

UNITED KINGDOM:

**SUBMISSION TO UK
GOVERNMENT
CONSULTATION ON “A BILL
OF RIGHTS FOR NORTHERN
IRELAND - NEXT STEPS”**

**AMNESTY
INTERNATIONAL**



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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

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INTRODUCTION

Amnesty International has been involved in and been supportive of the process to formulate a Bill of Rights for Northern Ireland since 1999. It has made several submissions to the Northern Ireland Human Rights Commission (NIHRC) on the Bill of Rights, supported the establishment of the Bill of Rights Forum, on which we were represented via the ‘human rights sector’ agreed representative, has continued a long-running dialogue on the matter with political party representatives, and is a long-standing member of the Human Rights Consortium, a coalition of approximately 150 civic society groups campaigning for a strong and inclusive Northern Ireland Bill of Rights.

Amnesty International is deeply disappointed at the proposals published by the UK Government for consultation in November 2009¹ and believes they fall far short of what is required for a Bill of Rights for Northern Ireland to reflect international human rights law and standards.

Amnesty International extended a broad welcome to the advice presented to the government by the Northern Ireland Human Rights Commission in December 2008. The methodology and approach used by the Commission were appropriate to the task, and resulted in advice, which met the specific remit of advising on supplementary rights that both reflect the particular circumstances of Northern Ireland and draw on international human rights law and standards.

In contrast, the proposals published for consultation by the government fail to fully reflect the particular circumstances of Northern Ireland and fall far short of accepted international standards for present-day constitutional rights protection. Most worryingly, the arguments made by Government for rejecting a broad range of the rights protections advised by the Commission betray an apparent lack of understanding of the specific role and purpose of a Bill of Rights as a foundational document.

Further, the rejection by the government of much of the advice by the Commission has served to undermine its ability to fulfil its role effectively as a human rights institution, a development which Amnesty International deeply regrets.

A BILL OF RIGHTS FOR NORTHERN IRELAND – OUR VISION

Amnesty International considers that the UK Government has an opportunity to draft a modern, effective and forward-looking bill of rights for a divided society whose history has been marked by intolerance, violence and discrimination. In accordance with its mandate, Amnesty International has focussed its work over preceding decades on promoting respect for human rights, documenting violations of civil and political rights in Northern Ireland and making recommendations to halt such abuses.

The organization considers that the Bill of Rights should create an effective system of protection of human rights for Northern Ireland, which would ensure equal dignity and respect for all persons within its borders or subject to its jurisdiction. The organization believes that the Bill of Rights must guarantee not only the fullest protection of civil and political rights, but also social, economic and cultural rights. It is regrettable that the Government does not see the value of this approach and we urge it to reconsider when it comes to formulate further proposals.

As the European Convention on Human Rights and other international human rights instruments provide a minimum standard, Amnesty International believes that the Bill of Rights should go beyond minimum standards and enshrine guarantees of the highest level of protection. Therefore, the Bill of Rights should take account of the developments in international law, both of treaty and of customary legal nature, as well as developments reflected in a variety of non-treaty standards and the jurisprudence of international human rights tribunals, bodies and mechanisms. It should incorporate formulations of fundamental rights that have not necessarily been included in other international instruments. In doing so, it would be providing a model for other parts of the UK as well as of the world, rather than settling for a minimalist approach to rights protection.

The Human Rights Act embodies most, but not all, of the rights contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and Protocols 1 and 6 to the Convention. Amnesty International considers that the European Convention on Human Rights should not just be uncritically adopted in a domestic bill of rights.

This is so for three reasons: first, as a regional treaty intended to bind a diverse range of countries, its language and content frequently reflects a minimum standard rather than the highest standard. Second, there have been significant developments in international human rights law since the adoption of the European Convention on Human Rights in 1950, with the result that the express provisions of the European Convention on Human Rights, in certain significant respects, fall short of contemporary international law and standards. Third, the European Convention on Human Rights does not enshrine all relevant civil and political and social, economic and cultural rights.

The envisaged Bill of Rights for Northern Ireland, therefore, ought to go beyond the Human Rights Act and encompass additional rights and protections and enjoy a special status. Amnesty International believes that a Bill of Rights for Northern Ireland should enshrine the highest standards of human rights and humanitarian law protections, including those recognized in the International Covenant on Civil and Political Rights (ICCPR), the

International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Rome Statute of the International Criminal Court.

In keeping with the fact that all human rights are universal and indivisible, Amnesty International regrets that the government's proposed Northern Ireland Bill of Rights rejects the inclusion of provisions guaranteeing some economic, social and cultural rights. The argument from Government against inclusion that these rights are not of sole or unique concern to Northern Ireland, as opposed to other parts of the United Kingdom, is neither relevant nor convincing.

