



**NIACRO'S RESPONSE TO THE NORTHERN  
IRELAND OFFICE CONSULTATION ON A  
BILL OF RIGHTS FOR NORTHERN  
IRELAND: NEXT STEPS**

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## 1. INTRODUCTION

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for almost 40 years to reduce crime and its impact on people and communities. NIACRO provides services under the headings of:

- *working with children and young people who offend;*
- *working with offenders and ex-prisoners;*
- *Prisoners, families and children.*

NIACRO welcomes the opportunity to comment on public policy consultations from government. However, we are disappointed in both the tone and content of the present consultation document.

The consultation does not properly reflect the fact that a proposal for a Bill of Rights for Northern Ireland was part of the Good Friday Agreement 1998 and was confirmed in the St Andrew's Agreement in 2006; nor that it was an attempt to address relations within Northern Ireland. What the consultation in its current format has done is reduce the chances of introducing a Bill of Rights for Northern Ireland that will be progressive in nature and will make a difference to people's lives - lives which have been affected directly and indirectly by the conflict in Northern Ireland.

Other organisations are better placed to provide a strictly legal analysis of the consultation. The Northern Ireland Human Rights Commission (NIHRC) has pointed out that the consultation:

- Demonstrates a lack of understanding of the purpose and functions of a Bill of Rights.
- Fails to take appropriate account of international human rights standards.
- Appears to be suggesting the lowering of existing human rights standards in Northern Ireland.
- Fails to satisfy the minimum common law consultation requirements.
- Misrepresents the advice given by the Commission.

NIACRO supports this analysis.

Given NIACRO's location in the heart of the criminal justice system and its association with government departments outside the system, the organisation has the experience to comment on the potential that a strong Bill of Rights for Northern Ireland could have.

NIACRO is also aware (and has been involved with associated groupings) of the work that has been carried out in the last 12 and more years in relation to human rights in Northern Ireland. Reading the consultation it is almost as if government is unaware of the impact of the conflict on people's lives. It seems to be based on the premise that many of the human rights advocated

by the NIHRC will be "taken care of" by the proposed UK Bill of Rights and Responsibilities.

- The consultation fails to acknowledge that within Northern Ireland there has been an extensive discussion around an NI Bill of Rights whereas the debate on a UK Bill of Rights and Responsibilities is just beginning.
- Why should the citizens of Northern Ireland, who have been through this wide ranging debate, for many years, have their needs subsumed into a UK Bill of Rights and Responsibilities?
- It dilutes the attempt to establish a Bill of Rights that will make a difference to people's lives in Northern Ireland whose basic rights were affected by over 30 years of violent conflict
- It seems that government does not, or does not wish to, understand this difference.

The consultation argues not only that many of the rights alluded to will be addressed in a UK Bill of Rights and Responsibilities but that in many instances rights protection is unnecessary as legislation, policies and codes of practice that protect people's rights already exist. This is disingenuous. There is a great difference between having a Bill of Rights and an instrument such as a code of practice, which has little or no legal status and is much more open to interpretation.

## **2. HOW A STRONG BILL OF RIGHTS COULD MAKE A DIFFERENCE TO THOSE AFFECTED BY CRIMINAL JUSTICE**

It is not NIACRO's intention to respond to the questions posed in the consultation in detail because of our fundamental disagreement with its approach. However, we wish to make the following points. For the purposes of clarity these will be broken down into NIACRO's operational headings:

- Working with children and young people who offend
- Working with offenders and ex-prisoners
- Prisoners, their families and children

The rest of this response outlines the services NIACRO provides and how a Bill of Rights would benefit our service users and other offenders, consequently reducing crime and the impact of crime on society.

### **WORKING WITH CHILDREN AND YOUNG PEOPLE WHO OFFEND**

Services provided by NIACRO to children and young people who offend include Independent Visitors (supporting children and young people at risk within the care sector), Child and Parent Support – Caps (supporting young people aged 8 - 13 and their families at risk in the community), Independent Representation (children and young people in secure care) and Youth Employability (enhancing the employability of young people in the criminal justice system).

NIACRO has identified a trend suggesting that the Public Prosecution Service is setting too low a threshold in relation to its use of prosecutor-directed youth conferencing, i.e. becoming involved too early and, in some cases, too frequently. This is having the effect of drawing more young people into the system and then moving children "up tariff" more rapidly. The result is the labelling of children as offenders – in effect criminalising them - and increasing their chances of becoming 'locked into' the criminal justice system.

