

# TABLE OF CONTENTS

Background .....	1
Introduction .....	1
1. Structure .....	3
1.1. The Status of the Bill of Rights .....	3
1.2. Application .....	3
1.3 Enforceability .....	4
(i) Establishing a human rights court .....	4
(ii) Ensuring the right to prompt, independent and impartial investigations .....	5
(iii) Strengthening the Human Rights Commission .....	6
1. 4 Limitations .....	6
2. Contents .....	6
2.1. Strengthening of rights already enshrined in the European Convention on Human Rights (or the Human Rights Act 1998): .....	7
A) The right to life .....	7
B) Prohibition of torture .....	9
C) Rights to liberty and fair trial .....	9
D) The right to freedom of expression .....	12
E) The right to privacy .....	12
2.2 Rights additional to those enshrined in the European Convention on Human Rights: .....	13
A) The right to dignity .....	14
B) The right of lawyers to independence and security in the exercise of their profession .....	14
C) The right of access to information .....	15
D) The right to equal treatment .....	15
E) Children's rights .....	16
F) Women's rights .....	19
G) Administrative justice .....	20
H) The right to seek asylum .....	20
I) Victims' rights .....	21
J) Economic, social and cultural rights .....	22

# **UNITED KINGDOM**

## **Northern Ireland:**

### **An inclusive Bill of Rights for all**

#### **Background**

A major development in the peace process in Northern Ireland was the Multi-Party Agreement, which was signed in April 1998 by ten political parties involved in the multi-party negotiations in Northern Ireland as well as the governments of the United Kingdom (UK) and the Republic of Ireland. A referendum was held on the Agreement, both in Northern Ireland and in the Republic. In Northern Ireland, the Agreement gained support from 70 percent of people who voted.

The Agreement mandated the Northern Ireland Human Rights Commission<sup>1</sup> to prepare the draft of a Bill of Rights for Northern Ireland which would define rights additional to those in the European Convention on Human Rights and which would reflect the particular circumstances of Northern Ireland, drawing, as appropriate, on international instruments and experience.<sup>2</sup>

#### **Introduction**

Amnesty International considers that the mandate presented to the Northern Ireland Human Rights Commission presents a unique 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 the last 30 years 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.

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<sup>1</sup> The Multi-Party Agreement recommended the creation of the Commission, which came into existence on 1 March 1999.

<sup>2</sup> See, paragraph 4 of the Multi-Party Agreement section entitled United Kingdom Legislation. The full text of the Multi-Party Agreement is accessible on the following website:  
<http://www.nio.gov.uk/agreement.htm>.

Amnesty International considers that this Bill of Rights should be inclusive. 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.

The Human Rights Act, which came into effect on 2 October 2000 throughout the UK, 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 Racial Discrimination, and the Rome Statute of the International Criminal Court.<sup>3</sup> In addition, reference should be had to other modern constitutions; to this end Amnesty International has attached, as an Appendix, a paper written

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<sup>3</sup> With the exception of the Convention against Torture, none of the above listed treaties are directly enforceable in UK courts. Guaranteeing the provisions of these treaties, that are not set out in the Human Rights Act, in the Bill of Rights would remedy this situation for those under the jurisdiction of Northern Ireland.

by Gilbert Marcus, Senior Counsel, Advocate of the High Court of South Africa and England, entitled, “A Bill of Rights for Northern Ireland: Lessons from South Africa”.

The following submission on the Bill of Rights for Northern Ireland to the Human Rights Commission by Amnesty International is divided into two parts: one dealing with the structure, and the other with the contents. The contents section is sub-divided into two sections: strengthening of the rights enshrined in the European Convention on Human Rights; and those rights which are not in the European Convention but which should be added to ensure an inclusive Bill of Rights.

## **1. Structure**

### **1.1. The 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.

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; Amnesty International recommends that the Human Rights Commission consider, for example, that no proposal for amendment be passed without considered consensus in Northern Ireland.

### **1.2. 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.

### **1.3 Enforceability<sup>4</sup>**

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<sup>4</sup> The only international treaty-based mechanism that an individual can currently turn to when he or she believes that the state and the UK courts have failed to redress a violation of their internationally protected rights is the European Court of Human Rights. The International Covenant

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.

(i) Establishing a human rights court

The enforcement of the Bill of Rights should be a function of all courts, which should be encouraged to exercise broad powers of judicial review. Given the particular circumstances of Northern Ireland, Amnesty International also recommends that the Human Rights Commission explore the establishment of a human rights court as a mechanism to enforce and protect the rights enshrined in the Bill of Rights.

It is essential that such a court not only administer justice independently and impartially but also is perceived to do so, and enjoy the confidence of all. In order to do so, Amnesty International believes that such a court must be composed of judges who are human rights experts, including some with expertise on issues of gender and minorities, and who are representative of the whole population of Northern Ireland, in contrast with the under-representation of women, Catholics, and minorities which currently exists in the judiciary.

