

Draft notes of socio-economic rights meeting – 14 November 2007 (Stormont)

Introductions

There was a round of introductions at the table and some preliminary remarks made before moving on to discuss the working paper circulated in advance of the meeting.

Rena Shepherd (business) indicated that she had been left uncertain as to who in the business sector she was representing, since some had indicated that they had not been consulted about representation in advance of her appointment by the NIO. This, in turn, makes it difficult for her to know who she should be reporting to, and consulting with, in terms of fulfilling her role. It was agreed that this lack of clarity should be drawn to Chris Sidoti's attention since it was a matter for the Forum rather than the working group specifically.

Jeff Dudgeon (UUP) indicated that he was unhappy that there were a number of issues that ran throughout all the discussions but which were not being adequately addressed. By way of example, he cited different understandings of the significance to be accorded to the phrase "the particular circumstances of Northern Ireland"; references to the "state" when it was unclear what was intended since NI is not a sovereign state in the sense that this terminology would normally imply in Bills of Rights; what were the cost implications to be associated with the inclusion of certain rights etc. Dermot Nesbitt (UUP) concurred in general terms.

It was agreed that all of these issues need to be addressed by the socio-economic rights group (and/or other groups/the Forum), and that several of these more generic issues had been listed specifically on the agenda for debate. Accordingly, when that point on the agenda of the group is reached, care should be taken to ensure that all of these concerns are addressed in turn, especially if they were not adequately addressed in the course of the debate around specific clauses.

Having completed this work, it was noted that yet again there was no note-taker, and Maggie agreed to take a note and find out from the secretariat what was happening in this regard. Patricia McKeown explained that Maura McCallion had been asked to act as chair for the day to facilitate participation by everyone and the work began!

Right to Health

The meeting discussed the draft text circulated in advance and after extensive discussion agreed on revised wording (see appendix one). The major debates/changes ranged over the following issues:

- a) The "highest attainable" standard of health was accepted as the most frequently used formulation in relevant human rights texts. It does not give an absolute standard against which to measure provision, but gives people the possibility to challenge behaviour which they feel falls foul of this situation.

- b) People were not certain whether to require a right to “enjoy” or to “have access” to healthcare.
- c) Will the BoR apply to private healthcare, or only public services – this was thought to be an issue that the Preamble working group would be addressing?
- d) They did however want to insert reference to “social care” given that, peculiarly in Northern Ireland, health and social care are (wisely) combined in the same governance arrangements. This is also clearly a right “supplementary to the ECHR”
- e) There was uncertainty as to whether to retain the reference to equality in the second clause if there is to be a general equality clause, but it was strongly felt by some that there are many issues running counter to equality of access to healthcare, and it was therefore particularly important to retain this here. At the same time, it was emphasised that this could not and should not be misinterpreted to mean “treating people the same” (obviously a nonsense leading to treating old and young alike in terms of health provision!)
- f) Editing would be needed when the work was completed – both to have consistency across the issue of “everyone” “every body” “every person” “all persons” etc. and to determine the issue of the entity against which the rights are claimed – “the state”, “the government”? (The latter issues would also presumably be addressed by the preamble group?)
- g) The concept of progressive realisation is introduced in clause 3. There was a brief discussion about its significance (a qualification of clauses 1 and 2), its justiciability (Aoife noted that it had proved a workable concept internationally and in other jurisdictions), and the fact that it is best to include it as and when appropriate, rather than have a general proviso to this effect.
- h) Clause 4 – about the issue of consultation, people raised concerns about effective participation, the right to advocacy, the need for proper disclosure of all relevant information, and issues of choice and control. It was thought that the wording could be improved – see appendix.
- i) Clause 5 – initially the group wondered if this could be deleted, given that we are all (thankfully) well-used to medical care, free at the point of delivery. However, only a few examples of situations which might arise in future where medical care is denied (smokers, obese patients, drug users) convinced the group that there must be some clear and non-negotiable right for everyone to have access to emergency care, as a minimal measure.

There had been some uncertainty about the exact wording of references to reproductive health/healthcare (clause 3) and Lynn Carville was mandated to liaise with the women’s working group to see what they are proposing in this regard, and report back on whether we needed to include anything and if so whether the proposed wording attached is appropriate.

Right to Housing

Again, the final wording agreed is attached in Appendix. The main issues discussed can be summed up as follows:

- a) If we accept that everyone has a right to “adequate” housing (clause 1), it is understood that this clearly referred to it being “adequate” from the point of view of individual need, rather than some general definition. Thus, adequate housing for a family with four children is clearly going to be interpreted differently to what is adequate for a single person, or for an elderly person with disabilities.
- b) Clause 2 sets out some of the criteria that are applied in international standards in determining the adequacy of housing. The initial clause was much longer, but it was thought that it was unhelpful to extend the list too widely, since it might result in unintended consequences (eg public housing not being provided in rural areas in advance of all the necessary services being available). Moreover, the initial list seemed to range beyond housing to much more detailed issues of planning.
- c) It was noted that there was a need somewhere to recognise that there is clear international case-law determining what qualifies as “adequate” housing. If we don’t want to include all this in specific clauses (we don’t) is there some reference that can be made – in the preamble or elsewhere – to require local judges to interpret these clauses in the light of good international practice? It was agreed that this was an issue for the Preamble, Implementation and Enforcement Working Group.
- d) Clause 3 – standard “progressive realisation” reference. Examples were given of situations in which either limited numbers of people, or very costly price-tags, or insufficient need, mean that housing is not an unrestricted right, and the need for this clause. There are, however, some situations which require that a minimal safeguard is set out (see on).
- e) Clause 4 – initial reference to home demolition was omitted as not particularly relevant to Northern Ireland. All the other provisions from international law were retained, though some concern was expressed about what might happen to local authorities if they made people homeless in response to, say, ASBOs. Most people, nevertheless, seemed to think that there must be a provision excluding the option of making anyone homeless.

