

Bill of Rights Forum  
Working Group on Criminal Justice and Victims  
Minutes of Meeting held on Friday 2<sup>nd</sup> November 2007  
The Interpoint Centre, York Street, Belfast

Convened by: The Very Reverend Dr Samuel Hutchinson.

Present: Barry Fitzpatrick (CoSo), Edel Quinn (Include Youth). Alex Maskey (Sinn Féin), Stephen McIlveen (DUP)

Apologies from: Marian Killen (ICTU), Annie Campbell (Women's Aid Federation), Ellis Haughey (SDLP).

In attendance: Dr Linda Moore (Human Rights Advisor).

Observing: Mark Kelly MBE. & Hanna Munter (WAVE Bill of Rights Committee), Darren McStravick (Committee on the Administration of Justice, CAJ), Ben Lee (Human Rights Adviser).

1. The Convenor welcomed and introduced the newly appointed note-taker Richard Barklie, student at Queens University, Belfast.
2. Matters arising from previous minutes (Re para 4). The Convenor said that he had spoken with Chris Sidoti, regarding the appointment of a legal advisor; the note-taker has been appointed.

3. The Convenor made comment regarding the good quality of the previous minutes which had been circulated.
4. The Convenor asked observer Hanna Munter if WAVE were on the mailing list for the groups' minutes. The reply was no. The Convenor made reference to regular observers being included on the electronic mailing list.
5. On its question of juvenile justice, the Convenor mentioned the advanced progressive position already achieved by the Youth Justice Group and asked Linda Moore if she felt children needed to be dealt with under the umbrella of this group. This led to a general discussion within the group with a consensus that children would remain a facet of this group and an important issue for this group. It was acknowledged that there would be an overlap with other groups on the issue of children. It was suggested that meetings with other groups could be considered to cross-reference views and progression, but ultimately it would be wrong to take 'Youth Justice' out of the groups' agenda.
6. The Convenor raised point 8, a question previously raised by Barry Fitzpatrick on behalf of CoSo, regarding a strong harassment provision being included in the Bill of Rights. Linda Moore advised the group that this is being looked after in the Civil Political Rights Working Group and best dealt with by them. It was also pointed out that this group was looking strongly at hate crime and harassment, coupled with degrading treatment of women in prison. It was again suggested that a cross group consultations would be advantageous on a future date to clarify positions.
7. The Convenor referred to the presentation provided by Linda Moore on the previous meeting and acknowledged her prepared draft document discussion

paper which was before the group (Para10). General discussion. Initially following the T&V V UK case the UN has commended the UK for its introduction of the Restorative Justice processes. Linda Moore, however, introduced a caveat referring to the recent trial of 2 young boys in the UK who were tried for their part in the murder of a pensioner. Both were tried in an adult court and by example this case highlights a continuing acceptance of a low age of criminal responsibility and the erosion of the doli incapax principle. Stephen McIlveen pointed out the difficulties of their cases were children were currently charged with adults and the pragmatic imposition and inherent difficulties of two trials, one for children and another for adults, this could impose on the judicial system. After discussion it was acknowledged that the Youth Justice System in N.I has in fact improved, but the age of criminal responsibility is too low. Children's rights need to be protected in light of Youth Justice Policies and changes, new civil injunctions, particularly ASBO's, the removal of doli incapax and the right to silence and an expansion in secure units.

8. The Convenor raised the question posed by Patrick Yu (NICEM), (para 3) concerning the composition of the judiciary not being reflective of N.I society. No ethnic minority representation. The Convenor highlighted the diverse composition of the International Courts and judiciary and acknowledged little or no representation from ethnic minorities throughout the N.I legal establishment. The Convenor asked Linda Moore if some clause regarding ethnic minorities' inclusivity in the judiciary should be included as a 'right' or what could be done to encourage a change. Patrick Yu had also raised issues surrounding migrant workers, asylum seekers, trafficking of women and illegal immigrants. Stephen McIlveen said those who attain jobs within the judiciary should do so on a merit basis and not on the basis of proportional representation or as a 'right'. Alex Maskey argued that there is

much need for the underpinning of equality within the bill which was agreed by Linda Moore. Edel Quinn suggested a clause recognizing inclusivity of an ever developing and changing diverse N.I society. During this discussion it was mentioned that perhaps this may be better passed to and examined by the Culture and Identity Group.

