

Bill of Rights Forum
Working Group on Culture, Identity and Language
Minutes of Meeting held on Thursday 29th November 2007
Parliament Buildings, Stormont, Belfast

Convened by: Nelson McCausland MLA (DUP)

Present: Stephen Nicholl (UUP), Lee Reynolds (DUP),
Stephen Farry MLA (Alliance), Rev Patricia
McBride (Irish Council of Churches), Brian
Syminton (RNID), Fr Tim Bartlett (Catholic
Church), Barry McElduff MLA (Sinn Féin), Willis
McBriar (ICTU).

In Attendance: Dr Elizabeth Craig (Human Rights Legal Advisor)

Observed by: Devika Prasad (CAJ)

Minutes by: Ian Black (QUB)

1. The Convenor opened the meeting by distributing documents¹ and proposed that the working group make a note of the previous meeting's minutes as the regular minute recorder was not present at this meeting and there may have been difficulties circulating the minutes. The Convenor then invited Dr Craig to guide the working group through the various documents presented.
2. Dr Craig informed the working group that groups were supposed to report back before the next meeting and that she had been in contact with Chris Sidoti (Chair of the Bill of Rights Forum) and that Chris was content that this group report back the week of the 14th December. The next meeting of this group is the 13th of December and Dr Craig proposed that she would compile a progress summary on the morning of Tuesday 11th December and circulate it to the members of the group, requesting that if there were any comments they be returned to her as soon as possible in order that she could

¹ Dr Elizabeth Craig, 'Discussion Paper for the Working Group on Culture, Identity and Language,' 20 November 2007.

Dr Elizabeth Craig, 'What gaps are there in the ECHR? What additional protections should be included in a Bill of Rights for Northern Ireland? To what extent are these issues addressed in the Framework Convention and the Languages Charter?'

Dr Elizabeth Craig, 'Article 2 of the First Protocol to the ECHR Paper for Culture, Language and Identity Working Group, 28 November 2007.'

Patrick Yu (NICEM), 'Language, Culture and Identity Issues,'

Working Group on Culture, Identity and Language, 'Minutes of Meeting held on 21 November 2007.'

update Chris Sidoti by Wednesday. This request was approved by the working group.

3. With regard to progress from the last meeting Dr Craig had requested that members of the group send a list of issues to her that they wanted considered or addressed. She had received quite a few responses and she had summarised the responses under the document titled 'What gaps are there in the ECHR.' An issue Dr Craig wanted addressed was that she was aware there was a consensus among some members that the Framework Convention was an attractive document. What she was unclear about was the intended incorporation into domestic law. A Bill of Rights is essentially how we are going to give effect to the Framework Convention in domestic law and in her various papers she points out that the Framework Convention is drafted in a very different way to the ECHR. The ECHR has judiciable enforceable rights for example "everyone has the right to freedom of expression," which is easily enforceable in a court subject to adjudication, whereas the Framework Convention is worded quite differently. Dr Craig wanted clarified what the working group wanted done with the Framework Convention. Dr Craig informed the group that Council of Europe experts suggested a general provision that the law should give effect to the Framework Convention and also suggested language rights should be protected. Dr Craig's preference was an inclusion of two clauses to that effect and then a more specific clause for example giving effect to education in the minority language. Dr Craig inquired of those favouring incorporation what they understood that term to mean. If the Framework Convention is to be incorporated into domestic law, what is that incorporation going to look like? Dr Craig continued wanting to know opinions on how the Framework Convention could solve problems in Northern Ireland and wanted to know what those favouring incorporation anticipated and what the effect of incorporation was.
4. Lee Reynolds on incorporation suggested implementation. An issue he raised with the Framework Convention was that the processes were slow and the final recommendation was vague with essentially a cycle from the issue arising until final determination taking between eight to nine years. Dr Craig suggested that recommendations were vague because the provisions in the Framework Convention were vague. Lee Reynolds suggested that he would add a caveat that it can be incorporated but there is a slight problem with the Council of Europe's Recommendations in that it only affords protection

to minorities and that the group would need to consider minority and community definition.

