

Bill of Rights Forum

16th meeting, Wellington Park Hotel

20th March 2008

Present

Chris Sidoti, Chair

Martina Anderson MLA,
Sinn Féin

Paula Bradshaw*, UUP

Annie Campbell*, Women's
Sector

Elaine Campbell*, Older
People's Sector

Sheri Chamberlain*,
Children and Young
People's Sector

Lisa Coyle, SDLP

Brian Crowe, UUP

Jeff Dudgeon*, UUP

Neil Faris*, Business Sector

Stephen Farry* MLA,
Alliance

Aideen Gilmore, Human
Rights NGO Sector

Derek Hanway*, Ethnic
Minority Sector

Colin Harper, Disability
Sector

Eillis Haughey, SDLP

Rev. Dr. Samuel

Hutchinson, Churches

Dolores Kelly MLA, SDLP

Paddy Kelly*, Children and
Young People's Sector

James Knox*, Sexual
Orientation Sector

Seamus Lynch*, Older
People's Sector

Nelson McCausland, MLA,
DUP

Patricia McKeown, Trade
Unions

Derek Hanway*, Ethnic
Minority Sector

Alban Maginness MLA,
SDLP

Thomas Mahaffy, Trade
Unions

Shannonbrooke Murphy,
Sinn Féin

Dermot Nesbitt, UUP

Vincent Parker, Sinn Féin

Ian Parsley, Alliance

Christopher Stalford, DUP

Margaret Ward*, Women's
Sector

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

Sorcha McKenna, Children and Young People's sector

Legal Advisors

Dr Elizabeth Craig (Culture, Identity and Language)

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

Criminal Justice and Victims working group

1. The discussion adjourned at the 15th meeting was
resumed.

Discussion (specific proposals)

Page 18, Youth justice

- The proposals need to be harmonised with those of the Children and Young People's working group.
- The DUP is opposed to raising the age of criminal responsibility. The UUP is opposed to doing so in a Bill of Rights.
- The disproportionate length of some of the proposals in this report was highlighted. It could lead to criticism of imbalance.

Page 22, Inquests

- Legal aid should be targeted to need.
- This proposal could lead the way to many more inquests being held than at present.

Page 23 Criminal Justice

Page 23, General

- The need to be mindful of existing funding pressures was raised. The counter-argument was put forward that justice should not be based on the State's alleged ability to pay.
- Some of the proposals suggest investing in areas that will ultimately cause savings, such as diversion.

- References to excepted matters (immigration, national security) were highlighted.
- If the detail is precised, the ethos should not be lost: a different approach is needed to criminal justice as Northern Ireland moves forward.
- The need to ensure that terminology throughout the report was acceptable (e.g. the references here to 'physical or mental condition'). Disability Action will provide text.

Page 28, Preamble

- The proposal needs to be discussed in the context of a general preamble.
- Criminal justice and policing have not yet been devolved. This does not mean that a Bill of Rights cannot address the issues, however, and entrench a clear set of values and communal responsibilities.
- The drafting at clause 8 appears to rule out police cautioning, and would have an impact on delay.
- There is no mention of disablism at clause 10.

- The Chair intervened to suggest a general list should be provided in the equality clause, and then referred to throughout the Bill.
- The proposal does not preclude future 50:50 type policies, nor does it specifically require or argue for them.

Page 31, Right to life and use of force, to freedom from torture, to privacy

- The proposal overlaps with that of the Civil and Political Rights working group.
- Proposals 1a and b move away from the overarching duty on the State to protect life.
- The intention was to supplement the right to life, with the working group being concerned that Article 2 of the ECHR does not provide enough protection (e.g. by permitting loss of life to prevent escape).
- The SDLP and Sinn Féin support the suggestion that the Chair should redraft.
- 'Potentially lethal' is more accurate than 'less lethal'. Potentially lethal weapons should never be used on children.

- Prohibition of police profiling and stereotyping should not be restricted to ethnicity; disability can also be a basis of negative stereotyping.

Page 33, Right to effective investigation

- At clause 5, 'particular' should replace 'special'.

Page 35, Right to liberty

- The specificity of the proposals was highlighted.
- A potential inconsistency between clauses 2 (promptly) and 3 (at the earliest opportunity) was noted. The legal advisor responded that this was to clarify that information must be given promptly but that questioning must not take place without an interpreter (which can take time to obtain).
- Clause 5 needs redrafting, on the advice of Disability Action. References are also needed throughout to sign language interpreters, advocates and appropriate formats for information.
- The underlying thrust of the proposal is to address issues arising from the profile of the prison population, the lack of concern about underlying causes, the needs of prisoners (including their

families, communication issues, children and young people in prison, women prisoners).