Amnesty International urges that such a court have jurisdiction to consider petitions alleging that rights have been or may be violated. The Court should have jurisdiction to consider petitions brought by individuals, including anyone acting on behalf of a person who cannot act for themselves; any individual or organization acting in the public interest; any group or organization acting in the interest of its members; groups or classes of persons; and the Human Rights Commission and other public bodies such as the Equality Commission. Amnesty International notes that this would go beyond the powers set out in Section 7 of the Human Rights Act which restrict petitioners to the individual who claims to have been the victim of unlawful actions by the authorities. In order to ensure that the right of petition is equally available to all persons, legal aid must be made available for such actions.

The rules of the Court should provide for the Court to invite and accept written submissions, such as *amicus curiae* briefs and oral submissions.

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on Civil and Political Rights, the Convention against Torture, the Convention on the Elimination of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women guarantee additional rights to those set out in the European Convention on Human Rights. Although the UK is a party to these treaties, it has to date failed to allow individuals to seek redress before the mechanisms set up in these four treaties. Amnesty International continues to urge the government to permit individuals to present complaints to the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination and more recently to the Committee on the Elimination of Discrimination against Women.

Such a court must also be granted sufficient resources to carry out its duties and wide enough jurisdiction to ensure it may grant appropriate effective remedies. The Court must have power to order such relief or remedy as it considers just and appropriate, including declaratory relief and reparation, including but not limited to compensation. In its issuing of decisions, the Court should be guided not only by the judgments of the European Court of Human Rights but also by the work of other international and regional human rights bodies and mechanisms, including United Nations (UN) treaty bodies, (such as, the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, etc); UN special mechanisms, including Special Rapporteurs and Special Representatives and Working Groups; and other international human rights courts (including, for example, the Inter-American Court of Human Rights).

Amnesty International believes that training and continuing education programs for the judiciary and members of the legal profession must include training on human rights.

(ii) Ensuring the right to prompt, independent and impartial investigations

The right to redress includes the right to prompt, thorough, independent and impartial investigations of allegations of human rights violations. The right to such investigations, which is not expressly set out in the Human Rights Act, has been set out in international human rights instruments, including among others, the Convention against Torture, Principle 7 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. It has also been deemed inherent in rights enshrined in the ICCPR and the European Convention by the Human Rights Committee and the European Court of Human Rights<sup>5</sup>.

Amnesty International urges that this right be expressly guaranteed in the Bill of Rights, particularly in view of the organization's long-standing concerns about the failure of the authorities to initiate prompt, thorough, independent and impartial investigations into allegations of human rights violations in Northern Ireland, including killings by the security forces; allegations of official collusion in killings; torture and ill-treatment.

(iii) Strengthening the Human Rights Commission

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<sup>5</sup> See, for example, Human Rights Committee General Comment 20, and the judgment of the European Court of Human Rights in the case of *Aydin v. Turkey*, (Application No. 23178/94, 25 September 1997).

In addition, Amnesty International recommends that the Human Rights Commission be given greater powers to advance the observance of human rights, for example, by ensuring that the Commission can intervene and make submissions to courts, and that it is given the power to compel attendance of witnesses and evidence in the course of its investigations.

#### **1. 4 Limitations**

Certain international human rights treaties provide that some rights, like the right to freedom of expression, may be limited, under strictly limited defined circumstances in order to protect and promote the enjoyment by other people of their rights without discrimination; but such limitations are subject to requirements of reasonableness and proportionality. In order to prevent the state from imposing unreasonable limitations, the Bill of Rights should specify the limited circumstances in which restrictions may be imposed as well as the principles behind any such limitation. Any limitation should depend on a balance of factors, based upon proportionality, taking into consideration the nature of the right and its significance, the purpose of the limitation, and the existence of less restrictive means to achieve the purpose of the limitation. Moreover, such limitations may not go beyond limitations permitted under international law and standards.

#### **2. Contents**

Amnesty International has been documenting human rights violations within Northern Ireland for the last thirty 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 fifty years ago.

In our approach to a framework for a Bill of Rights for Northern Ireland, Amnesty International would encourage the Human Rights Commission to ensure that the rights enshrined in the European Convention are strengthened and the gaps in protection are filled. Thus, Amnesty International's submission on the substantive contents of the Bill of Rights is subdivided into two sections:

- \* strengthening of rights enshrined in the European Convention on Human Rights (section 2.1);
- \* rights additional to those enshrined in the European Convention on Human Rights (section 2.2).

Although Amnesty International believes that the Bill of Rights for Northern Ireland should set out guarantees of civil, political, social, economic and cultural rights, it is inevitable that its enumeration of rights will not be exhaustive. Amnesty International believes that the introduction to the Bill of Rights should expressly state that the rights set out are not an exhaustive list of all the rights of people in Northern Ireland or subject to its jurisdiction, and that the rights guaranteed in the Bill of Rights apply at all times.

