

HUMAN RIGHTS, A BILL OF RIGHTS AND CULTURAL EXPRESSION AND DIVERSITY: REPORT BY THE SUB-COMMITTEE

1 The sub-Committee met to continue its work on remaining matters and considered and developed further the statement, in Annex A to its report of 10 June, that "constitutional legislation for establishing new institutions would provide for machinery to deal with and correct grievances and would provide for the further entrenchment of individual and community rights, including through a Bill of Rights, which the Assembly could not amend". (References to "institutions" in Northern Ireland should be interpreted by reference to the other work of the sub-Committee).

2 The sub-Committee noted that there was already a considerable corpus of legislation and other measures in addition to the Northern Ireland Constitution Act 1973, which sought to protect human rights. The Government paper describing this is at Annex A. It was agreed that the further protection and enhancement of human rights would be an important element in any new political institutions in Northern Ireland; the parties also agreed that, in order to have the greatest degree of credibility and effectiveness, any fundamental provisions should be "entrenched" against amendment by local institutions. New institutions in Northern Ireland could nevertheless have the right to request the Secretary of State (or Parliament) that action be taken to enhance the rights protected by those provisions.

3 The European Convention on Human Rights and its additional protocols (ECHR) were discussed. All the parties agreed that the ECHR covered many areas where human rights protection was desirable. The parties agreed that the ECHR would be a valuable, but not definitive, basis on which to build a system of fundamental provisions protecting human rights, and that provisions in other international agreements should be drawn on. (A summary of the provisions of the ECHR and its additional protocols was tabled and is attached at Annex B). The parties also agreed that other rights might be protected and that access to remedies against any breach of human rights provisions should be speedy, uncomplicated, and readily available.

4 The SDLP saw merit in additional provisions guaranteeing fair elections on the basis of a proportional system of voting. While not disagreeing with this proposal, the other parties did not feel it appropriate to list specific rights at this stage.

5 All the parties believed it desirable that any comprehensive human rights provisions such as a Bill of Rights should be entrenched against anti-terrorist laws applied in Northern Ireland. There were technical difficulties in such "entrenchment", although many experts believed it to be possible. It was noted, however, that support had not until now existed in Parliament for such entrenchment on a UK-wide basis; and that such entrenchment even for Northern Ireland alone might not win acceptance in Parliament for a number of reasons.

6 It was noted that other forms of more limited entrenchment were possible, for example, on the model of Section 17-19 of the Northern Ireland Constitution Act 1973 or by making a matter "excepted". It was suggested that it might be possible to provide entrenched human rights provisions against anti-terrorist legislation by making such legislation subject to provisions which operated on the same legal basis as Sections 17-19 of the 1973 Constitutional Act. The parties noted that this might be a practicable way of achieving entrenchment.

7 The sub-Committee discussed two recommendations in the Second Report on Religious and Political Discrimination and Equality of Opportunity by the Standing Advisory Commission

on Human Rights (SACHR). The parties agreed that, in principle, provisions against indirect discrimination, and provisions for equity of treatment and esteem could be of value; but it would not be possible to take a definitive view without studying the text of possible provisions and looking at their effect on the system of government as a whole. Any system would have to be applied fairly and be capable of gaining confidence throughout the community.

8 The parties agreed that there would be a body to consider and investigate human rights matters and that the Standing Advisory Commission on Human Rights might have an expanded role. The body could have the role of investigating particular cases of alleged breaches of human rights provisions, and could sponsor cases before the courts; it could be charged with the promotion of and education in human rights; and it might have a formal role in making recommendations to new institutions about proposed legislation. Its annual report might also be laid before the Assembly as well as Parliament. Appointments to the body should be of independent persons, who would win confidence throughout the community.

9 the parties agreed that the possibility of a special division of the High Court to consider human rights cases (the "Human Rights court") should be considered further. Another potential way forward would be an expansion of judicial review.

10 It was agreed that new institutions in Northern Ireland would need to be sensitive to and allow the expression of different cultural traditions. There could be a body within the new institutions to promote knowledge of and respect for the various cultural traditions in Northern Ireland. A Bill of Rights could contain a provision requiring institutions in Northern Ireland to take account of cultural traditions in developing policies.