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经济、社会和文化权利

受教育权

特别报告员 Katarina Tomasevski 根据委员会
第 2002/23 号决议提出的报告

增 编

对联合王国(北爱尔兰)的访问**
(2002 年 11 月 24 日至 12 月 1 日)

* 本内容提要以所有正式语文分发，报告本身载于内容提要的附件中，仅以提交语文分发。

** 根据 A/RES/53/208 号决议 B 节，特别报告员在提交本报告时做出了下列解释：“本报告于 2003 年 1 月 15 日提交，原因是特别报告员的访问于 2002 年 12 月 1 日结束，2003 年 1 月 13 日收到有关政府对其报告草稿的评论。”

内 容 提 要

特别报告员于 2002 年 11 月 24 日至 12 月 1 日访问了联合王国(北爱尔兰)，目的是在制定指导冲突后社会的规范和机构框架之时实地考察教育的人权方面情况。北爱尔兰议会和行政部门在特别报告员访问之时停止运作毫无疑问影响到访问的性质和范围。因此，特别报告员的这次访问是在非同寻常的情况下进行的。举行了正式和非正式、公开和私下、有记录和没有记录的会见。有关会见及随后对其报告草稿的评论涉及各种行为人，以及有关教育人权方面问题的更加多种多样的意见。

三十年的冲突及北爱尔兰社会极为分裂的形象对教育产生了深刻的影响。人权的不可分割性体现在交织于学校和社会之间的各种问题上。教派骚扰和社会排斥使学校儿童及其教师深受其害。各种解决办法突出了政府在人权方面的义务：创造享有受教育权的必要条件，不受骚扰或暴力、社会排斥或有关偏见的阻碍。特别报告员集中注意的是教育的潜力，通过完全包容的学校教育理念来克服社会分裂。由于受教育权包括公民和政治、以及经济、社会和文化方面的内容，是享受所有各项人权的关键所在，使人权成为主流可以便利正在开展的改革小学以后教育的进程。少女怀孕或工作儿童的问题表明了人权办法在消除多重歧视方面的好处。

将人权纳入目前各种教育改革的进程必须制定一种蓝图，明确阐明共同的目标和有关价值。特别报告员着重指出了一些关键的参数：排斥相对于包容、隔离相对于融合，不平等相对于平等。比较经验表明，如果设计以此为目的，基于权利的教育可以有助于补救和预防冲突和暴力，包括处理有关问题的原因。

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Introduction

1. The Special Rapporteur visited the United Kingdom (Northern Ireland) from 24 November to 1 December 2002 with the aim of examining in situ the human rights dimensions of education. The suspension of the Northern Ireland Assembly and Executive at the time of her mission inevitably coloured it. The Special Rapporteur had extensive correspondence with the relevant authorities regarding a variety of issues for which she had been approached. These ranged from street demonstrations preventing children's access to school to the human rights dimensions of reforming post-primary education. Subsequent to her private visit to Belfast in May 2002, the correspondence continued, and on 8 October 2002, the First and Deputy First Minister invited the Special Rapporteur to visit Northern Ireland. On 14 October 2002, the Northern Ireland Assembly and Executive were suspended. The Special Rapporteur proceeded with preparations for her visit, adjusting them and the visit itself to changing circumstances.

2. Thus, the Special Rapporteur's visit to Northern Ireland took place in unusual circumstances. Her meetings were official and unofficial, public and private, on and off the record, and encompassed a variety of actors with an even greater variety of views on the human rights dimensions of education. The Special Rapporteur had meetings at the Northern Ireland Office, including with the Parliamentary Under-Secretary, Des Browne. A planned meeting with the Minister with responsibility for education, Jane Kennedy, unfortunately could not take place due to force majeure. She had private meetings with the, (currently suspended), First and Deputy First Minister and the Minister for Education. Her schedule included meetings with officials of the Department of Education, the Northern Ireland Human Rights Commission and the Equality Commission. The Special Rapporteur would like to thank the Northern Ireland Human Rights Commission for help with her visit, and to numerous academics working on and in education, especially to Laura Lundy for sharing her expertise on education law. She had a joint meeting with leaders of the Irish National Teachers' Organization and the Ulster Teachers' Union, met non-governmental organizations, representatives of political parties, movements for integrated and Irish-medium education, teachers, pupils and their parents, and visited schools.

3. The circumstances of her visit, aggravated by the constraints of time and space, imposed upon the Special Rapporteur the necessity to abandon issues she would have otherwise addressed, such as denominational schools, education for children deprived of their liberty, or suspensions and expulsions from school. The 20-page maximum length for this report has imposed additional, unwelcome but inevitable limitations. A partial exoneration is the report on her mission to England in October 1999, which discusses the legal framework, which is much the same, and analyses many similar problems.¹ Moreover, the existing literature is vast: "in proportion to size, Northern Ireland is the most heavily researched area on earth",² and the Special Rapporteur has provided as many references as the space allowed. The immense interest for discussing the integration of human rights in education has been reflected in numerous comments which the Special Rapporteur has received on her draft report, which she circulated as widely as she could. To remedy the time constraints, she returned to Belfast on 9 and 10 January 2003 on a private visit to provide an opportunity for further comments and additional input.

I. THE CONTEXT

4. The most frequent self-description that a visitor encounters points out that Northern Ireland is emerging from three decades of conflict (which some trace back to the twelfth century), and is a deeply divided society. Both facets have profoundly affected education.

5. Boundaries are marked by physical barriers between neighbourhoods called “peace lines”. Their explicit purpose - to prevent conflict - has implicitly defined the absence of contact between neighbours as a prerequisite for peace. The political cultures in Northern Ireland are intensely visual and boundaries are reinforced through the painting of kerb-stones, the hanging of flags, and the painting of murals. Far-away conflicts are used to reinforce division, and Belfast may have seen more Palestinian and Israeli flags than any other place in the world. Many murals glorify political violence. Huge, dark, intimidating graffiti depicts hooded, heavily armed men and their political messages.³ Studies into the pattern of political violence have identified the dominantly male face of both perpetrators and victims, with death rates starting at 12 and peaking at 19.⁴ **The Special Rapporteur recommends a gender analysis of the contents of in-school and out-of-school education, especially concerning the role of political violence and political governance in the contemporary history of Northern Ireland.**

6. Boundaries were - and are - expressed through the choice of language. Binary terms such as Ulster/Six Counties, the Republic/Eire, Mainland/Britain, Derry/Londonderry are widespread. The 1998 Agreement is called alternatively the Good Friday and the Belfast Agreement. Children learn the words before they can understand their implications.