- Sinn Féin supports the proposal subject to its being abbreviated.

Page 38, Right to fair prosecution process

- The proposal is too black and white – the PPS needs to retain discretion with regard to restorative processes.
- Attention was drawn to the wording ‘where this is deemed appropriate’ in the restorative context.
- The Chair intervened to explain that international law goes further than the proposal, providing for detention of children only as the last resort.

Page 39, Right to a fair trial

- The proposal overlaps with that of the Civil and Political Rights working group.
- The DUP wants to see clause 13 (uncorroborated evidence) qualified.
- The proposal is unnecessary as Article 6 of the ECHR has been incorporated in the HRA.

Page 43, Rights in detention

- Clause 4 (maximum periods in custody pending trial) would require a major change to the criminal justice system that would require major resources.
- Clause 10 (imprisonment for non-payment of fine/debt) is too stark and does not acknowledge deliberate non-payment as a form of protest. Legislation is in hand to address imprisonment of fine defaulters.
- The Chair intervened to point out that international law distinguishes between non-payment of fines and non-payment of debts, with an absolute prohibition on imprisonment for the latter.

Page 47, Right to fair treatment

- Discrimination legislation covers facilities as well as goods and services.
- Sinn Féin supports the proposal if it does not preclude legislation to expunge convictions.
- A lot is being done at present in relation to terrorist convictions. The Bill of Rights should not freeze in time ongoing work.

- SDLP supports the proposal which seeks to create favourable conditions for rehabilitation, but does not support a requirement for expunging legislation.

Page 49, Right to non-discrimination

- The right to non-discrimination has been discussed in relation to a number of other working group reports.
- The need to ensure this draft does not have implications for existing anti-terror legislation was raised.

Final decision making: BORF 22

2. The Chair reported the discussions of the informal sub-group set up at the meeting on 18th March to consider the final decision making process.

3. In discussion the following points were made:

- The use of 'agreement', 'support' and 'consensus' was raised.
- Without references to 'full' agreement the concept of consensus is damaged. It is important to strive for the widest level of agreement within the Forum.
- The deadlines must be clarified.

- The reference to 'lowest common denominator' should also refer to not undercutting international standards.
- Listing the rationale and levels of support is consistent with the approach of transparency and openness. The text relating to reasons for support/dissent must be kept brief.
- If there are groupings that agree or disagree for similar reasons, common text will be worked on.

4. It was agreed that

- the introductory paragraph to the paper would be deleted;
- 'full agreement' would be replaced with 'consensus';
- alternative proposals must be submitted by 5pm on 27th March; and
- brief text clarifying agreement or disagreement with specific proposals must be submitted by 5pm on 28th March.

Outreach workers' reports

5. The Forum formally received the reports submitted by the four outreach workers. Two of the workers, Etain O'Kane (LGBT, carers and travellers) and Mary Lafferty (new

immigrant communities, and users of languages other than English), gave brief verbal reports of their work.

6. In discussion the following points were made:

- The outreach workers were thanked by many members of the Forum, and congratulated for having achieved so much, despite time and other pressures.
- The NIHRC needs to be aware of the work that has been started and build on the appetite that there is among these groups. The Forum should recommend to the NIHRC ongoing contact with the groups now involved in the process.
- The emphasis many of the groups placed on economic and social rights was noted.
- Feedback on contact with the Orange Order was requested.
- The reports will be placed on the website, and groups that had engaged would be written to, thanking them for their input and informing them of the next stages of the process. These letters need to be honest about the amount (or lack) of time working groups had to consider the groups' views.

- The reports demonstrate that, once you begin to engage hard to reach groups, they are quick to consider how the Bill of Rights could impact on them.
- The Forum has acknowledged that a culture of rights is more important than a Bill of Rights – this is part of the process of engendering that culture.
- The importance of language and of allowing groups to identify themselves was agreed by all Forum members. There was discussion (unresolved) of whether 'unionist ex-prisoners' should be used.

Structure of final report: BORF 21

7. A revised structure of the final report had been circulated. The order was based on the European Charter of Fundamental Rights.

8. Some amendments were suggested which will be reflected in the revised draft of the Chair's consolidated text.

9. The order can be revisited once proposals are agreed (e.g. should they be recorded according to level of support, or in a more logical content based order).

