

Linguistic Rights and Education in Northern Ireland (2005)

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1. Introduction

Northern Ireland is part of the United Kingdom; the official language is English and English is taught in all state-funded schools. The languages which are indigenous to Northern Ireland are Irish and Ulster Scots. However, like many of the other factors which define and impact on an individual's identity, the issue of language is inextricably connected to the religion and politics which are at the heart of Northern Ireland's conflict. The conflict can be traced to the plantation of Ulster (the nine counties in the northern part of Ireland) in the seventeenth century.¹ After Ireland was conquered by Britain, new settlers (who were usually English or Scottish Presbyterians) were given lands confiscated from local people. Many of these English or Scots speakers settled in the geographical north of the country. Irish-speaking Catholics who were living in the plantation areas were evicted from their lands with the result that the northern counties became almost exclusively English-speaking. By the end of the 19th Century the use of Irish experienced a significant and general decline throughout the island, one of the contributory factors being a ban on the teaching of Irish in state schools.²

In the late 19th century, the majority Catholic community on the island sought independence from Britain. The Protestant minority, concentrated in the north-east of the island, wanted to maintain the link with Britain. In 1921, the island was partitioned, with six of the northern counties forming Northern Ireland.³ Although the partition boundary had been drawn to reflect religious demography on the island as a whole, about a third of the population of Northern Ireland was Catholic and retained a desire to join the rest of Ireland (the Republic of Ireland) in a separate state. After Partition, politics in Northern Ireland became fixed around religion, with the Protestant majority supporting Unionist (pro-British) political parties while most Catholics supported Nationalist/Republican (pro-Irish unity) parties. At the time of partition, there were very few native Irish speakers remaining in Northern Ireland. Moreover, attempts to revive the use of the language were often associated with Republican and Nationalist politics with the result that Irish was regarded with suspicion by many Unionists.⁴ Irish was not taught in controlled (state-managed) schools and public signs in Irish were banned by law.

Throughout the history of Northern Ireland, Republican para-military organisations waged a violent campaign against the British State generating a counter offensive by loyalist (Pro-British) paramilitary organisations. The main paramilitary organisations declared cease-fires in 1994 and an agreement on shared governance between the two main religious/political traditions ('the Belfast Agreement') was signed in 1998.⁵ One of the key provisions of the Belfast Agreement was the establishment of a power-sharing Assembly, with devolved responsibility for legislation. However, the Northern Ireland Assembly was dissolved in 2002 as a direct result of Unionist concerns about insufficient progress on the decommissioning of paramilitary weapons and Northern Ireland is once again governed by 'direct rule' from the British Parliament in Westminster. There are currently negotiations underway to restore devolved government. In the meantime, there has been what might be best described as an uneasy peace. The worst forms of violence (indiscriminate bombings and 'tit for tat' murders) are over although there is still unacceptably high levels of violence within certain

¹ For a detailed history and analysis of the reasons underlying the conflict see, Stewart A.T.Q. (1989), *The Narrow Ground: the Roots of the Conflict in Ulster*, Faber, London.

² Beckett J. C. (1981), *The Making of Modern Ireland, 1603-1923*, Faber and Faber, London.

³ See generally, Bardon J. (1996), *A Short Illustrated History of Ulster*, Blackstaff Press, Belfast.

⁴ Pritchard R. (2004), 'Protestants and the Irish Language: Historical Heritage and Current Attitudes in Northern Ireland', 25 *Journal of Multilingual and Multicultural Development*, para. 3.2.

⁵ See Bew P. and Gillespie G. (1996), *The Northern Ireland Peace Process 1993-1996: A Chronicle*, Serif, London.

communities.⁶ Moreover, Northern Ireland remains a deeply divided society. In fact, there is evidence that the attitude of Northern Ireland's Catholic and Protestant communities towards each other have become increasingly negative since the Belfast Agreement.⁷

Northern Ireland's education system reflects the wider divisions in Northern Irish society. Schools are almost completely religiously segregated in terms of their pupil profile. Just over 5% of children attend 'integrated' (mixed religion) schools. Protestant children generally attend state-owned controlled schools (managed by local education authorities) and Catholic pupils generally attend state-funded voluntary schools which are in the ownership of the Catholic Church.⁸ One of the outward manifestations of the segregation in the school system can be seen in the study of Irish. After the partition of the island in 1921, Irish was made compulsory in all schools in Southern Ireland. In Northern Ireland, it has been observed that the government engaged in a policy of 'planned neglect' with the hope that Irish would eventually be suppressed in the education system.⁹ In spite of this, Catholic schools continued to teach Irish, and indeed it was actively promoted in some schools by religious orders such as the Christian Brothers. This pattern continues today: Irish is taught in all Catholic secondary schools and is rarely taught in the state-owned (*de facto* Protestant) schools. Just over 2 500 children are educated in Irish Medium schools (schools in which the main language of instruction is Irish) – a sector which has witnessed considerable growth since the Belfast Agreement in 1998.

