

Submission 157

Association of Independent Advice Centres (AIAC)

What is AIAC?

AIAC is a voluntary organisation for the independent advice sector in Northern Ireland, representing and giving voice to its members' aspirations to deliver effective and holistic, community or issue based advice through the provision of services, support and development opportunities.

As a membership organisation, our values are embedded in promoting the application of creative community development approaches to advice giving, which place people and communities at the centre of the process and involves them in finding solutions and making informed choices.

AIAC believes in:

- Quality advice which is delivered free;
- Advice services which are impartial and non-judgemental and respect the individuals' dignity;
- Advice which is wholly confidential and accountable to the public;
- Independent advice, which is free from statutory or private control and is both non-party political and non-sectarian in nature;
 - Advice services which are aimed specifically towards overcoming social exclusion;
 - Offering people choice through the provision of flexible, accessible advice services.

AIAC works with its member organizations on a series of social policy and wider legislative matters and consultations. Members use AIAC's resources and capacity to access these debates and articulate their real, experience based concerns and demands. Advice workers in the independent advice sector work within their local communities or "communities of interest" to provide information, advice, advocacy and representation. Advice workers work with some of the most social excluded people in Northern Ireland. Their work is informed by a community development model focused on overcoming social exclusion..

AIAC and the Bill of Rights Consultation Process

AIAC believes the main purpose of a Bill of Rights is to establish and guarantee the relationship between the state and its citizens. A modern Bill of Rights should also impose more positive requirements on the Government and public bodies, such as ensuring equality for all under the law, protecting everyone against discrimination and guaranteeing access to essential public services.

AIAC and the Independent Advice Centres

AIAC has followed closely the development of this consultation document on the proposed Bill of Rights. AIAC has acted as a channel, for information on the consultation process to be passed from the NIHRC towards advice workers, the

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centres they work in and the members of the public they serve. We believe that this work has raised awareness of the concept of human rights. However we recognized that AIAC needed to do more detailed work in order to shed light upon the links between the theory of a Bill of Rights and the day-to-day concerns of advice workers. Independent advice centres work with people, whose social and economic rights in particular, are not currently fully safeguarded. Advice workers have an important role to play in contributing to this debate because their knowledge and experience enables them to articulate the needs and demands of people who so often go unheard. AIAC agrees with the Commission's concern that the Bill of Rights should enable the protection of the most vulnerable and disadvantaged members of the community in Northern Ireland in accordance with best current international standards.¹

From previous discussion with our members, we were aware that advice workers from the independent advice sector would want to discuss social and economic rights, such as the right to an adequate standard of living² and the right to adequate housing, but also issues around the right to information and the right to advocacy and representation.

AIAC Seminars on the Bill of Rights

AIAC held two consultation seminars with independent advice agencies, one in Londonderry/Derry and one in Belfast to discuss the NIHR's consultation document on the Bill of Rights for Northern Ireland. The seminars were well attended by advice workers from both generalist and specialist advice centres (see attached list). Using materials issued by the NIHR AIAC encouraged those in attendance to use their practical experiences working with the public to focus their responses to the inclusion of various social and economic rights.

The Economic and Social Rights Working Group Report

AIAC notes the conclusions of the NIHR's Economic and Social Rights Working Group (ESRWG) Report. Our response will refer to some of these conclusions. AIAC also notes the working group's substantive overview of the international obligations which bind the United Kingdom in this area, and their comments on the enforceability of social and economic rights.

AIAC's work with other community sector organisations on the Bill of Rights

AIAC has been in communication with a wide variety of non-governmental organisations with regard to recognising and supporting a broad consensus that economic and social rights must be included in a Bill of Rights for Northern Ireland. Our membership of the Ad Hoc Human Rights Consortium has provided an important channel of communication with regard to developing arguments with regard to the Bill of Rights.

¹ See www.nihrc.org

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Introduction

AIAC welcomes the opportunity to be involved, once more, in the debate on the content and form of the Bill of Rights for Northern Ireland.