5. Stephen Farry stated that he was not preoccupied with precisely what is meant by incorporation whether the group makes reference to the Framework Convention or takes those rights out and define the wording accordingly. What is stressed is concern that if reference is made to the Framework Convention and all fifteen articles apply to national minorities and then some rights that are broader applying to communities are selectively taken out, it is important to make sure that this will apply uniformly. Dr Craig imagined that interpretive clauses would be included. Stephen Farry recalled the classic sense of minority in a historical European sense but noted the need to reflect the indigenous problem of two identities and emerging identities. Dr Craig noted that defining national minority group may be problematic and that the group might need to say what groups are included. Stephen Farry suggested that there is a need to be flexible to take account of changing circumstances with a specific reference to migrant workers, reminding the group that if this exercise had been undertaken ten years ago there would have been no regard for migrant workers, whereas this is an important issue today. The importance is to ensure flexibility and the listing of groups for example may be counter productive.
6. Stephen Nicholl reminded the group of the need to regard the particular circumstances of Northern Ireland and questioned that migrant workers may not be a particular circumstance of Northern Ireland. His concern was that the group needs to be careful of not taking issues beyond Northern Ireland responsibilities into what is a national responsibility. The importance for this group is to regard the Northern Ireland issues and responsibilities.
7. Dr Craig inquired whether there had been any conclusion on opinions on the particular circumstances of Northern Ireland and how the term communities was to be defined, whether that was to include ethnic, national and linguistic groups or cultural as well. Fr Bartlett advised the group not to put "the cart before the horse," if this issue was to be the focus of a future meeting and Dr Craig informed The Convenor she would report back that there had been discussion of this issue but it was still pending a full consideration at a future meeting. Willis McBriar reminded this group that there will need to be consistency across all the working groups with Lee

Reynolds suggesting that was where the last process fell apart.

8. Fr Bartlett took the opportunity to thank and commend Dr Craig for her excellent paper, appreciated by the working group which The Convenor duly noted. Dr Craig then drew the attention of the group to her paper 'What gaps are there in the ECHR?' For consideration was page 2 of this document, the two provisions in italics found in section 31 of the South African Constitution.. Dr Craig explained the context suggesting one notable gap in the ECHR is that there is no provision to protect minority rights, compared with the International Covenant of Civil and Political Rights (ICCPR) which does. The ICCPR recognises "minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language." The Convenor asked if this was the same position with the Framework Convention which Dr Craig replied it was not in that exact way. The Convenor enquired what the nearest equivalent in the Framework Convention was; Dr Craig drew the attention of the group to Article 5 of the Framework Convention and explained that this article was not formulated as a right but instead as an obligation on the state which people have said makes the provision weaker. In a Bill of Rights one would normally expect a provision like this to be formulated as a right rather than an obligation on the state. Stephen Nicholl expressed contentment with the context in the Framework Convention. Dr Craig reminded the group that a public authority would be required to promote the conditions. Willis McBriar wanted to know in what sense it can be a Bill of Rights if it is formulated in a Framework Convention method. Dr Craig wanted to determine what the consensus was whether rights language or obligation language was preferred. Rev McBride asked if the rights language was stronger than obligation language which Dr Craig confirmed it generally was. Dr Craig suggested it was possible to put the two together, to put the right and obligation together. Stephen Farry was mindful of how this provision was going to be sold reminding the working group it would still have to be passed through the Human Rights Commission and the UK Parliament. Dr Craig then invited opinions on a combined provision. The Convenor expressed a personal preference for a Framework Convention format and was aware of the need to get through the Bill of Rights Forum, the Human Rights Commission and the political process. There was a danger of going a step too far in which people would walk away from the process. The need was to maximise the chances of getting this Bill enacted and

reminded the working group that nothing was set in stone and could be changed and added to in years to come. The Convenor continued stressing that ultimately there is a need to arrive at a Bill people will buy in to.

