

Bill of Rights Forum

13th meeting, Wellington Park Hotel

12th March 2008

Present

Chris Sidoti, Chair

Martina Anderson MLA*,
Sinn Féin

Paula Bradshaw, UUP

Elaine Campbell*, Older
People's Sector

Brian Crowe, UUP

Neil Faris, Business Sector

Stephen Farry MLA, Alliance

Aideen Gilmore, Human
Rights NGO Sector

Simon Hamilton MLA, DUP

Colin Harper, Disability
Sector

Eilis Haughey, SDLP

Rev. Dr. Samuel
Hutchinson, Churches

Lisa Coyle, SDLP

Seamus Lynch*, Older
People's Sector

Mairead McCafferty, Sexual
Orientation Sector

Nelson McCausland, MLA,
DUP

Sorcha McKenna*, Children
and Young People's
Sector

Alban Maginness MLA,
SDLP

Thomas Mahaffy, Trade
Unions

Shannonbrooke Murphy,
Sinn Féin

Dermot Nesbitt, UUP

Domhnall Ó Cobhthaigh,
Sinn Féin

Vincent Parker, Sinn Féin

Ian Parsley, Alliance

Margaret Ward*, Women's
Sector

Patrick Yu, Ethnic Minority
Sector

Ben Lee, Human Rights
Advisor

Gillian Preece, Secretary

Gareth Wright, Secretariat

* for part of the meeting

Alternates

Elaine Campbell*, Older People's Sector
Seamus Lynch*, Older People's Sector
Derek Hanway, Ethnic Minority Sector

Legal Advisors

Elizabeth Craig (Culture, Identity and Language)
Aoife Nolan (Economic and Social Rights)

Official Observers

Kevin Hanratty, Northern Ireland Human Rights Consortium
Ann Hope, and Miriam Titterton NIHRC
Paula Molloy, Dept of Foreign Affairs
James Taylor, NIO

Apologies

Martina Anderson (for the morning session), Father Tim Bartlett, Annie Campbell, Dolores Kelly, Paddy Kelly, Chrissie McAuley, Patricia McKeown, Margaret Ward (for the morning session)

Minutes of 11th and 12th meetings

1. The minutes of the 11th meeting were agreed and adopted. One amendment to the minutes of the 12th meeting was agreed, and the minutes were agreed and adopted.

Matters arising

2. A revised version of BORF 21 (outline of the Forum's final report), which took account of comments made at the 12th

meeting, had been circulated ahead of the meeting. The paper was tabled for further consideration subsequently.

3. Forum members were reminded of the request to check their details in the draft appendix 5 to the report that had been circulated.

4. It was agreed to revisit the question of where the working group reports should be placed in the final report (ie attached in full, or as links to the website).

5. The UUP and DUP indicated that they would reserve their opinion on the structure of the report, pending discussion of voting procedures.

6. Guidelines for Forum discussion during the last six meetings had been circulated by the Chair. There were no comments. The Chair indicated that he would apply the guidelines during the remaining plenary sessions of the Forum.

7. The informal working group established after the 11th meeting to consider further two outstanding issues from the report of the Children and Young People's working group (age of criminal responsibility and age of entry to the military) had met twice. Discussions were ongoing.

8. The Chair advised that he was continuing consultations with Forum members on decision-making procedures.

Working group final reports

Culture, identity and language working group

9. The draft report had been circulated. The Convenor of the working group, Nelson McCausland, introduced the report, noting that, however the 'particular circumstances of Northern Ireland' were interpreted, they covered this working group's remit. The lack of time to discuss all the issues was highlighted.

Discussion (general points)

- A number of Forum members indicated general support (UUP, SDLP, Sinn Féin, ethnic minority sector, Alliance Party, human rights sector).
- There were issues around indigenous/non-indigenous languages and the rights that attached to each.
- The different levels of protection for indigenous/non-indigenous languages reflected the need to guard against the former dying out.
[Convenor's response]
- The Traveller community was not included in the list of indigenous groups.

