



**Submission to the**  
**Commission on a Bill of Rights**  
**on**  
**Discussion Paper**  
**“Do we need a**  
**UK Bill of Rights”**

**November 2011**

## **1 Introduction**

- 1.1 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.<sup>1</sup> Our vision is of a society where differences are recognised, respected and valued, a society free from all forms of racism and discrimination, where Human Rights are guaranteed. NICEM works in partnership to bring about social change, by achieving equality of outcome and full participation in society.
- 1.2 NICEM welcomes the Commission's publication of the Discussion Paper "Do we need a UK Bill of Rights". As a general principle NICEM supports any upward improvement of human rights protections which build upon guarantees currently within the Human Rights Act 1998. Any regression from the current position under the Human Rights Act 1998 will not be acceptable.

## **2. Question 1: Do you think we need a Bill of Rights?**

- 2.1 NICEM does not believe that there is a need for a UK-wide Bill of Rights. The current Human Rights Act 1998 already fulfils the function of a UK Bill of Rights with regard to civil and political rights. It provides the basic minimum standards for the protection of such human rights within UK jurisdiction, the Act empowers individuals to challenge human rights violations under the law at a domestic level, NICEM supports such legal provisions. NICEM would only support a UK Bill of Rights or amendment to the current domestic legal regime, if

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<sup>1</sup> In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minorities" shall be understood to mean people whether they are settled ethnic and religious minorities (including Travellers, Roma and Gypsy), migrants (EU and non-EU), or those with asylum seeker, refugee, or other immigration status. It has an inclusive meaning to unite all minority communities.

it built upon the Human Rights Act 1998 in creating more comprehensive protection. Any such proposed Bill or amendments should encompass international human rights norms that explicitly extend to economic, social and cultural rights. In addition such a Bill should have the status of a written constitutional document.

2.2 Moreover the Human Rights Act 1998 has been enshrined into the constitutional arrangements of the devolved administrations in Northern Ireland (1998), Scotland (1998) and Wales (2010). Consistency of human rights protection across the United Kingdom under the obligations provided in the Human Rights Act is important.

2.3 Any repeal, amendment or weakening of the Human Rights Act 1998 will affect the current constitutional arrangements of all the devolved administrations, any such adjustments to the current order must have full consent from the legislative body in each region. In Northern Ireland, the Human Rights Act is not only enshrined into the Northern Ireland Act 1998 (Section 6(c) and Section 7(1))<sup>2</sup>. It is also enshrined in the Belfast Agreement under Strand one, Safeguards Article 5 (b) and (c). Strand 3 covers Rights, Safeguards and Equality of Opportunity, the Human Rights Section gives effect under UK legislation to a Bill of Rights for Northern Ireland in addition to the European Convention of Human Rights.<sup>3</sup>

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<sup>2</sup> **Safeguards**

5. There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including:

(b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission;

(c) arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland;

<sup>3</sup> **United Kingdom Legislation**

2. The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.

4. The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to

2.4 The Belfast Agreement is an international treaty which is actionable. It was signed by both the British and Irish Governments and a significant majority of the people of the island of Ireland voted favourably for it. Any changes to the Human Rights Act 1998 would require amendment to the Belfast Agreement and the Northern Ireland Act and thus would pose a complex constitutional challenge for Northern Ireland.

2.5 The formulation in the Belfast Agreement states clearly that both the European Convention (which has been incorporated into domestic law through Human Rights Act 1998) and the Bill of Rights for Northern Ireland should not be restricted by the Northern Ireland Assembly and/ or public authorities. The proposal of a Bill of Rights for Northern Ireland is a post-conflict arrangement to address the root of the conflict. The conflict arose in the wake of violations of economic and social rights, for example with regard to housing, employment and public services; violations of civil and political rights were also significant factors. The NI process therefore enables greater protection to be established than that offered under the current Human Rights Act. It is not uncommon, in accordance with international human rights standards, to have a Bill of Rights in post-conflict settlement.

