* – The Border Minority Group sees its work specifically as addressing the problems of discrimination and vulnerability of the Protestants of the border counties.<sup>140</sup>

Expac is a group that *does* consider it has adopted a human rights approach to peace-building and reconciliation. Expac is a project set up to deal with the issue of employment and training of politically motivated ex-prisoners and their families. Expac grew out of an initiative amongst republican former prisoners to provide mutual support and assistance to each other and their families in the post-release period. Expac now offers help to all former prisoners and/or their families.

Expac sees its work as:

- 1) Publishing a cross-community/cross-border magazine; *The Other View*. Since 2000, Expac has jointly published a quarterly magazine with people from the Loyalist community in Belfast and Carrickfergus. The ethos of the magazine is to confront contentious issues as well as those of common concern. This project has offered us the opportunity to establish a working rapport between communities that were once hostile to each other.
- 2) Participation in the establishment of a network drawing together a number of voluntary agencies working with former prisoners in the Republic of Ireland. Although Expac was founded to care for former political prisoners, we are very aware of the needs of all prisoners and have offered our experience to this sector in the Republic of Ireland. This project has helped us establish our bone fides with key sections of the Southern Irish civil service.
- 3) Addressing conferences, seminars and meetings on issues relating to politically motivated ex-prisoners and the history of their communities of origin. We often accept invitations to speak from other platforms and this has helped us raise the profile of our community in a positive way. Often we speak on the Northern Irish situation in general and this helps spread an understanding of the different positions and outlooks that often lay at the heart of the conflict.

Expac does consider that it deals with the human rights such as the right to work, travel and adopt. They see the right to work as central in obtaining the rights of their membership. They had not received any human rights training.

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<sup>140</sup> Interview with Mr C McAdam of Border Minority Group.

The work of Expac was directed more at aspects on reconciliation than human rights, in the words of Tommy McKearney:

It is the view of Expac that too often “reconciliation” in the Northern Irish context is understood in terms more applicable perhaps to marriage guidance counselling rather than to a post political conflict situation. The emphasis, we feel, should not be to promote personal relationships (although this aspect should not be dismissed) but to ensure that all communities and members of all communities should be able to conduct normal, healthy, everyday social, political and economic activities with each other. Out of such routine contact develops a natural reconciliation.

Examining the five principles of a human rights approach to peace building and reconciliation and applying these to the project we can see again that most of the elements are present in the project.

*Legitimacy* – Expac sees itself very strongly as advancing the rights of its members chiefly with the right to work and the removal of some of the present legal restrictions on former prisoners and their right to work and the right to travel. There are wide ranging contacts with the political ex-prisoner groups in Northern Ireland and non political ex-prisoners and it was under this umbrella that the above submission was made to the Equality Authority in the Republic of Ireland.

*Empowerment* – The universality of human rights is supported by Expac. Difficulties with regard to the public which were an issue at the beginning of the project in Monaghan have been overcome.

*Accountability and Transparency* – Expac is quite a small organisation and overall control of the organisation is through a management committee which is made of members and some outside members.

*Participation* – Expac has worked hard for the acceptance into society of the equal rights of ex-prisoners with an emphasis on the right to work and the right to travel.

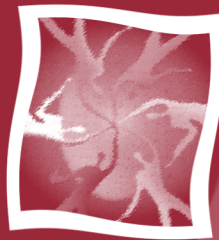
*Equality, Non-discrimination and attention to vulnerable groups* – Expac in its work with political ex-prisoners has also worked with other vulnerable groups in the Monaghan area such as migrant workers and non-political former prisoners.



The survey conducted provided useful information on the breakdown of specific target groups. Almost two-thirds of projects said that they deal with human rights issues. Civil and political rights were not as well represented in the respondents' projects as economic, social and cultural rights. However given the Peace Programme's focus on economic regeneration and social inclusion this is not surprising. There was a high recognition of the European Convention of Human Rights but a disappointing level of recognition of other international human rights instruments. There was little training in human rights for the projects and some of respondents requested human rights training in their comments on the questionnaire.

Many of the projects had taken on some of the language of human rights, especially in relation to cultural rights and freedom of expression.





*A New Approach*

6

**Suggested Framework for a Human Rights Approach  
in Future Programmes After Peace II**

## **Suggested Framework for a Human Rights Approach in Future Programmes After Peace II**

A human rights-based approach to peacebuilding and reconciliation has already been defined as the incorporation of international human rights standards into policies and projects established to aid the peacebuilding and reconciliation process. A human rights-based approach to peacebuilding and reconciliation needs the incorporation of international human rights standards into the policies and projects established to aid the peacebuilding and reconciliation process. As has been noted, this approach offers an explicit normative framework which is underpinned by universally recognised moral values and by legal obligations.

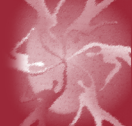
### **Five principles of a human-rights-based approach:**

- Legitimacy
- Empowerment
- Accountability and transparency
- Participation
- Equality, non-discrimination and attention to vulnerable groups

Five principles were identified as essential features: Legitimacy; empowerment; accountability and transparency; participation; equality; non-discrimination and attention to vulnerable groups. The promotion and protection of both civil and political rights, economic, social and cultural rights and the commitment to the eradication of gender discrimination are fundamental to redressing inequalities in a post-conflict situation. Human rights protection forms a safeguard against domination and discrimination for all communities. The introduction of an explicit human rights dimension signals a fundamental change in the nature of the state.

The research conducted as part of this study indicates that a human rights-based approach can add to existing strategies to advance the interests of the client groups served by the voluntary and community groups funded by Peace II. Many of the voluntary and community groups funded by Peace II that replied to the questionnaire stated a preference for using a human rights-based approach to advance their clients' interests because of the opportunities it offers for empowerment and autonomy. These organisations recognise the conceptual link between the human rights-based approach principles and the values that are fundamental to their work.

This report proposes a human rights framework that is adaptable for



programme funders as part of any process following from Peace II. The framework has been developed in response to Border Action's request for practical guidance on developing indicators for assessing human rights-based approaches to peacebuilding and reconciliation in projects. This report outlines existing human rights indicators and shows how they might be incorporated into human rights-based programmes. In addition it develops a framework for assessing human rights standards and principles in projects. The framework amalgamates the principles of dignity, equality, empowerment and participation that underpin voluntary and community activity with the fundamental principles of a human rights-based approach.

To help funding bodies, the framework specifies critical areas for using indicators:

- understanding the situation in terms of human rights in the area of the project through the identification of and use of indicators that can be used to provide an assessment of the baseline human rights situation;
- understanding the capacities of individuals and groups as 'rights holders' to claim their rights as well as the capacities of state institutions as 'duty bearers' to promote and protect human rights on the ground;
- identification and use of indicators for ensuring the incorporation of human rights principles in the design, implementation and monitoring of peacebuilding and reconciliation programmes;
- identifying and using indicators to determine the likely impact of programmes on furthering human rights in the area that the projects take place.

### **Obligations in three dimensions**

- to respect
- to protect
- to fulfil

As explained previously, the state has obligations in three dimensions in the protection of human rights. They are to respect, to protect and to fulfil. The analytic breakdown of governmental duties into these three types is usually referred to in the context of economic, social and cultural rights, but in fact it applies to all human rights, including civil and political rights.<sup>141</sup>

<sup>141</sup> See Theo C. van Boven, Cees Flinterman, & Ingrid Westendorp, eds., *The Maastricht Guidelines on violations of economic social and cultural rights*, SIM Special No. 20, Netherlands Institute of Human Rights, Utrecht, 1998.

The obligation to respect requires the state and its organs to abstain from tolerating, sponsoring or carrying out any practice, policy or legal measure violating the integrity of individuals or impinging on their freedom to access resources to fulfil their needs.

The obligation to protect obliges the State and its organs to prevent the violation of rights by other individuals and non-state actors. If and when these violations do occur, the State must guarantee access to legal remedies.

The obligation to fulfil involves issues of public expenditure, regulation of the economy and provision of services.

To give some examples of these, for instance the duty to respect, a State respects a person's right not be tortured by refraining from the state authorities torturing him or her, and it respects a person's right to health by refraining from interfering with his or her means of access (for example by not imposing blockades of medical supplies to punish her region for holding dissident political views).

With regard to the duty to protect, for instance, a State has a duty to pass and enforce laws forbidding companies from producing health-impairing pollution.

Finally, the duty to fulfil requires a State, for example, to see that a school system providing free and compulsory primary education is in place throughout its country.

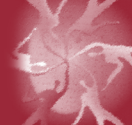
How these three dimensions interact with both civil and political rights and economic, social and cultural rights can be seen in the following matrix:<sup>142</sup>

Combining the different categories and dimensions of human rights means that there are six main ways in which human rights indicators can be developed. The table overleaf depicts a matrix for the different categories and dimensions of human rights, and includes examples of how their different understandings have implications for the development of indicators.

Indicators for Column I in the table measure the degree to which States are responsible for violating human rights (e.g., measures of incidences of torture, or acts of discrimination in public health authorities). Indicators for Column II measure the degree to which States are able to prevent non-state actors and other third parties from violating human rights (e.g., incidences of third party deprivation of liberty or denial of access to private sector health provision).

<sup>142</sup> This matrix is adapted from Indicators for a Human Rights Based Approaches to Development in UNDP Programming – A Users Guide, United Nations Development Programme, 2006.





## Dimensions of Human Rights

	Human Rights Dimensions		
	<b>I. Respect</b> (Non-interference in the exercise of the right)	<b>II. Protect</b> (prevent violations from third parties)	<b>III. Fulfil</b> (provision of resources and the outcome of policies)
<b>Civil and political rights</b>	Torture, extra judicial killings, arbitrary detention, unfair trials, electoral intimidation , disenfranchisement by state bodiespect (Non-interference in the exercise of the right)	Measures to prevent non-state actors from committing violations such as torture, abduction, intimidation and electoral fraud	Investment in criminal justice system, prisons and elections and resource allocation to ability
<b>Economic, social and cultural rights</b>	Prevention of ethnic racial, religious, gender or linguistic discrimination in health, education and welfare and resource allocations below ability	Measures to prevent non-state actors from engaging in discriminatory behaviour that limits access to health education and other welfare	Progressive realisation  Investment in health education an welfare and resource allocation to ability

Indicators for Column II measure the degree to which States provide the necessary resources and policies for realising and promoting the protection of human rights (e.g., investment in police training on issues of torture and inhuman treatment or investment in the infrastructure for health, education and welfare).

As the table shows, different types of indicators are needed to measure the same sets of human rights, since each category of human rights has three different dimensions. However, measurement of progress in human rights is incomplete, especially in regard to indicators on State obligations to fulfil civil and political rights and on State obligations to respect and protect economic and social rights. The construction of measurements of human rights is an ongoing enterprise and this document does not claim to have resolved the matter. Nonetheless, an attempt has been made to derive from the existing literature, a set of measurements that seem most appropriate for the targets in question, within the context of peace and reconciliation.