The discussion further looked at the Criminal Justice System and its use of International Law clauses or representation through diversity. This was contested by Stephen McIlveen on the basis that it should be strictly on merit. Linda Moore pointed out that states have a duty within context of the Beijing Rules, staff representation within Youth Justice to aspire to equality and diversity. Barry Fitzpatrick questioned how the state could accommodate those with little English comprehension to attain a qualifying law degree to create a level playing field in our developing society. He suggested looking at the 'South African model' and their social equality clause alongside their non discrimination clause and he suggested that we liaise with the Civil and Political group to see what they propose and if we need to develop our own statement. Barry Fitzpatrick advocated that we make reference to this issue within this group, although not in the groups remit, an insurance policy as it were so that the Bill of Rights may not be used to turn this matter on its head.

Alex Maskey pointed out that we cannot deal with all clauses, he pointed out that the Criminal Justice System per se is not representative, we need equality across the board he likened this definition 'equality' to the similar fate of 'victims'.

9. The Convenor raised the question by Patrick Yu regarding illegal immigrants, traffickers of women, asylum-seekers and their rights within the Criminal

Justice System. The Convenor pointed out that he had written to other groups about possible overlaps, but to-date he had little response. Linda Moore highlighted that Children's Groups are looking at some of these issues. A discussion evolved around this issue and Stephen McIlveen pointed out that immigration issues do not fall within the Criminal Justice System. Linda Moore pointed out that the Police don't do anything in these cases. However, Alex Maskey made the case that the Criminal Justice mechanisms, i.e. the Police, are involved and are used during the process of dealing with immigrants who become detainees. Linda Moore suggested that this issue should be passed to the Civil and Political Group and the issue of ASBO's for their consideration. It was agreed also that Linda Moore would oversee these issues.

10. The Convenor: minutes agreed.
11. The Convenor: The families of the disappeared to be included as victims.
12. The Convenor introduced Linda Moore's draft paper 'Children rights in Criminal Justice System'. Discussion paper for Bill of Rights Forum, Criminal Justice and Victims Working Group 2<sup>nd</sup> October 2007. Document to be discussed, amended, agreed upon.
13. Stephen McIlveen asked for references and bibliography to see how the particulars of the document fit into context. Linda Moore said she would contact the Secretariat to have those forwarded, only those which were not copy-righted. She would provide a list of books which would be accessible at University libraries, bar library, etc. The Convenor pointed out the volumous amount of work this may entail and the load the secretariat may face with

such a request. Ben Lee stated were possible documents would be made available.

14. The Convenor: All agreed pages 1-2 satisfactory.
  
15. The Convenor: Page 3, para 4 concerning Criminal responsibility. The age 16 years 'stands out', but little is said about what we do with children who commit crime that are under the age of 16 years. Edel Quinn developed this discussion suggesting that we look at the practicalities of how or when in fact we deal with under 16's. She referred to the Swedish policing practices which take on an investigative role alongside social services which is non-adversarial – find out what happened – take responsibility and provide support for the child. Stephen McIlveen added that we need to develop preventionist programmes, better defined measures of prevention we don't say 'no culpability'; we do not advocate a soft option-approach. The question was asked if a 14-15 year old committed murder – what happens to him? Linda Moore addressed the issue of street children and the necessity for some measure of detention again making reference to a Scandinavian model of process. Stephen McIlveen posed the question if 16 years are doli incapax would this not leave children open to exploitation by paramilitaries for use in crime and acts of terrorism, effectively creating a child soldier culture? The debate acknowledged that within the current Criminal Justice System 10 years as a limit of criminal responsibility may well be too low. A better standard may be equated with International Standards under the United Nations Convention on the Rights for the Child (UNCRC) the age for criminal responsibility is 12 years. It is proposed that the group incorporates a clause that the age of criminal responsibility does not fall below the International Conventions Law. It was suggested that the group drafts a defined recommendation in accordance with International Law.

