

ICESCR Shadow Report

Submission from the Human Rights Consortium to the United Nations Human Rights Committee on Economic, Social and Cultural Rights (ICESCR) Pre-sessional Working Group for the UK's 6th Periodic Report

August 2015



“the Committee notes the draft Bill of Rights for NI, which includes ESC Rights which are justiciable, and calls for its enactment without delay”

- Concluding Observations 2009



The Consortium

The Human Rights Consortium is a not for profit coalition of civil society organisations from across Northern Ireland. We have almost two hundred member organisations from a range of community and voluntary groups, NGOs and Trade Unions; drawn from all sections of the community and all parts of Northern Ireland. Our coalition operates to raise awareness and promote the values of human rights and campaigns for the development of a human rights compliant Northern Ireland. The ultimate end goal of this is the development of a strong and inclusive Bill of Rights, other short to medium term goals include enhancing understanding, communication, cooperation and campaigning opportunities on human rights issues between members of the Consortium, civil society and the public generally. In our day to day activities we try to achieve these objectives through research, training, awareness raising and advocacy.

Submission Overview

The Human Rights Consortium believes that the state party's commitment to enabling the effective realisation of Covenant rights in Northern Ireland has significantly deteriorated in the six years since the previous concluding observations for the last reporting cycle in 2009.

The UK has failed to take advantage of opportunities to incorporate the articles of the Covenant into domestic law, refused to follow the statutory advice of a National Human Rights Institution, ignored the clearly evidenced public desire for the incorporation of Economic Social Cultural Rights (ESCR) within Northern Ireland and failed to fulfil its obligations under an international agreement to incorporate additional rights for Northern Ireland that were drawn from international standards and experience.



In addition, the UK government has regressed the existing application and availability of entitlements the state party claims give effect to Covenant rights through welfare reforms and other negative social measures, encouraged a climate of negativity towards existing human rights protections and currently stand ready to scrap the single strongest piece of human rights legislation across the entire UK.

Bill of Rights

The Committee gave a clear recommendation in its 2009 Concluding Observations that the 2008 advice from the Northern Ireland Human Rights Commission (NIHRC) should be developed into legislation by the UK Government.

“the Committee notes the draft Bill of Rights for Northern Ireland, which includes economic, social and cultural rights which are justiciable, and calls for its enactment without delay.”¹

The state party response outlines the range of failures in the UK Government approach to the Bill of Rights process during the intervening 6 years.

“there is no draft legislative Bill of Rights for Northern Ireland. In December 2008, the Northern Ireland Human Rights Commission (NIHRC) delivered its statutory advice on a potential Bill of Rights for Northern Ireland. The UK Government subsequently carried out a public consultation on this issue, and wants to see the issue of a Bill of Rights for Northern Ireland resolved. However, it remains clear that there is currently no consensus among the political parties in Northern Ireland as to whether such a Bill is desirable, or to its potential content.”²

The UK Government’s response seeks to diminish the significance of the NIHRC advice, ignores the widespread public support for a Bill of Rights and creates roadblocks to progressing the Bill of Rights that were never intended in the Belfast/Good Friday Agreement.

The advice received by the NIHRC represents the statutory advice of a National Human Rights Institution (NHRI) as part of the state party’s duty under an international peace agreement.³ It therefore represents substantive legal recommendations on the content of a Northern Ireland Bill of Rights whether drafted as a final legislative text or in its existing format.

¹ Concluding Observations to the UK 5th periodic state party review, 2009, paragraph 10.

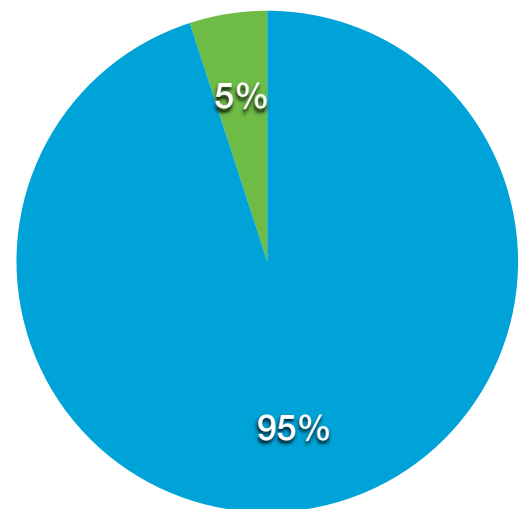
² United Kingdom 6th periodic report, 2014, paragraph 5