<sup>143</sup> See Maria Green, 'What we talk about when we talk about indicators: Current approaches to Human Rights Measurement', (2001) 23 *Human Rights Quarterly* 1062.

The discourse on the measurement of a human rights-based approach often speaks of *indicators, benchmarks and indices*.<sup>143</sup>

According to the United Nations Population Fund:

The definition and qualities of an indicator has long been the subject of debate. An indicator is a variable, or measurement, which may convey both a direct and indirect message. So long as it can be consistently measured, it can be based on either quantitative or qualitative information.

...

An indicator is generally expressed as a single figure, even when it combines information from a number of different sources. Presentations of more complex arrays of inter-related figures are usually referred to as statistical tables or tabulations, which in many cases are needed to supplement the summary information contained in indicators.<sup>144</sup>

As Green has pointed out:

Within the human rights community there appear to be two distinct usages for the term: one a numerical definition in which 'indicators' is simply another word for 'statistics'; and one which we will call a more 'thematic' approach in which the term 'indicators' covers any information relevant to the observance or enjoyment of a specific right.<sup>145</sup>

It is clear that for many experts and scholars working in human rights, 'indicators' refers purely to statistical information.

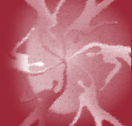
The report of a 1998 United Nations workshop, *Benchmarks for the Realization of Economic, Social and Cultural Rights*, contains the following remark: 'For the most part, they [indicators] are essentially statistical in nature. That in turn means that their subject matter must be potentially quantifiable, not only in a technical sense but in practical terms as well.'<sup>146</sup>

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<sup>144</sup> United Nations Population Fund, Technical and Policy Division, *Indicators for Population and Reproductive Health Programmes*, 1998.

<sup>145</sup> Maria Green, 'What we talk about when we talk about indicators: Current approaches to Human Rights Measurement', (2001) 23 *Human Rights Quarterly* 1062.

<sup>146</sup> See *Report of the Workshop on Indicators to Monitor the Progressive Realisation of the Right to Education*. World University Service--International, Geneva (Versiox), May 1999.



And in the words of Danilo Turk, the United Nations Special Rapporteur on the Realization of Economic, Social and Cultural Rights: 'The word indicator refers to statistical data which attempts to provide or "indicate" (usually based on some form of numerical quantification) the prevailing circumstances at a given time.'<sup>147</sup>

However, information other than statistics is used in monitoring whether or not a government is complying with its human rights obligations. This is a thematic approach to human rights indicators. For example it is routine for United Nations committees charged with overseeing the various human rights treaties to request information of all sorts: from descriptions of legislation passed to 'any factors or difficulties affecting the enjoyment of the right by persons within the jurisdiction of the state'.<sup>148</sup>

The International Labour Organization, discussing the question of whether human rights indicators go beyond statistical information, has said:

The ILO's supervisory bodies use a variety of indicators of the degree of implementation of the instruments they supervise... Many of these indicators include a 'numerical' aspect, many do not.<sup>149</sup>

The Common Country Assessment indicators used in the United Nations Development Assistance Framework process do not provide an explicit definition for 'indicators', other than to mention that 'participants identify sources of information including both quantitative and qualitative data'.<sup>150</sup>

Distinct from indicators, benchmarks are goals or targets that are specific to the individual circumstances of each country. As opposed to human rights indicators, which measure human rights observance or enjoyment in absolute terms, human rights benchmarks measure performance relative to individually defined standards. Benchmarks, in this sense, are also sometimes referred to in the context of economic, social and cultural rights as minimum thresholds.<sup>151</sup>

Indices, or 'rating scales based on expert knowledge and judgment', are

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<sup>147</sup> Danilo Turk, 'Realization of Economic, Social and Cultural Rights, First Progress Report, 1990', UN Doc. E/CN.4/Sub.2/1990/19.

<sup>148</sup> Fausto Pocar, 'Reporting Guidelines for the Committee on Civil and Political Rights, reproduced in The International Covenant on Civil and Political Rights', in *Manual on Human Rights Reporting*, 1997, p. 172.

<sup>149</sup> Maria Green, 'What we talk about when we talk about indicators: Current approaches to Human Rights Measurement', (2001) 23 *Human Rights Quarterly* 1062.

<sup>150</sup> United Nations, *Guidelines, Common Country Assessment (CCA)* (April 1999), at p. 9.

<sup>151</sup> Asbjorn Eide, 'Realization of Social and Economic Rights and the Minimum Threshold Approach', (1989) 10 *Human Rights Law Journal* 35.

occasionally used in the human rights context. They generally rely on composite information and their main purpose appears to be to provide a comparative means of ranking governments by performance. However there is concern with indices because they involve choosing a limited number of specific indicators that reflect the concerns of the index compilers rather than a value-neutral interpretation. Many of the indices are not based on the specific norms of human rights law. When indices methodology is not entirely transparent they risk accusations or the reality of bias.

However, the use of indices in a human rights context has been endorsed by various United Nations programmes, including the United Nations Development Assistance Framework.<sup>152</sup> These existing approaches have measured human rights in three ways:

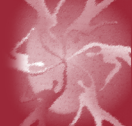
- as they are laid out in national and international legal documents (*human rights in principle*);
- as they are enjoyed by individuals and groups in nation states (*human rights in practice*);
- Through the generation of official statistics that may not have been devised originally to measure rights, but that nevertheless may serve as important proxy measures related to human rights protection (*official statistics*).

The sources for covering these three areas are hugely important in informing an assessment of the baseline human rights situation, including the human rights experience of particular target populations, understanding the history of rights protection, and enabling monitoring at a macro level within Ireland and the United Kingdom providing answers to important questions within the projects such as:

Which human rights are not yet realized fully? Are there significant gaps in the protection of any civil rights? Political rights? Economic rights? Social rights? Cultural rights? Do some sectors of society enjoy a greater protection of these rights than others? Is there *de facto* discrimination in the access to and provision of services in the areas of housing, education, and welfare? Who are the main duty bearers and are they aware of their responsibilities to protect, respect and fulfil human rights according to the legal obligations established through their country's international and domestic commitments? Who are the main rights holders and are they aware of their ability to claim redress? What

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<sup>152</sup> United Nations, Guidelines, Common Country Assessment (CCA), April 1999.



appear to be the main structural causes of human rights violations? Are there cultural reasons for the persistence of violations? What institutional failings and/or obstacles stand in the way of protecting human rights?

There is an important conceptual and methodological difference between human rights indicators, on the one hand, and indicators for measuring the application of a human rights-based approach, on the other. There is a need to bolster the existing collection of indicators on human rights with those that are more attuned to use in human rights-based programming and more in line with human rights principles.

Adopting a human rights-based approach makes it clear that human rights must be mainstreamed through projects. Human rights concerns are included as the result of a project as much as the *process* that was used to obtain the result.

A human rights-based approach to projects requires:

- planning and implementing projects in which a key feature in the initial assessment is the legal framework for protecting human rights and the general human rights situation;
- the identification of duty bearers and rights holders across different policy areas;
- the ongoing monitoring and evaluation of the project for its adherence to human rights principles;
- the assessment of the human rights impact of the project.

It is thus equally clear that carrying out human rights-based projects requires the development and use of indicators.

The proposed list of indicators that has been adapted from the Office of the High Commissioners *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* is by no means exhaustive.<sup>153</sup> At the same time, it is not expected that all the indicators proposed here are applicable to all projects at all times. The list is intended for reference only. Each project must decide for itself which indicators are most appropriate for its specific circumstances. If we examine some of the human rights standards that we have identified we can suggest some of the indicators that would be relevant.

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<sup>153</sup> Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies, UN High Commissioner for Human Rights, 2006.

**Right to freedom from torture, inhuman or degrading treatment.** Many people can be subject to physical violence or threats of physical violence by State and non-State actors.

*The scope of the right to freedom from torture, inhuman or degrading treatment.* If individuals or groups are subject to death threats, violent attacks, harassment, intimidation or severe discriminatory treatment, States have a positive obligation to provide a minimum standard of protection for their life, integrity and personal security.

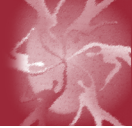
*Potential indicators:* Crime statistics for targeted groups. Number of complaints made to police services about such threats.

**Right to Health.** Health is one of the components of an adequate standard of living.

*The scope of the right to health.* It is the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health. The right includes both health care and the underlying determinants of health. It contains both freedoms and entitlements. The freedoms include the right to control one's body, including reproductive health, and the right to be free from interference, such as non-consensual medical treatment. The entitlements include a system of health care and protection that is available, accessible, acceptable and of good quality. Therefore the right to health implies that functioning public health and health care facilities, goods and services are available in sufficient quantity within the State. It also means that they are accessible to everyone without discrimination. According to international human rights law, the right to health encompasses a number of more specific health rights including: the right to maternal, child and reproductive health; the right to healthy natural and workplace environments; the right to prevention, treatment and control of diseases; and the right to health facilities, goods and services.

*Potential indicators.* Life expectancy at birth, proportion of public expenditure on primary health care, proportion of the population not covered by any kind of pre-payment mechanisms or by privately funded health insurance, number of primary health care units per thousand population, number of doctors per thousand population, under-five mortality rate, infant mortality ratio, maternal mortality ratio, proportion of births attended by skilled health personnel, proportion of mothers with access to pre- and post-natal medical care facilities, disability-adjusted life years lost for men and women.

**Right to education.** The exercise of the right to education is instrumental for



the enjoyment of many other human rights, such as the rights to work, health and political participation. Lack of education is usually manifested by high illiteracy rates and low primary school enrolment ratios.

*The scope of the right to education.* International human rights treaties define the right to education in a comparatively precise manner. In addition to providing free and compulsory primary education for all children, States have an obligation progressively to introduce free and equal secondary education (including vocational training) for all and equal access to free higher education on the basis of capacity. They also have an obligation to increase basic education, leading above all to the elimination of illiteracy, for adults who have not satisfied their basic learning needs. Equality and non-discrimination are important aspects of the right to education, and States should give priority to equal access for female children and particularly vulnerable groups, such as children with disabilities and minority and refugee children. School discipline should be administered in a manner consistent with the child's human dignity. In principle, States can provide these rights in the context of both private and public educational institutions. In addition all Governments have a duty to teach regularly about human rights and to provide a learning environment where human rights are respected and acknowledged.

In addition to these positive obligations to fulfil the right to education, States have an obligation to respect the liberty of parents to establish and direct their own educational institutions, to choose private schools for their children and to ensure the religious and moral education of their children in conformity with their own convictions.

*Potential indicators.* Net enrolment ratio in primary education, literacy rate in the age group 15-24, attendance rates in primary schools, share of public expenditure on primary education, overall adult literacy rate, net enrolment ratio in secondary education, disaggregated for members of minority communities, share of public expenditure on secondary education, ratio of girls to boys in secondary education, attendance rates in secondary education, proportion of children with disabilities attending secondary education, pupil-teacher ratio, teacher-classroom ratio.

