

Bill of Rights Forum

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

Minutes of Meeting held on Friday 30th 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), Rev. Dr. Fred Munce (Irish Council of Churches), Kieran McEvoy (CAJ), James Knox (CoSo), Gerry Lynch (Alliance)

In attendance: Rachel Murray (Legal Advisor)

Observed by: Claire O'Brien (CAJ)

Minutes: Josephine Lett

1. The Convenor opened the meeting by welcoming everyone. He explained that the function of the meeting was to finalise the draft document so that it could go to the outreach process. He reminded the group of the importance of recording everything both accord and discord. He then invited comments on the previous minutes.
2. Sandra Baillie wished to clarify that within paragraph 2 of the previous minutes, the point she wished to make was that she did not wish to see items beyond the competency of the Assembly included in the Bill of Rights. In paragraph 19 she wished to clarify that the right to speech goes with the right to assembly. She pointed out that in paragraph 21, rather than 'wondering' she had actually 'suggested'.

3. Vincent Parker wished to clarify in relation to the reference to developments in paragraph 12, the reference should actually read communities. In paragraph 14, in relation to territorial integrity, the term 'used' should in fact be 'misused'. In paragraph 19 he suggested that the language should be neutral as opposed to an explicit reference to him or her. He drew the group's attention to the document on parading which was discussed in the previous meeting. He pointed out that it was a document on the right to assembly rather than parading. It is entitled 'Freedom of assembly and the rights and freedoms of others'. He elaborated on his reference to sectarian harassment and advised that it should apply to all groups rather than just to the Chinese. In paragraph 21 he noted that it should read as the right to live free rather than the right to be free. This wording is in line with the Good Friday Agreement.
4. The Convenor concluded that subject to these changes minutes are adopted. He then explained that Rachel Murray had drafted a document based on the previous meetings. The function of the meeting today was to go through the document to identify where consensus was achieved and where there was discord.
5. Rachel Murray explained that she had inserted a preamble on the advice of Chris Sidoti as all the Working Group's documents should look similar. The object of the preamble is to give an indication of the process which each group has gone through. It will not act as a preamble but rather as an explanation of the work of the group. This was unanimously agreed.
6. The Convenor then directed the group to the document. They began their discussion at Article 14.
7. Article 14 No Punishment without law. Agreed.

8. Article 15 Right to respect for private and family life: Rachel Murray explained that she had inserted three new lines on the basis of the discussion at the previous meeting. Vincent Parker outlined the background to the suggestions explaining that given the various building developments taking place in Belfast, should the right to privacy be extended to cover the family home. In response to this, Rachel Murray informed the group that the concept of the home already covers a broad range of protection such as protection from aircraft noise pollution. Sandra Baillie pointed out that this protection should be balanced with economic considerations. Rachel Murray explained that the protection which Vincent has in mind is already balanced with the economic considerations which Sandra has in mind in the cases of the European Court. All agreed.
9. On the issue of the right to found a family, Rev. Dr. Fred Munce commented on the addition of 'regardless of sexual orientation or gender identity'. This he believed is superfluous. He believed there should be a full stop after 'Everyone has the right to found a family'. He pointed out that every church would say the rights of the child are paramount. The Methodist Church for e.g. are happy to place a child with anyone provided they are the right people to have them regardless of whether they are same sex, single, etc. It is already a legal right of a single person to adopt in Northern Ireland. He would like to see the legislation for the right of same sex couples to adopt soon. Vincent Parker explained the background to the addition of this sentence. It stemmed from the fact that people have differing conceptions of what constitutes a family.
10. James Knox pointed out that new legislation is expected in this area soon. Kieran McEvoy agreed with the rationale behind Rev. Dr. Fred Munce's suggestion provided it could be shown that it would actually cover everyone. Rachel Murray suggested that a full stop could be inserted after 'the right to found a family'. Then in line two state that no family may be subjected to discrimination on the

