

Bill of Rights Forum  
15<sup>th</sup> meeting, Wellington Park Hotel  
18<sup>th</sup> March 2008

Present

Chris Sidoti, Chair	Mairead McCafferty, Sexual Orientation Sector
Martina Anderson MLA, Sinn Féin	Nelson McCausland, MLA, DUP
Father Tim Bartlett, Churches	Patricia McKeown, Trade Unions
Paula Bradshaw*, UUP	Helena Macormac, Ethnic Minority Sector
Annie Campbell*, Women's Sector	Alban Maginness MLA, SDLP
Elaine Campbell*, Older People's Sector	Thomas Mahaffy, Trade Unions
Lisa Coyle, SDLP	Shannonbrooke Murphy, Sinn Féin
Brian Crowe, UUP	Dermot Nesbitt, UUP
Jeff Dudgeon*, UUP	Vincent Parker, Sinn Féin
Neil Faris*, Business Sector	Ian Parsley, Alliance
Stephen Farry* MLA, Alliance	Christopher Stalford, DUP
Aideen Gilmore, Human Rights NGO Sector	Margaret Ward*, Women's Sector
Colin Harper, Disability Sector	Peter Weir MLA, DUP
Eilis Haughey, SDLP	Ben Lee, Human Rights Advisor
Rev. Dr. Samuel Hutchinson, Churches	Gillian Preece, Secretary
Paddy Kelly, Children and Young People's Sector	Gareth Wright, Secretariat
James Knox*, Sexual Orientation Sector	
Seamus Lynch*, Older People's Sector	

\* for part of the meeting

Alternates

Sorcha McKenna, Children and Young People's sector

Legal Advisors

Dr Catherine Donnelly (Preamble, Enforcement and Implementation)

Dr Aoife Nolan (Economic and Social Rights)

Dr Linda Moore (Criminal Justice and Victims)

Official Observers

Kevin Hanratty, Northern Ireland Human Rights Consortium

Ann Hope, and Miriam Titterton NIHRC

James Taylor, NIO

Eithne Ryan, NICCY

Working group final reports

Economic and Social Rights (including equality) working group

1. The discussion adjourned at the 14<sup>th</sup> meeting was resumed.

Discussion (specific proposals)

Page 35 (environmental rights)

- A drafting correction (removal of the word 'justifiable' at 2(iii)) was made.
- The DUP expressed sympathy with the need for a sustainable environment but did not see this as

related to the particular circumstances of Northern Ireland.

- A correction of text at page 37 was made (“the UUP commended the wording”, rather than “the UUP commended inclusion of the wording”). These rights are already provided for in planning law.
- The provision is not related to the particular circumstances, but if it were to be included it should be more widely drafted.
- The SDLP believe environmental rights are related to the particular circumstances.

Page 38 (right to an adequate standard of living)

- A substantial number of people in Northern Ireland live below the poverty line, particularly children and older people.
- A third of children and young people live in poverty, most of them in the areas most directly affected by the conflict. As drafted, the provision reflected the UK’s commitments under the Convention on the Rights of the Child.

- As 40% of children and young people in London live in poverty, the above is not one of the particular circumstances of Northern Ireland.
- The proposal reflects international standards and explicitly imposes a duty of 'progressive realisation' on public authorities.
- The definition of 'continuous improvement' was questioned. This is the aim of macro-economic policy for which Stormont is not responsible.
- The inappropriateness of a Bill of Rights placing funding obligations on Government was repeated.
- It has been a reality through the Troubles that improving well being and living standards has not been a priority for public funding, which has instead been diverted to security.
- The SDLP support the provision as it shows a commitment to putting aside division, to building consensus, and to realising the vision of the new future.
- Sinn Féin strongly support the proposal.

- Alliance support the principle, but highlight the need to recognise the NI Government can only redistribute wealth, not create it.
- The danger of undermining the UK-wide social security provision and creating conflict with the Treasury was repeatedly highlighted.
- The risk of conflicting with the equality provisions was raised (e.g. by prioritising the recently redundant over long term unemployed).
- Reference was made to the recent speech by Michael Wills (Minister for Justice) in which he said economic and social rights were under consideration for the UK Bill of Rights and had not been ruled out at this stage.
- No-one can disagree there has been over thirty years of conflict in Northern Ireland: such a situation would create economic and social suffering anywhere. While the political process is to be applauded, the benefit is not being felt by many people: they do not see dead bodies on the street but their daily standard of living has not improved. The Bill of Rights provides the opportunity to give the people of Northern Ireland

what they have been denied by successive Governments.

