

THE BILL OF RIGHTS

CULTURE AND IDENTITY

SHOULD A BILL OF RIGHTS FOR NORTHERN IRELAND PROTECT RIGHTS TO CULTURE, IDENTITY AND PARITY OF ESTEEM?

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 rights in respect of identity, ethos and parity of esteem can best be protected in a Northern Ireland Bill of Rights and whether they should be formulated on an individual or a communal basis. This pamphlet sets out the Commission's initial view of the issues which need to be addressed in this context. It also includes some 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) Are any individual or communal rights of this kind protected under the European Convention on Human Rights?*
- (b) Can the right to parity of esteem and other rights of this kind not be adequately protected by guarantees against discrimination?*
- (c) What are communal or group rights and how do they differ from individual rights?*
- (d) Would the incorporation of some or all of the provisions of the European Framework Convention on the Protection of National Minorities be appropriate?*
- (e) What more specific communal or group rights might be guaranteed in a Northern Ireland Bill of Rights?*
- (f) What about smaller communal groups like Travellers or other ethnic minorities?*
- (g) Are there any dangers in granting group rights of this kind?*

(a) Are any individual or communal rights of this kind protected under the European Convention on Human Rights?

Not explicitly. Some of the individual rights protected under the European Convention can be relied on to protect the rights to communal ethos and identity. The rights to freedom of religion, freedom of expression and freedom of association, for example, can all be used to protect the rights of communities as well as of individuals. But it is generally agreed that the European Convention is weaker than some other international conventions in protecting minorities and other communal groups. That is why a new European Framework Convention on the Protection of National Minorities was drawn up in 1994. The British Government and the Irish Government have ratified the new Convention. But the rights it guarantees cannot be enforced, either in any national court or in a European Court.

(b) Can the right to parity of esteem and other rights of this kind not be adequately protected by guarantees against discrimination?

The European Convention on Human Rights prohibits discrimination on the ground of religion, political opinion, language and membership of a minority. So any direct discrimination against a communal group on any of those grounds would be unlawful. But this would not prevent a state for example, from insisting that all children should be taught in the state language or through a prescribed national curriculum, since in doing so it would be treating them all equally and without discrimination. And it might not extend to all forms of indirect discrimination, that is practices or policies which in practice have an adverse impact on a particular community.

(c) What are communal or group rights and how do they differ from individual rights?

They are rights which are granted to members of a community or group collectively rather than as individuals. For example, a right could be granted to a particular communal group to have its own state-funded schools or its own cultural centres or even its own system of communal government. It would not make sense to grant rights of that kind to a single individual.

But it is not always so easy to distinguish individual and communal rights. Some individual rights like freedom of association, the freedom to practise a religion or the freedom to express a cultural identity can equally be formulated as communal or group rights since religious practice and cultural expression are almost always group rather than individual activities. The most significant communal or group rights are those which give the members of the group *more* than they would be entitled to as individuals. For example, the right granted to parents to have their children educated in schools of a particular religious faith would not necessarily include a right to state funding for those schools. But a collective right to state support for their schools could be given to particular communities.

(d) *Would the incorporation of some or all of the provisions of the European Framework Convention on the Protection of National Minorities be appropriate?*

The acknowledged weakness of the European Convention on Human Rights in respect of minorities eventually led to the formulation of the European Framework Convention on the Protection of National Minorities, drawn up in 1994.

The most important rights of members of minority communities under the Framework Convention are:

- to full and effective equality in all areas of economic, social, political and cultural life;
- to maintain and develop their culture and to preserve the essential elements of their identity, ie their religion, language, traditions and cultural heritage;
- to practise their religion and use their language;
- to be taught or educated in their distinctive language; and
- to participate effectively in public affairs, especially on matters affecting them.

Similar rights are included in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted in 1992. But none of these rights can be enforced, either in any national court or in any European Court. If any of them were included in a new Northern Ireland Bill of Rights, however, they *could* be enforced in our courts.

(e) *What more specific communal or group rights might be guaranteed in a Northern Ireland Bill of Rights?*

The Belfast (Good Friday) Agreement specifically mentions the possibility of making special provision to protect both communities in Northern Ireland in respect of:

- the principle of mutual respect; and
- parity of esteem.

This raises the question whether it would be sufficient to include those general principles in a Bill of Rights or whether it would also be desirable to provide more detailed guarantees, as has been done in many other divided societies, on other matters such as:

- equal state aid for schools for the main communal groups or for integrated schools;
- specific language rights;
- specific rights in respect of parades and demonstrations;
- specific rights in respect of flags and emblems; and
- special rights of communal self-government or autonomy.

(f) What about smaller communal groups like Travellers or other ethnic minorities?

In principle all individuals belonging to communal or ethnic groups should be treated without discrimination. But it is quite usual in national Bills of Rights for major established communities or minorities to be granted special rights, for example in respect of education or the use of their language, which are not granted to smaller immigrant communities. There is nothing in international human rights law to prevent some difference in treatment for major communal groups. The test is whether this difference in treatment can be justified as reasonable and proportionate in all the circumstances.

(g) Are there any dangers in granting communal rights of this kind?

Some people argue that granting specific rights to communal groups or minorities may encourage separatist tendencies and thus increase the risk of potential conflict with other groups. It may also infringe some of the individual rights of members of the group by putting pressure on them to maintain traditions or practices which they would prefer to abandon. For that reason the European Framework Convention includes a specific right for individuals *not* to be treated as members of a distinctive group against their will.

EXAMPLES FROM OTHER BILLS OF RIGHTS

United Nations International Covenant on Civil and Political Rights (1966)

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

South Tyrol Autonomy Statute (1972)

Under South Tyrol's Autonomy Statute there is now a formal guarantee that "the German language shall have equal standing with the Italian language" and there is a substantial body of regulations to give this effect.

Canadian Charter of Rights and Freedoms (1982)

Section 25

The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights of freedoms that pertain to the aboriginal peoples of Canada including:

- (a) any rights of freedoms that have been recognised by the Royal Proclamation of October 7, 1763; and

- (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Section 27

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

The United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1992)

Article 1

- (1) States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
- (2) States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

- (1) Persons belonging to national or ethnic, religious and linguistic minorities ... have the right 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.
- (2) Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
- (3) Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

European Framework Convention on the Protection of National Minorities (1995)

Article 3

- (1) Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
- (2) Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Article 4

- (1) The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

- (2) The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
- (3) The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

- (1) The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
- (2) Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

- (1) The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.
- (2) The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

- (1) The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

- (2) Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
- (3) The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
- (4) In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

- (1) The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
- (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
- (3) The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

- (1) The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.
- (2) The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
- (3) In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Article 12

- (1) The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
- (2) In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

- (3) The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

- (1) Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
- (2) The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

- (1) The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
- (2) In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
- (3) Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present Framework Convention.

Article 17

- (1) The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
- (2) The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

- (1) The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
- (2) Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

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.

**Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast BT1 1NA**

Tel: 028 9024 3987

Fax: 028 9024 7844

Email: nihrc@belfast.org.uk

Website: www.nihrc.org

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.

BILL OF RIGHTS RESPONSE SHEET

CULTURE AND IDENTITY

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 culture and identity rights 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 culture and identity rights may be needed:*

3. *What particular provisions on culture and identity rights 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

Please include your name, organisation (if applicable) and address if you wish your response to be acknowledged.