The Belfast Agreement recognises the need to respect and value Northern Ireland's diverse cultural traditions, including in particular issues of language. The Agreement states that: '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 which are part of the cultural wealth of the Island of Ireland.'¹⁰ Moreover, it was as a direct consequence of the Agreement that the United Kingdom agreed to ratify the European Charter for Regional or Minority Languages.¹¹ The Agreement also contains a number of joint commitments made by the British and (Southern) Irish governments. One of these was the establishment of a North/South Language body. This has two implementation bodies: the Ulster Scots Agency and the Irish Language Agency, both of which promote the use of their respective languages, for example, through the provision of funding to develop educational materials.

2. The Irish Language

The use of Irish within Northern Ireland is frequently associated with the cause of Irish Republicanism. As one commentator has observed: 'In a society which is fundamentally divided on political grounds, to learn or speak Irish is perceived as an act with political implications.'¹² It is partly as a result of this that the Irish language has enjoyed something of a renaissance in Northern Ireland since the 1970s. However, it was only after the introduction of 'direct rule' in 1972 (whereby Northern Ireland is governed directly from the British Parliament in Westminster) that state attitudes to the Irish language began to change: 'From having suffered state discrimination in Northern Ireland, the Irish language has gradually progressed to becoming a state beneficiary.'¹³ This process of increasing state

⁶ Rowan B. (2003), *The Armed Peace: Life and Death after the Ceasefires*, Mainstream Publishing, Edinburgh.

⁷ Hughes J. and Donnelly C. (2001), *Integrate or Segregate? Ten years of Social Attitudes to Community Relations in Northern Ireland*, Northern Ireland Life and Times Survey, Belfast

⁸ See, Lundy L. (2000), *Education, Law Policy and Practice in Northern Ireland*, SLS, Belfast.

⁹ Andrews L. (1991), 'The Irish Language in the Education System of Northern Ireland: Some Political and Cultural Perspectives' in: Pritchard R. (ed) *Motivating the Majority: Modern Languages in Northern Ireland*, CLIT/UU, London and Coleraine

¹⁰ The Belfast Agreement, (Belfast: 1998), p.19.

¹¹ The UK signed the Charter on 2 March 2000 and ratified it on 27 March 2000. The Charter came into force on 2 July 2001.

¹² Reilly C.O. (1997), 'Nationalists and the Irish Language in Northern Ireland', chapter 4 in: MacPoilin A. (ed), *The Irish Language in Northern Ireland*, Ultach Trust, Belfast.

¹³ Pritchard R. (2004), 'Protestants and the Irish Language: Historical Heritage and Current Attitudes in Northern Ireland', 25 *Journal of Multilingual and Multicultural Development*, para. 3.2.

recognition culminated with the Belfast Agreement in which the British Government agreed to take 'resolute action' to promote the Irish language. This recognition is the product of a long-running campaign to secure state recognition for the language, a campaign which relied to a large extent on arguments based on the minority rights protections in the international human rights covenants.¹⁴

Irish is the most widely spoken language in Northern Ireland after English. The 2001 Census indicated that 10.4% of the population have some knowledge of Irish. However, knowledge of the language varies considerably depending upon the individual's age and religious background. The highest concentration of knowledge is in the age group 12-15 (23.8%), an indication of the fact that many young people are learning to speak Irish while at school. This, combined with the data on the religious background of Irish speakers, indicates that the knowledge of the language is gained primarily within the Catholic school sector: 22.2% of Catholics had some knowledge of Irish compared to 1.1% of Presbyterians and Methodists and 1.3% of Anglicans. Children in Northern Ireland normally learn to speak Irish in one of two ways – in Irish Medium schools and as a subject option in other English speaking schools.

