

THE BILL OF RIGHTS

EDUCATION

SHOULD A BILL OF RIGHTS FOR NORTHERN IRELAND PROTECT EDUCATION 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 education 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 education system in any society plays an important part in creating and maintaining communal identity and ethos. There are general provisions on education rights in all the main international human rights conventions and more detailed special provisions in minority rights conventions. And in many divided societies

there are special provisions in a Constitution or national Bill of Rights to guarantee the right of major communities to maintain their own schools. This pamphlet includes extracts from some of these international or national documents. 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) Does the European Convention on Human Rights provide adequate protection in respect of education rights?*
- (b) Are there more detailed provisions in other international conventions which might also be incorporated into the law of Northern Ireland?*
- (c) Should the state be required to fund different types of school on an equal basis?*
- (d) Should children have the right to have their views taken into account in relation to major decisions which affect them at school?*
- (e) Should the Bill of Rights guarantee equal access to existing state educational institutions?*
- (f) Should the Bill of Rights say something about the curriculum in schools?*
- (g) Should the Bill of Rights prohibit religious discrimination in the selection of school teachers?*

(a) Does the European Convention on Human Rights provide adequate protection in respect of education rights?

Protocol 1 of the ECHR includes a provision which states that no-one shall be denied the right to education and protects the right of parents to have their children educated according to their own religious or philosophical convictions. These provisions are being incorporated into the law of all parts of the United Kingdom by the Human Rights Act 1998, which comes fully into force on 2 October 2000. But the British Government has reserved its right to deliver the protections under the Convention only if these are consistent with what it regards as sensible public expenditure.

Parents of any particular religious group therefore have the right to set up their own schools, provided these meet proper educational standards. However, the European Convention does not guarantee the provision of state funding for those schools. And it would not give parents a right to insist on the provision of integrated or Irish-language schools or even to set them up themselves, since the European Court of Human Rights has decided in the Belgian Linguistics case (1968) that the phrase 'religious or philosophical convictions' does not cover parental preference for schools using a particular language. This would also exclude any right of parental preference for different types of school systems, such as non-selective or integrated schools.

It is arguable that any preference in funding for one school system over another, for example for state schools over Catholic schools, would constitute discrimination under the ECHR and could therefore be challenged in a court. But the European Court of Human Rights decided in the Belgian Linguistics case that the Belgian government was entitled as a matter of state policy to fund only French-speaking schools in one part of the country and Dutch-speaking schools in another.

(b) Are there more detailed provisions in other international conventions which might also be incorporated into the law of Northern Ireland?

The European Framework Convention on the Protection of National Minorities (1995) gives more detailed guarantees for some minority communities. It provides that parents from a national minority community should be entitled to have their children educated in a minority language or at least taught that language in schools using the dominant national language. But the incorporation of this provision into Northern Ireland law would not guarantee the provision of Irish-medium education since the government could meet its requirements by providing classes in Irish for those who wanted them. Nor would it give any rights to parents or children from immigrant communities, such as Chinese people, since they are specifically excluded from protection under the Framework Convention. It would also exclude any rights in respect of integrated education.

The United Nations Convention on the Rights of the Child (1989), to which the UK is a party, in Articles 28 and 29, goes further than the European documents by requiring states, for example, to encourage the development of different forms of secondary education, including vocational education, to make these available and accessible to every child, and to take appropriate measures such as the offer of financial assistance in cases of need. The education of children is to be directed to the development of the

child's personality, talents and mental and physical abilities to their fullest potential, and to the development of respect for human rights and fundamental freedoms. It is also to develop respect for the child's parents, for his or her own cultural identity, language and values, and for the natural environment. School discipline, moreover, is to be administered in a manner consistent with the child's human dignity. This UN Convention also requires states to make higher education accessible to all on the basis of capacity by every appropriate means.

(c) Should the state be required to fund different types of school on an equal basis?

This is the strategy that has been adopted in other countries with well established minority communal groups. The provisions in their Bills of Rights and Constitutions are typically very detailed and specific. The examples given later in this pamphlet indicate that there are various ways in which rights of this kind can be formulated. The Canadian Constitution provides a guarantee of state funding for schools for the English-speaking and French-speaking communities where there are sufficient numbers to justify specified education rights. In the Canadian Provinces of Ontario and Quebec there are also constitutional guarantees for Catholic and Protestant school systems, each of which has its own administrative and state funding structures. In the Italian province of South Tyrol there are similar guarantees for the German- and Italian-speaking sections of the population. In the Netherlands there is a more general constitutional guarantee for any group of parents to establish and receive state funding for a school, provided that it meets educational standards. In Belgium, on the other hand, there is a constitutionally entrenched provision which prescribes that state funding shall be provided only for Dutch-speaking schools in the Flanders region, only for French-speaking schools in the Walloon region and for both Dutch-speaking and French-speaking schools in the bilingual Brussels region.

