

**NICEM**  
**Submission to**  
**Northern Ireland**  
**Human Rights Commission**

**On**  
**Consultation document**  
**“Making a Bill of Rights**  
**for Northern Ireland”**

**March 2002**

## **1. Introduction**

- 1.1 NICEM welcomes the Consultation Document “Making a Bill of Rights for Northern Ireland”. We regret the fact that we submit our comments far behind the consultation deadline. NICEM, as an umbrella organisation for the black and ethnic minority sector, organised our sectoral consultation in early January this year as the result of competing needs and issues within the sector. Moreover, we would like to spend more time to digest a number of key issues, which will have sufficient impact towards our sector.
- 1.2 The proposed Bill of Rights is an important process to engage civil society in the transition in Northern Ireland. The process should encourage wider debate and discussion in civil society in order to create the long-term objective of the Human Rights Commission – create a human rights culture in all aspects of public and private life in Northern Ireland. The substantive rights included should ensure that everyone enjoys highest protection and effective guarantees of the universal and indivisible rights.
- 1.3 In essence, the Bill of Rights for Northern Ireland should enact in such a way that we make the best of international human rights standard. Such a Bill will benefit to the divided society in Northern Ireland in which we are all committed to the values and principle of human rights as enshrine in the Good Friday Agreement.
- 1.4 This is for that particular circumstances in Northern Ireland the Bill of Rights should not be too narrow in focus. It should give a wider protection in both civil and political rights on the one hand, substantial economic, social and cultural rights on the others. In our view, the later rights can bring the divided communities together to value the substantial rights based on “the principle of mutual respect for the identity and ethos of both communities and parity of esteem”, which is the cornerstone of the Good Friday Agreement.
- 1.5 The Bill of Rights should set out a new vision for our divided society in which we share and have the ownership to take a positive step to move the way forward. Therefore, the entrenchment of the Bill of Rights for Northern Ireland should enjoy a special status in law in order to value its fundamental nature, as well as a separate Constitutional Court adjudicate the final decision of the Bill of Rights cases.

## **2. Preamble**

- 2.1 We welcome the elaboration of a Preamble, but it is too long that we need to cut it short that has sharp focus and vision. We suggest the Preamble, under the Good Friday Agreement, should include “parity of esteem and just and equal treatment for the identity, ethos and aspiration of both communities”, rather than legislate “parity of esteem” as rights. We will see the ethos of the “parity of esteem” is a general principle cut-across all sections of the Bill of Rights.
- 2.2 We strongly object to the theory of “rights and responsibility”. The rights are to observe in accordance to international human rights standards. The general obligation is already existed under the rule of law.
- 2.3 We object to use the phrase “people of Northern Ireland” simply because it will exclude certain groups in our society, such as undocumented persons, immigrants, asylum seekers and refugees. These are the vulnerable groups in our society that

needs the basic protection, prevention and promotion of human rights. The approach that the Commission used is not compatible with the ECHR in which it applies to any persons within that territory jurisdiction of the Member State.

### **3. Minority Rights-Rights concerning identity and Communities**

- 3.1 An initial point to make in relation to this chapter is the references made to 'citizens'. As we have already pointed out, this is entirely inappropriate and potentially limiting. If the Bill of rights is truly to be a Human Rights document, then the rights contained within it must apply to all those who are within the jurisdiction, not just those who qualify for 'citizenship'. Any limits on this must be clearly identified and subject to strong justification.
- 3.2 Another important point is that rights belonging to groups, whilst of extreme importance, cannot be taken to override the rights of individuals belonging to that group, and their right to assert these rights within that group. Thus religious and cultural rights cannot, for example, override the rights of women or gay people.
- 3.3 **'Minorities' or 'Communities'**- Concern was expressed during our consultations regarding the replacing of the term 'minorities' with 'communities'. A failure to mention minorities is likely to have the effect of undermining current protections under international law. The Framework Convention for the Protection of National Minorities, which this chapter claims to be based on, very clearly talks about minorities. In addition to this, the definition of minorities adopted by the UK government under this Convention is a broad one, including all groups covered by the Race Relations (NI) Order 1997.
- 3.4 Minority rights are clearly established in international human rights law and to create additional category may suggest that certain of those rights do not apply to them. This has important implications for this chapter. If this chapter is truly to reflect the provisions of the Framework Conventions, as it claims to do, and truly reflect the right of minorities under international law, it is essential that the terminology remain consistent with such provisions. For this to occur, the term minorities must be used.
- 3.5 The use of the term 'communities' would also lead to inconsistencies with current legislation, where the use of the term 'minorities' is commonly used, such as current anti-discrimination legislation and s. 75 of the Northern Ireland Act 1998.
- 3.6 With regard to the issue of protection for minorities, we must point out that while members of majority groups must also be protected from discrimination, and allowed, like everyone else, to express their identity in private and in society, special provision is rarely, if ever, required to ensure protection for such groups. The elaboration of the rights of dominant or majority groups does not normally figure in international human rights texts.
- 3.7 The simple fact is that, in general, majority groups, through existing structures in society, already have access to these rights. The elaboration of specific rights for minorities is intended to even up the status quo, so that everyone can enjoy rights that majority groups take for granted. As a recent OSCE report states:

"both the rights of non-discrimination and of the maintenance and development of identity serve to advance the primary function of human rights law, respect for human dignity... Linguistic rights, and minority rights in general, help ensure that

minorities are able to realize and enjoy rights that the majority might be able to enjoy on its own...”<sup>1</sup>

- 3.8 In addition to this, the term ‘minorities’ does not necessarily refer to numerical minorities. For example, in the language of equality, ‘minorities’ is often taken to include women, and sometimes used to refer specifically to women. Women are clearly not a numerical minority; rather they are a group that has been ‘minoritised’, i.e. subject to marginalisation, exclusion and a denial of rights.
- 3.9 The fact that, in certain circumstances, minority rights protection is available to the majority is also clear from the definition of minorities chosen by the UK government in applying the Framework Convention. The Race Relations (NI) Order 1997 is symmetrical, and covers the white majority.
- 3.10 Thus if the term minorities is retained, a majority group would still be able avail themselves of the protections within this chapter if subject to the disadvantage that requires the elaboration of specific rights for minorities, and therefore the disadvantages flowing from the replacing of the term ‘minorities’ with ‘communities’ cannot be justified.
- 3.11 If the commission feels that the term ‘communities’ must be used in the final advice to the Secretary of State, we strongly doubt whether the provision will be in breach of the obligation under the Framework Convention for the Protection of National Minority.
- 3.12 **The right to a national identity** - The language used should be consistent with that used elsewhere in the document. **Thus the “individuals born in” should be changed to ‘Everyone born in’.** During consultations with members of minority ethnic communities it was pointed out that this provision could be discriminatory, and should also include other nationalities. For example, one woman pointed out that she had both British and Pakistani nationality, and that this would not be covered by this right.
- 3.13 Whatever the final decision as to the form and coverage of this section, it should not be given the prominent position in the chapter that it currently has, particularly if the current coverage is retained. While of great importance to many in our society, for many it is only one aspect of their identity. Such specific rights for particular groups, rather than to all groups in Northern Ireland, should be seen as additions to the rights of all groups/communities, not as the most important.
- 3.14 **The rights of members of communities** - There appears to be some confusion over the appropriate coverage of the term ‘national minority’ under the Framework Convention. The coverage is clear: It applies to anyone who is covered by the Race Relations (NI) Order 1997. The claim that the criteria of ‘well established immigrant communities’ would give the term ‘communities’ a broad definition is incorrect. Such a restriction would not only restrict the application of the rights contained within the document, it would also breach international law. The UK government has placed no such restriction on the application of the Framework Convention for the protection of National Minorities, and its arbitrary application to the Bill of Rights, with no justification given, cannot be seen in any way as acceptable.
- 3.15 **The Rights** - The first point to be made here is that, while claiming to use the Framework Convention as a basis for this chapter, **the Commission omits a**

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<sup>1</sup> OSCE Report on the linguistic rights of persons belonging to national minorities in the OSCE area, (the Hague: OSCE 1999), section III (D)

number of vitally important rights. These include: references to cultural minorities; Article 6.1 of the Framework Convention (encouraging tolerance and intercultural dialogue in the fields of education, culture and the media); article 9 (access to and licensing for TV and other media to reflect minority interests); article 12 (education and culture including teacher training etc); article 15 (participation rights); and article 16 (protections against altering populations in specific areas).

- 3.16 Of particular importance are provisions concerning education and training as part of the process of empowerment and challenging prejudice and intolerance. While we recognise that provisions in the education chapter attempt to address some of these issues, there are provisions within the Framework Convention that could more effectively do so, and consideration must be given to the inclusion of these.
- 3.17 **(b)(1) Should be dropped.** This provision appears to be in direct response to the concern about the right to self-definition interfering with monitoring mechanisms, and would therefore be more appropriately addressed within the context of that particular provision.
- 3.18 **(b)(2) should mirror the Framework Convention directly rather than in part.** The text should also refer to the rights of people to exercise their rights as individuals *and* as members of a particular minority. The clause should read as follows:

*Every person belonging to a national, ethnic, religious or cultural minority shall have the right individually and in community with other members of that minority to participate effectively in the cultural, religious, social, economic and public life of society, to enjoy his or her own culture, to profess and practice his or her own religion and to use his or her own language.* (Changes to text underlined)

