

Culture, Identity and Language Working Group
Final Report

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Working Group Membership

Convenor: Cllr Nelson McCausland MLA (Democratic Unionist Party)

Legal Advisor: Dr Elizabeth Craig (University of Sussex)

Father Tim Bartlett	Churches	Catholic Church
Rev Patricia Ann McBride	Churches	Irish Council of Churches
Brian Symington	Disability	RNID
Patrick Yu	Ethnic Minorities	NICEM
Willis McBriar	Trade Unions	ICTU
Lee Reynolds	Political	DUP
Barry McElduff MLA	Political	Sinn Fein
Stephen Nicholl	Political	UUP
Dominic Bradley MLA	Political	SDLP
Dr Stephen Farry MLA	Political	Alliance

Schedule of Meetings

27/07/07 Interpoint Centre (14:00)
02/08/07 Parliament Buildings (13:30)
06/09/07 Parliament Buildings (14:00)
15/11/07 Interpoint Centre (14:00)
21/11/07 Interpoint Centre (14:00)
29/11/07 Parliament Buildings (14:00)
13/12/07 Interpoint Centre (14:00)
08/01/07 Interpoint Centre (14:00)
25/01/07 Parliament Buildings (09:30)
08/02/07 Wellington Park (14:00)
15/02/07 Parliament Buildings (10.00)

APPROACH OF THE WORKING GROUP

The working group began its work by considering the content of relevant international instruments, including the Framework Convention for the Protection of National Minorities, the UN Convention on the Rights of the Child, the European Charter for Regional or Minority Languages, the International Human Rights Covenants and the UN Declaration on the Rights of Minorities. The group proceeded to consider the extent to which the provisions in some of these instruments might be used to fill gaps in the European Convention on Human Rights, referring also to relevant provisions in other bills of rights. Working group members were asked to identify culture, identity and language issues that they considered needed to be addressed specifically in a Bill of Rights for Northern Ireland and the two meetings held in January 2008 were subsequently devoted to education and to the right to freedom of peaceful assembly and the issue of parades. There was a lot of discussion within the working group on the need for the law of Northern Ireland to give effect to the Framework Convention for the Protection of National Minorities and on the extent to which distinctions could justifiably be drawn between indigenous and other languages.

At the meeting on the 25 January it was decided that working group members should have a few weeks to consult with their respective parties and sectors on the proposals and a final meeting of the working group was scheduled for 22 February 2008. On the 1 February 2008 the Bill of Rights Forum decided that the working group's report had to be submitted by 15 February (later extended until 19 February) and meetings were subsequently arranged for 8 and 15 February. Although all of the political parties were represented at the 8 February meeting, only one civic society representative was able to attend. At the 15 February meeting all of the political parties were represented by working group members but only one of the civic representatives who were members of the working group (the Catholic Church representative) could attend the last meeting. The Disability sector was represented by a substitute at that meeting and other working group members were invited to submit their comments via email. Considerable concern was

expressed at the impact that the setting of this deadline had had on the quality and inclusiveness of the decision-making process, especially as the Working Group had chosen to leave declarations of levels of support for each proposal to the last meeting in order to facilitate consultation by working group members with their respective parties and sectors.

This report provides a rationale for each of the proposals supported by a majority of working group members as well as for those proposals that were discussed extensively within the working group and in relation to which there was some divergence of views. A number of proposals were tabled for consideration at the very last meeting of the working group and these are included separately with an indication of the parties and sectors who expressed support for each proposal.

PROPOSALS CONSIDERED

1 Civil and Political Rights (Right to Freedom of Peaceful Assembly)

The working group has noted that Article 7 of the Framework Convention for the Protection of National Minorities highlights the particular relevance of the civil and political rights in Articles 9-11 of the ECHR (freedom of religion, expression, peaceful assembly and association) for the protection of national minorities.

Article 9 ECHR

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Working group members endorsed the wording of s. 13 of the Human Rights Act 1998. Some members proposed that consideration be given to strengthening s. 13 of the Human Rights Act 1998, in light of its relevance to the particular circumstances of Northern Ireland, but the working group did not have sufficient time to consider this in any depth.

S. 13(1) HRA

'If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.'

