

The right to integrated education in Northern Ireland

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Omission of a right to integrated education from Bill of Rights proposals for Northern Ireland (NIHRC, 2008) and recent Assembly education bills, raises some questions about education in divided societies.¹ The contribution of integrated schools to peace and reconciliation is relatively well understood.² Article 26(2) UN Declaration of Human Rights states that education shall be directed to ‘the strengthening of respect for human rights and fundamental freedoms...understanding, tolerance and friendship among all nations, racial or religious groups, and...the maintenance of peace’. The need for protection from assimilation is less widely appreciated. International organisations have supported integrated education not only as a child’s right to non-sectarian education but also as protection of parents’ right to freedom of conscience in their choice of schools for their children on a basis of equality for members of minorities.

The role of integrated education in achieving stability in a divided society is recognised in the Belfast Agreement (1998) and the associated inter-governmental Treaty between the British and Irish Governments. The parties acknowledged that ‘promoting a culture of tolerance ... including initiatives to facilitate and encourage integrated education’ is ‘an essential aspect of the reconciliation process’. (part IV para 13) The two Governments agreed to guarantee ‘freedom from discrimination for all citizens, and parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities’. (Treaty Article 1(v))

Very little progress has been made in reforming a highly segregated education system. This paper does not attempt to survey the development of integrated education in detail. There is a wealth of documentation about its educational benefits and high level of support for it.³ Instead, the focus is on its failure to flourish under the Agreement. This is a legitimate question given the scale of international support and good will it has attracted. As O’Leary (1998) has argued, ‘the Agreement left in place the new arrangements for

schooling in Northern Ireland in which Catholic, Protestant and integrated schools are to be equally funded. In this respect, Northern Ireland is fully consociational and liberal’.

One explanation for the lack of progress is the absence of debate about educational rights in Northern Ireland, even in community relations commentary.⁴ The paper begins by briefly sketching the recent constitutional background of integrated education. Section 2 considers the role of a working group set up after the Agreement to address integrated education. Section 3 compares experience here with political and constitutional practice in the Republic of Ireland. The concluding section argues that a definition of the right to integrated education should be consistent with international minority and human rights law and with the obligation of the parties and two governments to guarantee the protection of human rights and equality.

Integrated education and the peace process

Growth of concern over lack of shared or non-sectarian schools in Northern Ireland coincided with the start of the Civil Rights Campaign. All Children Together (ACT), the cross-community group, argued that, given the sectarian ethos of parallel controlled (de facto Protestant) and voluntary Catholic schools in Northern Ireland, denial of funding for integrated schools violated religious freedom.⁵ The European Commission on Human Rights dismissed this claim in 1978.⁶ As an alternative, ACT founded Lagan College and promoted the ‘Dunleath Act’ (1978) to encourage schools to become controlled integrated ‘state’ schools by consent, an aspiration revived in later legislation.

Just as there was no remedy for sectarian education during the ‘troubles’, there was no protection from discrimination. Minority education rights for Catholics became part of the civil rights agenda. The imposition of Westminster rule had only served to intensify complaints of discrimination. The Anglo-Irish Agreement (1985) recognized the Irish Government’s right to have a say in matters affecting the nationalist minority. It signalled a change of direction.

One of its first results was a radical reorganisation of the education system under the Education Reform (NI) Order 1989. Parity of treatment was established for Catholic schools by the creation of a Commission for Catholic Maintained Schools, a separate statutory administrative body, and eventually, by full equality of capital and revenue funding with ‘state’ schools for the Catholic ‘sector’. Provision of new Catholic grammar schools underscored de facto ‘equal but separate’ denominational academically selective education. The Order also provided recognition and the promise of funding for a new form of

grant maintained integrated school (GMIS) established by parents, as well as a procedure for any existing school to transform to controlled integrated status (CIS) after a parental ballot. Funding was also granted for an integrated education support body.

The reforms provided some measure of financial support for the fledgling integrated 'sector', but also a dilemma. The change from voluntary to apparently statutory recognition afforded no clear definition of an integrated school or guarantee that the legislation would be fully implemented. Voluntary GMIS schools' trust deeds incorporated principles requiring 'equality of status within the schools for the two main ethno-religious communities ... structurally within the Board of Governors, the staff and the pupils and culturally in the overt and hidden curriculum within the school'.⁷ In contrast, the legislation required:

the Board of Governors [of an integrated school] to use its best endeavours, in exercising its functions under the Education Orders, to ensure that the management, control and ethos of the school are such as are likely to attract to the school reasonable numbers of both Protestant and Roman Catholic pupils. (Education Reform (NI) Order 1989 article 66(2))

Without any formal commitment to integrated education principles of parity, integrated status was mainly dependent on pupils' perceived religious identity.

