

REPORT TO CHAIRMAN
Criminal Justice and Victims Working Group
December 2007

Introduction

To date the Working Party on Criminal Justice and Victims has met nine times. It is now meeting every week and further meetings are planned for December 7 and 13. We have had a number of problems which have hampered progress of the group's work, including attendance of some members – the group has tried to achieve as much consensus as possible and endeavoured to ensure that all members have the opportunity to input into development of provisions. We have further been hampered by the late appointment of the legal advisers and outreach workers. In addition, one of our legal advisers has been unable to attend meetings to date as she has unfortunately been unwell.

At an early stage two invited speakers gave separate presentations on the subjects of criminal justice and victims. At later meetings we divided our time between these two topics but substantive work on discussing draft clauses only became possible with the appointment of legal advisers; at this stage we can say more about criminal justice rather than victims issues.

Criminal Justice

The introductory presentation raised such issues as length of time suspects may be held awaiting charge or trial, the need for prompt access to lawyers, confidentiality during lawyer/client consultations, the age of criminal responsibility, youth justice, etc. We have had substantive discussions on the issue of youth justice, and are beginning to address issues of prisoners at our meeting on 7 December. We append the latest material from our legal advisers.

However, that material (indeed the whole report) only has the status of a "pre-draft" (as envisaged in Gillian's e-mail of 28/11/07), being purely a progress report for the information of Forum members. Any legal documents appended will not

necessarily represent the conclusions of the working group; further detailed discussion on them is still needed.

Victims

The introductory presentation raised such issues as the difficulty of framing an acceptable legal definition of "victim", the right to redress, access to legal services and social care and support. It is expected that such topics – and many others – will appear in some form or other in our final report.

The matter of victims is a very sensitive one; we believe that it would be inadvisable to compile even a draft report in advance of properly engaging with the victims' representatives. In our "particular circumstances" it is essential to get this matter right as any perceived bias or insensitivity could damage the entire Bill of Rights process.

Being anxious to obtain the views of victims' groups, none of whom are directly represented on the Forum or working group, (a grievance on which there is cross-community agreement!) we circulated about 40 such groups inviting them to send a written submission (max 1,500 words) as to what provisions they would like to see in the Bill of Rights. Four written submissions were received, and on 16 November we held an all-day meeting at Stormont to meet those representatives who wished to explain their submissions or answer questions. Three groups sent representatives to speak about their submissions, and a few others who had not submitted written comments sent representatives to observe and/or comment.

However, it soon became clear that some other groups wished to have an input, so a further invitation has been sent out to about 100 groups or contacts (including the original 40). We will follow up these invitations and then meet on 13 December to confer with any representatives who wish to attend.

Conclusion

We propose to meet again to consider the representations from the various victims' organisations and discuss draft provisions on victims' rights to be compiled by our legal adviser. In addition, we will have substantive discussions on

the remaining criminal justice issues will also have to be drafted by the legal adviser.

We will endeavour to have our final draft advice to the Forum by 15 January.

However, we are deeply concerned that none of the constituencies being consulted by the four Forum Outreach Workers during December and January will have an opportunity to be consulted on the content of the Criminal Justice and Victims Working Group Draft Report; this effectively means that in preparing our final report to the Forum, the CJ&V Working Group will not have had the benefit of the views, experience and comments of the wider public, particularly those groups which the Forum has agreed require particular focus to ensure their participation in the process.

We recommend that the Working Group be given sufficient time to complete its Draft Report and in the interim that the Outreach Workers begin a process of engagement and awareness raising around the Bill of Rights process; we further recommend that when all draft reports are complete and a period of engagement has been conducted that the Forum undertake the consultation process proper.

As required by our remit we intend our final proposals:

- (i) to be consistent with the relevant International Standards;
- (ii) to deal with matters not (or not adequately) covered by the European Convention on Human Rights; and
- (iii) to relate to "the particular circumstances of Northern Ireland" (whatever interpretation of that phrase may ultimately be approved by the Forum).

However, we are not at all clear as to how reports (post 15 January) from all four Outreach Workers on matters concerning criminal justice and – especially – victims will be processed. Guidance on that procedure would be welcomed. Will there be any provision for an addendum to the main consultative document before the consultative process undertaken by the four outreach workers is too far advanced?)

Report on progress to date on substantive proposals.

Criminal Justice & Victims Working Group

Areas to be covered

The group has identified the following list of areas which it wishes to address (this list is not exclusive):

Criminal Justice

Right to silence

Pre-trial Detention (Including Bail, Detention without Charge)

Access to lawyers (promptness, etc)

Confidentiality during lawyer/client consultations

Right to a Fair Trial – jury trial

Age of Criminal Responsibility

Standards in Detention

Juvenile Justice

Victims

Legal Definition

“Do not time-limit victims”

Clear rights to redress

“...that the loss and suffering of all victims of that conflict and the responsibility of state and non-state participants are appropriately and independently established and/or acknowledged”

Social care and support

The group has also identified that the issues of rights of witnesses; hate crime; women and violence; immigration detention and detention of asylum seekers should be included. Members of the group noted that aspects of immigration detention touch upon the criminal justice system (for example the holding of immigration detainees in police stations) but do not consider that immigration detention appropriately sits within a criminal justice framework.