2.1. Irish Medium Education

An Irish medium school is defined by law as one in which religious education and more than half of the compulsory subjects (other than English and Irish) are taught wholly or partly in Irish.¹⁵ The legal position in relation to the curriculum in Irish Medium schools which are publicly-funded is prescribed as part of the statutory curriculum in Northern Ireland. In Irish Medium primary schools, Irish is compulsory in each year of primary education. However, Irish medium primary schools are exempted from the requirement to teach English to children in the first three years of primary school.¹⁶ This exception was lobbied for by the Irish-speaking community who considered that it was important that children were taught exclusively in Irish in the early stages of their schooling, given that they were living in English-speaking environment. English remains a compulsory subject throughout the pupil's remaining years at an Irish Medium primary school. The legal position represents a balance which enables children to settle in to the use of Irish as the language of instruction but which does not completely deprive them of an opportunity to learn the main language of the society in which they live.

The numbers of children attending Irish Medium schools has almost doubled since the signing of the Belfast Agreement in 1998. There are currently around 2,500 children attending Irish medium schools. Moreover, pupil numbers are targeted for a 5% increase year on year within Northern Ireland's Programme for Government. This period of growth has followed years of campaigning for recognition and funding for the sector following the establishment of the first Irish medium primary school in the 1971.¹⁷ Irish medium schools tend to be established by groups of parents on a voluntary and charitable basis (i.e. without public funding). When they have sufficient pupils enrolled, they apply to the Department of Education for official recognition and state funding. Whether or not they gain recognition depends to a large extent on whether they meet the Department of Education's 'viability' criteria (which specify minimum numbers in terms of pupil enrolment). These criteria have been very contentious, with many in the sector arguing that the numbers were unrealistically high and set well above the actual numbers of children attending some of the existing state-funded schools.

The legal options for challenging the viability criteria were, however, limited. An application to the European Court of Human Rights was ruled out as an option in the wake of the *Belgian Linguistic*

¹⁴ See, The Committee on the Administration of Justice, *The UK Government's Approach to the Irish Language in the Light of the European Charter for Regional or Minority Languages*, (Belfast: CAJ, 1992).

¹⁵ Education (Reform) (NI) Order 1989, Article 35(2).

¹⁶ Education (Reform) (NI) Order 1989, Sch. 2; Curriculum (English in Irish-speaking Schools) (Exceptions) Regulations (NI) 1996.

¹⁷ MacPoilin A. (1992), *Irish-medium education in Northern Ireland – A Preliminary Report*, ULTACH Trust, Belfast.

Case.¹⁸ However, in one domestic case, *In Re Scullion's Application*, a parent challenged the Department of Education's refusal to provide funding and recognition to an Irish Medium secondary school.¹⁹ The school has been established on a charitable basis by parents and later sought recognition and state funding from the Department of Education. The legal issues in the *Scullion* case focused mainly on the Department's application of the viability criteria. The court decided that the Department was legally entitled to apply the criteria which it was using. However, it is interesting that, in support of this, the judge referred directly to the European Charter for Regional and Minority Languages. This was not binding on the court (the UK had not hadn't ratified the Charter at that time). However, in deciding that it was both legitimate and necessary for the Department to apply objective criteria to determine which schools were eligible to receive ongoing state funding, the judge cited a provision of the European Charter which states that minority language education could be provided 'where demand exists in a number considered sufficient'.

The key change for the Irish Medium sector was negotiated as part of the Belfast Agreement. It was in the Belfast Agreement that the UK committed itself to signing the European Charter for Regional or Minority Languages. Irish is designated under both Part II and Part III of the Charter. Part III in particular, requires the UK to comply with a series of educational commitments set down in Article 8. These include, for example, a commitment to make primary and secondary education in the language available to 'pupils whose families so request and whose number is considered sufficient'.²⁰ The Belfast Agreement also included an express commitment to introduce domestic legislation requiring the Department of Education to support and facilitate the development of Irish language education (enacted in the Education (NI) Order 1998, article 89). This has had two very immediate practical effects. First, the state now funds Comhairle Na Gaelscolaíochta, a voluntary organisation committed to the development of Irish Medium education. Secondly, there has been a review of the viability criteria for the establishment of new Irish Medium schools which have made it easier to establish new Irish Medium schools. There are currently 19 state-funded primary schools and 10 funded Irish Medium units attached to existing English speaking primary schools. There is one state funded secondary school in Belfast and two Irish Medium units attached to English-speaking secondary schools.