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The following two proposals were discussed in relation to the right to freedom of peaceful assembly and association in Article 11 of the ECHR – the inclusion of a reference to the right to live free from all forms of harassment in Article 11(2) and the inclusion of a reference to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2007).

A Article 11 of the ECHR

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 11 ECHR (with the inclusion of a reference to harassment in Art 11(2))

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, in particular the right to live free from all forms of harassment including on the basis of an individual's race, religion, sexual orientation and disability. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Rationale

The inclusion of a specific reference to the right to freedom from harassment in Article 11(2) of the ECHR was proposed by Sinn Fein during the discussion on the right to freedom of peaceful assembly and the parades issue. In proposing the inclusion of such a reference, Sinn Fein noted the affirmation of the right to freedom from sectarian harassment in the Good Friday Agreement and stressed the importance of giving due regard to the right to freedom

from harassment in light of the particular circumstances of Northern Ireland. Sinn Fein argued for an amended formulation of the right to be included, referring to harassment 'on the basis of an individual's race, religion, sexual orientation and disability', because of the changes that had taken place within society since the signing of the Good Friday Agreement.

Level of Support

It was agreed within the working group that a general right to freedom from harassment should be included in the Bill of Rights and it was assumed by the majority of working group members that the right to freedom from harassment was implicit in the reference to 'the rights and freedoms of others' in Article 11(2) of the ECHR. Sinn Fein has argued that an explicit supplementary right is required as harassment is not specifically protected under the ECHR.

Whilst strong support for the inclusion of a specific reference to harassment within Article 11(2) was expressed by Sinn Fein, the DUP and the UUP strongly opposed this proposal. The DUP and the UUP considered that the addition of a further limitation to the right to freedom of peaceful assembly would worsen the situation rather than help resolve it, would provide less protection than under the ECHR and would undermine the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2007). The Catholic Church and the Disability sector also opposed the inclusion of a reference and, with the UUP, considered that this issue would be addressed sufficiently by the inclusion of a general right to freedom from all forms of harassment as a broad principle in the Bill of Rights. They preferred not to enshrine a concern about the particular issue addressed by this clause, whether valid or otherwise, in the Bill of Rights when such matters might be resolved through political or other negotiations in the future. The Trade Unions sector, the Ethnic Minority sector and Alliance were content for such a clause to be included. The Ethnic Minority sector suggested that the phrase 'in particular to respect the protection of private and family life in order to live free from all forms of harassment ...' would demonstrate more clearly the purpose of the clause. This was also supported by

the Trade Unions sector. However, this proposal has been rejected by Sinn Fein.

B Reference to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly

Any court, tribunal or public authority considering any question that has arisen in connection with the Convention right to freedom of peaceful assembly should have regard to relevant international instruments, including the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2007).

Rationale

The inclusion of a specific reference to the OSCE Guidelines on Freedom of Peaceful Assembly was proposed by the DUP and the UUP during the discussion on the right to freedom of peaceful assembly. The working group was aware that section 2 of the Human Rights Act 1998 requires courts and tribunals to take into account relevant jurisprudence of the European Court of Human Rights when determining a question that has arisen in connection with a Convention right. Working group members were referred to relevant jurisprudence of the European Court of Human Rights on the right to freedom of peaceful assembly and proceeded to consider the extent to which the OSCE/ODIHR guidelines helped clarify the content of that right. The DUP and the UUP argued that a reference to the guidelines should be included as they provided the most recent and comprehensive international review of the right to freedom of peaceful assembly.

Level of Support

Whilst strong support for the inclusion of a specific reference to the OSCE Guidelines was expressed by the DUP and the UUP, Sinn Fein strongly opposed this proposal. Sinn Fein argued that the OSCE Guidelines do not relate to the particular circumstances of Northern Ireland and do not merit or warrant specific reference above or beyond any other international legal instruments. There was a divergence of views expressed by other members of the working

group. Its inclusion was supported by the Trade Unions sector and Alliance was also content for such a clause to be included. The view of the Catholic Church and the Disability sector was that the whole issue requires further reflection and discussion, which takes account of those aspects of OSCE and other soft law instruments which may be of relevance to the particular circumstances of Northern Ireland and of any agreed principles that emerge from the Strategic Review of Parading or any subsequent process. The view of the Ethnic Minority sector was that separate legislation could be passed to enact the OSCE guidelines as a code to bind the Parades Commission.

