



NORTHERN
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HUMAN
RIGHTS
COMMISSION

Submission of the Northern Ireland Human Rights Commission to the Committee for Education Inquiry into Shared and Integrated Education

Summary

The NIHRC recommends that the Committee give due consideration to the purpose of education in the context of its inquiry and that it examines the relevant human rights standards directly related to shared and integrated education as set out in paragraphs 2.1 – 2.11. (Par. 2.12)

The NIHRC further suggests that the Committee considers the application of domestic equality and good relations duties within schools and in particular recommends that they be designated as public authorities for the purpose of Section 75 of the Northern Ireland Act. (Par. 2.13)

The decision of the High Court in the application by Drumragh Integrated College is that the definition of integrated education requires a particular constitution and governance structure within schools and that the pupils of that school are both catholic and protestant. The NIHRC therefore advises that shared education programmes between schools that are not integrated would be unlikely to fall within the definition of integrated education for the purposes of Art 64 of the Education Reform (Northern Ireland) Order 1989. (Par. 3.5)

The NIHRC recommends that the Committee seeks the opinion of the DE on their understanding of the definition and scope of integrated education in accordance with the Drumragh judgment. It further suggests that the Committee examines whether

integrated schools in Northern Ireland, in the opinion of the DE, fall within the ambit of a philosophical conviction under Prot 1 Art 2 of the ECHR. In undertaking this examination, the NIHRC recommends that there should be a strong presumption of non-retrogression in the enjoyment of the right to parental choice. (Par. 3.9)

The NIHRC recommends that the Committee examines the role of the ETI and satisfies itself that the function of the inspecting body is robust in monitoring the protection and promotion of the human rights standards in education with particular attention to the duty to promote inclusion, tolerance and mutual understanding. (Par. 4.14)

The NIHRC recommends that the Committee seek further information from the DE on the measures it has introduced to implement Recommendation 10 of the Ministerial Advisory Group. It further recommends that the Committee considers the outcome of the survey to be undertaken by the Chief Inspector. (Par. 4.16)



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1. Introduction

1.1 The Northern Ireland Human Rights Commission (NIHRC) pursuant to Section 69 (1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of Human Rights.¹ In accordance with this function the following statutory advice is submitted to Committee for the Office of the First Minister and deputy First Minister (OFMdfM) on its inquiry into integrated and shared education.

1.2 The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:

- the CoE European Convention on Human Rights, 1950 (ECHR)²;
- the CoE Framework Convention for the Protection of National Minorities (FCNM)³;
- the International Covenant on Civil and Political Rights (ICCPR)⁴;
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁵;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶;
- the UN Convention on the Rights of the Child (CRC)⁷;

¹ Northern Ireland Act 1998, Section 69(1).

² Ratified by the UK in 1951.

³ Ratified by the UK in 1998.

⁴ Ratified by the UK in 1976.

⁵ Ratified by the UK in 1969.

⁶ Ratified by the UK in 1976.

- the UN Convention on the Rights of Persons with Disabilities (CRPD)⁸
- the UN Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions.⁹

1.3 The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification. In addition, the Northern Ireland Act 1998, section 26 (1) provides that 'if the Secretary of State considers that any action proposed to be taken by a Minister or Northern Ireland department would be incompatible with any international obligations... [s]he may by order direct that the proposed action shall not be taken.'

1.4 The NIHRC further recalls that the Northern Ireland Act 1998, section 24(1) states that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.

1.5 In addition to these treaty standards there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context are:

- UN Human Rights Council Resolution 6/37 on the elimination of intolerance and of discrimination based on religion or belief;
- UN Declaration on a Culture of Peace;
- Faro Declaration on the Council of Europe's Strategy for Developing Intercultural Dialogue;
- Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity;
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- UN Durban Declaration and Programme of Action;
- CoE European Commission against Racism and Intolerance (ECRI) General Policy Recommendation 10 on Combatting racism and racial discrimination in and through school

1.6 With reference to the terms of reference of the inquiry, the NIHRC's submission focuses on the following aims:

- Review the nature and definition of Shared Education and Integrated Education as it applies across all educational phases

⁷ Ratified by the UK in 1991

⁸ Ratified by the UK in 2009

⁹ Ratified by the UK in 2007

including consideration of the need for a formal statutory definition and an obligation in statute to facilitate and encourage Shared Education;

- Consider what priorities and actions need to be taken to improve sharing and integration – including the effectiveness of the relevant parts of the CRED policy, the need to engage more effectively with parents/carers, and the role of Special Schools.