**Right to dignity.** The respect for the inherent dignity of all members of the human family is the foundation of all human rights. The guiding principle of the dignity of the individual goes beyond the prohibitions of torture and degrading treatment and encompasses the obligation of States to ensure that all human beings have the necessary means to at least a minimum level of an adequate standard of living, including adequate food, clothing and housing.

*The scope of the right to dignity.* The right to privacy guarantees that no human beings shall be subjected to arbitrary or unlawful interference by State or non-State actors, with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. States are under a positive obligation to provide the protection of the law against such interference and attacks by private actors. The concept of privacy protects the particular area of individual existence and autonomy, including a person's appearance, identity, integrity, sexuality, communication, family and home, that does not touch upon the liberty and privacy of others. The right to take part in cultural life is respectful of cultural diversity and serves as a protection against social exclusion. States have a responsibility to take all necessary measures to prevent marginalized groups from being socially excluded and to enable them to participate in the social, cultural and political life of their respective communities.

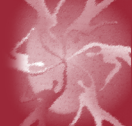
*Potential indicators.* Proportion of targeted groups that are socially excluded, proportion of targeted groups that fear being discriminated against taking part in cultural life.

**The right of equal access to justice.** One of the most important tools to defend the vulnerable from human rights violations and abuses by governmental authorities and private individuals is court protection. Even when free legal aid is available, they may lack the necessary information and self-confidence to seek redress from the courts. Thus, States should actively promote the free access to courts, tribunals and other dispute resolution mechanisms as a remedy against human rights violations.

*The scope of the right of equal access to justice.* All persons are equal before the courts and tribunals and enjoy certain procedural guarantees in civil and criminal trials. Equality before the courts means, in particular, that all persons must be granted, without discrimination, a right of equal access to an independent and impartial court or tribunal for the determination of civil disputes or criminal charges. The most important procedural guarantee in both civil and criminal proceedings is the right to a fair and public hearing, including the principle of equality of arms between all parties. In criminal trials, a number of specific rights are granted to the accused, such as the presumption of innocence, the right to an adequate defence including the assistance of a lawyer, the right to examine witnesses, and the right not to be compelled to testify against oneself. Victims of crime should also be provided with equal access to justice and may require specific protection.

*Potential indicators.* Proportion of targeted groups availing themselves of civil justice mechanisms, disaggregated by gender, minority status, proportion





having access to legal aid in civil matters, proportion of targeted groups availing themselves of specific human rights litigation, disaggregated by gender and minority status, proportion of targeted groups having access to legal aid for human rights litigation, number of judges and courts per unit of population, average length of proceedings before civil and human rights courts and tribunals.

### **The right to freedom of expression, assembly and political participation.**

Active participation in political decision-making processes plays a role in expanding political freedoms and in empowering people, which in turn contributes towards combating social exclusion and political marginalization. In addition, the enjoyment of political rights and freedoms is instrumental in securing other human rights such as education, work, health and equal access to justice.

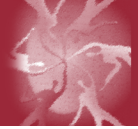
*Scope of the right to freedom of expression, assembly and political participation.* Those human rights that are essential for the participation of civil society in a free and democratic society are usually referred to as political rights and freedoms. Apart from the general political right of citizens to take part in the conduct of public affairs, a number of political freedoms are essential for the effective participation starting with the right to information. Political rights are usually defined as the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, for instance by means of the right to vote and to be elected in parliamentary and other elections, and the right of equal access to public service. Political freedoms include essential democratic rights such as freedom of speech, expression, information, association, assembly and the media. While political rights are usually restricted to citizens, political freedoms are general human rights to be equally enjoyed by all human beings, regardless of citizenship or other status. The right to freedom of expression guarantees the right to express and impart any opinions, ideas or information. The right to freedom of assembly means that all persons have a right collectively to express their opinions by organizing demonstrations and similar types of public meetings in order to attract the attention of the Government, the media and the public at large. Lastly, all persons have the right to freedom of association with others, including the right to form and join trade unions, for the more effective protection of their interests. Although the exercise of these political freedoms carries with it special duties and responsibilities, and may therefore be subject to certain restrictions, such limitations must be prescribed by law and must be necessary in the interests of certain public goals, such as national security, public order, health and morals, or for the protection of the rights and freedoms of others.

*Potential indicators.* Proportion of target groups going to the polls, proportion of target groups elected to public bodies at the local, regional and national level. Proportion of targeted groups appointed to public office. Proportion of targeted groups belonging to any association established by the targeted groups themselves, number of associations, unions, political parties, foundations and media established by the targeted groups for the protection of the interests of the targeted groups, number of public meetings, demonstrations or strikes organized by the targeted groups or on their behalf, number of public information activities organized by Governments directly addressing the targeted groups, number of media programmes directly addressing the targeted groups, circulation of print media in different languages, share of public expenditure on dissemination of information to the targeted groups.

Some of the indicators proposed have a striking resemblance to the standard indicators of socio-economic progress. In what sense can they be characterised as human rights indicators? A human rights indicator is derived from, reflects and is designed to monitor the realisation or otherwise of a specific human rights norm with a view to holding a duty-bearer to account. As there is an overlap between socio-economic progress and human rights targets, there is likely to be a resemblance between the standard indicators of socio-economic progress and human rights indicators – although it should be observed that some human rights indicators, especially those relating to civil and political rights do not usually figure in measures of socio-economic progress. What tends to distinguish a human rights indicator from a standard disaggregated indicator of socio-economic progress is less its substance than (i) its explicit derivation from a human rights norm and (ii) its purpose in human rights monitoring with a view to holding duty-bearers to account.

In using information from the baseline assessment, project administrators are making initial judgments as to the likely areas that need to be addressed, the ways in which human rights standards can be realised, how human rights principles can be strengthened, and how human rights standards and principles will guide specific projects from start to finish. Key questions that need to be asked include:

- do projects incorporate human rights standards and take into account the United Nations treaty body recommendations?
- do both duty-bearers and rights-holders participate in all aspects of projects?
- do the projects build capacity for realizing human rights in the area they are based?



- do they address the causes (rational, structural, and cultural) for the non-realization of human rights?
- are some human rights better realized than others?
- and finally, how are the projects monitored and evaluated?

The objective of monitoring is twofold: (i) to help identify, on an ongoing basis, the areas on which a duty-bearer may need to concentrate or to which it may need to redirect its attention if its targets for the realization of human rights are to be attained in the most expeditious and effective manner; and (ii) to enable a right-holder to hold a duty-bearer to account for failure to discharge its duties.

Each stage in the planning process can be informed through the use of indicators on peacebuilding and reconciliation and human rights-based approach principles, as well as project specific indicators. No one indicator can measure the impact of a human rights-based approach. For this reason there should be a range of indicators to measure the impact of any intervention. These indicators chosen should measure specific project outputs and then 'triangulate' an assessment of their outcomes on the human rights environment.

Selecting performance indicators and designing an evaluation process for peace and reconciliation projects involves making often pragmatic choices of methodology, in practice, owing to constraints of time, money and/or expertise. These constraints determine the mix of what we need to measure with what we are able to measure.

It is proposed that a two-tiered building-block approach to performance indicators be adopted to assess the projects in terms of its processes and its impacts.

**Process Indicators.** These measure the implementation of a development project in terms of its efficiency and effort. These indicators are 'internal' to the project and evaluate whether it is doing what it set out to do.

An example is a training programme for educators in international human rights law so that they will be able to provide training, information and advice to projects. A lead indicator relating to central project activity and efficiency could be conducting training activities on schedule and within budget. Because it may be difficult to make direct assessment of improvements in the levels of knowledge, understanding, skills and attitudes of training course participants, it may be appropriate to select secondary indicators relating to participation in training. Both these indicators are objective, visible, quantitative measures of

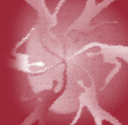
project effort and efficiency. It is useful to measure (a) participants' satisfaction in terms of whether they perceived that the training added to their knowledge, understanding and skills and (b) the participants' intentions to make improvements in service delivery as a result. While it is difficult for indicators to measure qualitative perceptions of the project value, they do enable ongoing refinement and fine-tuning of project effort (formative evaluation). They provide the means to measure the will to improve systemic performance, which is essential to improving the human rights-based approach environment (summative evaluation).

**Specific Impact Indicators.** These measure the effectiveness of project outputs in terms of their results or outcomes. They are “external” to the project, and describe objectively visible measures and how they contribute to enhancing the human rights environment.

The main specific impact indicator is ultimately the confidence of the projects in adopting a human rights-based approach and using this in their work. It may not, however, be easy to select any single indicator of measurement; Interviews and surveys of project representatives, public interest groups and/or members of the public should be undertaken to assess satisfaction with different projects services, using criteria such as accessibility, openness, efficiency, protection of human rights, transparency and integrity.

While data may be qualitative and anecdotal, assessments plotting aggregated responses in pre/post or internal/external perceptions can describe measurable differences and changes attributable to the adoption of a human rights-based approach. In summary, the range of performance indicators available for assessment of a human rights training project might include:

- numbers conducting training activities
- numbers participating in training
- participants satisfaction with the perceived usefulness of training
- attitudes of those participating in training before and after
- knowledge of those participating in training before and after
- confidence of civil society
- observations of projects use of the training.



A number of techniques could be used to collect data using these indicators for purposes of evaluating the intervention. They may consist of:

- comparative surveys – self, peer and external assessment
- interviews of key stakeholders and representatives of civil society
- observation and expert appraisal.

A variety of performance indicators should be selected with which to 'triangulate' measurements of the contribution of human rights education. These indicators combine process and impact evaluation techniques, subjective and objective criteria, and quantitative and qualitative data. Collectively, they make the anecdotal measurable. A selection of these can be seen in the Sample Project Evaluation. (Overleaf)

However this framework is only a starting point. Each organisation will have to consider its own priorities and seek relevant information about the legal rights applicable to its own concerns.

Our research revealed that the voluntary groups funded by Peace II have a broad understanding of human rights principles. However these are not necessarily drawn from human rights legislation and treaties. Respondents in the questionnaire drew a distinction between use of human rights legislation and reliance on human rights principles. In addition, when questioned about their awareness of human rights legislation, there was a low recognition of some of the United Nations conventions such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

How can voluntary and community organisations funded by Peace II and any funding hereafter devise a human rights-based approach strategy? By combining specific and general conceptions, a meaning for a human rights-based approach may be reached that is accessible and workable in practice. Each organisation needs to reflect on what is most appropriate for its own strategic goals. The basis for improvement of these conditions should be a requirement of policy makers and service providers that they respect human rights and be accountable for them.