Chair's Consolidated text: BORF 23

10. The draft text had been circulated. Working group proposals had been linked together, and were followed by a Chair's proposal (which was not a Chair's recommendation) developed on the basis of the working group proposals, Forum plenary discussion and international standards.

11. The proposals are drafted as a statement of entitlement, followed by statement/s of the corresponding obligations of public authorities.

Discussion

Page 7, Dignity and equality

- Dignity has been linked to equality to give it content and show that equality derives from dignity.
- Clause 1 has a preambular feel – it could replace the preamble. It should also contain reference to responsibilities.
- 'Full equality' relates to outcome, not opportunity.
- Dignity does not sit properly with equality.
- Equality should be a free-standing right and not be restricted to the rights contained in a Bill of Rights.

- Some of the wording in the Economic and Social Rights working group report is preferable (“full and equal enjoyment of all rights and freedoms”).
- Clause 3 could impact on the Single Equality Bill process. Clauses 3 and 4 are already provided for in the HRA and ECHR.
- Clause 3 should include a reference to ‘conflict-related convictions’.
- ‘Religion or belief’ should be followed by ‘or lack thereof’.
- Public authorities should not be required to respect only rights in the Bill of Rights.
- Reference should be made to fair and unfair discrimination, to direct and indirect discrimination and to exceptions.
- If there is not to be an interpretive clause this needs to be clearer about discrimination, which is a loaded term in the Northern Ireland context.
- ‘Nomadism’ is preferable to ‘Traveller identity’.
- ‘Genetic status’ and ‘health status’ should be added at clause 3.
- Clause 3 should be free-standing.

- Concerns were expressed about positive action.
- Clauses 6 and 7 are not appropriate for supplementary rights.
- Clause 6 is more permissive than existing legislation (s.75 of the Northern Ireland Act).
- The draft of clause 6 is too strong.
- 'Females and males' is preferable to 'women and men'.
- Clause 7 should reflect existing obligations.
- SDLP agreed to provide text on parity of esteem.

12. It was agreed to

- split dignity and equality;
- incorporate clause 1 in the preamble;
- have a freestanding right to equality;
- include indirect discrimination (although international standards clarify that 'discrimination' includes direct and indirect discrimination – this will be returned to);
- amend the list at clause 3 as suggested;

- revisit clause 6 to see if it is too permissive or too strong, or necessary at all; and
- acknowledge existing obligations at clause 7.

13. It was also agreed that CAJ will provide a second model that is based on the concept of unfair discrimination.

14. The Forum will need to consider on a clause by clause basis whether proposals supplement the ECHR or simply repeat it. References to the ECHR could be shown clearly by, for example, italicising text. A general clause can clarify that nothing in the Bill of Rights is to be interpreted in a way that undercuts international standards.

Page 13, Right to life

- The DUP opposes clause 1 as it makes no reference to the rights of the unborn child and precludes re-introduction of the death penalty. It supports clause 2, not clause 3 (not particular circumstances) and clause 4 is an excepted matter.
- The UUP thinks clause 1 repeats the HRA and so is not needed. It is open to clause 2, does not support clause 3, and clause 4 is excepted.

- Alliance believes the proposal simply rewrites the ECHR. Could the Forum recommend that clause 4 be applied at UK-wide level?
- Clause 1 includes the positive obligation on the state to avoid loss of life.
- Reference to being executed 'extra-judicially' might be better cast as 'murdered'.
- Is clause 1 lower than Article 2 of the ECHR without the reference to 'deprived of life intentionally'? The legal advisor replied that it did not. Article 2 has a second sentence which qualifies its extent.
- Clause 2 should include the words 'and, when appropriate, independent' between 'impartial' and 'investigation'; 'partners' after 'relatives'; and 'unlawful' between 'unnatural' and 'death'.
 - There was discussion about whether 'independent' implied a slur on the PSNI/PPS, and about who is independent. Not including 'independent' undercuts international standards.
 - There was discussion about whether 'investigation' means 'inquiry'.

- There was discussion about whether a death can be unlawful but natural.
- Would clause 2 be retrospective?
- Deaths in care should be added at clause 2.
 - There was discussion about whether this meant all deaths in care, or suspicious deaths in care. The suggestion was made that the clause stop at 'suspicious deaths'.
- The closing words at clause 3 ("... and to the extent required...") lower standards.
- Clause 3 should clarify that lethal or potentially lethal weapons should never be used against children.
- At clause 4 'reasonable' is preferable to 'substantial'.
- It is for Parliament to decide if clause 4 can be exercised locally.
- This proposal is outside the terms of reference.

