

The Bill of Rights Forum
Working Group on Economic and Social Rights
(including relevant Equality Issues)
Interpoint Centre
Friday 7th December 2007

Convened by: Patricia McKeown (ICTU)

Present: Jeff Dudgeon (UUP), Maggie Beirne (CAJ), Chrissie McAuley (Sinn Féin), Fra McCann MLA (Sinn Féin), Dermot Nesbitt (UUP), Mairead McCafferty (CoSo), Seamus Lynch (Help the Aged), Dolores Kelly MLA (SDLP)

Attended by: Dr Aoife Nolan (Legal Advisor), Gareth Wright (Forum Secretariat)
Chris Sidoti (Forum Chair)

Apologies: Anna Lo (Alliance Party), Lynn Carvill (Women's Support Network)
Steven Nolan (ICTU)

1. The Convenor opened the meeting by asking for comments on the notes of the last meeting. Chrissie McAuley explained that as she had just received them she was not in a position to comment. Dolores Kelly also stated that she had not received documentation and asked for her name to be added to the circulation list. Dr Nolan undertook to recirculate previously issued documentation. The Convenor noted that the secretariat of the Bill of Rights Forum had offered to become the conduit for all documentation to be issued to prevent any future issues arising in this area.
2. Jeff Dudgeon sought clarification on what the term "Agreed" in previous documentation actually meant. The Convenor explained that, at this stage, it meant that although discussion had ended on the subject, it may be revisited at a later stage.

ENVIRONMENT

3. Discussion turned to the draft provisions on the Environment within Dr Nolan's paper entitled, "Working paper for November 14th 2007 debate". Dr Nolan asked members to note that the 2001 NIHRC base document had contained paragraphs 1 and 3. All

members present were agreed on the wording within paragraph 1. Dr Nolan explained that she had used the South African constitution as the basis for the content of paragraph 2 and sought comments.

4. Dermot Nesbitt commended the inclusion of the wording but wondered how it would manifest itself "in reality". Jeff Dudgeon was concerned that the inclusion of this provision may not fall within the forum's terms of reference in relation to the "particular circumstances of Northern Ireland". Jeff stated that "a raft of legislative provisions" already existed and cautioned against "overegging the pudding". Seamus Lynch believed that existing legislation should not distract the members of this working group from developing provisions which may create a strong Bill of Rights and supported the inclusion of this paragraph. Dolores Kelly stated that most, if not all, of the duties contained within the paragraph already exist in legislation and believed that the issue lay more within the area of enforcement.

5. Dr Nolan referred to the inclusion of "through reasonable legislative and other measures", noting that although this form of words was not "progressive realization" she was seeking further comments from the group. Paragraph 2 was then agreed and discussion moved to paragraph 3.

6. Chrissie McAuley suggested the inclusion of "accessible" before the phrase "accurate and timely information". A discussion began on the accessibility of information and the current level of local involvement in decision making within the Planning Service. The Convenor emphasized the need for pro-active consultation with communities from an early stage in the planning process. Dr Nolan explained that paragraph 3 was broadly phrased and asked the group not to focus too on the planning system. Jeff Dudgeon suggested replacing "timely" with "at the earliest moment". Dolores Kelly questioned this and stated that there would be difficulty in defining what exactly the "earliest moment" would be. Dermot Nesbitt was concerned about the exact obligations and the practical application of this paragraph on future decision making within Government. As an illustration, the Convenor referred to a possible duty on Government to carry out Environmental Impact Assessments on new policy decisions.

7. The Convenor moved the discussion forward by noting “broad agreement” on paragraph 3 and discussion turned to the proposed provisions on an adequate standard of living.

ADEQUATE STANDARD OF LIVING

8. Maggie Beirne noted that there was uncertainty over what had already been discussed in this area as it had been “squeezed” in previous discussions.
9. Dr Nolan explained that there remained an issue over the inclusion of either “adequate” or “highest attainable” also noting that the term “civic care” was not used in domestic and international standards. Within the first paragraph, Dr Nolan had taken “food” and “clothing” from Article 11.1 of the International Covenant on Economic, Social and Cultural rights and had included water, energy and fuel from previous working group discussions. Dr Nolan also stated that with reference to living conditions, the word “adequate” may suggest a minimal “safety net” and the inclusion of “continuous improvement” had been inserted to address previous concerns over same.
10. Mairead McCafferty felt strongly about the inclusion of the term “highest attainable” as the Bill of Rights was to be an aspirational document. Dr Nolan suggested that the wording of paragraph 2 may satisfy this requirement and that the word “adequate” was used historically as a “catch all” phrase. The Convenor believed that this section may be interpreted as referring to income and as discussion was yet to move to the provisions on a right to work, suggested exploring the use of a different title. Dr Nolan explained that the use of the term “adequate standard of living” stems from the elements of Article 11.1 (abovementioned) having been separated out and developed within existing rights provisions
11. Maggie Beirne noted the inclusion of “adequate” twice and suggested the removal of its second usage before “food”. She also expressed her concern that provisions in relation to “income” would “fall between stools” and asked if the creation of a separate provision could be explored. The Convenor asked for a distinction between the “right to work” and the “right to income”. Jeff Dudgeon cautioned against this in a provincial Bill of Rights given the limited tax raising powers of the Northern Ireland Assembly. Dr Nolan suggested that an alternative way of looking at this issue was that if the provision