Sample Project Evaluation

Objectives	Target	Inputs	Process Indicators	Output	Specific Impacts Quantitative	Specific Impacts Qualitative	General Impacts	Learning
1 To train educators in international human rights law so that they will be able to provide training, information and advice to projects	To train people as educators	Financial cost of providing training (i.e. people-hour costs and material costs) per week/month/year	No. of hours spent designing programme	No. of people trained as educators	No. of people in the area benefiting from the educator service (to be gauged by interviewing educators)		Increased awareness projects population in area of where to go to obtain, as well as what is available in terms of human rights education and training services. Measured via survey of target population	For example any lessons learnt in terms of advertising programme and course accreditation
		Human resources (number of people hours) involved in providing training per week/month	No. of hours spent compiling programme content	No. of educators in employment providing educator service to target population				

[illegible]

Objectives	Target	Inputs	Process Indicators	Output	Specific Impacts Quantitative	Specific Impacts Qualitative	General Impacts	Learning
2 To provide an advocacy and information service to be used by the refugee and asylum seeking community	Percentage of the refugee and asylum seeking community expected to avail of this service	Financial cost of providing the service in terms of people-hour costs and any material or other costs	No. of booklets/leaflets created	No. of client visits by issue raised	% of asylum seeking and refugee community availing of advocacy and information service		Reduced isolation felt by asylum seeking and refugee community. Measured via survey of target population	For example from the issues raised can gauge what are the main problems that refugees and asylum seekers face
		Human resources (no. of people hours) involved in providing information and advocacy service	No. of booklets/leaflets created	No. of client visits by issue raised?				
			No. of contacts made with relevant organisations	No. of outreach (home) visits made to refugees and asylum seekers				



Objectives	Target	Inputs	Process Indicators	Output	Specific Impacts Quantitative	Specific Impacts Qualitative	General Impacts	Learning
<b>3</b> Develop an information pack for politically motivated former prisoners	No. of information packs printed	Financial cost of compiling the pack in terms of man-hour costs and material costs	No. of contacts with relevant authorities to source information	No. of comprehensive information packs printed	Use of information pack. (to be gauged by interviewing peer educators)			
		Human resources (no. of people hours) involved in compiling pack	No. of booklets/leaflets created		Use of information pack by relevant authorities in course of their work. (to be gauged by interviewing relevant authorities)			
<b>4</b> To develop links between the local farming communities on either side of the border	No. of occasions/opportunities where two communities interact cooperatively		No. of other organisations worked with to organise events	List of events organised	Increased activity of different communities on either side of the border.		Increase community relations. Measure via survey of target population and local population	Have people in community become more involved in the Peace II and continuing work as a result
		Human resource cost - people hours involved in organising and running events		Numbers partaking in event				

Objectives	Target	Inputs	Process Indicators	Output	Specific Impacts Quantitative	Specific Impacts Qualitative	General Impacts	Learning
5 General networking (including meetings, seminars, conferences, etc.) (Applies to all projects)		Financial cost of attending and/or hosting meetings, seminars, conferences, etc.	Time spent preparing for meetings, seminars, conferences, etc.	No. of meetings, seminars, conferences attended and no. of meetings, seminars, conferences hosted	Increased awareness of issues discussed at conference - measured via survey of local population			
		Human resources (no. of people involved in attending and/or hosting conferences, etc.		No. of attendees at seminars/ conferences hosted by project				
6 Policy development (Applies to all projects)	Influence policy development	Human resources cost in terms of people days of preparing submissions and attending meetings		No. of submissions made and policy meetings attended		Identify policy that has been changed		



It should be remembered that there needs to be an awareness of when requirements to comply with human rights may be legally enforceable and when they are being argued for on the basis of best practice. Many organisations funded by Peace II have an understanding of the potential for human rights principles to empower disadvantaged groups and help them achieve the changes that are needed. It is clear that in order for there to be effective training on a human rights-based approach to peacebuilding and reconciliation, this must be:

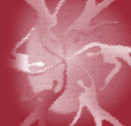
- based on the applicable human rights framework
- participatory in its design and delivery
- relevant to the specific situation, roles and mandate of trainees
- part of ongoing process, as opposed to ad hoc events
- evaluated by its demonstrated impact on future behaviour of trainees
- linked to the empowerment
- human rights outcomes for the rights-holder
- linked directly to personnel management providing an incentive to change behaviour, e.g., promotion, benchmarking, etc.
- linked directly to the assessment of the institution/organization's performance (see accountability below).

There are still relatively few tools to assist organisations in putting into operation a rights-based approach.

In 2001 NORAD, the Norwegian External Aid agency, developed a handbook in human rights assessment. The handbook assists practitioners in asking the relevant questions concerning human rights, implementing and monitoring them. It is particularly suitable when trying to apply a human rights perspective to a project. It includes a simple scoring tool for assessing how a programme affects human rights, people's awareness about their rights and whether or not it empowers people to claim their rights. An adapted version appears below. This matrix could be used with projects to stimulate attention and awareness to trends and tendencies as regards human rights impact of their projects.

In projects for Peace II there are a number of questions asked at screening level as to social inclusion and paving the way to reconciliation. It would be

Human rights issue	Score	Follow up
<b>1. AWARENESS</b>		
1. What is the project's assumed/actual impact on equality and non-discrimination?		
2. Has the population in the area of the project been informed about the project?		
3. What human rights does the project hope to affect in the population?		
4. What agencies has the project approached for information about human rights norms?		
5. Does the project respect/has it respected everyone's right to seek, and impart information relevant to its implementation?		
<b>2. EMPOWERMENT</b>		
6. Does the project respect/has it respected the right to express views freely in the preparation and implementation?		
<b>3. ACCOUNTABILITY AND TRANSPARENCY</b>		
7. Is the project transparent ?		
8. How is the project accountable to its target audience?		
<b>4. PARTICIPATION</b>		
9. Does the project promote/has the project promoted participation in decision making of groups affected?		
10. Does the project uphold/has the project upheld the right to organise?		
11. Does the project respect/has it respected the right to just and favourable conditions of work?		
12. Does the project affect/has it affected the fulfilment of the right to an adequate standard of living for target groups and other people affected?		
<b>5. NON-DISCRIMINATION AND ATTENTION TO VULNERABLE GROUPS</b>		
13. Does the project discriminate against any group in society?		
14. Does the project affect/has it affected the marginalized groups within the community?		



suitable at this stage to introduce a question checking if the project adopts a human rights-based approach to peace building and reconciliation.

At the stage of external appraisal the human rights-based approach of the project could be examined more closely. The following checklist has been drawn up to allow programme staff and appraisers to analyse whether a human rights-based approach has been adopted by projects.

## **Human rights-based approach to Peace Building and Reconciliation – Suggested Checklist for Programme Staff and Appraisers**

### **Project Context**

- What are the top priorities for peace building and reconciliation in the area of the project?
- Does the project consider itself as promoting human rights?
- Which rights does the project identify as being unfulfilled in the area of the project?
- What treaty standards and comments of rights bodies are relevant in this context?
- How does the Peace and Reconciliation Project support the realization of human rights?
- Do project staff have the capacity to integrate human rights in their work, and a sound grasp of UN human rights instruments, and the national human rights protections?

### **Excluded and Vulnerable Groups**

- Which groups are the most disadvantaged in the area of the project?
- Are tools and indicators to identify excluded groups sufficiently disaggregated?
- How does the project address exclusion and disadvantage within the framework of Peace and Reconciliation?

### **Stakeholder Capacity**

- Who are the project stakeholders and how were they identified?
- Which are duty-bearers and what obligations are they supposed to meet? Do they have the capacity to meet obligations (including responsibility, authority, data, and resources)?
- Which are claim-holders and do they have the capacity to claim their rights (including ability to access information, organize, advocate policy change, and obtain redress)?

### Project Process (Conduct)

- Do project design and implementation incorporate human rights standards as set out in international and regional conventions?
- Do project design and implementation incorporate principles of universality, equality, participation, and accountability and transparency?
- Do both duty-bearers and claim holders participate in project design, implementation, monitoring and evaluation?

### Project Outcome (Results)

- How has the project built capacities to realise human rights in the area of the project?
- Which human rights will be further realised?
- Has the project campaigned in the wider community on the human rights issues raised?
- How does the project build the capacities of duty-bearers to meet obligations and claim holders to claim human rights? Which human rights will be further realized? How is this monitored and evaluated?
- Has the project advocated on behalf of vulnerable groups?
- Do indicators capture perceptions on the enjoyment of human rights and other qualitative aspects, such as accountability of public authorities?

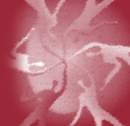
### Human rights principles

Five principles can be identified as essential feature of a human rights-based approach: legitimacy; empowerment; accountability and transparency; participation; equality, non-discrimination and attention to vulnerable groups.

*Legitimacy:* States and other duty-bearers are accountable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

*Empowerment:* Human rights are universal and inalienable. All people everywhere in the world are entitled to human rights. They cannot be given up or taken away.

*Accountability and transparency:* Human rights are visible to all. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the



dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, *a priori*, in a hierarchical order.

*Participation:* Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realised.

*Non-discrimination and attention to vulnerable groups:* All human beings are entitled to their human rights without discrimination of any kind, on the grounds of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

The eligibility scoring that Border Action undertakes with regard to Peace II funding allows an assessment to be made of the qualities of a project under various headings. Such a scoring framework could be adapted using the model of the checklist above. This report proposes a human rights matrix above that can be adopted and used by projects funded as part of Peace II or any process that follows. As we have noted, there is a difficulty in developing indicators for assessing human rights-based approaches to peacebuilding and reconciliation in projects. However in the same way indicators for reconciliation have been used in assessment of projects in the procedure manuals so indicators for a human rights-based approach can be introduced.

## **Evaluation Process by Border Action under Peace II**

Current projects under Peace II have both monitoring and evaluation processes. Monitoring is described as ‘a value free process which involves the systematic recording and documenting of participants, activities, events and training which will be used in the evaluation process to show a record of how the project is progressing in relation to targets and outputs’.<sup>154</sup>

Evaluation is described as ‘a way of assessing or judging the value of its work at a particular time. It compares the actual achievements of the project against the outcomes the project hoped to achieve as well as the approach taken by the project. The evaluation process should also highlight strengths and weaknesses of the project and outline what could be further developed or changed. It should be a critical analysis of the project, taking into account any external factors or context (positive or negative) affecting the progress or outcomes of the project’. This monitoring and evaluation process is in keeping with the human rights-based approach.<sup>155</sup>

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<sup>154</sup> Border Action, Section 3, Measure 5.4, Monitoring and Evaluation, p. 8.

Border Action requires most Peace II projects to undertake an evaluation. Those that are not required to undertake an evaluation under the terms of their contract are encouraged to do so. The evaluation process is designed:

to provide a critical analysis of the work of the project, in relation to both the objectives of the project and the objectives of Peace Programme, taking into account the external context and other factors contributing to or hindering, the achievement of those objectives. Projects will be expected to document the process – why and how things were done – and record difficulties or failures, the reasons for these and how they were overcome as well as project achievements.<sup>156</sup>

It is proposed that the project evaluation for a human rights-based approach follows the methodology of the monitoring and evaluation framework for the Peace and Conflict Impacts and Impacting Poverty and Equal Opportunities. Projects planning a project evaluation are required to submit a Monitoring and Evaluation Framework within three months of the project start date.

Monitoring and Evaluation Framework details:

- Which indicators and evaluation questions are relevant to their project;
- What evidence will be needed to demonstrate progress;
- How this evidence will be collected;
- Who is responsible for gathering data;
- Timetable for data collection;
- Who is responsible for compiling the evaluation report;
- Who is responsible for overseeing the evaluation process.

