

Bill of Rights Forum
11th meeting, Wellington Park Hotel
1st February 2008

Present

Chris Sidoti, Chair

Paula Bradshaw, UUP

Annie Campbell, Women's Sector

Elaine Campbell, Older People's Sector*

Sheri Chamberlain, Children & Young People's Sector

Brian Crowe, UUP

Neil Faris, Business Sector

Aideen Gilmore, Human Rights NGO Sector

Simon Hamilton, MLA, DUP*

Colin Harper, Disability Sector

Eilis Haughey, SDLP

The Very Rev. Dr. Samuel Hutchinson, Churches

Dolores Kelly, MLA, SDLP

Seamus Lynch, Older People's Sector*

Chrissie McAuley, Sinn Féin

Mairead McCafferty, Sexual Orientation

Nelson McCausland, MLA, DUP

Patricia McKeown, Trade Unions

Alban Maginness, MLA, SDLP

Thomas Mahaffy, Trade Unions

Deirdre Nelson, DUP
Dermot Nesbitt, UUP
Domhnall Ó Cobhthaigh, Sinn Féin
Vincent Parker, Sinn Féin
Ian Parsley, Alliance
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

Derek Hanway, Ethnic Minority Sector
Paddy Kelly, Children and Young People's Sector
Sorcha McKenna, Children and Young People's Sector
Margaret Ward, Women's Sector

Outreach Workers

Leslie Macauley
Mary Lafferty

Legal Advisors

Linda Moore
Dr Aoife Nolan

Official Observers

Kevin Hanratty, Human Rights Consortium

Hanna Munter, WAVE

Colin Harvey, Ann Hope, and Miriam Titterton, NIHRC

Sarah McGrath and Fiona Ni Dhonnacha, Dept of Foreign Affairs

Laura Dick, NIO

Apologies

Martina Anderson

Father Tim Bartlett

Stephen Farry

Monica Williams

Minutes of last meeting

1. The minutes of the last meeting were agreed and adopted.

Matters arising

2. The Chair commented on the contents of a recently received letter from the Secretary of State in which the Secretary of State expressed his appreciation to Forum and working group members for their efforts and commitment. The Secretary of State's letter stated that he did not envisage the Forum as

engaging in a significant public consultation exercise, and committed the Government to undertaking a full consultation process on any proposals for future legislation carrying forward the Bill of Rights that would include direct engagement with Forum members.

3. The Secretary of State was also keen to receive an update following the Forum's present meeting. The Chair stated that he would send a letter to the Secretary of State during the following week providing an update on the outcomes of the meeting.
4. The importance of the Forum meeting its 31 March deadline and the lack of meetings held by the Economic and Social Rights working group during January 2008 were also raised in discussion under matters arising.

Decision Making

5. The Chair reviewed the agreements reached with regard to the Forum's decision-making procedures at its 5th meeting on 27 July 2007. The Chair stated that, while he did not expect the Forum to come to a final decision on this issue at the present meeting, he hoped that the Forum would strive to achieve as much consensus as possible. The Chair also stressed that all proposals should be recorded to ensure that nothing could or

would be lost in this process.

6. During discussion the following points were made:

- ÿ Clarification was sought on what had been agreed on decision making at the 5th Forum meeting. The minutes from the 5th meeting were produced to aid this discussion.
- ÿ Concern was expressed at the fact that Forum working groups had not addressed the particular circumstances of Northern Ireland and the principles of mutual respect and parity of esteem in their reports.

Update on Working Group Reports

7. The Women's working group hoped to have a final draft of its report ready for consideration at the next (12th) Forum meeting.

8. The Criminal Justice and Victims working group continued to strive toward producing a final draft for consideration at the next Forum meeting. It had adopted an inclusive style to its report writing to ensure that nothing was lost in the process, recording the levels of support for each recommendation.

9. The Culture, Identity and Language working group continued to make progress particularly in addressing matters that it considered fell within the particular circumstances of Northern

Ireland. The group had been working toward achieving consensus and hoped to have its work completed by 22 February.

10. The Preamble, Enforcement and Implementation working group had held good discussions around justiciability and enforcement. However, it awaited the delivery of the final reports of other working groups to obtain an indication of how enforceable particular rights should be.