16. The Convenor asked two questions. (1) Age of Criminal Responsibility? (2) How are children dealt with in Criminal Justice System? Alex Maskey replied that it is unacceptable that 10 year old children are being held as criminally responsible, Hydebank doesn't work. He acknowledged that another approach needs to be taken. It was further pointed out that children are more than ever being criminalized and imprisoned. Children, Alex Maskey highlighted have been brutalized in our society in N.I for too long. It was noted that 30 year old who had committed offences at the age of 10 years were now being excluded from various forms of employment. It was proposed that European standards be applied and enforced through a children's ombudsman. The Convenor asked Linda Moore if she had sufficient information to amend Para 4 at page 3, she replied that she had, all present agreed to an amendment.
17. The Convenor referred to the bullet points at page 3 and continued on to page 4. Linda Moore pointed out that these already exist and that they have been taken from a 2001 document, if they were agreed they could be shortened. Clarification was sought on 'privacy' in last bullet point, page 4. Linda Moore clarified that it referred to the child's name and picture being excluded from public domain. The Convenor asked if these particular points were agreed. Stephen McIlveen questioned the decision making of acceptable care – who makes this decision if a child is arrested? Edel Quinn proposed that all law agencies should be conversent with rights and further education is required throughout organizations in contact with children, particularly those in the Criminal Justice System. Edel Quinn highlighted that N.I has the highest figures of young people in custody than in anywhere in Europe alarmingly so. Stephen McIlveen proposed that the Bill of Rights acknowledge 'challenging children' and provide funding for an appropriate

environment, where children haven been rejected by 'care centres'. The Convenor asked Linda Moore if a statement could be included which was a requirement for the future on the State i.e., 'State should progressively ensure, provide for ....' This would be a similar theme to the 'South African model'; if this is not included cases may be taken to court. It was highlighted that it's incumbent that the legislature – assembly – judiciary, ensure provisions are provided. Stephen McIlveen added that with reference to 'appropriate detention areas', Musgrave Street PSNI and Antrim Police PSNI cells are 'not age appropriate', this needs to be reviewed.

18. The Convenor moved to the second set of bullet points, pages 4-5 and invited discussion. Stephen McIlveen queried the issue of privacy during detention. The discussion initially centered on initial detention at the police station, whether phone calls may be listened to or mail opened. Linda Moore stated that during remand an in detention mail was routinely opened and calls monitored. It was argued that this must be based on risk assessment. Stephen McIlveen highlighted a case whereby evidence obtained through this means convicted a terrorist; its admissibility was questioned, but he challenged, 'What about the rights of victims? And the duty to bring perpetrators of crime to justice. The right to privacy (article 8 HRA 1988) is not an absolute right. An issue was discussed about young people bragging whilst in custody to peers about offences they may not have committed. Alex Maskey advocated establishing a benchmark; people are entitled to the right of privacy. The right to privacy as a blanket right was further discussed. The Convenor asked if correspondence - both 'mail' and 'phone' be amended and replaced with the word 'communications'.
19. The Convenor asked Linda Moore if suitable information was available for proposed amendments, it was pointed out that there may be a possible

doubling up of some of the points raised in the document discussed. It was also highlighted that within the Bill of Rights Framework it does not essentially mean that human and degrading treatment won't happen; it should never get to Article 3 of the Human Rights Act 1998. It was discussed and agreed that, clearly isolating a child in solitary confinement breaches Article 3. Amendments to the draft where appropriate will be carried out for next meeting.

