

INTRODUCTION

Law Centre (NI) is a voluntary organisation providing legal support to advice giving organisations throughout Northern Ireland. Its services include advice (through an advice line), casework and representation, training and the provision of information and publications. The Law Centre's work covers five key areas of law, namely, social security, employment, housing, immigration and social services. Services are delivered to member agencies through offices in Belfast and Derry. The Law Centre has 83 full members consisting of the main voluntary sector advice agencies in Northern Ireland and over 500 associate members encompassing solicitors, social services and probation offices, trade unions, political parties, women's groups, tenants associations and other community based organisation. The Law Centre has a long-standing interest and involvement in human rights issues and how they impact on our work.

The submission to the consultation document is confined to those areas of the Bill of Rights that impinge directly on our work.

THE MANDATE

The Commission rightly emphasises that any Bill of Rights brought forward to the Secretary of State must be in accordance with the mandate provided by the Belfast Agreement.

The Law Centre recognises that how this mandate is interpreted will, in large measure, determine the scope and impact of any Bill of Rights. We are firmly of the view that a broad interpretation should be given to the relevant parts of the Belfast Agreement. In particular, the need to reflect the specific circumstances of Northern Ireland should not be interpreted in a narrow way designed to close down rights and dilute the value of the document. We have given consideration to the argument that the Commission should be pragmatic and bring forward

proposals for a tightly and closely defined Bill in order to enhance the chances of a Bill of Rights actually making it through the parliamentary process in Westminster. On this basis, it would be prudent to interpret the mandate narrowly. This is a legitimate point of view, but on balance, we would strongly urge the Commission to reject this approach.

The rationale for this recommendation is that economic, social and political rights cannot be divorced from the civil conflict and violence of the past 30 years. To illustrate through our example, it is generally agreed that Northern Ireland fares badly compared to Britain and other parts of Europe on many health indicators. In addition, many of the health problems are related to social and economic conditions whilst some are also directly affected by the political unrest. Attempting to divine the precise extent of health care problems attributable to social conditions shape by conflict and violence specific to Northern Ireland in order to decide whether a right to health is justified in a Bill of Rights is not a tenable approach. The purpose of a Bill of Rights is to strengthen the transition towards peace and to recognise the parity of esteem between the two main communities. In this context, a broad based Bill of Rights is an essential building block to this goal. Having said that, we do, however, hold the view that the Bill of Rights should not be used as a vehicle to tidy up much needed legal reform elsewhere unless such provision falls normally within international Bills of Rights.

The Commission seeks comments on whether Protocols 4, 7 and 12 of the Convention should be included in the Bill of Rights. The Law Centre would urge that these articles be incorporated. As the only part of the United Kingdom with a landlocked border with another member state of the European Union freedom of movement has a particular resonance. Moreover, the protection of people from collective expulsion and procedural safeguards against individual expulsion is particularly important given the current legislative climate following the events of 11 September 2001. From the Law Centre's perspective incorporating these protocols will also send out an important message to asylum seekers whose rights

and safeguards remain vulnerable to the prevailing political climate within and beyond these islands.

PREAMBLE

The Law Centre endorses the idea of a preamble to the Bill of Rights which makes a positive statement and sets the frame for specific rights. We also welcome the general tone and endorse the wording save for two brief concerns. First ‘the people of Northern Ireland’ which opens the statement should be omitted. This phrase potentially gives rise to ambiguities, for example, does the Bill of Rights apply to an asylum seeker awaiting a decision on refugee status or a cross-border worker travelling from Cavan to Fermanagh each day? On the grounds that this ambiguity is an unintended consequence, we recommend the omission of this phrase.

We also recommend shortening the preamble by retaining the first three paragraphs and substituting the rest of the preamble with the following:

“building on the principles enshrined in the Belfast Agreement, the protections of the European Convention on Human Rights, the European Union Charter of Fundamental Rights and other international human rights instruments, the following Bill of Rights is adopted”

EQUALITY AND NON-DISCRIMINATION

The Law Centre supports the Commission’s general approach contained in the equality and non-discrimination chapter.