The current evaluation describes and analyses:

- the Peace & Conflict impacts (using the framework of the ‘five strands of reconciliation’ as appropriate)
- how the project is implementing the horizontal principles of Impacting Poverty and Equal Opportunities;
- who is benefiting from the project;
- project actions (refer to the measure-specific template);
- contribution to measure objectives.

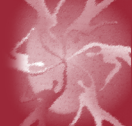
The evaluation should provide evidence of change brought about as a result of the project’s activities. This change can be at one or more levels, such as:

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<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*, p. 9.





- individuals' attitudes and behaviour;
- social and economic activity;
- public policies, programmes or practices.

As in the current evaluation and monitoring process the evaluation should be evidence-based with projects encouraged to plan what information will be needed to demonstrate impacts and outcomes and how this will be collected early in the life of the project; keeping this under review as the project and/or its context change.

### The current evaluation process

It is proposed that the Evaluation Report should follow the specified report structure with the addition of an evaluation section for a human rights-based approach as follows:

#### **Border Action's Guiding Questions for Evaluation of Peace and Conflict Impacts**

*These questions are meant to assist you reflecting upon and reporting on the peace and conflict impacts of the project. They are not intended to be a 'tick box' or 'yes/no' exercise, and there may be other questions which are more appropriate to your project. The project promoter and the evaluator should consider which of the five strands and which of the questions under those strands are relevant to the project. Both qualitative and quantitative information may be used to demonstrate impacts, but it is important that the evaluation describes what the impact is and its degree or extent. This should be **supported by evidence** that the impact is real, and why it can be attributed (at least in part) to the actions of the project.*

**1. Building positive relationships:** Relationship building or renewal following violent conflict addressing issues of trust, prejudice, intolerance in this process, resulting in accepting commonalities and differences, and embracing and engaging with those who are different to us.

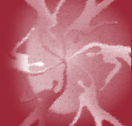
- What new or existing relationships have been developed? Between participants? Within and between communities? Between community organizations and public agencies?
- Did/will the project seek explicitly to benefit or build bridges between different communities? If so, how? What are the criteria for effectiveness?
- Did/will the project help foster an inclusive – rather than exclusive – sense of community?

- Did/will the project facilitate the ability of individuals and groups to work together for the mutual benefit?
- Did/will the project facilitate positive communication/interaction between and within groups? Is this sustainable?
- Did/will the project increase contact, confidence, or trust between the communities? Did it dispel distrust?
- Did/will it create common interests, or encourage individuals and groups to recognize their common interests, and did/will it modify their behaviour in order to attain them?
- Did/will the project help defuse inter-group tensions? If so, how?

**2. Developing a shared vision of an interdependent and fair society:** The development of a vision of a shared future requiring the involvement of the whole society, at all levels. Although individuals may have different opinions or political beliefs, the articulation of a common vision of an interdependent, just, equitable, open and diverse society is a critical part of any reconciliation process.

- Did/will the project provide/generate the skills, tools, capacity for individuals and communities to define issues/problems to be addressed, formulate solutions to those problems, or resolve those self-defined problems?
- Did/will the project affect organizational capacity of individuals, or collectivities (institutions, social groups, private sector) — positively or negatively— to identify and respond to peace and conflict challenges and opportunities?
- If so, Which groups? To what degree? How and why? ‘Organization capacity’ might include: 1) the ability to conceptualize and identify peacebuilding challenges and opportunities; 2) in the case of organizations, to restructure itself to respond; and 3) to alter standard operational procedures to respond more effectively and efficiently in ways that have a tangible positive impact on the ground — for example, in ways that enhance fairness, equity, ‘even-handedness’, and accountability, and transparency.
- Did/will the project increase or decrease the capacity to imagine, articulate and operationalise realities that nurture rather than inhibit peace?

**3. Acknowledging and dealing with the past:** Acknowledging the hurt, losses, truths and suffering of the past. Providing the mechanisms for justice, healing, restitution or reparation, and restoration (including apologies if necessary and steps aimed at redress). To build reconciliation, individuals and



institutions need to acknowledge their own role in the conflicts of the past, accepting and learning from it in a constructive way so as to guarantee non-repetition.

- Did/will the project take into consideration the history/legacy of conflict in its design? For example, did/will it consider the specific impact on children, women and other vulnerable groups such as displaced populations, and the politically, socially and economically marginalized?
- What individuals/groups/institutions are involved? How are they acknowledging and/or addressing their own role in the conflict?
- What mechanisms are being put in place for justice, healing, restitution or reparation, and restoration?

**4. Significant cultural and attitudinal change:** Changes in how people relate to, and their attitudes towards, one another. The culture of suspicion, fear, mistrust and violence is broken down and opportunities and space opened up in which people can hear and be heard. A culture of respect for human rights and human difference is developed creating a context where each citizen becomes an active participant in society and feels a sense of belonging.

- Did/will the project contribute to the development of the capacity of individuals/collectivities to participate constructively in democratic political processes?
- What was/will be the impact of the project on human rights conditions? (e.g., awareness, legislation, levels of abuse/respect?)

**5. Substantial social, economic and political change:** The social, economic and political structures which gave rise to the conflict and estrangement are identified, reconstructed or addressed, and transformed.

## SOCIAL CHANGE – EQUALITY & EQUITY

*Impact on: quality of life; constructive social communication (e.g., those promoting tolerance, inclusiveness and participatory principles); displaced people; in/adequacy of health care and social services; communications; transport); resettlement/displacement; housing; education; nurturing a culture of peace.*

- Did/will the project contribute to the development or consolidation of equity and justice, or the means of providing basic needs? How?
- Did/will the benefits of the project get shared equitably? How?

### SECURITY & HUMAN SECURITY

*Direct and indirect impact on: the level, intensity, dynamics of violence; violent behaviour; in/security (broadly defined) — in particular as experienced in the daily lives of the general population; security policy; repatriation, demobilization and reintegration; reform and retraining of police and security forces/structures; disarmament; anti-social behaviour/petty crime; organized crime.*

- Did/will the project affect the individual's sense of security?
- Did/will the project affect the military/policing/paramilitary/criminal environment — directly or indirectly, positively or negatively?  
If so how?
- Was there/will there be tangible improvements in the political, economic, physical, security? If so, what are they, and to whom do they apply?

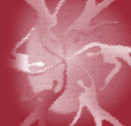
### POLITICAL CHANGE

*Impact on formal and informal political structures and processes, such as: government capabilities from the level of the state government down to the municipality; policy content and efficacy; decentralization/concentration of power; political ethnicisation; representation; transparency; accountability; democratic culture; dialogue; conflict mediation and reconciliation; strengthening/weakening civil society actors; political mobilization. Impact on rule of law; independence/politicization of legal system; human rights conditions; labour standards.*

- Did/will the project help or hinder the consolidation of constructive political relationships within and between state and civil society?
- Did/will the project have a positive or negative impact on formal or informal political structures and processes — either within the formal arena of constitutional or party politics or within the informal arena of civil society? If so, how?
- Did/will it contribute to increasing the transparency, accountability, representativeness, and appropriateness of political structures?
- Did/will the project influence policy processes or products? If so, in what ways?

### SOCIAL & ECONOMIC RECONSTRUCTION

*Impact on strengthening or weakening equitable socio-economic structures/processes; distortion/conversion of war economies; impact on economic infrastructure; supply of basic goods; availability of investment capital; banking*



*system; employment impact; productivity; training; income generation; production of commercial product or service; Impacts on the exploitation, generation, or distribution of resources.*

- To what extent did/will the project contribute to or detract from efforts to “re”-construct damaged economic and social infrastructure?
- To what extent did/will the project:
  - assess damage to social and economic infrastructure?
  - provide technical assistance for rehabilitation and reconstruction?
  - rehabilitate and reconstruct economic infrastructure?
  - sustain smallholder agriculture and diversification?
  - rehabilitate the export sector?
  - rehabilitate key industries?
  - up-grade employment skills?

### **Protection and improvement of the environment**

- *Did/will the project contribute to protection and improvement of the environment?*
- *Have individuals’ attitudes and behaviour changed? If so, which groups? To what degree? How and why?*
- *What has changed in relation to social and economic activity (locally, regionally, cross-border, east-west)? Is there evidence of this? (e.g. improved physical environment)*
- *Have public policies, programmes or practices been changed? How has the project helped to bring about this change?*

### **North – South co-operation**

- *Did/will the project contribute to North – South co-operation?*
- *Have individuals’ attitudes and behaviour changed? If so, which groups? To what degree? How and why?*
- *What has changed in relation to social and economic activity (locally, regionally, cross-border, east-west)? Is there evidence of this? (e.g. more cross-border mobility)*
- *Have public policies, programmes or practices been changed? How has the project helped to bring about this change?*

### **Gender mainstreaming\***

- *Did/will the project contribute to Gender Mainstreaming?*
- *Have individuals’ attitudes and behaviour changed? If so, which groups?*

To what degree? How and why?

- What has changed in relation to social and economic activity (locally, regionally, cross-border, east-west)? Is there evidence of this? (e.g. participation by women in non-traditional occupations)
- Have public policies, programmes or practices been changed? How has the project helped to bring about this change?

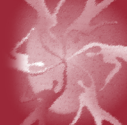
### Horizontal Principles

The following **prompts** are intended to help in thinking about how a project is implementing the horizontal principles of Impacting Poverty and Equal Opportunities.

### IMPACTING POVERTY / TARGETING SOCIAL NEED

- Is the project targeting efforts and resources on people and areas of greatest need? Who has benefited? Has targeting been successful?
- Does the project help prevent people falling into poverty/reduce the level (in terms of numbers and depth) of poverty? If so, how? Who has been helped? To what extent has it been effective?
- Does the project directly or indirectly address inequalities which might lead to poverty and/or problems of unemployment and increasing employability? What inequalities/problems? How effectively have these been addressed?
- Has the project identified and tackled factors which cause poverty/social exclusion? If so, what factors? How were they identified/tackled? To what extent has this been effective?
- Has the project proactively promoted social inclusion? If so, how? Social inclusion of whom? To what extent has it been effective?
- Has the project made a positive contribution to the achievement of NAPS and/or new TSN targets a specific objective of the project? If so, what targets/objectives? How did it contribute?
- Is there a link between poverty / social exclusion as a cause/legacy of the conflict and the rationale for the project? If so, what is it?
- If the project has not helped to lessen the levels or effects of poverty/social exclusion, has it increased poverty or social exclusion in any way? Why is this the case?

\* Gender mainstreaming can be defined as a process which involves the incorporation of gender considerations into all policies, programmes, practices and decision-making so that at every stage of development and implementation, an analysis is made of the effects on women and men, and appropriate action taken to promote gender equality.



## BALANCED INTERVENTION /EQUAL OPPORTUNITIES

The equality grounds are: Religious belief; Political opinion; Race; Age; Marital status; Sexual orientation; Gender; Disability; Dependency.