NIACRO is also aware that the prosecution process can be subject to inordinate delay. There are instances of young people appearing in Court for offences committed many months and even years previously. This serves neither the needs of the child nor the credibility of justice. NIACRO has direct experience of this through our youth employability programme. It can be the case that we are able to access employment or training opportunities for young people, only to have a court appearance or sentencing for offences committed months or years earlier, disrupt (or in some cases stop) this opportunity. Consequently, speedy access to justice needs to be enshrined in the Bill of Rights.

In secure accommodation for young people, both care and custody, NIACRO is aware that there is very limited scope for an individual child to make a complaint. Lakewood (care), Woodlands (criminal justice) and Hydebank Wood (criminal justice) all operate complaints processes, but these are closed institutions and the complaints process is highly regulated and controlled. They depend upon the goodwill of the institutions for effectiveness and are vulnerable to disruption. NIACRO has had reports of young people wanting to make complaints being obstructed by staff and being reluctant to make complaint for fear of retribution.

The nature of closed institutions means maintaining an effective and accessible complaints procedure is difficult, but it is very important those affected have ultimate recourse to an external authority. An effective Bill of Rights would provide such recourse.

NIACRO is on record as opposing the use of young people to gather evidence through entrapment, such as using young people in test purchase operations and the use of children and young people to gather intelligence for the security forces. Such actions must be tested against a principle of whether the child's involvement is in his or her best interests and the Bill of Rights must afford that protection, if it is not.

### **WORKING WITH OFFENDERS AND EX-PRISONERS**

A significant amount of NIACRO's work is with these groups. It includes Jobtrack (community), whose aim is to raise levels of employability amongst ex-prisoners and offenders in the community. Jobtrack also works with employers and specifically encourages best practice in the recruitment and selection of offenders.

One of the proposals in the NIHRC advice was that "no one shall be unfairly discriminated against by any public authority on any grounds such as.... **irrelevant criminal record.....**" (our emphasis). NIACRO has long advocated those with a criminal record should have equal access to the labour market, and to equality, representation and participation in public life. This is subject to the principle of "material relevance," that is, a person's conviction should be considered by an employer where appropriate, but should not exclude them from employment opportunities. The rationale for this position is that employment led resettlement contributes to public protection, the reduction of crime and consequently the numbers of victims of crime. Although government says it supports resettlement in its various pathways, there is an obvious disparity between the budget allocation for the "front end" (detection, prosecution and sentencing) in the criminal justice system and the resources allocated to diversion, care and resettlement. We estimate that the latter receives less than 10% of the budget.

A rights based reintegration proposal has been rejected on the basis that such re-integration can be adequately addressed by Northern Ireland Prison Service and the Probation Board for Northern Ireland. The claim that "substantive areas" are "therefore already being addressed through significant policy and operational measures" misses the point. One only has to read the reports from the Prisoner Ombudsman and the Criminal Justice Inspectorate NI, on the state of the prison system to understand this. NIACRO is on record as calling for a root and branch reform of the prison service and part of the review needs to be the development of a rights based culture. The inclusion of the right to reintegration would go a significant way to redressing the security dominated culture that still pervades the prison system in Northern Ireland.

Another area where the reliance on a code of practice has failed is the recruitment and selection of individuals with a conflict-related record. In our experience, the voluntary guidelines introduced in 2008 have had little or no effect on employers in the statutory, private or voluntary sector. It is for this reason that NIACRO is calling for a single piece of anti-discrimination legislation, which should include both incentives and sanctions and provide protection for potential and actual employees with a criminal record as well as for employers.

The out of date rehabilitation of offenders' legislation and the recently introduced Security Industry Authority (SIA) and Safeguarding Vulnerable Groups legislation have had the effect of creating more barriers to those seeking to gain employment, though claiming to improve public protection.

Most commentators agree that a combination of enforcement, encouragement and education are the most effective means of reducing crime. Governments in general seem to focus on the enforcement element and it is NIACRO's view that this legislation has potentially created a more dangerous situation by focusing on enforcement and monitoring. Therefore, reintegration services need to be located within a human rights discourse and include a specific reference to the right of access to employment.

NIACRO's Base 2 project provides a crisis intervention, clarification and support service for individuals and families who may be at risk of violence or exclusion from the community.

This project has its origins in the conflict and has been in existence for almost 20 years. Many of the rights proposed by the NIHRC would have relevance to individuals and families using the Base 2 services. These include -:

- The freedom from torture, inhuman or degrading treatment,
- The right to liberty and security,
- The right to a fair trial and no punishment without law,
- The right to freedom of thought, conscience and religion,
- The right to freedom of expression, freedom of movement,
- The right to freedom from violence, exploitation and harassment,
- The rights of victims,
- The right to civil and administrative justice,
- The right to accommodation,
- The right to work, social security rights
- Children's rights. Many children are directly and indirectly affected by threats of violence, many of which are conflict related.

