

Subject: Material on Particular Circumstances

Dear Gillian,

I would be grateful if you would distribute the attached copy of the submission from the Catholic Bishops of Northern Ireland to the NIHRC back in 2001 in response to the then consultation document on the proposed BOR. Although it doesn't cover everything I would like to say on the issue of what should be included under 'the particular circumstances of Northern Ireland', given the constraints on time, it reflects the general position I would want to present on behalf of the Catholic Church as a member of the Forum.

I would ask members, given the date of its origin, to read it in the light of the following additional comments, most of which I made at the recent plenary session in Derry:

- The Catholic Church has a long commitment to the principle of the inherent dignity of the human person and to the cause of human rights across the world. The Holy See (Vatican) is a signatory to many international HR instruments, including the UN Convention on the Rights of the Child. Official Catholic social teaching is strongly in favour of the concept of human rights and

many Catholic Church workers have been recognised for their contribution in this field.

- It is in this context that the Catholic Bishops in Northern Ireland have consistently supported the prospect of an agreed Bill of Rights for Northern Ireland since the initiative was first proposed under the Belfast Agreement. This is not to say that the Church wholeheartedly supports the parameters proposed for the Bill by the Agreement. The broad theological and philosophical support within Catholic Church teaching for human rights would dispose it to a much more open approach to the scope of the Bill, achieved through dialogue and consensus by as broad a process of participation, consultation and outreach as possible.
- However, the Bishops of the Catholic Church in Northern Ireland, who have ultimate responsibility for teaching and governance within the Church, have profound regard for the moral and legal implications of what was agreed by democratically elected representatives, after protracted and difficult negotiations, in the Belfast Agreement. For this reason, in every submission made to the NIHRC on this matter, the Church has emphasised two points:
  - However restrictive it may be or however much people may want to wish it away, the broad

intention of the parameters established by the Agreement are both clear and have legal authority. It has been the consistent view of the Church that the wording clearly infers that the 'additional rights' beyond the ECHR to be considered for a BOR(NI) are those which relate directly (as opposed to indirectly or loosely) in some way to the history, causes and consequences of the conflict here. We suggest they also infer that in agreeing a BOR priority should be given to a process which facilitates agreement between the two historic political, cultural and religious traditions associated with the conflict on this island. This brings me to the second point:

- o The Catholic Church has consistently emphasised the respect which is due to democratically elected representatives in Northern Ireland in their role as a legislature through the NI Assembly. If the process of agreeing a BOR is, as suggested, to establish an agreed set of core values for the people of NI and to support the ongoing process of mutual understanding, reconciliation and peace building (which the parameters of the agreement suggest), then it seems critical that there is some

form of prior agreement, established through protracted dialogue and negotiation if necessary, between the political representatives about the process itself and about those core values. As it is, this does not exist. This brings me to some of the concerns about the current process and the composition of the Forum which I expressed at the plenary session in Derry.

- In Derry (stroke Londonderry for those who prefer) I expressed deep concern that the current Forum process, while it is not without value, is in my view fundamentally flawed in respect of its starting point, timing and composition. Let me elaborate briefly on each of these;

Starting Point: There seems to be a consensus among the civic representatives within the Forum that the parameters established by the Agreement, whether you interpret them broadly or narrowly, do not provide the best starting point for a BOR. In my view we are trying to cope with this poor starting point by either pretending the parameters don't exist and getting on with it or by trying to interpret the wording in way which does not stand up to literal or in my view legal scrutiny. For this reason, setting aside the hoops to be

jumped through in terms of the predispositions of the NIHRC to what we have to say (they can choose to ignore us completely), the divisions within the Assembly and the interests outside of NI which will influence Westminster, the sword of Damocles hangs over all that we are doing as a Forum if we do not stay within a reasonable and legally sustainable interpretation of the parameters established by Agreement. We could be legally challenged at any point on this issue. We could also waste a lot of precious time in a well intentioned pretense (which is why I am disappointed that, despite many efforts to do so and in spite of the Admission by Prof Christine Bell that this was one of the issues in which the previous NIHRC had become unstuck, we are only now getting round to look at this issue in detail). In my view we have two basic choices going forward: we either accept the reality of the limitations imposed on the scope of the Bill by the Agreement or we propose, as a fundamental finding of the Forum, that within an agreed and reasonable time frame (possibly even years to allow the Assembly to bed in) our locally elected MLA's come up with new and better terms of reference and a new, better resourced, inclusive and more reasonably timed process for winning support and agreement for a BOR(NI).

