

THE BILL OF RIGHTS

CHILDREN AND YOUNG PEOPLE

HOW COULD A BILL OF RIGHTS FOR NORTHERN IRELAND PROTECT CHILDREN'S AND YOUNG PEOPLE'S RIGHTS?

Under the Belfast (Good Friday) Agreement and the Northern Ireland Act 1998, the Northern Ireland Human Rights Commission has been given the task of advising the Secretary of State on a Bill of Rights for Northern Ireland. The Agreement also says that the Bill should reflect the particular circumstances of Northern Ireland and the principles of mutual respect for the identity and ethos of both communities and parity of esteem. The exact wording of the relevant paragraph from the Agreement is reproduced in the box below.

EXTRACT FROM THE BELFAST (GOOD FRIDAY) AGREEMENT, 1998

'The new Northern Ireland Human Rights Commission will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and — taken together with the ECHR — to constitute a Bill of Rights for Northern Ireland.

Among the issues for consideration by the Commission will be:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and*
- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.'*

One of the questions which the Human Rights Commission has to ask itself is whether and, if so, how children's and young people's rights should be protected in a new Bill of Rights. This pamphlet tries to deal with some of the issues which arise for consideration in this context. The pamphlet also includes extracts from Bills of Rights in other countries or from relevant international treaties.

The issues and options set out in this pamphlet are not exclusive and the Commission would welcome other suggestions and proposals on this aspect of its work. The ways in which you can make your views known are set out at the end of the pamphlet.

EUROPEAN DEVELOPMENTS

Throughout its consultation period the Commission will have to keep up to date with developments in human rights law in Europe. There is currently a proposal for a new European Union Charter of Fundamental Rights, which may address a broad range of civil, political, economic, social and cultural rights. However, whether and how such a Charter will be enforceable locally is at present unclear. The European Union is also in the process of producing new Directives aimed at protecting people more effectively against discrimination, particularly racial discrimination and discrimination within the sphere of employment. The Council of Europe, likewise, has drafted a new Protocol to the European Convention which will provide additional protection against discrimination. If a coherent human rights framework is to be provided for Northern Ireland, a Bill of Rights for Northern Ireland must clearly take into account not only the existing European Convention but also the potential developments mentioned here.

SOME ISSUES FOR CONSIDERATION

- (a) *Why do children's rights need extra protection?*
- (b) *What age group should benefit from this extra protection?*
- (c) *Are there any competing rights in this context?*
- (d) *Should the physical punishment of children be completely banned?*
- (e) *What rights should children have in the context of the criminal justice system?*
- (f) *To what extent should children have a say in decisions which affect them?*

(a) Why do children's rights need extra protection?

The European Convention on Human Rights is addressed to all people in Europe. It confers no special rights on particular groups of people, certainly not on children. Naturally the European Court of Human Rights will take into account the age of a victim when assessing whether what happened to him or her was a breach of one of the Articles in the Convention (for example, Article 3, which confers the right not to be subjected to inhuman or degrading punishment, or Article 6, which confers the right to a fair hearing) but there are no Articles which give specific protection to vulnerable children.

On several occasions the UK has been held by the European Court of Human Rights to have breached the rights of children under the European Convention. Most recently, the Court has condemned the way in which the defence of "reasonable chastisement" is available within the UK to a parent or guardian who is accused of beating his or her child. In another case two young boys accused of murder were held not to have received a fair trial when to all intents and purposes they were treated as adults.

Other intergovernmental bodies, notably the United Nations, have developed treaties and other documents targeted specially at children. The best known such document is the United Nations Convention on the Rights of the Child (1989). That Convention has been ratified by more countries than any other international convention (all but the USA and Somalia). In the United Kingdom the Children Act 1989 and the Children (NI) Order 1995 have attempted to make the law consistent with parts of the United Nations Convention. There is an opportunity for a Bill of Rights in Northern Ireland to draw upon provisions in the United Nations Convention which have not yet been properly implemented here.

(b) What age group should benefit from this extra protection?

The United Nations Convention states that for its purposes a child is every human being below the age of 18 years, unless a particular country recognises that persons younger than that age have reached their majority. In the United Kingdom, and in Ireland, the age of majority is also 18 years.

It may be, however, that children who are much younger than 18 years deserve additional protection of their rights, or that children who are approaching 18 years of age should have more rights than younger children. All young girls and boys, for example, require strong protection against sexual abuse or exploitation. Persons who are already 16 or 17 years of age, on the other hand, might be said to be mature enough to have the right to vote or to stand for election. Should a Bill of Rights for Northern Ireland set different age limits depending on the right in question?

(c) Are there any competing rights in this context?

The European Convention says that states must protect the right of parents to ensure that the education and training of their children is in conformity with their own religious and

philosophical convictions. The United Nations Convention, on the other hand, simply says that education must be directed to (amongst other things) the development of respect for the child's parents. Where should the balance be struck between the rights of children and the rights of parents in the context of education and other contexts?

It is generally the position in most countries that children under a certain age should not be held responsible under the criminal law for the things that they do. In the UK the age is 10 years but in most other countries the age is much higher. Yet the higher the age of criminal responsibility, the more difficult it might be for the victims of children's misdeeds to feel secure. The right of society to protect itself, by law, against serious wrongdoing needs to be weighed against the rights of children not to have to suffer the consequences for behaviour which they may not have appreciated was wrong.

(d) Should the physical punishment of children be completely banned?