15. The Chair responded that international law remains undecided on when life begins, hence the lack of reference to the rights of the unborn child at this point: text could be suggested. 'Extra-judicially' can be changed to 'criminally'.

'Investigation' implies active steps being taken by the police, judiciary etc. The double use of 'necessity' at clause 3 requires absolute necessity in relation both to the decision to use force and to the level of force used.

16. It was agreed that no alternative models would be discussed. Language amendments should be submitted by 9am on 26th March.

Page 15, Physical integrity

- The words at 1c relating to reproduction rights are taken from international law and refer only to 'within the law' – that is, it is still down to local law. It should be read in the context of the 'best interests of the child' (in, for example, cases requiring consent to operate).
- The UUP believes the Bill of Rights is not the place to address gender-related violence (1a). It is open to 1b, given the land border, but has grave concerns about c and d. Immigration being an excepted matter has been flagged before.
- The DUP thinks 1a could reflect the particular circumstances if it stopped at '... or private sources'. If there is a blanket acceptance on freedom from violence, adding a list implies a

hierarchy of victims. It agrees with the UUP on b, c and d. If clause 1 is not agreed there is no need for clause 2.

- The SDLP supports the proposal but wants a reference to sectarian violence added. Clause 1c represents the careful balance previously discussed.
- Sinn Féin supports the proposal but wants references to race, religion etc. included either here or at some point in the Bill.
- Alliance broadly supports the proposal but wants a reference to the hate crime legislation categories.
- The clauses reflect the structural inequalities of violence and mirrors international language. Clause 1c leaves options on abortion open, and allows for aftercare.
- It was explained again that 1d refers to more than abortion, including maladministration of medicine, the right to refuse treatment etc.
- At clause 2 the text between 'public authorities' and 'shall take all...' should be deleted. If left, reference to education should be added.

17. The Chair explained that the recommendations from the Women's working group are contained elsewhere, so gender-based violence will not be lost if removed from this proposal. Harassment is referred to in a number of proposals in order to mainstream it.

18. It was agreed that no alternative models would be discussed. Language amendments should be submitted by 9am on 26th March.

Page 17, Freedom from torture

- 'Serious' should be deleted from clause 1 ('serious sexual assault'). An assault can be 'serious' because of its impact as well as its nature.
- Extradition (clause 2) is an excepted matter.
- At clause 2, 'substantial' should be replaced with 'reasonable'.
- There is an explicit prohibition on torture in the HRA – this proposal is, therefore, not needed.

19. It was agreed that no alternative models would be discussed. Language amendments should be submitted by 9am on 26th March.

Page 19, Freedom from slavery

- This proposal is a redraft of the ECHR and not relevant to the particular circumstances.
- The Forum should consider how words will be viewed by the media and not set itself up to be mocked (e.g. the reference to compulsory military service, which does not occur in Northern Ireland).
- This proposal is necessary as Northern Ireland moves forward from being a mono-cultural society. The Bill of Rights needs to provide for the future.
- Sinn Féin supports the proposal but wants 3b deleted as it limits the scope for prisoner rehabilitation.

20. It was agreed that no alternative models would be discussed. Clause 3b would be deleted. Language amendments should be submitted by 9am on 26th March.

Page 21, Right to liberty and security of the person

- This proposal is a redraft of Articles 5 and 6 of the ECHR and not relevant to the particular circumstances.

- The proposal needs to be read alongside that in the Children and Young People's report, setting the context of the best interests of the child.
- Reference should be made to accessible formats (clauses 3 and 4).
- Sinn Féin broadly supports the proposal but wants 2g (unauthorised entry into the jurisdiction) deleted; clarification as to whether 2e (infectious diseases) meets World Health Organisation standards; and clause 9 to stop at 'fine or tax'.
- Alliance welcomes clause 9.
- Clause 7 confuses two rights (right to fair trial and right to bail) which should be separated.

21. The Chair explained that all of clause 2 is permissive, but that clause 1 refers to deprivation that is unlawful or arbitrary – detention could be lawful but still arbitrary. Decisions on infectious diseases (2e) would be taken by the court under the law.

22. It was agreed that no alternative models would be discussed. Language amendments, particularly those aimed at brevity, should be submitted by 9am on 26th March.