7. The frequency with which visitors to Northern Ireland are told that society is deeply divided prompts asking how this is done. For outsiders, this is impossible because people look alike and speak alike.⁵ Explanations follow, listing the school one attended among the key identifiers. Parental choice to help their children “be individuals, not be categorized”⁶ is circumscribed by the insufficient capacity of integrated schools, whose intake is merely 5 per cent of the schoolchildren. It is an immensely positive sign that the demand for integrated schools exceeds their supply, but an equally worrisome sign that government support lags behind the popular demand. That demand reflects a widely shared priority for diminishing the coinciding religious, residential and political boundaries. **The objective of buttressing peace-building through all-inclusive education, in the best interests of children, could, in the Special Rapporteur’s view, represent an attractive vision of the future.**

A. Transition to peace-building

8. Transition from conflict to peace-building was formally launched by the 1998 Agreement(s).⁷ The implementing 1998 Northern Ireland Act⁸ followed, whereupon the Northern Ireland Assembly and Executive started in December 1999. Devolution has been halted several times, including during the Special Rapporteur’s visit. Each suspension, including this most recent one, has been accompanied by reiterating the 1998 Agreement’s pledges. The Agreement has, however, outlined different blueprints for the future.

9. Power-sharing on the basis of the d’Hondt electoral model divided executive functions amongst the political parties with the largest number of seats. Education was particularly

affected when Martin McGuinness, then Sinn Fein's chief negotiator, became the Minister for Education. That appointment "generated political shock waves",⁹ and "in addition to a flood of letters to the local papers objecting in strong terms to the placing of children's development in the hands of a person with connections to paramilitaries, in several schools pupils walked out of classes in protest".¹⁰ Furthermore, key decisions should be taken on a cross-community basis. Thus, pledges such as promoting integrated education, ensuring freedom from sectarian harassment, or remedying the political underrepresentation of women have not attained priority.

10. Sources of law are many. Vertically, they are global, regional and domestic. The many global human rights treaties trigger uncertainty due to the views of the Government of the United Kingdom regarding the Convention on the Rights of the Child or the International Covenant on Economic, Social and Cultural Rights, deemed by the United Kingdom to constitute "principles and programmatic objectives rather than legal obligations".¹¹ European Community law is directly applicable as is the European Convention on Human Rights. Domestic sources of law include those applied throughout the United Kingdom and those specific to Northern Ireland. The process of implementing the 1998 Agreement included devolution of some powers to the currently suspended Northern Ireland Assembly and Executive, retention of others for Westminster.

11. In addition, the institutional infrastructure that has evolved in the area of human rights also includes different governmental and public bodies. The Human Rights Commission and the Equality Commission, both established in 1999,¹² are to be followed by a Children's Commissioner. Education pertains to the remit of all three institutions. In an ideal scenario, they might be able to delineate their respective areas and jointly tackle overarching issues. The experience in countries with multiple institutions is fragmentation and duplication, less done at a higher cost. The parallel drafts of a Bill of Rights and a Single Equality Bill raise the obvious question: why not an Equal Rights Bill? At the global and regional level, the United Nations and the Council of Europe have followed a fragmented human rights agenda, separating civil and political from economic, social and cultural rights, and adding later the rights of the child. By contrast, the International Labour Organization and the European Union have opted for an integrated approach. **The support for the Children's Commissioner has demonstrated the unifying potential of the rights of the child and a similar potential might be generated for an integrated approach to human rights.**

B. Suspended devolution

12. The suspension of devolution has, however, entailed reimposing direct rule and was accompanied by numerous calls for transition from violence. Violence has been diminished, but neither halted nor prevented. The most recent suspension of the Assembly and Executive was preceded by the police raiding Sinn Fein offices in the Stormont parliament building, arresting an official for possession of documents likely to be of use to terrorists.

13. The basic arrangements agreed in 1998 focused on short-term governance, cloaking under a veil of official silence wounds that are still raw and accountability for inflicting them. For many atrocities responsibility was admitted by their perpetrators. Their account has been accepted by some, rejected by others, but accountability has not followed. Human rights are defined as forward-looking, addressing the future, not the past. A firm dividing line between the

past and future has yet to be defined. Explaining to schoolchildren the principles of human rights against this background must be difficult, if not impossible: When does the past characterized by impunity end, for the future founded upon human rights to begin?

14. The 1998 Agreement was hailed as the global precedent in mentioning children in peacemaking.¹³ Despite promises to future generations in the 1998 Agreement and the fact that children below 16 represent 23.6 per cent of the population,¹⁴ there is, as yet, no long-term vision of Northern Ireland in 10 or 20 years to guide the design of education. The plea of the Council for the Curriculum, Examinations and Assessment (CCEA) for “an agreed vision of what is taught in our schools”¹⁵ resonates widely.

II. INTERFACE BETWEEN SCHOOL AND SOCIETY

15. In Northern Ireland, “interface” is commonly defined as the boundary between neighbourhoods, denoted as Catholic and Protestant. Residential segregation is particularly and painfully visible in working class urban areas. Deprivation that fuels hostility and violence¹⁶ heightens the importance of school. Research has shown that “the majority of schools viewed their role as providing a preserve of normality for pupils as well as support for their pupils educationally in the context of the political situation”.¹⁷

16. The transition from “long-standing low-intensity conflict”¹⁸ necessitates an appraisal of the existing net of protection for schools and schoolchildren so as to fill the substantive gaps in it. The right to education extends far beyond mere provision of education services. The corresponding government obligations include creating conditions necessary for the enjoyment of the right to education, human rights *in* education and *through* education so as to overcome the limitations of what the school, alone, can do to shield children from sectarian harassment or societal prejudice.

