

Bill of Rights Forum

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

Minutes of Meeting held on Friday 16<sup>th</sup> November 2007

Interpoint Centre, York Street., Belfast

Convened by: Domhnall Ó'Coibhthaigh

Present: Vincent Parker (Sinn Féin), John O'Kane (SDLP), Sandra Baillie (UUP), Sr. Brighde Vallely OP (Catholic Church)

Apologies from: James Knox (CoSo), Lisa McElherron (NICVA), Rachel Murray (Legal Advisor)

Observed by: CAJ

1. The Convenor opened the meeting by welcoming the new note taker, Josephine Lett and inviting comments on the previous minutes.
2. Sandra Baillie wished to clarify that within paragraph 4 and on the subject of parades issues, she wished to have the words 'would not' removed from the last line of the paragraph. She also pointed out a spelling mistake in paragraph 6. The Convenor asked that it be noted that the UUP would not like the Bill of Rights to go into the realm of excepted matters. The SDLP and SF would like particular emphasis to be placed on the local circumstances. The minutes of the previous meeting were accepted.
3. The Convenor informed the group that he received an email from the Criminal Justice Working Group. They indicated that the CPE working group should examine the issue of equality and political ex-prisoners. Vincent Parker noted that in previous minutes political ex-prisoners were defined as those released under the Good Friday Agreement, This is not the case. They include more people than just those released under the Good Friday Agreement. The Convenor clarified this as making a definitional point that ex-prisoners are not simply those released under the Good Friday Agreement. All agreed that this definitional issue be resolved. Sr. Brighde Vallely questioned whether this definition would include Al Qaeda if they targeted airports in Northern Ireland, given the fact that

they are politically motivated. The Convenor noted that since they would consider themselves to be politically motivated, once they are released from prison logically they should be treated with equality. John O’Kane agreed they should be treated with equality upon release. Sandra Baillie explained that the UUP does not believe they should be treated equally on release. Vincent Parker drew her attention to the Good Friday Agreement and asked for clarification on whether the UUP is not in agreement with certain parts of it. Sandra Baillie indicated that she would seek clarification from her party on their position on this. The Convenor reminded all present that the aim of the working group is to create a draft. Each member can indicate whether they agree or disagree. The aim of the forum is to indicate the level of consensus achieved in the working group.

4. The Convenor directed the group’s attention to Rachel Murray’s document. He noted that in terms of the preamble it was agreed to arrangement in alphabetical order. It was also agreed to include economic and social rights. This is considered done.
5. Article 2: Right to Life: Already discussed and agreed in previous meeting.
6. Article 3: Prohibition of Torture: Sandra Baillie raised the issue of domestic abuse and said that she will investigate this. The Convenor held that the Article already includes this. It was agreed by all.
7. Article 4: Prohibition of slavery and forced labour: Vincent Parker requested that the term ‘prison regime’ be removed and replaced by rehabilitation. This was agreed. The wording of 4.3.A will be changed to rehabilitation of individual.
8. Article 5 Right to Liberty and Security: It is felt that the amendment in 5.1.E does not read correctly. There seems to be a word omitted. A substitute is need for the term ‘unsound mind’ and the Convenor indicated that he would ask the legal adviser to address this issue. Sr. Brighde Vallely pointed out that many people who are in medical facilities are of sound mind and cannot be included in this description. The term needs to be qualified. Vincent Parker stated that the term ‘incapable’ is discriminatory. The remainder of this right will be addressed by the Criminal Justice Working Group.

