

THE BILL OF RIGHTS

LANGUAGE

SHOULD A BILL OF RIGHTS FOR NORTHERN IRELAND PROTECT LANGUAGE 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 language 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 Belfast (Good Friday) Agreement makes express provision for the recognition and promotion of both Irish and Ulster-Scots and a cross-border body with executive powers has already been established to carry out that commitment. In addition, the UK Government is committed to ratifying the European Charter for Regional or Minority Languages in respect of Irish. The major question is whether any further protection regarding the use of minority languages needs to be included in a Bill of Rights for Northern Ireland.

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) What languages other than English are regularly spoken by communities in Northern Ireland? What barriers do non-English speakers face in our society?*
- (b) What does the European Convention on Human Rights say about language rights?*
- (c) What will be the practical impact of the ratification of the European Charter on Regional or Minority Languages?*
- (d) What additional protection will be provided by the cross-border body set up under the Good Friday Agreement?*
- (e) What additional rights could be provided in a Northern Ireland Bill of Rights?*

(f) *Should we have the same rights for all languages?*

(g) *What obligations would be imposed on others if specific rights for minority language speakers are granted?*

(a) *What languages other than English are regularly spoken by communities in Northern Ireland? What barriers do non-English speakers face in our society?*

Most of the public debate on language issues has been focused on the status of the Irish language and more recently on the status of Ulster-Scots. Government researchers have reported that some 140,000 people claim to be able to speak or understand Irish. There are no equivalent figures for Ulster-Scots and some people claim that it is more of a dialect than a distinctive language, though it has been recognised as a minority language by the European Bureau of Lesser Used Languages. But no-one argues that those who speak Irish or Ulster-Scots, or even Gammon (the language of some Travellers), cannot speak or understand English. The position of those whose mother tongue is Chinese or Urdu or another ‘foreign’ language is often different. Many of them cannot speak or understand English well or at all.

The position of those who rely upon sign language must also be borne in mind. Many people argue that sign language is itself a different language, using concepts and syntax different from those employed in English. Sign language users often prefer even written documents to be in such innovative forms rather than in standard English, in order that the concepts being explained can be better understood. In Northern Ireland both British and Irish sign language are used.

So there are three very different groups of people whose rights must be considered:

- (i) English speakers who want also to have their right to use Irish or Ulster-Scots recognised or guaranteed;
- (ii) those whose mother tongue is not English and who may not be able to speak or understand it; and
- (iii) those who rely upon sign language to communicate.

It is clear that the same set of language rights would not be appropriate for all these groups.

(b) *What does the European Convention on Human Rights say about language Rights?*

The European Convention on Human Rights does not specifically provide for language rights. However, some of its provisions are significant for indigenous and minority language users.

For example, Article 6, which deals with the right to a fair trial, provides that everyone charged with a criminal offence has a right to be informed promptly in a language which he or she understands of the charges against him or her. Such a person also has a right to the free assistance of an interpreter if he or she cannot understand or speak the language used in court. But this would not include a right for someone who understands English to use Irish or Ulster-Scots in court.

Other Articles in the Convention might be particularly useful to people who face restrictions on their use of a minority language or are discriminated against because of their use of the language. Article 10, which guarantees the right to freedom of expression, could be relied upon in a challenge to any legislation which tried to prevent anyone from using their own language for their own private purposes. But this would not give any general right for those concerned to insist on using their own language for public purposes or to insist that public officials should understand it or respond to them in it. Article 14 of the European Convention - which prohibits discrimination in the enjoyment of the rights and freedoms in the Convention on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status - has been interpreted by the European Court of Human Rights in a similar way. It does not require the state to take any positive action.

The provisions of Article 2 of Protocol 1 in respect of education are also unlikely to be of much help to those who want their children to be educated in Irish or another minority language. It provides that 'in the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions'. But the European Court of Human Rights has held that this does not cover a right to education in a particular language. And in any case the UK government has entered a reservation to this Article, stating that it will apply it only to the extent to which it does not require unreasonable expenditure.

In summary the European Convention provides only for:

- a right to use a particular language with friends and socially, without government interference;
- a right not to be discriminated against on the basis of being a minority language user; and
- a right to interpretation and translation in a court, where that is necessary to understanding the proceedings.

(c) What will be the practical impact of the ratification of the European Charter for Regional or Minority Languages (1992)?

The Charter provides for extensive positive duties to be imposed on states with regard to what the Charter defines as regional or minority language, that is languages that are (i) traditionally used within a given territory of a state by nationals of that state who form a

group numerically smaller than the rest of the state's population, and (ii) different from the official language(s) of that state. But it does not include either dialects of the official language(s) of the state or the languages of migrants. Nor does it seem to cover the needs of those who rely upon sign language.

The Charter is very broad in the type of measures it contemplates. But it allows states a wide choice of which of these measures to implement for a particular language. There are two levels at which states can commit themselves. At the lowest level states are required under Part II of the Charter to accept some basic principles in respect of *all* languages which meet the definition of a regional or minority language:

- to recognise the value of the language and promote its study;
- to take resolute action to promote its use;
- to foster cross-border links with other users of the language;
- to foster mutual understanding between users of minority languages and the national language; and
- to avoid any discrimination against the language.

The higher level of recognition under Part III of the Charter requires states to commit themselves to at least 35 specific measures of recognition and promotion out of a possible list of about 100 options in respect of education (26 options), judicial proceedings (15 options), administration (21 options), media (15 options), culture (10 options), economic issues (9 options) and trans-frontier links (2 options).

The British Government has recognised Irish and Ulster-Scots under Part II of the Charter and has undertaken to ratify Part III of the Charter in respect of Irish in Northern Ireland. But it has not yet published the 35 measures which it proposes to adopt. It appears, however, that the choice will be limited to those forms of recognition and promotion which are already being provided.

