

Bill of Rights Forum

Working Group on Civil and Political Rights (incl. relevant Equality Issues)

Minutes of Meeting held on Friday 19th October 2007

Interpoint Centre, York St. Belfast

Convened by: Domnhall O’Cobhthaigh

Present: James Knox (CoSo), Sister Brighde Valley OP (Catholic Church),
Rev Dr Fred Munce (Irish Council of Churches), Sandra Baillie
(UUP), Lisa McElherron (NICVA), John O’Kane (SDLP)

Apologies from: John O’Dowd (Sinn Féin)

In attendance: Gareth Wright (Bill of Rights Forum Secretariat), Steven Greer
(Legal Advisor)

Observed by: Claire O’Brien (CAJ)

1. The Convenor opened the meeting by welcoming Steven Greer and invited comments on the previous minutes.
2. Dr. Baillie wished to clarify that within paragraph 11 of the previous minutes her caution related to the prevention of disappearances. With reference to a point of clarification sought by the Convenor from the previous meeting Dr Baillie confirmed her party’s position was to object to the inclusion of both “criminal and political convictions” within Article 4 of the NIHRC’s equality base document (paragraphs 6 & 7 of the previous minutes refer). In relation to work in detention (paragraph 15 of the previous minutes) Dr Baillie also stated that the UUP supports a requirement by the state, for those in detention, to work.

3. In response to Rev Dr. Munce's request for an outline of the working groups "critical path", the Convenor briefly outlined the previous and future programme of work.
4. The Convenor then sought comments on Rachel Murray's paper distributed prior to this meeting to all members. The discussion began on Article 4 of the proposed equality clauses and all agreed that groups within this article should be listed in alphabetical order. Discussion returned to the issue of including the term "criminal and political convictions" and James Knox reiterated his minimum position was the inclusion of "criminal conviction". Steven Greer clarified that discrimination meant a "difference of treatment not justified" and therefore there could conceivably be situations where those with criminal or political convictions could be discriminated against. It was further clarified that "political conviction" referred only to prisoners released under the Good Friday Agreement. It was then agreed that the wording could be developed to become, "possession of a criminal or politically motivated conviction as defined by law".
5. James Knox referred to Section 75 and suggested the inclusion of Carers in Article 4. Sister Vallely stated that being a Carer was an employment choice and to include one economic group would be at the exclusion of others. It was agreed by all that the inclusion of "socio-economic status" includes Carers and a separate provision was not necessary. James Knox also reiterated that "culture" should be included in Article 4; Paragraph 6 of the previous minutes refer.
6. James Knox returned to Article 1 (Preambular paragraph on Equality) and to the inference of the word "tolerance", it was suggested by James and agreed by all that the addition of "dignity" after the words "mutual respect" would strengthen this paragraph.

7. The content of Article 6 was agreed.
8. On Article 7, Dr Baillie asked for an example of “indirect discrimination”. The Convenor cited an example provided by Professor Michael O’Flaherty’s at the recent Forum residential (Secretariat to provide case ref if applicable).
9. Discussion moved to the ECHR. All agreed on the wording proposed within Article 2(1) on the right to life which now includes “The death penalty shall be abolished. No one shall be condemned to such penalty or executed” which is taken from Protocol 13 of the ECHR.
10. During discussion of Article 2(2) of the ECHR, Steven Greer pointed out that the paper prepared by Rachel was highlighting options for the group to consider and in some cases, suggested wordings are based on UN documents which don’t have a high legal status and aren’t necessarily binding on the UK Government. Steven Greer further suggested that some elements only held persuasive authority and Bills of Rights should contain “universal rights” rather than containing specific provisions which may be interpreted narrowly presenting the potential to “leave things out”.
11. Steven Greer stated that the options provided by Rachel were too detailed and that he was sorry for providing conflicting advice but suggested that rather than incorporate “soft law” a more profitable way forward would be to examine the civil and political elements of other bills of rights such as the South African or Canadian models. Upon reflection though, Steven cautioned against a “shopping trolley” approach to certain rights contained within other Bills as they have been context specific and to apply them to Northern Ireland may have a different impact than the original issue they were designed to address. Steven did

undertake to examine the applicable elements to Northern Ireland contained within South Africa's Bill of Rights.

12. In response to Steven's comments, the Convenor reported that his party (Sinn Féin) felt that existing provisions didn't go far enough and that any document produced by this group or the Forum should be one that was aspirational. The Convenor also stated that from his party's perspective the level of detail shown in Rachel's paper was necessary to ensure the project was not "built on sand" and that some of the protections listed already existed in law. Lisa McElherron stated that just because it existed in law didn't necessarily mean it should be included in a bill of rights. Dr Baillie stated that her party remained content with the existing provisions within Article 2.
13. During a discussion on the wording in respect of the "disappearances", Rev Dr Munce suggested that the issue of the disappeared may overlap with the Criminal Justice and Victims group and should be raised with them.
14. The issue of application and enforcement arose during discussion on the proposed clause on extradition. Lisa McElherron stated that it may not be possible for a Bill of Rights for Northern Ireland to deviate from the current position of the UK Government. Dr Baillie agreed with this view. The Convenor reiterated the need to present an aspirational document and also pointed to the charter of rights process for the island of Ireland.
15. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, paragraph 9, was considered unnecessary. It was agreed that Rachel should consider integrating following four draft additions into one generalised right.

16. The suggested right regarding the state's obligation to conduct effective investigations was not agreed.
17. The suggested wording on disappearances was agreed if it was inserted in generalised form to cover all groups including the state.
18. The suggested wording on extradition agreed and following discussion it will be retained in this section of the Bill.
19. Discussion moved to Article 3 (Prohibition on Torture). It was agreed to insert the word "cruel". All suggested amendments with the exception of the wording on gender-based violence were agreed after discussion. This reference was believed to be too restrictive in terms of violent acts against all persons.
20. Following the discussion on Article 4 (prohibition of slavery and forced labour) the suggested amendment on trafficking was agreed.
21. All amendments to Article 5 were agreed with one exception; no agreement was reached on the inclusion of the suggested wording on the "Right to silence".
22. Discussion around an obligation on the state not to imprison mothers ended with agreement that the matter should be referred to the Criminal Justice & Victims working group. It was further agreed that the suggested wording on the rights of a child should be referred to the Children's working group.
23. The suggested amendment on separate imprisonment was rejected. The suggested wording on aggravated crime is to be referred to Justice working group.

24. All members were asked to revert with suggested changes to Sections 6 to 15 by Friday 25th October and asked to examine the sections of relevant constitutions.

25. The next meeting will be held at the Interpoint centre on Friday 2nd November.

[signed]

Gareth Wright
Bill of Rights Forum Secretariat