A. Holy Cross Girls’ School

17. During the first 10 days of September 2001, front pages of major newspapers carried photographs of terrified and tearful schoolgirls being walked through an adult cordon to their school. One part of that adult cordon was hurling abuse at them, the other trying to shield them. International publicity halted on 11 September 2001, when the media switched to terrorism. Beforehand, the vast publicity had been part of both micro- and macro-politics. On the micro level, the targeting of the Holy Cross School epitomized the price of residential and educational segregation and the associated appropriation of public space. Publicizing child abuse should have raised ethical issues, but these were relegated to the margins. Questions about the rights of the victimized schoolgirls have remained unanswered. The principal and her staff have done their best for the girls and, at the time of the Special Rapporteur’s visit on 29 November 2002, they were happily rehearsing for their Christmas play. And yet, their victimization has left scars that the school alone cannot heal. The school’s principal, Anne Tanney, prioritizes the rights of the child in coping with the victimization of her pupils, which occurred again in January 2003.

Indeed, schools should not be left to themselves to protect children from the impact of sectarian harassment, with only some additional funding and security. **The Special Rapporteur recommends urgent development of effective safeguards to prevent victimization of schoolchildren and an accountability mechanism for immediate redress of any victimization that might occur.**

18. The facts are both simple and complex. Holy Cross School is on top of a small hill, the road leading to it was blocked by demonstrators to prevent parents from taking their daughters to school and back home. Two residentially and educationally segregated neighbourhoods, both experiencing deprivation, provide the background. Protesters blocked the passage to school trying to exclude “the other” from “their” neighbourhood. The parents insisted on taking their daughters to school by the road claimed as theirs by “the other”. The trigger had been an incident that nobody is quite sure about. The cause was frustration and hostility, vented through the means epitomized in an indigenously created “right to parade or protest”,¹⁹ contrasted against a “freedom from sectarian harassment” promised in the 1998 Agreement. The legal safeguards for schoolchildren are strong, reaching back to the prohibition of attacks on schools and schoolchildren in 1863 and to the inclusion of intentional attacks on educational institutions in the list of war crimes in the 1998 Statute of the International Criminal Court.²⁰ The merger between criminal, human rights and humanitarian law which this development has put in place, and the emphasis on individual criminal responsibility, provide foundations for ensuring that those who deliberately target schoolchildren are held accountable and do not benefit in any possible way from such actions. **The Special Rapporteur recommends an immediate clarification of the legal framework protecting schoolchildren and schools, especially from sectarian harassment.**

B. St. Mary’s School

19. The 2000 Report on Racial Prejudice has found racist prejudice twice as likely as sectarian.²¹ Travellers are a small community, a mere 0.1 per cent of the population.²² They are victimized by multi-layered discrimination, similar to England,²³ which is exacerbated by prejudice expressed as “the Travellers bring trouble” or “Travellers are trouble”.²⁴ Their nomadic lifestyle and the tradition of self-employment have not yet been integrated in modelling education. Their “educational underachievement” is documented by a vast array of statistics, with a rare mention that it results from their having been in fact, if not in law, excluded from education for a long time.

20. Previous policies were criticized for “building better ghettos, not implementing human rights”.²⁵ In Belfast, one of the most visible manifestations of segregation was St. Patrick’s (1968-1980) and then St. Paul’s School for Travelling Children (1980-2000). The Special Rapporteur visited the successor, St. Mary’s School, attended only by Traveller children at the time of her visit, although open to all children. The principal, Paul Coulter, and his staff have accomplished a great deal in creating an attractive school, increasing the pupil-teacher ratio, improving the children’s attendance and learning accomplishments, translating the principle of the best interests of children into practice. There is too little recognition he and his staff have obtained for their efforts and accomplishments. Indeed, the Special Rapporteur has heard suggestions that the school be closed as only Traveller children attend it. Enrolling

non-Traveller children is beyond the remit of the school since parental choice reigns. **Teachers and schools cannot overcome social exclusion on their own. The Special Rapporteur recommends urgent revision of a 10-year-old policy on Travellers' education.**

III. ONGOING POST-PRIMARY REFORM

21. Secondary education is proverbially the weakest link in the process that is today expected to extend to lifelong education, and Northern Ireland exemplifies this. The ongoing process of reforming post-primary education has generated immense debate and widely diverging proposals.²⁶

22. Since compulsory education ends at the age of 16, one might think logical a division at the post-compulsory rather than post-primary stage. Being compulsory, education triggers the coercive powers of the State and thereby heightened human rights safeguards, especially entitlements regarding the quality and contents of education. Northern Ireland has, however, preserved segregation at the age of 11, following what is known as the 11-plus transfer test, previously used throughout the United Kingdom.²⁷ The transfer test takes two hours and covers only English, mathematics, and science. The two-thirds of the children who do not perform well enough to qualify for a grammar school tend to perceive themselves as educational failures, relegated to inferior schools: "The smart people go to really good schools and the not so smart people go to the not-so-smart schools."²⁸ The ongoing debate has tended towards a narrow focus; some have argued against selection, others have initiated campaigns to preserve the grammar school. Two English models, grammar and comprehensive school, have become a frequent point of reference. For example, Sinn Fein is opposed to "the selective, elitist 'ethos' of the grammar school",²⁹ while the Ulster Unionist Party opposes changes that might "compromise Northern Ireland's enviable record of examination success".³⁰

A. Teenage pregnancy

23. The post-primary review has excluded gender,³¹ although the phenomenon of teenage pregnancy illustrated the importance that gender should have attained. Sex education is unregulated in Northern Ireland, and it would be difficult to imagine an obligation to provide schoolchildren with the information they need to make informed and responsible choices through the existing law-making process. The United Kingdom has the highest teenage birth rate in the European Union, called by the Prime Minister a "shameful record".³² It is five times as high as in Sweden or the Netherlands.³³ EU members with high and low teenage pregnancy also exhibit different upper secondary school enrolments, 73 per cent in the United Kingdom and above 85 per cent in the Netherlands and Sweden.³⁴

24. Empowering girls to exercise choice requires means, defined by the Northern Ireland Human Rights Commission as everyone's right to "education relating to sexual and reproductive matters at all levels".³⁵ Their motivation is even more important, especially expectations of good quality education and matching career prospects. These are thwarted by disadvantages, exemplified by the unemployment rate of 29.45 per cent among girls and women aged 16 to 64.³⁶

B. Working children

25. Post-primary review has also neglected the linkage between education and the labour market, evidenced in the gender profile of unemployment as well as age-based discrimination against working youth and children. Because grammar schools are vastly oversubscribed, the consequence is that parents may express their preference but, in practice, it is the schools that choose children rather than the reverse, reinforcing inter-generational transmission of privilege. Moreover, the introduction of tuition fees in universities has reinforced the effects of income inequalities on access to post-compulsory education. The goal of parity of esteem for academic and vocational education thus requires rethinking the entire model of education.