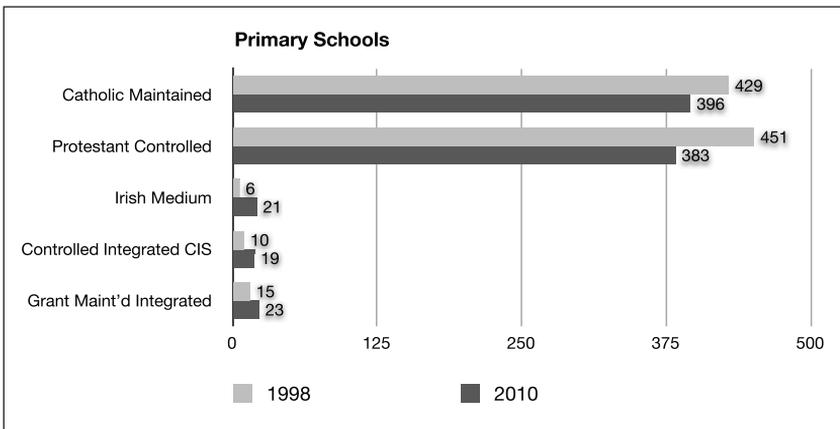
There was hostility to a Westminster-imposed statutory duty to 'encourage and facilitate integrated education', including an unsuccessful legal challenge from the Catholic bishops on grounds of religious and political discrimination. The Department of Education increasingly limited support largely to encouraging existing Protestant controlled schools to 'transform' to integrated status. The policy was confirmed with financial help for a simplified and quicker transformation procedure and new requirements specifying a 10% minority pupil enrolment initially and a 30:70 target balance in the long term.⁸ At the same time criteria for recognition of new (GMIS) integrated schools, including higher minimum enrolments, were tightened up.

Public perceptions remained ambivalent. Grammar schools, whether controlled, Catholic or 'other', and Catholic maintained schools did not take up the opportunity of 'transforming' as provided in the legislation. Controlled (de facto Protestant) schools which did 'transform' to controlled (CIS) status seemed to be less fully integrated than new integrated (GMIS) schools and were assumed to be merely protecting falling enrolments. They were neither

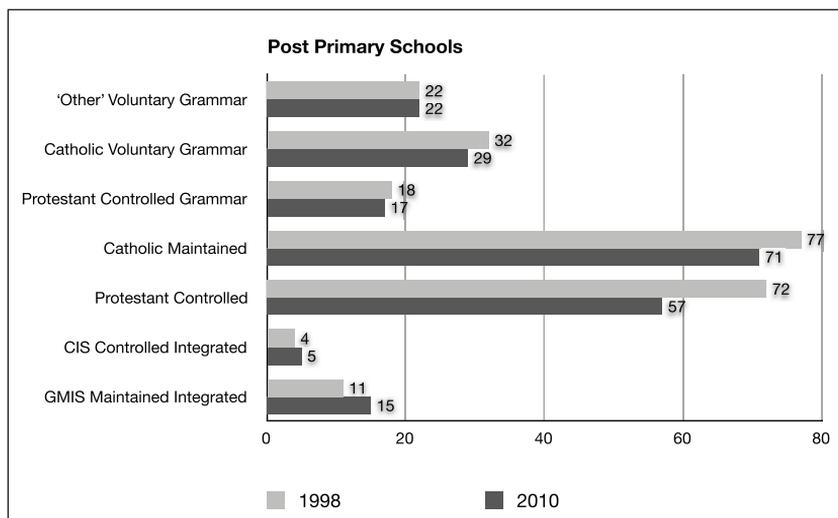
‘interdenominational’ nor ‘non-denominational’ nor representative of ‘both sides’ and seemed to lack the democratic legitimacy of a genuinely integrated parental constituency. Catholic school trustees refused to cooperate by making nominations to ‘transformed’ boards of governors as provided in the order.

Governing bodies and staff of new grant maintained integrated (GMIS) schools established by parent groups were expressly cross-community. They used the exemption from fair employment legislation and the European Framework Equality Directive⁹ flexibly to achieve staffing ‘balanced’ rather than denominational exclusivity. ‘Transforming’ controlled integrated schools (CIS) rarely used the exemption to appoint minority community teachers to achieve ‘balance’ or fairer participation. Religious discrimination in teacher appointments and governor nominations was seen as necessary and politically justified in a divided society, and unavoidable even in ‘transformed’ (CIS) controlled schools¹⁰ when it contributed to ‘imbalance’. Transformation policy as well as administrative hurdles for grant aid for ‘new-build’ GMIS projects, (as subsequently occurred in Irish medium schools) seemed to be deliberately designed to discourage voluntary parental initiatives. This was reinforced when recognition was sometimes withheld after schools had survived on charitable donations for years.¹¹

Integrated and non-integrated schools in Northern Ireland 1998 – 2010



(Based on Department of Education, N Ireland figures. NB Note different x axis scales apply)



Progress was nonetheless impressive, but as statistics indicate, much less so after the Agreement, than before it, despite continuing high level of public support. In 2000 there were 43 integrated schools, 29 GMIS and 14 CIS. By 2010, of 62 integrated schools that had survived (catering for 6.7% of pupils) roughly two thirds were voluntary parent initiatives established before 2000. Research has confirmed the positive benefit of integrated education for pupils, parents and teachers, especially for those with least diversity experience. It can result in greater mutual willingness to trust, respect and share.¹² But evidence that 'transformed' schools achieve the full extent of these benefits is contested.