- The group had not listed indigenous groups in order not to restrict future application of the provisions.
- There were issues for some Forum members around the proposed right to self-identification and whether that would conflict with existing equality legislation.
- There was disappointment that 'mutual respect' and 'parity of esteem' were not more clearly referred to, either in the proposals themselves or in the explanatory text.
- Giving domestic application to international instruments was to be welcomed, but these could not be lifted en bloc, without consideration of their relevance to Northern Ireland.
- The Framework Convention for the Protection of National Minorities differs from the ECHR and cannot simply be incorporated: its provisions need to be analysed in detail.

Discussion (specific proposals)

Page 8, proposal 1 A (Article 11 of the ECHR)

- The overlap with the Civil and Political Rights working group would need to be considered. There appeared to be inconsistency in the levels of support for the two groups' proposals.
- Adding text to existing ECHR provisions was not welcomed. Supplementary rights should be drafted as separate provisions.
- The draft is potentially repressive, giving wide power to Government. Exercise of other rights (eg to free speech) could be considered harassing by others.
- Harassment is not only an issue in relation to peaceful assembly: it would be preferable to have a standalone provision, or an interpretive clause.
- The right to be free from sectarian harassment is in the Agreement, and representations to the Strategic Review of Parading have highlighted the need for balance.
- It was highlighted that Article 11 provides the right to peaceful assembly, and does not protect anyone who intentionally harasses others.

Page 10, proposal 1B (reference to OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly)

- Sinn Féin opposed this on the ground that the Guidelines were designed for emergent democracies.
- There was discussion about whether specific international guidelines should be referred to. In particular, soft law should not be drawn upon.
- The existing European case law on peaceful assembly was inconsistent: the Guidelines had been developed to plug identified gaps.

Page 12, proposal 2 (general right to culture, identity and language)

- The issue of prescribing programmatic rights in general was raised: these were better left to the Assembly.
- There had been discussion in the working group of the use of 'minority' or 'minority or community'. Some international provisions were exclusively intended to protect minorities, in particular ethnic, cultural, linguistic and religious; and the broader definition watered this down. However, a minority in (for example) one part of Northern Ireland may be the majority elsewhere.

- The addition of “community” was important to extend protection to groups that constituted cultural, linguistic or religious communities but may not be minorities.
- There is no definition of ‘national minority’ in UK law.
- The right to use a language in public should not be interpreted as a breach of the rights of those who do not use the language.
- Sinn Féin drew attention to an additional clause proposed by the party on p31.

Page 13, proposal 3 (right to self-identification)

- The proposal must not be allowed to undermine existing equality provisions (particularly with regard to workforce monitoring).
- For minority groups, rights regarding how a person may or may not be treated are vital. So too is equality monitoring. Self-identification is not an absolute right: a limitations clause should be added including ‘the protection of the rights and freedoms of others, in particular equality monitoring data’.

- Self-identification affects more than fair employment: it is also relevant to the census, integrated education. Existing practice and policy should not justify limiting rights. Rights should take precedence and policy and law be made to fit. Current workforce monitoring is based on a two community approach rather than a multi-community approach.
- The Chair intervened with his personal view that the right to self-identification is absolute. The question is how to ensure it does not undermine other rights. He suggested a further clause: “notwithstanding clause 1, public authorities may collect data relating to the enjoyment of human rights by members of groups that have been historically disadvantaged or discriminated against”.
- Without the right to self-identification other people can apply your rights for you on the basis of their perception of who you are.
- Concerns were expressed about the current lack of choice in self-identification for the persons with disabilities.

- The Chair highlighted the omission of reference to the child's own values in the clause as drafted.
- The focus should be on the best interests of the child and on the child's choice.
- The Convenor highlighted this provision as a key part of moving towards a better future by enshrining knowledge and understanding of different cultures.
- Sinn Féin reserved its position.
- Reservations were expressed about the possible impact on the need for education to include elements of challenging the child's values.
- The Framework Convention uses language of 'encouraging' rather than 'must ensure'. The CRC uses 'shall be directed to'. The last formulation has funding implications.
- This is an international provision that the UK is already signed up to.
- There is overlap with the Children and Young People's working group report – concerns expressed here may be placated by reference to that draft which provides a broader context.

