

Bill of Rights Forum  
Working Group on Civil and Political Rights (incl. relevant Equality Issues)  
Minutes of Meeting held on Friday 2<sup>nd</sup> November 2007  
Interpoint Centre, York St. Belfast

Convened by: Domnhall Ó Cobhthaigh

Present: James Knox (CoSo), Sandra Baillie (UUP), Vincent Parker (Sinn Féin), Kieran McEvoy (CAJ), Lisa McElherron (NICVA), John O’Kane (SDLP), Gerry Lynch (Alliance)\*, Sister Brighde Vallely OP (Catholic Church)

Apologies: DUP

In Attendance: Steven Greer (Legal Advisor), Chris Sidoti (Chair of the Bill of Rights Forum)

Observed by: An observer was in attendance.

Minutes: Ian Black (QUB)

1. The Convenor opened the meeting with an apology from the DUP who were trying to find a substitute to take over. The Convenor introduced Ian Black a postgraduate student from Queen’s University who would be recording minutes at this session.
2. Steven Greer requested to make a brief statement regarding concerns which had been raised in respect of advice. The statement was read out. “There may be some confusion over the role of legal advisors in an exercise such as this. Our conception of our function is as follows:
  - 2.1. Our contribution is entirely reactive. Ownership of the project lies with the Human Rights Forum. We can only identify options and alert you to the pros and cons of the alternatives. But in the final analysis the choices are yours. And at the end of the day, they are fundamentally political and moral rather than legal ones.

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\* In attendance from 1435.

2.2. Since the ECHR is currently the legally binding 'bill of rights' for Northern Ireland and for the rest of the UK, the main choice concerns how much is added to these rights, or how much they are 'amplified', 'augmented' or 'expanded'.

2.3. There are two difficulties with adding or expanding too much:

2.3.1. The more detail that goes in, the more detail that's left out. In other words, because all details cannot be included, there's a risk of arbitrariness and incompleteness.

2.3.2. There's also a risk of unwittingly creating conflict between what is added and how Convention provisions have been, or may be, interpreted by the courts. And if there is conflict, it is the interpretation of the ECHR which will prevail.

2.4. Finally we will continue to provide alternative formulations of how the relevant rights in the Convention might be expanded, drawing on a wide range of sources. Whether these additional norms are 'legally binding' in any sense is not the issue. The fundamental question is whether they should be included or not in a bill of rights for Northern Ireland and what might result if they are. Ultimately, this is a matter for you not us to decide."

3. The Convenor thanked Steven Greer for his statement. Steven Greer continued that he had gone another direction as that was another alternative. Rachel had offered norms from secondary UN standards. That is why he had emailed with the Canadian, South African, New Zealand bill of rights. The South African is more detailed; the other two are more schematic. The convenor thanked Steven Greer for clarifying and invited comments on the previous minutes.

4. Sandra Baillie began by acknowledging that The Convenor had to do two jobs last week. Paragraph 24 concerns the forwarding of comments and she did not receive the comments. Sister Brighde Vallely had said that she would not be forwarding comments. The Convenor suggested that the scale of comments were reflective. As regards paragraph 4 especially the second last line Sandra Baillie reemphasised that the Party did not agree with section on criminal or politically motivated conviction defined by law. It had been implied that it was agreed by all but the Party do not accept this and she may have to come back to this. Regarding paragraph 14 she continued that she had to add with Gareth that she had agreed. Paragraphs 16 and 17 regarding

disappearances she may have to revisit. Sandra Baillie declared that number 22 was her suggestion the importance being that parades issues would not be referred to the cultural group and that The Convenor had received her email.