The new obligation to 'facilitate and support the development' of Irish medium education is not without its limitations, particularly in relation to Irish Medium schools which have not yet been afforded state recognition and funding. For example, children attending Irish-medium schools can experience considerable difficulty securing suitable transport to school. The wider geographical spread of schools means that children often have further to travel and, there is a concern that, as newcomers, the sector loses out to more established schools in transport planning.²¹ For example, in one case, *In Re Martin's Application*, a parent complained about the failure to make transport provision for a child attending a non-grant-aided Irish Medium school.²² The court decided that the local education authority did not have the power to provide transport assistance to children attending schools which were not publicly funded. However, at the end of the decision, the judge suggested that the position might have been very different if it had been argued under the European Convention on Human Rights (ECHR). This is in spite of the wide discretion which the ECHR gives to individual states as to the manner in which they regulate and finance their education systems.²³

There are several other areas where there is unmet demand for provision, particularly at secondary level. In Comhairle Na Gaelscolaíochta's view, part of the difficulty is that Irish medium education is

¹⁸ (1968) EHRR 252 at p.281 where the European Court of Human Rights stated that the right of access to education did not require states to 'establish at their own expense, or to subsidise, education of any particular type or level' and further that access to education 'by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals.'

¹⁹ Unreported decision of the High Court of Northern Ireland, 1995.

²⁰ Art. 8, para. 1b(iv) and 1c(iv).

²¹ See, Lundy L.(2005), 'Education', in: *Children's Rights in Northern Ireland*, NICCY, Belfast, p. 164.

²² Unreported decision of the High Court of Northern Ireland, 8 May 2000.

²³ See, n. 18 above.

still viewed as ‘a luxury rather than a fundamental right’.²⁴ In recent research conducted by the author for the Northern Ireland Commissioner for Children and Young People, the following concerns were raised about provision in Irish Medium schools: there is an insufficient number of places for Irish medium specific teacher training which impacts on the sector’s capacity to expand and to provide an effective range of subjects for pupils; funding premiums for children attending Irish Medium schools are not index-linked; only three of the 37 Irish medium pre-school programmes are in statutory nursery units; and the fact that special educational need support for children attending Irish Medium schools is not sufficiently sensitive to the needs of children who are bilingual.²⁵ In the NICCY research, children attending Irish medium schools were particularly critical of the limited facilities in their school. For example, one stated:

“Tá scoil s’againne maith go leor ach níl a lan haiseanna an agus ta an hait in a bhfuil sé suite thar a bheith faoin tuath mar sin de níl a lan haiseanna thart arainn. Bíonn orainn dul go dtí an scoil Béarla chun aiseanna s’acu a said. Bonn arainn ‘mini-bus’ a fhail thuas ansin agus glacann se a lan ama.” - ‘Our school is good enough but we don’t have a lot of resources and the place where it is located is nearly out in the countryside so we don’t have a lot of facilities around us. We have to go to the English school to use the facilities. We have to take a minibus up there and it takes a lot of time.’ (Girl, aged 14).²⁶

In spite of these ongoing concerns and reservations, the Committee of Experts which monitors compliance with the European Charter for Regional or Minority languages considered that the UK has largely met its obligations under the Charter.²⁷ However, it did acknowledge concerns about the adequacy of teaching and educational resources in Irish.²⁸

2.2. Irish in English Medium Schools

The Northern Ireland Curriculum makes specific provision for the teaching of Irish in publicly-funded schools. The Irish language does not have to be taught at primary school although it may be offered as an addition to the curriculum once the other statutory requirements have been complied with. Secondary school students are required to study at least one of the following modern European languages: Irish, French, German, Italian or Spanish.²⁹ Under the original proposals Irish was not part of the list. It was inserted following a consultation period on the statutory curriculum in response to representations by the Catholic Church and Irish language pressure groups. Pupils can opt to study Irish instead of any of the other European languages offered by their school. In practice, Irish is the most widely chosen language of study after French.³⁰ However, schools are under no obligation to offer Irish as one of their language choices. Moreover, if they do offer Irish, they must offer an alternative European language as well. In effect, this means that no pupil can be required to study Irish to fulfil the modern European language.

Irish is taught in many secondary schools in Northern Ireland but these are almost exclusively Catholic schools. The teaching of Irish outside the Catholic school system can be controversial to the point where it has generated litigation. For example, in *In Re Ferris’ Application* the plaintiff was a Protestant who was the father of a child attending the integrated (mixed religion) secondary school.³¹ The school had a compulsory programme of Gaelic studies in its first year in which the children

²⁴ See, Lundy L.(2005), ‘Education’, in: *Children’s Rights in Northern Ireland*, NICCY, Belfast, p.153.