It is fairly obvious that this project represents the legacy of the conflict which forms a part of the particular circumstances of Northern Ireland.

NIACRO's Assisting People in Communities service (APAC) covers areas such as accommodation, advice, housing, addiction, women and mental health. These form some of the "pathways to resettlement" referred to earlier and involve not only the criminal justice system but other government departments. Contrary to the consultation's claim that many of the NIHRC proposals appear to have equal importance across the UK, practically all public services in Northern Ireland have been impacted on by the "particular circumstances" of Northern Ireland. Housing, health and education are the most obvious examples.

#### *Housing*

There is a concern that the NIHE may apply the criteria that those who commit offences and get a prison sentence make themselves intentionally homeless. Last year NIACRO was questioned in the Assembly as to why ex-offenders "should automatically be entitled to go on the housing list". NIACRO's response was that a person is sentenced to imprisonment or other penalty: not to homelessness. Everybody has the right to be housed and to create homelessness would in turn create more crime.

#### *Health*

The NIHRC made several recommendations around the right to health which are valid. The government is aware that mental health services for those in the criminal justice system and particularly within the penal system. are inadequate. The Bamford Report looked at this, however, it is clear that key central recommendations are going to take years to implement.

The inclusion of health within the Northern Ireland Bill of Rights would assist in the development of our health services in general.

Again the NIO consultation paper ignores the particular circumstances of Northern Ireland when it comes to addressing health issues and impact of the legacy of the conflict on public health issues.

### *Education*

Many of those in the criminal justice system have been let down by Northern Ireland's education system. At the lower end of the educational attainment spectrum more children in NI do less well than the rest of the UK.

Evidence from the 2009 Labour Force Survey that shows that 47,000 people who are between the ages of 16 and 24 are not in education, employment and training – a fifth of this total age group. This has significant implications in terms of the likelihood of offending behaviour. Over 80% of NIACRO's' adult employment programme participants (medium to high risk offenders) have literacy and numeracy skills at level 1 or below on entry to the programme (the skills levels of an 11 year old.) The position is much more serious for 16-20 year olds whose basic skills, unemployment rate and school exclusion background are a third worse than the older cohort.

Research also indicates that a high proportion of prisoners have learning disabilities and/or specific learning and communication difficulties. These present significant challenges to service providers, so there must be a more tailored approach to education provision, combining equal access with relevant support.

Although NIACRO welcomes the education rights promoted by the NIHRC, they do not go far enough. The rights must include adult education, available in prison, which would contribute to the reduction of offending behaviour. There is some access to education in the prison system; however it is highly dependent on the regimes that exist in the three establishments. There is little recourse through the existing codes of practice and other policies if (as happens in many instances) individuals are denied access to education. For example, the recent "withdrawal of goodwill" by prison officers led to vocational workshop training and educational courses being suspended for months.

Under current prison management, the care and resettlement elements of the prison regime are the first to be withdrawn. A relevant section in a Bill of Rights would ensure that access to education received the priority it deserves.

### **PRISONERS, THEIR FAMILIES AND CHILDREN**

NIACRO provides services which reduce the harm imprisonment does to prisoners, families and children and support the resettlement of prisoners on release.

Jobtrack (prisons) seeks to raise prisoners' levels of employability pre-release and on leaving prison, and contributes to the development of effective resettlement practice in prison.

NIACRO's advice services aim to support effective reintegration through the provision of a specialist welfare rights advice and advocacy service to offenders and their families and vulnerable people in the community.

### *Social Security*

The NIHRC recommends a supplementary right "to social security, including social assistance, social insurance and pension". This is important, as several studies have indicated a correlation between the high dependency on social security benefits and the conflict. This clearly demonstrates the impact the conflict has had on significant numbers in Northern Ireland. The reluctance to move outside areas considered safe and the economic stagnation brought about by the conflict are in part responsible for the high level of dependency on social security

### *Families*

The issue relating to making complaints without fear of retribution has already been raised with respect to children and young people in Hydebank Wood. The same applies to those imprisoned in Maghaberry and Magilligan.

NIACRO's family and child centred services include Family Links, whose aim is to maintain and enhance positive contact between prisoners, their children and their families. NIACRO believes this contact to be an expression of the right of the child to maintain family life and that this right should be expressly supported by the Bill of Rights.