AIAC members agreed that the NIHRC consultation document lacked coherence and fluency. The language was not as accessible as the NIHRC has previously said it would aim to make it. AIAC feels that final Bill of Rights recommendations must sit as a textured but cohesive document where the relationships between different rights and responsibilities are seen to be close and enduring not distant and temporary.

The Inclusion of Economic and Social Rights in a Bill of Rights for Northern Ireland

AIAC notes the comments made by the NIHRC with regard to the inclusion of economic and social rights. In our opinion the proposed clause 14 (a) (1) offers action only by way of *“legal remedies (to) protect the due process and equality rights of all citizens in respect of social and economic rights”*. This reduces the protection of economic and social rights to a procedural duty and denies the courts the opportunity to review substantive decisions, leaving them instead to make judgements as to due process. Though the consultation document claims to have included economic and social rights on the same basis as civil and political rights, this is not in effect what has happened.

Given that the inclusion of such rights reflects current international practice, and is wholly in line with the United Kingdom’s legal obligations under international human rights norms, AIAC is of the opinion that effective legal and judicial remedies must make up the primary mechanisms through which people may realise their economic and social rights.

However, we recognise that these legal and judicial remedies alone cannot assure the dignity of the human person. We would support the ESWRG stated tie between those legal rights and broader social objectives and principles, which are in turn tied to broader policies and programmes initiated both by government and the private sphere. As the ESWRG has noted, “These include inclusive planning, consultation, co-operation, partnership, accountability, transparency, mutual responsibility, and respect for all parties subject to [or involved in] decision-making in the economic and social sphere. As in other rights protection fields, we stress that government has a positive role to play as an advocate of economic and social rights. This means a concrete obligation to support citizens in understanding and exercising the rights to which they are entitled.”²

Nevertheless direct legal remedies must offer the central mechanism for delivering the economic and social rights of the people the Bill of Rights purports to protect.

² NIHRC Economic and Social Rights Working Group Report

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AIAC believes that all rights outlined in the Bill of Rights, including the economic and social rights outlined below, should be protected equally and without discrimination on the basis of clause 4(4) (non-discrimination clause as amended, see below).

The Right to Health

AIAC members confirmed that the Bill of Rights for Northern Ireland ought to protect a person's right to "quality healthcare". Advice workers noted that this refers to access to health promotion, treatment and prevention of ill-health measures. Such a right must govern the healthcare system as a whole. A holistic approach to the health system would ensure that people's right to "quality healthcare" is respected.

Advice workers also referred to the links between ill-health and social deprivation. A person's experiences of social deprivation may lead to stress, anxiety, illness etc.³ all of which will have an effect on that person's health.

Advice workers emphasised that questions of access are central to any debate on, and inclusion of a right to health. In particular they talked about the right of people living in rural areas, with relation to access to treatment, the rights of people from socially and economically deprived areas and from interface communities and their access to treatment. Advice workers acknowledged a need for local health provision.

AIAC agrees with the ESWRG that the right to health includes the right to physical and mental well-being⁴

AIAC supports the Proposed Wording: the right to health

Principle

Health is a fundamental aspect of human dignity. Adequate health care requires meaningful consultation with the public which shall be facilitated and encouraged by government.

1 Every person is entitled to the highest attainable standard of physical and mental health and well-being.

³ The ESWRG has correctly identified that the reasons for ill-health are multiple. "...levels of ill-health are closely linked to social disadvantage, to poor housing, poor environmental conditions, to unemployment, to low income and to violence. We confirm that the right to health is not only a juridical right, but a programmatic right requiring co-operation and co-ordination between many branches of government and the communities they serve. Given the variety of unique social features which have contributed to low levels of health in Northern Ireland, we advocate the inclusion of a right to health in a Northern Ireland Bill of Rights.

⁴ ESWRG Report "In this we draw on the World Health Organization's definition of health; '...a state of complete physical, mental and social well-being that does not consist solely of absence of illness or infirmity'. We also note the recent decision in case C-84/94, *United Kingdom v. Council of the European Union* where the ECJ gave a wide and expansive interpretation of health."

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2 Government shall take all possible steps to promote good health and wellbeing, and to ensure adequate prevention and treatment of ill-health.