³ The NIHRC were asked “... 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 constitute a Bill of Rights for Northern Ireland.” Belfast Agreement, “Rights, safeguards and equality of opportunity”, pp 16-17



Following receipt of the NIHRC advice the UK Government ran a public consultation on the content of a Bill of Rights. Surprisingly the Government consulted not on the statutory advice received from the NIHRC but on their own response to the Commission’s recommendations. While the NIHRC advice recommended the adoption of rights supplementary to the European Convention of Human Rights (ECHR) that would have incorporated and built upon many of the rights contained within the International Covenant on Economic, Social and Cultural Rights (ICESCR) (specifically articles 6, 9, 11, 12, 13, 15) and other international obligations, the Northern Ireland Office (NIO) consultation document rejected many of these proposals. Stating that they did not see these additional rights as falling within the test of being particular to Northern Ireland or of not being the most appropriate method to realise the particular rights.

● Support for wide-ranging BoR
 ● Other opinion



“it is the Government’s view that the introduction of such rights in Northern Ireland would either be unworkable in practice, or could give rise to unjustified inequalities across the UK.”

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Instead the NIO consultation document proposed the inclusion of only two rights in a Northern Ireland Bill of Rights - *“a right to vote freely in and be elected at genuine periodic elections held by secret ballot”*⁵ and *“the right of the people of Northern Ireland to identify themselves and be accepted as Irish or British or both”*.⁶

The contrast in approach to the rights to be extended under the NIO/UK proposals was stark when compared with the NIHRC advice. However the resulting consultation exercise clearly established an overwhelming preference for the approach adopted by the NIHRC.

A total of 36,492 responses were received. Of these at least 34,843 called for a strong Bill of Rights: that is 95% of all submissions.⁷

The NIO failed to appropriately recognise the extent of this widespread support following the consultation.

*“There was **considerable support** from human rights and community groups for a wide-ranging Bill of Rights along the lines of that recommended by the Northern Ireland Human*

⁴ NIO Consultation Paper, A Bill of Rights for Northern Ireland: Next Steps, November 2009, pp 3.15

⁵ Ibid 5.21

⁶ Ibid 6.6

⁷ The Consortium believes this to be the largest response rate to any consultation that has ever been conducted in Northern Ireland.

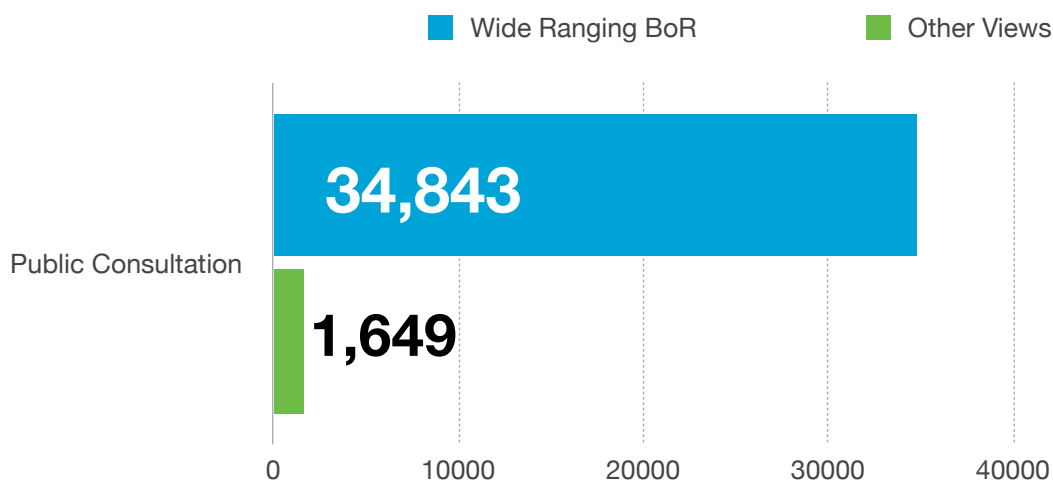


Rights Commission. They expressed concern that the proposals in the consultation document fell well short of this.⁸