26. Knowledge about alternatives is necessary for questioning the status quo. A key obstacle was summed up thus: “When you have known nothing else you get used to it.”³⁷ This applies particularly to working children. There is little knowledge of the rights that working children have, despite their existence in international labour law for the past eight decades. These are particularly necessary since the Committee on Economic, Social and Cultural Rights has found domestic law to be discriminatory on the basis of age, bestowing a smaller proportion of the minimum wage upon young people and guaranteeing none to those below 18.³⁸ **More than knowledge is required to change the status quo. Since age has been included in the list of grounds for which equality impact assessments (addressed in paragraph 34 below) are required, the Special Rapporteur recommends that age-related discrimination affecting children and young people, both girls and boys, be accorded priority.**

27. The cranes and scaffolding in the centre of Belfast, fondly called “the peace and reconciliation industry” disappeared as international and external funding for the first years of peacemaking came to an end. This may have temporarily increased employment, but education constitutes the long-term solution. This is reinforced through the recent emphasis on education for employability,³⁹ and the obligation in the Amsterdam Treaty to promote “a skilled, trained and adaptable workforce”. The interlocked development of education and training rights within the European Union has buttressed the trend within the OECD towards prioritizing upper-secondary education.⁴⁰ **Preventing schools from “reproducing the existing patterns of privilege rather than delivering equal opportunities”⁴¹ seems to the Special Rapporteur a particularly important guidepost for ongoing education reforms.**

IV. DEFINING HUMAN RIGHTS PARAMETERS FOR EDUCATION

A. Exclusion *versus* inclusion

28. Social exclusion had entered the European and United Kingdom’s vocabulary recently.⁴² Northern Ireland has made a further step through the terminological shift from exclusion by inclusion. The first items on the agenda were “Travellers, teenage parenthood, and ethnic minority people”.⁴³ This has broadened the term “inclusive” education from its frequent use for children with disabilities, enabling the application of the same rationale. The Disability Rights Task Force has found that 61 per cent of people under 35 had no contact with any person with any disability, to emphasize that “inclusion is one of the most powerful levers in banishing stereotypes and negative attitudes”, and educating children together facilitates inclusive society.⁴⁴ The definition of discrimination extended from exclusion to segregation much earlier,

in the process of eliminating racial discrimination. The often-quoted finding of the United States Supreme Court that “separate educational facilities are inherently unequal”⁴⁵ was made in 1954. Recently, inclusive education has been prioritized to also enhance social cohesion, defined as the glue that bonds society together, and found crucial in remedying and preventing violent conflict.⁴⁶

29. In Northern Ireland, admission criteria, the composition of governing boards, family ties to the school, or nuances in the multitude of complex funding formulas profile the intake of particular schools. Although girls’ and boys’ schools are widespread, segregation by sex is seldom discussed. Male political culture, inevitable in a post-conflict situation where militarization still prevails, marginalizes gender. Direct discrimination on the basis of religion is prohibited but this prohibition coexists with religiously segregated education. The formal legal prohibition of discrimination does not address *the practice* of segregation. Religious affiliation is further used as a metaphor for political and cultural allegiance and compounded by the “coincidence of poverty and political violence”.⁴⁷ Instead of poverty, the official vocabulary uses the term “social need” although there is ample statistical evidence on the high percentage of children living in poverty. Average incomes in Northern Ireland are 22 per cent lower than the average for the United Kingdom as a whole. Save the Children has reported that 32 per cent of children live in households whose only income derives from benefits while for half of poor children one employed parent has not been sufficient to lift them from poverty.⁴⁸ The law requires children with disabilities to be educated together with all others, provided that their special needs can be met by the criterion of the efficient use of resources. Because children with disabilities require additional resources, that yardstick results in their neglect in mainstream schools or continued segregation unless human rights correctives are in place. **The planned draft law on special educational needs and disability, for which the consultation ends in January 2003, provides an opportunity for addressing the challenge of all-inclusive education.**

B. Segregation *versus* integration

30. A noticeable feature of education in Northern Ireland is its fragmented infrastructure. The Irish Congress of Trade Unions has highlighted “the existing four fully funded school systems”.⁴⁹ Different types of educational institutions entail separate administration and governance structures, which inevitably diverts funding from teaching and learning. The OECD has found that “inclusive systems are generally less costly to operate than segregated systems”.⁵⁰ **The Special Rapporteur recommends a study of the financial cost of the fragmented educational infrastructure with a view to exploring options for diminishing the funding allocated to the administration of four separate systems and devoting more funding to teaching and learning.**

31. The Department of Education is obliged by law to encourage and facilitate integrated education. This had been introduced by the 1989 Education (NI) Order and reinforced by the 1998 Agreement. That carefully worded political compromise has subsumed under reconciliation “initiatives to facilitate and encourage integrated education and mixed housing”, adding “a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education”. Thus, integrated and Irish-language education suffered the intertwined fate of mutually dependent political promises.

32. The attempt at integrated education in 1923 is cited as evidence that such a model would, 80 years later, still face fierce resistance. At the time, schools were “parochially organized, denominationally segregated and clerically managed”. Resistance to change had been led by institutionalized religions and continued after the Second World War:

The Protestants argued that they wanted a non-denominational State system; but they also wanted it to be Protestant with regard to staffing and religious instruction, and to have a curriculum that reflected the British connection in its ethos (a word not much in use then). [...] The Catholics had the virtue of unwavering consistency; they wanted a completely separate Catholic school system, permeated by the Catholic ethos, staffed completely with Catholics chosen by the Church, and under the Church’s managerial control. They also wanted the State to pay this in full.⁵¹

33. Although by law all public schools are open to all pupils, in practice 94 per cent of schoolchildren (some 350,000) attend either a school that is de facto Catholic or Protestant, 5 per cent (some 15,100) integrated schools with “a Christian rather than secular approach”,⁵² and 1 per cent private schools. The pledge of the 1998 Agreement to facilitate integrated education has not led to a statistically visible dent in segregation. Out of some 1,300 schools, only 47 are integrated. The parental demand for integrated schools exceeds their availability. Demand for secular education is unknown because this option does not exist, despite the priority for parental choice.