9. Article 6 Right to a fair trial: This will be addressed in the Criminal Justice Working Group.
10. Article 7 No Punishment without Law: As requested, Rachel Murray has found an alternative for the term civilised nations. She has introduced the term war crime. This was found to be acceptable and agreed.
11. Article 8 Right to respect for private and family life: The Convenor wished it to be noted that he was raising an issue on behalf of CoSo who were unable to attend. CoSo would like a specific right to be included which would recognise the right to found a family without discrimination based on sex or gender. There should be no discrimination of the lesbian, bi-sexual, transgender grouping. Sr. Brighde Vallely pointed out that this distinction should include heterosexual too. The Convenor questioned how the concept of family life should be defined. Vincent Parker stressed that his party is strongly in favour of the right to found a family without discrimination on the basis of sexual orientation or gender. Sr. Brighde Vallely indicated that she agrees. Sandra Baillie wondered if the issue is already covered and if this new line is necessary. John O’Kane agrees with Sandra Baillie as he feels that the term ‘everyone’ is adequate. The Convenor repeated that he raised this on behalf of CoSo and stated that James Knox will clarify it when he returns. Sandra Baillie made the point that some people have a psychological barrier with rights. They feel that there are rights and not responsibilities. Sr. Brighde Vallely indicated that she is not certain what the church’s position is on it. She did note that in London Bishops were talking about closing down adoption agencies as there is no right to set up an agency to provide adoption services to heterosexuals solely. The Convenor pointed out that this might be the crux of the issue – should same sex couples who want to adopt be discriminated against by an agency who want to give a baby to a heterosexual couple only. Sr. Brighde Vallely will seek clarification on the Church’s position. She noted that in exercising the right of same sex couples, this was infringing the right of the adoption agencies to give to a heterosexual couple. The Convenor drew the issue to a close. It will be returned to when James Knox is present.
12. Vincent Parker questioned whether the right to privacy for the family life and the home should be included in this right? He explained that the context of his suggestion lies in the current practice of developers building in Belfast. Sandra Baillie and John O’Kane

noted that such an inclusion would have economic and financial implications. Sandra Baillie pointed out that people can challenge developments under the law. Vincent Parker drew the group's attention to developments in Belfast which are being ring fenced by apartments and hotels. He pointed out that there is no specific right for those people to claim under the law. The Convenor suggested that Rachel might consider this possibility. Sandra Baillie stressed that her party is against this on principle. Sr. Brighde Vallely and John O'Kane both agreed that such a right could not be implemented. John pointed out for example that there is no right to light or to a view. The Convenor suggested that Rachel look at this suggestion.

13. Article 9 Freedom of thought, conscience and religion. The group discussed the issue of taking an oath of allegiance. Vincent Parker pointed out that the difficulty lies in the compulsion to take an oath. The Convenor added that people may find it difficult to take an oath for religious reasons. Sandra Baillie agreed that the issue of compulsion is problematic. John O'Kane and Sr. Brighde Vallely reminded the group of the historical dimension to the issue of oaths highlighting the impact which this had on people's employment opportunities. John O'Kane stressed that the right should take account of the unique circumstances of Northern Ireland. The Convenor agreed that it will be left in provisionally. Sandra Baillie agreed no one should be compelled to take an oath.
14. Art. 10: Freedom of expression Vincent Parker drew attention to paragraph 2 and specifically to the concept of restrictions 'in the interests of national security and territorial integrity'. He disagrees with restrictions on these grounds as he believes they are too broad and can be readily used by the Government. The Convenor reminded the group of the issue of historical censorship and that the issue could be considered relevant to the 'particular circumstances' of NI. Sandra Baillie pointed out that she has never agreed with this and that everyone has the right to free speech. Sr. Brighde Vallely agrees that territorial integrity should not be included. It was agreed that national security and territorial integrity should be removed leaving the interest of public safety to remain.
15. Vincent Parker drew the group's attention to the phrase in Article 10, paragraph 2 'for preventing the disclosure of information received in confidence'. His understanding of this is that it relates to informants and he finds this questionable. The Convenor suggested that Rachel should examine this.

16. The Convenor related the potential to look at extending the right to access information to a more generalised right to information. John O' Kane concurred that there are times when you can't access info. It was agreed that the group would ask the Legal team to look into wording for this.
17. The Convenor questioned whether this is a right to journalistic freedom? Sandra Baillie argued that this is already included. Vincent Parker stressed the importance of enshrining the freedom of the press. Sandra Baillie raised the issue of responsibilities of the press. The Convenor clarified that this right should be balanced with Art 8. Sr. Brighde Vallely questioned whether the concept of receiving and imparting information does not already include the concept of journalistic freedom. While the Convenor agreed that it was included, he pointed out that as it stands, the right is not explicit. It was agreed to consider a working on a Right specifically dealing with Freedom of the Press.
18. The Convenor raised the issue of free speech the context of elections? He explained that in the ROI there is a ban on discussing politics in the 24 hours preceding an election. John O'Kane pointed out that a similar system is in place in France. The Convenor questioned whether such a system may be useful in Northern Ireland. He requested that Rachel consider drafting additional materials on this.
19. Article 11 Freedom of assembly and association. Vincent Parker requested that in paragraph 1 'his interests' should be supplemented with 'her interests'. The convenor suggested that all language would be dealt with at the end. Also in paragraph 1 he requested the inclusion of the right to form a political party. On the issue of parading he requested that this be balanced with the right to live free from sectarian harassment. He pointed out that this is in the Good Friday Agreement which has been accepted by all parties. Sr. Brighde Vallely questioned whether assembly included marching? John O'Kane confirmed that the right to parade is not included in the right of peaceful assembly. The Convenor questioned whether the group should consider a right to parade. John O'Kane disagreed with this suggestion. Sandra Baillie believed that this right should be enshrined as it is a form of cultural expression. Vincent Parker suggested that this right is a matter for the cultural working group. He drew the working group's attention to a new document on parading from Paddy Ashdown's strategic review body.