11. The Economic and Social Rights working group stated that it would hold a number of meetings during February and that it had already started consulting with the Preamble, Enforcement and Implementation working group. It intended to adopt the structure of the Children and Young People's final report as a model.

12. The Civil and Political Rights working group continued to receive feedback from Forum members and convenors of other working groups on the content of its interim report. The group was currently examining the right to a fair trial and would move forward with new additions and amendments to its report by email.

13. The Chair commended the work of all working groups and stressed that finalising working group reports was essential to ensuring that the Forum had adequate time to consider their content, and to meet the deadline of 31 March 2008. It was

tentatively agreed, subject to the delivery of final working group reports, that the Forum would examine the reports of the Women's and Criminal Justice & Victims working groups at its next meeting.

Decision making

14. Discussion returned to the decision making process and the following points were made:

- Concern was expressed at the fact that the Forum had not yet finalised its decision making procedures.
- Discussion at the 5th Forum meeting reflected an attempt to reach a compromise on a procedure acceptable to as many Forum members as possible.
- The Working group draft reports reflected the measure of consensus that had already been achieved through negotiation and the Forum should continue to strive towards achieving as much consensus as possible, addressing difficult issues as they arise.
- There was a clear need to maintain the open and transparent nature of the Forum's deliberations when moving forward from working group reports to the final

product.

- Nothing should be lost in the process; differing views on proposals within the final report would be recorded and reflect the level of support for them.
- The Forum's discussion of decision making procedures should be delayed until all final working group reports have been delivered.

Examination of the Children and Young People Working Group's final report

15. The Chair expressed appreciation and admiration for the work of the Children and Young People's working group and welcomed the format of their report, commending it as a model for other working group reports. He proposed that the Forum begin a clause-by-clause examination of the report of the Children and Young People working group, asking Forum members to flag proposals contained in the report that they objected to on the basis of wording or content. The Forum would return to discussion on these flagged proposals at later meetings.

16. The Convenor of the Children and Young People's working group reported that the draft report had been circulated to around 200 interested parties for comments and they had

received a significant number of endorsements. The Convenor stated that the report indicated the level of consensus achieved by the working group and highlighted the need for a Bill of Rights to mainstream children's rights while also containing a child-specific section.

17. The Convenor also reported on the two main issues of contention in the report: age of criminal responsibility and the minimum ages for joining the military and for deployment in armed conflict. The Convenor stated that the report was a representation of international best practice on children's rights and that it contained rights that the UK Government had already committed to.

18. During discussion the following points were made:

- Forum members thanked the working group for its work and welcomed the format of its final report.
- There was a need to demonstrate that each proposal fell within Northern Ireland's particular circumstances, as required by the Forum's terms of reference. Some Forum members made general reservations to the whole report on this basis. Others considered that the impact of the conflict upon children and young people of itself fulfilled the particular circumstances of Northern Ireland element within

the terms of reference.

- Forum members were divided about whether supporters or opponents to a proposal should bear the onus of establishing whether or not a proposal fell within Northern Ireland's particular circumstances.
- Criticism of any working group report for not addressing Northern Ireland's particular circumstances was unfair given that working groups were not asked to do so.
- Some Forum members took issue with sections of the report beyond the two sections highlighted by the Convenor.
- Forum members would not at this stage object to any proposals going forward for later discussion and further consideration by the Forum.
- The Forum's role is to identify rights supplementary to the European Convention on Human Rights (ECHR) and, while it could not undermine ECHR rights, it could certainly strengthen them.
- The Forum could find itself in the position that some proposals may not be consistent with the Human Rights

Act.

- It was suggested that references to the Travelling community within the report be altered to include Roma and Gypsy persons.
- Ratification alone by the UK Government does not mean that rights have been implemented.
- Intergenerational transmission of cultural identity within education was currently being examined by the Culture, Identity & Language working group and would be discussed when its report was submitted to the Forum.
- The comprehensive nature of the report vindicated the decision to split the original working group on Children and Young People and Women into two separate working groups. There remained some overlapping issues that were currently being examined by the Women's working group.
- The report contained matters of policy that would require further legislation and were therefore not appropriate to a Bill of Rights.
- The report was welcomed as a useful advocacy tool for Children and Young People with a disability.