was ultimately created in Westminster, then the onus would be on Westminster to provide additional resources to fulfil the obligations of this provision. The Convenor stated that there was a clear need for a standard that would deal with the issue of poverty.

12. Dr Nolan clarified that “renumeration” falls under the right to work but income could fall within this provision or under the broad elements within social security. Maggie Beirne asked for the inclusion of income, in square brackets, within paragraph 1.
13. The Convenor cautioned against this if the group opted for the inclusion of the words, “highest attainable”. Mairead McCafferty believed that the term “highest attainable” should remain as an aspiration and appeared mutually compatible with the phrase “progressive realization” in paragraph 2, whilst recognizing the need for limitations. Dr Nolan also cautioned against the use of “highest attainable” when referring to income. The Convenor concurred and stated that “the issue was about creating a floor, not a ceiling”. Seamus Lynch reiterated his belief that a Bill of Rights should establish “a level below which people cannot fall”.
14. The Convenor explained that there may be a difference in the legal interpretation of “adequate” and the group’s interpretation and accepted Mairead McCafferty’s suggestion that there may be a need to further define it. Dr Nolan agreed to examine this issue and revert. Maggie Beirne suggested that the group retain the suggested wording and remove “for themselves (himself) and their (his) families”. Dr Nolan explained the inclusion of this wording was a reference to the rights of children. Maggie Beirne suggested referring this issue to the Children and Young People’s working group. The removal of, “for themselves and their families” was agreed. The wording of paragraph 2 was also agreed with the proviso that it could be revisited at a later date. The discussion on the adequate standard of living ended with an undertaking to further examine potential provisions in relation to Social Security.

RIGHT TO WORK

15. Dr Nolan explained that the original NIHRC document had three paragraphs and that the larger number within her current paper reflected a range of issues previously discussed by the group. Paragraph 1 was taken directly from the previous NIHRC document and

paragraph 2 had been taken from Part III, Article 6 of the International Covenant on Economic, Social and Cultural rights.

16. In discussion around Paragraph 2, the Convenor stated that she had a fundamental issue regarding the right to lifelong learning as it did not appear to be as strong in the proposed wording as desired. Maggie Beirne questioned the advantage of this paragraph and suggested revisiting the original NIHRC document. Dolores Kelly and Dermot Nesbitt had concerns over the inclusion of the word “cultural development” and suggested that this may be better addressed by “cross referencing” the issue to the Culture Identity and Language working group. Dr Nolan acknowledged that paragraph 2 raised more questions than it resolved and it was agreed to re-examine this paragraph at a later stage.
17. The discussion turned to paragraph 3 and Maggie Beirne proposed to remove subparagraphs (a) to (e). She believed “just and favourable conditions of work” covered the issue of remuneration and would be interpreted as such by the judiciary. The group explored the possibility of including an explanatory note which would record the group’s interpretive views if (a) to (e) were to be removed. Dermot Nesbitt acknowledged that an explanatory note would be helpful and Mairead McCafferty felt that the phrase, “just and favourable” needed to be “explicitly explained”.
18. The Convenor recognized the difficulty in arriving at an inclusive forum of words and referred to types of work, such as Agency work, where she believed workers were not being fully protected. The Convenor would also like to see a distinction made between conditions of work and employment rights.
19. In discussion on the rights of migrant workers (paragraph 6), the Convenor supported the need for a separate provision. Chris Sidoti suggested including “on the basis of equality, irrespective of the status of the worker and the nature of the work relationship” within paragraph 3 as an alternative. Dr Nolan suggested the possibility of merging paragraphs 3 and 6 together whilst the Convenor remained in favour of a separate provision. It was agreed that this area required more detailed analysis and further discussion to explore the complex issues within.

20. The Convenor closed the meeting noting that the next meeting will be held on Tuesday 11th December 2007 in Unison, Galway House, 165 York St at 15:00.

[signed]

Gareth Wright
Bill of Rights Forum Secretariat