

A Response to the NIHRC Consultative Document,
'Making a Bill of Rights for Northern Ireland'
by the
Catholic Bishops of Northern Ireland.

1. **Introduction:**

In light of the publication of the consultative document, 'Making a Bill of Rights for Northern Ireland', we welcome this opportunity to make the following recommendations in relation to the proposed Bill. Our response should be read in association with our original submission to the NMRC on this issue. While our response here is limited to the consideration of a number of key issues, our comments are made without prejudice to any future position we may take in regard to the Bill. Similarly, while our responses are presented in the sequence proposed by the Consultative document, this should not be taken as an indication of the relative importance we wish to attach to the issues raised.

2. **The Breadth of Issues to be Included in the Bill?:** (Questions 1-3)

As we suggested in our original submission, a Bill of Rights for Northern Ireland 'has the potential to provide an agreed set of values which unites the diverse traditions in our society'¹. This objective of strengthening the level of agreement between the diverse traditions of our society must be a fundamental objective of the Bill of Rights. As it is, the expansion of the proposed Bill into so many issues unrelated to the 'particular circumstances of Northern Ireland', undermines the very reconciling nature of the Belfast Agreement by limiting the opportunity for achieving broad consensus on the content of the Bill. The inclusion of issues such as reproductive rights, women's rights, children's rights, some educational rights, some environmental rights and some electoral rights have no direct relation to the 'particular circumstances of Northern Ireland' and could be pursued, if necessary, through democratic and legislative mechanisms other than the proposed Bill.

For that reason we wish to reiterate our original position that 'such a Bill should be as comprehensive in its articulation and protection of rights as can be achieved *under the terms of the Belfast (Good Friday) Agreement*'². It is our view that any issue which falls outside the reconciling objectives and the specific terms of the Belfast Agreement should not be included in the Bill.

¹ *Promoting Peace: Protecting Rights, A Preliminary Submission to the Northern Ireland Human Rights Commission on the Proposed Bill of Rights*, The Catholic Bishops of Northern Ireland, March 2001, para 1.2

² *ibid.*, para. 1.3

3. **The Failure to Protect Religious Freedom:**

It seems appropriate when discussing the type of issues which fall under the clause ‘reflecting the particular circumstances of Northern Ireland’, to highlight one obvious and important issue which has not been developed in the proposed Bill, namely, the implications of the right to freedom of religion in a pluralist society. In our view presenting a mature understanding of this issue is not only relevant to the Belfast Agreement but is also an essential part of creating an authentically pluralist and reconciled society in Northern Ireland.

Given the particular character of Northern Ireland in terms of religious practice and conviction, as well as the religious dimension to the history of the conflict here, the failure to articulate the right to freedom of religion in any significant and developed way is a particularly striking omission in the Consultative Document. It is a serious omission which we suggest should be redressed in consultation with representatives from the full range of faith communities in Northern Ireland, in the next stage of constructing the proposed Bill.

At the heart of this omission is a failure to uphold the right of individuals, parents or religious institutions to be distinct and to promote and protect those values which are consistent with their philosophical and religious convictions, particularly when those convictions are recognized as wholly consistent with the common good and the dignity of the human person. An important dimension of this omission includes the failure of the proposed Bill to acknowledge the concept of a ‘hierarchy of rights’ and, in particular, to recognize the right of individuals and religious institutions not to be obliged by State legislation to promote a view of fundamental human rights or values, such as the right to life or the value of heterosexual marriage and the family, which are contrary to their deeply held philosophical and religious convictions.

Also related to this omission is the lack of any significant elaboration of issues such as the rights of conscience, the right to freedom of association, and the rights of religious, cultural or other institutions and how these rights might be protected and developed in the ‘particular circumstances of Northern Ireland’.

We hold that both the commentary and the principles which are described in section 12 of the Consultative Document (and in Articles 9 and 10 of the European Convention) are inadequate to address the particular circumstances of Northern Ireland in this regard. We suggest that the failure to describe and protect the concept of Religious Freedom and the rights of religious institutions in a pluralist society, is in direct contravention of the NIHRC’s obligation under the Belfast Agreement to formulate ‘a general obligation on Government and public bodies fully to respect.. . *the identity and ethos* of both communities in Northern Ireland’ (The *Belfast Agreement*).

4. The Preamble: (Questions 4-5)

We welcome and commend the general tone and vision of the proposed preamble to the Bill. We acknowledge in particular the effort to establish an overt connection between the Bill and the ‘achievement of reconciliation, tolerance, mutual trust and the protection and vindication of the human rights of all’. We also welcome the effort to create a sense of ‘responsibility.. . for the promotion and observance of the rights recognized in the present Bill’.