5. Steven Greer commented on paragraphs 10-11 suggesting it did not reflect accurately what was said or what was meant. He wanted to make the general point that there are other alternatives. The legal binding is not the issue it is the level of detail that is the issue. In paragraph 11 he suggested that what he was apologising for was the appearance that they were giving inconsistent advice and what was said in the brief statement (above) should clarify.
6. There were issues with paragraph 14. John O'Kane referred to paragraph 14 questioning whether it was factually correct. The paragraph states that it may not be possible for a bill of rights to deviate from the current position of the UK government. Lisa McElherron affirms that it was not her that stated this. She may have asked the question but it was definitely not stated by her. Sandra Baillie suggested that Lisa McElherron may have asked the question and there was interaction. The Convenor recalled a discussion with Sandra Baillie along the lines of accepted matters not falling within the remit. Sandra Baillie suggested that the discussion happened but it wasn't included in the minutes.
7. Lisa McElherron asserted that what was said by her at the start of the meeting wasn't mentioned at all in the minutes regarding a debate in the Assembly and the personal attack on colleagues in the voluntary and community sector. She remembers saying that she wanted this and the hope that we could remain civil in our disagreements noted and it is not referred to at all in the minutes. Paragraph 5 regarding carers, she did not think this was agreed by all. She did not want to reopen the discussion but questioned whether this could be reworded. Lisa McElherron did not want to be associated with the assertion that carer was an employment choice. James Knox suggested that this was the only part of section 75 not included, an important omission and it was important it was not an employment choice. The Convenor suspected that the debate should not be reopened and suggested that it should be recorded in the minutes that it is understood it is specifically included within the provision affording protection to that group.

8. Vincent Parker raised point 4 wanting to refer the group to May 2007 document produced by the good relations and reconciliation division of OFMDFM, the executive issued a paper on the need not to discriminate against ex-prisoners. This provides a baseline for legal protection against political ex-prisoners. Sandra Baillie suggested that her party would have a particular objection to that and details would be swapped between Sandra Baillie and Vincent Parker.
  
9. The Convenor proposed that the minutes would be accepted subject to those amendments and that the working group would move on. Before doing so there was a request for a representative to sit on an outreach working group, which deals with determining the form of the outreach process which accompanies the forum and working group. Every working group has a nomination and a volunteer was required. Chris Sidoti informed the group that outreach working groups were important groups, working with and directing their activities. This is something there has been difficulty getting done and much of the work will be about seeking responses from organisations. Much of the work will be about seeking responses from organisations which is the principle method and means for broader consultation. Chris Sidoti was not aware of the exact time commitment but estimated they would be short meetings not dissimilar to this group probably about 2 hours, perhaps a couple in the first fortnight but hopefully not more than one a month. The Convenor invited volunteers however no one from the working group could commit, anyone that would be able to attend could email before the next meeting of the working group. This is the only working group that has not nominated. Chris Sidoti acknowledged the amount of time working group members were already devoting and recognised the enormous effort already put in. Sandra Baillie inquired whether the outreach groups would be going out to more marginal groups. Chris Sidoti directed the working group to the outreach paper on the website identifying 13 groups that have not participated fully. The unionist community was one of 13 groups along with children, older people, carers, travellers, ethnic minorities, disabled, LGBT and rural and remote. The outreach workers will go out to the groups and work with groups working with the groups. Sister Brighde Vallely asked whether the committee being formed would be a steering group and Chris Sidoti confirmed that this basically would be the case. Disability was identified as a cross cutting issue. Lisa McElherron asked whether a volunteer can be someone

from your organisation. Chris Sidoti stressed that the intention was that it would be someone from the working group.

10. The Convenor drew the attention of the working group to the new paper by Rachel which was emailed to the group. Vincent Parker requested that his email address was added. The first section concerns equality clauses. James Knox raised the importance of alphabetical order but also the status of victims suggesting we would like the status of victim included for the purposes of hate crimes etc.\*
11. Lisa McElherron raised a potential issue with Art 2 the right to life, questioning whether it was the case that the working group may have agreed on a stronger wording. Steven Greer informed the working group that the UK is obligated by the ECHR not to send people to countries where they would face the death penalty; even where they face prolonged wait for execution is included. The Convenor invited the group to affirm whether stronger wording was required. Sandra Baillie suggested she may have to check with her party. James Knox reminded the group that we can not go below the convention anyway. The Convenor directed the attention of the group to the section on the State 'prohibiting by law all extra-legal arbitrary and summary executions. There was a debate over the definition, strength of wording and inclusion of 'strictly necessary' or 'absolutely' which was an aspect which may require investigation before the next session. Steven Greer suggested that if there was any doubt to go with the ECHR standard. The Convenor suggested that the wording may need to be reviewed to be coherent with the ECHR and if it was coherent then it should be inserted.
12. Regarding Art 3 Chris Sidoti made a proposal that it may be better to adopt the same language of Art2 and whether or not it was beneficial to keep the wording consistent. The opinion he expressed was that Art 3 para 2 was weaker than the last paragraph in Art 2 and it might be better to use the same wording but to adapt it to torture.