We are particularly pleased to see the Commission’s pro-active and positive emphasis. A cornerstone of the Agreement is the concept of equality and non-

discrimination and this also forms part of the Commission's mandate for bringing proposals on a Bill of Rights.

We would propose some amendment to the drafting which is designed to strengthen and simplify the provisions being proposed. First, we would omit clause 4(1) as it does not appear to go as far as clause 4(4) and may, paradoxically, detract from the rights contained elsewhere. Second, we would also omit clause 4(3). There are powerful and legitimate arguments for and against placing emphasis on the rights of particular social groups. On balance, we prefer to see equality and non-discrimination mainstreamed across groups that face discrimination and disadvantage. Third, we welcome the attention given to freedom of harassment and bullying, but wonder whether this would be better placed within a clause covering the right to personal and physical integrity as outlined in chapter 6. Our reasoning for this suggestion is that bullying harassment in the workplace which stems from an abuse of power not related to one of the discriminatory grounds may not be covered within the existing proposed clause. However, if no clause covering the right to personal and physical integrity is advanced, then we would urge the maintenance of the existing clause. Fourth, we would change 'possession of a criminal conviction' to 'conviction for offences'. This widens the scope of the protection to ensure those convicted of non-criminal offences are covered. Fifthly, we believe positive action should be required rather than permitted within clause 4(8). This would be in keeping with the pro-active approach adopted by the Commission and send out a strong message in tune with government's desire to target social need and end social exclusion.

ECONOMIC AND SOCIAL RIGHTS

The Law Centre is disappointed with the Commission's proposals to restrict legal remedies to due process and non-discrimination challenges. The advice of the

economic and social rights working party has been inadvertently or otherwise misinterpreted. In particular, the Commission asserts:

“The Working Groups on Social and Economic Rights and on Implementation, and a number of submissions, drew the Commission’s attention to the need to develop innovative approaches to the delivery of social and economic rights in addition to enforcement by judicial decisions. These would treat different types of rights differently, some being justiciable and directly enforceable by judges and some being enforceable in a programmatic way according to prescribed processes. The Working Group on Social and Economic Rights was unanimous in its conclusions regarding the inclusion and implementation of social and economic rights in the Bill of Rights. As regards enforcement, the Group said:

“Legal remedies are necessary but not sufficient to assure the dignity of the human person. The conditions which alleviate social exclusion and deprivation include but are not limited to: consultation and communication with the public, education and effective access to information, advancing inter-agency responsibility for the enforcement of economic and social rights, facilitating public participation in decision making processes and acknowledging the inter-dependency of rights.”

There is nowhere in the text of the advice provided by the Working Group a statement that some rights should be enforced judicially whilst other rights would

be made effective through programmatic reform. The Law Centre director chaired the working group and the clear position was that economic and social rights should be judicially enforceable augmented by programmatic approaches. It is perfectly legitimate for the Commission to reject the advice of the working group but not proper to misinterpret the advice provided.

Taking into account existing statutory duties within domestic legislation and the equality and non-discrimination clause outlined in chapter 4, the enforcement of new economic and social rights as currently drafted represents a limited step forward. Moreover, providing scope only for due process violations effectively allows inadequate provision to be made providing it is done so fairly and without discrimination against groups covered in the equality clause. The same applies to substantial cutbacks made to provision covered by economic and social rights. We do not see why economic and social rights should be treated differently from other rights advanced by the Commission. As a result, the Law Centre strongly urges the Commission to allow judicially enforceable remedies against substantive decisions on economic and social rights. International experience, for example, in South Africa, suggests that powers to challenge substantive decisions on economic and social rights does not lead to judges micro-managing economic and social provision.

The Commission rightly points out a substantial majority in both the main communities support the idea of rights covering health, housing and employment being included in a Bill of Rights. The chapter is not explicit as to the difference between substantive and procedural rights. We suspect that many supporters of such rights are not aware of the limitations that have been imposed by the Commission's approach. If this approach is to be maintained, then the Law Centre recommends that this issue be made the subject of further consultation with the full implications of enforcement mechanisms being spelt out.