- The claim that this is 'left wing' was examined: Bills of Rights which do include economic and social protections can be found in contexts which are not left wing, eg some US States.
- The Chair intervened to clarify that the text at clause 1 is from the International Covenant on Economic, Social and Cultural Rights, which uses 'adequate' and 'continuous improvement' as a means of establishing a floor but not a ceiling. He questioned the appropriateness of including 'continuous improvement' in the right now. Deciding on 'maximum availability' of resources is not done in isolation, but requires Governments to balance competing demands.

Page 41 (right to work)

- The proposal is important because of the high level of economic inactivity in Northern Ireland.
- The separate clauses at 5 and 7 are included to address the particular conditions affecting women and migrant workers. They are dealt with separately as the group felt that women and

migrant workers had particular needs in relation to the right to work.

- In the context of all the economic and social rights being justiciable, who defines 'essential', 'employability' and 'fulfilment'?
- The courts are already required to interpret terms such as 'reasonableness'. They should, therefore, be able to interpret 'essential' etc.
- Clause 2b primarily refers to macro-economic policy. Full employment is not necessarily desirable.
- 'Fair wages' is not used elsewhere in UK legislation.
- There is a plethora of legal rights which implement the UK's obligations under the UNCSD.
- This is an important issue for women. Cross references are needed to pensions, maternity/paternity leave. Sexual harassment should be specified at 3c.
- Clause 1 would be better drafted if it referred to the right to 'access to work'. But note that

international conventions refer to the 'right to work'.

- Is 'non-nationals' preferable to, and more durable than, 'migrant workers'? But note the Migrant Workers Convention on which this is based.
- The drafting might be too specific to be applicable to the economic situation of the future.
- Cross reference should be made to the Children and Young People working group report – around 100,000 children and young people work and need to do so in controlled and monitored contexts.
- The SDLP and Sinn Féin support the proposal.
- The DUP supports clauses 4-8 but not 1 or 2. The use of 'favourable' at clause 3 was questioned.
- The question of 'legal persons' was raised. Businesses are not people, but contain people.
- 'Informal employment' was used to replace 'black economy'. It refers to work outside the formal employment system.

- The definition at clause 4 goes beyond existing definitions. 'Political conviction' does not reflect international language.
- The DUP do not support positive discrimination. The use of the word 'appropriate' at 5 is good.
- Employers should be able to take into account an individual's convictions.
- The draft agreed by the OFMDFM working group (on convictions) should be used.
- Convictions can affect decisions on insurance, thereby affecting families as well as individuals.
- Nationality/immigration is an excepted matter.
- The UUP is open to a general equality provision but do not want it to prejudice the Single Equality Bill process.

#### Page 59 (right to social security)

- The existing system of UK-wide parity could be challenged by this proposal, which would be potentially detrimental to Northern Ireland.
- Alliance is happy with clause 1 if it refers to non-discrimination and full access, but remains concerned about the UK-wide implications.

- Sinn Féin support the proposal.
- The proposal refers to the public authority taking decisions in the context of 'to the maximum of their available resources' [emphasis added].
- The European Social Charter includes justiciable economic and social rights (including to social security) but collective complaints cannot be taken against the UK for Charter violations as the UK has not ratified that Additional Protocol to the European Social Charter Providing for a System of Collecting Complaints.

Page 62 (outstanding issues)

- The first ten items fall to the Preamble, Enforcement and Implementation discussion.
- Transport came up repeatedly, affecting the environment, education, housing, economic participation.
- The right to information is included in the Civil and Political Rights working group report.
- The issue of private/non-state actors is for the Forum to consider.

- Trade union rights could sit here or in the Civil and Political Rights section. The latter includes them.

### Preamble, Enforcement and Implementation working group

2. The draft report had been circulated. It built on the report of the NIHRC working group, but also identified other issues. Rather than specific proposals, it mostly listed options for discussion by the full plenary.

3. Discussion of this report would not foreclose the subsequent Criminal Justice and Victims working group report discussion.

### Discussion (general points)

- It was agreed that, as the report reflected a high level of consensus (which had not always been easily won) and all parties'/sectors' views were clearly expressed, the following discussion of general points and specific proposals should be limited to:
  - i. questions/clarifications
  - ii. explanation of further development of positions on the part of parties or sectors represented on the working group

iii. comments from non-participants on specific proposals.

- It was noted that the working group members had different understandings of 'supplementary rights'.
- The UUP supports mainstreaming supplementary rights, in the same manner as is done in the HRA, but not a separate Human Rights Court.
- The report was supported by all parties.

Discussion (specific proposals)

Page 6, Preamble

- Had the group considered alluding to responsibilities?
- Had the group given any cognisance of how the ECHR is enacted in Ireland or discussed the proposed all-island Charter of Rights or the Lisbon Treaty?
- The preamble is one of the most important parts of the Bill of Rights, setting out the shared values. Not having one would undermine the Bill.
- The preamble should make reference to international human rights standards and obligations which are not listed.