C. Inequality *versus* equality

34. Public authorities are required by section 75 of the 1998 Northern Ireland Act to promote equality of opportunity. As required, the *Equality Scheme for the Department of Education* has listed nine grounds: religious belief, political opinion, racial group, sex, marital status, age, disability, personal responsibility for dependants, and sexual orientation. Some of these are also legally prohibited grounds of discrimination, others are not. Statistics are available for some but not for others. Property is absent from the list, although it is included in the European Convention on Human Rights⁵³ and the 1998 Agreement has affirmed “the right to equal opportunity in all social and economic activity, regardless of class”.

35. Among the nine grounds that have been singled out, religion is prioritized. Statistical monitoring of religious affiliation is mandatory in education. A child has commented: “It would be better if the schools were religiously mixed - we should be taught together in schools and this might help to break down some of the barriers that exist in Northern Ireland - we’re brought up to hate each other.”⁵⁴ Moreover, all employers “must collect information on the religious composition of their workforce, on applicants for employment and appointees and make an annual monitoring return”.⁵⁵ Changes in the proportions of Catholics and Protestants are monitored with particular attention. The 2001 census revealed the biggest increase in the proportion of those with no religion, from 11 per cent in 1991 to 14 per cent in 2001, and 17 per cent in Belfast.⁵⁶

36. The Equality Commission has found, in the case of the 1,398 children for whom English is an additional language, that “the extra support which black and minority ethnic children require is not just language support”.⁵⁷ As in the rest of the United Kingdom, there is no

prohibition of discrimination on the basis of language. The commitment to Irish-medium education in the 1998 Agreement elevated the political visibility of Irish and, typically, Ulster Scots was added as a counterweight aimed at a political balance. Two parallel but contradictory developments have ensued. On the one hand, there has been a dent in unilingualism and “a by-product of the peace process has been more leaflets in Chinese and Urdu”.⁵⁸ On the other hand, support for Irish-medium education “received more opposition than other proposals”.⁵⁹

Ongoing debates about changing the post-primary curriculum seem slanted towards unilingualism, depriving the future generations of benefits inherent in educational and employment mobility within the European Union and the world at large; the Special Rapporteur recommends that this be revisited.

D. Equal treatment, opportunities, or outcomes?

37. The text of the 1998 Agreement alternates between referring to the all-inclusive “community” and “the two main communities”, highlighting “the recent history of communal conflict”. The “two communities” are denoted by the nationalist or unionist designation of identity for the purposes of democratic governance, through the importance attached to “the identity and ethos of both communities” in defining rights supplementary to those in the European Convention on Human Rights, and the elimination of different unemployment rates between the two communities regarding employment equality. There is no statutory or judicial definition of “communities,” however. In jurisprudence, this term has been left to be “construed as meaning a group of people in society”, leaving the nature and scope of that group to be determined by the context.⁶⁰

38. Much as elsewhere, a considerable investment would be necessary to equalize educational opportunities for all children. Such investment requires a clearly articulated definition of equality, the corresponding determination of means necessary for achieving it, and specification of accountability. The political agenda of negotiating power-sharing has influenced the human rights discourse, prioritizing equality *between* “the two communities” over equality *of* all individuals. The Equality Scheme for the Department of Education has defined its objective as enhancing “equality of opportunity between groups in terms of outcomes”. Equality of outcomes has been critiqued by the European Court of Justice,⁶¹ and **the Special Rapporteur recommends a review of the definition of equality by the criteria of international human rights law and European Community law.**

39. UNICEF’s Innocenti Report Card on Educational Disadvantage in Rich Nations has found that “a family’s social, cultural and economic status tends to act as a rifle-barrel setting an educational trajectory from which it is difficult for a child to escape”.⁶² Nevertheless, the frequent resort to the term “underachievement” in measuring learning outcomes implies that “underachievers” could and should have performed better. And yet, obstacles they face may not have been even acknowledged. Obstacles such as disability or poverty ought to be overcome *before* learners are assessed by a yardstick developed for those who do not face them. The Committee on the Rights of the Child has noted “the sharp differences in [education] outcomes for children according to their socio-economic background”.⁶³ Nevertheless, elimination of poverty as an obstacle to children’s enjoyment of their right to education is not part of the human rights agenda but is addressed through New Targeting Social Need (NTSN). Therein, equality is also defined in inter-group terms, as removing “socio-economic differentials between groups in

Northern Ireland”.⁶⁴ A policy aimed at redressing poverty should be, by definition, generously funded, but this is not the case. Poverty is widespread. The Northern Ireland Statistics and Research Agency (NISRA) calculated in 2001 a deprivation measure showing that children living in poverty constituted more than 70 per cent in 6 per cent of electoral districts, and more than 30 per cent in 60 per cent of electoral districts.⁶⁵ **The Special Rapporteur recommends a rights-based analysis of the pattern and dynamics of poverty to inform ongoing education reforms.**

V. A PEACE-BUILDING ROLE FOR EDUCATION

40. The European Court of Human Rights has defined the right to education as fundamental, “and it is onto this fundamental right that is grafted the right of parents to respect for their religious and philosophical convictions”.⁶⁶ In Northern Ireland, parental choice has been prioritized.⁶⁷ Research has shown the need for a change so as to support reconciliation. Children as young as 6 (after the first two years of compulsory education) recognize the political significance of symbols such as parades or flags associated with the Catholic and Protestant communities, 34 per cent identify with their community and 15 per cent make sectarian comments.⁶⁸ Such findings reinforce the thrust of integrated education, in particular the creation of “a common anti-bias language”, especially for children aged 3 to 5, when they learn how to meet adults’ expectations by behaving to attract approval.⁶⁹

41. The extent to which education is designed to reflect or obliterate societal fault-lines is a political choice made by adults and imposed upon children. The rights of the child represent an indispensable corrective for such adult choices. The contents and methods of teaching have been profoundly altered with the advent of the rights of the child. The introduction of sex education or the prohibition of corporal punishment generated precedent-setting international human rights jurisprudence under the European Convention on Human Rights, which neither did nor could include the rights of the child when it was adopted 40 years ago. These changes would not have been possible through electoral or parental choice, and they highlight the importance of government human rights obligations owed to children.