2. General Right to Culture, Language and Identity

Persons belonging to a cultural, ethnic, linguistic or religious minority or community shall have the right, individually and with other members of that minority or community, to enjoy their own culture, to profess and practise their own religion and to use their own language. No one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Rationale

This proposal is based on Article 27 of the International Covenant on Civil and Political Rights 1966. There was some discussion within the group about whether or not to include a negative formulation as in the New Zealand Bill of Rights Act (s. 20) and the South African Bill of Rights (s.31) or a positive formulation as in Article 2 of the UN Declaration on the Rights of Minorities. The terminology issue was also the subject of much debate. Whilst the term 'minority' is used in the ICCPR and the UN Declaration, the term 'community' is used in the South African Bill of Rights. Working group members stressed that users of British and Irish Sign Language should be covered by this provision.

Level of Support

There was unanimous support within the group for the inclusion of a positive formulation of this right. It was also agreed unanimously that the proposal should refer to 'persons belonging to a cultural, ethnic, linguistic or religious minority or community.' Whilst the Ethnic Minority sector expressed strong support for the use of the term 'minority', the view of Alliance was that the use of the term 'community' provided a better reflection of the complex nature of Northern Ireland's society. The Catholic Church and the Disability sector also expressed their preference for the use of the term 'community' only as the term 'minority' was sometimes pejorative. The working group therefore agreed to include the term 'community' and the term 'minority' to avoid needless discussions as to what constitutes a minority or community in this context.

3 Right to Self-Identification

1. Every person belonging to a cultural, ethnic, linguistic or religious minority or community 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 cultural, ethnic, religious or linguistic minorities or communities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the Bill of Rights individually as well as in community with others.

Rationale

The inclusion of this right was proposed by Alliance. It was noted that the right to self-identification was one of few provisions in the Framework Convention formulated as an individual right rather than a duty on the State. This right is recognised in Article 3 of the Framework Convention and the group has discussed the potential implications for existing law, policy and practice. The working group considered the views on the right to self-identification expressed by the Council of Europe experts who visited Northern Ireland in 2004 and by the Advisory Committee established under the Framework Convention for the Protection of National Minorities in its Opinion on the UK (2007). These can be found in Appendix I of this report. Alliance stressed the importance of the right in the context of Northern Ireland society, where many people do not feel that they either fit or wish to belong to what are perceived as being the two dominant sections of society. Alliance also stressed that it was important to acknowledge that there is not a uniform correlation between national identity, religious identity and political identity.

Level of Support

The inclusion of this right was supported by Alliance, Catholic Church, DUP, the Trade Unions sector, the Disability sector and UUP. They considered that the right to self-identification is a fundamental dimension of personal freedom and integrity and therefore should take precedence over any issues in domestic legislation; that legislation should respond to the right rather than the other way around and that the legislature should be capable of developing more complex mechanisms for monitoring multiple identity factors than exist at present. They also noted that the view of the Advisory Committee is that current procedures may not necessarily be in breach of the Framework Convention in any event. The inclusion of this right was opposed by the SDLP and Sinn Fein, who argued that existing fair employment monitoring procedures were too important to risk their continuation in this way. SDLP believes that the lack of equal opportunities in employment was one of the underlying causes of the conflict and that the procedures introduced by the Fair Employment legislation have been, and remain, key to tackling discrimination. SDLP pointed out that the fair employment monitoring procedures are anonymous and relied on the expert opinion referred to above to argue that this issue would normally be dealt with by legislation. Sinn Fein argued that clause 1 could not be allowed to stand without a complementary clause indicating that positive action measures shall not be considered a 'disadvantage' under this provision. The Ethnic Minority sector declared that it would only accept the inclusion of this right if it contained a qualification along the lines of Article 11(2) of the ECHR with the inclusion of the phrase 'the protection of the rights and freedoms of others, in particular equality monitoring data that enhance positive equality in society.' This was supported by the Trade Unions sector and by the Catholic Church, both of whom regarded the inclusion of the right as more important.

4. Education Rights

A Public authorities and education providers must ensure that the education of each child is directed to the development of respect for the child's parents and knowledge of and respect for the cultural identity, language and values of the family and community to which the child belongs; for the shared national values of the country in which the child is living, taking into account the particular circumstances of Northern Ireland; the country from which he or she may originate, and for cultures different from his or her own.