However, in keeping with our original submission, we would propose that these critical themes should be more overtly and consistently presented throughout the document, possibly by way of a preamble to each section of the Bill. We also propose that the concepts of interdependence, mutual responsibility and the common good should be given more overt and exhaustive treatment as part of the ‘aspirational’ dimension of the Bill.

5. Democratic Rights: (Questions 6-8)

We accept the proposition posed in Question 6 on the basis that it is not predicated upon simple majority rule and that the decision making process involves a system of cross-community consent.

We believe it is not appropriate to deal with the issue of the age of voting in a Bill of Rights. If necessary this matter can be pursued through other forms of legislation and may remain subject to further change.

6. Rights Concerning Identity and Communities: (Questions 9-11)

Our main concern in respect to this section of the Consultative Document has already been partially addressed in Section 3 above. At the heart of this concern is the underlying analysis of the ‘core of the conflict in Northern Ireland’ (p. 24) presented by the Consultative Document. The document holds to the view that the underlying cause of the conflict in Northern Ireland is a divergence of ‘identities, cultures and aspirations’. This is simply not accurate. Whilst the document duly acknowledges that this is only one analysis of the ‘core of the conflict in Northern Ireland’, there is, regrettably, no reference to alternative perspectives. The quotation (p.21) from the Northern Ireland Executive’s Programme for Government, however, with its reference to the concepts of justice and inclusion, clearly points to an alternative and, in our view, a more accurate perspective that sees the underlying causes of the conflict as transcending cultural differences and residing primarily in a sense of exclusion and injustice. Exclusion, injustice and intolerance of difference remain the primary causes of conflict between individuals and communities in this society, not individual or community difference in itself. Indeed we would go as far as to say that both individuals and communities have a right to be distinct and different and that it is unjust to locate the cause of conflict in difference itself, as opposed to the lack of tolerance and respect for difference.

This issue is important since any simplistic identification of Northern Ireland's conflict as emanating primarily from issues of culture or identity may well result in the adoption of what might be deemed an "integrationist" as opposed to an authentically "pluralist" perspective. Given the recent publication of the "Culture of Tolerance" document which adopts this more authentically pluralist approach, one which encourages respect for and the celebration of difference, this would be unfortunate.

In our view it is important in a pluralist society such as Northern Ireland to recognise that difference in culture, or religious or political beliefs is not of itself the sole or primary source of our communal difficulties but our failure to accommodate and celebrate such difference. This point is not sufficiently acknowledged in the Document or in the proposed Bill and is reflected in the failure of the Bill to promote and protect the right to have distinct religious and cultural convictions and distinctive structures to support those convictions. There is a sense in which the proposed Bill and the commentary given with it, seeks to 'dissolve' cultural and religious difference rather than promote the celebration and tolerance of it. This is not authentic pluralism.

It is also our view that the proposed omission of a provision dealing with 'parity of esteem' (Question 9) would be acceptable only if the principle is sufficiently addressed by a clause in the proposed preamble to the Bill. This would also be dependent on the inclusion of Clause (5) (1a to 1c) as outlined on p.28 of the Consultative Document and the substitution of Clause (2) on the same page.

7. Equality and Non-Discrimination: (Question 13)

We remain convinced that that whilst 'positive action' is to be encouraged, it should not be rendered mandatory. To that end, we propose that the amendment in brackets on page 33 (panel 8) should be used.

Notn Bene: In our view, any acceptance of the proposals regarding 'positive action' can only be made if the exceptions on page 34 (panel 9) form part of the Bill.

8. The Rights of Women: (Question 14)

As Catholic Bishops we reaffirm the fundamental equality of women and men who, created in the image of God, "are called to participate in the same divine beatitude [and] . . . therefore enjoy an equal dignity."³ We also state with certainty that discrimination or violence against women, as with any other person, contradicts the will of Christ.

What is less certain, however, is how an extensive treatment of the 'Rights of Women' as a specific category within the proposed Bill of Rights for Northern Ireland can be justified within the limits imposed on the scope of such a Bill by

³ *Catechism of the Catholic Church*, Veritas, Dublin, 1994, para. 1934

the, Belfast Agreement. Rights in regard to equality and discrimination apply to every person, irrespective of gender. This fundamental principle of equality also mitigates against the proposed elaboration of Women's Rights as a distinct section within the Bill.