- Have you had any occasion to refer to/use your project's Equality Policy?
- What inequalities are being addressed by your project (e.g. unequal participation, direct or indirect discrimination, unequal resources).
- What has been achieved? Who has benefited? What actions by the project have made a contribution – how and why?
- Has the project specifically addressed inequality between men and women? If so, how has this been done? Has it been effective?
- Does the project directly or indirectly address gender-specific impacts of the conflict? (Have men and women – or specific groups of men or women – been differentially affected by the conflict?) If yes, what are these impacts and how are they being addressed?
- Is there a clear link between inequality as a cause/legacy of the conflict and the rationale for the project?
- Has this project increased inequalities or adversely impacted upon certain social groups? If so, how? Have any steps been taken to alleviate these adverse impacts?

## SUGGESTED HUMAN RIGHTS-BASED APPROACH EVALUATION QUESTIONS

### Human Rights Impacts

*These questions are meant to assist you in reflecting upon and reporting on the human rights impacts of the project. They are not intended to be a 'tick box' or 'yes/no' exercise, and there may be other questions which are more appropriate to your project. Both qualitative and quantitative information may be used to demonstrate impacts, but it is important that the evaluation describes what the impact is and its degree or extent. This should be **supported by evidence** that the impact is real, and why it can be attributed (at least in part) to the actions of the project.*

- Does the project consider itself as promoting human rights?
- Which rights does the project identify as being unfulfilled in the area of the project?
- What treaty standards and comments of rights bodies are relevant in this context?

- What has been achieved? Who has benefited? What actions by the project have made a contribution – how and why?
- How have project staff integrated human rights in their work?

### **Excluded and Vulnerable Groups**

- Has the project dealt with disadvantaged groups in the area of the project?
- What has been achieved? Who has benefited? What actions by the project have made a contribution – how and why?
- How does the project address exclusion and disadvantage within the framework of Peace and Reconciliation?

### **Stakeholder Capacity**

- Who are the project stakeholders and how were they identified?
- Which are project duty-bearers and what obligations have they been they? supposed to meet? Have they done this?
- Which are claim-holders and have they had? the capacity to claim their rights (including ability to access information, organize, advocate policy change, and obtain redress)?

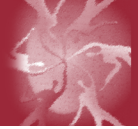
### **Project Process (Conduct)**

- Has the project implementation incorporated human rights standards as set out in international and regional conventions? Which ones?
- Has the project implemented and incorporated principles of universality, equality, participation, and accountability and transparency?
- Did both duty bearers and claim holders participate in project design, implementation, monitoring and evaluation?

### **Project Outcome (Results)**

- How has the project built capacities to realise human rights in the area of the project?
- Which human rights will be further realised?
- Has the project campaigned in the wider community on the human rights issues raised?
- How does the project build the capacities of duty bearers to meet obligations and claim holders to claim human rights? Which human rights will be further realized? How is this monitored and evaluated?





- Has the project advocated on behalf of vulnerable groups?
- Do indicators capture perceptions on the enjoyment of human rights and other qualitative aspects, such as accountability of public authorities?





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**Conclusion and Recommendations**

## Conclusions and Recommendations

As we have seen, the human rights landscape on the island of Ireland has been utterly changed since the Agreement. The previous experience in relation to the Northern Ireland conflict had revolved around restrictions placed upon citizens' human rights in the name of state security, such as restrictions on freedom of movement and fair trial rights. These concerns have not disappeared but beyond these concerns, there lies a wider arena for human rights to impact on the daily life of all who live in Northern Ireland and the Republic of Ireland. The decline in extreme violence, a cross-border referendum and the appearance, at times, of cross-party intercession each testify to the development of quasi-constitutional politics.

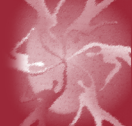
However it is not the case that all the issues arising out of the conflict have been resolved. Although the number of deaths and injuries arising out of the conflict is thankfully now low and there are few highly visible confrontations, tensions remain and there is persistent low level violence especially in some areas. Sectarian interface areas still dominate the geography of key points in Northern Ireland, such as North Belfast and Portadown. Survey work, research and polling still point to a society in Northern Ireland still divided and segregated in its patterns of living, housing, education and services, and sectarian attitudes remain firmly entrenched.<sup>157</sup> The seemingly perpetual realities of political intransigence and cultural contest that surround discrimination in the workplace, marching, decommissioning, flag-bearing and policing are ever present. The inability of devolution to reverse perceptions of religious discrimination, and the sense that communities are being socially and culturally marginalised due to political factors, as opposed to economic ones, has serious consequences in terms of creating faith and support for political reconciliation.

In addition many issues which remained hidden during the conflict or have arisen since directly impact on human rights such as racism, domestic violence and disputes over economic, social and cultural rights.

Within the Northern Irish context, it seems clear that devolution in the short term cannot resolve deep-seated political antagonisms. The aim of the Agreement as outlined in Chapter Four is to draw together diametrically political groups in order to promote a con-sociational accord, which endorses Northern Ireland's place in the UK and at the same time upholds minority rights and cultural demands. Despite much reduced but continuing violence and political discord,

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<sup>157</sup> Research carried out by the University of Ulster in 2002 found that by three years of age, 51% of children could demonstrate awareness of the political or cultural significance of a symbol or event and 15% of six year olds expressed sectarian statements.



the Agreement is as yet the most enduring settlement within Northern Ireland's contemporary history.

As so much of the debate that has surrounded the Agreement has tended to concentrate upon its provisions concerning disarmament, self-governance and other aspects of the political compromise. This emphasis has tended to ensure that the Agreement's broader human rights dimensions have to a degree been overlooked. Human rights are mainstreamed within the Agreement, and all the signing parties have committed themselves to respect and uphold this core element of the Agreement. The general commitment to uphold fundamental rights extends further than the set of rights contained in the European Convention on Human Rights. This is evident in the recognition by all parties that the power of the sovereign government with jurisdiction in Northern Ireland should be founded on: the principles of full respect for, and equality of, civil, political, social and cultural rights, as well as, freedom from discrimination for all citizens.<sup>158</sup>

It is also evident by the inclusion in the Agreement of specific rights commitments in respect of Northern Ireland relating to economic, social and cultural rights as well as the specific requirement upon the Irish government to ratify the Framework Convention on National Minorities and to draw upon international instruments (including but not limited to the ECHR) in ensuring: 'equivalence of rights'.<sup>159</sup>

The civil, political, socio-economic, cultural and minority rights recognised in the Agreement reflect the contents of the international human rights instruments which both governments have already ratified and accepted as binding in international law. All of these human rights provisions are a core element the Agreement. There should be given real and lasting effect to these general human rights commitments by sufficiently robust, resourced and well-implemented policy and legal measures.

As this report has demonstrated, a human rights-based approach is a process, which applies core principles aimed at ensuring the full enjoyment of human

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<sup>158</sup> Multi-Party Agreement Constitutional Issues, para. (v). The range of these rights commitments goes much further than the ECHR's scope, especially in the recognition of cultural rights and freedom from discrimination, which is considerably wider than the narrow and limited Article 14 right to equality in the ECHR.

<sup>159</sup> It also recognises the importance of addressing the full range of issues that have contributed to the Northern Irish conflict, including the denial of full socio-economic, minority and civil and political rights to many members of all the different communities. See C. Harvey and S. Livingstone, "Human Rights and the Northern Ireland Peace Process" [1999] *European Human Rights Law Review* 162-177

rights by all. Although there certainly are examples of good practice and learning, every State has had difficulties in implementing human rights into practical reality. The Republic of Ireland and the United Kingdom are no exceptions to this.

The strengths of a human rights-based approach to peacebuilding and reconciliation include: legitimacy and clarity deriving from rights and obligations based explicitly on human rights norms recognised in international law; an increase in accountability deriving from duties and duty-bearers in the reconciliation process; enhanced protection for individuals and communities as well as prioritisation of the most vulnerable in our society; improved co-ordination between groups in civil society as regards human rights norms and methodologies with appropriate interaction with State institutions; comprehensive assessment of human rights needs; guidance provided to government officials, nongovernmental organizations, professional groups, educators, advocates and other members of civil society regarding the steps necessary to ensure that human rights are vindicated; concerns of vulnerable groups more effectively addressed through a comprehensive approach emphasising prevention; a non-confrontational, society-wide, consideration of human rights issues promoted.

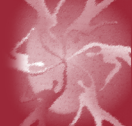
Where individuals are marginalised or excluded from society, leading to them suffering economic or social deprivation, it is unlikely that their human rights will be fulfilled. As such, a vicious circle is created whereby discrimination or vulnerability prevents people from gaining access to human rights protections, which in turn leads to further marginalisation and vulnerability. The people most in need of human rights protections are those for whom access to protection is most difficult. It is therefore most important that where:

voluntary and NGOs exist to advance the interests of people experiencing disadvantage and discrimination...[they] use human rights principles to negotiate changes in policy, practice and procedure. The value of using human rights as the path to challenging discrimination and deprivation is that a rights discourse may lay claim to concrete legal entitlements; but even in the absence of such entitlements it can generate a symbolic, rhetorical force.<sup>160</sup>

In its latest report, the United Kingdom's Parliamentary Joint Committee on Human Rights has expressed the view that 'a rights based approach can assist government in addressing poverty'.<sup>161</sup>

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<sup>160</sup> Ruth Lister, *Poverty: Key Concepts*, Polity Press (Oct 2004) at 159



The Institute for Public Policy Research in the United Kingdom has argued that groups such as those funded by Peace II are:

a frequent intermediary between individuals using services and public authorities providing them. [... They are] in a prime position for using human rights as an agent of change.<sup>162</sup>

However, in order to do so, projects such as those funded by Peace II and any further Peace funding must be adequately informed of the relevant human rights legislation, in accessible language and with guidance as to the protections that can be translated from each of the rights. This is particularly important for small, grassroots organisations. In decisions taken and policy adopted by health care providers, social services departments, planning departments and education authorities, human rights legislation in both jurisdictions imposes an obligation of compatibility with fundamental rights and freedoms. As such, human rights considerations are applicable in all such decisions and practices, and voluntary and community organisations should use human rights discourse to frame their input into such services.

Peacebuilding takes time and the process of mobilising ordinary people and their communities around peace in a post-conflict society is a long-term investment. Political structures must be complemented by initiatives at community and societal level and by structures for rights, equality, participatory democracy and civil society. Conflict thrives on inequality, or even perceptions of inequality, and social exclusion. Conversely, a programme that attempts to reduce underlying inequalities in society is all the more important. Lessons from international conflicts suggest that reconstruction is most successful when it is linked to reducing inequalities, incorporates a democratic and human rights dimension, involves women and engages civil society, especially the most marginalised, in developing their own agendas and articulating their needs and experiences.