grounds elaborated in Article 4. James Knox cautioned that while it was a good idea in theory to include a full stop after the right, he cautioned that if something is not mentioned, it is often not dealt with. Kieran McEvoy pointed out that this is a Bill of Rights document as opposed to a policy document. Rachel Murray suggested that a reference be made to non-discrimination in Article 4. Sr. Brighde Vallely feared that we would end up with a list. Kieran McEvoy suggested that the group agree to include a full stop after the right. Otherwise he pointed out that a political fight might ensue in which the substantive right might be lost. James Knox remained concerned that if the issue was not flagged directly, it might not be sufficient. In relation to the third new line 'No family may be subjected to discrimination...' Sr. Brighde Vallely asked whether it should be families or persons. Sr. Brighde Vallely suggested that the term 'maybe' be amended to 'shall'. All agreed.

11. The group turned its concern to the use of the term 'morals' in the document. Rachel Murray explained that the term was taken from the European Convention on Human Rights which is a living instrument which reflects the moral values of the time. The Court has given countries significant leeway in their interpretation of this. She asked the group was there another term which they would prefer. James Knox questioned whether the term was needed as he felt it was an outdated concept. Gerry Lynch explained that it is a term most often used by the State to manage offences such as child pornography. Sr. Brighde Vallely explained to the group the difference between morals and ethics. She explained that morals have been described as the agreed principles of the state while ethics are the agreed principles of a group. James Knox questioned this definition asking who exactly agrees them. Gerry Lynch pointed out that difficulties may arise if people's moral frame of reference doesn't agree with the State. The Convenor asked the group did it wish to remove the reference to morals. Kieran McEvoy wondered how the reference to morals fitted with the previous article on founding a family based on different types of couples. Rachel

Murray explained that the reference to morals by the European Court is really a catch all phrase. Vincent Parker pointed out that morals change over time while Sandra Baillie agreed that the concept of morals is relative. Vincent Parker was in favour of removing the term. John O'Kane pointed out that what is acceptable and what is tolerated may shift over time but regardless something remains morally right or wrong. Rachel Murray pointed out that the reference to 'the protection of the rights and freedom of others' would take the concept of morals into consideration when engaging in a balancing exercise. At this point the Convenor decided to move the debate forward. He called for a vote. The reference to morals was removed throughout the document but it is noted that three people wanted it to remain. He requested a briefing on the issue in anticipation of discussion at the forum.

12. Article 16: Freedom of thought, conscience and religion. Rachel Murray explained that she had included a line on the fact that an individual must not be compelled to take an oath. Sr. Brighde Vallely questioned whether this had been agreed on grounds of religion? Vincent Parker pointed out that whether it was religion or belief, the issue here was the concept of compulsion. James Knox added that CoSo would like to see included that in addition to the freedom of religion, people would be free from coercion or imposition of beliefs. Kieran McEvoy questioned whether this was not already covered in the freedom of thought and conscience. It was generally felt by the group that the right not to have a religion put upon you was already covered in the Article. Vincent Parker explained the issue with the term morals as discussed earlier applied throughout the whole document. Sr. Brighde Vallely would like the freedom of thought and conscience separated out from the freedom of religion. The Article was adopted unanimously but the Convenor sought a briefing in anticipation of discussion the forum.

13. Article 17 Freedom of Expression Rachel Murray pointed out that journalistic freedom is already covered in the article. She asked the

group if they were certain they required additional protection? Sandra Baillie disagreed with the additional protection offered to journalists in this addition. Rachel Murray pointed out that there are restrictions to the freedom offered, which can be found in paragraph 2 of the Article. James Knox gave examples of how far the freedom of the press can go and the impact which this can have on the individual. Kieran McEvoy agreed that at times the local press can be irresponsible but the restrictions in paragraph 2 of the Article should suffice. Vincent Parker pointed out that this line was brought up in terms of historical rights of journalists. The Convenor asked for the line to be removed.