- Concerns about (a) are largely addressed by including it in a package with (b), (c) and (d).
- The proposals need to be compatible with the broad interests of the controlled sector.
- The recommendation at (e) (relating to funding) is inappropriate in this section: this is an issue that falls to the Preamble, Enforcement and Implementation (PEI) working group.
- The issue of whether schools could change their status was raised (ie from controlled to integrated and vice versa).

Page 20, proposal 5(a)-(d) (minority language education rights)

- Arguments relating to the appropriateness of providing for funding were repeated. This provision cannot be put forward as an absolute right because of competing resource needs.
- The issue of progressive realisation (also raised elsewhere) would be discussed in relation to the report of the Economic and Social Rights working group.

- The issue of indigenous/non-indigenous languages was raised again. While previous rights protected the language, this proposal was about the rights of speakers. There should not be, therefore, any distinction. The Framework Convention does not distinguish between the two. Ulster-Scots and Irish could be highlighted for a higher status that reflects the specific circumstances in Northern Ireland.
- How individuals can fully participate in Northern Ireland if they have only been educated in their own language was raised, as was the position of children who do not want to be educated in their language and/or culture.

Page 23, proposal 6 (language rights)

- The European Charter for Regional or Minority Languages is clear that it refers to places where languages are used.
- The proposal should be anchored in the wording of the Belfast/Good Friday and St Andrews Agreements which have specific references to language.

- The Belfast/Good Friday Agreement language is lifted from the Charter. The St Andrews Agreement refers only to strategies.
- The Charter also protects use of non-territorial languages.
- The formulation suggested for proposal 5 (highlighting that Ulster-Scots and Irish have a higher status, but not differentiating between indigenous and non-indigenous languages) was repeated.

Page 26, proposal 7 (giving effect to the rights and obligations in the Framework Convention)

- Some of the provisions in the Framework Convention are not referred to – for example, Article 20 on the duties of those for whom rights are provided.
- The PEI working group has identified issues connected to ‘the law of Northern Ireland’, which will be discussed.
- The formulation suggested for proposal 5 (highlighting Ulster-Scots and Irish, but not differentiating between indigenous and non-indigenous languages) was repeated.

Page 29, proposal 8 (general obligations on public authorities)

- No points were raised.

Page 30, proposal 9 (right of communication)

- No points were raised.

Page 31, other proposals tabled

- There was discussion as to whether suggestions tabled at the end of the working group process should be discussed. The Chair's view was that proposals one and four should be discussed separately, but that proposals two, three and five would be covered during the discussion of the language of the final report.

Civil and Political Rights (including equality) working group

10. The draft report had been circulated. The Convenor of the working group, Domhnall Ó Cobhthaigh, introduced the report, noting disappointment at the lack of participation by the DUP and highlighting the need to undertake the final discussion electronically, due to lack of time. There had been a good level of support throughout the discussion, but the UUP had subsequently withdrawn support for the final report.

Discussion (general points)

- The UUP does not support the report. The DUP also opposes it in general.
- The lack of development of the rationale behind the proposals was disappointing, as this is an area where there should be consensus that this relates to the particular circumstances and parity of esteem.
- It is not acceptable to insert clauses into the ECHR.
- The SDLP would look to enshrine proportional representation as the way of electing governments, and to ensure protection from coercive assimilation by a public body on the basis of perception. The cross-community arrangements reflected in the Belfast/Good Friday Agreement must be stressed.
- This report needs to be cross-referenced with that of the PEI working group in relation to protecting rights contained in the ECHR. The Forum should also note that the ECHR is now fifty years old and therefore it may be appropriate to provide for measures that update it. Limitations that applied

fifty years ago do not necessarily reflect where Northern Ireland is now.