The view of the UN Economic, Social and Cultural Rights Committee in 1997 was that integrated education developed through transformation was 'ineffective and likely to preserve the status quo'.¹³ The Committee on the Rights of the Child had raised the initial alarm about the extent of segregated education in its first UK periodic report in 1995. The CRC Committee was persuaded in its 2002 report that a new British ministerial working group would address the issue.¹⁴ Also in 2002, the Advisory Committee of the Framework Convention urged that integrated education should be provided in 'response to parental demand'.¹⁵ But by 2007/8 international monitoring committees were acutely aware of the absence of 'measures to address segregation of education in Northern Ireland'.¹⁶

Integrated education and the promotion of a culture of tolerance

European Union institutions emphasise the democratic value of pluralism and diversity but also insist that justice and equality are compatible with privileging

particular religious institutions constitutionally and in functions like education.¹⁷ This does not mean state autonomy is unfettered.¹⁸ Integrated education was already provided for in Northern Ireland legislation; but in ‘the particular circumstances’, the human rights principles in the Treaty and Agreement state obligations required greater clarity.

The then Labour Government delegated consideration of this to a working group set up in June 1998.¹⁹ The group included Education Department officials, academics, representatives of the main education systems and integrated schools, but no obviously independent parent representatives or advice from legal experts.²⁰ Its remit was:

having regard to DENI's duty to encourage and facilitate integrated education... consider ways of assisting the further development of the integrated school sector while taking account of the interests of other schools, and in particular to assess the long-term potential for integrated schooling in the Province. (DENI 1998, Appendix B)

The group failed to grasp the breadth of this remit. Even before the ramifications of the Agreement had been considered TACOT (as the group styled itself) changed its terms of reference to: ‘It is a seminal purpose of the Northern Ireland Education Service to promote a culture of tolerance and reconciliation and, for schools, to do so in keeping with the particular ethos and circumstances within which they operate’.²¹

TACOT’s drift from its official brief had been evident from the start. A prior assumption apparently already accepted was that ‘the long term potential for the development of formally integrated schools is limited’. (para 24) Evidence that more than half of Northern Ireland local districts were 90% Protestant or 90% Catholic was noted; but not the significance of the fact that integrated schools were located in both ‘ethnic’ and ‘mixed’ neighbourhoods. Given Catholic authorities’ opposition to integrated education, TACOT made the unjustified inference that development should mainly be by ‘transformation’ of Protestant/state controlled schools.

ACT’s original concerns – freedom of thought, conscience and religion – were not even mentioned. *Campbell and Cosans* had by then established that ‘convictions’ in Protocol 1(2) ECHR²² are to be equated with the term ‘belief’ in Article 9²³ as:

views which attain a certain level of cogency, seriousness, cohesion and importance... ‘Philosophical convictions’ denote convictions which are

worthy of respect in a democratic society and are not incompatible with human dignity. *Campbell & Cosans v UK* (1982) 4 EHRR 293 para 40

Until this time, parents' rights regarding education and teaching in conformity with their religious or philosophical convictions had been interpreted in local legal commentaries as not requiring states 'to establish or subsidise education of any particular type or any particular level' only to guarantee 'the means of instruction existing at a given time'; permit the teaching of religious knowledge in state schools provided it is 'conveyed in an objective, critical and pluralistic manner'; and allow parents to withdraw children from religious instruction and worship in state schools or to choose private schools.²⁴ The widened definition of religious or philosophical convictions in Protocol 1(2) extended the scope of state obligations regarding non-discriminatory 'opt outs' or alternatives.²⁵ Discrimination under the Agreement was thus a highly pertinent issue despite the conventionally narrow reading of Article 14, ECHR.

Arguably a belief in integrated education should have been considered as a Convention right. TACOT should also have been advised that neutrality was required, not just between competing religious and philosophical convictions, but also on whether and what restrictions are legitimate and proportionate. Working group papers suggest that these and other issues raised in international human rights reports were not formally tabled or considered.²⁶

The group's only substantive contribution to integrated education was to endorse the policy already adopted ten years previously – 'transformation' of controlled (de facto, Protestant) schools.²⁷ One of the sub-group's other proposals was the laudable – though institutionally challenging - idea that 'all schools should work together in an integrated way by sharing and collaborating in the interests of their pupils'. However, these proposals were not supported by any analysis of their human rights implications, even though the Northern Ireland Human Rights Commission (NIHRC) was then actively addressing such constitutional issues in its proposals for a Bill of Rights.²⁸ No consideration was given to alternative structures for developing integrated schools on the basis of parental consent, such as multi-denominational schools as in the Republic of Ireland or interfaith schools in the UK or in other divided states. Given the known objections of Catholic authorities, restrictions, for example, on integrated school sixth form development, might have been acknowledged as unreasonable and unjustified discrimination.