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\* While the working group waited for photocopies to arrive there was a discussion over the mechanism of recording minutes. Some members suggested that every word need not be recorded simply the topic discussed, whether a decision was or wasn't made or whether there were two minds on a topic. Other members suggested they were responsible to parties and required everything to be recorded. Other members proposed a happy medium whereby if someone wanted something expressly recorded for example objections, they could make it clear to the minute taker. Voting appeared to be ruled out. For the attention of the permanent minute taker and future minute takers this may be useful.

13. Regarding Art 4 The Convenor requested Steven Greer to expand on what the comment on Art 4 (3) (a) means. Gerry Lynch suggested there may have been a difference of opinion and reminded The Convenor that his (the Convenor's) position was that prisoners should not have to work. Gerry Lynch recalled the discussion concerning a general prohibition on any compulsion to work. His concern was if you strengthen the clause in the manner that The Convenor would prefer courts would interpret in a way that would prevent any link to rewards, early release etc. The danger is that this can't be read in isolation and if read with fair and equal treatment for example he speculates that within a year someone will refuse to work and then say I can't be refused rewards. The Convenor wished to determine whether the opinion of most people favoured the existing exemption being retained. There was no strongly expressed disagreement. Sister Brighde Vallely suggested she favoured the aspect of proactive types of work. Amongst the group it appeared that most work was proactive and constructive. Steven Greer informed the group you can be made to work against your will ironically forced and compulsory labour is a term of art which is something a bit more than being forced to do work. He recommended that if there was a choice to go with the convention standard. Sandra Baillie appeared to imply that her party may not be happy with that being changed.
14. The group progressed to the definition of honest living. Sister Brighde Vallely suggested it might be possible to remove the word honest. Kieran McEvoy suggested that the UN standard might be quite outdated. The Convenor implied that the group may have to look at an alternative wording here.
15. The discussion moved to trafficking and exploitation. The Convenor asked the group should this be an article on its own as it is such a big issue. Sandra Baillie inquired whether there was existing UK legislation concerning trafficking. The working group appeared to think there was. The group was reminded that Northern Ireland has an international border and has become a hub for trafficking. The Convenor expressed the opinion that this issue was so important it should be recognised specifically and included in a bill of rights. Sister Brighde Vallely recalled the example of a Chinese national found dead in the boot of a car. The woman was being trafficked to Dublin but died in Belfast. Sister Brighde Vallely appeared to be of the opinion that it should be mentioned under Art 4 as a fourth bullet point. Gerry Lynch raised the example of police practice in the UK not pursuing immigration proceedings;

it's a practice not law. It is more important to prosecute traffickers than the migrants. James Knox suggested that the police in a lot of their practices have been ahead of legislation monitoring on hate crime for example. The working group appeared to consider this important and it should be included at least as a subsection of Art 4.

16. Regarding Art 5(1) (e) unsound mind, Lisa McElherron had explored this issue. The term mental disorder was actually preferable being mentioned in the Bamford Review and UK Mental Health Act. She observed how this was not actually mentioned at all in the South African Bill of Rights. There was still no definitive answer and this issue may have to be postponed. There would be consultation with members of the UK Alliance on Mental Health. Gerry Lynch mentioned that if the working group get rid of this we are effectively making the sectioning of persons illegal. The point that was being made was not whether that was a good or bad thing. James Knox appeared to clarify the issue by suggesting that it was the term and not the practice. Lisa McElherron suggested that the wording may need to be updated. Chris Sidoti made two suggestions firstly that the group look at the wording in the convention on rights of persons with disability and in addition to assess the lawful detention of persons in an appropriate medical facility. There did not appear to be a problem or opposition to Chris Sidoti's suggestions and Kieran McEvoy suggested that the Prison Service would probably be quite happy with that.

17. The discussion moved on to Art 5 (5) the second paragraph 'A woman shall have the right to keep her child with her in prison until the child reaches the age of one' The Convenor suggested this was to be sent to the children's group and that the person convening the children's group wanted that issue as they have a particular expertise. The next three paragraphs in red were to be sent to the children's and criminal justice groups. James Knox again stressed that alphabetical order was important.