## **2.1. Strengthening of rights already enshrined in the European Convention on Human Rights (or the Human Rights Act 1998):**

### **A) The right to life**

#### **(i) The strongest formulation of the right to life**

As the right to life is the most fundamental of human rights, Amnesty International believes that it should be formulated in the Bill of Rights in a manner which aims to provide maximum protection.

The right to life as set out in Article 2 of the European Convention on Human Rights provides in part that “no one shall be deprived of his life intentionally”. This article also specifies that the right to life shall not be deemed to have been violated when the deprivation of life

“results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection”.

These limitations on the right to life are not set out in the ICCPR, which, in contrast, provides that “no one shall be arbitrarily deprived of his life”. The concept of arbitrariness contains elements of disproportional and unreasonable use of force, unlawfulness and injustice, as well as capricious abuse of power.

Amnesty International believes that the provision for the right to life in the Bill of Rights should state that no one shall be *arbitrarily* deprived of their life, because this formulation includes both intentional and unintentional killings, and the use of this term obviates undertaking the difficult task of listing all instances of deprivation of life which are not prohibited under international law and standards. Adopting wording similar to Article 2 of the European Convention on Human Rights would risk being deemed to exclude from protection unintentional killings and elements of unlawfulness, injustice, capriciousness and unreasonableness.<sup>6</sup>

In any event, Amnesty International considers that the provision should be drafted in a manner that takes into account developments in international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It should provide that law enforcement officials may only intentionally use lethal force as a last resort in carefully prescribed circumstances, and only when strictly unavoidable in order to protect life.

#### **(ii) Prohibition of use and re-introduction of the death penalty**

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<sup>6</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, pp.110-113 (NP Engel, Strasbourg, Arlington, Va.,1993).



Amnesty International believes that the Bill of Rights should contain a provision which expressly abolishes the death penalty in all circumstances and prohibits its re-introduction.

(iii) Investigations into deaths in custody and in disputed circumstances

Over the years Amnesty International has been concerned that the inquest systems in Northern Ireland, England and Wales fail to provide effective mechanisms for public scrutiny of the legality of actions or omissions by state agents in cases of disputed killings by law enforcement officials and deaths in custody. One of the weaknesses in the system in Northern Ireland has been the failure to protect the right to equality of arms for all interested parties to an inquest and in particular the families of the deceased: the families have not received disclosure of all relevant evidence in advance of the inquest and legal aid is not statutorily available for families, therefore they may be legally unrepresented. Although inquests are only convened once a decision not to bring prosecutions has been made, law enforcement officials who are suspected of involvement in the deaths in Northern Ireland cannot be compelled to testify at inquests.

In England and Wales inquest juries are able to reach a range of verdicts, including unlawful killing or an open verdict. Inquest juries in Northern Ireland, however, are not authorized to bring in verdicts after hearing all the evidence; they are restricted to making findings which are limited to a determination of the identity of the deceased person and how, when, and where that person died. The findings do not in any way determine the legality or illegality of law enforcement officials' actions.<sup>7</sup> The inquest cannot examine the full circumstances in which people have been killed. Thus, there is currently no effective public scrutiny of possible unlawful killings or deaths in custody.

Therefore, Amnesty International believes that the Bill of Rights should include:

- a) the right to a prompt, independent, impartial, and thorough investigation into all deaths in custody and killings in disputed circumstances;
- b) the requirement that families of victims of killings in disputed circumstances and deaths in custody are kept fully and regularly informed about the progress of the investigation;
- c) the requirement that all suspicious deaths must be subject to a public form of inquiry which can determine the full circumstances of a death and the legality of state agents' actions;
- d) the requirement that families of victims be afforded full and equal participation in any such public form of inquiry, including full access to legal aid and equality of arms, including disclosure of information;

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<sup>7</sup> In its judgment in *McCann and Others v. UK*, (Application No. 18984/91 at para. 161, 27 September 1995) (the Gibraltar Three case), the European Court stated: "A general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities."

e) the right of relatives and dependents to reparation.

#### B) Prohibition of torture

Similar to the right to life, Amnesty International urges the Commission to adopt the strongest formulation of this fundamental right. The Bill of Rights should expressly prohibit torture and other *cruel*, inhuman or degrading treatment or punishment; the use of judicial and administrative corporal punishment; and incommunicado detention. Article 3 of the European Convention on Human Rights omits the word “cruel”, which is incorporated into other international standards, including Article 7 of the ICCPR.