9. Dr Craig noted that the South African Constitution only has two provisions dealing with culture and language but there is a minimum individual right recognised. Dr Craig continued by asking if there was a consensus having a general provision addressing those issues and then having a more specific reference to the Framework Convention. Stephen Farry expressed a need for consistency of approach in terms of application.
10. Dr Craig pointed out that sign language was not specifically protected and questioned whether the working group wanted to make a specific reference to sign language. Brian Syminton expressed a preference for inclusion asserting that sign language was a language in its own right. At this stage there were no strong objections. Stephen Farry returned to the issue of particular circumstances and expressed concern with the idea that only some identities or languages relate to the conflict. The fear was if only some languages should be protected this could contribute to tension. He continued stressing that if there is going to be language protection it will need to be fair. Lee Reynolds on the particular circumstances issues suggested that security of identity is very important for everybody. Dr Craig then enquired what the working group's consensus was on the Languages Charter as this charter makes a distinction between indigenous and non-indigenous languages. The aspect of Irish Sign Language was raised and discussed. The Convenor suggested there were certain broad principles set down in Article 7 of the Languages Charter parallel in many ways to the Framework Convention in terms of format, for example the state should resolutely promote etc. Dr Craig discussed Article 7 and agreed that its potential application to a wider range of languages could be considered.
11. The working group then considered substantive issues which can be found from page 3 in Dr Craig's paper. The issues had arisen in email correspondence between working group members and Dr Craig and included 'The need to communicate one's culture to the next generation, the right of individuals to be taught their minority language or for receiving instruction in language, interculturalism, the right to self-identification, the role of the media, the parades issue

and religious education.' Dr Craig attempted to ascertain if anything was missing from that list, Barry McElduff requested that self-identification was discussed. Dr Craig drew the attention of the working group to page 6 of her paper 'What gaps are there in the ECHR?' Article 3 of the Framework Convention considers that "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice." This is considered particularly problematic in relation to Fair Employment legislation and monitoring requirements. Lee Reynolds wanted to know more on this issue and whether a statistical exercise can lead to action. Dr Craig responded by reading out what the Advisory Committee on the Framework Convention had ascertained suggesting that "The Advisory Committee notes that data collected under the Fair Employment legislation remains anonymous and used purely for statistical purposes in order to determine whether members of each community are enjoying fair participation in employment and if not to identify additional methods that could be adopted to ensure fair participation. The Advisory Committee reminds the government that restrictions on the right to free self-identification are not consistent with Article 3 of the Framework Convention; however the Advisory Committee considers that in the specific context of northern Ireland and at this particular moment in time the determination by employers of the community background of their employees may be relevant in order to ensure fair participation of under-represented groups." Lee Reynolds then raised the issue of residualisation. The Convenor recalled an example which occurred in the Belfast Education and Library Board where there was 'half-members' of a community. Stephen Farry contributed by reminding the working group of the implication of this issue in the census where there can be public policy outcomes based on how persons are categorised. Dr Craig advised the group that the wording of the Advisory Committee suggests for now this position is OK but it is possible that a court in Northern Ireland could say differently. Stephen Farry then referred to a classic example becoming a huge problem in the area of integrated schools. If for example the vital criterion of a school is to be 70:30 (majority/minority) it may be difficult to achieve this balance in a certain geographic area. Principals have pleaded with parents of children from mixed marriages to put their child down as a catholic or as a protestant so that a quota can be met. By being forced to choose an identity this may defeat the purpose of sending a

child to an integrated school. By asking parents to make this choice it can defeat the initial attractiveness to this type of school.

12. Barry McElduff made an additional point raising an issue with the phrase "No disadvantage shall result from this choice." In fact disadvantage does result and a specific example occurs when a young person applies to go to university and fills out a UCAS form. If a person fills out that they are Irish then the next question makes the presumption that person has Leaving Certificate results. This can put pressure on a young person and they feel they may have to declare a different identity or change their identity. The Good Friday Agreement at least makes reference to the fact that you can declare yourself to be Irish, British or Both and in the particular circumstances in the North of Ireland this is a huge issue for young people and requires sorting out. This is about national identity and he needs to be assured that the legalistic language incorporates decisions to stick to your national identity in the way you wish to be seen.
13. Willis McBriar considered the wording in Article 3 "the right to be treated or not to be treated," and considered if this was incorporated would it be sufficiently robust to address the issue of the parents (discussed above in paragraph 11) to say we have the preference to be treated not as a member of either of these groups. He continued to query whether this was an area where it was beneficial to have rights based language. Dr Craig inquired if the working group was going to add something to Article 3 with particular reference to the particular circumstances of Northern Ireland what that would entail. Barry McElduff suggested community background and national identity.
14. Stephen Farry alluded back to the Fair Employment terminology and suggested that an overtly religious label may not actually be about religion but rather about something completely different. The Convenor then requested that for this session the general principle that someone should not be coerced into something they do not want to be should be accepted and working group members were requested to be aware of the other issues resulting from this as some of these issues may be resolved in the debate taking place in the forum. It was acknowledged that there can be difficulty with identity as protestant does not always equate to unionist and likewise catholic does not always equate to nationalist.