14. In relation to the addition of the right to information, Rachel Murray pointed out that the addition of this line would in fact go further than what it already in legislation. Most documents, she noted, refer to the right to access information as opposed to the right to information which is broader. She pointed out that it would still be subject to the restrictions in paragraph 2 of the Article. She wondered if the group might like it in a separate clause. Sandra Baillie noted that the UUP would not be in favour of that. The group noted that it had adopted the 'right to information' with one dissension previously and moved on.

15. Vincent Parker sought clarification on the term in paragraph 2 'for maintaining the authority and impartiality of the judiciary'. Does this mean that the judiciary can restrict information in relation to cases? The Convenor asked if the group wished to remove the term 'authority'? Gerry Lynch disagreed with this. Vincent Parker pointed out that he did not necessarily wish it to be removed. He just wanted clarification on its meaning. The Convenor suggested that it be forwarded to the forum as it stands.

16. On the insertion of the third line 'free speech in the context of elections' Rachel Murray suggested that this be moved. This was

agreed unanimously. She also clarified that the term 'in confidence' does not refer to informants.

17. Article 18: Freedom of assembly and association. Gerry Lynch questioned whether the group had discussed the issue of senior civil servants and restrictions on their political activity? Rachel Murray confirmed that it is covered in the reference to national security and in particular it is covered by the last sentence in paragraph 2. The discussion turned to the inclusion of the right to live free from sectarian harassment. James Knox pointed out that hate crimes legislation covers religion, belief, race, homophobia and disability and should be included here. Vincent Parker explained that the terminology comes from the Good Friday Agreement. Rachel Murray stated that she would amend the wording to include the terminology from the Criminal Justice Act. The proposal was agreed unanimously with one dissention (UUP).

18. Article 19: Right to marry . Sr. Brighde Vallely suggested that people have a right to enter into civil partnerships should also be included here. Rachel Murray pointed out that the right to found a family is already covered in an earlier Article. The Convenor suggested that it be amended to cover civil partnerships and marriage. James Knox pointed out that by explicitly referring to marriage and civil partnerships, this is excluding other types of relationships. Rachel Murray suggested that the heading include the right to marry and that the substantive article refer to the right to enter partnerships. Vincent Parker raised the issue of the rights of couples cohabitating. Kieran McEvoy pointed out that this is already covered under common law. Vincent Parker questioned would the terms civil and domestic partnership both be included. Gerry Lynch pointed out that the term civil is recognised term while the term domestic is not. James Knox explained to the group that he raised the issue in order to ensure rights for all. Rachel Murray suggested that the right to marry and the right to found a family be re-ordered. James Knox suggested that the title of the Article include

the right to marry and that the reference to civil partnership be included within the body of the Article. Rev. Dr. Fred Munce pointed out that he had requested that civil partnership be included in Article 4 and was denied it earlier. He was informed that the term marital and family status covered it all. The Convenor noted that the term 'national' should be removed from before law.

19. Article 20: Right to an effective remedy . This is being referred to the implementation group.

20. Article 21: Derogation in time of emergency. This will be dealt with by implementation group.

21. Article 22: Right to participation Rachel Murray explained that this Article reflects a combination of a number of documents. The Convenor questioned the origin of the last sentence which Rachel Murray explained emanated from Venezuela. Following a brief discussion on the term 'genuine', the Convenor requested that it be removed. This was opposed by Gerry Lynch. It was unanimously agreed that the word genuine would be retained. Vincent Parker questioned the right in (c) the right of access to public service. He questioned why it was not simply the right to public service. Kieran McEvoy explained using the example of a hospital that people may have a public service without actually having access to it. All agreed that the term access remain. Rachel Murray confirmed that she would delete the last sentence and would change the term genuine to periodic, genuine elections. She also noted that in relation to the access issue, a reference to non-discrimination could be included. This was agreed unanimously with one dissension (UUP).