He reiterated that the right of freedom of assembly should be balanced with a right to live free from sectarian harassment. As it is in the Good Friday Agreement, it should be in this Bill. Sandra Baillie pointed out that she is opposed to sectarian harassment. Vincent Parker pointed out that he would like to widen the concept of sectarian harassment to include other groups such as the Chinese community. Sandra Baillie questioned how harassment is defined. The Convenor drew her attention of Section 6. Sandra Baillie suggested that the right to free speech should be greater than the right to assembly. John O'Kane agreed that the right to peaceful assembly should be enshrined considering the specific circumstances of Northern Ireland. Sandra Baillie provided an example of the right to free speech and the right to peaceful assembly in the case of a group of neo-Nazis who wished to parade through a village of Holocaust survivors. She argues that there should be a right to parade and that it should be stronger than that to live free from harassment. Vincent Parker reminded her that another group will deal with the right to assembly and the issue we face is to balance it with right to live peacefully and free from harassment. He pointed out that the cultural language and identity group will deal with the remaining issues and that by balancing the two the group is not seeking to agree which takes priority. The Convenor clarified that the group is dealing with two issues: the right to assembly and the right to live free from sectarian harassment and asked if members were agreed to leave it in that way. Sr. Brighde Vallely suggested that Vincent propose a wording. Vincent Parker suggest that 'Everyone has right to live free from sectarian harassment' and he proposed this should be extended to include other forms of harassment.

20. On the issue of including a right to join a political party, Sandra Baillie pointed out that the UUP will not agree with this reference. Vincent Parker stressed that this is a fundamental right. The Convenor proposed that as there was otherwise unanimous agreement with this proposal, the group move ahead with this amendment noting dissent from the UUP member.

21. The group returned to the issue of parading. John O'Kane agreed that it is a cultural issue but pointed out that the problem arises in relation to the motivation behind it. The Convenor added that the problem arises when it infringes other people's rights. Sr. Brighde Vallely suggested that the right to be free from sectarian harassment should be placed in paragraph 2. Vincent Parker drew the group's attention to the document of the

Strategic Review Body and the Good Friday Agreement. Sandra Baillie wondered whether the Cultural Group would deal with this. Vincent Parker pointed out that it is a political and civil issue. The Observer (CAJ) intervened to point out that the balance which Vincent Parker is urging corresponds to the concept of responsibility which Sandra Baillie raised earlier in the meeting. Sandra Baillie believes that her community would react badly to this inclusion. She suggested consulting the Orders on this issue. The Convenor suggested that the amendments be included subject to Sandra Baillie's dissension. It was agreed, with one dissenting vote (UUP), to insert the words 'in particular, the right to live free from sectarian harassment' in the second paragraph of Article 11. He will send a note to the cultural committee to work on the issue of parades. Vincent Parker would like it to be noted that the right to be free from sectarian harassment has been agreed by all parties to the GF agreement. The Convenor concluded that the reference to labour will be left to the social and economic group.