“The consultation also **demonstrated opposition** to a wide-ranging Bill of Rights and support instead for a more limited set of rights that reflected the particular circumstances of Northern Ireland. This divergence of views was also reflected in the submissions made by political parties in Northern Ireland.”⁹

The state party has clearly ignored the fact that 95% of respondents expressed a clear preference for a ‘wide ranging Bill of Rights’ while only a small percentage of respondents disagreed. The failure to even acknowledge the comparative depth of support for a broad based Bill of Rights among the Northern Ireland public emphasises the state party’s unwillingness to develop a Northern Ireland Bill of Rights.

This consultation exercise, over five years ago, represents the last active engagement by the UK Government in the Bill of Rights process. Since that time the UK Government has changed twice (2010 and 2015) but has yet to take any action to move a Bill of Rights towards legislation. The public rationale presented for this inaction has been twofold (a) the



belief that additional rights for NI could be better incorporated in a UK wide Bill of Rights and (b) that local party consensus on the content of a Bill of Rights was required.

On the issue of a UK Bill of Rights the Government’s own Commission on a UK Bill of Rights stated in 2012 that:

“we recognise the distinctive Northern Ireland Bill of Rights process and its importance to the peace process in Northern Ireland. We do not wish to interfere in that process in any

⁸ NIO Press Release, Publication of Responses to Consultation: 'A Bill of Rights for Northern Ireland:Next Steps', 16 December 2010

⁹ibid



way nor for any of the conclusions that we reach to be interpreted or used in such a way as to interfere in, or delay, the Northern Ireland Bill of Rights process.”¹⁰

The Commission also couldn't agree on the necessity of a UK Bill of Rights in that same report yet the UK Government currently remain committed to taking the concept forward. We return to this point further in our submission in relation to the Human Rights Act. The inclusion of a Bill of Rights in the Northern Ireland peace agreement fulfilled a clear role as a mechanism to aid the transformation of a society moving away from conflict and set up new institutions and mechanisms of governance that directly addressed the divided nature of Northern Ireland. The UK Bill of Rights process has had a significantly different origin and trajectory. Initiated originally as a political debate about which political party could be the first to develop a written constitution for the UK the proposal has descended into an attempt to undermine existing Human Rights standards within the UK. To therefore confuse or conflate the two processes could, as the UK commission pointed out, be particularly damaging to the Northern Ireland peace process and the guarantees of our peace agreement.



On the issue of local political consensus in Northern Ireland on the content of a Bill of Rights, there was no such requirement stated in the Belfast/Good Friday Agreement. Many elements of the peace process that were contested or which sought to act as ‘confidence building measures’ were introduced through Westminster legislation precisely because local party consensus would be difficult. Measures such as the Section 75 equality duties, the Patten Policing Reforms and the introduction of the Human Rights Act. All of which were delivered through Westminster legislation so that both communities could be assured that

¹⁰The Commission on a Bill of Rights Final Report, January 2012 Pg 175, Pt 12.4, ‘Conclusions on the Principles of a UK Bill of Rights’



appropriate structures were in place to prevent inequalities or failures in the protection of human rights within the new institutions of Government in Northern Ireland. To take other human rights elements of the Agreement through Westminster legislation but not the essential framework of rights to be provided by a Bill of Rights is at odds with the UK Government's role to date regarding the Agreement and a failure in its role as guarantor of that document and its implementation. Human Rights is also a reserved matter in the UK and the obligation to develop additional rights for Northern Ireland as referenced in the Belfast/Good Friday Agreement was to be enacted through primary Westminster legislation.

The reality is that the UK Government has introduced the local consensus rationale as an excuse to put a roadblock in the path of progressing the Bill of Rights. The state party report outlines that they want to see the Bill of Rights issue resolved, yet the responsible department, the Northern Ireland Office (NIO), and subsequent Secretaries of State, have failed to take any significant action since 2010 to help achieve the political consensus the UK say they are concerned with. No dialogue, debate or negotiation between political parties locally has been sponsored or coordinated by the UK Government.