The failure to implement human rights, particularly in the case of marginalized or minority groups, can lead to social exclusion, which in many cases will take the form of economic deprivation. These vulnerable groups are present in Northern Ireland and the border counties. In addition, research has shown that, in relation to Northern Ireland, there are specific groups whose human rights continue to be adversely impacted in the aftermath of the conflict. As such, ex-prisoners, displaced persons, women and minority communities face problems

<sup>161</sup> Report on the International Covenant on Economic, Social and Cultural Rights, Parliamentary Joint Committee on Human Rights, (House of Commons 2004).

<sup>162</sup> Frances Butler, Institute for Public Policy Research, Human Rights: Who needs them ? Using Human Rights in the Voluntary Sector IPPR (2004).

with discrimination, employment, poverty, health and crime, each of which directly or indirectly caused by the failure to protect their human rights and which, in turn, prevents them from securing such rights. Both Northern Ireland and the border counties have always been regions of comparative economic deprivation. It is important to note the economic effect of the conflict.<sup>163</sup> In Northern Ireland, for example, gross domestic product in 1998-2000 was 75% of that of the United Kingdom,<sup>164</sup> with unemployment in the same period standing at 5.7% compared to a United Kingdom rate of 4%.<sup>165</sup> The objective of the International Covenant on Economic, Social and Cultural Rights is the achievement of social justice through socio-economic means. The Committee on Economic and Social and Cultural Rights, which has primary responsibility for implementation of the Covenant, has stated that poverty does not constitute a denial of human rights under the Covenant. The Covenant provides for the rights of everyone to an adequate standard of living (including the right to food, clothing and housing, the 'enjoyment of the highest attainable standards of physical and mental health the right to work, social security and education. The Covenant envisages an incremental approach, and this has encouraged successive government to regard socio-economic rights more as aspiration policy objectives rather than obligations under international law. Socio-economic questions are not seen in rights-based terms in both countries. It is not surprising that for most of the respondents, the International Covenant on Economic, Social and Cultural Rights had the lowest recognition rate of all the international instruments that were surveyed.

It could be argued that an important benefit of the Peace Programming has been its capacity to activate ordinary citizens in a diverse range of projects, all of which obliged them to think about peacebuilding. Indeed one of the most positive aspects of the programme has been, despite the absence of meta-politics, to allow:

the strengthening of civil society by allowing grass-roots community-based organisations to mobilise within communities and allowed people to buy in to the peacebuilding and reconciliation agenda.<sup>166</sup>

Clearly there is still a huge amount of peace and reconciliation work to do, much of which can best be undertaken by the kind of voluntary and community organisations set up under the auspices of Peace I and Peace II. It is clear that

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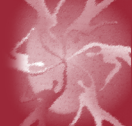
<sup>163</sup> See Brian Harvey et al, *The Emerald Curtain: The Social Impact of the Irish Border* (2005), Triskele Community Training and Development.

<sup>164</sup> Northern Ireland Economic Council, as quoted in Area Development Management and Combat Poverty Agency, *Building on Peace, Supporting Peace and Reconciliation after 2006*. (2004) at 82.

<sup>165</sup> *Ibid* at 83.

<sup>166</sup> Interview with Ruth Taillon of Border Action.





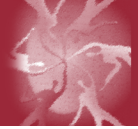
the social, economic, security and sectarian consequences of the Troubles have not yet been fully undone. Northern Ireland also faces a rise in other forms of violence and related social problems that arise when communities are in a transition from armed conflict to a more stable society. Violent attacks against members of minority ethnic communities and older people have also increased. There is a difficulty in assessing where a programme such as the Peace programme can affect the consequences of a situation such as the Troubles in Northern Ireland. The assessment of any programme requires both the identification of change and the capacity to attribute change to programme interventions. The volatility of the situation in Northern Ireland creates extreme difficulties in identifying the changes that can be attributed to the Peace Programmes. The key issue here is whether this volatility was contingent (difficulties associated with the transition from violence to politics in any society) or structural (difficulties that the nature and form of the peace process were incapable of overcoming). In the case of the former, the problems of transition can moderate the impact of a peace programme, whereas, with the latter, a peace programme may be misconceived.

We have posited that a human rights-based approach to peacebuilding and reconciliation is the incorporation of international human rights standards into the policies and projects established to aid the peacebuilding and reconciliation process. This is particularly appropriate in the area of Peace funding which has been a result of the peace process in Northern Ireland and the Belfast Agreement, given the centrality of human rights protections in the Agreement. If the philosophical connection between the fundamental values for a peaceful and reconciled society and human rights principles can be made, there must be potential for those principles to assist in progressing such a society. A human rights-based approach with its universally recognised moral values and reinforced by legal obligations provides a compelling normative framework for the formulation of national and international policies, including those of peacebuilding and reconciliation.

## **Recommendations**

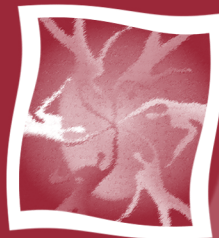
1. The Republic of Ireland and the United Kingdom have a responsibility to provide leadership and consistency by adopting proactive measures to provide information and support to voluntary and community organisations so that they can understand and use human rights principles in their work.
3. The Republic of Ireland and the United Kingdom should encourage the Irish Human Rights Commission and Northern Ireland Human Rights Commission to become a catalyst promoting a human rights-based approach as discussed in this report.

4. The Republic of Ireland and the United Kingdom have a responsibility to emphasise that the accountability of public authorities for their human rights responsibilities should not have to be achieved through expensive litigation. This can be done through maintaining and publicising a human rights and equality message across all governmental departments and agencies.
5. The Republic of Ireland and the United Kingdom should give consideration to implementing a national programme of a human rights education and awareness-raising through education and integration in school curricula.
6. There is an urgent need within the voluntary and community sector, schools trade unions, churches and government departments for accessible and practical information on the human rights legislation applicable in both jurisdictions, as well as on international human rights instruments, the underlying human rights principles and the mechanisms for their practical implementation. The impetus for this work should come from the two governments, funders and from the voluntary and community sector itself. This information can be disseminated as follows:
  - Developing coalitions and alliances that are committed to using human rights and equality principles which can focus on particular issues or the needs of a particular sector;
  - Engagement by voluntary and community groups to disseminate information to their members or client group;
  - Web-based and other information provision from funders.
7. Any future Peace funding programme should explore the design of a human rights-based approach and adopt a human rights framework in the selection and assessment of projects. This framework would incorporate the principles of a human rights-based approach of legitimacy, empowerment, accountability and transparency, participation equality and non discrimination.
8. Projects funded by any future Peace funding should consider using human rights language and emphasising positive obligations when working with public authorities to seek change and promote accountability for human rights outside a litigation environment. The use of human rights more explicitly in advocacy and development work is particularly recommended because:



- After initial training, using a human rights-based approach is not resource intensive because it is more about an approach to a problem than an expert knowledge of human rights law;
  - It should be possible to hold public authorities to account without the use of litigation;
  - Most projects negotiate with service providers;
  - It has the potential to have long lasting affects because it can engender cultural change.
9. Special efforts must be deployed, at all levels, to ensure that economic, social and cultural rights take their rightful place within the general scheme of human rights protections.





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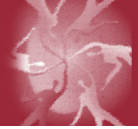
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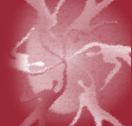
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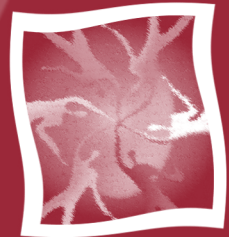
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**Appendix 1: Questionnaire**

## Questionnaire.

### Definitions:

#### *Human rights approach:*

A human rights approach to peace and reconciliation is the incorporation of international human rights standards into the policies and projects established to aid the peace-building and reconciliation process.

#### *Transparent:*

This term refers to the fact that a project is run in a way that is accountable.

#### *Statutory Human Rights Body:*

Examples include the Human Rights Commissions, North and South, the Equality Authority in the Republic of Ireland and the Equality Commission in Northern Ireland.

#### *Non-Governmental Organisation:*

Examples include Amnesty International.

#### *Instructions:*

In questions where it is necessary to do so please tick “yes” or “no” as appropriate.

In questions where a longer answer is required please write in the space provided.

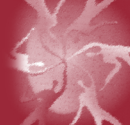
### 1. Are the following details about the project you are involved in correct?

Title: Yes? ☐ No? ☐

Location: Yes? ☐ No? ☐

### 2. Which of the following groups participated in the project? (Tick as appropriate)

- (a) Victims of conflict-related violence and their families? ☐
- (b) People displaced as a result of conflict and their families? ☐
- (c) Politically motivated ex-prisoners and their families? ☐
- (d) Women? ☐
- (e) Young people? ☐



**What issues does the project aim to address in the community? For example does it address issues such as employment, education, culture? (Please write below)**

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**To what extent does the project involve rights and responsibilities? (Please write below)**

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**Does the project address human rights issues?**

Yes? ☐

No? ☐

**What human rights issues does it address? (Please write below)**

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Human rights have traditionally been divided into civil and political rights such as, for example, the right to freedom of expression, religion and fair trial and economic, social and cultural rights such as, for example the right to work or the right to health.

**Does the project address civil and political rights?**

Yes? ☐

No? ☐

**Does the project address issues of freedom from torture or inhuman and degrading treatment?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**Does the project address fair trial rights such as the right to liberty, the right to be informed of reason for arrest, the right not to be arbitrarily detained?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**(c ) Does the project address issues of political participation?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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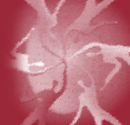
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**(d) Does the project address issues of freedom of thought, religion or opinion?**

Yes? ☐

No? ☐



**If yes, please give examples in the space provided below**

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**(e) Does the project address issues of freedom of association or peaceful assembly?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**Does the project address economic, social and cultural rights?**

Yes? ☐

No? ☐

**(a) Does the project address issues the right to work?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**(b) Does the project address issues of the right to an adequate standard of living?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**(c) Does the project address issues of the right to join a trade union?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**(d) Does the project address issues of the right to health?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**(e) Does the project address issues of the right to education?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**(f) Does the project address issues of the freedom to practice ones culture?**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**


**9. Freedom from discrimination:**

Please tick as appropriate:

**Does the project address issues of :**

**Equality of men and women**

Yes? ☐

No? ☐

**Racism**

Yes? ☐

No? ☐

**Discrimination on the grounds of religion**

Yes? ☐

No? ☐

**Discrimination towards people with a disability**

Yes? ☐

No? ☐

**Discrimination on the grounds of sexual orientation**

Yes? ☐

No? ☐

**Discrimination of the grounds of age**

Yes? ☐

No? ☐

**Discrimination on the grounds of political opinion**

Yes? ☐

No? ☐

**Does the project deal with the challenges that arise from discrimination?**

Yes? ☐

No? ☐

**If yes, in what way? (Please write in the space below)**

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## **11. Language rights:**

**Does the project promote the Irish/Ulster Scots language?**

Yes? ☐

No? ☐

**If yes, in what way? (Please write in the space below)**

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**Was the project conducted through the medium of the Irish/Ulster Scots language?**

Yes? ☐

No? ☐

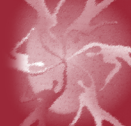
**If yes, which language? (Please write in the space below)**

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**Would you be aware of domestic human rights legislation?**

Yes? ☐

No? ☐

*For example:*

In Northern Ireland; The Human Rights Act 2001, Fair Employment and Treatment Order 1998, the Race Relations Order 1997, The Disability Discrimination Act, The Sex Discrimination Order 1976 (as amended) Section 75 of the Northern Ireland Act etc.

