

IRISH COUNCIL OF CHURCHES

BILL OF RIGHTS FOR NORTHERN IRELAND

Some Comments on the Clauses for Consultation for Consultation that appear in *Making a Bill of Rights for Northern Ireland*

GENERAL COMMENTS

1 The Particular Circumstances of Northern Ireland

A key issue is the interpretation of the phrase in the Good Friday Agreement that says the Bill of Rights is “to reflect the particular circumstances of Northern Ireland”. The Clauses for Consultation that appear in *Making a Bill of Rights for Northern Ireland* reflect a maximalist interpretation. It is, however, very difficult to argue that Northern Ireland should have rights greatly superior to those in the rest of the United Kingdom or in the Republic of Ireland except in so far as there are “particular circumstances”. What are the particular circumstances of Northern Ireland? These are that it is a divided society with two main communities with a conflict of national allegiances; that there has been a history of injustice and discrimination (the exact dimensions of which continue to be disputed); that there has been a history of violence; and that issues of law and order and criminal justice have been areas of significant contestation and controversy.

There are many things in the Clauses for Consultation which may be popular and even desirable, eg economic and social rights, but they would be much better dealt with within the context of these islands, and not in a Northern Ireland only context.

2 The Balance between General Principles and Specific Rights

On pages 6-7 it is stated:

“A Bill of Rights should not be thought of as just another piece of legislation to achieve a particular objective. It should set general standards against which all kinds of legislation and activity by the Government are to be judged. **It should therefore be drafted in general terms, setting out basic principles for how the Government should operate but allowing a good deal of flexibility for the way in which the principles are implemented.**”
(emphasis added)

This is the right way to go about a Bill of Rights. But it has to be questioned whether this has been realised in practice. Why should there be such detail in the Children’s Rights section? Why should the age of voting and the age of criminal responsibility be prescribed? Why should the maximum number of days for anyone remanded in custody before commencement of the trial be precisely defined? Why should a Bill of Rights confer a right to jury trial? Should these things not be left to legislation?

The Commission has wisely concluded that it is best to leave issues such as abortion, marching rights and the use of emblems and flags to be dealt with by specific

Submission 84
Irish Council of Churches

legislation.

3 Rights as a Primary Focus of Political Action

Both in the interpretation of the ‘particular circumstances of Northern Ireland’ and in some of its recommendations about ‘specific rights’ the Commission is in danger of suggesting that rights are the primary focus of political action. With this focus comes an emphasis on the use of legal tribunals where claims by individuals and groups are ‘fairly’ assessed. There are many areas where the management of claims and difference should properly be the activity of politicians and political action rather than the courts. Of course the courts have an important role but the balance needs to be carefully thought about.

4 What has been left out

There is nothing on the rights of the disabled and the elderly (other than a mention in 4(4)). If the Commission wishes to go in the direction of a maximalist interpretation of “the particular circumstances of Northern Ireland” surely the elderly and disabled are deserving of inclusion?

5 Responsibilities

The Churches have been concerned to promote talk about duties and responsibilities. This has basically been dealt with in the Preamble. The reference to duties in the Preamble could be strengthened and there should be references in appropriate places in the text (see specific comments below).

6 Promoting Good Relations

Churches have a particular interest in promoting good relations in society. It is important that the anti-discrimination legislation should not make it illegal to encourage greater integration of the two main communities. This may be particularly significant in areas like housing and education where it is important that policies of maintaining a balance of numbers in an integrated estate or in an integrated school are legal. It is important that the Exceptions Clause 4(9) allows this.

Promoting good relations should be one of the principles that guide interpretation of a Bill of Rights. In the Preamble and in 3(5)(6) references to Promoting Good relations should be inserted (see specific comments below).

7 A Point about Language

A Bill of Rights should be striving after accessibility and clarity of language (and should avoid ‘legalese’ as much as possible. Sometimes there is reference to “individuals” and sometimes “persons”. It would be better to consistently talk about “persons”. The European Convention does this.

Submission 84
Irish Council of Churches

PARTICULAR COMMENTS

1 The Preamble

It is important to have an inspirational opening to a Bill of Rights where statements about dignity, equality, responsibility to others, the particular context of Northern Ireland can be included.

A couple of particular comments:

- 1.1 people not only have duties to their own community but to the whole of society. It would read better if it said “.... duties to other persons and to the whole society...”
- 1.2 Promoting mutual tolerance and respect between all sections of the community is not enough. Also there is confusion between talk about a number of communities (“the rights of both main communities and all other communities”) and one community (“between all sections of the community”). It would be better to say “promoting mutual tolerance, respect and good relations between all sections of Northern Ireland society” (or some such).