- Some of the Economic and Social Rights working group recommendations on the vulnerable might sit better in the preamble.
- The preamble should be firmly anchored in the language of the Belfast/Good Friday Agreement, and refer to the principles of reconciliation, tolerance etc.
- The non-diminution clause is modelled on the EU Charter.

#### Page 9, Relationship with the Human Rights Act

- Sinn Féin supports model 1 as it is more robust and more accessible, and allows the establishment of a Human Rights Court. The model should only be rejected if it is shown to undermine rights.
- Model 2 guards against undermining the Human Rights Act.
- The HRA and ECHR are deeply flawed – in practice it is hard to realise the rights contained in them for children and young people (e.g. the problem of ‘victimhood’ in the HRA). Model 1 is preferable, as to access rights you need to know what they are.

#### Page 12, Limitations

- The group had not had sufficient time to audit the limitations clauses proposed by other working groups.

#### Page 15, Derogations

- The older people's sector would provide text for an appendix to the report indicating agreement to option 2.
- If options 3 and 4 are not supported, Sinn Féin will insist on stringent derogation procedures at least to the ICCPR standard.

#### Page 23, Entrenchment and amendment

- The first two points are inextricably linked to the ability to vote – did the group consider the implications for children and young people? Does this endorse lowering the voting age? The convenor replied that it did not.

#### Page 25, Application

- The group had initially had a higher degree of consensus on using the Bill of Rights to address the problem identified in the YL case, but this had waned.

- There was concern among the group about the possible negative impact of clause (7) on programmatic rights. There was a question about binding private actors in private acts.
- The UUP reserves its position. It has contacted the NIHRC and is aware discussion is in hand on addressing YL.
- Sinn Féin is open to discussing horizontal application.

#### Page 34, Standing

- Does this proposal encompass the Economic and Social Rights working group recommendation on legal aid? The convenor replied that this is addressed under 'remedies'.

#### Page 36, Interpretation

- The record indicates there was no agreement here.

#### Page 40, Devolved and non-devolved matters

- The working group's legal advisor explained the detail in the tables annexed to the report. Some working group recommendations relate to transferred matters, some to reserved matters

and some to excepted matters: different means of enforceability and different remedies will, therefore, be necessary.

- The supposition is that the Assembly's relationship to the Bill of Rights will be the same as to the ECHR, ie that it is subordinate to the Bill.

#### Page 48, Justiciability

- The older people's sector would provide text for an appendix to the report indicating agreement to an Assembly Committee.
- The Forum will need to look carefully at all recommendations to see whether it is proposed that they be legally enforceable or programmatic.

#### Page 51, Enforcement mechanisms

- The Forum was referred back to the discussion under devolved/non-devolved matters.
- The need to have a separate Assembly Committee was questioned.
- The Children and Young People's sector support a separate human rights court, in view of experience in other countries.

#### Page 55, Remedies

- Had the working group given any consideration to children and young people's access to the legal/tribunal system? The convenor replied that it had not.
- The Forum could discuss whether this should be extended to all vulnerable groups.

#### Page 57, Outstanding legal issues

- Recommendations relating to due process would impact on 'legal persons' – for example, some civil and political rights apply to companies.
- If you impose duties on private business it is unfair if the same entities are not also entitled to the enjoyment of rights. Legal persons should have rights and duties.
- Sinn Féin agreed to the provision on non-diminution of existing standards. On coverage it considered that the rights of businesses are not fundamental human rights but are and should be addressed in law.
- Consideration of 'legal persons' is another issue for the Forum to bear in mind as it goes through the final text. The text should be 'audited' to consider the extent of application to legal persons.

- References to 'harmonisation and non-diminution' in this context are to how the Bill of Rights and ECHR would operate together, not to the harmonisation of rights legislation across the island of Ireland.
- The proposed all-island Charter of Rights is only for signature by politicians, if it ever comes to pass.

#### Page 60, Implementation

- The need for a responsibility to collect disaggregated data was highlighted.
- Should responsibilities be flagged here?
- The majority view in the working group had been that referring to rights and responsibilities endangered rights as it assumed a linkage between the two.
- Rights apply between the state and individuals, responsibilities apply between individuals.
- Individuals should be able to exercise their rights even if they have behaved irresponsibly. A preamble can recognise that, at a collective level,

rights depend on a framework that reflects the rule of law.

