



**Submission from the Human Rights Consortium on the
Draft Programme for Government (PfG) Framework
of the Northern Ireland Executive**

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Introduction

The Human Rights Consortium is an alliance of groups campaigning to ensure a human rights based society which includes a strong and inclusive Bill of Rights for Northern Ireland. With over 160 member organisations from across the full spectrum of civil society and community groups in Northern Ireland we work together to help protect and promote human rights through advocacy, education, awareness raising and a range of other actions and activities.

The Consortium welcomes the opportunity to comment on the Draft Programme for Government 2016 – 21. We note that the approach being taken in this latest Programme for Government (PfG) has moved away from a traditional input and output model of planning budget allocations, programme development and monitoring implementation towards an outcomes based model that focuses on the impact on people and sets longer term goals.

We welcome this general approach and hope that our comments can help develop and expand this useful starting point into a Programme for Government that is in line with human rights requirements and best practice.

Conceptual Framework

The move to an outcomes and indicators based framework is a welcome shift in the Executive's approach to governance. It provides the opportunity for a more comprehensive understanding of the Executive's vision for the next five years of government and tracking whether those plans have been achieved.

However, the use of an Outcomes and Indicator framework approach is not a new concept. While we understand that the NI Executive have drawn their inspiration from Outcomes Based Accountability (OBA) literature an enhanced version of this approach has been in existence as recommended best practice for the tracking and monitoring of the implementation of international human rights standards at a state level for a number of years. We would herald a note of caution at an early stage in the development of this new approach to measuring progress in achieving the Programme for Government. Adopting an outcomes approach much be underpinned by an understanding of how what is being measured relates to the lived experience of people in Northern Ireland, otherwise it risks becoming a mechanism for accounting 'progress' against individual measures, rather than a comprehensive approach to improvement of wellbeing for everyone in Northern Ireland.

To reduce this risk, we would recommend that the Programme for Government avails of international best practice models, specifically guidance on embedding human rights measures into the outcomes framework. Human rights are indivisible and interdependent and a comprehensive approach is necessary to ensure progress towards their full realisation. The Office of the High Commissioner for Human Rights (OHCHR) at the United Nations has developed specific guidance for states on how they can best carry out their duty to monitor and report their actions to realise individual human rights standards at a state level in its publication *Human Rights Indicators, A Guide to Measurement and Implementation*.¹

¹ Human Rights Indicators, A Guide to Measurement and Implementation. United Nations Office of the High Commissioner for Human Rights (OHCHR), HR/PUB/12/5 Available at http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf

In the context of the NI Executive adopting a new Outcomes Based Accountability (OBA) model, the additional factor of the UK having signed and ratified a range of international human rights treaties² and the fact that detailed conceptual models, guidance and best practice already exist and are in operation for how outcomes based models can be tailored to incorporate the monitoring and realisation of human rights we would recommend that the current Programme for Government framework proposals are developed further to accommodate this approach.

Despite the UK already being legally bound by the treaties listed above there has been a lack of a joined up approach to effectively implement and monitor individual rights duties and actions at a state or regional level. The move to adopting an outcome based framework in Northern Ireland affords an opportunity to embed the implementation and monitoring human rights standards into the Programme for Government. This approach would have the added benefit of establishing a clear mechanism by which the Executive could report on how these international human rights standards are being achieved and where there are gaps or obstacles in implementation.

The Human Rights Consortium has long argued for a Northern Ireland Bill of Rights that would give direct access to international human rights in domestic legislation. The Northern Ireland Bill of Rights would provide a clear framework to an outcomes based approach to governance.

The realisation of international human rights standards can and should be achieved through the adoption of programmes, measures, policies and other government initiatives and decisions in the first instance. For those who have been resistant to the concept of establishing supplementary domestic rights, embedding a human rights framework into the Programme for Government in this way, without the requirement for the backstop of enforceable rights, should provide the natural mechanism by which these rights could be implemented.

While we maintain the need for supplementary enforceable rights in a local Bill of Rights the above programmatic approach to realising human rights would seem a logical interim step given the Executive's move towards an outcomes based model.

The international human rights treaties to which the UK is party create a legal duty on the state to give effect to these rights, however, there is no mention of any individual right or the concept of human rights at all in the draft Programme for Government. Our criticism of the previous PfG was that it did not make one single mention of equality or human rights and was not directed towards the realisation of any outcomes in that regard. While it is commendable that a number of indicators link to the removal of existing inequalities in Northern Ireland in the latest draft model this could easily be developed further into a comprehensive plan to realise the full range of rights of people in Northern Ireland.