- Having a specific section within a Bill of Rights on the rights of the child may send out the wrong message to other sections of Northern Ireland's community who are not afforded a specific section.

19. The Chair identified three general issues that arose in discussion and that would need to be addressed at a future Forum meeting:

- whether the Bill of Rights should be specific or general, and whether it should be long and detailed or short and concise
- whether the rights of specific groups should be mainstreamed throughout a Bill of Rights or whether be given discrete sections, or both
- questions around enforcement and justiciability.

Discussion on age of criminal responsibility (article 5)

20. The Convenor of the Children and Young People's working group reported that all members of the group believed the current age of criminal responsibility (10) to be too low, but that not all agreed with the report's proposal of raising the age to 16 years, with progressive increases to 18 years.

21. The following points were made in discussion:

- The age of criminal responsibility varied throughout the UK and Europe.
- There was a need for a debate on this issue but the determination of the age of criminal responsibility was not a matter for a Bill of Rights.
- This issue overlapped with the work of the Criminal Justice and Victims working group which had yet to come to a decision on it.
- Increasing the age of criminal responsibility may deprive children of their due process rights.
- Children should be held accountable for their actions in an age appropriate manner. There is a need for the development of good practice within the juvenile justice and care systems, focused on acting in the best interests of the child with effective regulation of related programmes and initiatives.
- Criminal responsibility goes to the heart of citizenship and taking responsibility for your actions.
- The wording could be altered to "children above the age of

16 years” but doing so could prevent the progressive realisation goal of 18 years.

- The Criminal Justice Review recognised that the current age was too low and the introduction of care orders for those between the ages of 10 and 14 reflects this viewpoint.

Discussion on the minimum ages for joining the military and for deployment in armed conflict (article 12)

22. The Convenor outlined the group’s rationale for including this provision in its report. There was no desire to deny the right of anyone aged 16 to join the military. However, there was strong support for those between 16 and 18 being regarded as “trainees” rather than as members of the armed forces and not being deployed in armed conflict until the age of 18.

23. During discussion the following points were made:

- The Public Authority in this instance is the UK Government. The determination of UK defence policy was not a matter for the Forum.
- There would be a practical disparity if this proposal was included in a Bill of Rights for Northern Ireland; a child could circumvent this by simply joining in Scotland, England

or Wales.

- The current practice of the Ministry of Defence was not to deploy under-18s into conflict situations but, as this was only a policy decision, there was no law preventing it from being altered. The UK Government has retained the option of discretionary deployment of those below 18.
- There is a need to highlight child protection issues within the Armed Forces, particularly with regard to cases of self-harm and suicide.
- There is a global element to this proposal. Recruitment to any armed group is unacceptable, including to paramilitaries.
- Further discussion was needed on who would be bound by a Bill of Rights and a uniformity of language employed; current drafts use "public authority", "the State" and "the Government" and so need to be standardised.
- Proposals in relation to the provision of support to children affected by violence or conflict should be extended to all persons.

Other comments on sections of the Children and Young

People Working Group's report

24. Definition of a child (article 1)

- The Convenor reported that all references to "children" within the report had been used for the sake of brevity and should be interpreted as "children and young people". This should be made clearer within the rationale element of the report.

25. Family (article 4)

- Carers were specifically included to protect children who are being looked after by those other than their parents or legal guardians.

26. Education (article 5)

- This area was approached from the child's perspective but was not intended to override parental rights.
- Concern was expressed that the proposals were incompatible with the right to education as defined in the ECHR.

27. Healthcare (article 6)

- All provisions were constructed around the best interests of the child.
- There is an issue around parental rights and who would decide on what were a child's best interests when it came to public health issues.
- Sexual and reproductive health was a "red flag" issue. While the working group did not explicitly examine abortion it did identify areas of concern within the context of reproductive health, the high level of teenage pregnancy for instance.
- The term 'reproductive health' is internationally accepted as neither including or exclusion abortion.

28. Standard of living (article 7)

- The State should be required to allocate resources to protecting children in violent families.
- The Bill of Rights is not the place for defining what a stable family is.

29. Right to participate (article 9)

- The right to join a political party was being examined by

the Civil and Political Rights working group.