TACOT's failure to address the constitutional basis of parental and children's rights and its idea for informal 'shared' or 'collaborative' school arrangements could be deemed contrary to the principles enshrined in the

Treaty. It claimed that ‘it would be wrong to seek to enforce radical changes in the pattern of governance (in schools)’.²⁹ Yet its proposals led directly to the radical administrative changes proposed in associated Departmental proposals for administrative reform.³⁰ This in turn ultimately resulted in the aborted Education Bill of 2008 and many years of bickering about ‘sharing’ or ‘integrated’ education.³¹

A more accurate characterisation of the ‘transformation’ process endorsed by TACOT is that schools were being given the opportunity to modify their religious/communal ethos to comply with international standards on inclusion and respect for religious convictions as also specified in the Toledo Guiding Principles.³² In practice international human rights principles require all grant-aided schools in Northern Ireland to respect parents’ right to opt their children out of religious education and collective worship. ‘Transformed’ CIS schools *may* acquire some additional characteristics which enhance inclusiveness; but many unresolved equality, minority parental and children’s rights concerns and fair employment issues remain.³³ The Department of Education, TACOT and the Equality Commission³⁴ chose to ignore all these issues, including the fact that even ‘state’ schools are not public authorities under the Northern Ireland Act 1998 and are also exempt from significant religious discrimination provisions in fair employment legislation.

Constitutional rights: Ireland North and South

The constitutional implications of the Treaty for Northern Ireland education can be illuminated by comparison with approaches to educational rights in the Republic of Ireland. The Irish Constitution accords a much higher priority to parental rights than UK legislation, devolved or otherwise. Nevertheless, there are strong historical parallels between the two jurisdictions, particularly with respect to denominational education. Curiously, given the post-Agreement cross-border cooperation opportunities, TACOT chose to ignore this. Articles 42 and 44 of the Irish Constitution resemble former constitutional provisions in Northern Ireland.³⁵ They deal with freedom of conscience and religious profession and practice, prohibition of religious discrimination or endowment of religion, the child’s right to attend any state-funded school without attending religious instruction and the freedom of religious denominations to manage their own affairs, including their schools. Admittedly, the emphasis on parental rights added by DeValera has weakened the State’s position - as confirmed in *Crowley v Ireland*³⁶ and *Campaign to Separate Church and State Ltd v Minister of Education*³⁷ The former established the duty of the state to ‘provide for’ rather than to ‘provide’ education; the latter unsuccessfully challenged the constitutionality of publicly funded school chaplains.

One of the problems this created was the difficulty, for minority faith and non-religious groups, of ‘opting out’ of religious education, particularly in primary schools.³⁸ The vast majority are privately owned by the Catholic Church (94%) or the Church of Ireland (5%) but funded by the state. Another difficulty is legal ambiguity concerning parental choice, denominational education and equality.³⁹ While some read the Constitution as upholding the principle of separation of church and state, opinions differ on whether the state can arbitrate fairly and impartially between denominational groups and individuals to protect religious freedom for all.⁴⁰ Contention has arisen over recent cuts to ‘ancillary’ state funding for Protestant secondary schools. This effectively treated the schools as part of the public education sector (or at least, on a par with state funded Catholic post primary schools) but was withdrawn when the Attorney General ruled it incompatible with constitutional anti-discrimination guarantees.

Critics argue that accommodating minority religious and non-religious groups by guaranteeing ‘formally equal’ public recognition and funding for otherwise private denominational or multi-denominational schools is not genuine equality and does not cater for other scattered minorities.⁴¹ A real, as opposed to formal, guarantee of equality of parental choice, would require a parallel state system of non- or perhaps multi-denominational public schools. In short, there is room for ambiguity under the Constitution about whether the non-endowment clause should qualify the principle of state support for denominational education, or vice versa.

International human rights bodies have called for a more appropriately diverse Irish system of schooling given an increasingly multi-ethnic and secular population. A Department of Education and Science working group appointed to consider the matter has accomplished far more than TACOT, in less than half the time.⁴² Seminars, consultations and advice sought include a detailed report from the Irish Human Rights Commission.⁴³ One proposal being pursued is the divestment of some denominational schools by agreement with Patrons for use, according to parental preference, by multi-denominational or Irish language providers.

The situation in Northern Ireland prior to the Agreement was similar to the Republic. There was state funding for what are in many areas effectively two parallel denominational systems of schooling. One was described as the ‘state’ sector, though the legal significance of the term is unclear. The Agreement has now removed grounds for constitutional ambiguity on this matter. ‘Rigorous impartiality’ (Treaty Article 1(v)) requires not just ‘freedom from discrimination for all citizens’ but ‘parity’ for both communities and, arguably, the right of individual members, to exercise their identity, individually or in community.

TACOT's idea of 'transformation' can help to ensure conformity with international human rights standards. The point is however, in the Northern Ireland constitutional context in particular (as discussed in the next section) such standards apply to all schools funded by the state. Research⁴⁴ shows that international standards are not always achieved in either jurisdiction. A number of recent UN Human Rights Committee cases considered under Art 18 International Convention on Civil and Political Rights (ICCPR) on freedom of thought, conscience and religion indicate where problems are likely to occur.⁴⁵ Parents find that 'opting out' may be unenforceable because of lack of alternatives, or blocked by lack of information or co-operation and indirect discrimination, for instance inflexible opting out arrangements. In 'mixed' or 'transformed' schools, which lack pupil, staffing and management balance, the 'hidden curriculum' may result in even more serious breaches. A recent ECHR Court judgement considered such matters to be Protocol 1(2) issues.⁴⁶ A Northern Ireland survey comparing integrated, 'mixed' and segregated schools found that attendance at 'informally mixed' schools was more likely to result in minority students (of whatever identity) being assimilated to majority group values.⁴⁷ Some parents may be prepared to tolerate, or conceivably even welcome, this; but most 'transformed' CIS schools and 'mixed' grammar schools have shown little active interest in becoming genuinely multi- or inter-denominational.