20. The Convenor addressed 'Questions of Victims', referring to an invitation to victims groups for a 1500 word submission by the 7 November 2007 so that they can be heard on 16 November 2007. The Convenor asked if anyone knows of any group who has not received an invitation to make them aware. Edel Quinn queried whether the focus should solely be on victims groups related with the conflict not already represented on the forum. Stephen McIlveen implied all victims groups should be involved. Linda Moore outlined the rationale for the 16<sup>th</sup> November 2007 and stated that 'victims of the conflict' that those groups should be the focus. Stephen McIlveen asked if Victim Support Group had been invited. The Convenor confirmed this had been done. The 'victims groups' list handed to the group by WAVE included around 40 groups. The Convenor asked the WAVE observers if this was the complete list. Hanna Munter stated that the list was not an exhaustive one, but to date it was all which they had collated. A discussion centered around which groups should attend on the 16<sup>th</sup> November and how to include the participation of other groups in the future. Alex Maskey proposed that the 16<sup>th</sup> November be set aside for those groups already invited 'victims groups of the conflict' and an undertaking be taken that in the future through media representation efforts are made to widen the net and gain a wider 'victims group' participation.

21. The Convenor reported that outreach workers have been appointed by the Secretariat. The Convenor has asked for one for the 16<sup>th</sup> November 2007. Edel Quinn welcomed the acknowledgement of 'victims groups' as a priority. A further discussion took place surrounding the proposed presentations for the 16<sup>th</sup> November 2007. Edel Quinn asked for a victim's database to be completed including such groups as Rainbow Project, Disability Active, the intentions being to invite these groups to speak with the Criminal Justice and Victims Working Group. It was added that they are invited personally as opposed to being invited via a public announcement. This process could occur following the groups draft document to the forum on the 30<sup>th</sup> November 2007. Written submission could be invited from specific groups. Edel Quinn asked if the work of the Working Group is finished after the submission of the formal draft proposals and if so asked who is going to follow the work through to a conclusion. Ben Lee indicated that after submission the work of the group will continue. Barry Fitzpatrick proposed that in December 2007 after the groups' submitted consultative document has been drafted other groups could be heard in January 2008. He emphasized a broad range of groups related to victims. So it was confirmed the 16<sup>th</sup> for conflict groups only. Linda Moore asked if outreach worker could be assigned the task of gathering a victims' database. Ben Lee acknowledged that this could be achievable. Barry Fitzpatrick further added that for the 16<sup>th</sup> November it was important that the Working Group knew which groups were actually confirmed as attending so firm plans could be put in place.
22. The Convenor asked if 'Any other business': Stephen McIlveen raised the issue of liberty as discussed on Linda Moore's discussion paper. This was referring to pages 4-5, encompassing the second set of bullet points. Linda Moore added this section, as being drafted to account for children in custody, custody or remand should be for the shortest period possible. She

acknowledged very few in N.I are serving sentences. Further a child in custody should be encouraged to have contact with other children especially on remand. Alex Maskey suggested an obligation remains with the parents to maintain contact. Linda Moore highlighted the recent case of a child held in custody in a police station, pending immigration processes. Rights of the child are paramount and it is incumbent on the agencies concerned to facilitate this contact extending to parents, family and friends. This is regular contact not immediate it was highlighted. This is not designed to thwart any criminal investigative processes. The child's rights are secured through trained support and the child's legal advisor. The child must be expeditiously processed to ensure its well-being. Linda Moore highlighted the problem which exists in N.I; too many children are on remand. The Convenor asked if the question of liberty as drafted stands as it is. Linda Moore replied that it does. It was further asked regarding 'girls', are international standards to be applied? It is acknowledged that girls need special attention, but not to the detriment of boys. It was proposed that this should be enshrined in our Bill of Rights. Stephen McIlveen asked what was envisaged in the last two lines of the document. Barry Fitzpatrick added that when children are released some have no support, no-one to turn to and nowhere to go; he asked in keeping with the Beijing rules can this be made more programmatic, can children who end up in this category be afforded appropriate provisions and assistance which are rights based?

23. Next meeting: 9<sup>th</sup> November 2007, The Interpoint Centre, 2.30pm – 4.30pm.