

Bill of Rights Forum
9th meeting, Interpoint Centre
7th December 2007

Present

Chris Sidoti, Chair	James Knox*, Sexual Orientation Sector
Monica McWilliams, guest speaker	Anna Lo, MLA, Alliance
Martina Anderson, Sinn Féin	Seamus Lynch, Older People's Sector
Father Tim Bartlett, Churches	Deirdre McAliskey*, Women's Sector
Paula Bradshaw, UUP	Chrissie McAuley, Sinn Féin
Sheri Chamberlain, Children and Young People's Sector	Mairead McCafferty*, Sexual Orientation Sector
Neil Faris, Business Sector	Nelson McCausland, MLA, DUP
Stephen Farry, Alliance	Patricia McKeown, Trade Unions
Aideen Gilmore, Human Rights NGO Sector	Alban Maginness MLA, SDLP
Simon Hamilton MLA, DUP	Thomas Mahaffy, Trade Unions
Colin Harper, Disability Sector	Peter Munce, UUP
Eilis Haughey, SDLP	Dermot Nesbitt, UUP
Michael Hughes, Community Sector	Domhnall Ó Cobhthaigh, Sinn Féin
Rev. Dr. Samuel Hutchinson, Churches	Margaret Ward, Women's Sector
Dolores Kelly, MLA, SDLP	Peter Weir, MLA, DUP

Patrick Yu, Ethnic Minority Sector
Ben Lee, Human Rights Advisor
Gillian Preece, Secretary
Gareth Wright, Secretariat

* for part of the meeting

Alternates

Sorcha McKenna, Children and Young People's Sector

Outreach Workers

Mary Lafferty
Lesley Macauley
Etain O'Kane

Official Observers

Kevin Hanratty, Northern Ireland Human Rights Consortium
Hanna Munter, WAVE
Colin Harvey, Ann Hope, and Miriam Titterton NIHRC
Helena Macormac, NICEM
Fiona Ni Dhonnacha, Dept of Foreign Affairs
Patrick Lynch, and Nadine Brown, NIO

Apologies

Annie Campbell, Women's Sector
Elaine Campbell, Older People's Sector
Derek Hanway, Ethnic Minority Sector
Paddy Kelly, Children and Young People's Sector
Rena Shepherd, Business Sector

Minutes of last meeting

1. Subject to an amendment presented by the Chair and the correction of the spelling of a name, the minutes of the last meeting were agreed and adopted.

Matters arising

2. Submissions on the consequences of the 'particular circumstances of Northern Ireland and the particular rights affected by these circumstances' had been received from the Alliance Party, Neil Faris (two), CAJ, CoSO, Father Tim Bartlett and the Catholic Bishops, the Children and Young People's sector, the DUP, ICTU, Rev Dr Sam Hutchinson, the SDLP, Sinn Féin, the UUP and the women's sector. A paper had been put together based on these submissions and would be discussed later as BORF 18 (see para 12).

3. Working Group draft reports would be the subject of the Forum meeting on 14 December. Reports had been received from five working groups (Children and Young People, Civil and Political, Criminal Justice and Victims, Preamble, Enforceability and Implementation, and Women). Progress reports were expected from the two remaining working groups in the intervening week.

4. The Chair welcomed those outreach workers who were in attendance.

5. A reply from the Speaker of the Assembly to the letter from the Chair in October 2007, concerning replies to personal criticisms made in Assembly debates, had been received and distributed.

NIHRC preparations to receive the Forum's advice

6. The Chair welcomed Monica McWilliams, Chief Commissioner at the Northern Ireland Human Rights Commission (NIHRC) and invited her to brief the Forum on the NIHRC's preparation to receive the Forum's recommendations.

7. Monica McWilliams conveyed the NIHRC's encouragement for the Forum's work, and expressed admiration for the amount of work that already been done. The Forum's openness and transparency were commended.

8. The NIHRC has a statutory obligation to offer advice on the Bill of Rights to the Secretary of State for Northern Ireland. To help it do this, it looked forward to receiving the Forum's recommendations at the end of March 2008. In the meantime, the Commission was keeping up to date on developments in jurisprudence and Bill of Rights related issues. From the NIHRC's point of view, the greater the level of detail the Forum provided, and the greater the level of consensus attached to its recommendations, the better. The Commission has always said it must take its own mind

on the Bill of Rights but would give due regard both to what has been done before, and what is said by the Forum.