Part of the trouble is that no strictly multi-denominational option is available in Northern Ireland. Ironically, it is the Irish Constitution's formal equity of state funding for denominational institutions and recognition of parental rights, which makes the multi-denominational alternative a realistic political and (given the Republic's generous exemptions under EU provisions regarding religious discrimination) the only constitutional option. In Northern Ireland such principles have been subordinated to the rights of church and political leaders. This limitation of parents' and children's rights in education is nevertheless in principle reviewable. Under section 2 of the Human Rights Act 1998 courts must take account of judgements, declarations or advisory opinions of the European Court of Human Rights. Under section 4 Assembly legislation which is incompatible with the ECHR may be declared invalid.⁴⁸

The Right to Integrated Education in a Divided Society: a definition

Three considerations are directly relevant to specifying the right to integrated education in Northern Ireland: how integrated education is defined constitutionally; how the right to integrated education relates to other international rights; and how the right may be vindicated.

A primary justification for integrated education is the wide support for protecting children's rights. When the Northern Ireland Human Rights Commission was initially established it proposed a Bill of Rights based partly on civic society consultations and independent cross-community working group recommendations.⁴⁹ Integrated education was included amongst a range of children's rights.⁵⁰ A working group recommendation that 'both main communities' should receive 'just and equal treatment for (their) identities, ethos and aspirations' was also incorporated into the draft bill.⁵¹ This was in line with Article 3 of the Framework Convention for the Protection of National Minorities (1995), which the British and Irish Governments ratified as part of the Treaty. It provides for the right of individuals to decide whether or not to be treated as members of a community or national minority.⁵² In the event, against Council of Europe advice⁵³, the proposals were rejected by some of the parties to the peace negotiations and by the Equality Commission.⁵⁴

These early proposals by NIHRC are valuable nevertheless in suggesting the minimum requirements for a definition of integrated education. Equality between members of the two communities and the right of choice, subject to cross-community consent, captures the essence of both Agreement and integrated education principles, and is consistent with provisions on education in general, and for minority children in particular, in the UN Convention on the Rights of the Child. Articles 28, 29 and 30 incorporate almost all the education provisions of the UN Declaration, the International Convention on Economic, Social and Cultural Rights (ICESCR) and the ICCPR. Art 29(c) affirms (inter alia) that education should be directed towards the 'development of respect for the child's parents, his or her own cultural identity, language and values ...'. This reflects the universal consensus that education should cherish and protect family life which is vital to nurturing the dignity and identity of the child. But there is no agreed international definition of 'education' consistent with the rights of both minorities and non-minorities.⁵⁵ As a Framework Convention commentary argues⁵⁶ education has 'multiple and sometimes contradictory aims which need to be reconciled and balanced'; 'the development of respect for the child's identity is perceived as primordial'; it is 'important per se even if there is no rational or economic justification' (part I §1(3)). 'Rights *to* and *in* education' therefore 'need to be institutionalised and safeguarded in clear and coherent legal acts' (part II § 2(1)). This minimum standard is equally valid with respect to both segregated or genuinely integrated schools. Defined in this way, the most important role of integrated education is in protecting children from discrimination. The failure of a second group of NIHRC Commissioners empanelled in 2006 to carry forward this work on the right to integrated education is regrettable.⁵⁷ But fortunately we now have the benefit of the Irish Human Rights Commission report on the right to education completed for the Patronage Working Group.⁵⁸

Unlike NICHHR and TACOT, the IHRC drew extensively on reports critical of the Republic of Ireland, as well as on domestic constitutional debates. Its report includes an extended reference to Article 5 of the Convention on the Elimination of All forms of Racial Discrimination (ICERD) ‘...State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...in particular: ...the right to freedom of thought, conscience and religion and... to education and training’. (para 271) The IHRC report draws attention to Article 18, ICCPR on freedom of thought, conscience and religion which uses practically identical wording to Article 9 and Protocol 1(2), ECHR. It did not need to quote Article 13, ICESCR that adds safeguards to Article 29(2) UNCRC, with which the Republic of Ireland – but not Northern Ireland - is now actively seeking to comply. ICESCR General Comment on Article 13 affirms the freedom of parents in conformity with their convictions to choose schools other than those established by public authorities and (para 54) that ‘... if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.’ ICERD Committee Concluding Observations on Ireland (March 2011) are recorded in full in the IHRC report: ‘[t]he State Party [should] accelerate its efforts to establish alternative non-denominational or multi-denominational schools...amend the existing legislation that inhibits students from enrolling into a school because of their faith or belief...(and) encourage diversity and tolerance of other faiths and beliefs in the education system by monitoring incidents of discrimination on the basis of belief.’ (para 273)

Northern Ireland parents who would choose integrated education cannot rely on the British Government or its agents to defend their rights under the Human Rights or Northern Ireland Acts, from arbitrary treatment by the devolved Assembly and administration. Recourse to Convention Rights may be the only remedy for an individual complainant.⁵⁹ Integrated education was dismissed in 1978 because a wide margin of appreciation was granted on account of the UK’s original reservation. Such latitude cannot now be taken for granted, whether Protocol 1 (2) is considered as *‘lex specialis’* or in conjunction with Article 9.