#### C) Rights to liberty and fair trial

For a number of years Amnesty International has documented its concerns about violations of the rights to fair trial in cases of people arrested under emergency legislation in Northern Ireland, in particular the denial of legal assistance to suspects during interrogation; the use of ill-treatment and threats of violence to obtain involuntary or false statements and the use of such statements as the basis for prosecution and at trial; and the curtailment of the right of silence and encroachments on the rights to the presumption of innocence and not to testify against oneself, including as a result of statutory presumptions.<sup>8</sup>

The organization considers that it is essential that the rights to fair trial in the Bill of Rights provide additional rights and guarantees to those expressly set out in the European Convention on Human Rights. For example, Amnesty International believes that it is essential that the provisions related to the right to liberty and security of the person (Article 5 of the European Convention) expressly include the right to access of all people deprived of their liberty (whether or not in connection with a criminal charge) to a lawyer of choice without delay, including the right to assistance of counsel during questioning by law enforcement officials.<sup>9</sup> This right should expressly include the right to appointed counsel and the right of counsel free of

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<sup>8</sup> It should be noted that the European Court of Human Rights, in the recent case of *Heany and McGuinness v. Ireland* (Application no. 34720/97 (21 December 2000)), concluded that a provision of the Offences against the State Act in the Republic of Ireland, which penalized with up to six months’ imprisonment a person detained under the Act who failed, upon request, to provide information about their movements and activities during a specified time period and all information about the commission or intended commission of a crime, violated the rights to silence and against self-incrimination inherent in Article 6 of the European Convention on Human Rights.

<sup>9</sup> See Principles 1 and 7 of the UN Basic Principles on the Role of Lawyers, the judgment of the European Court of Human Rights in *Murray v. United Kingdom*, (Application No. 41/19994/488/570 (8 February 1996)), and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

charge in all cases where a person has been deprived of their liberty or is at risk of such a deprivation and does not have sufficient funds to pay for counsel. The right to confidential communications between counsel and client must also be expressly protected.<sup>10</sup>

In addition to the fair trial rights expressly set out in the European Convention on Human Rights, the fair trial provisions within the Bill of Rights should also guarantee:<sup>11</sup>

- the right to notification of rights, in a language the person understands, upon arrest or detention in accordance with Principles 13 and 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Rule 42 of Rules of Procedure and Evidence for the International Tribunals for Rwanda and the former Yugoslavia (Rwanda and former Yugoslavia Rules) ;
- the right to inform or have informed family or friends of the fact of arrest or detention and the place where they are being held in custody and of any transfers without delay; and the right to communicate with and be visited by family members (Rule 92 of the Minimum Standard Rules for the Treatment of Prisoners, and Principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment);
- the provision of Article 9(3) of the ICCPR which makes it clear that “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial”. In addition, such a provision should expressly include the guarantee enshrined in Article 37(b) of the Convention on the Rights of the Child, that in all cases concerning children, the deprivation of liberty of any child shall be used only as a measure of last resort and for the shortest appropriate period of time;
- the right to full disclosure of evidence to the defence, including all exculpatory evidence (Articles 56 (1)(c) and 67(2) of the Rome Statute of the International Criminal Court; Rule 66 of Rules of Procedure and Evidence for the International Tribunal for the former Yugoslavia (as amended on 13 December 2000 and published January 2001));
- the right to a public trial before an ordinary court (Principle 5 of the UN Basic Principles on the Independence of the Judiciary), except in the cases of children, who are entitled to special treatment and consideration (*see* Section 2.2(E), below);

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<sup>10</sup> See Principle 22 of the UN Basic Principles on the Role of Lawyers.

<sup>11</sup> It should be noted that the citations to instruments which set out each of the rights mentioned is illustrative only, not exhaustive. For a more complete reference of standards setting out each of these rights, *see* for example, Amnesty International’s *Fair Trials Manual* (December 1998).

- the right to be present at trial (Article 14(3)(d) of the ICCPR);
- the right to silence during questioning and at trial. This right has been enshrined in full in Rule 42(a)(iii) of the Rules of Procedure and Evidence for the International Tribunals for Rwanda and the former Yugoslavia and in Article 55(2)(b) of the Rome Statute of the International Criminal Court for people suspected of the most heinous of crimes, including genocide, other crimes against humanity and war crimes;<sup>12</sup>
- the right not to be compelled to testify against oneself or confess guilt (Article 14(3)(g) of the ICCPR);
- the right not to have evidence, elicited as a result of torture or ill-treatment, to be used in any proceeding except in proceedings against the alleged perpetrator of torture or ill-treatment for the purposes of establishing that the statement was made (Article 15 of the Convention against Torture, Principles 21 and 27 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment);
- the right to appeal the conviction and sentence in all cases, to a higher tribunal in accordance with Article 14(5) of the ICCPR. Amnesty International notes that the Human Rights Act did not incorporate Article 2 of Protocol 7 to the European Convention on Human Rights, which enshrines the right to appeal in a manner which is more restrictive than that set out in Article 14(5) of the ICCPR;
- the right of all accused persons to be treated in accordance with the presumption of innocence as unconvicted persons and, save in exceptional circumstances, to be segregated from convicted persons (Article 10(2) of the ICCPR);
- the prohibition of double jeopardy. This right is guaranteed in Article 14(7) of the ICCPR and in Article 4 of Protocol 7 to the European Convention on Human Rights, which has not been incorporated in the Human Rights Act.

#### D) The right to freedom of expression

Amnesty International believes that the Bill of Rights should guarantee the right to freedom of expression which should be defined to include:

- the right of journalists not to disclose their sources of information.