30. Protection from abuse and exploitation (article 10)

- Freedom of expression with regard to broadcasting is a reserved matter and should therefore be left to the Westminster Parliament.
- The working group was mindful of other forms of broadcast technology, including the internet.
- The term 'public authority' needs to be defined.

31. Employment protection (article 11)

- It was stated that this area could cover military service.

32. Child witnesses and victims of crime (article 13)

- As Northern Ireland continues to emerge from a period of conflict, this is now the time to express a clear vision for a future society.
- The two provisions contained within this section provide clear examples of generality and specificity. The Forum needs to develop its thinking on this issue.

- The work of the Criminal Justice and Victims working group may further develop the work already done in this area.
- The Forum should not limit itself only to devolved issues. Given that its work will ultimately be endorsed by the Westminster Parliament, the Forum should consider all matters, both reserved and devolved.

33. Youth Justice (article 14)

- Concern was voiced over the need for the inclusion of the reference to an “appropriate adult” as well as the presence of a solicitor or responsible adult.

34. The Children and Young People’s working group report was officially carried forward for future consideration by the Forum. Individual Forum members were invited to submit written comments on their organisational or party positions on the paper if they so chose. These statements would be distributed to all Forum members.

Outreach report

35. Gillian Preece reported that there had been a high level of activity by the Forum’s outreach workers over the past few months and that feedback from groups contacted by the outreach

workers had been positive. Outreach workers were continuing to tailor their workload to raise the level of awareness of the Forum's work.

36. Gillian Preece also told the Forum that the outreach workers would benefit greatly from the increased participation and assistance of Forum members in their work.

37. A request had been made for the Forum's outreach subgroup to reconvene. The Chair indicated that a meeting would be called either during his time in Belfast or when Gillian Preece returned from sick leave.

38. The following comments were made:

- There were concerns expressed about how best to build upon the good work the Forum had done in raising awareness once the Forum had completed its work. The need to continue public outreach should be stressed in the Forum's final report.
- The Forum's deadline is approaching and it is therefore unreasonable to expect the outreach workers to perform anything more than an awareness-raising role.
- Although noting the commitment of the Secretary of State

to consult widely, some Forum members were concerned that the Forum had lost a unique opportunity to engage in a full consultation process.

Discussion on the Forum's timetable

39. The Chair outlined that the progress report to the Secretary of State following the meeting would inform him that, although there has been a month's slippage on the delivery of working group reports, the Forum remained of the view that the 31 March deadline would be met.

40. During discussion the following points were made:

- The Forum needed more time to consider the content of the working group reports more fully.
- The final report should not simply be a compendium of working group reports. Issues and proposals contained in these reports should be settled in plenary, otherwise the Forum's end product could be viewed as a failure.
- Any extension would not provide solutions to the issues faced by the Forum. A compendium of working group reports may be as good as it gets.
- Deadlines crystallise the mind and the Forum's deadline

should not be extended beyond 31 March, otherwise the process could be driven into the sand.

- An impressive amount of work had been done by the Forum and extending the deadline for a short period may provide some breathing space.
- If the Forum's deadline was to be extended it should not go beyond 30 April.
- The Preamble, Enforcement and Implementation working group needed more time to consider the remaining working group reports.
- There was a need to focus existing efforts; working groups need to intensify their work and the Forum should extend the number of meetings in Plenary scheduled during March.

41. There was overwhelming agreement that the Forum deadline should not be extended. All working group reports would be submitted to the Forum no later than 15 February and the Preamble, Enforcement and Implementation group would subsequently report on 29 February.

42. In recognising the Forum's decision to work to its current deadline, the Chair pressed that meeting that deadline would

affect the nature of the Forum's final report. He stated for the record that much of the report writing work would fall upon the Forum's small Secretariat, and highlighted the fact that the month slippage in the delivery of working group reports was not being compensated for with extra time - taking a month away from time dedicated to negotiation on the final content of the Forum's recommendations to the NIHRC.

43. The Chair announced that in the absence of working group reports for consideration at the next plenary meeting (scheduled for 8 February), the Forum would focus on issues surrounding the shape and content of a Bill of Rights (see 19).

44. It was decided that the Forum would extend the number of days set aside for its consideration of working group reports and the content of its final report. The following future meeting dates (in addition to 8 February) were agreed: 12, 14, 18, 20, 28 and 29 March.