9. The NIHRC has been at Westminster regularly, talking to parties and individuals about the scrutiny process that will be followed after its advice is put to the Secretary of State. It had also held discussions on the proposed Bill of Rights and Responsibilities/Duties for the UK (on which a green paper is due in March 2008). There is an awareness in Westminster that the Northern Ireland Bill of Rights has come out of a different context from the proposed UK Bill of Rights.

10. The NIHRC has also held discussions with the Irish Human Rights Commission on a Charter of Rights for the Island of Ireland

11. The NIHRC will receive the Forum's recommendations by the end of March, and wants to submit its advice to the Secretary of State before the end of 2008.

Discussion

- The NIHRC is open to receiving either recommendations or draft text.
- The Commission is having regular discussions at the Assembly as well as at Westminster, although

whether the Assembly will debate the Bill of Rights is out of the NIHRC's hands.

- The timing of the proposed UK green paper could be worrying – could it restrict the Northern Ireland process? At recent meetings with trade unions from Scotland, England and Wales the view had been that the rest of the UK could benefit from the work being done here.
- The Westminster Parliament's Joint Committee on Human Rights is currently conducting hearings. Francesca Klug had drawn attention to the Northern Ireland process when she appeared before the Committee. The Chair of the Forum has been invited to meet the Committee in January 2008.
- The contexts of the British and Northern Ireland Bills of Rights are different – for the former it is post-Iraq and very much about constitutional arrangements; for the latter it is about addressing the particular circumstances of Northern Ireland.
- If the Forum recommends something the NIHRC does not want to endorse, the Commission will take heed of the level of consensus attached to

the recommendation in making its decision on whether or not it should be included in its advice.

- If the UK Government is considering a move away from the ECHR at the same time as Northern Ireland is considering rights supplementary to the Convention, that would be worrying: the Bill could be going forward into a hostile political environment. But if the Forum concentrates on 'rights supplementary' as set out in its terms of reference what is happening in the rest of UK should not matter.
- It was noted that the Human Rights Act does not cover private residential homes and nursing homes, only public bodies.
- The NIHRC has been holding discussions with Northern Ireland's political parties around the Bill of Rights and other human rights issues. It has welcomed this dialogue and hopes to continue it.

BORF 18: Particular Circumstances of Northern Ireland

12. Ben Lee, on behalf of the Secretariat, presented BORF 18, the compilation of submissions from Forum members on the "particular circumstances of Northern Ireland". The

paper does not seek to list what should be in a Bill of Rights for Northern Ireland, but to identify the kind of issues the particular circumstances might require the Bill of Rights to address. The paper summarised the submissions of Forum members under the working group headings, with one further section on equality, non-discrimination and specific groups, and another on general comments on Northern Ireland's particular circumstances and interpretive statements on the Belfast (Good Friday) Agreement (the Agreement).

13. Authors were invited to suggest corrections in relation to their own submissions. It was agreed that the annex to the paper was unhelpful, and that it should be removed.

14. It was also agreed that those sectors who had chosen not to submit papers, or whose papers built on but did not reiterate previous contributions, could submit a sentence explaining their position if they wanted.

15. Subject to paras 13 and 14 above, the discussion paper was adopted.

16. There was discussion of the text of the Agreement from which the Forum's terms of reference had been drawn: The new Northern Ireland Human Rights Commission... will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the

European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland.

17. In discussion the following points were made:

- The second sentence follows on from the first, setting conditions for the rights detailed in the first sentence but not restricting those rights.
- The second sentence has a mandatory element to it. The context of the Agreement prevents taking 'parity of esteem' wider than the two communities.
- The reference to 'both communities' in the second sentence comes before 'parity of esteem' not after. Therefore, it can be argued that 'parity of esteem' is not restricted to those two communities alone.
- 'Additional rights' is open to both broad and narrow interpretations.