Right to Education

The group thought that the initial text here looked very different to other provisions and that there might be some value in condensing the material, to make it more consistent with other entries. At the same time, people were aware immediately of a number of ‘silences’ that were important and should be included, either here or elsewhere. For agreed text, see appendix.

- a) There seemed to be general agreement, and surprise, that a key principle of the UNCRC (Convention on the Rights of the Child) relating to the “voice of the child” seemed absent from the draft text. Will this be addressed elsewhere by the children’s group? If not, it must be included somewhere.
- b) There was also concern about “effective” education being assessed with reference to the needs of the child. The wording is assumed to include this concept – see related issue under the “adequacy” of housing.
- c) There was concern about issues of “lifelong learning”, the need for educational provision that allows everyone to develop to their fullest potential (rather than the detailed listing of attributes provided in the draft), skills shortages, the meaning of inclusion etc. Eventually clause 1 was tightened up to reflect many of these concerns, and subsequent clauses amended accordingly too.
- d) Clause 2 – standard progressive realisation clause
- e) Clause 3 was amended to reflect local realities more than the standard international language (about obligatory primary education for example). Some concern was expressed at the inclusion of the concept of “compulsion” in a Bill of Rights, but this is routinely included in international texts and – in this instance - amounts more to the obligation on the state to ensure that people are able to secure an effective education.
- f) Clause 4 – the initial text was extended with the inclusion of “human rights” and the dropping of references solely to different “national, ethnic and religious” identities. It was thought more inclusive to drop this list and emphasise the need to encourage education in accepting different identities of all kinds.
- g) In this context, more detailed concerns were raised about specific educational issues particular to Northern Ireland – for example, why are schools exempt from fair employment legislation? Why does section 75 not apply to schools? It was thought that these were precisely the kinds of issues that might be subject to challenge if there was a general ‘constitutional’ duty to promote equality in education laid down in an agreed Bill of Rights as set out here. A general equality and non-discrimination clause (to be returned to later) would also be relevant in this regard.
- h) Clause 5 – there was some discussion as to whether concerns around harassment should be kept distinct from the preceding clause about promoting respect for difference. Given the nature and level of concerns in NI on this topic, it was thought that it would be important to keep this as a distinct provision, to make it explicit that both “bullying” and harassment are unacceptable, and that it was important to include reference to the whole “educational sphere” rather than education per se.
- i) Clause 6 – this proved quite complicated and we have kept part of the text in square brackets (in line with international negotiating practice!) to revert to later. Changes were however also made in referring to education for people with disabilities, and to the “beliefs” of parents. However, people were

particularly concerned about - where is the child's right to be heard? Reference is made to the state's rights, the parents rights, but no balancing reference to the child's right to be heard in relation to determining what is an effective education. There were also concerns raised about separate educational provision (eg for Travellers), the value of protecting "home schooling" etc., and education in different language media. It was determined to return to this clause and re-examine if it needs more specificity, or if it could be condensed and made more generic.

- j) Clause 7 – there was a lack of clarity about what this right was intended to protect, and whether it was therefore necessary to include. It is clearly meant to be a passive rather than an active right (with individuals not prevented from creating educational institutions), but concrete examples of why this might be necessary were not self-evident. Having just discovered the value of square brackets, the group determined to use them again (bad precedent!), but it may be useful when examining this clause in future to determine more clearly what significance this right is intended to confer.

The group ended their work here, and agreed that it had been useful to discuss specific clauses. It was also, however, noted that a lot of work remained, since we had only completed half of the agenda of specific clauses, and had not even started the more general discussion of generic issues (other than as part and parcel of specific clauses). This was not seen as problematic as long as time does allow us to get through the whole agenda, and nothing important gets squeezed out of consideration because of lack of time.

It was agreed that we would need (a) to meet more frequently; (b) ideally find more full days since we had got through more work than we can do in odd two hour sessions; and (c) circulate a chart to determine availability. Decisions about dates would be made on the basis of (i) number of people able to attend any session (ii) subject to the availability of the convenor/s and the legal adviser. Maggie offered to circulate a chart accordingly.

In the course of this planning, several people in the group indicated serious concerns about the overall timetable and considered the current timetable for outreach (a very short time period over the Christmas vacation) to be inappropriate. This concern should be brought to the attention of the Forum chair/secretariat.

(sorry no list of attendance was circulated!)