22. Article 12 Right to Marry: John O'Kane and Sandra Baillie pointed out that civil partnerships are enshrined in law. The Convenor suggested a parallel right to civil partnership might be included in the Bill. Vincent Parker suggested that the reference to 'marriageable age' be removed as it already exists in legislation. Sr. Brighde Vallely disagreed and this was agreed. The Convenor suggested that this right be returned to when CoSo are present with a view to including additional protections of relevance to that group.
23. Article 13 Right to an effective remedy: This right will be dealt with by the Implementation Group.
24. Article 14 Prohibition of Discrimination: This will be replaced with the agreed text as amended from the Equality Working Group paper.
25. Article 15 Derogation in time of emergency: The Convenor suggested that this right be delayed until the next meeting.
26. The Group turned their attention to additional issues. The first issue discussed was that of property. The Observer intervened to explain that the property in question is intellectual property. Does the group wish to recognise this as a right? In general the

group felt that this was quite a complicated area. The Convenor requested all groups to return with their thoughts on whether intellectual property rights should be included.

27. The next issue discussed was the right to participation. The Convenor stated that he felt strongly that there should be a right to participate in the political processes affecting people paralleling those within the Good Friday Agreement. Vincent Parker added that there should be no restrictions on people's involvement in political processes. John O'Kane pointed out that such restrictions are of historical relevance only. While Vincent Parker agreed, he felt that such a right should be enshrined. John O'Kane questioned whether any group is addressing the issue of proportional representation. There was a general discussion on this. The Convenor questioned whether any group is dealing with the right to representation. Following a request for clarification from Sr. Brighde Vallely, John O'Kane explained that a party could be systematically excluded in a local council in terms of committees. The discussion turned to the right to a vote and the historical background to this. The Convenor suggested that the right to representation, the right to vote, the right to participate, a parallel duty on Government to provide such empowerment mechanisms be included in some way. Vincent Parker suggested that it might be termed a right to political and civic processes. The Convenor raised the possibility of including the concept of accountability? He pointed out that no other group is dealing with this. The Convenor noted that the issue of proportional representation was agreed upon by everyone present.

28. The third additional issue discussed was the issue of freedom of movement. Sandra Baillie pointed out that there is no change in her party's position of opposition to this. John O'Kane drew the group's attention to the proposals to remove the freedom of movement between Northern Ireland, the ROI and Great Britain. The Convenor suggested that the group search for a formal wording on the right to freedom of movement. Vincent Parker pointed out that it should agree with the 4<sup>th</sup> protocol of the European Convention.

29. The group turned its attention to the right to nationality. Sandra Baillie pointed out that her party is not happy with this inclusion. Vincent Parker pointed out that the right to nationality is enshrined in all UN documents and was essential. Sandra Baillie questioned its inclusion in a Bill of Rights. Vincent Parker argued that a Bill of Rights is

the correct location for such a right. Sr. Brighde Vallely and Vincent Parker disagreed over whether nationality was something you could buy or whether that was citizenship. The Convenor pointed out that the UK Government has already signed up to the right of nationality in its UN commitments but that the aim of the group is to express it in the particular circumstances relevant to Northern Ireland. Vincent Parker stressed the importance of including the right to nationality as it enshrines the right of people to choose if they are British or Irish citizens. The Convenor suggested that the next step may be to look at a proposed wording for this. It might include something like the right to nationality that you are entitled to. Sandra Baillie questioned how this might impact migrants? Sr Brighde Vallely indicated that this was precisely what was in question. John O'Kane raised the issue of the impact on the children of migrants. Vincent Parker drew the group's attention to the legal cases on this emanating from Dublin. The Convenor concluded this subject suggesting that the group search for an appropriate wording on this – with support from the Legal team.

30. The final issue discussed by the group was the general right to dignity. It was felt by the group that this is included in the preamble paragraph on equality and throughout all the rights. Sr. Brighde Vallely however raised the issue in relation to the imprisonment of asylum seekers. John O'Kane gave a specific example of the imprisonment of a visitor during his visit to the Giant's causeway. The Convenor suggested that this might fall under Art. 5 (f). Sr. Brighde Vallely gave the example of two migrants sent to Maghaberry who were strip searched and treated like criminals. Following her intervention in the case she was assured it would not happen again. She pointed out that they should have been held but not imprisoned. The Convenor requested that Rachel suggest a wording which prevents people who should be subject to holding orders being sent to prison. Vincent Parker added that treatment appropriate to their circumstances and with dignity should be included too.

31. The Convenor drew the meeting to a close and informed the group that the next meeting would be held in two weeks time. It is hoped that there would be a full house for the next meeting to run over the first full draft.