After the European Court of Human Rights held, in 1998, that the defence of "reasonable chastisement" in UK law was inconsistent with the right in Article 3 of the Convention to be protected against torture or inhuman or degrading treatment or punishment, the United Kingdom government issued a consultation paper on how the law of England and Wales should be changed to reflect the requirements of Article 3. A further consultation paper is to be issued in due course for Northern Ireland. One option to be considered is whether all forms of physical punishment — including smacking — should be outlawed and, if so, in what way. Should a parent be criminally liable or should the child be able to lodge an official complaint?

(e) What rights should children have in the context of the criminal justice system?

If children are to play a helpful role in the criminal justice system, their special vulnerability needs to be borne constantly in mind. Whether they are the victims of a crime, the witness to it, or the alleged perpetrator, their special needs must be recognised if fairness is to be preserved and truth is to emerge from the proceedings.

The Review of the Criminal Justice System in Northern Ireland, which was published in March 2000 and on which comments to the Northern Ireland Office are to be made by the end of September 2000, makes some recommendations in the realm of juvenile justice. Should any of these be reflected in a Bill of Rights for Northern Ireland?

(f) To what extent should children have a say in decisions which affect them?

Article 12 of the United Nations Convention on the Rights of the Child says that states must secure to every child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child. The child's views are to be "given due weight in accordance with the age and maturity of the child." In particular the child must be provided with the chance to be heard, either directly or through a representative, in any court proceedings affecting the child. Should a right along these lines be included in a Northern Ireland Bill of Rights?

EXAMPLES FROM OTHER INTERNATIONAL AND NATIONAL DOCUMENTS

United Nations Convention on the Rights of the Child (1989)

Article 2

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 9

- (1) States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
- (2) In any proceedings pursuant to paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
- (3) States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 12

- (1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

- (1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
- (2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 18

- (1) States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
- (2) For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
- (3) States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

- (1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

- (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

- (1) A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
- (2) States Parties shall in accordance with their national laws ensure alternative care for such a child.
- (3) Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 23

- (1) States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
- (2) States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
- (3) Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

- (1) States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- (2) States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human

rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The Constitution of South Africa (1996)

Section 28

(1) Every child has the right:

- (a) to a name and a nationality from birth;
- (b) to family care, parental care, or appropriate alternative care when removed from the family environment;
- (c) to basic nutrition, shelter, basic health care services, and social services;
- (d) to be protected from maltreatment, neglect, abuse, or degradation;
- (e) to be protected from exploitative labor practices;
- (f) not to be required or permitted to perform work or provide services that –
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health, or spiritual, moral, or social development;
- (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;
- (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

(2) A child's best interest is of paramount importance in every matter concerning the child.

(3) In this section, "child" means a person under the age of 18 years.

WHAT CAN I DO TO MAKE SURE THAT MY VIEWS ARE TAKEN INTO ACCOUNT BY THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION WHEN IT IS DRAWING UP ITS RECOMMENDATIONS ON THESE ISSUES?

You can contact the Commission at any time to express your views. The address, telephone, fax and email numbers are set out below. Please feel free to use the response sheet at the end of this pamphlet. If you have a special interest in any of the issues identified above, you can also ask to be included in the arrangements for more detailed discussion on that issue. The Commission has established a working group of individuals and representatives with a special interest in this area to advise it on more detailed formulations which might be considered for adoption. That working group can also be contacted through the Commission; it would be interested in hearing from you.

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BILL OF RIGHTS PAMPHLETS

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| 1. <i>A Bill of Rights for Northern Ireland</i> | March 2000 |
| 2. <i>The Bill of Rights: Introduction</i> | September 2000 |
| 3. <i>The Bill of Rights: Children and Young People</i> | September 2000 |
| 4. <i>The Bill of Rights: Criminal Justice</i> | September 2000 |
| 5. <i>The Bill of Rights: Culture and Identity</i> | September 2000 |
| 6. <i>The Bill of Rights: Education Rights</i> | September 2000 |
| 7. <i>The Bill of Rights: Equality</i> | September 2000 |
| 8. <i>The Bill of Rights: Language</i> | September 2000 |
| 9. <i>The Bill of Rights: Social and Economic Rights</i> | September 2000 |
| 10. <i>The Bill of Rights: Victims</i> | September 2000 |
| 11. <i>The Bill of Rights: Women</i> | November 2000 |
| 12. <i>The Bill of Rights: Implementation</i> | September 2000 |

Any or all of the pamphlets are available from the Northern Ireland Human Rights Commission.

RESPONSE SHEET

CHILDREN'S AND YOUNG PEOPLE'S RIGHTS

The Northern Ireland Human Rights Commission welcomes responses on the proposed Bill of Rights in any form. It would be particularly helpful to have your comments and suggestions on the various issues raised in this pamphlet. This response sheet is intended to make it easy for you to do so.

1. *Do you think that special provisions on rights for children and young people should be included in the Bill of Rights?*

Yes

No

Don't Know

2. *Please add the reasons why you think some special provision on children's and young people's rights may be needed:*

3. *What particular rights for children and young people do you think should be included? If possible give your reasons.*

4. *Can you suggest how these rights might be formulated – would any of the examples given in the pamphlet be a good model?*

If there is not sufficient space on this sheet please use extra sheets. You can if you wish enter your response on this form on the Commission's website at www.nihrc.org.

PLEASE RETURN TO: NORTHERN IRELAND HUMAN RIGHTS COMMISSION, TEMPLE COURT, 39 NORTH STREET, BELFAST, BT1 1NA; FAX: 028 9024 7844, EMAIL: NIHRC@BELFAST.ORG.UK