- The rights proposed here should be considered on their merits, with the discussion of how they sit alongside the ECHR to follow.
- If the Northern Ireland Bill of Rights has rights supplementary to the ECHR, and there is a UK Bill of Rights, and parity of esteem between Northern Ireland and the rest of the UK, then there is going to be confusion.
- The Chair intervened to put his view that it is not for the Forum to recommend anything that falls lower than the standard set in the ECHR, but that it can recommend measures that supplement the rights in the Convention. In discussing proposals from working groups the Forum should consider whether, if they undercut, or simply reword Convention rights, they should be rejected. But if they supplement existing provisions they should be considered for acceptance.
- Several working groups have addressed equality – the proposals will need to be compared and the best chosen.

Discussion (specific proposals)

Page 2, proposal 1 (right to equality and non-discrimination)

- Similar clauses are included in most working group reports, indicating the importance of a provision. Drafts should be compared and the best chosen. 'Legal status' might be preferable to a reference to convictions. 'Irrelevant criminal conviction' is used in Australia.
- The impact of the reference to 'social or economic origin' was queried.
- It needs to be remembered that the ECHR's focus is on non-discrimination, not on equality. This clause should be drafted with as little detail as possible.
- The proposal at (c) is programmatic, and the responsibility of the Assembly.
- The inclusion of 'any member of their family' was welcomed.
- It was argued that a reference to 'parity of esteem between both communities' should be included here, in the preamble or in the right to dignity.

- The proposal has a technical definition of direct and in-indirect discrimination and should adopt a definition of “discrimination” instead and suggested followed the definition in ICERD and CEDAW.

Page 4, proposal 2 (prohibition of harassment)

- Not specifying gender in this clause diminishes women. The alternative is to repeat all of the categories listed at proposal 1, or not to specify any individual grounds but just refer to ‘as outlined in section 1 above’.
- This proposal has an impact on the right to freedom of expression and assembly. Giving the Government the right to ban the latter on grounds of harassment is a cause for concern.
- This should be cross-referenced with the proposal in the report of the Women’s working group about sexual harassment.
- This is a vital clause which falls in the remit of a Bill of Rights to enshrine a society’s values.

Page 5, proposal 3 (right to life)

- This proposal overlaps with the Criminal Justice and Victims (CJ&V) working group.
- The words “or in care” should be added after “in custody”.
- Paragraph 2 is a direct quote from the ECHR and so unnecessary.
- The reference to abolishing the death penalty should be amended to ‘shall not be reinstated’.

Page 6, proposal 4 (prohibition of torture)

- The reference to ‘rape and other forms of serious sexual assault’ had been added at the request of the Women’s working group, addressing the traditional view of torture as gendered, and not recognising rape. There was the suggestion this risked becoming too prescriptive.
- The above reference was also relevant in the contexts of extradition applications, and developing jurisprudence.
- It was argued that a reference to ‘non-consensual medical intervention’ should, therefore, also be included.

Page 7, proposal 5 (prohibition of slavery and forced labour)

- No points were raised.

Page 8, proposal 6 (right to dignity)

- This is one of the most important rights for older people. The reference to it being 'impractical' should be amended to 'aspirational'.
- This proposal sits better in the preamble.
- This should be enshrined as a right: this is one area where the Catholic Church agreed with the sexual orientation sector. It is not up to the Forum to determine what dignity is, but for the courts.
- The Chair intervened and suggested following the example of the Convention for the Rights of Persons with Disabilities where this is included at Article 3.

Page 9, proposal 7 (right to liberty and security)

- This will be discussed further in the discussion of the CJ&V working group report.
- The proposal at 1(d) might be better worded following the example of the new provisions in the Convention for the Rights of Persons with Disabilities, or removed altogether.

- The Women's sector supported inclusion of para 7 of this proposal as most people in prison for non-payment of debt are women.

Page 11, proposal 8 (right to a fair trial)

- This proposal had been amended to reflect the wording of the South African Constitution.
- No points were raised.

Page 13, proposal 9 (no punishment without law)

- The reference to 'criminal offence' is not broad enough. The Chair intervened to suggest amending to 'no-one shall be subject to any other punishment or penalty on account of...'
- A reference to genocide is needed.