3 Equality of access to [quality healthcare, i.e.] health promotion, treatment and prevention of ill-health will be assured.

4 All persons have the right to be consulted about decisions which affect their physical and mental health.

5 The reproductive health of [] women shall be protected.

The Right to an Adequate Standard of Living

AIAC members agreed that the Bill of Rights for Northern Ireland must guarantee the right to an adequate standard of living. This relates both to an earned wage in terms of the minimum wage and to benefits. Advice workers believed that the term “liveable wage” encompassed all the elements which would ensure that people attained an adequate standard of living.

Benefits provision should ensure an adequate standard of living. It was agreed that the benefits system was there because no one should be left with nothing.⁵ Thus, the provision of social security benefits ought to be read in terms of the general qualification of ‘adequacy’ that attaches to the general provision for living standard. This would include a responsibility by the state to progressively raise the standard of social security provision in line with general economic indicators and costs. Advice workers are particularly concerned with the burdens that fall upon families and persons who function in a caring role, particularly when caring for a disabled child or adult. People talked about the European decency threshold with regard to determining the cost of living.

AIAC agrees with the ESRWG that ‘Adequacy’ is not an entirely objective test unrelated to the particular circumstances of the person relying upon financial support from the state. It should take account of the myriad of circumstances which define the needs of the person supported. We confirm that the principle of non-discrimination (see clause 4(4)) applies to the provision; of social security and living needs generally.

It was noted that at present there are issues around the reasons why people are disqualified from receiving benefits. For example, different rules for people of

⁵ AIAC notes the ESRWG’s comments “In advocating the inclusion of this right, the working group takes account of the current and historic social deprivations which have characterised the social landscape of Northern Ireland. Poverty and social exclusion are a persistent feature of many citizen’s lives. The prevalence of disadvantage is acknowledged in the Belfast (Good Friday) Agreement, which called for a “new more focused Targeting Social Need initiative and a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need.” The British government subsequently launched New TSN in July 1998, followed by draft action plans, though subsequent public consultations by the new Northern Ireland Executive revealed serious weaknesses in the plans. The principle of targeting objective need has been accepted by the Draft Programme for Government, which promises that “Through New TSN we will redirect resources and efforts towards people, groups and areas in greatest need. All must have an equal opportunity to participate in the life of this society.”

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different ages led to discrimination against some people on account of their age.

AIAC agrees with the ESWRG that the right to an adequate standard of living is not solely an autonomous right but contains mutual elements. Therefore, it is appropriate that the right to an adequate standard of living should include dependency responsibilities. We take the widest view of the extent to which multiple forms of care, dependency and familial relationships are included within this definition.

AIAC also agrees with ESWRG that there are certain entitlements which are non-negotiable components of an adequate standard of living. The right to food and the right to clothing is another specific requirement of an adequate standard of living.

Therefore AIAC agrees with the suggested clauses by the ESWRG but would add the following comments

Proposed Wording: the right to an adequate standard of living

1. Every person is entitled to an adequate standard of living sufficient for themselves and those in dependent relationships with them.
 2. Material provision for each person should be sufficient to ensure esteem for their health and dignity.
 3. Every person has the right to social and civic care.
 4. Persons receiving assistance from the government shall be accorded respect. Government shall endeavour to accommodate the particular needs of ethnic and minority groups in the provision of material needs.
 5. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided to ensure the enforcement of this right.
- [6. Every person has the right to access information and advice with regard to available state support.]**

The Right to Housing

AIAC members believe that the Bill of Rights for Northern Ireland must guarantee a right to safe and affordable housing. AIAC believes that a lack of access to adequate housing is a significant factor contributing to social exclusion. Furthermore a lack of access to housing is both a cause and effect of poverty and social deprivation.⁶

Advice workers agreed that there must be overall regulation coming from the Northern Ireland Housing Executive in terms of public housing. The need for joined up government to ensure the protection of the right to safe and affordable housing.

AIAC notes the protection of the right to “adequate housing” under the International Covenant on Economic, Social and Cultural Rights protects the right to ‘adequate housing’. AIAC agrees with the ESWRG that, in proposing that a Northern Ireland Bill of

⁶ AIAC factual information on housing availability in NI given by the ESWRG, information which is backed up by the practical experience of advice workers.

