



**The Northern Ireland Council for Ethnic  
Minorities (NICEM) submission to the NIO  
Consultation on, 'A Bill of Rights for  
Northern Ireland: Next Steps '**

**March 2010**

## **Introduction**

NICEM is an independent non-governmental organisation monitoring racism and racial inequality in Northern Ireland. As an umbrella organisation we represent the interests of black and minority ethnic groups in Northern Ireland. Currently we have 29 affiliated black and minority ethnic groups as our full members; this composition is representative of the majority of black and ethnic minority communities in Northern Ireland.

NICEM has spent a considerable amount of time working on the Bill of Rights process over the past twelve years. We have worked with a wide variety of black and minority ethnic groups and individuals in order to generate awareness and debate on the issue. From 2006-2008 NICEM shared a seat with An Munia Tober on the Bill of Rights Forum. The two organisations also represented the ethnic minority sector on 4 of the forum's working groups.

NICEM has been a committed member of the Human Rights Consortium since its inception and we are fully supportive of a strong and inclusive Bill of Rights for Northern Ireland.

In February 2010, NICEM held a significant conference specifically addressing the issue of the Bill of Rights and the importance of social and economic rights, the conference was over subscribed, it was attended not only by representatives and community leaders from ethnic minority groups but also by representatives from broader civil society and government, this was the 4<sup>th</sup> conference NICEM has held in ten years on the subject of a Bill of Rights, the popularity of such events and the debate which it has generated clearly demonstrates the passion and commitment of the ethnic minority sector for a Bill of Rights.

**NICEM firmly believes that the NIO's consultation document is inadequate and that it does not reflect the advice presented to it by the Human Rights Commission on 10th December 2008.**

Whilst we were delighted to read of the secretary of states "continuing commitment to a strong and effective human rights framework that will benefit everyone in Northern Ireland" as expressed in the foreword of the document, we believe that the current consultation document does not sufficiently reflect such a commitment.

For the reasons outlined below, we have urged the NIO to revoke the consultation document and issue one that adequately reflects the advice presented to the Secretary of State by the Human Rights Commission on 10<sup>th</sup> December 2008. As we do not believe the NIO document is capable of generating a meaningful response to the process in its current form we are not responding to the detail of the consultation paper.

The NIO's narrow consultation paper does not give weight to the desires of the people of Northern Ireland for a strong and inclusive Bill of Rights. These desires have been expressed through numerous public meetings, seminars and training events for twelve years now. In fact, the Human Rights Commission has received over 600 submissions from individuals and agencies throughout NI on the Bill of Rights, making it one the most extensive and robust consultation processes NI has ever seen. Reinforcing this, research from the Human Rights Consortium published in May 2009 found that 83% per cent of respondents to a NI opinion poll support a Bill of Rights for Northern Ireland.

In addition to this, NICEM believes that the current consultation document effectively excludes vulnerable minorities, with only 2 rights to be expressly included, namely voting rights and the right to identify oneself as either British or Irish, ethnic minorities are thus rendered invisible.

**The NIO have failed in their consultation obligations;**

The NIO have failed to meet both common law and statute requirements regarding consultation;

Guidance from the Equality Commission states there should be a 3 months consultation period for a Government Consultation. As the consultation was issued in late November, to run over the holiday period, the fair requisite period has not been provided. As a designated public authority under section 75 of the Northern Ireland Act 1998, the NIO has also failed to fulfill obligations to submit an Equality Impact Assessment with the document.

In common law the Sedley requirements set out what is necessary in any consultation process;

1. They state that firstly the proposals must be at a formative stage, given the fact that the NIO has already excluded numerous rights from consideration, issues have evidently been decided upon previously and thus cannot be said to be a formative stage.
2. Secondly, they state that sufficient reasons must be given to enable a meaningful response. The consultation does not provide sufficient explanations for its proposals, most notably regarding the “particular circumstances of Northern Ireland” thus hindering the ability of many consultees to engage meaningfully with the document.
3. Thirdly the principles state that adequate time must be given for consideration, as stated above the consultation ran over a holiday period with an extension only announced at the last minute, therefore this requirement was not fulfilled.
4. Lastly the requirements state that the results of the consultation must be conscientiously taken into account in finalizing any proposals, it remains to be seen as to whether this will occur.

NICEM accepts that the NIO has belatedly extended the consultation period for a further month, merely to satisfy the Code of Practice on Consultation,

but this was only achieved under threat of individual complaints to the Equality Commission and possible judicial review.