Child centred visits, offering enhanced contact between the child and parent in prison, are provided on a discretionary basis by NIPS. There are many instances where these visits do not take place as the service is dependent on the relevant officer being available. Child centred visits are not made available to the children of Schedule I offenders despite the approval and recommendation of Social Services. The reason given is usually that the prison authorities do not have the facilities to provide parallel child centred visits. This right is being denied for operational rather than child protection reasons.

So when the government in its consultation states that "codes currently permit visits where possible, subject to the discretion of the custody officer, the availability of staff to supervise any visit and the need to minimise hindrance to the investigation", it is NIACRO's experience that the discretionary element too often outweighs the declared intent. A Bill of Rights would provide the necessary legal force.

NIACRO's transport service maintains links through the provision of a bus and volunteer driver service to prison establishments. Transport services are sometimes interrupted by the "lock downs" that occur within prison establishments. There have been occasions when families have turned up at

establishments only to be informed (sometimes by a note on the gate) that visits have been cancelled. A rights informed culture that had respect at its core would help reduce these incidents.

The consultation states that NIPS "encourages family contact by providing support through the assisted prison visit scheme". The government should be aware that there is a proposal to withdraw resources for assisted prison visits in England and Wales. It is therefore clear that such "encouragement" has no legal force and needs to be enshrined as a right.

NIACRO also manages two visitors' centres in Magilligan and Hydebank Wood. The centres work to enhance the quality of visiting arrangements at prisons and promote child centred/family visits. The fabric of Magilligan Visitors Centre has required improvement for years. Hydebank's, despite consultation around the time it was built, cannot be described as "family friendly". A rights based culture would have ensured that the actual physical estate would look significantly different and be more welcoming for families, who – after all – have not committed the crime.

The consultation does not reflect the fact that almost 300 children were killed and thousands affected by the conflict. We only need to note the events at Holy Cross School in Ardoyne to understand how real the "particular circumstances" pertaining to Northern Ireland are. Children have experienced unique forms of abuse and through its Base 2 project, NIACRO has direct experience of the impact that informal justice has had on the lives of children in Northern Ireland. NIACRO has dealt and is dealing with the consequences of segregation within communities in housing, education, play and leisure facilities. As the NIHRC points out, "in order to repair the damage of the past and protect future generations, it is important that children in Northern Ireland are afforded additional protections".

### **3. CONCLUSION**

NIACRO is extremely disappointed at the NIO's consultation. It did not recognise the value of a Bill of Rights that speaks to the experience of Northern Ireland. Indeed, we believe it has seriously undermined the possibility of producing an effective instrument which would tackle the legacy of the conflict and make real changes for the better in Northern Ireland.

The consultation certainly did not recognise the "reach" that the conflict has had and still has with respect to the particular circumstances of Northern Ireland. To suggest that rights can be protected by codes of practice or "policy and operational measures" that have no legal force does not stand up to scrutiny.

This response is based on NIACRO's experience and the belief that a relevant Bill of Rights for Northern Ireland can ultimately contribute to a reduction in crime and numbers of victims experiencing crime.

A strong Bill of Rights can provide a positive and constructive platform to build a society that is respectful of all and can assist in the development of a sense of citizenship that will build positively for the future. NIACRO urges the government to take account of the analysis presented in this paper and incorporate it into a Bill of Rights - one that will make a difference.

## **SUMMARY OF NIACRO RECOMMENDATIONS**

Throughout our response, NIACRO has offered arguments regarding the need for a NI-specific Bill of Rights.

In line with our operational headings, we recommend the following –

### **Working with children and young people who offend**

1. The right of young people to be diverted from criminalisation
2. The right of young people to speedy access to justice
3. The right of young people in secure accommodation to access an independent complaints procedure
4. The right of a child to have their best interests properly assessed before entering into evidence gathering operations
5. The right for all children and young people to have equal access to education services and necessary support for learning, particularly when in custody

### **Working with offenders and ex-prisoners**

6. The right for employees and prisoners within the Prison Service to operate within a rights-based culture
7. The right for ex-offenders to access reintegration services, which have a basis in human rights
8. The right to access to employment opportunities
9. The right to live free from violence
10. The right to be part of a community and free from threats of exclusion
11. The right to be housed
12. The right to access appropriate health services
13. The right for all adults to have equal access to education services and necessary support for learning, even in custody
14. The right to social security, including social assistance, social insurance and pension

### **Working with prisoners, their families and children**

15. The right of a child to family life
16. The right for all families to access child-centred visits in prison
17. The right for all families to assisted prison visits.