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Rights should include a right to 'adequate housing' the NIHRC should rely heavily on the interpretation that the Human Rights Committee has given to the concept of adequacy. The Committee has taken the view that the right to housing should not be interpreted in a restrictive way. In tandem with the Human Rights Committee we do not equate the right to adequate housing as merely a right to shelter. Instead, we submit that it constitutes a wider entitlement. The Human Right Committee take the following criteria to determine whether housing is adequate. 1) Adequate housing includes a legal right to security of tenure 2) It includes the availability of services, materials and infrastructure 3) Adequate housing is affordable 4) Adequate housing is habitable (this includes adequate space plus protection from cold, damp, heat, rain, wind, threats to health and disease). 5) Adequate housing is accessible (particularly for disabled persons) 6) Adequate housing takes into account an adequate location for the person concerned (access to employment, health-care services, schools, and other social facilities). 7) Housing should be culturally adequate (housing should be constructed to appropriately enable the expression of cultural identity).

With regard to the proposed wording of the following clauses AIAC would recommend the following changes (in line with advice from the NI Housing Rights Service):

Proposed Wording: the right to housing

1 Every person has the right to adequate housing.

2 [Every person has the right to appropriate housing to meet their needs and the needs of the household.]

3 Every person is entitled to **[peaceful enjoyment of]** his or her home. Limitations on **[peaceful enjoyment of]** must be subject to fair legal process.

The Right to Work

AIAC notes and supports the conclusion of the ESWRG with regard to the inclusion of the right to work in the Bill of Rights.

As such we would agree that the dignity of each person is advanced by being able to contribute positively to the society in which they live. Economic contribution includes 'work' in the traditional sense of paid employment but also refers to other economic activity by citizens including child, elder and dependency care. It includes contributions by persons, who work in a part-time or unpaid capacity. It encompasses volunteer work and work which is unpaid but contributes to and supports the economic life of the community as a whole, as well as micro communities within it.

AIAC also believes in the right of individuals and communities to contribute to the social development of society and to the social economy both of their local environment and in terms of the wider society.

AIAC believes that a right to work must be supported by a positive duty on government

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to ensure fair access to work opportunities, vocational and other training and professional development. AIAC also believes that government must ‘support’ the conditions which facilitate access to work, for example, childcare, respite care, equality of geographical access and structural supports such as transport.

We agree with the ESWRG assertion that “the right to work is necessarily understood in light of the interpretative clause. In framing this right as a ‘right of access to work’ we intend to convey a duty for government, in co-operation and through our effective working relationship with the private sector, to facilitate the creation of such economic and social conditions as would allow all those who wish to and are able to engage in work to be so fulfilled.”

AIAC further believes that ‘just and favourable’ conditions of work must be protected. The Bill of Rights for Northern Ireland must be seen in the context of present and possible anti-discrimination protection, positive action programmes and equality-proofing duties, which should apply equally to the public and private spheres.

AIAC supports the Proposed Wording: the right to work

1 Every person has the right to contribute to the economic and social life of society, including the right of access to work and the right to choose and practice a trade or profession.

2 Government shall provide for, support and encourage the continuous development of skills, knowledge and understanding that are essential for employability and fulfillment.

3 Every person has the right to just and favourable conditions of work.

The Right to a Healthy and Sustainable Environment

AIAC supports the inclusion of environmental rights in a Northern Ireland Bill of Rights. In doing so, we acknowledge the mutual responsibility of both government and community in preserving and safeguarding the natural environment for future generations.

AIAC notes that the ESWRG has stated the following, “We view the inclusion of the right to a healthy and sustainable environment as particularly subject to the general interpretative clause. This right is best advanced by broad programmatic approaches to protection, planning and maintenance of the environment and all those who inhabit it.” AIAC is not necessarily in agreement with this sentiment. We feel that the right to a healthy and sustainable environment must be a legally enforceable right. Though the programmatic responses the ESWRG speaks of are of crucial importance, a more realistic view is that litigation will be a more forceful mechanism to protect this right.