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<sup>12</sup> See footnote 7 above.

Amnesty International has been concerned about the state's attempts to force journalists to disclose sources, including by initiating court proceedings which may result in the imprisonment of journalists who refuse to reveal sources. The organization considers that this has violated the right to freedom of expression and may have a chilling effect on journalists in investigating allegations of serious human rights violations by state agents. The organization refers the Human Rights Commission to the Principles concerning the right of journalists not to disclose their sources of information, which were adopted on 8 March 2000 by the Council of Europe's Committee of Ministers, in Recommendation No. R (2000)7. The Recommendation recognizes that the free and unhindered exercise of journalism is enshrined in the right to freedom of expression and is a fundamental prerequisite to the right of the public to be informed on matters of public concern.

- the right of public officials, including agents of the state, to make public information when it concerns violations of human rights by state agencies.  
Amnesty International has been concerned about the bringing of charges under the Official Secrets Act against former members of the security forces and against journalists who sought to publish information about allegations of human rights violations by state agents.

#### E) The right to privacy

The Bill of Rights should enshrine the right to privacy. This should specify that all searches and seizures must be based on reasonable suspicion that a crime has been or is about to be committed. The organization considers that, in all but exceptional circumstances, searches and seizures should be made pursuant to warrants which are issued by a court in a manner consistent with the fundamental right of the right of privacy and in a manner consistent with rights to due process. The same should apply to warrants for interception and surveillance (electronic and telephonic). In order to ensure respect for fundamental rights Amnesty International believes that all such warrants should be authorized by an independent court only upon the basis of evidence given under oath to justify the action.

Amnesty International considers that the right to confidential communications and consultations between counsel and client within their professional relationship, as enshrined in Principle 22 of the UN Basic Principles on the Role of Lawyers, must also be expressly protected.

Principle 6 of the Principles concerning the right of journalists not to disclose their sources of information (Recommendation No. R (2000)7 Council of Europe's Committee of Ministers) states that interception, surveillance and search or seizure orders should not be

applied if their purpose is to circumvent the right of journalists not to disclose information identifying a source.

## **2.2 Rights additional to those enshrined in the European Convention on Human Rights:**

Amnesty International urges the Northern Ireland Human Rights Commission to include in its draft of the Bill of Rights the following rights which are additional to those set out in the European Convention.

#### A) The right to dignity

All people, including those deprived of their liberty, have the right to be treated with humanity and with respect for and protection of the inherent dignity of the human person including the right to bodily and psychological integrity. This right is reflected in the preamble to the ICCPR, and with respect to people deprived of their liberty in Article 10(1) of the ICCPR, but is not expressly set out in the European Convention on Human Rights. The Bill of Rights should enshrine this right and indicate its implications, including for people deprived of their liberty. The guarantee of the right should include the right of all persons to be free from all forms of unlawful violence from either public or private sources.

In particular, all people deprived of their liberty should have the right to: conditions of detention which are consistent with human dignity, including the rights to exercise and association, to regular visits, and the provision, at state expense, of clean, healthy and safe accommodation; nutrition consistent with their dietary, religious and cultural needs; reading material; and effective medical, including psychological, care and treatment. No detained or imprisoned person shall be subjected to any medical or scientific research unless: they provide informed consent and the research offers potential benefit to the population from which the subject comes; the research protocol is approved by an independent and reputable ethics committee; the study is not entered into as a result of the use of illegitimate inducements; the participant has the right to withdraw from the research program; and the research will be terminated if harm to participants can be demonstrated.

#### B) The right of lawyers to independence and security in the exercise of their profession

Amnesty International has documented its concern about the practice of the authorities of identifying lawyers in Northern Ireland with their clients' causes and of subjecting lawyers to intimidation and harassment. The UN Basic Principles on the Role of Lawyers set out, among other things, the duty of governments to ensure that lawyers may perform their professional functions without intimidation, hindrance, harassment or improper interference; that lawyers not be identified with their clients or their clients' causes as a result of discharging their functions; that lawyers be adequately safeguarded if they have been threatened as a result of discharging their functions; and the right to confidential communications between lawyers and their clients within their professional relationship.<sup>13</sup>

Amnesty International deems it essential that these rights are included in the Bill of Rights.

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<sup>13</sup> See, Council of Europe Recommendation no. R (2000) 21, of the Committee of Ministers to the Member States on the freedom of exercise of the profession of lawyers (6 November 2000).

### C) The right of access to information

In the absence of a right under applicable national law of access to information, Northern Ireland authorities have refused or failed to provide the community with information that people need to protect and promote rights. The Bill of Rights should provide a right of access to information in order to enhance the accountability of public authorities to the community. Authorities should also be obliged to release information to enable people to monitor and assess how well (or how poorly) rights are respected in Northern Ireland. (*See*, Article 32 of the Constitution of the Republic of South Africa; Article 19(2) of the ICCPR.)