Progress to date

The Working Group has had detailed discussion on draft provisions on youth justice. These draft provisions are adopted from the United Nations Convention on the Rights of the Child; UN Rules for the Protection of Juveniles Deprived of

their Liberty; UN Standard Minimum Rules for the Administration of Justice (Beijing Rules); UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules). The proposals also take account of the United Nations Committee on the Rights of the Child's General Comment on Juvenile Justice (2007) and the Committee's 2002 observations of the UK Government report.

Youth Justice Draft provisions discussed to date

The Public Authority shall recognise the right of every child alleged to, accused of, or recognized as having infringed the criminal law to be treated in a manner consistent with the promotion of the child's human rights and dignity, which reinforces the child's respect for the human rights of themselves and others and which takes into account the child's age and understanding and the desirability of the child's assuming a constructive role in society. (Agreed by those present)

In all decisions taken within the context of the administration of youth justice, the best interests of the child shall be the paramount consideration. (Agreed)

Children under the age of 16 shall be presumed not to have the capacity to infringe the penal law. The age of criminal responsibility shall be set accordingly and subject to review by the Public Authority. (Still to be agreed)

The Public Authority shall provide effective alternatives to the criminalization of children including family based support and community based diversion, which protects the child and is in the child's best interests. (Agreed)

[Group wishes paragraph to be added here regarding the process through which children who have broken the law will be encouraged to take responsibility and make reparation and promoting the positive development of the child]

Safeguards for children under the due process of law shall include the right to have criminal charges explained promptly and in appropriate language; to access appropriate legal and

other assistance; to have an appropriate adult present even where a solicitor is also present, where required; to remain silent without prejudice; to be tried in an appropriate setting and manner, having regard to the child's age, understanding and needs; to have measures taken to ensure his or her meaningful participation in criminal proceedings; and to have his or her privacy respected at all stages of the process. (Issue of right to remain silent without prejudice agreed by most of group but with one dissention).

The detention of a child must occur only in exceptional circumstances, as a measure of last resort and for the shortest appropriate period of time. (Agreed by those present)

The Public Authority shall provide a variety of alternatives to institutional care to ensure that children are always dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the alleged offence. (Agreed by those present)

Children deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty. (Agreed by those present)

Every child deprived of liberty shall be treated with respect for his or her dignity and human rights and shall receive care, protection and all necessary individual assistance -social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality. (Agreed by those present)

All children in detention shall be separated from adults and (if not yet found guilty) from children who have already been found guilty. (Agreed by those present)

Each child in detention has the right to privacy and respect for his or her correspondence and communications and to maintain regular and direct contact with parents, siblings or other family members and friends, save in exceptional circumstances or where it is not in the child's best interests (Agreed by those present)

Corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the child's physical or mental health is forbidden. (Agreed by those present)

Use of force or instruments of restraint shall be used only in exceptional cases 'where all other control methods have been exhausted and failed'. Physical restraint and use of force should be used only where the child is in danger of injuring themselves or others, should not cause humiliation, degradation or injury to the child, and should only be used for the shortest period of time. (Agreed by those present)

Girls in detention shall receive special attention as to their personal needs and problems and shall not receive less care, protection, treatment and training than boys. (Agreed by those present)

The Public Authority shall ensure that on release from an institution children are assisted and supervised by an appropriate authority and provided appropriate support within the community setting and, as far as possible, within the family unit. (Agreed by those present)

Paragraph to be added regarding children's re strip searching.

Legal advisor to look at issue of separation of boys and girls in custody

Rights re conditions in detention, rights of prisoners and ex-prisoners

The legal advisors have drafted provisions regarding prisoners' rights and conditions in detention. These will be discussed by the group at its meeting on 7th December. Provisions have been drafted with particular reference to the rights contained within the UN Basic Principles for the Treatment of Prisoners and the New European Prison Rules (Council of Europe). Issues covered include: non-discrimination and respect for dignity and rights; remand in custody; custody as a last resort; alternatives to custody for non-payment of fine; separation of prisoners of different categories including separation of men and women and children and adults; rights of women in custody; restriction of imprisonment of pregnant

women and mothers of young children; mothers and babies in custody; mental illness; human-rights compliance and disciplinary procedures/use of force and isolation; support for ex-prisoners and the families of prisoners and ex-prisoners.

Loss of liberty/fair trial

The human rights advisors have received advice from the advisor to the civil and political rights group regarding issues which are referred from that group to the criminal justice and victims group. These will be reported to the criminal justice and victims group on Friday 7th December and provisions drafted and discussed accordingly.