42. Government human rights obligations encompass guaranteeing the right to education, safeguarding human rights in education, and enhancing human rights through education.⁷⁰ “The right of the State to regulate education”⁷¹ gains heightened importance in the current emphasis on the values underpinning education in measuring its quality.⁷² Education policy is operationalization of values since public education creates a public. The principal aim for the forthcoming Commissioner for Children and Young People is “to safeguard and promote the rights and best interests of children and young persons” and this includes reviewing the adequacy of the existing laws and practices by that yardstick.⁷³ In a draft Bill of Rights for Northern Ireland, education rights form a separate section and are also included amongst the rights of children.⁷⁴ **This has heightened the urgency of clarifying the nature and scope of the right to education and the corresponding government obligations.**

43. The objectives of education are commonly sought in the changing needs of society and economy. Standardized tests leading to higher education and to higher incomes emphasize the economic utility of education. There are no corresponding assessments of the contribution that education makes - or fails to make - to the attainment of societal objectives. In the past two decades, Eurobarometer surveys have demonstrated increased intolerance of minorities and

migrants and a growing proportion of Europeans assessing themselves as “quite racist”.⁷⁵ In Northern Ireland, public opinion surveys show a trend opposite to the spirit of the 1998 Agreement. An initial increase in self-declared commitment to inter-religious mixing in 1989-1996 has been reversed in recent surveys.⁷⁶ **This highlights the urgency of defining and assessing the role of education in achieving key societal goals, especially peace-building.**

44. Leading bookshops in Belfast devote much space to the history of Northern Ireland as if to confirm a claim by Leon Uris that “there is no future, only the past happening over and over”.⁷⁷ Voluminous literature is constantly generated about every event and personality. Usually, two different versions are side by side on the bookshelf, with divergent facts and explanations. The call of the Healing through Remembering Project for “parameters within which we in Northern Ireland might establish a mechanism to identify our own truth”⁷⁸ has, as yet, remained unheeded. It would have, ideally, recreated authoritative historical records that challenge every society to revisit its self-image. There is a common curriculum for history but few schoolchildren learn contradictory versions of history, reasons for divergent facts and conflicting interpretations. Three schoolgirls asked by the Special Rapporteur whether they learned about peacemaking or the current model of governance in Northern Ireland simultaneously shook their heads, adding with a touch of bitterness that the young were steering away from politics. The reason may be “the aggression of politics, adversarial debating and point-scoring”.⁷⁹ Role models for children and young people form part of both explicit and hidden curricula. For many, too much of the curriculum may be hidden and the past continues, unfinished, cloaked behind an official silence and unofficial, divergent and contested accounts. As long as the past continues unfinished, it cannot be rejected so as to clear the way for a different future.

45. The explicit part of the curriculum addressing peace-building, education for mutual understanding (EMU), is currently being revisited. The uncertain definition of community relations and the low strategic importance of EMU undermined its effects.⁸⁰ Moreover, pupils have “commented that the attitudes being promoted by the school clash with those at home”⁸¹ and ask pertinent questions: why are they taught that mutual understanding is easy while adults show that it is exactly the opposite? EMU was designed for mutual understanding but contact with those to be understood were optional and practised by less than half of schools.⁸² It is common to hear a Protestant saying that he knowingly talked to a Catholic for the first time at the university, or a Catholic to recall that she never met a Protestant until her early adulthood. **Education is about “showing rather than telling”,⁸³ children learn by example rather than exhortation. The Special Rapporteur suggests that the option of mainstreaming education for understanding and tolerance be explored rather than continuing an add-on curricular component.**

46. Experiences in other countries have shown that the past can become history once there is a shared, agreed version of the history that was, in fact, shared. Proposals for a truth commission have been made and have remained unheeded. And yet, it would be easy to collate different versions of that shared history, it is abundantly written up and documented. This would necessitate affirming that history is subjective, that different perceptions of the same event or personality are equally true in the eyes of their beholders. “True” does not necessarily mean justified or even tolerable. Determining the boundaries of the intolerable is the first step towards defining, and then teaching and learning tolerance.

Notes

¹ Commission on Human Rights, Report submitted by Katarina Tomaševski, Special Rapporteur on the right to education, Mission to the United Kingdom of Great Britain and Northern Ireland (England), 18 - 22 October 1999, document E/CN.4/2000/6/Add.2.

² Whyte, J., *Interpreting Northern Ireland*, Oxford University Press, Clarendon Paperbacks, 1990, p. viii.

³ Rolston, B., *Politics and Painting: Murals and Conflict in Northern Ireland*, Associated University Press, 1996.

⁴ Fay, M.T. et al., *Report on the Northern Ireland Survey: The Experience and Impact of the Troubles*, INCORE/UNU, Derry Londonderry, 1999; Smyth, M. and Fay, M.T., *Personal Accounts from Northern Ireland's Troubles: Public Conflict, Private Loss*, Pluto, London, 2000.

⁵ Apparently, there is a difference: "A group of masked men demanded that students produce identification or repeat the alphabet. Many Catholics pronounce the letter 'h' differently from Protestants, with an aspiration influenced by the Irish language. Students were evacuated before it became clear what was planned for people with the wrong accent." ("Northern Ireland: How do you pronounce hate?", *The Economist*, 15 June 2002)

⁶ McGlynn, C., "A case study of the impact of post-primary integrated education on past pupils in Northern Ireland", Paper presented to the 2000 Annual Meeting of the American Educational Research Association, New Orleans, 24 April 2000, p. 10.

⁷ The *Agreement Reached in the Multi-Party Negotiations* (Cm. 3883, 1998), referred to hereinafter as "the 1998 Agreement", consists of the British-Irish Agreement and the Multi-Party Agreement.

⁸ An Act to make provision for the government of Northern Ireland for the purpose of implementing the agreement reached at multi-party talks on Northern Ireland set out in Command Paper 3883.

⁹ Mallie, E. and McKittrick, D., *Endgame in Ireland*, Coronet Books, London, 2001, p. 306.

¹⁰ Lundy, L., *Education Law, Policy and Practice in Northern Ireland*, SLS Legal Publications (NI), Belfast, 2000, p. 12.

¹¹ Report on the mission to the United Kingdom (England), op. cit. in note 1, para. 28.

¹² The Equality Commission merged four separate bodies: the Fair Employment Commission, the Equal Opportunities Commission, the Commission for Racial Equality, and the Northern Ireland Disability Council.

¹³ Children and armed conflict: Report of the Secretary-General, document A/55/163-S/2000/712, para. 49.