22. Article 23: Right to protection of property Rachel Murray explained that this Article is not limited to intellectual property. All agreed with the wording of this Article.

23. Article 24: Freedom of movement: Rachel Murray explained that the wording of this Article is taken from the 4th protocol to the European Convention which the UK is not a party to. Kieran McEvoy questioned whether Article 24(5) covered the fact of two passports. Vincent Parker pointed out that this fact is covered in the next clause. Sr. Brighde Vallely questioned whether Article 24(4) should include the right to leave or enter as opposed to just enter. Gerry Lynch pointed out that some individuals, such as football hooligans, aren't allowed leave. Sandra Baillie indicated that her party would go with the UK position on this. Rachel Murray pointed out that the UK is a party to many of these rights by virtue of the International Covenant on Civil and Political Rights. Sr. Brighde Vallely suggested that the Article be re-ordered with point 3 going to the end. Rachel Murray is to identify why the UK is not a signatory to the 4th Protocol.

24. Article 25: Right to nationality Rachel Murray explained that the wording for this Article comes from the Universal Declaration on Human Rights and the European Convention on nationality which the UK is not a party to. Sandra Baillie indicated that the UUP is opposed to this part 1 of the Article. Gerry Lynch questioned whether in part 2 prohibited should be replaced with prohibited. A discussion ensued on the issue of dual citizenship and how one can be born a dual citizen but one cannot become a dual citizen. The Convenor suggested that No. 2 be deleted. James Knox requested that civil partnership be inserted in No. 5. Agreed Unanimously with one dissention (UUP).

25. Article 26 Right to dignity. Sandra Baillie informed the group that the UUP disagree with this right as they believe it is superfluous. Kieran McEvoy pointed out that a Bill of Rights is above a policy. Sr. Brighde Vallely suggested that it be inserted earlier in the document. This was agreed unanimously with one dissenting vote (UUP). Rachel Murray agreed to look at the potential re-ordering of the draft bill inserting the right to dignity in the appropriate place.

26. Rachel Murray requested that all working group members forward onto her details of any meetings or conferences which they have attended in relation to the group. This would be included in the document as it would give an indication of the extent of consultation of the group.

27. The Convenor the read through each section of the document in order that it be noted if people were in agreement or not.

Article 1: Agreement

Article 2: Agreement

Article 3: Disagreement from UUP on the issue of criminal and political conviction. The Alliance party decided to reserve its position on it. Kieran McEvoy suggested that the term politically motivated should be changed to conflict related. The Alliance party have an issue with this new terminology. Vincent Parker pointed out the importance of taking the local context into consideration. Rev. Dr. Fred Munce stated that he might have an issue with this too. Finally, there were two objectors and the Alliance Party reserved its position.

Article 4: Agreement

Article 5: Agreement.

Article 6: James Knox pointed out that this Article needs to reflect the hate crimes legislation and be broader than just sectarian. Agreed unanimously that this would be changed.

Article 7: Sandra Baillie pointed out that the UUP may have issues with this Article. She suggested that she would send something on to the Convenor on this. James Knox pointed out that indirect discrimination is clearly covered in legislation. The Convenor requested that the UUP discuss it. For the moment Sandra agreed to reserve her position rather than oppose it outright.

Article 8: Agreed

Article 9: Agreed but the reference to disappearances was referred to the Criminal Justice group.

Article 10: Agreed.

Article 11: Agreed.

Article 12: Agreed up until section (f) which was sent to the Criminal Justice group. Rachel Murray pointed out that the issue with the term 'unsound mind' had been replaced. Everyone was satisfied with the new terminology.

Article 13: This will be sent to the Criminal Justice group.

28. Finally, the Convenor then took the opportunity to thank the group for all their hard work. The document will now go to outreach and on to the general forum. The group may meet again in the future and the Convenor will be in touch with a date.