Page 14, proposal 10 (right to respect for private and family life)

- There was a discussion of the implications of 'all forms of communication'. The Chair suggested 'all forms of personal communication'.
- The drafting seems to create a hierarchy of rights with adults rating higher than children. The clause should make it clearer that it is parents' rights that are being limited, not children's.

- The clause is not intended to limit the right to privacy of the child, however, but to allow for interference in family life when this is in the best interests of the child. And there needs to be provision to intervene in cases of (for example) internet grooming.
- The right to found a family should be worded similarly to the provision in the International Covenant on Civil and Political Rights.

Page 15, proposal 11 (freedom of thought, conscience and religion)

- There was discussion (as elsewhere) of the reference to 'morals'. If deleted, does useful case law disappear with it? Does its inclusion not provide protection against manifesting religious belief in a manner that is derogatory towards others? The Chair suggested this was an instance of unnecessary redrafting.

Page 16, proposal 12 (freedom of expression)

- The redraft (from the interim report) had removed the references to national security and territorial integrity. These are fundamental to all (national

security) or most (territorial integrity) international standards.

- National security has particular resonances in Northern Ireland. The Bill of Rights is to ensure that the past cannot be repeated.
- But national security has great relevance generally in view of the threat of international terrorism.
- This disagreement is exacerbated by the lack of definition of 'national security'. Limitations need to be specific.
- It was acknowledged that, as any Bill of Rights will have to go through Westminster, proposing the removal of 'national security' is highly unlikely to be successful.
- The removal of 'morals' from this section risked creating a Pornographers' Charter.
- The use of the term derives from a period when very different attitudes to sexual orientation prevailed.
- 'Morals' is used at Strasbourg as a means of allowing States to make decisions in different contexts (eg in relation to stem cell research,

where the UK and Germany have quite different policies).

Page 17, proposal 13 (freedom of assembly and association)

- There was a question as to whether the rights to strike and to collective bargaining should go here or in the Economic and Social Rights part of the report.
- Caution should be exercised in granting the right to strike to everyone. For example, should the Armed Forces and Police have the right to strike?)
- It was disappointing that parading was not mentioned here, despite having been a key issue for at least ten years.
- It was disappointing that the UUP were not in agreement with the right to join a political party, as this addressed the prohibition on joining the Labour or Conservative parties.
- There should also be a reference to the right to children to participate in politics.

Page 18, proposal 14 (right to marry and form civil partnerships)

- The right to found a family could be included here.

- The right to form civil partnerships should be provided for separately as the right to marry is already in the ECHR.

Page 18, proposal 15 (right to participation and good governance)

- The reference at para 4 to “in all matters affecting their rights” is not in the Framework Convention.
- The gender neutral language in this proposal fails to acknowledge the impact of the last thirty years on women’s participation, and the drafting at para 4 seems to limit women to participation only in matters affecting women’s rights. The drafting in the Women’s working group report may be preferable.
- The reference to ‘genuine’ elections is unclear, and the right to vote is not for everyone as under 18s and non-EU citizens may not vote.
- The SDLP reiterated their commitment to enshrining proportional representation and agreed to circulate a written explanation of their views on parity of esteem and mutual respect in this context.

Page 19, proposal 16 (right to protection of property)

- This was originally a UUP proposal, which had attracted unanimous support.
- The UUP clarified they had proposed it as it would be unacceptable to have a document covering civil and political rights with no reference to property rights.

Page 20, proposal 17 (freedom of movement)

- This proposal relates to an area the UK is not signed up to, and is relevant to Northern Ireland because of the current sectarian barriers which restrict movement.
- A Northern Ireland Bill of Rights can only provide the right to leave or enter this jurisdiction, not others.
- The Women's working group had requested a reference to trafficked people and domestic workers.

Page 21, proposal 18 (right to nationality)

- It was pointed out that references should be to citizenship, not nationality, and that UK law can only recognise, and not grant, citizenship of another country (in this case Irish citizenship).

- The SDLP repeated their commitment to enshrining protection from assimilation by a public body on the basis of perception.

Any other business

11. The Chair reminded the Forum that the rules of procedure do not provide for proxy voting and so, when the decision making process begins, members need to be physically present to vote.