### D) The right to equal treatment

The Bill of Rights should provide that the right to equal treatment includes the rights to equality of all people before the law and courts and to equal protection of the law for all people without discrimination. These rights are not expressly set out in the Human Rights Act, but are expressly set out, for example, in Article 26 of the ICCPR.

The Bill of Rights should provide that the government and public bodies fully respect, on the basis of equality of treatment, the identity and ethos of *all* communities in Northern Ireland. It is necessary to ensure that the grounds of prohibited discrimination include not only those provided for in Article 1 of Protocol 12 to the European Convention on Human Rights,<sup>14</sup> but also age, sexual orientation, disability, pregnancy, culture, marital status, ethnic origin, and gender.

Amnesty International also urges that such provision specifically set out that legislative and other measures -- designed to protect or advance persons, or categories of persons, disadvantaged by discrimination in the past -- may be taken.<sup>15</sup> This also requires national

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<sup>14</sup> Article 1 of Protocol 12 to the European Convention on Human Rights lists the following grounds: sex, race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

<sup>15</sup> *See*, Explanatory Note and Commentary on the Provisions of Protocol 12 to the European Convention on Human Rights; Fact Sheet no. 22, "Discrimination against Women: the Convention and the Committee": <http://www.unhchr.ch/html/menu6/2/FS22.htm>; Human Rights Committee General Comment 18, UN Doc.: HRI/GEN/1/Rev.4 (7 February 2000); Article 9(2) of the Constitution of the Republic of South Africa, 1996. The Constitution of the Republic of South Africa is accessible on the following website: <http://www.polity.org.za/govdocs/constitution/saconst.html>.



legislation to prohibit unfair discrimination, including direct or indirect discrimination by private persons, groups/organizations, or companies.<sup>16</sup>

The prohibition of discrimination in Article 14 of the European Convention extends only to the rights and freedoms contained in the European Convention. It does not include the free-standing guarantee to equal treatment without discrimination, which is enshrined in other human rights instruments, such as Article 26 of the ICCPR.

Amnesty International notes with dismay the government's stated intention not to ratify Protocol 12 to the European Convention on Human Rights at this time. Ratifying and incorporating Protocol 12 into the Human Rights Act would go a long way to remedying inadequacies in domestic legislation.

#### E) Children's rights

The UK is a party to the UN Convention on the Rights of the Child (CRC). This treaty recognizes the special protection needed for persons under the age of 18 -- unless under applicable law the age of majority is attained earlier. It requires special safeguards and care including the duty to protect children within the legal system by reason of their immaturity and vulnerability.

Many of the specific rights, aimed at protecting children, are not included within the European Convention on Human Rights - a gap which Amnesty International believes must be filled within the Bill of Rights. These include, among others: the obligation that the best interests of the child shall be a primary consideration in all actions concerning children and their voices are heard and views put forward and given due weight according to the age and maturity of the child; rights to basic social and economic rights including the right to education; the right to be protected from maltreatment, neglect, abuse or degradation; the right to be protected from exploitative labour practices; the right not to be required or permitted to perform work or provide services that are inappropriate for a person of that age or that place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

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<sup>16</sup> This requirement is consistent with the government's obligations under Article 2(1)(d) of the Convention on the Elimination of Racial Discrimination. Amnesty International notes that the Multi-Party Agreement listed among the issues to be considered by the Human Rights Commission the inclusion in the Bill of Rights of "a clear formulation of the rights not to be discriminated against and to equality of opportunity in both public and private sectors" (at para 4 of the Section entitled United Kingdom Legislation). In this regard, it can be noted that Article 9(4) of the Constitution of the Republic of South Africa includes both a requirement to enact national legislation to prevent or prohibit discrimination and a prohibition of discrimination by private individuals.

Amnesty International also believes that the Bill of Rights should specifically provide that children under the age of 18 should not be recruited to the armed forces and deployed to situations of armed conflict and must be specially protected during times of armed conflict.

The Bill of Rights must ensure that children are entitled to all the fair trial guarantees and rights which apply to adults and to some additional special protection.<sup>17</sup> Such special protection, which should be enumerated, includes among other things:

- the justice system must emphasize the well-being of the child and ensure that any reaction to an alleged infraction of law is always proportionate to the circumstances both of the alleged offence and suspected offender (Rules 5 and 7.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules));
- the right of every child accused of a criminal offence to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and the desirability of promoting the child's reintegration and assumption of a constructive role within the community (Article 40(1) of the CRC);
- the right to freedom from cruel, inhuman or degrading treatment or punishment should include a strict prohibition of corporal punishment and disciplinary measures, including, placement in a dark cell, closed or solitary confinement, reduction of diet, restriction or denial of contact with family members, collective sanctions, or any other punishment that may compromise the physical or mental health of the child;<sup>18</sup>
- the duty to ensure that procedures are such as will take into account the age and desirability of promoting the reintegration into the community of each child accused or found to have violated provisions of the law (Article 40(1) of the CRC; Article 5(5) of the American Convention);
- the right to expeditious proceedings (Article 10(2)(b) of the ICCPR; Article 40(2)(b)(iii) of the CRC);

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<sup>17</sup> See, Amnesty International's *Fair Trials Manual* (December 1998), Chapter 27 on Children.