18. Chris Sidoti made the point that there may be an issue with sexist language in Art 6. Sandra Baillie had made a comment about inclusive language and The Convenor confirmed he had received an email. The Convenor suggested that everything would get fixed at the end. Vincent Parker made three proposals suggesting he was strongly in agreement 'without undue delay' rather than 'within a reasonable time' should be included. Secondly the right to trial by jury considering the particular circumstances of the North and the Diplock

court system something they strongly want included and thirdly the duty of the State to protect lawyers.

19. The Convenor invited the working group to comment on these suggestions. Beginning with 'without undue delay' Sandra Baillie commented that it would depend on how much the system has on. Vincent Parker suggested that he did not think cost should be in consideration in a bill of rights. Sandra Baillie suggested it should be in consideration but not the primary consideration. The wording 'without undue delay' was confirmed by the working group to be the stronger wording than 'within reasonable time.' The Convenor wanted it clarified that these rights were not necessarily going to be set out from day one and that was going to be a progressive realisation of these rights. There may be a duty on government to move progressively towards realisation of these rights realised. Sandra Baillie inquired whether there was a considerable backlog in the UK. Steven Greer suggested it was global and Kieran McEvoy suggested it was less of a problem in Scotland because there were stronger responsibilities on the prosecution to get the case together within time periods. Sandra Baillie continued that if there was undue delay surely then some cases would have to be dropped because of due process. The Convenor then suggested this might compel the government to set out a plan to address the issue over time. Sandra Baillie wanted to know how this was working in other parts of the UK. Kieran McEvoy informed the working group that the appropriateness of targets was a big debate in the first consideration of a bill of rights. Sandra Baillie advised The Convenor that she may have to get back to him on this issue. Chris Sidoti corrected The Convenor and informed the working group that progressive realisation does not apply with civil and political rights and that everything mentioned was immediately obligatory which The Convenor accepted. Sister Brighde Vallely asked Chris Sidoti if the wording 'without undue delay' would mean asking the authorities to 'hold their shoulders up a bit more' and ask them to do their best. Kieran McEvoy strongly agreed that this was one of the areas where the working group could be more creative and that they could make the system sit up more. A slightly stronger wording could be creative, which most professionals working in the system would be happy with.

20. Next for discussion was 'trial by jury.' Gerry Lynch stated that he absolutely supported it but reminded the group this might put them in direct collision with the British government. Steven Greer confirmed he was a great advocate

of the jury trial and then noted the situation in continental systems. Chris Sidoti confirmed that ECHR permits but does not require jury trials. Steven Greer further added that if the UK government wanted to restrict the right to a jury trial they could defend that decision. The Convenor sought clarification from Chris Sidoti who advised the working group that if we want to mirror the protections of the ECHR we should use the same words. Nothing the working group should do should undercut any existing international standards. The working groups can provide additional standards higher than required by the ECHR and what the working groups are trying to do is provide a domestic legal base. A court will ask if it can comply with both, if there is conflict then presumably the Human Rights Act will take priority. Gerry Lynch hypothesized an issue where the UK government legislates on a UK wide basis on a reserved matter meeting the ECHR standard but where it applies in Northern Ireland it doesn't meet the Northern Ireland standard. Chris Sidoti suggested that perhaps the UK wide Human Rights Act has priority. In Northern Ireland the bill of rights law should apply here and should be consistent. In the event of a higher standard the higher standard applies. International law treaties recognise that what ever is the higher standard, the higher standard should apply and our bill of rights should have a similar provision that says whatever the higher standard is, that is the standard that should be applied by the courts. Steven Greer advised the group that the European Court has held that Diplock courts are not incompatible with the convention. Sandra Baillie suggested that her party would probably be happy with the status quo that exists in place but will return to the working group to confirm this. Gerry Lynch recalled that the Diplock courts were a specific response to a specific problem but that the current Westminster administration had opted for juryless trials in respect of terrorist cases and serious fraud cases. Serious fraud cases being a recent addition as complex fraud trials kept falling apart. It had to be noted that Parliament did not have to redefine serious fraud. The Convenor asked whether the group was happy with the definition 'serious,' Kieran McEvoy maintained that he was not entirely happy with the wording serious. Gerry Lynch reminded the working group that if a person is in a lower court without a jury they can opt to go to the higher court with a jury but the penalties may be more severe. Chris Sidoti made the suggestion that in serious fraud cases it might be still possible to have qualified juries.

