

Draft/

1. We assume that the speaking note circulated yesterday is intended to be a "formal representation" within the meaning of Rule 29. If it is not intended to be such a formal representation then no proceedings relevant to this participant have, in fact, commenced.
2. If the speaking note is intended as a formal representation it is submitted that it is grossly defective as such. This is not a merely legal point: it goes to the fundamental justice of the matter. The speaking note is apparently (on the basis of paragraph 7) intended to be the document on which this participant is intended to make its representations. It would be impossible and inappropriate to make any representations on the basis of the skimpy and secondhand information contained therein.
3. Rule 29 envisages an allegation that a participant has "demonstrably" dishonoured the Mitchell Principles. There is, in fact, not even a bare assertion that this participant has done anything which can be interpreted as a dishonouring of those principles.
4. The persons whose exclusion is proposed constitute a team participating in negotiations, nominated by a party for which delegates have been returned to the forum constituted by the Northern Ireland (Entry to Negotiations etc) Act 1996. The parties, for the purpose of such nomination, are set out in the Schedule to that Act and include "Sinn Fein".
6. No entity such as "the Republican movement as a whole", to use the term employed in paragraph 2 of the speaking note, has any standing at the negotiations.

Accordingly, it is submitted that the speaking note contains literally no information, evidence or even ~~assertion~~ which could possibly lead to the operation of the powers mentioned in Rule 29 of the Rules of Procedure in respect of Sinn Fein.

6. Without prejudice to the foregoing fundamental point, it is submitted that, quite clearly the purpose of a formal representation within the rules of procedure is to enable an affected participant to make effective representations. One can only make effective representations if the material contained in the formal representation is sufficiently specific to make it susceptible of proof and rebuttal.

The speaking note simply does not meet this criterion. It is impossible to deal with except in terms of total generality, which we now do by asserting that Sinn Fein has not dishonoured the principles of democracy and non-violence as set forth in the report of the 22nd January 1996 of the International Body.

7. In particular, attention is drawn to the use of the term "demonstrably" in Rule 29. This term, in its ordinary meaning, clearly envisages something which can be shown, (Latin, *demonstrare*) as opposed to merely asserted. This is central to our objection to the present procedure.
8. It is submitted that the right to basic information in order to rebut any "representation" arises from the terms of the Rules of Procedure themselves and from natural justice. It also arises, it is submitted, from the established law of both the United Kingdom and Ireland.

In terms of Irish law, the situation is directly analogous to that obtaining in Re Haughey (1971) IR 217. This case deals with the rights of a person who, though not formally a defendant, has his character or reputation impugned before any type of tribunal or body, in that case, a parliamentary committee's enquiry. In this case, it is hardly possible to imagine any more serious allegation than that a participant has demonstrably dishonoured the principles of democracy and non-violence. Apart from reputation in general, such a finding clearly has consequences for the affected party's ability to conduct itself as a political party in relation to its own supporters and more generally.

In Haughey, a person so impugned was deemed to be entitled to be afforded "reasonable means of defending himself and in particular to:

- ...(a) The provision of copy of the evidence reflecting on his good name
- (b) Leave to cross-examine, by Counsel his accuser or accusers
- (c) Permission to give rebutting evidence
- (d) Leave to address the tribunal or body by Counsel or, presumably, personally.

According to the Irish Supreme Court in that case, without those rights, no person so affected "could hope to make any adequate defence".

9. We claim these rights in the context of the present accusation.

10. Identical rights are also claimed on the basis of the guarantee of "fundamental fairness" referred to in page 6 of the Mitchell statement. A bare assertion,

unsupported by evidence capable of assessment, analysis, challenge and rebuttal is plainly insufficient.

11. The foregoing is of particular importance, having regard to the fact that groundless allegations, based on assertion, and supported by inadequate or indeed invented evidence, have, in many individual cases, soured relations between communities and parties over a considerable period of time.

12. The secondhand statement of the "firm view" of the Chief Constable of the RUC is open to the following observations:

- (a) It does not amount to an allegation, even in its own terms, that this participant in the negotiations has dishonoured the relevant principles.
- (b) It is not accepted that this participant, or, we believe, by many others, as soundly based, or as supported by any evidence.
- (c) The speaking note attempts to suggest that there is evidence supporting the Chief Constable's view but that it is "not appropriate to go into further detail here".
- (d) It is submitted that it would be completely contrary to any conception of justice which obtains in the territories of either of the participating governments to shelter behind the sub judice principle in this fashion. It would have the effect of making the allegation in question impossible to rebut. In fact, details of evidence have frequently been released in individual cases in the course of pre-trial proceedings, bail applications and indeed off the record briefings. It would be gratuitous and dishonest, against that background, to suggest that there is any difficulty in supplying any evidence which may be thought to exist in support of the Chief Constables's "firm view".

13. Having regard to the sensitivities for the purpose of the present negotiations of topics relating to policing, it is particularly unfair to advance the unsupported view of the Chief Constable of the Royal Ulster Constabulary, and his assertion that there is intelligence and other information to support it, as part of a formal representation calculated to exclude Sinn Féin. Any attempt by the governments to rely on such information would be utterly inappropriate and an error of historic dimensions.