<sup>18</sup> See, Article 37(a) of the CRC; Rule 67g of the UN Rules for the Protection of Juveniles Deprived of their Liberty; Human Rights Committee General Comment 20 para 7 (on Article 7 of the ICCPR), (UN Doc.: HRI/Gen/1/Rev.4 (7 February 2000)); CRC Concluding Observations, Australia (UN Doc.: CRC/C/15/Add.79, 1997, para 15).

- the right of privacy of every child - accused of infringing or found to have infringed the penal law - in order to prevent stigmatization; the best interests of the child shall be primary when determining whether hearings should be closed to the public and press and court judgments should be public.<sup>19</sup> Amnesty International notes with concern that the determination of whether a child is tried in a juvenile or adult court is based on the seriousness of the crime which they have been accused of committing rather than on considerations of their age, vulnerability and rights to privacy.
- the duty to ensure that the parents or guardian of a child deprived of his/her liberty are notified immediately unless this would be to the detriment of the best interests of the child; and that the child is given prompt access to legal assistance (Article 9(4) of the CRC; Rule 10.1 of the Beijing Rules);
- all children may only be deprived of their liberty, including after a conviction, in conformity with the law as a last resort and for the shortest appropriate period of time (Article 37(b) of the CRC);
- all children deprived of their liberty must receive appropriate care, protection, assistance, education, and social and medical services (Rule 13.5 of the Beijing Rules);
- all children, either detained or imprisoned, should be held separately from adult detainees or prisoners, except when this would not be in the best interests of the child;<sup>20</sup>
- no child shall be subjected to corporal punishment;<sup>21</sup>
- persons under the age of 18 shall not be subjected to life imprisonment without the possibility of release.

#### F) Women's rights

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<sup>19</sup> See, the Committee of Ministers of the Council of Europe Recommendation no R(87)20, paras 5 and 8. In the judgment of the European Court in the case of *T. v. the United Kingdom*, the court noted the international tendency in favour of the protection of the privacy of juveniles accused of having infringed the penal law (Application no. 24724/94 (16 December 1999)).

<sup>20</sup> See, Article 10 of the ICCPR; Article 37(c) of the CRC; and the 9<sup>th</sup> General Report of the CPT's activities, in which the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) set out Safeguards against the ill-treatment of Juveniles. Access to this document may be obtained on the following web cite: <http://www.CPT.coe.int>.

<sup>21</sup> See, footnote 18 above.

The United Kingdom is a party to the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention). The Human Rights Act, however, does not provide for the full range of women's human rights incorporated in the Women's Convention and contains no express provisions enshrining special guarantees aimed at protecting against gender-based abuses. It does not expressly provide for the rights to equality in Article 2 of the Women's Convention or contain a positive obligation to eliminate and provide women with effective remedies against indirect discrimination as defined in Article 1 of the Women's Convention or provide for special measures, including those to protect or advance women disadvantaged by discrimination and to accelerate *de facto* equality.<sup>22</sup>

When examining measures taken by the UK government to implement its obligations under the Women's Convention in 1999, the Committee on the Elimination of Discrimination against Women expressed concern, among other things, about the absence of a national strategy on the prevention and elimination of violence against women and noted concern that women in Northern Ireland are particularly affected by violence. The Committee also noted the under-representation of women in public and political life, in the judiciary and in higher education, as well as the continuing pay gap between women and men.<sup>23</sup>

With respect to the rights of women deprived of their liberty, Amnesty International refers the Human Rights Commission to, among other things, the 10<sup>th</sup> General Report of the CPT's Activities, which includes a chapter on women deprived of their liberty.<sup>24</sup>

Amnesty International urges the Human Rights Commission to draft the Bill of Rights in a manner that guarantees the full development and advancement of women for the purpose of guaranteeing women the exercise and full enjoyment of human rights and fundamental freedoms on a basis of equality.

#### G) Administrative justice

The day-to-day lives of the people of Northern Ireland are vitally affected by administrative decisions taken or not taken by public officials exercising discretionary powers. These decisions extend to matters such as housing allocation, welfare benefits, policing functions and decisions relating to prosecutions and inquests. It is essential that the exercise of powers of this sort be subject to effective judicial review and that persons affected by such decisions or omissions are

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<sup>22</sup> See, Article 4.1 of the Women's Convention; and Human Rights Committee General Comments 4 (Article 3) and 18, UN Doc: HRI/GEN/1/Rev.4 (7 February 2000).

<sup>23</sup> UN Doc: A/54/38, paras. 278-318 (1999).