¹⁴ Northern Ireland Statistics and Research Agency, *Northern Ireland Census 2001: Key Statistics*, NISRA, December 2002.

¹⁵ "Put education first - not the institutions", says the curriculum body, Council for the Curriculum, Examinations and Assessment, News release NR/18/02, Belfast, 31 May 2002.

¹⁶ Two studies are often cited for evidence on the link between deprivation and political violence, the 1994 *Ethnic Space and the Challenge of Land Use Planning: A Study of Belfast's Peacelines*, by the Centre for Policy Research, and the 1998 *Mapping Troubles-Related Deaths in Northern Ireland 1969-1998*, by M.T. Fay, et al., INCORE.

¹⁷ Muldoon, O.T., Trew, K. and Kilpatrick, R., "The legacy of the Troubles on young people's psychological and social development and their school life", *Youth & Society*, vol. 32, No. 1, September 2000, p. 17.

¹⁸ Protection of children affected by armed conflict: Note by the Secretary-General, document A/55/442 (2000), para. 69.

¹⁹ Hamilton, M. et al., "Parades, protests and policing: A human rights framework", Northern Ireland Human Rights Commission, Belfast, March 2001.

²⁰ Articles b(b) (ix) and 8 (e) (iv), document A/CONF.183/9 (1998).

²¹ Connolly, P. and Keenan, M., *Racial Attitudes and Prejudice in Northern Ireland*, Northern Ireland Statistics and Research Agency, Belfast, 2000.

²² According to the 2001 census, the population of Northern Ireland is 1,685,267, with 99.15 per cent self-classified as white, 0.25 per cent as Chinese, 0.2 per cent mixed race, followed by 0.1 per cent Irish Travellers, op. cit., in note 15.

²³ Report on the mission to the United Kingdom (England), op. cit. in note 1, paras. 60-62.

²⁴ Equality Commission, *Good Practice Guide to Promote Racial Equality in Planning for Travellers. Consultation Document*, Belfast, March 2002, p. 37.

²⁵ Molloy, S., *Accommodating Nomadism*, Traveller Movement N.I., Belfast, 1998, p. 37.

²⁶ The signposts in this process were a political commitment to examine the selectiveness of post-primary education in 1997, with the report on its scope and impact following in 2000 (available at www.deni.gov.uk/pprb/research_docs/index.htm). The subsequently appointed review body issued its report (*Education for the 21st century: Report by the Post-Primary Review Body*, October 2001, known as "the Burns Report") one year later, triggering a broad-ranging public debate (information and documents are available at www.deni.gov.uk/pprb/index.htm).

²⁷ Eleven-year-olds in Northern Ireland have the same test that the rest of pupils in the United Kingdom have to go through (Key Stage 2), and, in addition, the transfer test, E/CN.4/2000/6/Add.2, para. 14.

²⁸ Leonard, M. and Davey, C., *Thoughts on the 11plus. A Research Report Examining Children's Experiences of the Transfer Test*, Save the Children, Belfast, 2001, p. 69.

²⁹ Sinn Fein, Response to the Consultation on Education in the 21st century (The Burns Report), p. 3.

³⁰ Ulster Unionist Party, *Our Children, Our Future. Response to the Report by the Post-Primary Review Body (The Burns Report)*, June 2002, p. 4.

³¹ By invitation of the Minister of Education, Martin McGuinness, the Special Rapporteur joined the debate in June 2002 by highlighting its human rights dimensions. Amongst other issues, her contribution pointed out that the 328-page Burns Report did not mention gender. To her regret, the subsequent report on the consultation also did not mention gender (Department of Education, *Review of Post-Primary Education: Report on Responses to Consultation*, October 2002).

³² Report on the mission to the United Kingdom (England), op. cit. in note 1, para. 75.

³³ UNICEF Innocenti Research Centre, *A League Table of Teenage Births in Rich Nations*, Innocenti Report Card No. 3, July 2001.

³⁴ OECD, *Education at a Glance, OECD Indicators 2001*, p. 134.

³⁵ *Making a Bill of Rights for Northern Ireland*, Northern Ireland Human Rights Commission, Belfast, September 2001, p. 89.

³⁶ 2001 Census, op. cit. in note 15.

³⁷ Holliday, L., *Children of "The Troubles". Our Lives in the Crossfire of Northern Ireland*, Washington Square Press, New York, 1997, p. 345.

³⁸ E/C.12/1/Add.79, para. 11.

³⁹ Northern Ireland Council for the Curriculum, Examinations and Assessment, *A New Approach to Curriculum and Assessment 11-16*, Belfast, April 2002, p. 9.

⁴⁰ Organization for Economic Cooperation and Development, *From Initial Education to Working Life. Making Transitions Work*, OECD, Paris, 2000, p. 199.

⁴¹ Organization for Economic Cooperation and Development, *Knowledge and Skills for Life. First Results from PISA 2000*, OECD, Paris, 2000, p. 210.

⁴² Report on the mission to England, op. cit. in note 1, paras. 33-37.

⁴³ *New TSN (Targeting Social Needs) Annual Report 2002*, December 2002, para. 7.3.

⁴⁴ *From Exclusion to Inclusion. Final Report of the Disability Rights Task Force*, available at www.disability.gov.uk.

⁴⁵ Commission on Human Rights, Report submitted by Katarina Tomaševski, Special Rapporteur on the rights to education: Mission to the United States of America, 24 September-10 October 2001, document E/CN.4/2002/60/Add.1, para. 34.

⁴⁶ Colletta, N.J. et al., *Social Cohesion and Conflict*, The World Bank, Washington, D.C., 2001, pp. 2-4.

⁴⁷ Muldoon, O.T., Trew, K. and Kilpatrick, R., "The legacy of the Troubles on young people's psychological and social development and their school life", *Youth & Society*, vol. 32, No. 1, September 2000, p. 10.