So also NICEM notes that, in the NIO's letter of 3 March to NICEM, it is claimed that a screening exercise had been undertaken. However, it is the duty of a designated public body to publish its screening exercise along with its consultation document. NICEM doubts that the screening exercise was undertaken until after the NIO received NICEM's complaint to the Equality Commission.

We therefore consider that the NIO has been forced to begin to face up to its responsibilities under section 75, for which it is supposed to have ultimate responsibility. In the consultation document, it is stated:-

"While ... the Northern Ireland system [under section 75] may well be capable of further development and improvement to reflect societal changes since 1998, it is important that its essential functioning is not compromised."

We consider this belated response by the NIO to be an example of the worst kind of 'tick-box' screening exercise.

The document as a whole continues to disregard the needs of a wide range of disadvantaged groups and communities within the section 75 categories. The assertion, in the screening form, that the NIO 'does not know' whether 'different groups have different needs, experiences, issues or priorities' after 10 years of consultation on a Bill of Rights, is a derisory conclusion. The NIO therefore continues to bring its responsibilities under section 75 into disrepute and thereby compromises the effectiveness of section 75 by setting a poor example to public bodies in Northern Ireland which might wish to take their responsibilities more seriously.

### **Particular circumstances**

The Belfast Agreement (1998) states that NI should have a Bill of Rights which "reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience", hence recognizing the uniqueness of the NI situation. This obligation should not

be under-estimated as the Belfast Agreement is an international treaty, moreover, 85% of people on the island of Ireland voted unanimously to support the Belfast Agreement thus creating a democratic obligation on the British and the Irish governments to fully implement it.

For the last twelve years much of the Bill of Rights debate has centered around what is meant by the “particular circumstances of Northern Ireland”. Despite this, nowhere in the NIO Paper is there an explanation of the factors that the NIO considers as relevant in determining the ‘particular circumstances’ of Northern Ireland, this is a huge contrast to the advice from the Human Rights Commission who provided detailed methodology as to why certain rights were related to such particular circumstances. This shortcoming seriously restricts the ability of consultees to submit a “meaningful response” as per the Sedley requirements.

**We would urge the NIO, in the spirit of the Belfast Agreement (1998), to be mindful of the fact that the Bill of Rights for Northern Ireland cannot be lost within a Bill of Rights and Responsibilities for the UK;**

In March 2009, the Ministry of Justice produced a green paper on constitutional reform in order to generate a UK debate about the future of rights and responsibilities. NICE are concerned that the Bill of Rights process for Northern Ireland should be recognized as distinct from this process as there are key distinctions between NI and GB. Moreover, our understanding is that any UK Bill of Rights and Responsibilities will not create any legal rights but simply a list of declaratory rights, this would be unacceptable.

The NIO Paper suggests that certain issues must be resolved within the framework of a national debate, however it does little to consider the interaction between devolution and a UK wide Bill of Rights and Responsibilities, as a paper published in February 2010 by Justice entitled ‘Devolution and Human Rights’ highlighted this is an incredibly complex issue which the simplistic nature of the NIO consultation does not give adequate credence to. To suggest that important issues pertinent to Northern Ireland can be adequately dealt with within a UK-wide bill of rights and responsibilities misrepresents obligations under the Sewell

Convention and therefore the constitutional reality.

### **Importance of Economic and Social Rights;**

The NIO has also added to the watering down of the “particular circumstances” of NI by stating in its green paper that economic and social rights are important issues throughout the UK and therefore should be considered in a Bill of Rights and Responsibilities, thus ignoring the distinct issues of social deprivation that our post-conflict society faces.

The reasoning and rationale as to why economic and social issues pertinent to ethnic minorities are inseparable from the “particular circumstances of Northern Ireland” have been evidenced on numerous occasions over the past twelve years through, for example, NICEM public events, previous consultation responses and forum engagement and it is for these reasons we do wish to reiterate them again here.

Such issues bear great relevance in today’s climate; Evidence and experience gained from grassroots organisations point to the fact that lack of targeted regeneration in post-industrial and post-conflict protestant working-class communities have lead to the creation of a new underclass of young men. We are aware that in times of economic downturn those most marginalized and disaffected by society become more prone to racially motivated behavior of both an organised (i.e. through the BNP sprinter groups in Northern Ireland) and unorganised nature.

As unemployment sores and prospects appear to diminish such people frequently look for someone to blame, the easiest and most immediate target are often those who are perceived to be different and therefore a threat, consequently migrant workers and foreign nationals living in these areas are vulnerable to attack. This is evidenced for example by recent graffiti in the Village area of South Belfast stating “British jobs for British people, Poles out”. Hence the conflict has created a legacy for which ethnic minorities experience a particular type of racist attack and harassment.

