

Bill of Rights Forum  
 12<sup>th</sup> meeting, Wellington Park Hotel  
 8<sup>th</sup> February 2008

Present

Chris Sidoti, Chair	James Knox, Sexual Orientation
Elaine Campbell, Older People's Sector	Chrissie McAuley, Sinn Féin
Brian Crowe, UUP	Alban Maginness, MLA, SDLP
Jeff Dudgeon, UUP	Dermot Nesbitt, UUP*
Neil Faris, Business Sector	Vincent Parker, Sinn Féin
Stephen Farry, Alliance	Ian Parsley, Alliance
Aideen Gilmore, Human Rights NGO Sector	Margaret Ward, Women's Sector
Simon Hamilton, MLA, DUP*	Monica Wilson, Disability Sector
Eilis Haughey, SDLP	Patrick Yu, Ethnic Minority Sector
The Very Rev. Dr. Samuel Hutchinson, Churches	Ben Lee, Human Rights Advisor
Dolores Kelly, MLA, SDLP*	Gareth Wright, Secretariat
Paddy Kelly, Children & Young People's Sector	
* for part of the meeting	

Alternates

Sorcha McKenna, Children and Young People's Sector

## Outreach Workers

Leslie Macauley

## Legal Advisors

Dr Elizabeth Craig

Dr Catherine Donnelly

## Official Observers

Kevin Hanratty, Human Rights Consortium

Colin Harvey and Miriam Titterton, NIHRC

Laura Dick, NIO

## Apologies

Martina Anderson MLA, Father Tim Bartlett, Sheri Chamberlain, Derek Hanway, Anna Lo MLA, Mairead McCafferty, Nelson McCausland MLA, Patricia McKeown, Domhnall Ó Cobhthaigh, Rena Shepherd

## Minutes of last meeting

The minutes of the last meeting were not available and will be provided to all members prior to the next (thirteenth) Forum meeting.

## Matters arising

The Chair commented on the recent letter sent to the Secretary of State which outlined the Forum's commitment to meeting the 31 March deadline, noting the additional number of plenary meeting planned to achieve this.

## Working group responses to revised timetable

The Economic and Social Rights working group continued to work through a number of issues, including unfair, direct and indirect discrimination, justiciability and progressive realisation. The group considered that it would need more time to complete the remaining volume of work.

The Preamble, Enforcement and Implementation working group faced a very difficult task ahead and considered that, as the timetables for some other working groups had slipped, an extension of its current deadline would be necessary to allow the group to discuss the implications of the reports of other working groups and adequately complete its tasks.

Following discussion, the Forum agreed to extend the existing deadline for the Economic and Social Rights working group and the Culture, Identity and Language working group to 19 February.

Consequently, the deadline for the Preamble, Enforcement and Implementation working group report was extended to 29 February for the Preamble and Implementation elements of their report and to 10 March for the Enforcement element. The Forum would then consider the working group reports on 12, 14 and 18 March and the Forum's final report on 20, 28 and 29 March.

In order to progress discussions during the intervening period between Forum meetings, the Chair envisaged the need for facilitated Forum discussion groups to consider issues that may require more detailed examination.

To begin this process, the Chair requested the Very Reverend Dr. Samuel Hutchinson to convene an informal group to discuss two issues arising from the Children and Young People working group report, namely, the age of criminal responsibility and the age of military service. He invited Eilis Haughey (SDLP), Annie Campbell (Women's Sector) and Paddy Kelly (Children & Young People's Sector) to join the group and the UUP and Sinn Féin to nominate members. Forum members also expressed a desire to have a DUP representative appointed to the informal group and the Chair agreed to this. The Chair asked to be kept fully informed on the group's developments and clarified that any resolution of issues achieved by the informal group would not bind the remaining Forum members.

## Discussion on broad approaches to a Bill of Rights

1. Should a Bill of Rights contain general or specific provisions?

The Chair referred to the tabled paper BORF 20 (Broad approaches to a Bill of Rights) and sought views around the following discussion points:

- Should a Bill of Rights for Northern Ireland be simply a broad statement of principles or contain very specific provisions or be a marriage of the two (a general statement of principles that includes specific provisions on select rights)?
- If the mixed option, what are the criteria by which we decide what should be dealt with in detail?

During discussion Forum members made the following points:

- A Bill of Rights defines the relationship between the citizen and the state. It should be widened to define relative societal relationships and recognise issues of common division. It should also hold the State to account by setting out core provisions that reflect our shared values.
- The Forum, in producing recommendations, should be looking

at broad principles, passing on other issues to the legislature, executive and judiciary for them to work out as appropriate.

- There is danger in outlining “duties” toward the State.
- The content of the final report should be easily understandable to the public and not just lawyers; the EU Charter of Fundamental Rights is well drafted and succinct and a good example to follow.
- This process should establish broad principles and not move into areas of legislative policy.
- The Forum should be looking to marry a general statement of principles with specific provisions where appropriate. An example of an area requiring specific provisions would be children’s rights.
- Broad principles are only acceptable in areas where rights have been fully developed with specific provisions included, governed by the particular circumstances of Northern Ireland as we emerge from conflict.
- It is difficult to contribute to an abstract discussion as there are divergent views on what the Forum should be specific about.

- A Bill of Rights should contain general provisions with very strong enforcement mechanisms.
- A Bill of Rights should be general, not overly specific, durable and flexible, accounting for changing circumstances.
- To avoid repetition, the Forum should not make recommendations on rights that are already applicable to the UK.
- UK ratification of European and international instruments does not mean that they have been implemented. Therefore, the Forum should continue to identify issues that require protection under UK law, while also identifying and addressing implementation gaps in ratified instruments.