Adopting a Rights based framework

The Human Rights Consortium recommends the adoption of a human rights based approach to the Programme for Government. By this we mean that the PfG should tailor its outcomes and indicators in a manner that assists the NI Executive as the primary duty bearer in its obligation to respect, protect and fulfil international human rights standards in Northern Ireland in line with their international legal duties.

² The United Kingdom has signed and ratified seven human rights treaties and a range of other protocols and procedures. For a full list see http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=185

The Consortium makes the following additional recommendations as to how that approach could be implemented. Our advice is largely drawn from the recommendations within the *Human Rights Indicators, A Guide to Measurement and Implementation* document cited above.

A. We suggest the addition of an overall outcome of ‘We are a society where everyone can enjoy their rights’.

The establishment of this outcome would allow for an initial collective focus by the NI Executive on their responsibility to implement international human rights standards by placing it squarely within their central objectives. This would be reflective of the important role that human rights play in the constitutional settlement for Northern Ireland and it fits appropriately with existing outcome proposals while also filling an identified shortcoming in the Executives legal duties.

B. There should also be a range of related outcomes measuring the enjoyment of each individual right.

The current draft includes only 14 proposed outcomes. The enjoyment of each individual right could and should also be established as additional outcomes in their own right. Only through establishing the enjoyment of the rights as proposed outcomes can the appropriate supporting indicators be put in place that are appropriate to the context of each right. Attempting to develop a smaller number of supporting indicators for the enjoyment of human rights in a more general way would not allow for enough detailed analysis of the commitment, measures and progress in realising individual rights protections in Northern Ireland.

C. The measurement of the enjoyment of each individual right should be assessed using an expanded indicator framework that includes structural, process and outcomes indicators.

There are a number of problems with the current approach to indicators and supporting measures in the draft PfG. Many of the indicators are helpful from a rights perspective in that they align with standard indicators for some existing rights. For instance, the measurement of healthy life expectancy at birth and the gap between highest and lowest deprivation quintile in healthy life expectancy at birth for indicators 2 and 3 correlate with similar indicators for the right to the highest attainable standard of physical and mental health using a human rights based approach. However, there are also shortcomings in the draft approach as framed. For instance, these two indicators are not sufficient in themselves to be able to accurately reflect both the enjoyment of the right but also the measures taken by the government to respect and protect the right which form an important element in the monitoring process. For example, the UN publication *Human Rights Indicators, A Guide to Measurement and Implementation* suggests measuring the right to health through five groupings of indicator on the following areas: sexual and reproductive health; child mortality and health care; natural and occupational environment; prevention, treatment and control of diseases; and accessibility to health facilities and essential medicines. Each of these areas is then broken down into a range of structural, process and outcomes measures in order to provide a fuller picture of how the right to health is being realised. This approach allows for a more comprehensive delineation of where there are successes and scope for improvement.

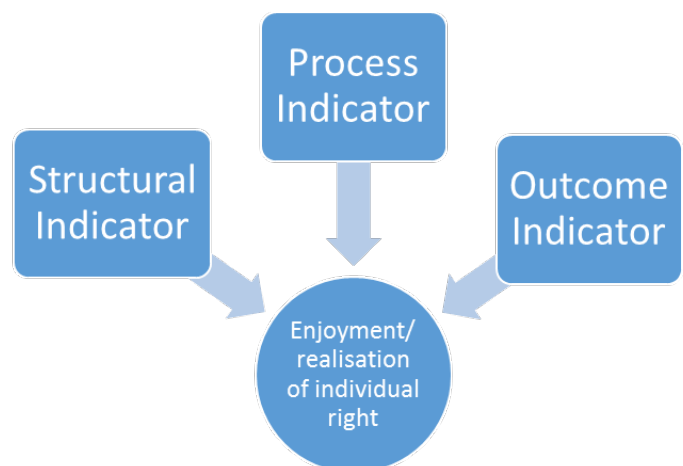
In the current Programme for Government only one measure exists for each indicator. The range of indicators is also insufficient to be able to comprehensively assess the enjoyment of individual rights and to appreciate how the Executive is working towards their achievement. The means of measuring

the indicator do also not align with existing human rights approaches and the advice from UN human rights bodies. For example, the UN Committee on Economic, Social and Cultural Rights had previously urged the United Kingdom to fulfil its commitment to reduce health inequalities by 10 per cent by 2010³, measured by infant mortality and life expectancy at birth. Infant mortality rates are an important measure of progress towards the right to health and should therefore be added as a measure in addition to life expectancy for the *reduce health inequality* indicator.