- There should be an attempt to agree a preamble that is visionary and sets values but is short and accessible. Responsibilities should be addressed in education and outreach, not in the Bill of Rights itself.
- Claiming rights for oneself involves recognising the rights of others – this is reflected in how few rights are absolute.
- The Chair intervened to agree that the Bill of Rights should be as accessible as possible and that the longer it is, the more technical it is likely to become. A solution could be to give each set of rights a 'detachable introduction' (e.g. 'everyone has the right to participate in public life') that could be the basis for public promotion and education. International human rights law is full of references to responsibilities. It is probably too late to draft a preamble but points that reflect the consequences of what happened in Northern Ireland (rather than interpreting) could be considered.

4. The draft report had been circulated.

#### Discussion (general points)

- The DUP reserves its positions in a range of areas covered by the ECHR and/or domestic law.
- The fact that criminal justice and policing have not yet been devolved was raised.
- Being too specific about victims' rights risks freezing in time what is an ongoing issue.
- The UUP reserves its position on victims' rights at present. Recommendations on criminal justice which modify or dilute the HRA must be considered against that background.
- The SDLP recognises criminal justice and victims as being central to the conflict and hence part of the particular circumstances. The consensus on values in the working group is encouraging. The report sends a clear signal to groups that feel they have been marginalised.
- Sinn Féin supports the report in general.

#### Discussion (specific proposals)

Page 3, Preamble

- To be returned to in the overall discussion on a preamble.

#### Page 3, Right to dignity

- This proposal may impact on those proposals about general rights in relation to torture.

#### Page 6, Victims' rights

#### Page 7, General provision and page 8, Definitions

- The DUP does not accept the definition of victim in the Victims and Survivors (NI) Order 2006 as this does not distinguish clearly between victims and terrorists.
- The UUP reiterated the need not to freeze in time a process which is ongoing.
- Sinn Féin will not support a hierarchy of victims.
- The definition gives primacy to those who have suffered regardless of their ideology.
- Being a victim and being a perpetrator are not mutually exclusive. The law can treat you as both at different times. Some people are clearly one or the other, but in the middle of the spectrum there is a large grey area.

- The two definitions (of victims of the conflict and victims of crime and abuse of power) should be read together.

#### Page 9, Definitions

- There is carry over here to the recommendations on equality and to recommendations in the Civil and Political Rights working group report.
- All lists in the Bill of Rights should be harmonised. Lists should be alphabetised to avoid implying rank.
- Clause 7 must be read in the context of ensuring the best interests of the child (for example when considering disclosure of abuse).

#### Page 12, Right to information and support

- The right extends to potential victims, and to victims where a crime has not been reported (e.g. in cases of domestic violence).
- Clause 17 needs to recognise some victims do not want information.
- These proposals apply to all victims, including victims of the conflict.

#### Page 12, Restoration

- The DUP reserves its position on restorative justice.
- The UUP reiterates its concerns about freezing provisions in time.
- The SDLP supports the proposals that enshrine the value of enabling victims to participate.
- Where restorative justice is provided, it should be by a public authority.
- The proposal is for restorative justice 'where appropriate'.

Page 13, Violence against women

Page 14, Interpretive clause

- The misinterpretation of s.75 has been used to prevent the addressing of unequal treatment.
- This proposal is also suggested by the Women's working group.

Page 15, Substantive provisions

- The proposals should be harmonised with those of the Women's working group.

- The Chair suggested that the Bill of Rights should contain general provisions for everyone, with specificity where needed.

#### Page 16, Victims and witnesses

- The proposals should be harmonised with those on fair trials in the Civil and Political Rights working group report.
- At clause 5, the need to allow lawyers to gain relevant experience was highlighted, as was the possible limitation on the right to choose your representation.
- Untrained lawyers can cause damage in cases of, for example, domestic violence. The proposals should not, however, be too detailed.
- Lawyers should be required to be trained in all aspects of the Bill of Rights.

#### Page 12, Child victims and witnesses

- The recommendations replicate those in the Children and Young People's working group report.
- The possibility of some of the proposals adding to delay (and so contradicting later proposals on speed of justice) was highlighted.

- It was suggested that references should include vulnerable adults.

5. The discussion of this report was adjourned until the meeting on 20<sup>th</sup> March.

Any other business

6. The Chair informed the Forum that drafts of chapters one and two of the final report had been circulated. Written comments should be submitted by 9am on 26<sup>th</sup> March. If possible, it was hoped to carry out all discussion electronically. If conflicting views could not be reconciled, discussion in the Forum plenary would be limited strictly to the written responses.

7. The first draft of the Chair's consolidated text had also been circulated. The text reorders the proposals in logical fashion, harmonising those that are duplicated across different working groups and developing final proposals for discussion.

8. The Chair's proposals are not the Chair's recommendations but attempts to move forward in light of the different working group drafts, the Forum plenary discussion, and international law.