We also note with deep concern the clause on 'reproductive health care' proposed in page 37 of the Consultative Document. Again it is difficult to justify the inclusion of such a clause in terms of the limitations imposed on the scope of the proposed Bill by the Belfast Agreement. We also hold that the NIHRC is obliged to explain to the general public and others, such as individuals and faith communities with deep philosophical and religious convictions on these issues, what exactly it means by the term 'reproductive health care' and what the full implications of such a clause would be. As Catholic Bishops we wish to indicate our intention to seek further clarification from the NIHRC on this issue.

9. The Right to Life: (Question 15)

We hold to the view that there should be no provisos or exceptions to the right to Life, from the moment of conception to natural death, or to Article 1 of Protocol 6 of the European Convention

10: The Rights of Children: (Questions 22-28)

As Catholic Bishops we are wholly supportive of the general principle of promoting and defending the rights of children. Through the Catholic School system, the Pastoral Care of our Parishes and our various youth-based organizations, the Catholic Church has worked assiduously for the well being of all children placed within its care, irrespective of religious, ethnic or political background. There is, however, some doubt as to whether the interests of children are best served through the presentation of a new and discrete section in the Bill of Rights on the Rights of Children.

We would propose instead the direct incorporation and operation of the operative provisions of the UN Convention on the Rights of the Child as the best method of ensuring the effective protection in National Law of current international standards.

Turning to the specific rights listed in regard to children's rights and education page 70, panel heading [(i) Education], of the four issues addressed, it is our view that number 3 relating to school exclusions and appeals should find expression in domestic legislation as opposed to a Bill of Rights. All of the other proposed rights relating to "effective education, education and what might be deemed vulnerable children and issues around dignity, safety and participation", are seen as more appropriate for consideration under Section 11 Education Rights.

In regard to the issue of the age of criminal responsibility we suggest that the State should keep the age of criminal responsibility under review and that as such consideration of this matter does not properly belong to a Bill of Rights.

In regard to the important issue of the right of representation on page 65, it is our view that this requires the addition of a limitation in terms of what is both reasonable and practical, not least in terms of the resources of the school and the rights of other children in respect of those resources.

11. **Education Rights:** (Questions 29 – 30)

As Trustees of the Catholic School Sector we wish to indicate our support for the comments and proposals being made to the NIHRC by the CCMS in respect to the section in the Consultative Document on Education Rights.

In particular, we would like to emphasize the following points:

We support the adoption and extension of Article 2 of Protocol 1 to the European Convention as set out on page 72 of the Consultative Document.

We particularly welcome the principle of parity of funding outlined on page 73 which, given the historical imbalance of funding previously identified by SACHR, together with the inequality of the current capital grant recovery provisions, highlights the need for this area to be dealt with in the Bill of Rights.

Our understanding is that the proposed clauses (2) and (3) extend clauses (1) and (2) respectively and to that extent they have our support.

Nota Bene: If our interpretation is incorrect we would welcome an opportunity for further clarification on this issue.

The proposals in Article 4 (page 75) are also acceptable.

We support the proposals in respect of discrimination outlined in panel 1 of page 75. However, the proposals regarding “admissions criteria” fail to provide a realistic or obvious connection between admissions criteria and effective and appropriate education.

Of particular concern are the comments and proposals made on page 76 in respect of “Employment equality for teachers”. As Catholic Bishops we are concerned that this most contentious issue would appear to be a mere addendum to this section. The question posed in Question 30 does not relate in any way to the body of the proposals and sits totally at odds with the proposal in panel 3, page 74, which clearly affirms the State’s responsibility to:

“ *the greatest extent possible* ensure the right of parents to have education and teaching for their children in conformity with their religious, philosophical and pedagogical convictions. . . The State shall respect the rights of parents to choose for their children education in schools with a particular religious ethos.”

The Catholic Church fully supports the right of all parents to send their children to schools of their choice. Indeed, as we noted in our original submission, the Human Rights Act, Schedule 1, Article 2, in compliance with international instruments on Human Rights, places an obligation on the State to “. . . respect the right of parents to ensure. . . education and teaching is in conformity with their own religious and philosophical convictions”. We hold that Denominational schools and the FETO exemptions which apply to schools in Northern Ireland exist to **support** the exercise of this right by parents.

It is also a fundamental ‘religious and philosophical conviction’ of Catholic parents that Catholic education cannot be achieved by the teaching of religion as a distinct subject within an otherwise secular curriculum. This is part of the ‘pedagogical conviction’ of Catholic parents which the Bill proposes to oblige the State to protect and respect to ‘the greatest extent possible’ (panel 3, page 74). It is part of the pedagogical conviction of Catholic parents that the core values of the Catholic faith must be evident in all aspects of the ethos and management of the school and in the content and presentation of the whole curriculum. In this context it follows that parents have a right to expect teachers in a Catholic school to have the requisite training, qualifications and attitudes to be able to contribute to this ethos and management of a Catholic School. A teacher in a Catholic school is not merely the provider of facts and knowledge, but one who by their attitudes and lifestyle contributes to and supports the values necessary for Catholic education.