As Amnesty International had recommended that the Northern Ireland Bill of Rights should enshrine guarantees of the highest protection of human rights,² the organization regrets that the provisions proposed by the government fail to take account of developments in international law in the 60 years since the adoption of the European Convention on Human Rights.

STATUS OF THE BILL OF RIGHTS

It is important that the Bill of Rights enjoy a special status in law which underscores its fundamental nature and what sets it apart from other legislation. A Bill of Rights is an instrument, which should withstand the test of time and political tides; it is a forward-looking instrument and must be interpreted as a living instrument. It is intended to act as a protection of rights and a restraint upon the abuse of power irrespective of the political make-up of the government of the day. The Bill of Rights should act as a safeguard against the whims of transient political majorities. This would require the entrenchment of its provisions to protect its amendment or repeal by a simple majority.

This essential dimension of a Bill of Rights is not reflected currently in the Government's proposals. The Government should reconsider its approach.

APPLICATION

It is axiomatic that the Bill of Rights should bind the state at all levels and all its agents. Amnesty International deems it essential that the Bill of Rights expressly set out the positive obligation of the state to respect, protect, ensure, promote and fulfil all the rights enshrined in the Bill of Rights. For example, in view of the diverse nature and sources of violence in Northern Ireland, which include violations by security forces, paramilitary abuse, domestic violence and abuse of children, the importance of incorporating a positive duty on the State to provide the necessary protection against violence, irrespective of the perpetrator, is evident.

ENFORCEABILITY

In order to ensure that the Bill of Rights has maximum impact, it is essential that it contain effective mechanisms for enforcement; provisions must include mechanisms for effective redress and ensure reparation for violations of the rights guaranteed. Such proposals are lacking in the Government paper.

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Amnesty International has been documenting human rights violations within Northern Ireland for the last 30 years. In documenting these violations, Amnesty International has compared national legislation and practice with international standards and has often found that there are gaps in protection. In addition the organization has noted gaps in the European Convention on Human Rights, an instrument that was adopted 60 years ago.

In our approach to a framework for a Bill of Rights for Northern Ireland, Amnesty International would encourage the government to ensure that the rights enshrined in the European Convention are strengthened and the gaps in protection are filled.

We have previously made specific recommendations concerning the rights provisions that a Bill of Rights for Northern Ireland should contain and would urge the Government to revisit our 2001 submission³ to the NI Human Rights Commission where these recommendations are set out under the following headings:

- Strengthening of rights already enshrined in the European Convention on Human Rights (or the Human Rights Act 1998):
 - The right to life;
 - Prohibition of torture;
 - Rights to liberty and fair trial;
 - The right to freedom of expression;
 - The right to privacy.
- Rights additional to those enshrined in the European Convention on Human Rights:
 - The right to dignity;
 - The right of lawyers to independence and security in the exercise of their profession;
 - The right of access to information;
 - The right to equal treatment;

- Children's rights;
- Women's rights;
- Administrative justice;
- The right to seek asylum;
- Victims' rights;
- Economic, social and cultural rights.

CONCLUSION

Amnesty International is deeply concerned at the current set of proposals from the government for the Northern Ireland Bill of Rights.

We believe that the current proposals are fundamentally misconceived, fail to recognize the specific role and purpose of a Bill of Rights and fail to provide the people of Northern Ireland with a full set of rights at the highest standard. We believe that to proceed with such an approach would be a missed opportunity for rights protection in Northern Ireland.

We urge the UK Government to undertake a complete reassessment of its approach to legislating for a Bill of Rights for Northern Ireland and to bring forward new proposals, which better reflect the particular circumstances of Northern Ireland, and international standards in human rights protection.

ENDNOTES

1 See Northern Ireland Office, *Consultation Paper: A Bill of Rights for Northern Ireland: Next Steps*, November 2009, http://www.nio.gov.uk/consultation_paper_-_a_bill_of_rights_for_northern_ireland__next_steps.pdf , accessed March 2010.

2 See Amnesty International, *United Kingdom/Northern Ireland: An inclusive Bill of Rights for all* (Index: EUR 45/006/2001, February 2001), <http://www.amnesty.org/en/library/info/EUR45/006/2001/en>.

3 See Amnesty International, *United Kingdom/Northern Ireland: An inclusive Bill of Rights for all* (Index: EUR 45/006/2001, February 2001), <http://www.amnesty.org/en/library/info/EUR45/006/2001/en>.

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