²⁵ Lundy L.(2005), ‘Education’, in: *Children’s Rights in Northern Ireland*, NICCY, Belfast, p.153.

²⁶ Lundy L.(2005), ‘Education’, in: *Children’s Rights in Northern Ireland*, NICCY, Belfast, p.153.

²⁷ Committee of Experts of the European Charter on Regional and Minority Languages, *First Report on the United Kingdom*, (2004) Council of Europe, ECRML (2004) 1.

²⁸ Committee of Experts of the European Charter on Regional and Minority Languages, *First Report on the United Kingdom*, (2004) Council of Europe, ECRML (2004) 1, para. 312.

²⁹ Education (Reform) (NI) Order 1989, Schedule 2 substituted by the Education (NI) Order 1996, Schedule 3.

³⁰ In 2002/3 2,689 pupils studied Irish at General Certificate of Secondary Education Level.

³¹ [2001] NIQB 22, 27 June 2001.

learned to speak Irish. This was additional to the statutory curriculum. The father argued that the requirement to study Irish was in breach of the school's obligation to provide a 'balanced and broadly-based' curriculum as required by Article 4 of the Education Reform (NI) Order 1989. Witnesses were called to argue that a balanced and broadly based curriculum would also have included instruction in Ulster-Scots, a language identified primarily with the Protestant community (see below). The court considered that the school was required 'to avoid a narrow biased programme for education that promoted to a position of dominance one particular viewpoint and neglected another.' It did not consider that the teaching of an elementary course in Gaelic studies had that result.

The applicant in the *Ferris* case did not argue that there had been a breach of Article 2 of the First Protocol of the ECHR, apparently because the case was initiated just prior to the incorporation of the ECHR by the Human Rights Act 1998. It would have been interesting to see if the outcome would have been any different if it had been possible to deploy European Convention arguments. It is possible to see an argument for respecting the parent's philosophical convictions in situations where the parent has a cultural or political objection to the topic or activity. Moreover, if the activity is extraneous to the standard content of Northern Ireland curriculum (as it was in the *Ferris* case), it would be difficult for a school to justify the mandatory nature of the programme on the basis that an exemption would result in the pupil being denied his or her right to an effective education. On the other hand, the European Court of Human Rights has shown that it is also reluctant to interfere in curricular programmes provided that the course of instruction does not amount to a form of indoctrination and that the information is presented critically, pluralistically and objectively.³²

3. Ulster Scots

Ulster-Scots is a variety of the Scots language which is spoken in parts of Northern Ireland. Its roots lie with the Scottish (and Presbyterian) planters who came to Ireland in the 17th Century. As is the case with Irish, its tradition and long-standing associations with one section of the community (in this case the Protestant community) has meant that public debate about the language is often politicised. It has been observed that: 'Ulster Scots is increasingly used by Unionists to assert identity in a post-Agreement Northern Ireland that they fear is bent on 'privileging' the Nationalist Irish contingent.'³³ Moreover, some Nationalists and Republicans also believe that Ulster Scots is a contrived language and that interest in it has developed solely as counter-reaction to the promotion of the Irish language within the Catholic community. There is no official indication of the prevalence of Ulster Scots speakers within Northern Ireland and data on usage was not gathered as part of the 2001 census. However, in one study, it was estimated that around 35 000 people (or 2% of the Northern Ireland population) can speak Ulster-Scots.³⁴

The Belfast Agreement recognises Ulster-Scots as 'part of the cultural wealth of the island of Ireland'.³⁵ There is, however, some dispute about whether it is a language in its own right. Some claim that it is a separate language derived from Scots, while others argue that it is simply a collection of local dialects, a mixture of Scots and Hiberno-Irish. It is defined in law as 'the variety of the Scots language which has traditionally been used in parts of Northern Ireland and in Donegal in Ireland.'³⁶ Moreover, Ulster Scots is also the only other language (apart from Irish) which is recognised in Northern Ireland for the purposes of the European Charter for Regional and Minority languages. Ulster Scots has been designated under Part II of the Charter. This requires the UK to base their policies, legislation and practices on a number of objectives which include: the provision of appropriate forms and means for the teaching and study of the Ulster-Scots language at all appropriate stages; the provision of facilities enabling non-speakers living in the area where it is used to learn if

³² *The Danish Sex Education Case* (1976) 1 EHRR 711.