15. Regarding communicating one's culture to the next generation Dr Craig suggested that that Article 5 of the Framework Convention was really the only provision that the working group has looked at which touches upon that issue. Article 29 of the UN Convention of the Rights of a Child considers 'national values.' Dr Craig suggested there may be problems with the wording national values and invited comments on whether the group wanted to look at developing something Northern Ireland specific. The Convenor suggested that cultural institutions other than education were difficult to define. He gave the example of museums and libraries. The Convenor recalled a discussion in the Education and Library Board where there was a section on Irish and Local Studies with the result being it had to be called 'Belfast, Ulster and Irish Studies,' which appeared a satisfactory compromise. He asked whether a term could be found in whatever format with reference to cultural organisations. Dr Craig asked whether what was sought after was to be phrased as a right and suggested she would consider and revisit this aspect. She enquired whether the group wanted to make reference to the section on non-assimilation. Fr Bartlett sought clarification on what people mean by assimilation and whether it for example obliged migrants to learn a local language. The discussion which then followed clarified that it entailed involuntary assimilation. Dr Craig suggested this aspect was framed in the context of Central and Eastern Europe and there were fears of quite extreme measures to suppress minority culture and language. Lee Reynolds informed the group of a situation which occurred in South Tyrol. There did not appear to be an overwhelming approval of Article 5 of the Framework Convention with some members of the group.

16. Regarding the right of individuals to be taught their minority language or for receiving instruction in a language, Dr Craig suggested consideration of what qualifications there were to be on this right and she proposed that she would return to this issue at the next meeting. Stephen Farry was aware of a situation occurring in North Down where in one primary school there were a number of children from ethnic minorities and the teacher grouped the ethnic minority children together whereas the parents preferred the children integrate more with local children to learn English better.

17. Page 6 of 'What gaps are there in the ECHR?' considers interculturalism. Dr Craig made the suggestion that the group begin to look at things they want specifically in the Bill of Rights as the Bill may start to become a lengthy document,

less like a Bill of Rights and more like an international treaty. This is an issue which may be returned to. The Convenor questioned why Article 12 of the Framework Convention had been included under interculturalism. Dr Craig replied that the wording includes national minorities and the majority. This wording is more straightforward and easy to understand.

18. The Convenor invited discussion on the media (found on pages 6-8 of 'What Gaps are there in the ECHR?') Dr Craig explained Article 10 ECHR and Article 9 of the Framework Convention, with paragraphs 2-4 of Article 9 elaborating on States' obligations. Fr Bartlett discussed the issue of parody and fair access with the working group, raising the issue of how groups and individuals are fairly represented by the media. The Convenor suggested the working group consider looking at producer guides and the Charter of the BBC to clarify this matter. Stephen Nicholl reminded the group of difficulties with interfering with artistic expression and Lee Reynolds suggested there may be more concern with factual programmes. Dr Craig explained the particular regard for freedom of expression in the Human Rights Act 1998. Willis McBriar informed the group that a lot of broadcast regulation is carried out by Ofcom, the Press Complaints Commission and bodies such as the BBC Trust. Willis McBriar questioned to what extent rights can be applied to those bodies. The working group then considered the effectiveness of those bodies in monitoring the media. The Convenor recalled a complaint concerning an illustration, where the media complaints mechanism may have been effective for an individual but was ineffective for groups depicted in a cartoon. Dr Craig requested that working group members email particular examples causing concern which they wish to be considered, she continued to explain that the European Court of Human Rights has interpreted Article 10 ECHR and allows people to say offensive things but she will investigate this matter for the working group.
19. On the issue of parades Dr Craig suggested that she would examine what the Civil and Political Group had achieved on this issue.
20. On the issue of religious education, working group members were offered the opportunity to read and reflect on Dr Craig's paper titled 'Article 2 of the First Protocol to the ECHR' to which they could respond by the next meeting.

21. A member of the working group had a difficulty with terminology. Dr Craig proposed that she would contact this member and follow up on any concerns. The Convenor thanked the working group and closed the meeting at 1600. At the time of writing the next meeting was due to be held at Stormont but this would be confirmed.