- There are different ways of interpreting the paragraph. Should a strict legal interpretation be taken or should there be an attempt to capture the intention of the drafters and the political tension at the time of the drafting? No side can claim absolutism.
- The drafting of the paragraph reflects the tension at the time of the negotiations. While it might be helpful to seek to renegotiate the Forum's terms of reference, we must proceed on the basis of the text.
- The paragraph has to be taken in the context of the paragraph preceding it in the Agreement, which lists areas that would become s.75 of the Northern Ireland Act.
- 'Reflect' is a horizontal principle, not a restrictive one. The paragraph also refers to 'among the issues' [stress added] and to non-discrimination. 'The particular circumstances' is based on the s.75 context of the preceding paragraph.
- Submissions that seek to add words to the text of the Agreement (e.g. 'must be such', 'directly' etc) are incorrect.

- The text in the Agreement should be seen as providing the minimum standard, not restricting rights only to what is stated.
- The Forum should bear in mind what is said elsewhere in the Agreement about rights – for example there is a clear commitment to women’s rights, especially to participation, which fits clearly with an interpretation of ‘parity of esteem’ that does not link it only to two communities.
- ‘The particular circumstances’ is an ‘elastic’ phrase. Instead of seeking to reach consensus on it, the Forum should concentrate on debating the rights members want included.
- People have been waiting for a Bill of Rights since the referendum: it is not of any help to go back to who was or was not present during the drafting. The Forum should accept it has been voted on and was supported by the people.
- The degree of change in the ethnic minority population since 1998 means ‘both communities’ is no longer helpful or accurate.
- The conflict had an impact on ethnic minority groups (e.g. no discrimination legislation, lack of

protection and services, marginalisation etc) and it should be remembered that there are much greater numbers of persons belonging to ethnic minority groups in Northern Ireland now than was the case at the time of the Agreement's negotiation.

- There has been no major deconstruction of the paragraph since the endorsement of the Agreement and we need to recognise that, even if the drafters only addressed two communities, such an interpretation would not be acceptable in Northern Ireland today.
- The Agreement is based on two communities – wider debate cannot, therefore, be justified. A better option might be to close the Forum and let the NIHRC ask the NIO to give it a wider remit.
- Despite concerns, the Forum is not under any risk of legal challenge to the interpretation that it takes of its terms of reference because our process is exempt from judicial review.
- Unionist parties do not oppose economic and social rights, but would not support their inclusion in a Bill of Rights if there are more appropriate ways of addressing them elsewhere. In issue is

the right of the Assembly to determine the allocation of funds to economic and social rights.

- The Bill of Rights, if it addresses economic and social rights, can provide a tool for Governments to use in setting policy and spending priorities.
- If the Forum agrees that 'the particular circumstances' includes the conflict, its impact and its legacy, then it must also note that the areas most affected by the conflict experienced greater social and economic deprivation.
- The Forum can be a mechanism for defining the scope of the Bill – our interpretation of 'the particular circumstances' can be stated in the same way as our interpretation of 'both communities' was.
- A two community approach runs counter to international standards. The Forum needs to bear in mind the fact that, while the two unionist parties may be in a minority within the Forum, they have the largest electoral support.
- The people of Northern Ireland are still waiting for parts of the Agreement to be implemented.

- The Children and Young People's sector is interested in how the Bill of Rights gives effect to the opening paragraph of the Human Rights section of the Agreement (The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community...).
- The Forum's role should be to look at what has happened since the NIHRC work in 2004. While the two 'main players' cannot be ignored the Forum needs to look forward, not back 10 years.
- If the Forum reaches agreement on the content of its recommendations, even if the terms of reference are stretched, the document will have a moral authority.
- Our debate on the Bill of Rights is not about who would support the Agreement in a vote today. There are many people around today who were unable to vote at the time of the Agreement either because of their age, or disabilities that prevented them from voting. We need to draft a Bill of Rights that is for everyone. Human rights principles must apply to all.

- Our agreement on what should be included in the Bill of Rights should not be restricted by our interpretations of 'particular circumstances'.