In this regard we note with particular interest that such rights of parents are recognised in Section 60 of the Schools Standard Framework Act 1998 for England and Wales, wherein foundation or voluntary schools that have a religious character can give preference in the employment, recruitment and promotion of teachers to those “whose religious beliefs are in accordance with the tenets of that religion”. In addition, it is noted that in connection with the termination of employment, regard may be had to conduct which is incompatible with the tenets of that faith. We also note that similar rights are granted to parents in Scotland and the Republic of Ireland.

As Catholic Bishops we hold that through the retention of Article 15(2) of the Framework Directive, the exemption in relation to the recruitment of teachers, the proposed Bill of Rights should grant the same level of rights to parents in Northern Ireland as exists in the United Kingdom and the Republic of Ireland, wherein Section 7 of the Irish Equal Status Act 1999 provides exemptions for schools promoting certain religious values.

We believe that failure to recognize this fundamental right of the Catholic community would be a serious contravention of the obligation on the NIHRC, arising out of the Belfast Agreement, to ‘a general obligation on Government and public bodies fully to respect. . . the identity and ethos of both communities in Northern Ireland’.

12. Language Rights: (Questions 32 -33)

We recognise the rights of all to have their language respected within a pluralist society and, as such, are in general agreement with the proposals made in the Consultative Document. That said, however, the practical implications of panel 3, page 82 raise some concerns, primarily in respect to the issue of resources and indeed availability of suitably trained personnel.

We also welcome the proposals at panel 5, page 82 in regard to the rights of all linguistic communities. In a world that is increasingly cosmopolitan and pluralist it is wholly appropriate that we seek to create the conditions that facilitate linguistic diversity as opposed to a de facto “linguistic assimilation”. The issue of “sufficiency of demand” is an important one and criteria in respect of this need to be developed in a manner that is seen to be objective and transparent.

13. Social and Economic Rights: (Questions 34)

In our original submission to the NIHRC we stated that as ‘a fundamental principle of the common good, people need to have the conditions necessary for meaningful participation in the life of the community. This includes the right to contribute to and benefit from economic and social life’⁴. We also acknowledged the intimate connection between social disadvantage and exclusion and the history of physical conflict in Northern Ireland. For this reason we welcome the inclusion of Social and Economic Rights in the proposed Bill and hold that the inclusion of such rights is wholly in keeping with a reasonable interpretation of the clause ‘to reflect the particular circumstances of Northern Ireland’ prescribed by the Belfast Agreement.

We welcome and support the principles espoused in the proposed general clause and in the presentation of the rights to property, health care, an adequate standard of living, housing, work and to a healthy and sustainable environment, as they are listed.

We object strongly however, to the inclusion of the following clause on ‘Right to health care’ (and to related proposals throughout the Bill):

Everyone has the right to have equal and free access to sexual and reproductive health care and to information and education relating to sexual and reproductive matters at all levels, free of coercion, discrimination and violence. (p.89)

We hold that, in keeping with the right to freedom of religion, the right to ‘education’ in this regard is limited by the rights of parents to have their children educated in a manner consistent with their philosophical and religious convictions. On this basis we hold that nothing enshrined within the Bill should inhibit or undermine the rights of any institution or school to protect and promote its own

⁴ *ibid.*, para. 9.1

ethos or to offer only programmes of study which are consistent with that ethos or those values.

We also hold, as we stated earlier in regard to the same proposed clause in the section on Women's Rights, that the NIHRC is obliged to explain to the general public in Northern Ireland what it means by the term 'sexual and reproductive health care', a term used several times throughout the proposed Bill but which is clearly subject to a variety of interpretations.

14. Environmental Rights: (Question 34)

In respect to the Right to a Healthy and Sustainable Environment we believe it would be appropriate for the Bill to seek to address the increasing environmental phenomenon of 'marking out territory' along sectarian lines through the unsolicited use of public or private property. This clearly falls within the realm of issues 'particular to Northern Ireland' prescribed by the Belfast Agreement.

15. Enforcement: (Question 37)

In regard to the proposal for the establishment of a new Human Rights Court, we would wish to express some reservation about the creation of a new layer of dispute resolution.

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