Rationale

The inclusion of this provision was initially proposed by the DUP. The DUP argued that all children should be taught about their cultural identity, language and values and noted that this did not currently happen to the same degree in all educational sectors. It was stressed that it was easier to respect the cultural identity of others once you have an understanding of your own cultural identity. The wording used is an adaptation of Article 29(1)(c) of the UN Convention on the Rights of the Child but this provision refers to the development of knowledge as well as respect. This provision also accords with Article 12(1) of the Framework Convention, which requires States to '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.' Article 29(1)(c) of the UN Convention on the Rights of the Child refers to the development of respect for the national values of the country in which the child is living and it was proposed that a reference to 'the shared national values of the country in which the child is living' was more appropriate in light of the particular circumstances of Northern Ireland.

Level of Support

There was unanimous agreement on the general clause with the caveat that the DUP supported the retention of the original phraseology of 'national values' not 'shared national values'. The DUP consider this appropriate as Northern Ireland's constitutional position is accepted. The UUP have also expressed reservations about the reference to 'shared national' rather than 'national' values.

B Public authorities and educational providers must also ensure that the education of each child is directed to the promotion of equality, respect, human rights, understanding and effective communication among people of different identities.

Rationale

This provision is based on a proposal of the Northern Ireland Human Rights Commission's Working Group on Education (2000) and members of the working group stressed the importance of promoting these values in light of the particular circumstances of Northern Ireland. This proposal accords with the aims of education identified in Article 29 of the UN Convention on the Rights of the Child and Article 13 of the International Covenant on Economic, Social and Cultural Rights.

Level of Support

There was unanimous agreement within the working group on the inclusion of this provision.

C Every person has the right to found educational establishments with due respect for democratic principles subject always to the child's right to an effective education and to the observance of the principles set forth in paragraphs A and B 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.

Rationale

This proposal is based on the requirements of Article 13 of the International Covenant on Economic, Social Rights and Cultural Rights and Article 14 of the EU Charter of Fundamental Rights.

Level of Support

There was unanimous agreement on the inclusion of this provision.

D Public authorities shall to the greatest extent possible respect the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions, the views of the child being given due weight in accordance with the child's age and maturity.

Rationale

It was recognised within the working group that Article 2 of the First Protocol to the ECHR,¹ which deals with education, is of limited use to those belonging to minority groups. This proposal aims to strengthen this provision and is adapted from Article 14 of the EU Charter of Fundamental Rights, which refers to 'pedagogical' as well as 'religious' and 'philosophical' convictions. The proposal also takes into account the requirements of Article 12 of the UN Convention on the Rights of the Child.

Level of Support

There was unanimous agreement within the working group for the inclusion of this provision.

E1 This right of parents will be supported by the distribution of public funding on the basis of equitable, transparent and non-

¹ Art 2, First Protocol ECHR: No person shall be denied the right to education. 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.

discriminatory criteria, those criteria to be determined by relevant public authorities.

or

E2 Any sectoral funding shall be provided in an equitable, transparent and non-discriminatory manner consistent with the ability of the relevant public authorities to manage resources efficiently and effectively.

Rationale

Option E1 was proposed by the Catholic Church and the following rationale was provided via email: 'The right to choose a particular type of education belongs to parents and not the State and the principle of equality of funding, according to minimum thresholds to be established by the public authority at any given time and with due regard to available resources, should be applied across the education system in order to support the primacy of parental rights and diversity within education rather than a state monopoly. The Catholic Church held that there is no such thing as a neutral philosophy of education, even or perhaps especially when it is provided by the state and that it is consistent with the principle of a free, diverse and democratic society that the state would respect and fund the primacy of parental rights, as occurs at present in Britain and Ireland.'

Option E2 was proposed as an alternative to Option E1 by Alliance and the following rationale was provided via email: 'It is right to respect and recognise diversity within the education system. However, it is open to a state to address this through either a single public school system or through funding different sectors. There is a separate right for parents to fund independent schools, with the discretion given to states as to whether or not they fund such schools. Alliance respects the existence of different sectors within Northern Ireland, and is committed to their funding. However, we would encourage greater area planning and collaboration between sectors. We believe that these questions should be determined by legislatures, not dictated by rights. Alliance believes that Northern Ireland should have the option of a single public school system or

different publicly supported sectors. However, if the state is to have separate sectors, we believe that they should be treated in a non-discriminatory and equitable manner. Hence, the wording of our proposal. This approach is not inconsistent with a desire to promote particular sectors.'