In the Republic of Ireland; Articles 40 – 44 of the Irish Constitution, the Employment Equality Act 1998, the Equal Status Act 2000, the European Convention of Human Rights Act 2003?

**12. Are you aware of the Human Rights Commission in Northern Ireland?**

Yes? ☐

No? ☐

**13. Are you aware of the Human Rights Commission in the Republic of Ireland?**

Yes? ☐

No? ☐

**Have you ever been in contact with either Human Rights Commission?**

Yes? ☐

No? ☐

**16. Are you aware of the United Kingdom and the Republic of Ireland's international human rights obligations?**

Yes? ☐

No? ☐

**If yes, could you give examples? (Please write in the space below)**

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**Are you aware of :**

Please tick “yes” or “no” as appropriate

**(i) European Convention of Human Rights**

Yes? ☐

No? ☐

**(ii) The European Social Charter**

Yes? ☐

No? ☐

**(iii) The International Covenant on Civil and Political Rights**

Yes? ☐

No? ☐

**(iv) The International Covenant on Economic, Social and Cultural Rights**

Yes? ☐

No? ☐

**(v) The Convention on the Elimination of All Forms of Discrimination Against Women**

Yes? ☐

No? ☐

**(vi) The International Convention on the Elimination of All Forms of Racial Discrimination**

Yes? ☐

No? ☐

**(vii) The Convention on the Rights of the Child**

Yes? ☐

No? ☐

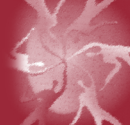
If you answered “yes” to any part of question 17:

**Are you aware of the enforcement mechanisms of these treaties listed below? Please tick “yes” or “no” as appropriate.**

**(i) European Court of Human Rights**

Yes? ☐

No? ☐



**(ii) Human Rights Committee**

Yes? ☐

No? ☐

**(iii) Committee on Economic, Social and Cultural Rights**

Yes? ☐

No? ☐

**(iv) Committee on the Elimination of Racial Discrimination**

Yes? ☐

No? ☐

**(v) Committee on the Elimination of Discrimination Against Women**

Yes? ☐

No? ☐

**(vi) Committee on the Rights of the Child**

Yes? ☐

No? ☐

If you answered “yes” to any part of Q 18:

**Has the project ever contacted any of the treaty enforcement bodies?  
(such as the treaty enforcement bodies listed in Q 18)**

Yes? ☐

No? ☐

**If yes, please give examples in the space provided below**

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**Did anyone overseeing the project receive training in human rights?**

Yes? ☐

No? ☐

**If so, please indicate who was the provider of the training by ticking a box below:**

- Government agency? ☐
- Statutory Human Rights Body? ☐
- Non-Governmental Organisation? ☐
- University/school? ☐
- Private legal/business trainers? ☐

**Can you indicate how much human rights training was received by persons involved in the overseeing of the project? Please tick a box as appropriate.**

- Under 3 hours? ☐
- 1 day? ☐
- 3 days? ☐
- 1 week? ☐
- More than 1 week? ☐

**23. Please rate the training below by indicating how good or poor the training was:**

Excellent? ☐ Very good? ☐ Good? ☐ Poor? ☐ Fair? ☐

**(ii) Please give reasons for your rating in the space provided below:**

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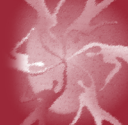
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**Does the Project help to raise awareness about human rights?**

Yes? ☐ No? ☐

**Does it educate participants about human rights?**

Yes? ☐ No? ☐



If yes, please give examples;

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**26. Participatory decision making:**

**When decisions are made regarding the running of the Project, are the views of all participants taken into account?**

Yes? ☐

No? ☐

If yes, please give examples;

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**Accountability:**

**Is the Project run in a transparent manner?**

Yes? ☐

No? ☐

If yes, please give examples;

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**Did the project set out with the aim of embracing a human rights approach?**

Yes? ☐

No? ☐

If yes, what are the benefits of using a human rights approach? (Please write below)

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**29. Did the project evolve over time to have a human rights based approach?**

Yes?

☐

No?

☐

If yes, why? (Please write below). If yes, please give examples;

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**30. Did this benefit the Project?**

Yes?

☐

No?

☐

If yes, in what ways? (Please write below)

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**31. Does the project aim to adopt a human rights approach in the future?**

Yes?

☐

No?

☐

If yes, why? (Please write in the space provided below)

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**THANK YOU FOR YOUR TIME**





*Respect, Protect and Fulfil*



**International Human Rights Standards**

## Summary of International Human Rights Norms

### Universal Declaration of Human Rights

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and

international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

*Article 1.* All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 2.* Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Article 3.* Everyone has the right to life, liberty and security of person.

*Article 4.* No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

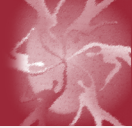
*Article 5.* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 6.* Everyone has the right to recognition everywhere as a person before the law.

*Article 7.* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 8.* Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

*Article 9.* No one shall be subjected to arbitrary arrest, detention or exile.



*Article 10.* Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11.* (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Article 12.* No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Article 13.* (1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14.* (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.\

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15.* (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16.* (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17.* (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

*Article 18.* Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19.* Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20.* (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

*Article 21.* (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 22.* Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

*Article 23.* (1) Everyone has the right to work, to free choice of employment, to just and

favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

*Article 24.* Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

*Article 25.* (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

*Article 26.* (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

*Article 27.* (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

*Article 28.* Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

*Article 29.* (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

*Article 30.* Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## International Covenant on Civil and Political Rights

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the



Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, Agree upon the following articles:

## PART I

*Article 1.* 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## PART II

*Article 2.* 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

*Article 3.* The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

*Article 4.* 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

*Article 5.* 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a

greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### PART III

*Article 6.* 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

*Article 7.* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

*Article 8.* 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term 'forced or compulsory labour' shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

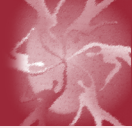
(iv) Any work or service which forms part of normal civil obligations.

*Article 9.* 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that



court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

*Article 10.* 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

*Article 11.* No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

*Article 12.* 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre publique*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

*Article 13.* An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed

to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

*Article 14.* 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;



(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

*Article 15.* 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

*Article 16.* Everyone shall have the right to recognition everywhere as a person before the law.

*Article 17.* 1. No one shall be subjected to arbitrary or unlawful interference with his

privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

*Article 18.* 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

*Article 19.* 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

*Article 20.* 1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.





*Article 21.* The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

*Article 22.* 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

*Article 23.* 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

*Article 24.* 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or

birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

*Article 25.* Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

*Article 26.* All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Article 27.* In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

[...]

## **International Covenant on Economic, Social and Cultural Rights**

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the

foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

### PART I

*Article 1.* 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

### PART II

*Article 2.* 1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the

present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

*Article 3.* The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

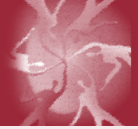
*Article 4.* The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

*Article 5.* 1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### PART III

*Article 6.* 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity



to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

*Article 7.* The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

*Article 8.* 1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely

subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

*Article 9.* The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

*Article 10.* The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

*Article 11.* 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

*Article 12.* 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

*Article 13.* 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human

personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.



*Article 14.* Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

*Article 15.* 1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;  
(b) To enjoy the benefits of scientific progress and its applications;  
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

[...]

## **International Convention on the Elimination of All Forms of Racial Discrimination**

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental

freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination, Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society, Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

### PART I

*Article 1.* 1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead

to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

*Article 2.* 1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

*Article 3.* States Parties particularly condemn





racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

*Article 4.* States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

*Article 5.* In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

- (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
  - (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

*Article 6.* States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

*Article 7.* States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

[...]

### **Convention on the Elimination of All Forms of Discrimination against Women**

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights, Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women, Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women, Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and

cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity, Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

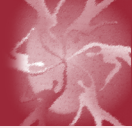
Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a





whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

## PART I

*Article 1.* For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

*Article 2.* States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to

eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

*Article 3.* States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

*Article 4.* 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

*Article 5.* States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

*Article 6.* States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### PART II

*Article 7.* States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

*Article 8.* States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

*Article 9.* 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.  
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### PART III

*Article 10.* States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and

vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

- (d) The same opportunities to benefit from scholarships and other study grants;

- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

- (g) The same opportunities to participate actively in sports and physical education;

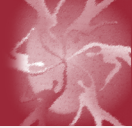
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

*Article 11.* 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;

- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and



the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

*Article 12.* 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to

women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

*Article 13.* States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

*Article 14.* 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

### PART IV

*Article 15* 1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

*Article 16.* 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to

exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

[...]

### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

## PART I

*Article 1.* 1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

*Article 2.* 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

*Article 3.* 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent

pattern of gross, flagrant or mass violations of human rights.

*Article 4.* 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

*Article 5.* 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

*Article 6.* 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which

he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

*Article 7.* 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

*Article 8.* 1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable

offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

*Article 9.* 1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

*Article 10.* 1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

*Article 11.* Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

*Article 12.* Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

*Article 13.* Each State Party shall ensure that any individual who alleges he has been





subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

*Article 14.* 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

*Article 15.* Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

*Article 16.* 1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

[...]

## Convention on the Rights of the Child

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom, Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General

Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth',

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries, Have agreed as follows:

### PART I

*Article 1.* For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

*Article 2.* 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion,

political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

*Article 3.* 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

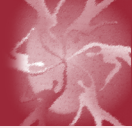
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

*Article 4.* States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

*Article 5.* States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.





*Article 6.* 1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

*Article 7.* 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

*Article 8.* 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

*Article 9.* 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any

action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

*Article 10.* 1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

*Article 11.* 1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

*Article 12.* 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

*Article 13.* 1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

*Article 14.* 1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

*Article 15.* 1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of

public health or morals or the protection of the rights and freedoms of others.

*Article 16.* 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

*Article 17.* States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;


(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

*Article 18.* 1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal



guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

*Article 19.* 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

*Article 20.* 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

*Article 21* States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is

authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

*Article 22.* 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the

family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

*Article 23.* 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

*Article 24* 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

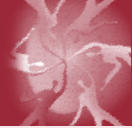
(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

*Article 25.* States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other



circumstances relevant to his or her placement.

*Article 26.* 1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

*Article 27.* 1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

*Article 28.* 1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

*Article 29.* 1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural

environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

*Article 30.* In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

*Article 31.* 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

*Article 32.* 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

*Article 33.* States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

*Article 34.* States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

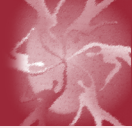
*Article 35.* States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

*Article 36.* States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

*Article 37.* States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to





maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

*Article 38.* 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

*Article 39.* States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

*Article 40.* 1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of

others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

*Article 41.* Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

### PART II

*Article 42.* States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

[...]