Personally, I would be happy to wait five years if it meant that we were going to do it right and start with a shared enthusiasm for the prospect of a BOR for the people of NI. As a Forum, we do not have the moral right or the legal authority to put our own interpretation on the parameters established by the Agreement. Our democratically elected representatives do however have the right to negotiate (with each other and the respective Governments of the UK and Ireland) a more definitive and constructive starting point. As it is I am disconcerted by my impression that some political representatives on the Forum want to push ahead with their own view of a BOR, however admirable, regardless of the parameters given by the Agreement. Is this not another form of 'Cherry Picking'? Why not have the courage and take the time to get it right in the first place? This brings me to the second point.

Timing: If there is one reason, more than any other (including my refusal in conscience to pretend that the Agreement says something more broad and inclusive about a BOR than it does) which threatens my willingness to continue as a representative on the Forum, it is my conviction that it is an insult to the

importance and seriousness of what we are trying to do to cram it into a process of approximately six months duration. Why do we need to rush? The wisdom of the ages suggests that where things of such fundamental importance are concerned it is better to get it right than get it quick! This brings me back to the idea of getting a better process mandated by the NI Assembly rather than this rushed affair hobbled together at the last minute by the NIO. I also suggest that we are taking on much more than we can chew in terms of outreach (though I have been consistently impressed by the capacity of the Chair and Secretariat to get much more done than I thought was possible) and composing an agreed draft of rights on areas such as language, culture etc.. Are we trying to be the NIHRC or are we trying to advise the NIHRC? Why have we not had any contact with or ongoing input from the NIHRC or the HRC for Ireland? Am I the only one who feels we are trying to do too much, too quickly and without sufficient agreement/clarity about our processes and remit? This brings me to my third and final point:

Composition: If I am right about the parameters imposed on the scope of the BOR by the Agreement then very hard questions arise in relation to the current

composition of the Forum. If the project was different and better (which is what I propose by giving it back to the Assembly and taking our time to get it right from the beginning) then every group that is represented on the current Forum would and should be included as a key contributor to the discussion about such a Bill. As it is, however, I would want to argue strongly in conscience (though regretfully) that the parameters imposed by the Agreement give priority to participation by those who can respond to the issues which directly gave rise to, sustained or flowed from conflict of recent years. In conscience therefore I feel obliged to say that the following groups have more right to be present on the Forum, under the current terms of reference, than some of the groups currently present. Those I believe have more right to be present include people representing:

- Victims (perhaps several to reflect the complexity of this issue);
- Cultural Issues (the Loyal Orders, GAA, AOH, people from the Arts etc.);
- Language Groups (notably but not exclusively Irish & Ulster Scots);

- The Poor (those most disadvantaged as a direct result of the social and economic causes and consequences of the troubles);
- Education (why have we no one representing the schools sector present?);
- Criminal Justice (why no-one from the PSNI and Gardai or PPS?);
- Initiatives in Reconciliation and dealing with the Past (we have no shortage of these);
- Religion (those, particularly from the Evangelical tradition, who may not feel they are represented at present – representatives of the Hindu and Muslim tradition?).

There may be others. While I appreciate that the intention is to include some if not all of these groups in the outreach initiative, I cannot in conscience stand over the fact that, given our terms of reference, these groups are 'outside' the Forum while certain other groups are 'within' the Forum.

Finally, to answer Chris's original question, I believe that the terms of reference established by the Agreement suggest the inclusion of and elaboration on the meaning and consequences of the following categories of rights:

- Freedom of Conscience and Religion (almost completely ignored by the previous NIHRC yet fundamental to issues around the conflict – to include issues around marching, protection of places of worship and religious gathering – Orange Halls, Churches etc.);
- Civil & Political Rights (including some creative thinking on Community Rights);
- Social and Economic Rights (including issues of housing – the conflict was closely connected to social and economic rights issues and has direct social and economic consequences)
- Equality and Parity of Esteem
- Cultural and Linguistic rights
- Education Rights
- Criminal Justice
- Victims
- Rights to do with healing, reconciliation and truth telling.

Again, this list is not intended to be exhaustive. What is manifestly more difficult to justify under the current terms of reference is any debate on issues such as 'reproductive rights', the 'Yogyakarta Principles', or otherwise important

aspects of age, disability, health, women's or minority rights which do not fall within these terms.

Others may want to pretend the Agreement does not limit our scope in this way but in conscience I can not do so. I would prefer we expressed our confidence in our politicians, in time, to come up with a much better starting point, process and ultimately atmosphere in which to take this important project forward.

As it is I look forward to a robust debate on Friday, though I hope that, unlike in Derry, I will not be accused of being 'Unchristian' for expressing with honesty an open conscience in defence of the freedom of speech and the value of sincere dialogue. All challenges to my analysis and assumptions outlined above, however, will be welcomed, no matter how robust.

Tim Bartlett.