Level of Support

There does not appear to be a clear consensus within the group on either of the two proposals. The Catholic Church and the UUP have expressed their support for Option E1. SDLP would support E1 or accept having the issue dealt with by legislation.

Alliance and the Trade Unions sector have expressed their support for Option E2. The view of Sinn Fein is that either one is acceptable so long as the provision of secular, multi- and non-denominational public education is not jeopardised or disadvantaged as a result. The DUP believes this complex issue requires further consideration and the Ethnic Minority sector expressed the view that the issue of funding should more appropriately be addressed through legislation.

5.Minority Language Education Rights

A. Every person belonging to a linguistic minority or community has the right to learn his or her minority or community language.

Rationale

This proposal is based on Article 14(1) of the Framework Convention and the Explanatory Report to that treaty states that the obligation to recognise that right 'concerns one of the principal means by which such individuals can assert and preserve their identity' (para 74). It also states that recognition of this right 'does not imply positive action, notably of a financial nature, on the part of the State' (para 74).

Level of Support

There was unanimous agreement on the inclusion of this provision.

B Every person belonging to a linguistic minority or community that is indigenous has the right to be educated in and, where appropriate, through their language.

C Every person belonging to a linguistic minority or community that is not indigenous has the right to be educated in their language where there are substantial numbers of users and sufficient demand.

Rationale

These proposals are based on Article 14(2) of the Framework Convention² and reflect the distinction between indigenous and non-indigenous languages drawn in the European Charter for Regional or Minority Languages. The working group considered a number of possible limitation clauses. Proposal C uses the language of the Framework Convention, which refers to substantial numbers of

² Art 14(2) Framework Convention: 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.

users and sufficient demand but a preference was expressed by a number of working group members for a stronger entitlement in relation to the indigenous languages in Proposal B. Working group members stressed that users of British and Irish Sign language should be covered under Proposal B.

Level of Support

The inclusion of these two provisions was supported by the majority of working group members. It was suggested by Sinn Fein that the terms 'indigenous' and 'non-indigenous' needed to be defined but the rest of the group did not have an opportunity to consider this proposal. There were differences in opinion on the most appropriate qualification clause in Proposal 5B. The DUP supported the limitation of 'subject to reasonable requirements' rather than 'where appropriate' and the Irish Council of Churches supported the limitation 'as is appropriate according to the situation of each language.'

The Ethnic Minority sector objected to the proposals on the grounds that they created a hierarchy of rights between speakers of indigenous and other languages. The Ethnic Minority sector proposed an amalgamation of the two proposals with the following qualifications: 'Everyone belonging to a linguistic minority or community, whether that is indigenous or not, has the right to be educated in and through their language, taking into account the usage, need, demand, practicality and the situation of each language and/or mode of communication.' The Alliance and the Catholic Church backed the Ethnic Minority sector position with respect to the merging of Proposals 5B and 5C.

3. The paragraphs in this article shall be implemented without prejudice to the learning of English or the teaching in English.

Rationale

This proposal is based on Article 14(3) of the Framework Convention and the Explanatory Report to this treaty identifies such knowledge as a factor of 'social cohesion and integration' (para 78).

Level of Agreement

There was unanimous agreement within the working group on the inclusion of this provision.

6. Language Rights

A

Language rights shall be protected through the progressive implementation by public authorities of the commitments made under the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Rationale

This is an adaptation of a proposal for the protection of language rights suggested by three Council of Europe experts during a visit to Northern Ireland in 2004.³ In addition to minority language education, the Framework Convention also addresses the use of minority languages in relations with administrative authorities (Art 10) and the use of minority language names, the display of signs, inscriptions and other information of a private nature visible to the public and of traditional local names, street names and other topographical indications in minority languages (Art 11). The European Charter for Regional or Minority Languages covers languages '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' but excludes the languages of migrants (Art 1). All 'traditionally used' languages are protected under Part II of the Charter and Irish is protected also under Part III. Part III of the Charter relates to the use of Part III languages in education (Art 8), in judicial (Art 9) and administrative settings (Art 10), the media (Art 11), cultural activities (Art 12), economic and social life (Art 13) and transfrontier exchanges (Art 14). The SDLP proposed that a reference should also be made here to the commitments made both in the Good Friday Agreement and in the St Andrews Agreement.