LIMITATIONS

The Law Centre is keen to see a Bill of Rights which is readily understandable in order to enhance its value and accessibility. On this ground, we believe a single limitation clause is preferable, though we recognise there are arguments for both options mooted by the Commission. The current general clause is too loosely drafted and should be tightened. We would prefer the Convention principle of proportionality to be included rather than the concept of reasonableness. We would suggest the following clause:

Non-convention rights in the Bill of Rights shall be subject to only such limits as can be shown to be:

- (a) absolutely necessary; and
- (b) prescribed by law; and
- (c) demonstrably justifiable in a free, open and democratic society based on human dignity, freedom and equality.

ENFORCEMENT

The Law Centre is torn by the proposals for enforcement. Our experience with Human Rights Act challenges to date has been that the courts have not been receptive to Convention arguments. In saying this the Law Centre has been mindful of launching challenges only in cases where the facts and legal argument are strong and this has made no difference to the outcome. A further observation is that many of our arguments have involved a mixture of domestic and Convention legal points. Bill of Rights challenges are also likely to contain arguments about the interpretation of other domestic law.

The Law Centre believes that current procedures for selecting judges lack openness and transparency. Further, the judiciary is not reflective of Northern Ireland society in terms of gender, religion, race and disability. The need for reform is long overdue, yet the proposals brought forward by government following the Criminal Justice Review do not go nearly far enough.

Pragmatically, we are attracted to the idea of a constitutional court to act as an appellate court for dealing with all cases where a Bill of Rights challenge is being mounted (either on its own or in conjunction with other domestic arguments). However, the primary basis for this approach is effectively to add impetus to the need for reform of the judiciary. We support the need for change, but wonder whether a Bill of rights should be used as a vehicle for driving this particular agenda. On balance, we therefore suggest that a new constitutional court should not be created.

We believe that a person or body with a legitimate interest in a matter should be able to bring a case under the Bill of Rights. We are mindful, however, that this will be of more value to the powerful, well resourced interests than local community and voluntary sector organisations who cannot afford to run the risk of facing a bill for the other parties' costs. Nonetheless, such a provision will also allow the Equality and Human Rights Commission to take legal challenges in appropriate circumstances. Whilst we have not researched the matter in any depth, there are a number of useful decisions on locus standi for judicial review which may assist the Commission in propounding a test to establish the requisite interest. To provide greater access to legal remedies, we would ask the Commission to bring forward proposals to ensure that Legal Aid is available for Bill of Rights challenges.

We would support the proposal to provide a mechanism for examining the compatibility of new legislation with the Bill of Rights in line with existing Commission power.

ADDITIONAL OBSERVATIONS

It is imperative that the Bill of Rights becomes a document that everyone in Northern Ireland is aware of and understands. An essential component is that the document's language should be clear, simple and straightforward. The Commission has made assiduous attempts to be inclusive in its approach to dissemination and consultation. We commend this. However, the consultation document took over three and a half hours to read and contains over 120 clauses supplementing rights contained in the Convention. Our sense is that, on occasion, the Bill of Rights is being utilised as a means of bringing forward specific legislative reforms that do not sit comfortably in a Bill of Rights. To take a single example, we support the removal of the fair employment exemption for teachers, but are doubtful as to whether this should be in a Bill of Rights. The litmus test of any final document submitted to the Secretary of State is that the wording of any proposed Bill should be readily understandable to lay people as well as lawyers. Therefore, this is a matter to which the Commission should give great attention.

We also believe that further consultation and raising of awareness should continue throughout the next few months as the Commission deliberates on producing its final version. In effect, the debate on a Bill of Rights has just begun rather than ended. Ultimately, one way to enhance the likelihood of a Bill of Rights being enacted is to ensure local communities have a deep understanding of the purpose of a Bill of Rights so that they champion its cause.