A recent survey conducted for a research report by NICEM looking at the

effect of the economic downturn on the Polish community found that many of those surveyed were concerned about racism and the conflict in Northern Ireland and that such concerns would effect their decision to stay and work here, such trends mean that Northern Ireland may suffer more greatly than other UK regions in terms of economic recovery.

Irish Travellers are a notable group who have suffered greatly as a consequence of the conflict, as racism was deemed not to be a significant problem in Northern Ireland, the region did not receive equivalent race legislation till more than two decades after the rest of the UK. Hence the nomadic indigenous people of Ireland had no protection from discrimination on the grounds of their race throughout the conflict. Northern Irish society is only beginning to criminalise discriminatory actions resulting from deep-rooted prejudices held against this ethnic group.

### **Greater economic and social rights will not undermine the political mandate**

In addition to these points it is worth emphasizing that with regard to a democratic basis, civil society is not trying to use economic and social rights to undermine the mandate held by elected representatives and shift the power balance in to the hands of an unelected judiciary. This does not happen in other countries where such rights are constitutionally enshrined, for example; the Finnish constitutional document which came in to force in March 2000 contains basic rights and liberties including economic and social rights whilst clearly affirming the principles of representative democracy and the position of Parliament as the highest organ of government.

If the NIO document lived up to our previous expectations and was a rigorous consultation document on an important issue of high constitutional policy, reflective of the work of the past 12 years, rather than an analysis of public policy then these are the sort of details we could be discussing at greater length.



**The NIO consultation will effectively damage the Human Rights of the most vulnerable people in NI rather than enhance them;**

It is of notable concern that the NIO paper appears to highlight a lack of knowledge as to the purpose of a Bill of Rights to enshrine protection. The paper sites evidence for the argument that additional protection is not required by listing codes and secondary legislation, such protections are vulnerable to change on political impulse and therefore not relevant to the question of whether that protection should be enshrined at a constitutional level. Given the fragile nature of politics in NI, as exemplified by recent developments, it is crucial that this is recognised.

The paper also fails to take account of relevant United Nations Human Rights obligations and standards with only the briefest of references to such commitments. In addition to this, the consultation document has some potentially damaging inaccuracies, notably the confusion of the Equality Duties, which are about policy making processes, with statutory Human Rights protections, which are based on enforceable rights.

Following a reference to the creation of the NI Equality Commission and section 75, page nine of the document quotes Peter Mandelson as stating, in September 2000, that Northern Ireland is “the sort of rights-based society that other countries will look to as a model of excellence”. That was not the case then and it is not the case now.

Such errors leave Northern Ireland vulnerable to further erosion of Human Rights legislation, and with further watering down of such protection from Westminster, NI looks far from being “a model of excellence”. Examples of this erosion include the introduction of enhanced terrorism provisions, which serve to erode both article 5 (right to liberty) and article 6 (right to a fair trial) of the European Convention on Human Rights. In addition to this, the British government’s opt out provisions with regard to the ratification of the Lisbon treaty effectively mean that the Charter of Fundamental Rights of the European Union will not apply fully to the United Kingdom. Also the British Government has failed to ratify the Council of Europe’s Revised European Social Charter (on the protection of economic and social

rights). It is precisely because the UK fails to fulfill its International Human Rights obligations that a Bill of Rights for NI, reflecting these international standards, is necessary.

## **Conclusion**

Northern Ireland must confidently move away from the past, with the devolution of Policing and Justice now scheduled for April 12<sup>th</sup>, it is time that the Government fulfilled other important commitments to devolution as laid out in the Belfast Agreement and the St Andrew's agreement, namely that a Bill of Rights for NI is created and also that the major recommendation of the Consultative Group to set up a Legacy Commission is fulfilled.

It is clear that we need a Bill of Rights because it is time to move out of the past. Ethnic minorities have also suffered as a result of the conflict, for example Irish Travellers, the indigenous nomadic people of Ireland, have been effectively criminalised in their lifestyle and ignored and dehumanised by the settled majority as Northern Ireland was pulled apart by 30 years of conflict. Notable communities such as the Chinese and Indians have been here for several generations and newer migrant worker communities such as the Polish and those from further afield namely the Philippines make a vital contribution to the economy and the delivery of services here. We need a strong inclusive Bill of Rights to ensure that everyone within society is protected.

In light of the above circumstances, it is clear that such a weak consultation document leaves the most vulnerable members of Northern Irish society even more vulnerable. This is why NICEM and the broader NI civil society demand a strong and inclusive bill of rights which include the protection of economic and social rights.

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