Level of Support

The majority of working group members expressed their support for the inclusion of this provision. Sinn Fein has reserved its support on

³ (Strasbourg, 3 February 2004), DG II (2004) 4, para 75

the basis that the formulation makes the rights less visible to the rights-holders, and this will cause problems for implementation. The SDLP and Sinn Fein also supported the inclusion of a reference to the commitments made in the Good Friday Agreement and the St Andrews Agreement.

B

In respect of the indigenous minority languages and according to the situation of each language, public authorities must base their policies, legislation and practice on the following objectives and principles:

- (a) the recognition of these languages as an expression of cultural wealth;
- (b) the respect of the geographical area of each language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the language in question;
- (c) the need for resolute action to promote these languages in order to safeguard them;
- (d) the facilitation and/or encouragement of the use of these languages in public and private life;
- (e) the maintenance and development of links between groups using these languages and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;
- (f) the provision of appropriate forms and means for the teaching and study of these languages at all appropriate stages;
- (g) the provision of facilities enabling non-speakers of these languages living in the area where it is used to learn it if they so desire;
- (h) the promotion of study and research on these languages at universities or equivalent institutions;
- (i) the promotion of appropriate types of transnational exchanges for those languages used also in another State.

Rationale

This inclusion of this clause was proposed by the DUP. The proposal is an adaptation of Article 7(1) of the European Charter for Regional or Minority Languages, which contains objectives and principles that are considered necessary for the preservation of regional or minority languages. Working group members stressed that users of British and Irish Sign language should be protected as indigenous languages.

Level of Support

The majority of working group members expressed their support for the inclusion of this proposal. The Ethnic Minority sector objected to its inclusion on the grounds that it will create a hierarchy of rights between indigenous and non-indigenous languages.

7 Giving Effect to the Rights and Obligations in the Framework Convention

A

The law of Northern Ireland shall give effect to the Framework Convention for the Protection of National Minorities.

The term 'national minority' shall be interpreted to cover all cultural, ethnic, linguistic and religious minorities and communities in Northern Ireland.

Rationale

There has been a lot of discussion within the working group about the need for the law of Northern Ireland to give effect to the Framework Convention for the Protection of National Minorities. This formulation was suggested by three Council of Europe experts in 2004 and reflects the fact that the Framework Convention contains mostly programme type provisions rather than directly applicable rights. The Council of Europe experts indicated that domestic effect could be given to these standards through sectorial legislation or through a generic law on national minorities or a combination of both.⁴ Many of the issues covered by the Framework Convention are addressed elsewhere in this report. These include civil and political rights (Arts 7 to 9), the right to self-identification (Art 3), issues relating to education (Arts 12-14), language rights (Arts 10, 11 & 14) and general obligations on the State (Arts 5 and 6). Other issues have been addressed to some extent by other working groups, including equality issues (Art 4) and effective participation in cultural, social and economic life and in public affairs (Art 15). However, a number of the provisions in the Framework Convention are not addressed specifically in any of the working group reports. These include Article 16, which focuses on measures aimed at altering the proportions of the population in areas inhabited by persons belonging to national minorities, and Article 17, which refers to the right of persons belonging to national

⁴ (Strasbourg, 3 February 2004), DG II (2004) 4, para 55

minorities to establish and maintain free and peaceful contacts across frontiers. It should also be noted that Articles 8 and 9 of the Framework Convention provide more detailed rules for the protection of freedom of religion and of expression than the relevant provisions of the ECHR.

In relation to the Framework Convention's scope of application, the view of the Working Group members is that the term 'national minority' is problematic. The drafters of the Framework Convention did not define the term, noting in the Explanatory Report that: 'It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States' (para 12). The UK has stated that it considers that the Framework Convention applies to 'racial groups' as defined under the Race Relations Act 1976 and its reports have addressed the situation of a wide range of groups defined with reference to their religion, language, traditions and cultural heritage (see UK's 1999 and 2007 reports). These characteristics are identified as essential elements of the identity of those belonging to national minorities in Article 5 of the Framework Convention. The Advisory Committee has also adopted an inclusive approach in relation to the Framework Convention's scope of application, suggesting that the UK consider the inclusion of other groups 'on an article-by-article basis' (Opinions of 2002 and 2007). An inclusive approach has also been advocated by members of the working group, who stressed that users of British and Irish Sign language should be also be protected.