The IHRC report explains how a balanced margin of appreciation is achieved by the Strasbourg Court. (para 245-267) On the right to manifest beliefs in education it holds that in democratic societies, in which several religions coexist it may be necessary to place restrictions on this freedom. The Convention nevertheless excludes ‘any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs

are legitimate', be they religious or secular. However, the obligation 'to respect' religious and philosophical convictions under Protocol 1(2) is an absolute right, not one that has to be balanced with others.⁶⁰ A belief in integrated education therefore, like a belief in Catholic or Protestant education, entails the presumption of the state's duty to protect it. The principle established 50 years ago in the *Belgian Linguistics Case* is still applicable, despite its apparent negativity: where state policy is held to be neither objective nor proportionate to its aim, discretion is to be restricted.⁶¹

Constitutional matters in Northern do not suggest that the reasons for not providing integrated schools in response to parental demand are legitimate or proportionate. Equality of funding is provided for voluntary schools, mainly denominational primary, secondary and grammar schools and 'other' grammars, including new Catholic grammar schools established specifically on grounds of equity with non-Catholic grammar schools. The British Government made legal provision and imposed an explicit duty on the Department of Education 'to encourage and facilitate integrated education'. This no longer happens. The two Governments have guaranteed the Treaty Article 1(v) rights: equality and freedoms from discrimination for all, including parity of esteem. This equality has not been extended, as it ought, to individual members of minorities who prefer integrated education.

Have all reasonable and necessary steps been taken by the UK Government to ensure equality of treatment and 'parity of esteem' for the two communities/minorities' children without them facing double discrimination or being 'assimilated against their will'? The failure to meet parental demand for integrated education in post-Agreement educational policies and planning and administrative reorganisation proposals is perverse in view of government commitment to fair participation in the public realm. Recent proposals for area planning and the establishment of a centralised administrative structure including only representatives of Catholic and Protestant sectoral bodies suggests sectarianism will be embedded and the rights of parents and children further diminished. Any such legislation would arguably be incompatible with the ECHR under the Human Relations Act.

Conclusion

Work still needs to be done on integrated education rights in a constitutionally divided society - including how it can contribute to social inclusion and relate to other school sectors. But some broad principles concerning state obligations can be specified:

- a) Parental religious or philosophical convictions concerning a child's education and teaching should receive the same respect regardless of whether they are Catholic, Protestant, Muslim, Hindu, and atheist – or integrated. Protocol 1(Art 2), Articles 9 and 14 ECHR
- b) All state-funded schools, especially in areas where there may be no reasonable alternative (as in a divided society like Northern Ireland or rural areas in the Republic) should observe international (ICSECR, ICCPR, ICERD and ECHR) standards for non-discrimination, inclusion and respect for minority children and parents. 'Transformation' should thus apply to all schools in Northern Ireland.
- c) Under the Agreement and the Framework Convention, the state has a duty to fund integrated education (i.e. schools which provide 'both main communities' with 'just and equal treatment for (their) identities, ethos and aspirations') to the extent at least that it funds segregated denominational or other minority schools.

In the meantime, given doubts about the British Government's attitude to its international obligations, an aggrieved parent might hope for better justice under the ECHR.

NOTES

¹ Integrated education is described in the Education (N.I.) Order 1989 art 66 (2) as ‘the education together at school of Protestant and Roman Catholic pupils’. In 2010-2011, 61 (20 post-primary, 41 primary) out of 1,068 state-funded schools were integrated. Integrated schools enrolled 20,535 pupils, 6.5% of 321,717 pupils in total.

² Hamber and Kelly, 2008

³ O’Sullivan et al., 2008; Ewart et al., 2010; IEF, 2011.

⁴ Todd et al. 2010.

⁵ Spencer, 1987.

⁶ *X v UK*
(1978) App. No. 7782/77 14 DR 179

⁷ NICIE Statement of Principles and Practical Guidelines, Appendix in (Moffat, 1993).

⁸ DENI, 1996, 1999.

⁹ European Council Directive 2000/78/EC 27 art 15(2) permits the exception of the recruitment of teachers from ss 75 and 76 of the Northern Ireland Act and the Fair Employment and Treatment (NI) Order 1998 (FETO).

¹⁰ Dunn and Gallagher, 2002.

¹¹ IEF, 2006.

¹² McGlynn, 2011.