Without comprehensively going through every indicator in the current draft Programme for Government, indicator 5 is another example of the limitations of the current approach. Its stated aim to *improve the quality of the healthcare experience* has, like all of the indicators, only one measure listed. The measure is the *percentage of people who are satisfied with health and social care (based on their recent contact)*. This measure is essentially a judgement based quantitative indicator that provides a subjective view of the healthcare experience at a fixed point. It does not take into account what this ‘satisfaction’ is based on. For example, person A may experience a poor standard of care, but recover to full health in a relatively short period of time, and therefore be ‘satisfied’ about their experience. Conversely, person B may be experiencing a chronic health problem and while they receive a high quality of care in some aspects of care, but poor in others, however they are generally satisfied with their experience. In relation to both these examples the apparent satisfaction may hide actual failures in care quality which are hidden.

To enable a comprehensive assessment of this indicator it could be supplemented with a fact based or objective quantitative indicator about the standard of care such as the number of people treated, waiting times for treatment or the number of complaints about treatment received. Moreover, the existing indicator only measures satisfaction with care provided and tells us nothing about the commitment of the public bodies involved or the measures they took to realise the broader outcome of improvement of healthcare. For instance, the legislation or policies adopted, the financial or budgetary allocations or the programmatic activities aimed towards improving the healthcare experience. These problems are repeated across the range of draft indicators and measures.

While no single indicator or grouping of indicators can paint an entirely accurate picture of the enjoyment of a right, such tools only give us an approximation that will always need to be supplemented by further analysis, the adoption of structure, process and outcomes indicators aligned to individual rights outcomes would at least help the Executive to paint a much more comprehensive picture of the status of human rights in Northern Ireland.



Such indicators are broadly aligned to measure whether the state has ensured each right has been respected, protected and fulfilled. The diagrams and tables on this page and the following page give a sense of the role of each type of indicator and how it helps the state as duty bearer develop a more comprehensive picture of the realisation of rights.

³ (E/C.12/GBR/CO/5, para. 32). Pg. 38

Structural Indicator	Process Indicator	Outcome Indicators
<ul style="list-style-type: none"> •Shows the commitment of the state to implement its commitment to the human rights standard. •Shows the nature of domestic law in relation to the right and the institutional frameworks, mechanisms, action plans and policies that the state will take to translate the right into reality. 	<ul style="list-style-type: none"> •Measures the ongoing actions of duty bearers in the practical implementation of steps taken to implement their duty on the ground. •Includes policy measures, public programmes, budget allocations, regulatory or redress interventions. •The implementation stage between the commitment of structural indicators and the results in outcome indicators. •Helps reflect the duty bearers ongoing efforts to realise rights over time. 	<ul style="list-style-type: none"> •Captures the consolidated impact of structural and process indicators over a longer period of time. •Help to assess the states efforts in furthering the enjoyment of individual rights. •Often expressed using statistical data or results.

The above approach not only measures the enjoyment of rights by rights holders by capturing outcomes that could be related to the state of realization of human rights, it also assesses the progress made by the duty bearer in meeting its human rights obligations.

Each right should be mapped out against relevant structural, process and outcome indicators to assess the status of the right in Northern Ireland. It is important to ensure that such indicators are context specific to Northern Ireland. The *Human Rights Indicators, A Guide to Measurement and Implementation* publication gives a list of illustrative indicators across a range of rights. It maps these out across the three types of indicators and the key attributes of the individual right⁴ which have largely been identified by UN bodies. These would need to be assessed for suitability to our context but would provide a good starting point for the development of a human rights based approach to measuring outcomes.

D. There should be indicators developed for the development and monitoring of cross cutting human rights norms/principles such as non-discrimination, equality, participation, access to a remedy and accountability.

These indicators embed best practice across all areas of the Programme for Government.

⁴ As an example see table 3 Page 90, for key attributes and indicators for the right to the highest attainable standard of physical and mental health. Indicators (in this case an outcome indicator) such as the proportion of people covered by health insurance may not be relevant to our local context but there will be others that will be specific to our circumstances that can be replacements.
http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf

Non-discrimination and equality

Non-discrimination and equality creates a positive duty to actively measure and combat any form of discrimination and inequality. This means that the Programme for Government not only address where there is clear evidence of discrimination or inequality, but also that it monitors hidden inequalities. This requires full disaggregation of data across all indicators to help measure how different groups experience different outcomes and which can help identify such hidden inequalities. The Government also has a statutory requirement under Section 75 of the Northern Ireland Act 1998 to produce disaggregated data across the nine equality categories which should be rigorously incorporated into the monitoring framework.

Participation

There are many examples of international best practice in participatory models of governance which go beyond the simple consultation approach and require meaningful engagement in decision making. The Programme for Government should reflect a more collaborate approach and ensure that it is actively reaching out to communities and individuals, particularly vulnerable and disadvantaged people and groups, who are viewed as being unresponsive to its 'passive' approach to consultations but who are directly affected by the decisions being taken.