## 2. What belongs in a Bill of Rights, Legislation and Government Programmes?

The Chair sought views around the following discussion points:

- What distinctions do Forum members draw between rights and matters that should and should not be included in a Bill of Rights?
- By what criteria should we determine what rights and matters

belong in a Bill of Rights or in legislation or in government programmes? Please use specific rights and matters as illustrations.

During discussion Forum members made the following points:

- There is a need to distinguish between a Bill of Rights, Government policy and legislation. There should be a fuller examination of the deficits in the delivery of existing rights.
- In some cases existing international standards may be lower than what we may aspire to.
- This issue is difficult to consider until the Forum agrees on which rights should be enforceable.
- The Forum should be mindful of areas where the UK Government has failed to implement a ratified treaty.

The Chair moved the discussion forward and stated the Forum would consider the issue of enforcement at a later stage and that international law obligates the state to take legislative, administrative and other measures to implement ratified treaties.

3. Should specific proposals be mainstreamed or

separated into distinct provisions?

The Chair sought views around the following discussion points:

- From a protection perspective, what views do Forum members have on 'mainstreaming' and the inclusion of discrete sections on specific population groups?
- What, if any, specific population groups do Forum members think should be given separate sections in a Bill of Rights? What arguments would you present in support of or in opposition to these groups being given separate sections?
- What are the criteria for deciding whether a provision should be mainstreamed or separated out?

The Chair suggested that, to focus discussion, members comment on the desirability of a separate section dealing with Children and Young People.

The following points were made by Forum members:

- Children are rights holders and the Bill of Rights should have a specific section addressing children and young people.
- Rights should be mainstreamed as far as possible but there

may be a need to examine the particular needs of children and women in specific areas such as criminal justice and political participation.

- The Disability sector needed to further examine this topic of discussion within their sector but made the following comments: The particular circumstances of Northern Ireland have had a significant impact on the number of persons with disabilities and this needs to be factored into the discussion of this issue; if a mainstreaming approach was taken then this should be accompanied by strong enforcement mechanisms; the issue of multiple identities and how people “fit themselves” within a Bill of Rights should also be considered; further issues in relation to definitions, with particular regard to mental health require further development and recognition.
- It would be difficult to encompass multiple identities within a Bill of Rights and provisions should be mainstreamed as far as possible.

The Chair summarised the discussion: the Forum would pursue a mainstreaming approach while exploring the need to be more specific in areas where there are existing gaps in coverage, or that have specific relevance to the particular circumstances of Northern Ireland or to the rights of particular groups.

## Structure of the Final Report

The Chair tabled a draft outline of the Forum report (BORF 21) and sought comments. Forum members made the following points:

- There should be a separate chapter on the question of the particular circumstances of Northern Ireland.
- The proposed chapter dealing with technical provisions is too definitive in its current form and requires expansion.
- The proposed appendices to the Forum's report should include a link to the Forum website and the current Forum discussion paper on particular circumstances (BORF 18).
- BORF 18 was a snapshot of Forum members' views on "particular circumstances" and there may now be a further degree of consensus on this issue.
- Further Forum discussion around the interpretation of "particular circumstances" would provide an opportunity to further develop the Forum's views on the expression "both communities".
- The Forum's report should be provided in languages other than

English and other formats.

Discussion also focused on the levels of support required for proposals to be fully considered by the Forum. The following points were made:

- The proposed threshold (a proposal would not be considered by the Forum if it attracts more than nine negative votes) is devoid of reality when considered within the context of Northern Ireland.
- The Forum's final report will be discussed in the Assembly and the UK Government would be unlikely to endorse a Bill of Rights for Northern Ireland that did not have the cross community support in the Northern Ireland Assembly.
- The Forum is aware of the political realities of Northern Ireland and the report should reflect views of all and not diminish the value of a minority view.
- The Forum was created to achieve political buy in and in particular unionist buy in; civic society has always been strongly supportive of a Bill of Rights.

After further discussion, the Chair said that he would convene a

second informal group to discuss further the question of decision making and thresholds.

## Relationship of the Forum to the Governance of Britain process

This discussion focused on how the Forum's work related to the current debate on a potential British/UK Bill of Rights and Duties. Dermot Nesbitt requested that this item be included on the agenda and also asked for two extracts that he sent to the Chair on 5 February to be recorded in the minutes: a statement made by Prime Minister Gordon Brown on 3 July 2007 on a British Bill of Rights and Duties (Hansard) and an extract from the Governance of Britain document (para 199 at page 59).

The following points were made by Forum members during discussion:

- It was noted that the Forum had not yet discussed the relationship between its work and a potential British/UK Bill of Rights and Duties.
- The Forum should be cognisant of the wider UK Bill of Rights process.

- While we should be cognisant of the British/UK Bill of Rights process, a Bill of Rights for Northern Ireland was a requirement of the Belfast/Good Friday Agreement, which was an international treaty. (Debate continued around this point with some members supporting it, and others rejecting it).
- All members of the Forum should remain focused on the programme of work ahead.
- The Forum has already gone beyond its remit by considering issues that impinge upon the entire United Kingdom. For this reason it is necessary for the Forum to consider the process surrounding a potential British/UK Bill of Rights and Duties.

The Chair was asked to clarify whether current discussions at Westminster indicated whether the potential British/UK Bill of Rights and Duties would in its deliberative process consider the views of Northern Ireland.