2. Purpose of Education

2.1 Human rights law and standards place a duty on the NI Executive to promote inclusion, tolerance and respect for diversity in and through education. As one of the purposes of education, there is considerable direction in a number of human rights instruments as to how this can be achieved.

2.2 The ICESCR Article 13(1) states that education should enable all persons to 'participate effectively in a free society, [and] promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups'.¹⁰

2.3 The UNCRC Article 29 requires that the education of the child should be directed to the development of respect for the child's parents, cultural identity, language, the country in which the child is living and from where he/she originates, as well as for 'civilisations different from his or her own'.¹¹

2.4 The UN Committee on the Rights of the Child has highlighted the links between Article 29(1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. It notes that racism 'thrives where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of difference, the exploitation of prejudices, or the teaching or dissemination of distorted values'.¹²

2.5 Further it recognises that approaches to promoting tolerance and friendship among all peoples, might appear to sit in tension with policies designed to develop respect for the child's own cultural identity, language and values.¹³ However the Committee 'recognises the need for a 'balanced approach to education...which succeeds in reconciling diverse values through dialogue and respect for difference'. Moreover it advises that children are 'capable of playing a unique role in bridging many of the

¹⁰ *International Covenant on Economic, Social and Cultural Rights 1966*, Article 13

¹¹ *United Nations Convention on the Rights of the Child 1989*, Article 28

¹² United Nations, Committee on the Rights of the Child (2001) *General Comment No.1: Aims of Education* (par 11)

¹³ *United Nations Convention on the Rights of the Child 1989* Article 29 (1c)

differences that have historically separated groups of people from one another'.¹⁴

2.6 The ICERD, Article 7, requires the adoption of 'immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups.'¹⁵ The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Article 10, has similarly recommended that governments educate the population at large by requiring that they 'encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes.'¹⁶

2.7 The FCNM Article 6 also requires States Parties take 'effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory.'¹⁷ The NIHRC notes that Section 75(2) of the Northern Ireland Act 1998 gives partial domestic force to the duty contained in the FCNM, Article 6. The NIHRC also notes that sectarianism falls within the ambit of the definition of racism in international human rights law.¹⁸

2.8 In accordance with the CEDAW Article 5 the Northern Ireland Executive has a positive obligation to take appropriate measures to 'modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'

2.9 The CRPD Article 8 contains a similar duty to 'raise awareness...and to foster respect for the rights and dignity of persons with disabilities' which includes an obligation to 'combat stereotypes'. One of the measures required is to foster 'at all levels of the education system, including in all

¹⁴ United Nations, Committee on the Rights of the Child (2001) *General Comment No.1: Aims of Education* (par 4)

¹⁵ *International Covenant on the Elimination of All forms of Racial Discrimination 1965* Art. 7

¹⁶ *United Nations Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005* Art. 10

¹⁷ *Council of Europe Framework Convention for the Protection of National Minorities 1995* Art. 6

¹⁸ *ECRI General Policy Recommendation 7: on national legislation to combat racism and racial discrimination, (2002)*, para 1(a). See also, 'Racism, Discrimination and Xenophobia', a publication prepared by: International Labour Office (ILO), International Organization for Migration (IOM), OHCHR, in consultation with Office of the United Nations High Commissioner for Refugees (UNHCR), (2001), p 2.

children from an early age, an attitude of respect for the rights of persons with disabilities’.

2.10 The Yogyakarta Principles set out the application of the right to education in relation to sexual orientation and gender identity in Principle 16. It requires that education ‘responds to the needs of students of all sexual orientations and gender identities’ and ‘[e]nsure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities’. It also sets out the duty to ‘[e]nsure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment’.

2.11 The NIHRC notes that whilst schools are not designated as public authorities for the purpose of the good relations duty found in Section 75 of the Northern Ireland Act, a similar duty does apply to schools in England and Wales. Under the Equality Act 2010 the public authority duty created in Section 149(1) is applicable to ‘the governing bodies of schools’ as set out in Schedule 19.

2.12 The NIHRC recommends that the Committee give due consideration to the purpose of education in the context of its inquiry and that it examines the relevant human rights standards directly related to shared and integrated education as set out in paragraphs 2.1 – 2.11.

