

Bill of Rights Forum
Working Group on Culture and Identity and Language
Minutes of Meeting held on Friday 25th January 2008
Parliament Buildings

Convened by: Cllr Nelson McCausland MLA (DUP)

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

Apologies: Patrick Yu (NICEM)

In attendance: Dr. Elizabeth Craig (Legal Advisor), Gareth Wright (Forum Secretariat)

Observed by: Sean Murray (SRP), Michael Johnston (Centre on Human Rights for Disabled People)

Barry McElduff expressed his concerns over working group procedures and the need to record the level of consensus for proposals made by the group within the minutes. Barry also expressed concern over the publication of an interim working group report on the Forum website which he feels does not accurately reflect of the views of his party.

In response the Convenor stated that no decisions on content had yet been made. It was noted that the approach taken by this working group varies from the approach taken by other groups and it was recognised that issues around Culture, Identity and Language was at the heart of the particular circumstances debate and that the group were only now moving to a decision making position.

Stephen Nicholl highlighted the difference of approach taken between legal advisors by outlining his experience as a member of the Criminal Justice & Victims Working Group. In

response, Dr Craig advised that this was a result of the group taking the Framework Convention and not the NIHRC's working group documentation as a starting point. The Convenor agreed, also noting that the current working method should continue with group members shaping the discussion for action by the legal advisor.

FREEDOM OF PEACEFUL ASSEMBLY

Dr Craig introduced her report on the right to freedom of peaceful assembly and identified three issues for potential discussion; namely the inclusion of a specific reference to the right to live free of harassment in that context; a specific reference to the OSCE Guidelines and a reference to the importance of the right as an expression of cultural and religious identity.

Barry McElduff referred to overlap between work of this working group and that of the civil and political rights group; he asked who decided what came within the remit of each work. In response, the Convenor said that the matter was for each group to decide. Dr Craig referred to the minutes of civil and political rights group meetings and there was clear expectation that issue would be addressed also within this group.

Barry McElduff also expressed his desire to see retention of reference to the right to live free from harassment within this area, noting that the Agreement referred to communities living free from sectarian harassment.

Lee Reynolds believed that a right to be free from harassment should be included as a general principle in the Bill of Rights but if attached specifically to one right that would be problematic. Dr Craig pointed out that her paper suggested a slightly different formulation to that proposed by the civil and political rights group; the reference to the right to live free from harassment coming after the phrase "the rights and freedoms of others" in Art 11(2) ECHR.

In response to a question from Willis McBriar, Dr Craig advised that normally the courts would look at whether or not there was a restriction of, or interference with, the right to freedom of peaceful assembly and would ask whether such a restriction or interference was justified under any of the grounds in Article 11(2), which included the protection of the rights and freedoms of others. If a specific reference to harassment was included the court's attention would be immediately drawn to the right to be free from harassment when assessing whether or not a restriction or interference

was justified

The Convenor felt that the inclusion in Article 11(2) ECHR would send out a clear message to the people of Northern Ireland that assemblies were about harassment. Father Bartlett agreed but supported the inclusion of a more general clause. Brian Symington also supported the inclusion of a more general clause. Willis McBriar accepted the point made by the Convenor but would like to retain a specific reference to harassment.

The discussion moved to the proposal to include a reference to the OSCE guidelines. Barry McElduff stated that the guidelines do not have legal standing here and do not have relevance to the particular circumstances of Northern Ireland. Lee Reynolds supported the inclusion of a reference to the OSCE guidelines and believes that they do apply to Northern Ireland. Dr Craig elaborated on the status of guidelines, stating that their intention was to fill some of the gaps that had emerged in case law on the right to freedom of assembly developed by the ECtHR. Stephen Nicholl suggested that if a reference was made then perhaps the Courts could decide how much weight to give them and Father Bartlett was also in favour of the inclusion of a reference.

EDUCATION

Barry McElduff queried why the group was examining the area of Education. In response Father Bartlett referred to the linguistic elements under discussion and Lee Reynolds outlined his previous position in relation to problems he believes are inherent within the controlled sector with regard to cultural identity.

The Convenor supported the view that the Controlled sector, was and is, isolated from the culture surrounding it and also stated his belief in the need for an overarching cultural right to be introduced within schools. Barry McElduff acknowledged that this was a difficult issue, and moreover the inclusion of cultural material within the current curriculum was an important issue to discuss.

Lee Reynolds commented on the broad terms of the current curriculum and the reluctance of the Dept of Education, particularly in terms of committing resources for education in or through Ulster Scots.