2 Rights Concerning Identity and Communities

There is a fear that a Bill of Rights may entrench division and further fracture the community. There is also concern about the balance between community recognition and individual rights. The Clauses in this section are broadly satisfactory. It would appear that community recognition is not elevated above individual rights but there is an attempt at integration

Some particular points:

- 2.1 “Parity of Esteem” language is vague language, although there are important things that need to be affirmed within it. It seems better to set out specific rights in clear language which underlie the concept(s) of parity of esteem and mutual respect.
- 2.2 It is right to seek to break out of “two communities” terminology to give recognition to the fact that there are more than two communities in Northern Ireland while recognising that some specific guarantees are required for the two main communities (page 25). Therefore the proposed clauses 3(2)-(4) is to be preferred to the alternative 3(2)
- 2.3 The Commission proposes conferring a right on individuals not to be treated as a member of a particular community. This is a desirable recognition of the fact that people are entitled not to be treated as a member of a distinctive group. 3(5)(c) could be strengthened to “promote tolerance, mutual respect, understanding, co-operation and good relations....”

3 Equality and Non-Discrimination

Positive Action Provisions 4(S) It is too prescriptive and wideranging to always require positive action provision for everything enumerated in 4(4). They may be

Submission 84

Irish Council of Churches

required in **particular** circumstances. The “may be adopted” alternative is to be preferred.

4 Exceptions 4(9)

It is important that this clause makes measures to preserve or create integration, eg in housing or education, clearly legal.

The current Exceptions Clause is almost a direct quote from Article 4.1 of the European Union Directive on Employment. However, the Directive has a further two Clauses 2(a) and 2(b).

2(a) Member States may maintain existing national legislation or provide for future legislation incorporating existing national practices pursuant to which, in the case of churches or other public or private organisations, the ethos of which is based on religion or belief as regards the occupational activities within these organisations, a difference of treatment based on a person’s religion or belief constitute a genuine legitimate and justified occupational requirement, having regard to the organisation’s ethos. This difference of treatment shall be implemented taking account of the Member States’ constitutional provisions and principles, as well as the general principles of Community law, and should not constitute discrimination on another ground.

(b) Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, ethos of which is based on religion or belief acting in conformity with national constitutions and laws to require individuals working for them to act in good faith and with loyalty to the organisation’s ethos.

The substance of these should be incorporated. Churches, as faith communities, are collective expressions of the person’s right to freedom of thought, conscience and religion. They are entitled to promote and preserve a particular ethos. In order to do so it is vitally important that they are able to train and employ personnel who share this ethos. This applies also to other faith-related bodies.

5 The Rights of Victims

This is an enormously emotive and complex issue. How the Commission has dealt with it is not satisfactory. It may in fact be impossible to deal with this issue satisfactorily in a Bill of Rights.

In particular, it is not satisfactory in a Bill of Rights to suggest that there are two classes of victims with two different sets of rights: victims of the conflict and victims for the future.

This whole area should be dealt with by way of legislation but acknowledgement of

Submission 84
Irish Council of Churches

the victims of the conflict should be put in the Preamble of a Bill of Rights (as is done in the current draft). It may be that the Commission should independently undertake to review the whole area of victims and make specific recommendations. If care is not taken what is going to be produced will satisfy no-one.

Some specific comments:

- 5.1 The inclusion in the definition of “victim” of those who are not victims of crime is an inflationary extension of the definition.
- 5.2 Truth and reconciliation are not principles S(a)(1). It might be better to talk about “promoting the values of the pursuit of truth and reconciliation”.
- 5.3 The clause S(c)(l) as currently drafted reads as if violence against men and boys is alright. In addition, with the emerging evidence of female violence against males in domestic situations (although at a much lower level) surely all the victims of such violence are worthy of protection?

6 Right to Family Life and Private Life

The legal recognition of same sex relationships 9(b)(2) should be left to legislation (as is recommended for the equally contentious issue of abortion).

7 Education

- 7.1 Clause 11 (B)(2)
This clause appears to arise from concerns about the 11 Plus and current admission policies employed in Northern Ireland’s schools. However, genuine these concerns may be it is difficult to see how such a clause would address them. It would be better that this matter was dealt with by legislation.
- 7.2 Clause 11 (C)(1) Human Rights Education
What is contained in this clause is much more than human rights education. It should be retitled. It is also important that it is “the promotion of human rights **and responsibilities.. .**”

David Stevens (Dr)
General Secretary

6 November 200 1