

Bill of Rights Forum  
Working Group on Culture and Identity and Language  
Minutes of Meeting held on Thursday 13<sup>th</sup> December 2007  
Interpoint Centre, York St., Belfast

Convened by: Cllr Nelson McCausland MLA (DUP)

Present: Willis McBriar (ICTU), Ian Parsley (for Stephen Farry, Alliance – left at 14.45), Lee Reynolds (DUP), Patrick Yu (NICEM), Dominic Bradley (SDLP), Stephen Nicholl (UUP), Brian Symington (RNID), Fr. Tim Bartlett (Catholic Church), Rev. Patricia Ann McBride (Irish Council of Churches)

In attendance: Dr. Elizabeth Craig Legal Advisor, Chris Sidoti

Observed by: Three observers.

1. The Convenor opened the meeting by welcoming the observers. He then turned to the draft progress report and asked if any issue arose from it.
  
2. Dr. Craig began by addressing the general right to cultural identity which is in the ICCPR which the UK has ratified. The Convenor questioned whether this right was included in Art. 5 of the Framework Convention. Dr. Craig explained that Art. 27 of the ICCPR is a negative formulation of the right as opposed to a positive one. She pointed out that the UK was guided by the constitution of New Zealand when it was developing the Human Rights Act. She pointed out that other constitutions such as the South African constitution contain a right to a cultural identity and a Bill of Rights should contain this right.

3. Patrick Yu pointed out that Art. 5 reflects the current UK position. He likes Art. 27 as it specifically gives the right. He drew the Working Group's attention to the 2005 report of the NIHR which he copied to all. He pointed to the table on page 36. He likes the formulation of the right in this report as it is more comprehensive.
4. The group then discussed whether to include the term minority as well as community. Patrick Yu would like both terms to be included. The Convenor questioned the value of including both terms. Patrick Yu explained the benefit by reference to the current situation with regard to religious education in Northern Ireland. Dr. Craig questioned whether he considered that the current situation was incompatible with Art. 2 of the First Protocol to the ECHR. Patrick Yu felt it was incompatible. The Convenor noted that this issue is complex and asked the group to note it and move on.
5. Patrick Yu stated that he would like a specific clause to protect Irish travellers and their right to be nomadic. The Convenor questioned whether there would be more value in specifying a general right to respect for a community as opposed to a list of rights for groups. Patrick Yu disagreed pointing out that travellers are mentioned in all major European Conventions. He pointed out that a broad general respect for cultural principles would be left open to Court interpretation. Dr. Craig suggested that a list could be included outlining which groups were considered to be covered. The Convenor assumed that travellers would come under ethnic group and therefore are included in the general provision that their traditions should be protected. Dominic Bradley pointed out that the wording about non-assimilation would cover the nomadic. Lee Reynolds pointed out that by dropping term 'minority', people stop thinking about minorities.
6. The Convenor explained that there are three options open to the group in terms of wording: (1) shall not be denied, (2) shall have the right to, (3) the government shall promote the right to. Stephen Nicholl disliked the third

option regarding promotion of the right. The Convenor agreed that it was a difficult choice and suggested that the three options be included in the draft document. Stephen Nicholl suggested that a series of case studies under each option would be useful. Patrick Yu preferred to include the positive right as he believes that negative rights lead to lower standards. Ian Parsley agreed with including the three options but requested that it be checked that it doesn't contravene the right to self-identification. The Convenor pointed out that it is likely that people will fall into a few groups. Willis McBriar agreed with the suggestion of case studies which he felt would provide a level of rigour.

7. The Group moved on to Section B. Ian Parsley noted that the Alliance Party have an issue with the reference to fair employment legislation in the section on the right to self-identification in the draft report. They disagree with people being divided into groups and worry about the loss of the right to self-identification. He wondered whether people were being discriminated against on the basis of these lists as lots of people fall into the 'other' category. Lee Reynolds pointed out that in certain cases those who fall into the 'other' category get residualised into the two main communities. The Convenor reminded the group that they would not solve all the issues today and that the object of the meeting was to agree on broad principles. Dr. Craig returned to the issue of fair employment legislation to check if the reference should be removed. Ian Parsley stated that the Alliance Party would prefer it to be removed.
8. The discussion turned to the issue of limitation clauses. Patrick Yu preferred the inclusion of the limitation clause from the Framework Convention. Dr. Craig read Articles 20 and 21. Patrick Yu questioned whether one clause was required or one after every right. The Convenor suggested that this point be returned to.

9. The Convenor asked was everyone happy with the right to self-identification. Patrick Yu stated that he disagreed with the Alliance Party on this.
10. Stephen Nicholl questioned why a limitation clause was necessary. Dr. Craig explained how the European Convention on Human Rights contained lots of limitations. Stephen Nicholl questioned whether the document would be a broad document full of limitations or a small document of rights. The Convenor drew the issue to a close noting that Patrick Yu dissented in relation to B.
11. The Convenor moved the discussion onto Section C. Lee Reynolds asked for clarification on that this section entails. Dr. Craig provided an explanation. Dr. Craig suggested that if the group wants to make rights justiciable then they should be included separately. The Convenor requested that she include a clause explaining this point. Patrick Yu suggested that the wording used in the NIHRC's 2005 report, which refers to the rights in the Framework Convention, might be preferable. Dr. Craig agreed that this was formulation was possible but that much of the aspirational language of the document would be lost in doing so.
12. The Convenor moved the group on to Section D. He pointed out that the references to the Belfast Agreement are misleading as they only refer to the Irish language. Dominic Bradley disagreed with the removal of the reference to the Belfast Agreement and drew attention to the implications of the St. Andrews Agreement. The Convenor pointed out that the Charter covers both the Irish language and the Ulster-Scots language stating that the Charter enshrines equality while the Good Friday Agreement enshrines inequality as it deals with only one language. Dominic Bradley pointed out that the Charter is meaningless unless it is enforced by legislation and the only parts which are enforced are those enforced through the Good Friday Agreement. Again he returned to the implications of the St. Andrews Agreement. He asked what the relationship between the Good Friday Agreement and the Bill of Rights

would be. Would one negate the other? The Convenor noted Dominic Bradley's points in relation to the Good Friday Agreement but noted that there are two views on this matter.