Dr Craig introduced her discussion paper on education provisions stating that Article 2 of the First Protocol of the European Convention reflected the spirit of the times and provided minimal protection for children, minority groups, linguistic communities or philosophical convictions. Dr Craig suggests exploring the need to go beyond Article 2 and provided examples of recent international and domestic case law within this area.

Stephen Nicholl commented on the need to further explore the means of incorporating culture and language within the educational system. The complex issues within the remit of this group could possibly be addressed by enhancing the current curriculum rather than the creation of new schools which have significant resource implications.

During a discussion on the cultural ethos within Catholic Maintained Schools it was suggested that there was lack of confidence and indeed clarity within the Clergy regarding their role within State Schools.

Brian Symington highlighted that there were many cultures and communities within Northern Ireland, including "deaf culture" which also needed consideration within this group. In response, the Convenor agreed and reiterated that the purpose of this group was to set out broad principles for the benefit of all communities within Northern Ireland.

Returning to the issue of resources, Father Bartlett agreed with Stephen Nicholl that language rights within publicly funded educational provision should be subject to reasonable limitations. The impact and practicalities of funding choices within the educational system was examined with particular reference to the conversion of State schools to Integrated schools. Barry McElduff reported that there was an onus on DENI to promote Irish medium and Integrated schools and wanted to record his party's opposition to the inclusion of a "sufficient demand" proviso within language rights. He firmly believes that any reference to available public resources will curtail rights.

Willis McBriar returned to the discussion on the development of a cultural ethos within

schools, suggesting that the secular nature of state schools may already be the culture of the state school and reflective of parental choice. The Convenor believed there was a need for a state school to reflect the culture of the community which surrounds it and whilst recognising parental rights, believed that the right of the child should also be protected.

Discussion returned to the impact of integrated education and the potential for the establishment of Ulster-Scot's schools. Barry McElduff referred to the existence of an integration policy within Irish medium schools and believed that the particular circumstances of the north of Ireland should not be ignored and would welcome looking at the issue of the potential establishment of Ulster-Scots schools. Lee Reynolds noted that the current DUP policy on education is to move towards the establishment of one state system for all.

In discussion on the Framework Convention, Steven Nicholl reiterated the UUP position; as it is justifiable, they saw no need to go beyond it. Barry McElduff recorded his objection to Article 14(2). Dr Craig pointed out that Article 13 has been criticised in the past for not creating funding obligations on the state. Stephen Nicholl asked if the term "adequate opportunities" within Article 14(2) addressed this. Dr Craig explained that Article 14 only applies to language and not the establishment of educational institutions.

Barry McElduff provided an EU Directive on the education of the children of migrant workers. Dr Craig advised that, although now part of Domestic law, there were no language rights contained within the directive and therefore the Framework Convention and Article 29 of the UN Convention on the Rights of the Child still went further.

BROKE FOR LUNCH

Dr Craig stated that the group had yet to examine specific language rights and asked if the group wished to create a specific clause which would create a funding obligation on the state. The Convenor noted that the NIHRC proposals appeared weak, and although using the term "in and through their language" also applies the terms "substantial numbers and

sufficient demand". Dominic Bradley noted that the provision of any course within the further education system is subject to a viable demand test. The use of an interpretative clause to relay the group's views on the meaning of sufficient demand was discussed, but it was recognised that this issue required further discussion and consideration by the group.

Dr Craig undertook to reflect on the group's current thinking and include draft provisions in relation to indigenous and non-indigenous languages in the draft progress report to be circulated to working group members. There was discussion over the problems in relation to the establishment of an Ulster Scots Academy. Lee Reynolds believed that Ulster Scots and Irish were mirror images of each other, years apart in progress.

Father Bartlett returned to the establishment of a right for institutions to maintain the ethos of that institution, to protect against State interference. Dr Craig undertook to reflect on this when preparing the draft progress report.

Dr Craig noted that at the last Forum plenary session, the rights to be nomadic and sedentary were raised and she sought views, some members of the group were unsure if this issue was reflective of the particular circumstances of Northern Ireland.

The right to communicate with a public body (through translators) in order to access essential services was also raised at the last forum meeting; it was agreed that this was of more relevance to the work of the economic and social rights working group and it was agreed to flag this issue up to the convenor of that group.

Barry McElduff asked if an Agenda could be distributed for the next meeting and noted that members have very little time to consider papers produced between meetings given wider forum deadlines. The Convenor drew the meeting to a close. The next meeting of the working group will take place on 22 February 2008 in Parliament Buildings.

[signed]

Gareth Wright
Bill of Rights Forum Secretariat