Level of Support

The majority of working group members supported the inclusion of this proposal as well as the inclusion of the interpretative clause. However, Sinn Fein's view is that that expressly enumerated rights provide greater transparency and thus accessibility for the rights-holders themselves. The SDLP indicated that they would be content to support the reference to the Framework Convention so long as it is interpreted in a manner consistent with the Good Friday (Belfast)

Agreement. A preference for an explicit reference to the rights recognised in the Framework Convention was expressed by the Ethnic Minority sector.

8 General Obligations on Public Authorities

A

Public authorities shall promote the conditions necessary for persons belonging to cultural, ethnic, religious or linguistic minorities or communities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Without prejudice to measures taken in pursuance of the any general integration policy, public authorities shall refrain from policies or practices aimed at assimilation of persons belonging to cultural, ethnic, religious or linguistic minorities or communities against their will and shall protect these persons from any action aimed at such assimilation.

B

Public authorities shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation and good relations among all persons living in Northern Ireland, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

Public authorities shall 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.

Rationale

These proposals are based on Articles 5 and 6 of the Framework Convention and their inclusion was considered necessary in light of the particular circumstances of Northern Ireland.

Level of Support

There was unanimous support for the inclusion of these provisions.

9. Right of Communication

Everyone has the right to communicate with any public authority through an interpreter, translator or facilitator when this is necessary for the purposes of accessing, in a language that he or she understands, information or services essential to his or her life, health or security. In this context "language" includes sign language and other forms of communication.

Although it is not considered to come solely within the remit of this group, the working group expressed unanimous support for this proposal, which was included in the February 2005 report of the Northern Ireland Human Rights Commission.

OTHER PROPOSALS TABLED

These proposals were tabled for consideration at the last meeting of the working group and an indication is provided below of any additional declarations of support made in relation each proposal.

1. Everyone has the right to be nomadic or sedentary and a right to change from one mode of living to the other.' (proposed by NICEM and supported by Sinn Fein)
2. 'Governments should give due regard to honouring the commitments made to indigenous languages given in the Good Friday Agreement and the St Andrews Agreement.' (proposed by SDLP and supported by Sinn Fein)
3. 'Individuals have the right to communicate with (on a two-way basis) any public body in Irish and public bodies have an obligation to respect and promote this right.' (proposed by Sinn Fein and supported by SDLP)
4. "In the absence of any proposals for the reform or restructuring of the NIHRC, consideration of the establishment of a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities to 'promote respect for and further the protection of the rights of cultural, religious and linguistic communities.' (proposed by DUP with reference to the South African model)
5. Sinn Fein proposed via email that an additional clause be added ensuring that the rights to cultural, language and identity in Proposal 2 can also not be exercised in a manner inconsistent with 'any right otherwise protected under international law'.

APPENDIX I

Comments by Council of Europe experts on certain aspects of a future Bill of Rights for Northern Ireland (Strasbourg, 3 February 2004) DG II (2004) 4⁵

The right to self-identification

61. The experts are aware that the inclusion of Clause 3 (7) in the Draft Bill of Rights has provoked much controversy. The current clause reads:

“Everyone has the right freely to choose not to be treated as a member of a national, ethnic, religious, linguistic or cultural community and no disadvantage shall result from this choice or from the exercise of the rights which are connected to this choice.”

62. This clause has its genesis in Article 3 of the Framework Convention for the Protection of National Minorities which concerns the right freely to choose to be treated or not to be treated as a person belonging to a national minority and that no disadvantage shall result from this choice.

63. The concerns raised are primarily that the inclusion of such a clause could open the way for challenges to be made to current equality provisions that would undermine recent gains in equality over past years.

64. Notwithstanding that the experts see that there may be an issue concerning the compatibility of certain equality provisions with the

⁵ Note that footnotes that appear in the experts' report are only reproduced here if not excessively detailed.

right to self-identification, they consider that this is not a matter that should be definitively solved in a bill of rights, but rather be addressed in ordinary legislation.