The NIO has therefore abdicated their responsibility in relation to this key opportunity to directly incorporate ICESCR articles and those of other International Standards into domestic law in Northern Ireland.

The failure to properly engage in taking the NIHRC advice through to legislation, the essential recommendation in the 2009 concluding observations, is a failure solely of the state party alone and cannot be blamed on the well documented intransigent nature of divided local party politics in Northern Ireland.

The Committee may wish to ask the UK government:

Why has the state party failed to deliver a Northern Ireland Bill of Rights in legislation?

Why does the state require local political consensus regarding the introduction of a Bill of Rights for Northern Ireland given that human rights are a reserved matter to the Westminster Parliament and the Northern Ireland Bill of Rights legislation was to be developed through Westminster legislation?

What measures has the state party taken to help reach consensus on a Bill of Rights for Northern Ireland with local parties?

Human Rights Act

The Human Rights Act (HRA) gave further effect to rights from the ECHR in domestic legislation across the UK. Allowing access to UK courts for violations of convention rights. The development of this legislation was also a key provision of the Belfast/Good Friday Agreement and took on special significance in Northern Ireland where it acted as one of the



key safety mechanisms to prevent against inequalities or abuse of human rights in the exercise of power by the new Stormont Government.¹¹ The Northern Ireland Executive and all public bodies are required to carry out their functions in accordance with the Act and indeed Stormont legislation can be struck down by courts if they are deemed to not be HRA compliant. The HRA was also to be supplemented with additional rights in Northern Ireland to develop a local Bill of Rights to act as another element in the Stormont human rights framework.

The HRA therefore fulfils a very unique role in the Stormont system of governance and acts as the main legislative protection of human rights across the UK. Although the Act primarily protects civil and political rights, in the absence of wider enforceable economic and social rights protections such as ICESCR, the articles of the HRA have been utilised in attempts to enhance the protection of social and economic rights.¹²

“The UK Government considers that protection for ICESCR-based rights is already afforded by domestic law, including under the Human Rights Act 1998”

- State Party Report 2014

“The Government will bring forward proposals for a Bill of Rights to replace the Human Rights Act.”

- Queen’s Speech, 2015

This interpretation seems to be mirrored by the UK Government who highlight in the state party report that the HRA is an essential mechanism by which they give effect to ICESCR rights.

“The UK Government considers that protection for ICESCR-based rights is already afforded by domestic law, including under the Human Rights Act 1998 and the Equality Act 2010;

¹¹ ‘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’. Section 6.2, Rights, Safeguards and Equality of Opportunity, Belfast Agreement, 1998

¹²See R. (Adam and Limbuela) v. Secretary of State for the Home Department <https://www.escr-net.org/node/364787> and YL v Birmingham City council <http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd070620/birm-1.htm> as examples of HRA driven cases that have either extended ESR protections or helped move the HRA towards greater ESR applicability.



*individuals may therefore seek remedies in UK courts or tribunals if they feel that their rights have been breached.”*¹³

It is therefore strange that while on the one hand the state party emphasise the importance of the HRA for the realisation of ICESCR rights in the UK, on the other it is stated Government policy that they wish to scrap the Human Rights Act.

*“The Government will bring forward proposals for a Bill of Rights to replace the Human Rights Act.”*¹⁴

So if the HRA is replaced not only will a distinct element of the Northern Ireland peace process be undermined but one of the stated UK Government mechanisms for making ICESCR rights available to the public shall be removed from statute.

The UK Government are set to bring forward proposals for a British Bill of Rights to replace the HRA. Such proposals may again be used as an attempt to undermine a Northern Ireland Bill of Rights process but will definitely undermine the core protections the HRA provides in the system of checks and balances within the Stormont model of governance.

It is unclear whether the UK Government will seek the approval of the Northern Ireland Executive to remove the Human Rights Act but it has previously elaborated on how closely human rights relate to devolution and the associated difficulties of introducing a Bill of Rights.

*“The UK Government accepted the Commission’s central conclusion that the time was not right to proceed with a Bill of Rights because of the way the human rights framework in the UK is tied into the devolution settlement and the forthcoming referendum in Scotland.”*¹⁵

If the Government proceeds with proposals to replace the Human Rights Act without the consensus of local political parties then it will have created a contradiction in its existing approach to human rights in Northern Ireland. Whereby it requires the consent of local parties to add existing protections in the shape of a local Bill of Rights but does not require such consensus for the removal of existing protections such as the HRA.