It should be noted that recognition under the Charter is limited to Irish and Ulster-Scots and that the Travellers' language and other minority languages used by immigrant groups, such as Chinese and Urdu, might not qualify even under Part II. In any event, ratification of the Charter does not give the users of a minority language any direct right to enforce the commitments which have been accepted. Rights granted under a Northern Ireland Bill of Rights, on the other hand, would be enforceable in local courts.

(d) What additional protection will be provided by the cross-border body set up under the Good Friday Agreement?

The Belfast (Good Friday) Agreement contains a number of specific provisions in respect of the recognition and promotion of Irish and Ulster-Scots in Northern Ireland:

'All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity including, in Northern Ireland, the Irish language,

Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.

...the British Government will in particular in relation to the Irish language, where appropriate and where people so desire it:

- *take resolute action to promote the language;*
- *facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;*
- *seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;*
- *make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints;*
- *place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education;*
- *explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of *Teilifís na Gaeilge* in Northern Ireland;*
- *seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland;*
- *encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community.'*

As with the ratification of the European Charter, however, these commitments are not directly enforceable in the courts.

(e) What additional rights could be provided in a Northern Ireland Bill of Rights?

There are many issues for indigenous and minority language users which are not covered by the European Convention on Human Rights or which are not directly enforceable under the European Charter for Regional or Minority Languages or the cross-border arrangements established by under the Good Friday Agreement. Some of these are issues about the rights of individuals to use their own language in dealings with public bodies. Others are about how far the government should go in providing positive support for a language.

There are different degrees of positive recognition and support which could be given to languages and language users in a Bill of Rights. Rights for individuals, for example, could include:

- a right to use the language and to be answered in it in some or all dealings with public bodies;
- a right to use the language in court proceedings even if those concerned are able to understand English;

- a right to use the language and to have simultaneous translation facilities in the proceedings of public bodies such as the Assembly or local district councils; and
- a right for parents or children to be educated in schools in which a particular language is the main language of instruction.

Rights for more general support could include:

- providing access to education for learning the language (for example, through schools or evening classes);
- funding bodies to promote the language;
- providing public facilities and services, such as health care, in the language in question; and
- providing radio and television services in the language at state expense.

(f) Should we have the same rights for all languages?

It is obvious that it would be impractical to guarantee the same rights for the users of every language which is or could be used in Northern Ireland. No-one could sensibly argue that, for example, a speaker of Swahili or Estonian should have the same rights as a speaker of Irish, and there are no international human rights conventions which would support any such claim. The more important issue is what the criteria should be for the inclusion of rights for particular languages.

As has been explained, the European Charter for Regional or Minority Languages draws a distinction between languages used by indigenous communities and those used by immigrant communities. This would suggest that Irish, Ulster-Scots and perhaps also the language of Travellers should be given some positive recognition over and above what is provided in the European Convention on Human Rights. But many more people in long-established communities in Northern Ireland use Chinese and Urdu than Ulster-Scots or the language of Travellers and as a result they may be less able to access various services about which information is provided only in English. In creating rights for language users, should some account therefore be taken of the number of people who regularly use a particular language?

A further issue is how the general principle of parity of esteem between the two main sections of the community in Northern Ireland should be implemented in respect of language. Should the Irish and English languages be given the same status as official languages in Northern Ireland as in the rest of Ireland under the Irish Constitution? Or should Irish and Ulster-Scots be given the same subordinate status to English as the national language? The British Government is already making a distinction between the degree of recognition and support it gives to Irish and Ulster-Scots both in respect of the ratification of the European Charter and in the cross-border arrangements established under the Belfast (Good Friday) Agreement.

(g) What obligations would be imposed on others if specific rights for minority language speakers are granted?

A further related issue is the extent of the obligations which would be imposed on others by the grant of enforceable rights in respect of languages other than English. To what extent would public bodies have to facilitate the use of another language? Would several officials in each public body or office be required to be able to understand it and respond in it? Would a central service be required to field queries and responses in, say, Irish? Would all public officials be required to learn Irish or other languages? Should different areas have different levels of requirement, such as in designated Gaeltacht areas in the Irish Republic? And should any obligations at all be imposed on individuals in the private sector, for example in shops and financial institutions, to provide facilities in languages other than English?

These are important practical issues which must be given serious consideration, not least since they may involve substantial expenditure.

EXAMPLES FROM OTHER BILLS OF RIGHTS

The European Convention on Human Rights (1950)

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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.

The Constitution of the Republic of Ireland (1937)

Article 8

- (1) The Irish language as the national language is the first official language.
- (2) The English language is recognised as a second official language.
- (3) Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.

The Canadian Charter of Rights and Freedoms (1982)

Section 16: Official languages of Canada

English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada. [A series of specific sections provide for proceedings and communications to be in both languages].

Section 23: Language of instruction

- (1) Citizens of Canada
 - (a) whose first language learned and still understood is that of the English or French linguistic minority 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 and 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 South Africa (1996)

Section 6

- (1) The official languages of the Republic are Sepedi, Sesotho, Seytswana, siSwathi, Tchivenda, Xitsonga, Afrikaans, English, isNdebele, isXhosa, and isZulu.
- (2) Recognising the historically diminished use and status of the indigenous languages of our people, the State must take practical and positive measures to elevate the status and advance the use of these languages.
- (3)(a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and

preferences of the population as a whole or in the province concerned, but the national government and each provincial government must use at least two official languages.

(b) Municipalities must take into account the language usages and preferences of their residents ...

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. 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

LANGUAGE

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 language 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 language may be needed:*

3. *What particular rights on language 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