2.13 The NIHRC further suggests that the Committee considers the application of domestic equality and good relations duties within schools and in particular recommends that they be designated as public authorities for the purpose of Section 75 of the Northern Ireland Act.

3. The Right to Parental Choice in Education

3.1 The ECHR, Article 2 of the first protocol outlines the State duty to ‘respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions’¹⁹. The Commission notes the UK’s reservation to this article of the ECHR stating that it will adhere to the principle of educating pupils in accordance with parents’ wishes ‘only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure’²⁰.

¹⁹ *European Convention on Human Rights, 1950* Protocol 1, Article 2

²⁰ Human Rights Act, 1998 Schedule 3, Part II

3.2 The Department of Education (DE) facilitates a variety of choices in education in Northern Ireland by providing funding for different types of school. The NIHRC notes that there is a statutory duty to 'encourage and facilitate the development of' both integrated and Irish medium education.²¹ In the context of the current discussion, the NIHRC notes that integrated education is defined as 'education together at school of Protestant and Roman Catholic pupils'²² and has traditionally meant education in a particular type of school that adheres to the criteria set out in the Core Principles of Integrated Education.²³

3.3 The NIHRC notes that the recent judgment in the judicial review application by Drumragh Integrated College examined the definition of integrated education. In addressing whether or not the 'Article 64 duty is capable of being owed to any school in which Protestant and Roman Catholic children are educated together' the judgment considered the potential that the definition might extend to schools providing shared education programmes. The conclusion of Treacy J was that 'Integrated Education is a standalone concept' and '[t]he provision plainly envisages education together at the same school.'²⁴

3.4 The judgment goes on to emphasise that a constitution and governance structure that reflects integration must be present in order for a school to be defined as integrated:

As against this, an integrated school strives to achieve an equal balance in relation to worship, celebration and exposure to both faiths. This is reflected in its constitution and the board must strive in its ethos to achieve this. For these reasons it must be the case that the integrated education referred to in the article is education that is integrated throughout and not education that is delivered by a partisan board.²⁵

3.5 The decision of the High Court in the application by Drumragh Integrated College is that the definition of integrated education requires a particular constitution and governance structure within schools and that the pupils of that school are both catholic and protestant. The NIHRC therefore advises that shared education programmes between schools that are not integrated would be unlikely to fall within the definition of integrated education for the purposes of Art 64 of the Education Reform (Northern Ireland) Order 1989.

²¹ Education Reform (Northern Ireland) Order, 1989 Section 64 (1)

²² Ibid.

²³ Northern Ireland Council for Integrated Education *Statement of Principles* See <http://www.nicie.org/wp-content/uploads/2012/08/Statement-of-Principles1.pdf>

²⁴ Re: Drumragh Integrated College (citation no. [2014] NIQB) (2014) par. 50

²⁵ Ibid. par. 53

3.6 The NIHRC view is that the question of whether or not integrated education constitutes a philosophical conviction for the purposes of Prot 1 Art 2 of the ECHR remains to be tested in the domestic courts. Whilst it was argued in Drumragh Integrated College's 2013 application for judicial review, it was not dealt with in the judgment as the application did not present a victim and therefore the argument could not be evaluated.

3.7 Early judgments of the European Court of Human Rights (ECtHR) did not uphold the argument that integrated education is a philosophical conviction that should be protected under the parental right to choice.²⁶ However the ECHR is a living instrument and subsequent cases at the ECtHR have demonstrated a broadening of the interpretation to protect beliefs that are 'worthy of respect in a democratic society'²⁷ and 'attain a certain level of cogency, seriousness, cohesion and importance'²⁸.

3.8 The NIHRC notes that the statutory duty to encourage and facilitate integrated education in Article 64(1) of the Education Reform (Northern Ireland) Order 1989 demonstrates the respect and importance attached to this choice of education in domestic law and policy. It further recognises the current level of State commitment to integrated schools through the support of an arms-length body, the Northern Ireland Council for Integrated Education, and the provision of funding to 62 schools providing places for 21,745 pupils.²⁹

3.9 The NIHRC recommends that the Committee seeks the opinion of the DE on their understanding of the definition and scope of integrated education in accordance with the Drumragh judgment. It further suggests that the Committee examines whether integrated schools in Northern Ireland, in the opinion of the DE, fall within the ambit of a philosophical conviction under Prot 1 Art 2 of the ECHR. In undertaking this examination, the NIHRC recommends that there should be a strong presumption of non-retrogression in the enjoyment of the right to parental choice.