- 3.19 **(b)(3) We welcome the specific reference to nomadism.** However, given the history of discrimination against nomadism, and the difficulties and disadvantages faced by those who live a nomadic lifestyle, it would be appropriate to strengthen this provision, to ensure that provision must be made to ensure peoples right to be nomadic:

*Everyone shall be ensured the right to be nomadic or sedentary and the right to change from one mode of living to the other.* (Changes to Commission text underlined)

- 3.20 **(b)(4) This clause is essentially about the right to self-definition.** This is an essential element of international human rights law concerning the rights of minorities. However, the concerns about interfering with the monitoring mechanisms in current and future equality provisions are legitimate, given the equal importance of these mechanisms. We feel that a 'without prejudice' clause could appropriately be used to address these concerns, and suggest the following clause:

*Every person belonging to a national, ethnic, religious, linguistic or cultural minority has the right freely to choose to be treated or not to be treated as a member of such a minority or what might otherwise be perceived to be their national, ethnic, religious, linguistic or cultural minority and no disadvantage*

*shall result from this choice or from the exercise of the rights which are connected with this choice. Such a right is without prejudice to the equality and positive action provisions in this Bill of Rights.*

3.21 (b)(5) These clauses should be retained.

3.22 The reference to voting mechanisms may be problematic, suggesting a narrower view that does not support representivity of other communities/minorities within the Assembly or other political institutions. The Commission may want to consider whether it is appropriate to entrench this in its Bill of Rights, rather than leaving it to legislation.

3.23 We would strongly object to the inclusion of the suggested alternative clause on page 28. This clause is far more restrictive than those contained in clauses 2 to 4. In particular, the specific reference to nomadism would be removed, and, it appears from the wording, that the protections offered by the Framework Convention would explicitly be restricted to the ‘both communities’. This would clearly be intolerable.

3.24 We also object to the use of the term ‘both communities’. The commission has clearly acknowledged the existence of more than two communities in Northern Ireland, and the use of terminology that denies this is completely inappropriate, particularly in a document that is discussing human rights.

3.25 **Language Rights – Chapter** - We would like to echo the calls of members of the Language Rights Working Group for an entire revision of this chapter, based on the proposals put forward by the Working Group. These proposals are vitally important, coming as they do through discussions among people of various community backgrounds, interests and perspectives, who managed to accommodate one another’s needs and perspectives to come to a common position. This chapter fails almost entirely look at these proposals, is far weaker than necessary, and inadequately reflect the language needs of all communities in Northern Ireland.

3.26 During our consultations, three main issues arose.

1. Language rights for members of minority ethnic communities is a needs issue, rather than a political one. This means that it should be given greater emphasis than it currently is. Without strong language rights, other rights, such as those in the social and economic rights chapter, become irrelevant if the language barrier prevents people from accessing and exercising their rights.
2. There needs to be a right to learn your mother tongue.
3. The requirement of sufficient demand is not clear. It appears that this may be interpreted as numerical, and this would be a mistake. It needs to be spelt out that ‘sufficient demand’ does not exclude smaller communities where there may well be as great, if not greater, need for provision.

3.27 With regard to clause 2, we welcome the fact that a provision on interpreting and translation services is proposed. However, the clause proposed by the

working group would be far more appropriate. The restriction of the right to “information or services essential to his or her life, health, security or enjoyment of other essential services” is extremely problematic, and may well create conflicts with existing legislation. There is a strong argument that s. 75 of the Northern Ireland Act requires interpretation services for those who would otherwise be unable to access services or benefit from the functions of a public authority. There is also a strong argument that, where the lack of provision prevents a person from accessing services it will constitute indirect discrimination against minority ethnic communities. In addition, for consistency with s. 75, the right must cover all public authorities exercising functions in Northern Ireland.

3.28 For these reasons, this provision in particular needs to be strengthened. We would propose the following wording:

**“Everyone has the right to communicate with any public body, or persons acting on their behalf, through an interpreter, translator or facilitator, when this is necessary for the purpose of accessing, in a language that he or she understands, information or services.**

3.29 The State must ensure that indigenous or minority ethnic community languages or relevant communication modes are used in the provision of services provided by any public body or person acting on their behalf, and ensure that, with a view to putting into effect this provision, translation or interpreting services and necessary recruitment and training of officials and other public service employees is undertaken.”