AIAC supports the proposed wording: right to a healthy environment.

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A sustainable environment constitutes an integral part of the communal heritage of all persons. Both government and the community have duties of stewardship and care for the natural environment and all those who inhabit it.

1 Every person has the right to a healthy and safe environment.

2 Government has a duty to provide accurate and timely information and to communicate, consult and foster participation in planning and decision making on matters which concern the environment.

Further Economic and Social Rights

AIAC notes that the ESRIWG was not moved to recommend the inclusion of the rights to information, advocacy and representation in its report. AIAC believes that these three rights are central to ensuring that the entire Bill of Rights does not become solely a paper exercise, but actually ensures that those it seeks to protect can take advantage of the protection offered by the law.

Right to information

IAC members were clear that the right to information is crucial in a free and open society, one where the rights of all are respected. Furthermore people have a right to free, confidential and impartial information or advice. People, in their day-to-day lives are discriminated against because they lack knowledge or information. Advice workers work with local communities to provide that information and explain the labyrinthine ways of the state and its legal processes. A Bill of Rights which does not support the right of everyone to information and advice cannot guarantee that the other rights mentioned in its contents will be guaranteed. The Bill of Rights will protect only the socially “included” and abdicate its responsibilities towards those who are the most marginalized in our society.

During the AIAC consultations advice workers pointed out that people don't know their rights. The bill of rights would be cosmetic unless people are educated about their rights. These advice workers believed that at the moment people can only have an influence on the political process at a local level. Advice centres can be used to spread information and education about new rights and existing rights.

The right to information and advice is closely linked to the right and opportunity, to express your opinion.

Advice workers also expressed support for people's right to transparency in terms of the state's functions, which in turn is linked to the right to freedom of information.

Right to advocacy and representation

The right to advocacy and representation is closely linked to the right to information and advice. Advice centres across Northern Ireland currently provide people from many different communities with different needs, the advice they need to realise their

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entitlements, be those state oriented or not.

To a certain extent, legal rights have to be activated through litigation or order to become meaningful to those who call upon them. Every person must have a right to advocacy and representation in order to ensure practical application of those rights in their day-to-day lives. Furthermore this right to advocacy and representation must be fully resourced by the state. If the state does not fulfil this obligation, it avoids its responsibility to protect and uphold the rights of all its citizens. Advice workers felt strongly that the Bill of Rights won't be worth the paper it's written on unless it can be acted upon. Every person must have access to the rights enshrined in the Bill of Rights.

Advice workers also foresee that they may not be able to deal with the scale of issues raised, or complaints lodged under the Bill of Rights. These complaints may not necessarily come in the form of litigation, but may be articulated in terms of conflicts between state and citizens which are referenced by Bill of Rights. Advice workers wanted to know if they will be resourced and trained to deal with enquiries under the Bill of Rights.

The right to advocacy and representation is closely linked to the right to a fair trial. This also encompasses the right to appeal and the right to have resources to appeal. Advice workers agreed that the current legal aid system, which is a means tested system was insufficient to deal with current rights based complaints, let alone the enlargement of the process under a new Bill of Rights. A new funding system would be necessary.

Proposed Wording – the right to information, advocacy and representation

A person's right to information, advocacy and representation underpin the application of each and every one of their civil, political, economic and social right. Without these rights the most socially disadvantaged people in society cannot actualise the rights given to them by a Bill of Rights.

1 Every person has the right to independent, impartial and confidential information and advice.

2 Every person has the right to advocacy and representation.

3 Government has a duty to provide resources to support access to information, advocacy and representation services for every citizen.

Clause 4(4) – anti-discrimination

AIAC agrees with the following wording for clause 4(4)

“Everyone has the right to be protected against any direct or indirect discrimination whatsoever on any ground (or combination of grounds) such as race or ethnic origin, nationality, colour, gender, marital or family status, residence, language, religion or

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belief, political or other opinion, possession of a criminal conviction, national or social origin, birth, disability, [**HIV status**], age, parentage, sexual orientation [**or identity**], status of victim, [**socio-economic status**] or any other status.”