¹³ Committee on Economic, Social and Cultural Rights, Concluding Observations: United Kingdom of Great Britain and Northern Ireland E/C.12/1/Add.19 12 December 1997 para 18

¹⁴ Committee on the Rights of the Child, Concluding Observations: United Kingdom of Great Britain and Northern Ireland UNCRC/C/83/Add.3 25/02/2002 (2002) para 9.48

¹⁵ Committee on Economic, Social and Cultural Rights: Concluding Observations: the United Kingdom of Great Britain and Northern Ireland E/C.12/1/Add.79 28th session 29 April-17 May 2002, para 29

¹⁶ Advisory Committee on the Framework Convention for the Protection of National

Minorities, Second Opinion on the United Kingdom, Adopted 6 June 2007, ACFC/OP/II(2007) 003; Committee on the Rights of the Child, *UK Consolidated 3rd and 4th Periodic Report CRC/C/GBR/CO/4/2008* para 67 (i).

¹⁷ McCrea, 2010.

¹⁸ Evans, 2001.

¹⁹ DENI, 1998.

²⁰ DENI, Sept. 1999.

²¹ DENI, Sept. 1999, Appendix C.

²² European Convention on Human Rights and Fundamental Freedoms (1950) Protocol 1 Art 2: 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.

²³ ECHR Art 9(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. 9(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.

²⁴ Craig, 2003.

²⁵ Mawhinney, 2007.

²⁶ Gallagher, 2005.

²⁷ DENI, 2004, 2007.

²⁸ NICHR, 2001, 2004.

²⁹ DENI, 2007, para 6.

³⁰ DENI, Dec. 2006, Reform of Public Administration, PANI, 2006.

³¹ Hansard, NIA, 2010.

³² ODIHR, 2007.

³³ The transformation policy faces challenges in achieving shared teacher participation. See *Brudell v Board of Governors of Ballykelly Primary School and WELB*, (March 2010) Fair Employment Tribunal 161/09. The complainant, a Protestant teacher in a 'mixed' controlled school (with a substantial Catholic enrolment) was found to have been subjected to unlawful direct and indirect discrimination on the grounds of religious belief following a redundancy selection exercise.

³⁴ ECNI, 2002, 2009.

³⁵ The Northern Ireland Constitution Act 1973 was repealed and replaced by the Northern Ireland Act 1998

³⁶ *Crowley v Ireland* [1980] I R 102.

³⁷ *Campaign to Separate Church and State Ltd v Minister of Education* [1998] 3 I R 321, [1998] 2 ILRM 81.

³⁸ Mawhinney, 2006.

³⁹ Whyte, 2010.

⁴⁰ O'Connell, 2000.

⁴¹ Daly, 2010.

⁴² DES, 2012.

⁴³ IHRC, 2011.

⁴⁴ Mawhinney et al, 2010; Mawhinney, 2007.

⁴⁵ *Hartikainen v. Finland*, (9 April 1981) Communication No 40/1978 (UN Doc A/36/40 (1981) para 147 Denominational instruction could not be taught in schools unless alternative provision was made for those not wishing to participate. *Leirvag et al v Norway* (2003) CCPR/C/82/D/1155/2003, Communication No 1155/2003 (Nov 2004) para 25 A scheme of partial exemptions from doctrinal religious classes does not accommodate the wishes of non-Christian parents.

⁴⁶ *Folgero v Norway* (2007) ECHR [GC] 2007-VIII para 54 The Court, leaving aside the fact that the children's complaints under Article 9 of the Convention were declared inadmissible on 26 October 2004, considers that the parents' complaint falls most suitably to be examined under article 2 of Protocol 1, as the *lex specialis* in the area of education; para 84(i) the competent authorities have a duty to take the utmost care to

see to it that parents' religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism.

⁴⁷ Hayes, 2007.

⁴⁸ Dickson, 2007.

⁴⁹ NIHRC, 2001a.

⁵⁰ NIHRC, 2001b.

⁵¹ NIHRC, 2004.

⁵² Article 3(1) Every person belonging to a national minority 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. Article 3(2) Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

⁵³ CoE, 2004.

⁵⁴ ECNI, 2002.

⁵⁵ UNGA/HRC, 2008.

⁵⁶ CoE, 2006.

⁵⁷ NICHHR, 2008.

⁵⁸ IHRC, 2011.

⁵⁹ Under s7(5) of the Human Rights Act a victim must bring his or her claim within one year of the claimed breach occurring or within such longer period as the court may consider equitable.

⁶⁰ IHRC, para 254, note 112.

⁶¹ Akermark, 1997.

Bibliography

Akermark, A. (1997) *Justifications of Minority Protection in International Law*, Kluwer Law International

Advisory Committee on the Framework Convention for the Protection of National Minorities (2006) *Commentary on Education under the Framework Convention*, ACFC/25DOC(2006)002, Council of Europe

Council of Europe (2004) *Comments by Council of Europe Experts on certain aspects of a future Bill of Rights for Northern Ireland* 3 February 2004, DG II (2004) 4 Strasbourg

Craig, E. (2003) 'The Accommodation of diversity in education – a human rights agenda?' 15 3 *Child and Family Law Quarterly*

Daly, E. (2010) 'The Constitution and the Protestant Schools Cuts Controversy'. 1(1) *Irish Journal of Legal Studies*,

Department of Education and Science (2012) *Forum on Patronage and Pluralism in the Primary Sector Report of the Forum's Advisory Group*, Dublin

DENI/Department of Education for Northern Ireland (July 1996) *Framework for Transformation: A Consultation*, Bangor

DENI (1997) *A Framework for Transformation*, Bangor

DENI (Nov 1998) *Towards a Culture of Tolerance: Integrating Education, Working Party Progress Report*, Bangor

DENI (1999) *Research Briefing 3/99: Literature review of integrated education in Northern Ireland*.