(Wording drawn from the proposed text in the Draft Bill of Rights and the Working group proposals)

*The use of this phrasing would place this provision clearly in the area of needs provision, without restricting the type of services that are perceived to be ‘essential’. Rather the test of ‘necessity’ would be applied, and the right would be available to everyone on the basis of need.*

#### **4. Equality and Non-Discrimination**

- 3.1 We welcome the approach that uses both Equality and non-discrimination. This is essential; non-discrimination is one aspect of equality, but not by any means the only one. In addition, the concept of non-discrimination is in many ways different to that of equality, particularly when we look at the more substantive forms of equality, which aim at true equality in practice.
- 3.2 We also agree that such an approach is necessary for conformity with International and regional Human Rights law.
- 3.3 We would suggest the removal of Article 4(1), as this may be seen as confusing. We believe that the later Article 4(4) already covers this right. This can be justified in terms of supplementing the ECHR, in that the Council of Europe has

already recognised the need to ensure further protection by the adoption of Protocol 12 ECHR.

- 3.4 **A Guiding principle** - There is a need to look more closely at what we mean by equality. It is clear from the definitions of discrimination used, and the existence of a strong positive action clause, that substantive equality is what is aimed at. It would therefore be appropriate to include a clause along the lines of:

**Equality recognises difference, diversity, respect and disadvantage. Equality assists in the empowerment and the capacity building of all groups and individuals.**

There would also be a need to refer to multiple identities.

The suggestion for this clause, which we fully support, was made in our consultations with black and minority ethnic groups. The suggestion was also made that this provision be a guiding principle, a value underpinning all the rights in the Bill of Rights, influencing the interpretation and application of these rights, not just in the Equality chapter. This would operate in a similar way to the 'guiding principles' used in the UN Convention on the Rights of the Child. It would be in addition to the equality provision.

- 3.5 **General Equality** - The main problem with this clause is the reference to "all rights and freedoms". We are concerned that this may be interpreted to refer only to those rights and freedoms as set out in the Bill of Rights, a situation which, considering the criticisms and shortcomings of this situation with relation to Article 14 ECHR, we are certain that the Human Rights Commission does not wish to see.
- 3.6 Even if this does not occur, there is still scope for a restrictive interpretation of this section due to the inclusion of this phrase. A better formulation would be:

*Equality includes, **but is not limited to**, the full and equal access to and enjoyment of all rights and freedoms.*

- 3.7 **Equality between men and women** - During our consultations with black and minority ethnic groups on the Bill of Rights, it was agreed that there was a need for a particular provision for gender equality. This was because of the way in which gender inequalities pervade all other forms of equality, for example the double discrimination faced by minority ethnic women.
- 3.8 However, it was felt that the link between this provision and this issue of multiple identities needed to be re-enforced for the inclusion of a specific term to be justified, and that this provision needed to be very carefully worded to ensure that no hierarchy of inequalities is created.
- 3.9 **Non-discrimination** - We welcome the application of this clause to 'everyone'. We also welcome the inclusion of the phrase 'has a right to be protected'. This emphasises the importance of government action to protect people from discrimination in all spheres, and hopefully can bring in horizontal effect to this provision.
- 3.10 We would suggest the inclusion of institutional discrimination within the definitions protected.
- 3.11 In relation to the grounds covered, we would like to see the addition of **nomadism, immigration status, status as a refugee, status as a person seeking**



asylum, and “disability” needs to be expanded on to explicitly include “**mental, learning and physical**” disability.

**3.12** The question was raised in our consultation of whether the Bill of Rights needed to explicitly state the reversal of the burden of proof in discrimination cases. **The Commission needs to carefully consider this, as it is absolutely necessary to ensure that the shift in the burden of proof applies to all grounds of discrimination under the Bill of Rights, not just those to which it must apply under EU law.**

**3.13 The definitions of Direct and Indirect discrimination and harassment**

### **Direct Discrimination**

We welcome the definition of direct discrimination, particularly the fact that it removes the requirement of a comparator for proof of discrimination. This is critically important, and must be retained in the advice to the secretary of state.

### **Indirect discrimination**

We welcome the definition of indirect discrimination, which appears to offer a higher level of protection than is currently available, either under UK or EU law.

### **Harassment**

We welcome the explicit mention of harassment

### **Positive action**

Positive action **must** be required.

We cannot emphasise this point enough. This reflects both domestic developments and current international thinking, and is essential to achieving equality for, among others, people from black and minority ethnic communities. There have been positive action measures permissible under the Race Relations (NI) Order 1997, and under the Race Relations Act 1976, but, mainly due to the fact that these measures were, and presently are, voluntary, the provisions have been used extremely rarely, with the result that these provisions have had minimal impact on inequalities for black and minority ethnic groups.

We would suggest amending the clause in the following way:

*“groups disadvantaged on the grounds specified in clause 4(4) (the non-discrimination clause), **including** on socio-economic grounds”*

The present wording suggests, by distinguishing socio-economic grounds from those under article 4(4), that they are not included under article 4(4). Even if socio-economic grounds are not specified under this clause, they must be covered by ‘or any other status’. Amending the wording in this way would

ensure that socio-economic grounds are seen as one ground in particular where positive action must be taken, rather than an additional ground, and prevents the conclusion that it is not a ground covered by the anti-discrimination principle.

