

## Language, Culture and Identity Issues

### Introduction

One of our concerns, from ethnic minority's perspective, is that we are just doing our shopping list of rights to protect our own identity. But we do not spend time to understand the basic concept of minority rights: to certain extent who is minority in our particular circumstances?

As I said in various occasion at the early dates of the Forum that the process to develop the Bill of Rights for Northern Ireland is also the process to develop the culture of rights for all. For me it is a dual process to finish the task on one hand, to start the debate, discussion on the concept of minority rights to reinforce the human rights culture and practice on the others. I do hope this paper can generate wider debate among us on the issues in which I would like to see, despite my absence at the meeting.

### Short snap on our human history

In the late of last century to the end of World War I it is uncommon to see the change of the national boundary of some sovereign states (some of them either completely disappeared or reappeared after World War II).

One of the consequences of these conflicts is the protection of minority rights through the work of the League of Nations. Measures included the protection of existence of minority language, religion and identity.

One of the consequences of the on-going regional and national conflicts is the displacement of person. Refugee is then become common in the neighboring countries and to less extent to the Western world.

From 60's onward the de-colonisation process triggers another human exodus and increasingly migration is the new trend to support the labour shortage of the Western world (German and Denmark imported Turkish nationals), in particular former colony (UK and France in particular).

At the same time the European Community (now European Union) encourage free movement of persons, goods and facilities within their boundary through restrictive law. The free movement of labour through migrant worker is one of the characteristics of the principle to establish the European Community.

In fact United Kingdom is one of the countries imported a lot of labour force from former colony from 50's onward. This triggers tensions and

conflicts in 60s and 70s. As a result different regimes were introduced. These include immigration law to control incoming migrants on one side the introduction of the Race Relations Act from 1965 onwards on the others.

Who are minority?

Although there is no one definition is satisfactory, what is required is to ensure appropriate rights for members of all groups and to develop good governance in a diverse society. By good governance means legal, administrative and territorial arrangements which allow for peaceful and constructive groups. From NICEM's definition it is the non-dominant ethnic, national, religious and linguistic groups in a state, whose members show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language. These communities may not necessarily be numerical minorities. Moreover it also includes indigenous and tribal people, migrant communities and refugees.

These communities may not wish to be classified as minorities for various reasons. We also recognize that these groups are not homogenous - some members face further marginalization due to age, class, disability, gender or other factors. The groups are among the poorest (both in terms of wealth and culture) and most marginalized groups in society. They may lack access to political power, face discrimination and human rights abuses, and have 'development' policies imposed upon them. NICEM seeks to protect and promote the basic rights of these communities. We believe that recognition of minority and indigenous peoples' rights is crucial to establishing and maintaining just and peaceful societies. It is also a means to prevent the future conflicts.

The Race Relations Act (the equivalent to our Race Relations Order), the principle legislation to outlaw racial discrimination in UK, use the concept of racial group as the definition for "national minority" under the Council of Europe Framework Convention for the Protection of National Minorities. Race group includes race, colour, ethnic and national origin, nationality.

The definition of ethnicity under the case law of *Mandla v Lee* has been expanded dramatically in late 90s in the last characteristic of an ethnic group. The characteristics of an ethnic group are:

"1. A long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; 2. a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated

with religious observance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant: 3. either a common geographical origin, or descent from a small number of common ancestors; 4. a common language, not necessarily peculiar to the group; 5. a common literature peculiar to the group; 6. a common religion different from that of neighbouring groups or from the general community surrounding it; 7. being a minority or being an oppressed or a dominant group within a larger community, for example a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might both be ethnic group." (at 1067).

Based on the *Mandla v Lee* principle, everyone is belonged to an ethnic group (either as ethnic majority or ethnic minority that depends on circumstances for the purpose of protection) As a result Irish people living in Britain are an ethnic group (or vice versa), the English living in Scotland and Northern Ireland are an ethnic group (or vice versa). We should not forget our first case law under the Race Relations (NI) Order 1997 is an English gentleman who experienced daily harassment and discrimination in the workplace and won the case!

Therefore we can conclude that the ethnic, national, linguistic and religious groups in Northern Ireland should include Irish and Ulster Scot, British and Irish Sign Language users, Braille users, settled ethnic minorities, migrants (from both EU and non-EU), refugees, Irish Travellers, Orange Order, Hibernians society, minority faith group (Muslim, Hindu, Judaism, Buddhism, etc.)

\* Welcome to comments on the above non-exhausted list of group

#### Human Rights Protection on Minorities

We reiterate the international human rights standards of prevention, protection and promotion. It ensures appropriate rights for members of all groups and to develop good governance in a multi-cultural and diverse society. By good governance means legal, administrative and territorial arrangements (as prescribed by the Belfast or Good Friday Agreement) which allow for peaceful and constructive group accommodation based on equality in dignity and rights for all and which allows for the necessary pluralism to enable persons belonging to the different groups to preserve and develop their identity, whether they are ethnic majority or ethnic minority. It is that particular circumstances we are talking about.

For the prevention, protection and promotion of human rights, the following issues must be taken into account:

- Minority protection is based on four requirements: protection of their existence, non-exclusion, non-discrimination and non-assimilation of the groups concerned;
- Group identity requires not only tolerance but a positive attitude towards cultural pluralism in Northern Ireland society;
- Protection of their identity means not only that our government should abstain from policies which have the purpose or effect of assimilating minorities into the dominant culture, but also that it should protect them against activities by third parties which have an assimilatory effect. The language and educational policies of our government are crucial in this regard;
- Denying minorities the possibility of learning their own language and of receiving instruction in their own language, or excluding from their education the transmission of knowledge about their own culture, history, tradition and language, would be a violation of the obligation to protect their identity;
- Promotion of the identity of minorities requires special measures (positive equality) to facilitate the maintenance, reproduction and further development of their culture. Cultures are not static; minorities should be given the opportunity to develop their own culture in the context of an ongoing process. That process should be an interaction between the persons belonging to the minority themselves, between the minority and the government, and between the minority and the wider society in Northern Ireland.

### Limitation on minority rights

We always take it for granted when we do our shopping list of rights. For one reason or the others we tend to forget the small prints of the limitation. As I raised it previously, when exercise the minority rights, there are certain limitation. I just quote the two limitation clauses of the Framework Convention for your attention.

Article 20??In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.??

Article 21??Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.??

- Do we need a limitation clause? If so, do we follow the South African model (or the European Convention of Human Rights) that have limitation clause after each right? Or do we have a general limitation clause such as the above two clauses under the Framework Convention?

For NICEM we opt for the clause by clause approach.