DENI (September 1999) *Towards a Culture of Tolerance: Education for Diversity: Report of the Working Group on the Strategic Promotion of Education for Mutual Understanding*, Bangor

DENI (Nov 1999) *Transformation: An Information Pack for schools*, Bangor

DENI (2nd edn 2004) *Transformation: An Information Pack for schools*, Bangor

DENI (2006) *Schools for the Future: Funding, Strategy, Sharing*. Report of the Independent Strategic Review of Education (Bain Report)

DENI (2006) *Review of Public Administration: Consolidated Policy Papers*, www.rpani.gov.uk. accessed 10 Feb 2013

DENI (2007) TACOT.ie Final Report, www.deni.gov.uk

Dickson, B. (2007) 'The Impact of the Human Rights Act in Northern Ireland' ch 11, John Morison et al. (eds) *Judges, Transition and Human Rights*, Oxford University Press, 201

Dunn, S. and Gallagher, T. (2002) *Research Report: The Teacher Exception, Provision and Equality in Employment in Northern Ireland*, ECNI, Belfast

Equality Commission for Northern Ireland, ECNI (2009) *Investigation of the Teachers Exception under the Fair Employment and Treatment (NI) Order 1998*, Belfast

ECNI (March 2002) *Proposed Bill of Rights for Northern Ireland: Response*, Belfast

Evans, C. (2001) *Freedom of Religion Under The European Convention on Human Rights* Oxford University Press

Ewart, S. and Schubotz, D. (2010) *Voices behind the Statistics: Young People's Views of Sectarianism in Northern Ireland*, National Children's Bureau, London.

Gallagher, T. (2005) 'Balancing difference and the common good: Lessons from a post conflict society' (2005) 35(4) *Compare: A Journal of Comparative and International Education*, 426

Hamber B. and Kelly, G. (2008) 'The Challenge of Reconciliation: Translating Theory into Practice' in *A Sustainable Peace*, Community Relations Council

Hansard, Northern Ireland Assembly, Private Members' Business 6(1) (Nov. 23 2010)

Hayes, B. et al (2007) *Integrated Education, Intergroup Relations and Political Identities in Northern Ireland*, 54 *Social Problems*, 454

Irish Human Rights Commission (IHRC) (2nd edn. March 2011). Religion and Education: A Human Rights Perspective, Dublin

McCrea, R. (2010) *Religion And The Public Order of The European Union*, Oxford University Press

McGlynn, C. (2011) 'The contribution of integrated schools to peace building in Northern Ireland' ch 4, M Power (ed) *Building Peace in Northern Ireland*, Liverpool University Press

Mawhinney, A. (2006) The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools', 2 *Education Law Journal*, 738.

Mawhinney, A. (2007) 'Freedom of religion in the Irish primary school system: a failure to protect human rights?' 27(3) *Legal Studies* 379

Mawhinney, A. et al (2010) 'Opting out of Religious Education: The Views of Young People from Minority Belief Backgrounds' Queens University, Belfast

Moffat, C. (ed) (1993) *Education Together for a change: Integrated education and community relations in Northern Ireland*, Fortnight Educational Trust, Belfast

Northern Ireland Human Rights Commission (NIHRC) (March, 2001a) *Reports of the Independent Working Groups to the Northern Human Rights Commission*, Belfast

NIHRC (September, 2001b) *Making a Bill of Rights: A Consultation*, Belfast, <http://www.borini.info/>

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

NIHRC (2008) *A Bill of Rights for Northern Ireland: Advice to the Secretary of State*, Belfast

O'Leary, B. (1998) 'The Nature of the Agreement' 22(4) *Fordham International Law Journal*.

O'Sullivan, P., O'Flynn, I. and Russell, D. (2008) *Education and a shared future: Options for sharing and collaboration in Northern Ireland schools*, Community Relations Council, Belfast

Spencer, A. E. C. W. (1987) 'Arguments for an Integrated School System' ch. 7 R. D. Osborne et al., (eds) *Education and Policy in Northern Ireland*, Policy Research Institute, 99.

Todd, J. et al (2010) 'From "A Shared Future" to "Cohesion, Sharing and Integration" An Analysis of Northern Ireland's Policy Framework Documents' Community Relations Council, Belfast

UN General Assembly, Human Rights Council (2008) Recommendations on Minorities and the Right to Education A/HRC/FMI/2008/2, Geneva

Whyte, G. (Nov 2010) Religion and Education – the Irish Constitution, <www.ionainstitute.com/Religion>