<sup>24</sup> This report may be accessed on the following website: <http://www.cpt.coe.int>.

equipped to make effective challenges. To that end Amnesty International recommends that the Bill of Rights incorporate a provision which guarantees lawful and fair administrative decisions coupled with a duty to furnish reasons for any decision or failure to take a decision, and the right to effective review. Regard may be had to Article 33 of the South African Constitution which enshrines these rights.<sup>25</sup>

#### H) The right to seek asylum

Amnesty International has noted with concern that the Human Rights Act does not incorporate Protocols 4 and 7 of the European Convention, which guarantee the rights to freedom of movement and prohibition against *refoulement*.

Amnesty International believes that the right to seek asylum, as provided for in the 1951 UN Convention Relating to the Status of Refugees and other regional and international human rights treaties, should be expressly enshrined in the Bill of Rights for Northern Ireland. The organization believes that this right should include the asylum-seekers' rights to :

- liberty and freedom from arbitrary detention;  
An asylum-seeker should only be detained if they have been charged with a recognizably criminal offence, or the authorities can demonstrate in the individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognize may be legitimate grounds for detaining asylum-seekers.  
Each asylum-seeker who is detained must be brought promptly before a judicial or similar authority to determine whether his or her detention is lawful and in accordance with international standards.
- full and fair determination of each individual's asylum claim which affords an effective judicial review;
- legal assistance, which includes access to legal assistance and interpreters at all stages of the procedure;
- treatment which respects the inherent dignity of a human person;
- prohibition of return to a country where they can reasonably be expected to experience human rights violations, such as torture, extrajudicial execution, "disappearance", unfair trial, the death penalty; abuses by political armed groups; or abuses by private individuals including female genital mutilation, "honour" killings, in the context of the trafficking of

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<sup>25</sup> The full text of the Constitution of the Republic of South Africa may be accessed at the following web site: <http://www.polity.org.za/govdocs/constitution/saconst.html>

women, by private security agents, slavery, and domestic violence, where the state is unable or unwilling to provide protection;

- prohibition of return or expulsion to any third country where a person would not be afforded effective and durable protection;
- dignity including the right to access to and provision of, among other things, adequate support, food, appropriate and safe housing, education, health care.

#### I) Victims' rights

As stated above in section 1.3 on Enforceability, Amnesty International considers that the Bill of Rights must include provisions which ensure effective redress and reparation to people for violations of the rights enshrined in the Bill of Rights. The organization recommends that the Human Rights Commission have regard to both the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly, in resolution 40/34 (29 November 1985), and the Draft Basic Principles and Guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law (UN Doc.: E/CN.4/2000/62, Annex), in drafting these provisions. In particular, Amnesty International considers that such provisions should include the right of victims to be treated with respect for their dignity and with compassion and to be given access to the justice system in a manner that is consistent with right of the accused to a fair trial.<sup>26</sup> Provisions in regard to remedy and reparation should include the duty of the state to ensure reparation in the form of restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition.

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<sup>26</sup> See, Article 68 of the Rome Statute of the International Criminal Court, and Article 6 of the (UN) Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

## J) Economic, social and cultural rights

Pursuant to its mandate, Amnesty International takes action against some of the gravest violations by governments of people's civil and political rights. The organization also promotes the observance of all human rights as enshrined in the Universal Declaration of Human Rights and other international standards, including economic, social and cultural rights through human rights education and campaigning for ratification and implementation of human rights treaties. The organization considers that all human rights are interdependent and indivisible and universal.

The UK is a party to international and European treaties that guarantee economic, social and cultural rights, but these treaties are not directly legally enforceable domestically. They include the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and the Framework Convention for the Protection of National Minorities. It is Amnesty International's view that the Bill of Rights should include provisions aimed at ensuring respect for and protection of economic, social and cultural rights including those enshrined in treaties to which the UK is a party.

Among the economic, social and cultural rights that Amnesty International considers should be included, consistent with the prohibition of discrimination, are:

- the right to safe and adequate housing;
- the right to access to social security, including social assistance;
- the right to the enjoyment and protection of the highest attainable standard of mental and physical health, including the provision of health care services;
- the right to sufficient food and water;
- the right to have the environment protected, and to a clean and healthy environment;
- the right to education;
- the right to language, which includes the recognition and promotion of languages other than the official language(s) of the state and respect for their learning and use;
- the right to belong to and participate in an ethnic, religious or linguistic community;
- the right of persons belonging to a national or ethnic, religious or linguistic minority to enjoy their own culture, to profess and practise their own religion, and to use their own

language, in private and in public, freely and without interference or any form of discrimination. Such rights shall be protected and promoted by the state;<sup>27</sup>

- the right to participate in public affairs;
- the right to work and the right to fair labour practices.

Amnesty International recommends that the Human Rights Commission have regard to international standards and other modern constitutions, including the South African Bill of Rights, in formulating these provisions.

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<sup>27</sup> See, Article 27 of the ICCPR and the Human Rights Committee's General Comment 23 (to Article 27), UN Doc.: HRI/GEN/1/Rev.4 (7 February 2000).