³³ Pritchard R. (2004), 'Protestants and the Irish Language: Historical Heritage and Current Attitudes in Northern Ireland', 25 *Journal of Multilingual and Multicultural Development*, para. 3.2.

³⁴ *Northern Ireland Life and Times Survey 1999* (Belfast: 1999).

³⁵ Beckett J. C. (1981), *The Making of Modern Ireland, 1603-1923*, Faber and Faber, London..

³⁶ North/South Co-operation (Implementation Bodies) (NI) Order 1999.

they so desire; and the promotion of study and research on the language at universities or equivalent institutions.

These objectives have, in part, been achieved through Government funding for the Ulster Scots Agency ('Tha Boord o Ulster-Scotch'), another product of the Belfast Agreement. The Agency's mission is to 'promote the study, conservation, development and use of Ulster-Scots as a living language; to encourage and develop the full range of its attendant culture; and to promote an understanding of the history of the Ulster-Scots.' There is no specific statutory provision for the teaching of Ulster Scots within the statutory curriculum. However, schools can provide education in Ulster Scots language, literature and culture through the cross-curricular themes of Cultural Heritage and Education for Mutual Understanding. Moreover, there are several government-supported initiatives which are intended to promote education in Ulster Scots, including the development of curricular materials by the Ulster Scots Curriculum Development Unit which is based at Stranmillis University College in Belfast. There is, as yet, no Ulster Scots Medium school, although there are current plans to establish an Ulster Scots Academy.³⁷

4. Educational Provision for Children from Ethnic Minority communities

Northern Ireland has a very small ethnic minority population – less than 1% of the population.³⁸ The single largest ethnic minority group is the Chinese community. It is estimated that approximately 4,500 people speak Chinese, making it the third most widely spoken language in the jurisdiction. No provision is made for the study of ethnic minority languages at all within the statutory curriculum, a position which can be contrasted to other parts of the UK. There are insufficient numbers to justify, and no apparent demand for, schools which instruct children in ethnic minority languages as the medium of instruction. However, ethnic minority children and their families have expressed concern about the lack of formal routes for studying and gaining qualifications in their mother-tongue languages within Northern Ireland's existing state schools.³⁹ If demand grows for instruction in non-European languages as part of the statutory curriculum, human rights instruments could provide the necessary legal grounding for rights-based advocacy. Although the ECHR does not require states to provide education in a particular language, there is a requirement not to discriminate in terms of the languages offered by schools (Article 14 in conjunction with Article 2 of the First Protocol).

The Department of Education in Northern Ireland does not have a specific policy on the education of ethnic minority children, although some of the needs of ethnic minority children are addressed in other policy documents and circulars. For example, schools receive extra funding for children for whom English is a second language. The Department of Education is proposing to increase this to provide additional financial support to children for at least two years with the possibility of extension if the child continues to have difficulty.⁴⁰ Additional resources will also be given to children born in an English-speaking country but of non-English speaking parents. Research indicates that refugees and asylum seekers, particularly adolescents, who may be poorly educated in their first language, experience particular difficulty in school.⁴¹ A further difficulty is the limited availability of interpreters and thus the fact that some minority ethnic parents find it difficult to liaise effectively with their children's school and hence to play a full and proper role in their children's education.⁴²

5. Conclusion and Prospects for the Future

³⁷ See, for example, the Joint Declaration of the British and Irish Governments, 1 April 2003.

³⁸ The Census 2001 indicates that 0.85% of the population does not have a white, European background.

³⁹ Radford K. (2004), *Count Me In- exploring cultural diversity amongst children and young people*, Save the Children, Belfast, p. 33.

⁴⁰ Department of Education, *Proposed Common Funding Scheme for Local Management of Schools*, (Bangor: DE, 2004), 37.

⁴¹ See, Lundy L.(2005), 'Education', in: *Children's Rights in Northern Ireland*, NICCY, Belfast, p.172.

⁴² See, Connolly P. and Keenan M. (2000), *Opportunities for All; Minority Ethnic People's Experiences of Education, Training and Employment In Northern Ireland*, Northern Ireland Statistics and Research Agency, Belfast.