- ⁴⁸ Save the Children, *Child Poverty: A Local Perspective*, Belfast, July 2002.
- ⁴⁹ Irish Congress of Trade Unions/Northern Ireland - Response to the Third Draft Programme for Government, November 2002, p. 3.
- ⁵⁰ OECD, *Inclusive Education at Work: Students with Disabilities in Mainstream Schools*, Paris, 1999, p. 71.
- ⁵¹ Dunn, S., A history of education in Northern Ireland since 1920, *Fifteenth Report of the Standing Advisory Commission on Human Rights, 1989-90*, London, HMSO, 1990.
- ⁵² NICIE (Northern Ireland Council for Integrated Education) Statement of Principles, *What's What in Integrated Education. A Guide for Teachers*, NICIE, Belfast, September 2001, Appendix 1, p. 24.
- ⁵³ The European Convention on Human Rights includes property among prohibited grounds of discrimination. Property is also a right protected by Protocol 1 but legitimately limited by taxation out of which public education is funded.
- ⁵⁴ Green, R. and Ward, L., "A test of time? A consultation with young people (14-19 years) recording their experiences of the transfer test (11+) and their views concerning the review of post-primary education", research report presented by the Northern Ireland Youth Forum on behalf of the Department of Education, Belfast, 2002, p. 32.
- ⁵⁵ Department of Higher and Further Education, Training and Employment, *Fair Employment: Religious and Political Discrimination*, ER 115, Belfast, 27 March 2001, p. 3.
- ⁵⁶ Census 2001, op. cit. in note 15.
- ⁵⁷ Report on the proposals for a common funding formula for grant-aided schools in Northern Ireland, second report, session 2000/2001, written submission by the Equality Commission.
- ⁵⁸ McCoy, G., "From cause to quango? The peace process and the transformation of the Irish language movement", in Kirk, J.M. and Baoill, D.P.Ó. (eds.), *Linguistic Politics: Language Policies for Northern Ireland, the Republic of Ireland, and Scotland*, Belfast Studies in Language, Culture and Politics, vol. 3, Queen's University Belfast/Cló Ollscoil na Banríona, Belfast, 2001, p. 215.
- ⁵⁹ Report on the proposals for a common funding formula for grant-aided schools in Northern Ireland, second report, session 2000/2001.
- ⁶⁰ *In the Matter of An Application by Patricia Pelan for Judicial Review*, 28 September 1998, p. 18.

⁶¹ The European Court of Justice has found the requirement of gender parity in public employment in Bremen (Germany) to constitute a breach of European Community law. The Court has held that “national rules which guarantee women absolute and unconditional priority for appointment or promotion” have wrongly substituted the original aim - equality of opportunity - with parity. The Court has subsequently ruled that preferential treatment for individual women where opportunities have yet to be equalized can be exceptionally allowed, but has not altered its outlawing of the requirement of parity. (The *Kalanke* and *Marschall* judgements of the European Court of Justice, Cases C-450/93 and C-409/95 of 17 October 1995 and 11 November 1997.)

⁶² *A League Table of Educational Disadvantage in Rich Nations*, UNICEF Innocenti Research Centre, Florence, November 2002, p. 21.

⁶³ CRC/C/15/Add.188, para. 45.

⁶⁴ Report on the proposals for a common funding formula for grant-aided schools in Northern Ireland, second report, session 2000/2001, para. 3.1.

⁶⁵ *The Northern Ireland Deprivation Measure 2001*, NISRA, July 2001.

⁶⁶ European Court of Human Rights, *Kjeldsen, Busk, Madsen and Pedersen*, judgement of 7 December 1976, Series A, No. 23, para. 50.

⁶⁷ “Mr. McGuinness promises support for parents who opt for the new mixed schools, but he sticks to the principle that it is the parents’ choice.” (Children of Northern Ireland learn lessons in living apart, *Financial Times*, 5 April 2002).

⁶⁸ Connolly, P. et al., *Too Young to Notice? The Cultural and Political Awareness of 3-6 Year Olds in Northern Ireland*, Northern Ireland Community Relations Council, Belfast, June 2002.

⁶⁹ Hovey, A., “As Easy as ABC: The Anti-Bias Curriculum”, in Moffat, C. (ed.), *Educating Together for a Change: Integrated Education and Community Relations in Northern Ireland*, Fortnight Education Trust, Belfast, 1993, p. 47.

⁷⁰ Commission on Human Rights, Annual reports of the Special Rapporteur on the right to education, Katarina Tomaševski, documents E/CN.4/2001/52 and E/CN.4/2002/60.

⁷¹ European Commission on Human Rights, *Yanasik v. Turkey*, Application No. 14524/89, Decision of 6 January 1993, *Decisions & Reports*, vol. 74, 1993, p. 14.

⁷² European Commission, *European Report on the Quality of School Education: Sixteen Quality Indicators*, Directorate-General for Education and Culture, Office for Official Publications of the European Communities, Luxembourg, 2001, p. 32.

⁷³ The Commissioner for Children and Young People Bill introduced before the Northern Ireland Assembly is expected to be adopted by Westminster in March 2003. The Special Rapporteur's references relate to its text of 19 November 2002 which is, she understands, to be adopted without any change.

⁷⁴ Northern Ireland Human Rights Commission, *Making a Bill of Rights for Northern Ireland. A Consultation by the Northern Ireland Human Rights Commission*, Belfast, September 2001, pp. 70 and 72-76.

⁷⁵ European Monitoring Centre on Racism and Xenophobia, *Attitudes Towards Minority Groups in the European Union. A Special Analysis of the Eurobarometer 2000 Survey*, Vienna, March 2001.

⁷⁶ Results of *Northern Ireland Life and Times Survey* for 2001 are available at www.ark.ac.uk/nitl.

⁷⁷ Uris, L., *Trinity*, London, 1976, p. 751.

⁷⁸ *The Report of the Healing through Remembering Project*, Belfast, June 2002, p. 1 (available at www.healingthroughremembering.org).

⁷⁹ Ward, M., "The Northern Ireland Assembly and Women: Assessing the Gender Deficit", *Democratic Dialogues*, December 2000, available at www.democraticdialogue.org.

⁸⁰ O'Connon, U., Hartop, B. and McCully, A., *A Review of the Schools Community Relations Programme 2002, A Consultation Document*, Department of Education.

⁸¹ Department of Education, *Report of a Survey of Provision for Education for Mutual Understanding (EMU) in Post-Primary Schools*, Inspected: 1999/2000, The Education and Training Inspectorate, para. 4.2.

⁸² Smith, A., and Robinson, A., *Education for Mutual Understanding: The Initial Statutory Years*, Centre for the Study of Conflict, University of Ulster, Coleraine, 1996.

⁸³ *Human Rights in Education Conference*, 26 September 2001, Stormont Hotel Belfast, Conference Report, Department of Education and Northern Ireland Human Rights Commission, January 2002, p. 16.