2.6 Since the inauguration of the Northern Ireland Human Rights Commission in 1999 10 working groups have been set up with regard to the formulation of the Bill of Rights for Northern Ireland. In addition, over the past 13 years, a broad civil society has been engaged robustly in discussions and debates concerning the delivery, formulation and contents of a Bill of Rights for Northern Ireland. The public debate which

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constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

- i) the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and
- ii) a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.

this process fostered and continues to foster has had the effect of educating the general public on human rights protection in Northern Ireland. Legal protections supported by civil society go beyond traditional civil and political rights. They address the needs of the post-conflict society regarding economic and social rights with a view prevention of such a conflict in the future.

2.7 The strong consensus amongst civil society for a strong and comprehensive Bill of Rights for Northern Ireland was reflected in the Bill of Rights Forum. This Forum was a mechanism established under the St. Andrew Agreement 2007, it brought political parties and civil society together (14 members of civil society and 14 political representatives) it was chaired independently by a human rights expert from Australia. Unfortunately Northern Ireland Politicians could not reach consensus on what the contents of a Bill of Rights. The final document of the Forum was vetoed at the last minute by Unionist politicians, despite this it was endorsed by civil society and the document created was passed to Northern Ireland Human Rights Commission in March 2008.

2.8 The Northern Ireland Human Rights Commission analysed the work of the Bill of Rights Forum and in light of this presented their advice to the Secretary of State for Northern Ireland in December 2008, NICEH supports this advice. The Northern Ireland Office (NIO) in response to the Human Rights Commission's advice published their consultation on a Bill of Rights for Northern Ireland in December 2009, the NIO's consultation was widely held by civil society as wholly derisory. In NICEH's submission to the NIO we stated 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."**

2.9 We further submitted the following analysis:

"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 consultation document effectively excludes vulnerable minorities, with only two 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.”<sup>4</sup>

- 2.10 NICEM firmly believes that, despite current set backs from the UK government, civil society will continue to work collectively on fighting for a strong and comprehensive Bill of Rights for Northern Ireland through the leadership of the Northern Ireland Human Rights Consortium. The UK Bill of Rights Commission should recognise distinctly the separate process of a Northern Ireland Bill of rights and it should respect that this process extends back to 1998. The British and the Irish governments have recognized their commitment for this process within the Belfast Agreement. Action should be taken to address the two major areas of the Agreement which have not been implemented, namely the Bill of Rights for Northern Ireland and the Legacy Commission.

### **3. Question 2: What should the Bill of Rights contain?**

- 3.1 We reiterate our position in paragraph 2.1 above: NICEM would only support a UK-wide Bill of Rights or amendment to the current legal regime, if it built upon the Human Rights Act 1998 in creating more comprehensive protection. Any such proposed Bill or amendments should encompass international Human Rights norms that explicitly extend to economic, social and cultural rights. In addition such a Bill should have the status of a written constitutional document. The lack of a written UK constitution creates a fallacy by

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<sup>4</sup> Our submission can be download from the following links:  
[http://www.nicem.org.uk/uploads/publications/NICEM\\_response\\_to\\_NIOBoR.pdf](http://www.nicem.org.uk/uploads/publications/NICEM_response_to_NIOBoR.pdf)

which the state is enabled to infringe human rights by way of the prerogative power.

- 3.2 The current Human Rights Act does not incorporate all the additional Protocols to the ECHR, for example the forth Protocol of Article 1 of the ECHR is not incorporated. It states that “No one shall be deprived of his liberty merely on the ground of their ability to fulfil a contractual obligation.”<sup>5</sup>

**4. Question 3: How do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?**

We reiterate our position in paragraph 2.2 above on the current arrangement under the Human Rights Act. Consistency is the key principle as the Bill of Rights for Northern Ireland is in addition to the ECHR under the Belfast Agreement.

**5. Question 4: Are there any other views which you would like to put forward at this stage?**

5.1 We reiterate our position in paragraph 3.2 above to incorporate additional Protocols which are currently not incorporated under the Human Rights Act 1998. We also request the UK government to ratify Protocol 12 to the ECHR as soon as practicable and accordingly amend the Human Rights Act to incorporate Protocol 12 into UK domestic law.

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<sup>5</sup> For further details of this particular point see the Northern Ireland Human Rights Commission’s advice to the Secretary of State for Northern Ireland on the Bill of Rights for Northern Ireland: [http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A\\_Bill\\_of\\_Rights\\_for\\_Northern\\_Ireland\\_and\\_28December\\_2008%29.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_and_28December_2008%29.pdf)

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