3.10 The NIHRC notes that while human rights standards are clear about the duty to promote inclusion, tolerance and respect for diversity through education, there is no requirement to support any particular school structure in order to achieve this. Both integrated schools and shared education programmes may be considered methods supported by the state to fulfil its obligations in this regard.

²⁶ *X v UK* (app no. 7782/77) (1978) ECHR 14 DR 179.

²⁷ *Young, James and Webster v UK* (app no. 7601/76) (1981) par. 63

²⁸ *Campbell and Cosans v UK* (app no. 7511/76) (1982) par. 36

²⁹ NI Statistics and Research Agency, *Enrolments at schools and in funded pre-school education in Northern Ireland 2013/14* Available: http://www.deni.gov.uk/enrolments_in_schools_1314_-_february_release_-_final_2.pdf

3.11 The NIHRC notes the commitment of the DE to advance shared education through the Shared Education Campuses Programme. This programme, alongside the financial support provided through the Office of the First and Deputy First Minister, is intended to implement the commitment in the Together Building a United Community Strategy to '[e]nhance the quality and extent of shared education provision, thus ensuring that sharing in education becomes a central part of every child's educational experience'³⁰ and to '[c]reate ten Shared Educational Campuses'³¹ within the next 5 years. The strategy includes this commitment as an action that will 'lead to sustainable improvements in good relations'.³²

3.12 The NIHRC is also aware that the UN Committee on the Rights of the Child has expressed concern that 'education continues to be heavily segregated' and has recommended that the Northern Ireland Executive 'increase [the] budget and take appropriate measures and incentives to facilitate the establishment of additional integrated schools in Northern Ireland to meet the demand of a significant number of parents.'³³

4. Curriculum content

4.1 The obligation contained in the ICESCR Art 13 and in the UNCRC Art 29 protects the right of children to an education that is directed towards,

(a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes,

³⁰ <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf> p. 29

³¹ Ibid. p. 5

³² Ibid.

³³ UN Committee on the Rights of the Child, *Concluding Observations: The United Kingdom of Great Britain and Northern Ireland* (2002) para 45

and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respect for the natural environment.³⁴

4.2 The NIHRC notes that in order to fulfil this obligation of the UNCRC and the ICESCR the DE are required to consider the content and delivery of the curriculum paying due regard to mutual respect and understanding.

4.3 The UN Human Rights Council Resolution 6/37 emphasises that:

promoting tolerance and acceptance by the public of and its respect for diversity and combating all forms of intolerance and of discrimination based on religion and belief are substantial elements in creating an environment conducive to the full enjoyment by all of the right to freedom of thought, conscience and religion, as enshrined in article 18 of the International Covenant on Civil and Political Rights.³⁵

4.4 The CoE Faro Declaration encourages:

intercultural dialogue on the basis of universal human rights, as a means of promoting awareness, understanding, reconciliation, tolerance and respect for the other, of preventing conflicts and of ensuring an integrated and cohesive society.³⁶

4.5 The UN Declaration on a Culture of Peace recognises peace as being:

a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation.³⁷

4.6 Creating a culture of peace, therefore, requires:

Adherence to the principles of freedom, justice, democracy, tolerance, solidarity, cooperation, pluralism,

³⁴ *United Nations Convention on the Rights of the Child 1989 Article 29 (1)*, See also *International Covenant on Economic, Social and Cultural Rights 1966 Article 13 (1)*

³⁵ UN Human Rights Council, *Resolution 6/37: Elimination of all forms of intolerance and of discrimination based on religion or belief (2007)*, para 8

³⁶ *Faro Declaration on the council of Europe's Strategy for Developing Intercultural Dialogue (2005) DGIV/DC-FARO*

³⁷ *UN Declaration on a Culture of Peace (1999)*, preamble

cultural diversity, dialogue and understanding at all levels of society and among nations.³⁸

4.7 ECRI General Policy Recommendation 10 on Combatting racism and racial discrimination in and through school outlines measures that should be applied to ensure equal access to education, to combat racism and racial discrimination at school and to support teachers to work in a multi-cultural environment. This includes 'by ensuring that human rights education is an integral part of the school curriculum at all levels and across all disciplines, from nursery school onwards'.³⁹

4.8 The statutory curriculum in Northern Ireland makes a general provision for teaching and learning in relation to tolerance and respect for diversity through the inclusion of 'mutual understanding' and 'cultural understanding' as key elements of the curriculum to be addressed by all learning areas/subject strands. In addition, specific provision is made within PDMU (primary) and Local and Global Citizenship (post primary).