The question is whether a similar provision should be included in a Northern Ireland Bill of Rights to guarantee state funding for Catholic, Protestant, integrated or Irish-medium schools and, if so, whether any specific conditions should be included in an entrenched Bill of Rights or left to ordinary legislation?

(d) Should children have the right to have their views taken into account in relation to major decisions which affect them at school?

The European Convention on Human Rights grants its limited rights in respect of religious and philosophical aspects of education exclusively to parents. The United Nations Convention on the Rights of the Child (1989) provides on the other hand that children as well as their parents should be consulted on the kind of education they want. More generally, by Article 12 of the UN Convention, states must assure to any 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. But the United Nations Convention is not directly enforceable in UK courts. If there is to be a guarantee that children's voices will be listened to in relation to educational matters, such as when they can be excluded from schools, whether there should be school councils, what kind of religious or sex education they should receive, etc, a Northern Ireland Bill of

Rights will have to indicate how conflicting wishes of parents and children are to be resolved.

(e) Should the Bill of Rights guarantee equal access to existing state educational institutions?

There is a continuing dispute over whether and, if so, how children should be selected for different types of school on the basis of ability. There are no clear international human rights principles or rules on the issue of selection itself. The idea of selection on the basis of ability is widely accepted in many other spheres. On the other hand a selective system based on a formal test can in practice be discriminatory, especially if it can be shown that there are defects in the testing system. Other relevant issues in Northern Ireland include whether special provision should be made for Irish Traveller children or for children with special educational needs. It is also important to consider whether students should have to pay fees for further or higher education

(f) Should the Bill of Rights say something about the curriculum in schools?

If we wish our children to be good citizens in the future, should we insist that they are taught certain things in school? Article 29 of the United Nations Convention on the Rights of the Child requires states to provide education which develops respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations. The content of the Northern Ireland Curriculum is currently under review. Should the Bill of Rights require the curriculum to teach awareness of the importance of equality and human rights?

(g) Should the Bill of Rights prohibit religious discrimination in the selection of school teachers?

At present it is not unlawful in Northern Ireland for those who are selecting a teacher for a post in a school to discriminate for or against a candidate on the basis of his or her religion, because the fair employment legislation has a specific exemption for school-teachers. The question now arises whether this exemption should be preserved or whether the time has come to apply the non-discrimination laws even to school-teaching. To do so might make for a better mix of religions among the teachers in each school in Northern Ireland.

EXAMPLES FROM OTHER BILLS OF RIGHTS

The following examples of provisions on education in international conventions and national Bills of Rights may assist in the discussion of these and other issues.

The Universal Declaration on Human Rights (1948)

Article 26

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents shall have a prior right to choose the kind of education that shall be given to their children.

The European Convention on Human Rights, Protocol 1 (1951)

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

The United Nations International Covenant on Economic, Social and Cultural Rights (1966)

Article 13

- (1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- (2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
- (3) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
- (4) No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

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

Article 28

- (1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) make primary education compulsory and available free to all;
 - (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) make educational and vocational information and guidance available and accessible to all children;
 - (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.
- (2) States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
- (3) States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

- (1) States Parties agree that the education of the child shall be directed to:
 - (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

- (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) the development of respect for the natural environment.
- (2) No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

The European Framework Convention for the Protection of National Minorities (1995)

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 system, that persons belonging to those minorities shall 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 of the teaching in this language.

The Canadian Charter of Rights and Freedoms (1982)

Section 23

- (1) Citizens of Canada
 - (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside; or
 - (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.
- (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language

- (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary or secondary school instruction in the language of the English or French linguistic minority population of a province
 - (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
 - (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

The Constitution of The Netherlands 1983)

Article 23

The requirement for primary education shall be such that the standards both of private schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provisions shall respect in particular the freedom of private schools to choose their teaching aids and to appoint teachers as they see fit.

Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed by public funds according to the same standards as public-authority schools. The conditions under which private secondary education and pre-university education shall receive contributions from public funds shall be laid down by Act of Parliament.

The Constitution of South Africa (1996)

Section 29

- (1) Everyone has the right -
 - (a) to a basic education, including adult basic education, and
 - (b) to further education, which the state through reasonable measures, must make progressively available and accessible.

- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable; in order to ensure the effective access to and implementation of this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account -
 - (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.

- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that -
 - (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.

The Constitution of the Republic of Ireland (1937)

Article 42

- (1) The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
- (2) Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
- (3) (1) The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.
(2) The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.
- (4) The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral education.
- (5) In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

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 form 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.

BILL OF RIGHTS RESPONSE SHEET

EDUCATION

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 education 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 education may be needed:*

3. *What particular rights on education 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.