13. Lee Reynolds returned to the point of moving towards giving effect to broad principles. Dr. Craig noted that it had been suggested at the previous meeting that Part II of the Languages Charter might be applied to non-indigenous languages. The Convenor reminded the group of the options available: (1) incorporating Part II to non-indigenous languages, (2) identify if any of those could be applied to minority ethnic languages, (3) a direct clause for minority ethnic languages. Dr. Craig suggested a fourth option based on the proposed extension of the scope of the Framework Convention .
14. Patrick Yu stressed the importance of the language clause. He advocated the use of the format of the Finnish Constitution which confers rights on specific groups. The Convenor suggested that Dr. Craig summarise the possible permutations. Dr. Craig noted that the Finnish Constitution deals with immigrant communities under their non-discrimination clause. Patrick Yu pointed out that he only advocated the construction and format of the Finnish Constitution not necessarily its contents. Dr. Craig suggested that the New Zealand and South African Constitutions are better examples to follow as they are more inclusive.
15. Dominic Bradley questioned whether it might be useful to distinguish between Irish, Ulster Scots and other minority languages. Lee Reynolds pointed out that minority languages which was non-indigenous are already protected in their own countries whereas Irish and Ulster-Scots need to be protected here. Dr. Craig asked whether the group was suggesting giving indigenous languages preferential protection. Patrick Yu agreed that the two indigenous languages should have higher preferential treatment.

16. Brian Symington raised the issue of sign language. Dr. Craig agreed to include a reference to sign language. Stephen Nicholl worried that by including reference to certain groups that other groups might be left out. Again Patrick Yu advocated that Finnish Construction as it included a reference to disability. Lee Reynolds raised the need for the inclusion of communicative language of people with severe disabilities.
  
17. The Convenor moved on to the provision on Inter-Culturalism. He explained that this was about promoting social cohesion. It related to inter-dependence in a shared future or shared society. All were happy with this provision. Dr. Craig agreed to record it as an obligation on the state as opposed to an obligation on the individual.
  
18. The Convenor raised the question of government responsibility in the area of education. Dominic Bradley reminded the group of the programme of Education for Mutual Understanding. He felt that the new programme of citizenship which is the new theme in the curriculum is working better. Stephen Nicholl questioned the parameters of this programme. He asked how it sits with creationism or Sharia law? He wondered whether it was too open? He asked whether a board of governors could be instructed to teach something?
  
19. The Convenor reminded the group that it is the role of politicians to inform their community of what the Bill includes. Stephen Nicholl pointed out that a lot of people won't read it. Their knowledge will be sourced from radio shows. Lee Reynolds agreed with this point.
  
20. The Convenor disagreed with the inclusion of specific categories as he believed that they would need to be amended in a few years time. Stephen Nicholl raised the issue of schools with a Muslim ethos and asked whether politicians were prepared to stand over this. The Convenor pointed out that what would need to be considered is the issue of social cohesion. This would

apply not only to religious school but also to a school teaching a cultural ethos which were not held by all e.g. Johnny Adair School or Bobby Sands school. He asked why should funding of Muslim school be any different than funding for a Catholic or Protestant school? Chris Sidoti explained with reference to the Convention on the Rights of the Child that there is no absolute right to school funding. Dominic Bradley agreed pointing out that people can home school once they have met the standard of the curriculum.

21. Stephen Nicholl raised the issue of the right to wear the veil for Muslim girls. Lee Reynolds pointed out that there is a Court ruling on this. Chris Sidoti added that there were different decisions from Turkey and France on this.

22. Fr. Tim Barlett pointed out that the point of the Bill of Rights was that it was an opportunity to outline what we want as a society. He pointed out that the difficulty surrounding education lies in the historical features of Northern Ireland and need to be taken into consideration. Nonetheless the Bill offers the opportunity to identify what we as a society want to say on the issue. The Convenor suggested that the issue of education be parked for the moment. He requested that Dr. Craig include a paragraph flagging up these points on education. He noted that other groups were also looking at this issue. Chris Sidoti informed the group that both the children's group and the social and economic rights group were looking at this issue.

23. The Group turned its attention to the issue of freedom of expression under Article 10 and the media. Dr. Craig asked if the group felt Art. 10 were sufficient or if they wanted to strengthen it. The Convenor drew the group's attention to the ODIHR report on Freedom of Assembly and wondered if it might be helpful in this area. He concluded that this topic was for another day and decided that the report should be circulated first.

24. Dr. Craig reminded the group that two issues were outstanding – education and parading, symbols and flags. The Convenor noted that these would be

the subject matter of the sessions in January. Chris Sidoti suggested that they should read the work of the other groups working on these topics.

25. Lee Reynolds flagged the issue of implementation of the Bill. He advocated the South African model of implementation. He agreed to provide a one page summary on this option.

26. The Convenor drew the meeting to a close. The next meeting of the working group will take place on Tuesday 8<sup>th</sup> January 2008 at 2pm at Interpoint. At the first meetings will focus on education and parading, symbols and flags, the Convenor requested the group to forward information on these issues to Dr. Craig before the next meeting.