### **3.14 Rights not included**

#### **Rights to protection from racist abuse and violence.**

While the harassment provision may protect from racist abuse, it does not protect against racist violence. It is important that racist and hate crimes are explicitly prohibited in the Bill of Rights, given the particular circumstances of Northern Ireland revealed in the recent Paul Connolly reports, including the high levels of racism within Northern Ireland, higher even than levels of sectarianism.

This may also be an issue for other groups who are often subjected to violence which comes from prejudice, such as homophobic violence. The inclusion within the Bill of Rights protection against such forms of violence is important. It needs to be recognised that violence that results from prejudice is particularly damaging, and adds to the disadvantaged position of such groups, and to inequalities in society as a whole.

#### **Institutional Discrimination**

Given the importance of combating institutional discrimination, particularly institutional racism, it is difficult to see why this has not been included in the Bill of rights. The lack of such a provision may run the risk of inconsistency with existing laws, particularly the s. 75 Equality Duty. One of the main purposes of this legislation is to tackle institutional discrimination by mainstreaming equality and the needs of marginalised and excluded groups, as evidenced by the inclusion of a similar duty in the Race Relations (Amendment) Act 2000 in direct response to the findings of the Stephen Lawrence enquiry.

Given this background, we would suggest the inclusion of a definition along the lines of that used by the McPherson report:

***“The collective failure of an organisation to provide an appropriate and effective service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes or behaviours which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people.”***  
***(McPherson 1999, Para 6.34)***

## **5. Social, economic and environmental rights**

### **5.1 Initial points**

Social and economic rights are fundamental to an effective Bill of rights for Northern Ireland.

The Good Friday Agreement allows for the inclusion of economic and social rights. It is also arguable that, because of the specific reference in the Good Friday Agreement to social and economic rights, their inclusion in the Bill of Rights is required.

All human rights are indivisible, and this is also recognised by the Good Friday Agreement

Social and economic rights are of particular importance to black and minority ethnic communities. This is reflected in the inclusion of such rights within the Convention on the elimination of all forms of racial discrimination (CERD 1966, Article 5(e))

It is also important to ensure that the rights are giving 'added value' to rights that already exist in this area. Particularly important in this area are s. 75 of the Northern Ireland Act 1998, New TSN and the PSI initiative.

### **5.2 Specific Comments on Chapter 14 – Social economic and Environmental Rights**

#### **The General Clause (p. 88)**

We welcome the principles of interpretation enunciated by the Commission. These reflect well the recommendations and conclusions of the working group.

However, the general clause proposed does not fulfil either these principles, or the recommendations of the working group. As it stands in the draft it in fact adds nothing by way of protection for social and economic rights, with enforcement restricted to due process and equality rights. These are already covered elsewhere, and the suggestion that this clause protects social and economic rights is quite frankly insulting.

There is no justification for a distinction between social and economic rights and any other rights. Such a distinction is no longer acknowledged as either appropriate or permissible under international human rights law. A good example of this is the UN Convention on the Rights of the Child, one of the most recently drafted UN Conventions, and the one with the largest number of signatories, where civil, political, social, economic, cultural and minority rights are placed side by side. In addition to this, the general clause runs the risk of watering down existing protections, such as under s. 75 of the Northern Ireland Act.

This having been said, we are not averse to a programmatic element to the implementation of social and economic rights, insofar as this does not detract

from the full legal enforceability of the rights themselves, giving added value, not reducing protection.

The following comments are on a sentence-by-sentence breakdown of this rather large clause. The Draft Bill of Rights text is in italics, with suggested amendments in bold.

We will consider the final sentence first, as this is the most problematic of the entire clause.

**Legal remedies shall protect the due process and Equality rights of all citizens in respect of social and economic rights.**

This sentence appears to restrict legal rights and remedies to “due process” and “equality”. This, if left unchanged, would render the entire chapter redundant, since the protections contained in this sentence are already offered elsewhere in the document. This would be completely unacceptable, given, among other things, the expressed support for social and economic rights from all communities in Northern Ireland, including from black and minority ethnic communities.

Such a restriction cannot be justified, either by international human rights law, the Human Rights Commissions deliberations, or any other means.