21. Concerning the 'duty of the State to protect lawyers,' Gerry Lynch wanted to know why lawyers should enjoy a higher standard of protection. Sandra Baillie

inquired whether or not lawyers were already protected. Vincent Parker then alluded to cases where the State interferes with the legal process and the need for specific additional protection; an example cited was the bugging of Antrim serious crime unit during a fraud investigation. The Convenor suggested this may be better put to the criminal justice group. Kieran McEvoy cited an example of a specific protection found in the South African bill of rights being s 35(5). Steven Greer suggested that bugging was allowed but perhaps not the bugging of a solicitor and client. The issue with bugging is under which circumstances you can use evidence obtained by bugging and the fairness of its use. Vincent Parker wanted to know if the South African provision protected against intimidation and prevented harassment and still maintained that specific protection be included. Gerry Lynch did not disagree with what had been said but was not convinced that this was not already included somewhere else and would need to see more. The Convenor suggested that a note would need to be sent on to the criminal justice group as a consensus on this issue was not reached.

22. On the issue of a right to silence The Convenor suggested this may need recognition of the relevant circumstances of the North. There was not complete consensus whether or not this was to be included. Sandra Baillie indicated that everyone should have a right to silence but how that is interpreted is important.

23. Lisa McElherron proposed that the working group return to consider Art 3. The Convenor indicated that this had not been fully decided. James Knox raised an issue with the inclusion of gender based violence. The term gender based may imply violence of men against women. The term domestic abuse is preferable as this terminology includes domestic violence, violence against the person and monetary control. Domestic abuse is a better term as it encapsulates all those things and his issue is with the terminology used. Lisa McElherron reminded the group about societies emerging from conflict where violence against women increases. The Convenor suggested this be sent on to the women's group however James Knox disagreed suggesting it does not necessarily deal with men and would require consideration. Kieran McEvoy informed the group that societies emerging from conflict can also experience a rise in racist and homophobic violence. James Knox suggested that it was not necessarily a female problem and in post-conflict societies violence against men and women increases. Chris Sidoti advised the group that torture, cruel,

inhuman degrading treatment was a pretty high standard and reflects the most serious forms of abuse. Sister Brighde Vallely indicated that something regarding security of the person may need to be included in the discussion. Steven Greer reminded the group that the bill of rights will bind public authorities.

24. Chris Sidoti suggested that Art 7 para 2 reflected a very quaint 1950s drafting. His suggestion was that there is now clear international law without the need to discuss general principles of law recognised by civilised nations.

25. Art 8 concerns right to respect for private and family life. Gerry Lynch raised an issue with the definition protection of health or morals, wanting to know whether there was more up to date drafting in particular the definition of 'morals' and whether case law was up to date. The concern of child pornography and the right to respect private life was discussed. Steven Greer suggested that protection preventing child pornography would be covered and his recommendation was that nothing would be achieved by taking the wording out. The group did not exclude the possibility that the meaning of morals could be updated and a more up to date definition could be investigated. The Convenor reminded the working group this could be examined at the end of the process when trying to update the language. Gerry Lynch suggested mentioned that attitudes can change and scapegoats groups can change. James Knox reminded the group of the recent example where Lisburn council attempted to prevent civil partnerships. The advice was presented by Steven Greer that this is a four fold test it must be enshrined in law, necessary in a democratic society, in pursuit of a legitimate purpose and proportional, noting that the standard of proportionality changes. The Convenor again suggested the working group may need to review the wording here.

26. The Convenor invited the group to raise any issues with Art 9. Vincent Parker discussed the aspect of those of no belief or those of a different allegiance, where it was important to include these concerns where there is an oath to the State or another body as the issue of oaths remains. Sandra Baillie indicated that she may have to consult the party as this might be an issue of identity for the party. Chris Sidoti directed the attention of the working group to the wording on oaths in the Fijian Constitution which can be accessed on

the forum website. There did not appear to be an overwhelming consensus on this issue however it did appear popular with some.

27. The Convenor brought a close to the working group\* inviting members to meet in two weeks time informing the group that Rachel Murray should be present for that session.

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\* Working group ended at 1600.