The Belfast Agreement (and the Northern Ireland Act 1998 which implements it) includes a range of human rights provisions which have had or have the potential to have a significant impact in the area of language rights and education. For example, section 75 of the Northern Ireland Act 1998 introduced an innovative statutory equality duty which requires public authorities, including the key education agencies, to promote equality of opportunity (and good relations) between people of different racial backgrounds. Public authorities are required to consult with groups on all policies which may affect them. This has provided pressure groups within the Irish language, Ulster Scots and ethnic minority communities with specific opportunities to highlight linguistic rights issues in the development of public policy, for instance in the consultation around a new statutory curriculum for Northern Ireland.

The Belfast Agreement also makes provision for a Bill of Rights for Northern Ireland.⁴³ The Bill of Rights is intended to supplement the rights in the ECHR to reflect the particular circumstances of Northern Ireland. The Belfast Agreement suggests that two issues, both of which have potential ramifications for education, require particular consideration in the context of a new Bill of Rights. The first is an obligation on government and public bodies to 'respect on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland'. The second is the need for 'a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors'. The Northern Ireland Human Rights Commission (NIHRC) was given the task of preparing the proposed Bill of Rights and has recently made revised recommendations as to the potential content of the Bill of Rights.⁴⁴

One of the most contentious aspects of the proposals are those in relation to linguistic rights. The NIHRC's most recent draft of the Bill of Rights acknowledges this and indicates that the Commission itself could not agree whether Irish should be recognised as an official language equal to English, as an official language secondary to English or whether the Bill of Rights should contain a clause which says: 'Legislation shall be enacted to prescribe the situations in which people have the right to use the language of their choice.'⁴⁵ However, the 'Language' section of the proposed Bill of Rights contains a proposal that members of linguistic communities in Northern Ireland shall have a right to 'be educated in and through their language, where there are substantial numbers of users and sufficient demand',⁴⁶ a provision which echoes the UK's obligation under the European Charter for Regional or Minority Languages. Moreover, there are also several recommendations in the area of education which are connected to linguistic rights. For example, the NIHRC has proposed that the state shall 'respect the right of parents to choose for their children schools with a particular religious ethos, education in integrated schools and education in Irish-medium schools'.⁴⁷ This reflects the considerable influence of the various educational interest groups, in particular the Irish-medium sector, in the consultation process and, if implemented, would exert additional pressure on the authorities to take parental demand for such education into account when making decisions on the future development of educational provision.⁴⁸

Much will depend on whether the Bill of Rights actually makes it into legislation. Its future is far from certain. There has been a significant level of complaint about specific aspects of the proposals, particularly from the Unionist community.⁴⁹ It is difficult to see how they might be engaged in the

⁴³ Lundy L. (2000), 'Education Law Under Devolution: The case of Northern Ireland' ,*Education Law Journal*, 81.

⁴⁴ Northern Ireland Human Rights Commission, *Progressing a Bill of Rights for Northern Ireland: An Update* (Belfast: NIHRC, 2004).

⁴⁵ Northern Ireland Human Rights Commission, *Progressing a Bill of Rights for Northern Ireland: An Update* (Belfast: NIHRC, 2004), p.67. Proposal 14(1).

⁴⁶ Northern Ireland Human Rights Commission, *Progressing a Bill of Rights for Northern Ireland: An Update* (Belfast: NIHRC, 2004), p.68. Proposal 14(3)(e).

⁴⁷ Northern Ireland Human Rights Commission, *Progressing a Bill of Rights for Northern Ireland: An Update* (Belfast: NIHRC, 2004), p. 65. Proposal 13(2).

⁴⁸ See, Craig E. and Lundy L. (2001), 'Education Rights in the Bill of Rights' *Northern Ireland Legal Quarterly*, 52, pp. 325-334.

⁴⁹ Morgan A. (2001), 'What Bill of Rights?' , *Northern Ireland Legal Quarterly*, 52, pp. 234-268.

process and more difficult still to see how the Bill of Rights might be implemented if it is not broadly acceptable to both communities. Given that linguistic rights are inherently political and always contentious within Northern Ireland, this is undoubtedly one of the areas where securing a consensus will be most challenging. Nonetheless, at the time of writing there are ongoing attempts to reach a political accommodation which will restore power to the Assembly and secure other key elements of the Agreement, including the Bill of Rights. If it does go ahead, even in a more limited form, Northern Ireland could be at the forefront of linguistic rights protection in education, offering a unique legal framework for tackling the problems which arise in societies with embedded ethnic divisions.