As Bruce Porter has stated:

“It is very clear from the Committee on Economic, Social and Cultural Rights that the UK would be in violation of its obligations under the Covenant on Economic, Social and Cultural rights if it imposed on Northern Ireland a distinction between civil and political rights and socio-economic rights as to access to a legal remedy. It would be in contravention of the Covenant if it imposed on the Northern Ireland Human Rights Commission that kind of distinction, because the Committee has made it fairly clear, and they made it clear to Canada, that you cannot just define socio-economic rights as policy objectives of government and leave it all up to government.”<sup>2</sup>

The Commission itself identifies the fact that “legal remedies are necessary but not sufficient to assure the dignity of the human person”. This is absolutely true, but is not a reason for *excluding* effective legal rights and remedies; rather it is a reason for supplementing them with other processes and mechanisms.

Given these facts, and the recognition of the importance of legal remedies already acknowledged by the Commission, this clause needs to either be deleted, or amended to ensure that the same level of legal enforceability is given to economic and social rights as all other rights within the Bill of Rights.

One way in which this may be done is to include a ‘without prejudice’ clause within this general clause.

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<sup>2</sup> Bruce porter, speech given in May 2001 as part of a lecture series by the Committee on the Administration of justice on a Bill of Rights for Northern Ireland, p.18

**This general clause is without prejudice to the enforcement provisions of this Bill of Rights, and effective legal and judicial remedies remain the primary mechanism through which social and economic rights are realised.**

This clause would ensure that the requirement for programmatic responses to social and economic rights is in addition to, not instead of, the legal enforcement of these fundamental human rights, whilst still retaining the ‘added value’ of the programmatic duties.

*Since poverty and social exclusion represent a fundamental denial of human dignity, and the protection **and fulfilment** of social and economic rights is an integral part of the delivery of effective human rights.*

We couldn’t agree more. It is important that this type of statement is in the final document. As the debate on A Bill of Rights for Northern Ireland has shown, there is a certain amount of disagreement as to the fundamental nature of social and economic rights, despite the overwhelming support from the general public, the NGO community and international human rights law. In this context it is particularly important that the fundamental nature and necessity of these rights is clearly spelt out for all to see. We would suggest the inclusion of ‘and fulfilment’ as a means of strengthening this commitment, and ensuring that the rights are more than merely declaratory.

~~*All public bodies through which any of the legislative, executive or judicial powers of the State are exercised in Northern Ireland (in particular the Northern Ireland Executive and Northern Ireland Assembly) shall therefore take legislative and/or other measures to develop and enforce programmatic responses to the social and economic rights set out below.*~~

**NICEM suggests the above change to this sentence.**

We agree that there must be a programmatic element to the enforcement of economic and social rights, and would therefore support the spirit of this sentence. However, there are two problems. Firstly, the definition of a ‘public authority’ could be interpreted as narrower than that to which the whole Bill of Rights applies. The Human Rights Act 1998 applies to all “persons certain of whose functions are functions of a public nature” (s. 6(3)(a)). In addition to this, the possibility for narrow interpretation runs the risk of having lesser coverage than under s. 75 of the Northern Ireland Act, for this reason it must also be ensured that the definition of ‘public authority’ includes not only those operating solely in Northern Ireland, but also UK wide public authorities.

The second problem with this sentence is the prominence it is given over effective legal and judicial enforcement of social and economic rights, an issue which both the working group and the Commission have highlighted as important. The lack of emphasis on the fact that such rights are also justiciable and legally enforceable sends out the wrong message about the fundamental nature of such rights, and the fact that Human Rights are indivisible.

***In doing so, all public authorities will allocate resources in a proportionate and non-discriminatory manner, as set out in the non-discrimination clause 4(4) of this Bill of Rights.***

This sentence creates particular problems. Firstly, it restricts the enforcement of the rights to non-discrimination in resource allocation, rather than ensuring substantive rights protection, a point that, again, reduces the importance given to social and economic rights and undermines the principle that all rights are indivisible and interconnected.

Secondly, the reference in the text is to non-discrimination, rather than equality. This reduces the protection of social and economic rights, both in relation to existing law (such as s. 75 of the Northern Ireland Act, where the emphasis is on the positive promotion of equality) and in relation to the Bill of Rights. If it is felt that such a clause is necessary, then the reference must be to the Equality clause as well as the non-discrimination clause (see comment below in relation to this clause), and, most importantly, must link the enforcement of economic and social rights to the positive action clause. This point must be highlighted particularly because the Good Friday Agreement makes specific reference to Equality of Opportunity in relation to Social and Economic Rights.