Accountability and access to a remedy

An outcomes based model of governance embeds accountability into the Programme for Government. However, there must also be administrative and other procedures in place for addressing individual complaints and providing a remedy where necessary. This is a vital check on how government and administrative programmes are operating and allows for individual and structural problems to be addressed in a timely manner. In order for such a check to be effective any such mechanism should be affordable and accessible.

E. For each right and set of indicators there should be established existing baselines, targets and benchmarks by which future progress will be measured.

Any data needs to go beyond statistical averages and provide information particularly focused on the most deprived and vulnerable people in society. While some disaggregation is evident in the current draft Programme for Government, this can be inserted across a range of measures. Statistical information should be disaggregated across all of the S75 grounds and the following: sex; age; urban/rural; economic wealth (eg, quintile or decile of income or expenditure); socioeconomic status or educational attainment; community background; and race/ethnicity either through objective and subjective criteria. We are also disappointed to note that there is no mention of setting targets towards the achievement of individual outcomes. Without setting incremental targets based on agreed measures it will make assessing progress over the lifetime of the PfG all the more difficult to quantify. We recommend the adoption of agreed targets to be aimed for over the five-year period of the PfG that align with each outcome.

Additional Human Rights issues for consideration in the PfG

- Adoption of a Northern Ireland Bill of Rights

Across the UK it is a time of uncertainty as regards the protection of human rights. Threats exist to the Human Rights Act and other protections provided by current membership of the EU. In Northern

Ireland there is also the ongoing public and civil society expectation of a local bill of rights as provided for under the Belfast Agreement. We therefore find ourselves in a situation where not only are rights supplementary to the European Convention of Human Rights not being delivered for Northern Ireland but that our linkages to the Convention rights through existing domestic legislation and other EU driven protections are currently being threatened. A Bill of Rights for Northern Ireland could have important implications in defending and enhancing the rights we already enjoy, and also provide people in Northern Ireland with an important additional layer of protection in these uncertain times, by ensuring that people in Northern Ireland experience no diminution of rights. In this context the imperative to develop a local Bill of Rights that protects and enhances existing standards from a range of sources becomes all the more important and we recommend that the development of a Northern Ireland Bill of Rights become a priority action for the Programme for Government.

- Protection of the Human Rights Act

The Human Rights Act sits at the heart of the protections of our governance structures in Northern Ireland. It has been a key confidence-building mechanism as we transition from a time of conflict. Ensuring all functions of public authorities, including the Stormont Assembly and Executive act in accordance with Convention rights. In addition, it has been welcomed by public authorities such as the PSNI as an important tool to help them properly fulfil their functions. For people within Northern Ireland the Human Rights Act has been a crucial mechanism for ensuring that their rights are respected in a variety of contexts such as people living in care homes, disability access and support to pensioners. It should be a key aim of this government to ensure that during this term nothing is done that will in anyway undermine the rights contained within the Human Rights Act, or the way in which people can enjoy or access these rights. The Northern Ireland Executive can do this not only by resisting any moves by the Westminster government to alter or remove the Human Rights Act, but also by ensuring the Human Rights Act is further utilised and entrenched in Northern Ireland- for example through awareness and capacity raising programmes for public officials and enhanced utilisation of the Act in the Stormont legislative and scrutiny processes.

- Implementation of International Standards and United Nations recommendations

The United Kingdom has signed and ratified 7 UN human rights treaties, each of which has a Committee of experts which monitors and reviews how a country is meeting or failing to meet the human rights provisions of each treaty.

These Committees of experts provide valuable advice as to how the UK as a whole, and the devolved regions can better meet their human rights commitments. The level of involvement and acknowledgement that the Northern Ireland Executive gives to these treaties and recommendations in the formulation of Government policy is practically non-existent. We recommend that the PFG ensure a commitment to the improvement of the Northern Ireland Governments participation in the treaty review processes, including dialogue with civil society and a commitment to directly incorporate the treaties and the treaty review recommendations into concrete government actions.

- Human Rights implications of Brexit

Following the recent referendum result in which a majority of people in the UK voted to leave the European Union, it is essential that as the UK government plans its exit the human rights protections

which people in the Northern Ireland have been afforded as members of the European Union are continued and that the government ensures that there is no diminution in how rights are experienced. Triggering the Article 50 process automatically brings with it a two-year countdown to a scenario where many existing rights could automatically be withdrawn or undermined. To do so without recourse to supplementary legislation or actions to replace those rights would be a dereliction of the duties of the NI Executive. In their role in shaping the context in which an EU withdrawal may take place we urge the NI Executive to ensure the protection of existing human rights standards are a priority.

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