4.9 Extensive support materials and non-statutory guidelines have been produced to support the delivery of these aspects of the curriculum; however, schools have discretion in terms of the way in which this is delivered. The need for continued professional development of teachers in relation to community/good relations has been identified by the Community Relations Equality and Diversity (CRED) policy which makes a commitment to provide funding to facilitate a move away from dependency on external organisations in delivering this type of work in schools to 'firmly embedding' CRED activities in educational settings by 'providing a strong skills base for educators'.⁴⁰

4.10 The Ministerial Advisory Group on Advancing Shared Education made a recommendation on this in its 2013 report suggesting that,

An independent review should be undertaken of current practice in relation to the delivery of:

- Personal, Social and Emotional Development (Pre-School Education);
- Personal Development and Mutual Understanding (Foundation Stage and Key Stages 1 and 2);
- Local and Global Citizenship (Key Stages 3 and 4); and
- The Curriculum Framework for Youth Work (Youth Service).

³⁸ Ibid.

³⁹ CoE European Commission against Racism and Intolerance (ECRI) *General Policy Recommendation 10 on Combatting racism and racial discrimination in and through school* (2006), p. 6

⁴⁰ DE (2011) *Community Relations, Equality and Diversity in Education*. Bangor: HMSO. (par. 6.9)

The review should consider the effectiveness of the current Community Relations Equality and Diversity (CRED) policy and also include consideration of the opportunities that are provided for children and young people to discuss and explore issues associated with divisions, conflict and inequalities in Northern Ireland. The review should make recommendations regarding the content of these areas of learning and also how teachers can best be supported to deliver these.⁴¹

4.11 General Comment 29 of the UN Committee on the Rights of the Child outlines the requirement to monitor progress in the fulfilment of the aims of education:

The Committee calls upon States parties to devote more attention to education as a dynamic process and to devising means by which to measure changes over time in relation to article 29 (1). Every child has the right to receive an education of good quality which in turn requires a focus on the quality of the learning environment, of teaching and learning processes and materials, and of learning outputs. The Committee notes the importance of surveys that may provide an opportunity to assess the progress made, based upon consideration of the views of all actors involved in the process, including children currently in or out of school, teachers and youth leaders, parents, and educational administrators and supervisors. In this respect, the Committee emphasizes the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education.⁴²

4.12 The NIHRC recognises the role of the Education Training Inspectorate (ETI) in providing 'inspection services and information about the quality of education' with a view to promoting 'the highest possible standards of learning, teaching and achievement'.⁴³

4.13 The NIHRC recommends that the Committee examines the role of the ETI and satisfies itself that the function of the inspecting body is robust in monitoring the protection and promotion of the human rights standards in education with particular attention to the duty to promote inclusion, tolerance and mutual understanding.

4.14 The Minister of Education in his response to the recommendations of the Ministerial Advisory Group stated that he welcomed this

⁴¹ DE (2013) *Advancing Shared Education: Final Report of the Ministerial Advisory Group* Recommendation 10, p. 118

⁴² UN Committee on the Rights of the Child, *General Comment 29 on the aims of Education (2001)* par. 22

⁴³ *Promoting Improvement in the Interests of all Learners: A Charter for Inspection* See: <http://www.etini.gov.uk/a-charter-for-inspection-december-2013.pdf>

recommendation 'in principle' and as a 'first step' had 'asked the Chief Inspector to carry out a survey of current practice, with a particular focus on what additional support and development teachers need.'⁴⁴

4.15 The NIHRC recommends that the Committee seek further information from the DE on the measures it has introduced to implement Recommendation 10 of the Ministerial Advisory Group. It further recommends that the Committee considers the outcome of the survey to be undertaken by the Chief Inspector.

⁴⁴ *Advancing Shared Education: Ministerial Statement 22 October 2013* See: http://www.deni.gov.uk/advancing_shared_education_-_22_october_2013_docx.pdf