We would suggest the following wording:

**In securing social and economic rights, including when developing and implementing programmatic responses to such rights, all public authorities exercising functions in Northern Ireland shall ensure equality of opportunity, including such positive action as is required by the positive action clause in this Bill of Rights, so that all may benefit from social and economic rights.**

This formulation ensures that the programmatic response, and particularly the ensuring of equality in the programmatic response, is not seen as an exclusive strategy, that while it is an important element of securing such rights, it is only one among many. It also places the emphasis on ‘securing’ rights, a phrasing that is consistent with the obligations under the ECHR, which talks about ‘securing’ rights to everyone. This phrasing has also been used under the ECHR system to develop positive rights, a use which is entirely appropriate and necessary with regard to economic and social rights. The reference to all ‘public authorities exercising functions in Northern Ireland’ links in the reference to the s. 75 Equality Duty, and gives added value to that duty by talking about ‘ensuring’ equality, rather than ‘promoting’. Finally, the reference to the positive action clause more coherently links this section to the Equality Rights chapter, and assists in giving coherence to the document.

An important point to note, however, is that this sentence does not, in fact, add to the protection given under the equality chapter, nor does the one proposed by the Commission. The rights to Equality, non-discrimination, and positive action are already applicable to the enforcement of Social and Economic rights. What this section does is to elaborate particular examples of how this right may be secured, and to explicitly state the link between social and economic rights and positive action.

However, we feel that such an explicit link is necessary, and would therefore welcome it.

***All public authorities shall be required to consult and to create mechanisms which facilitate and promote the development of policies and programmes to ensure social and economic inclusion for all citizens.***

The first point to be made about this sentence is in relation to the mention of ‘citizens’. The inclusion of this term, as with its use in other areas of the consultation document, creates particular difficulties. It suggests that the rights are only to be secured for those who have British or Irish citizenship. This is contrary to Human Rights principles, whereby Human Rights are to be secured to all persons, regardless of their status, as Mary Robinson has said: “Equality and Rights are something for us all, and something which enriches us all”<sup>3</sup>. It also runs the risk of breaching the non-discrimination clause within the Draft Bill of Rights. In addition to this, the use of this phrasing would give less protection than currently is available under s. 75 of the Northern Ireland Act. The s. 75 duty is not restricted to “citizens”; it applies to everyone under the 9 groupings.

The use of the term “persons in Northern Ireland”, or simply “everyone”, would be more appropriate.

This sentence needs to be looked at again to ensure that it is not too restrictive in what it requires public authorities to do. In particular, the question of whether this sentence fulfils the requirement to give the same or higher level of protection than s. 75 of the Northern Ireland Act needs to be considered.

### **5.3 The Right to Health Care**

An initial point to be made here is that the right would be better termed a Right to health, as this would reflect the fact that health is about more than treatment of ill-health.

Issues that were raised in NICEM’s consultations with black and minority ethnic groups were the importance of access to information, which is also culturally sensitive. Cultural sensitivity was also an issue in relation to access to health care, and to access to services more generally.

The second issue that arose was the need for a duty on public authorities to identify particular problems affecting certain groups, such as sickle cell anaemia, and to take into account relevant data on, for example, differentials in mortality rates for certain groups.

### **5.4 The Right to Housing**

During our consultations with black and minority ethnic groups it came to light that the use of the term ‘housing’ is a culturally specific term, and may

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<sup>3</sup> Mary Robinson, UN High Commissioner for Human Rights, Keynote speech at the conference “Equality and Human Rights, Their Role in Peace Building”

not adequately reflect the needs of all communities in Northern Ireland. This comment was made with particular reference to the Travelling community, where the term ‘accommodation’ is more appropriate. However, we also recognise that for some people, the term ‘housing’ may be more appropriate than ‘accommodation’, and that simply replacing one term with the other may have the effect of watering down what is a fundamentally important right.

We therefore suggest that the title should read **“Right to Accommodation and Housing”** and that references within the text to housing should also reflect this change. This would enable the document to be flexible enough to ensure that the needs of all communities are met. It would also assist in ensuring that the document reflects ‘the particular circumstances of Northern Ireland’, in that the presence of the Irish Travelling Community, and the disadvantage and social exclusion created by the lack of adequate accommodation, are elements of those particular circumstances. It is also important that this right is able to address the requirement of culturally appropriate housing.

We would therefore suggest that this section reads as follows:

#### The Right to **Accommodation** and Housing

1. Everyone has a right to adequate **accommodation and** housing.
2. **Everyone has the right to appropriate accommodation and housing to meet their needs and the needs of the household, with particular reference to material, social, mobility and cultural needs.**
3. Everyone is entitled to secure establishment in his or her home. Limitations on secure establishment must be subject to fair legal process.