The Committee may wish to ask the UK Government:

- **How does the UK Government intend to uphold its commitment under the Belfast/ Good Friday Agreement to the incorporation in Northern Ireland law of the**

¹³UK state party report to the Committee on Economic, Social and Cultural Rights for the 6th periodic review under ICESCR, 2014, pp 89.

¹⁴ The Queen’s Speech 2015: Background briefing notes, pg 75 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf

¹⁵UK state party report to the Committee on Economic, Social and Cultural Rights for the 6th periodic review under ICESCR, 2014, pp 86.



European Convention on Human Rights (ECHR) given its current plans to replace the Human Rights Act?

- **Will the UK Government seek the consensus of the devolved Government in Northern Ireland before removing the Human Rights Act from legislation in that jurisdiction?**
- **If ICESCR-based rights are already protected in the UK by domestic legislation such as the Human Rights Act (HRA) what effect will the current plans to replace this legislation (HRA) have on the protection of ICESCR rights in the UK?**

Welfare Reform

Current Welfare Reforms in Northern Ireland have already led to increased difficulties in individuals accessing the right to social security despite the full suite of proposed reforms not yet being delivered in Northern Ireland. In the 2009 Concluding Observations the Committee requested further detailed data on the equality impacts of welfare reforms in the next state party report.

“The Committee requests data, in the state party’s next periodic report, on the effects of the Welfare Reform agenda that are disaggregated on an annual basis, according to the prohibited grounds of discrimination.”¹⁶

Despite Northern Ireland having in place specific equality legislation that provides for Equality Impact Assessments of any new proposals to assess the impact on key equality grounds such an assessment was not properly conducted for the proposed welfare reforms. Therefore no disaggregated data has been presented in the state party report as requested.

The Committee may wish to ask the UK Government:

- **Why disaggregated data according to the prohibited grounds of discrimination on the effects of welfare reform in Northern Ireland have not been presented as requested in the state party report?**

State Party Reporting

As in previous reporting cycles there are a number of procedural flaws with the approach to drafting state party reports by the UK.

¹⁶Concluding Observations to the UK 5th periodic state party review, 2009, paragraph 42



Perhaps most fundamental is the example listed previously under welfare reform. The absence of disaggregated data on the implementation of ICESCR rights throughout the state party report renders it impossible for the Committee to make comparisons between review cycles of the measures taken to give effect to covenant rights within the UK. As an example in Paragraph 20 of the 2009 Concluding Observations the Committee makes detailed recommendation that the state party should *“strengthen its measures to reduce the substantial number of unemployed persons and to counteract the impact of the economic downturn on employment in order to implement fully the right to work, in particular with regard to the most disadvantaged and marginalised individuals and groups”*

In the paragraph 31 response for Northern Ireland the state party simply states that two programmes should be noted. No details are provided on employment figures in the last five years, the number of jobs created, the number of people entering work, the yearly budgets provided at a UK and Devolved level to tackle unemployment or any other disaggregated data that would help the Committee make an estimation of the efforts by the state party regarding this recommendation across the previous five years. Until the state party begins to provide such comprehensive data for each article of the covenant the ability of the Committee to effectively scrutinise the performance of the state party will be limited.

We are also conscious that information on Northern Ireland will form only one part of a wider report on all areas of the UK. However the level of information provided in the state party report for Northern Ireland is relatively minimal compared to other areas of the UK.

Numerous sections of the state party report list examples of programmes or measures described as evidencing implementation of covenant rights yet on numerous occasions the information listed for devolved regions only gives examples for Scotland and Wales and provides no information for Northern Ireland. See points 9, 20 -24 and 131-134 as examples of this much wider issue across the state party report.

The Committee may wish to ask the UK Government:

- **Why the state party report does not provide disaggregated data on the implementation of all the articles of the covenant?**
- **Why the state party report often cites examples of initiatives taken in Scotland and Wales to implement covenant rights but does not do so for Northern Ireland?**



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