65. As has been mentioned in the introduction to this paper, a bill of rights should be the product of a broad societal consensus. From the discussions held in Belfast it is clear that there is no such broad societal consensus concerning the inclusion of this provision. Furthermore, it can be said that it is rare for a bill of rights or for a constitution to treat such matters⁶.

66. The experts consider that it is important to note that the issue does not disappear if it is not specifically included in the Bill of Rights. The right remains to be implemented in the context of the application of Article 3 of the Framework Convention for the Protection of National Minorities. Furthermore, it can be argued that aspects of the right to self-identification may also be linked to Article 8 (right to privacy) of the ECHR for which redress procedures are already available under the Human Rights Act and under the ECHR itself⁷.

67. The experts note that if a review of the legislation is to take place, it will require an examination of the application of positive measures to ensure equality⁸ as this is a central element of the

⁶ The Constitution of "the former Yugoslav Republic of Macedonia" provides one example of a Constitution that indirectly includes such a matter, although it only provides for "free expression of ethnic identity" under Article 8. The Charter of Human and Minority Rights and Civil Liberties of Serbia and Montenegro provides another example in Article 48 "Freedom of expression of national affiliation shall be guaranteed. No one shall be obliged to reveal his/her national affiliation."

⁷ See ECHR judgment in the case *Stjerna v Finland* (1994) on the right to one's name.

⁸ In this context it can be noted, more generally, that there are certain limitations placed on the application of positive

issue in question. It can be noted that there could well be a clash of rights, for example between the right of self-identification on the one hand and the need to ensure equality on the other.

68. The experts consider that this issue could be better and more fully discussed or advanced, *inter alia*, in the context of discussions concerning the reform of the equality legislation and proposals to have a single equality act. There may also be other forums in which this matter can be raised, including the Advisory Committee on the Framework Convention during the second monitoring cycle under the Framework Convention for the Protection of National Minorities.

69. The experts are therefore of the view that the issue of self-identification should not be examined in the context of the Bill of Rights project, but rather outside of the project in a more appropriate forum.

measures. For example in the Explanatory Report of the Framework Convention (concerning Article 4 Paragraphs 1 and 2) it is stated that "Such measures need to be "adequate", that is in conformity with the proportionality principle, in order to avoid violation of the rights of others as well as discrimination against others. ... [and], ...that such measures do not extend, in time or in scope, beyond what is necessary in order to achieve the aim of full and effective equality." This presupposes that the application of positive measures is regularly reviewed.

Advisory Committee of the Framework Convention for the Protection of National Minorities, Second Opinion on the United Kingdom, Adopted on 6 June 2007
ACFC/OP/II (2007)003

47. The Advisory Committee takes note of the duties placed on employers by Northern Ireland's fair employment legislation as regards work force monitoring (see also comments under Article 4 below). Under this legislation, employers are required to submit annually a monitoring return giving details of the "community background" of their employees, trainees and applicants, meaning their affiliation to the Protestant or Roman Catholic community in Northern Ireland. Whereas the principal method for collecting this data relies on the free self-identification each employee, trainee or applicant, where the latter do not respond to a direct question on their "community background", employers are encouraged to make such a determination themselves based on written information supplied by the person concerned. Persons belonging to minority ethnic groups are also subject to these monitoring requirements and have the option of indicating that they are not a member of either community.

48. The Advisory Committee notes that the data collected under the fair employment legislation remain anonymous and may be used purely for statistical purposes, in order to determine whether members of each community are enjoying fair participation in employment and, if not, to identify additional measures that could be adopted to secure fair participation. The Advisory Committee reminds the Government that restrictions on the right to free self-identification by persons belonging to national minorities are not consistent with Article 3 of the Framework Convention. However, the Advisory Committee considers that, in the specific context of Northern Ireland, and at this particular moment in time, the determination by employers of the community background of their employees, trainees and applicants may be relevant in order to secure the fair participation of under-represented groups.

Recommendations

49. The Government should regularly review the authorisation given to employers in Northern Ireland to make a determination of the “community background” of employees, trainees and applicants, when the latter do not provide this information, in order to ensure its continuing relevance to the objective of securing equality in the field of employment.