It would need to be made clear that the inclusion of the term accommodation does not reduce the right to housing to a right to shelter. This would be in breach of International obligations, particularly the manner in which the Human Rights Committee has interpreted the right to adequate housing. The Human Rights Committee uses the following criteria to determine whether housing is adequate:

1. Adequate housing includes a legal right to security of tenure
2. It includes the availability of services, materials and infrastructure
3. Adequate housing is affordable
4. Adequate housing is habitable (this includes adequate space plus protection from cold, damp, heat, rain, wind, threats to health and disease)
5. Adequate housing is accessible (particularly for disabled persons)
6. Adequate housing takes into account an adequate location for the persons concerned (access to employment, health care services, schools and other social facilities)
7. Housing should be culturally adequate (housing should be constructed to appropriately enable the expression of cultural identity)

It may be necessary to explicitly refer to these principles in order to ensure that in the process of making the right more culturally appropriate it is not weakened.



## **5.5 The Right to an Adequate Standard of Living**

NICEM agrees that there must be a right to an adequate standard of living within the Bill of Rights.

It must be ensured that this right applies to everyone within Northern Ireland, regardless of, for example, nationality or citizenship.

## **5.6 The Right to Work**

We welcome the inclusion of this right within the Bill of Rights. However, the comment was made during our consultations that there needs to be more of a focus on employability and training. This would be necessary to avail of the other rights, particularly the right to choose and practice a trade or profession.

We would also support the inclusion of the wording in relation to basic labour rights. These are as follows:

**“Every worker has the right (a) to form a trade union; (b) to participate, or refuse to participate, in the activities of a trade union; (c) subject to (limitations clause elsewhere), to strike.**

**Every worker has the following rights: (a) the right to safe and healthy working conditions; (b) the right to fair remuneration; (c) the right to participate in the determination and improvement of his or her working conditions and working environment; (d) the right to the protection of his or her dignity.”**

However, we would also like the Commission to consider the inclusion of a clause that ensures that no disadvantage will flow from the exercise and enforcement of these rights. This would have to be able to cover the situation where, for example, a workers’ right to reside in the country is dependant upon their employment. We have numerous examples of where Phillipino nurses have been exploited, but have felt unable to enforce even the rights they do have for fear of deportation. For the effective application of the Bill of Rights, it must be ensured that everyone is able to avail of the rights.

## **5.7 The Right to a healthy and sustainable environment**

We support the inclusion of environmental rights in a Bill of Rights.

## **5.8 Rights not included in Chapter 14**

### **Cultural Rights**

It is difficult to see why cultural rights are not included in this section. The traditional formulation, particularly in international human rights law has been ‘social, economic and cultural rights’, and we do not see why this has been departed from. The guarantee of cultural rights is intimately linked to social and economic rights, and further consideration needs to be given to the

inclusion of these rights within this section, and if it is still felt that this is not appropriate, then further justification needs to be given for this conclusion.

## **5.9 Rights to Information, Advice, Advocacy and Representation**

The inclusion of these rights is essential to the effective implementation of Social and Economic Rights. These rights are of particular importance to people from black and minority ethnic communities, and this was an area that was highlighted as such during our consultations with members of minority ethnic communities, particularly for those groups where there is a language barrier.

A lack of information and knowledge of rights is a crucial factor in the social exclusion and disadvantage suffered by people from black and minority ethnic communities in Northern Ireland. The need to capacity build a knowledge base of rights and entitlements is extremely high within these communities, as is the need for advocacy and representation. People whose rights have been violated, particularly social and economic rights, are likely to be the most vulnerable in society. The exclusion of rights to information, advocacy and representation would act to perpetuate, and even to further create, the marginalisation of those who are already in the most vulnerable positions in society. Without these rights, the Bill of Rights will be either a paper exercise, or worse, a document that only those who already hold privileged positions will be able to access and benefit from.

We would proposed the following for this clause, with two minor changes:

**A person's right to information, advocacy advice and representation underpin the application of each and every one of their human rights. Without these rights the most socially disadvantaged people in society cannot actualise the rights given to them by the Bill of Rights.**

- 1. Every person has the right to accessible, independent, impartial and confidential information and advice, in a language that she or he understands.**
- 2. Every person has the right to advocacy and representation.**
- 3. Government has a duty to provide resources to support access to information, advice, advocacy and representation services for every person within Northern Ireland.**

The addition of 'in a language that she or he understands' reflects the language generally used in international law, and makes more explicit the link with the chapter on linguistic rights. This addition would not, in fact add another right. Rather it would ensure that the linkage to the existing right is recognised as clearly applying in this context.

## **6. Protection of Undocumented persons, Asylum Seekers and Refugees**

6.1 These are the most vulnerable groups in our society that needs special attention to the protection, prevention and promotion of international human rights standards, in particular in relation to expulsion, deportation and extradition. These rights are not considered in the draft Bill of Rights for Northern Ireland. NICEM strongly urge the Human Rights Commission to adopt a more inclusive approach to include the protection, prevention and promotion of international human rights standards to this group of people in our society.

**Any queries about this submission, please contact Ms. Tansy Hutchison and Patrick Yu at**

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