18. The Chair summed up by saying it was legitimate to discuss the correct interpretation of the Forum's terms of reference, even though common agreement may not be reached. No one person could claim to be the sole interpreter of what any phrase of the Agreement meant, and there were no explanatory notes, or Hansard debates, to clarify. Therefore, at this time, it would be better for the Forum to work around the diverging philosophical views and attempt to seek agreement on specifics.

19. The Chair made the following points:

- It must be remembered that the Agreement is a quasi-constitutional document adopted by referendum and the holding of subsequent Assembly elections does not in any way undermine its status
- The Agreement refers to 'particular', not 'unique', circumstances. Therefore, the Bill of Rights must reflect the situation in Northern Ireland.
- The Agreement goes some length toward setting out some of Northern Ireland's 'particular

circumstances'. It lists five principles: mutual respect; parity of esteem; commitment to the principles of partnership, equality and mutual respect and to the protection of civil, political, social, economic and cultural rights; a culture of tolerance; and non-violence. These principles could be agreed on by the Forum.

- The Agreement also sets out a number of specific rights that must be considered part of the particular circumstances. These include:
 - the right of free political thought
 - the right to freedom and expression of religion
 - the right to pursue democratically national and political aspirations
 - the right to seek constitutional change by peaceful and legitimate means
 - the right to freely choose one's place of residence
 - the right to equal opportunity in all social and economic activity regardless of class, creed, disability, gender or ethnicity

- the right to freedom from sectarian harassment; and
- the right of women to full and equal political participation.

20. The Chair also stated that the Agreement includes general references to issues that have a human rights basis:

- Equality and non-discrimination, including “in relation to religion and political opinion, gender, race, disability, age, marital status, dependants and sexual orientation”
- Reconciliation
- Rights of victims
- Religion, language, culture and heritage
- Citizenship, nationality and minorities
- Poverty, social exclusion and economic disadvantage
- Housing
- Education
- Employment
- Criminal justice, policing and prisoners

- Political representation and participation
- Parading and the use of symbols and emblems.

21. The Chair also stated that the St Andrews Agreement called on the Government to advance human rights by committing itself to addressing:

- Poverty and social exclusion ('Anti-Poverty and Social Exclusion strategy to tackle deprivation in both rural and urban communities')
- Victims (establishment of Victims Commissioner)
- Bill of Rights (establishment of Forum)
- Equality (Single Equality Bill)
- Language, heritage and culture (Irish Language Act and enhancement and development of Ulster Scots language, heritage and culture)
- Parading (terms of reference for review to examine issues around parading with a view to developing a long term strategy)
- Employment (Government to work with business, trade unions and ex-prisoner groups to reduce barriers to employment and enhance reintegration of former prisoners)

- Policing (50/50 recruitment arrangements to the PSNI)
- NIHRC powers (powers to compel evidence, access places of detention, bring judicial proceedings in its own name)
- EU nationals (access to posts in the civil service).

He also noted that the St Andrews Agreement states that it is "... fully committed to the fundamental principles of the Agreement: ... equality and human rights at the heart of the new dispensation in Northern Ireland".

22. Closing discussion, the Chair stated that, while it could not be said that the rights/issues he identified in the Agreement and the St Andrews Agreement should be in the Bill of Rights, as this would preempt the Forum's negotiation, it was to be noted that these rights/issues could be identified as capturing Northern Ireland's particular circumstances.

23. He also stated that, while not asking Forum members to state their agreement or support at the time, he considered that the issues he had raised could be agreed to by all members of the Forum as providing some basis for the Forum's work and as falling within a broad, common interpretation of particular circumstances. To the Chair, the

Forum's focus should be on the broad principles, specific rights and general references set out in the Agreement and in the St Andrews Agreement.

24. Although endorsement was not formally sought, a number of Forum members indicated that they could endorse the approach set out by the Chair, including the SDLP, Neil Faris, Father Tim Bartlett, and Rev Dr Sam Hutchinson. The DUP wanted to hold further discussions on the issue as a party.

Any other business

25. The Green Party requested, and were granted, official observer status.

26. The Chair was attending an event at the Lansdowne Court Hotel on 10 December. Forum members were encouraged to attend too.

27. Microphones were requested for future meetings.

28. Issues relating to outreach were postponed to the next meeting.