HEAR OUR VOICES

DEVELOPING A MODEL OF BEST PRACTICE FOR PUBLIC PARTICIPATION IN CONSTITUTIONAL REFORM BY STEPHEN O'HARE

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Summary of Recommendations

- The Government should employ a broad multifaceted approach to both civic education initiatives and public consultation on the establishment and operation of the constitutional convention to raise awareness among members of the public regarding the establishment of the convention and the topics for consideration. This should involve a campaign to provide information on the nature and scope of the convention, how members of the public can engage in the process, the selection process, opportunities to publicly debate the issues and a mechanism to provide feedback in a constructive manner.

- Learning from previous public consultation processes (e.g. the Government's 2011 public consultation on the *Universal Periodic Review* (UPR) and the current *Review of the White Paper on Development*) should be utilised in the design and implementation of a robust mechanism for consultation.

- The Government should make greater efforts to include a truly representative sample of the Irish population in the constitutional convention if the Citizen's Assembly style model that has been suggested is to be considered inclusive. This includes identifying and inviting participation across differing sectors of society and, in particular, those likely to be under represented and those who will be directly affected by proposed changes.

- The explicit exclusion of representative and civil society organisations from participating in the process should be revised.

- An open and transparent mechanism of appointment of participants, experts and parliamentarians to the process should be employed prior to the selection of convention delegates. Any pool of experts employed should not be limited to lawyers, academics and political scientists but drawn also from representative groups, stakeholder organisations and key experts on the issues scheduled for discussion.

- National and local media, civil society, community networks and information technology should be utilised to ensure access to the process and to deliberations.

- A commitment to limit party representation and attempts at political control should be made prior to establishing the convention.

- Renewed efforts should be made by Government to engage key stakeholders in meaningful discussion and negotiation around the preferred framework and structure for the constitutional convention process. This should include recognition of the need to allocate adequate space, time and resources in order that relevant civil society organisations are facilitated to draw less experienced actors into the process in a manner that allows them to be meaningfully consulted and participate.

Introduction

The Irish Government recently announced plans to establish a constitutional convention in the style of a joint parliamentarian/citizen assembly. The convention will be tasked with examining a number of preselected provisions of the Irish Constitution and considering proposals for reform.[1] The establishment of the convention fulfils a pledge by the coalition parties in the Programme for Government and follows previous commitments from both Labour (2011 pre-election manifesto) and Fine Gael (2009 Ard Fheis).[2] The decision to establish the convention has been broadly welcomed as a positive step. However, following publication in February 2012 of a set of proposals by Government, a number of commentators, public representatives and civil society groups have expressed concern including regarding the proposed methodology to be employed for the establishment and operation of the convention; the breadth of consultation to be undertaken; the express exclusion of representative organisations; opportunities for public participation and the specific topics to be covered.

Drawing on concrete examples from abroad, this paper asks whether and to what extent the Government's proposed process can foster a sense of legitimacy at national and international level in relation to constitutional reform. It points to useful lessons which can be learned from experiences in other jurisdictions and highlights factors that should be considered when determining the appropriate framework upon which to establish the convention. Highlighting international guidance on participative models of reform, this paper concludes that in order to ensure an open and legitimate process, the convention should be established on the basis of internationally recognised guiding principles of public participation, inclusion/representation, transparency and national ownership**.** This paper makes a number of recommendations intended to assist the Government to establish a constitutional convention based on these principles.

Key issues in designing a reform model

In their recent international publication on constitutional reform, Michelle Brandt *et al* (2011) consider that if the idea of a "constitutional moment" has any significance, it is when the process [of constitution making or reform] is being designed rather than when the design is being applied.[3] Furthermore, there are a number of key issues in relation to the reform process which ought to be considered at the design stage. The principal focus is on the method to be employed in order to consult with stakeholders and to facilitate popular engagement in the process. Consideration is also given to the identification of key actors for inclusion, forms of representation and the manner in which outcomes will be adopted. Experience from other jurisdictions suggests that objectives and principles governing the content of the reforms are sometimes prescribed at the outset or may develop as part of a consultative process. Other issues for consideration in advance of the process include procedural guidelines, mapping of different stages of the process and details on the administration/funding of the proposed mechanism. What becomes evident from international experience is that the level at which

[1] In this paper the term "constitutional convention" refers to the joint parliamentarian/citizen assembly forum in which issues of constitutional reform will be discussed.

[2] Programme for Government, 2011, available at http://www.taoiseach.gov.ie/eng/Publications/Publications_2011/Programme_for_Government_2011.pdf

[3] Michele Brandt, Jill Cottrell, Yash Ghai and Anthony Regan, *Constitution Making and Reform: Options for the Process*, 2011, Interpeace, available at: http://www.interpeace.org/constitutionmaking/sites/default/files/Constitution-Making-Handbook.pdf

decision makers can and should become responsive to public perception of the process is itself a key determinant of ensuring the process maintains popular legitimacy.[4]

Failure to lay the groundwork for consensus on the basic principles for constitutional reform can be costly. Where the political establishment remains divided, particularly in polarised political systems, legitimacy may become the first casualty. Without generating a clear sense of inclusion or national ownership, government can expect a measure of public discontent in relation to the process. This can manifest itself in the establishment of 'shadow' or rival consultation processes, public disengagement, boycott and ultimately rejection of proposals. Efforts to build consensus must therefore begin with the adoption of a strong and coherent set of guiding principles to inform the framework for deliberations.

Papua New Guinea, see (LeRoy, 2011)
Constitution making in the former Australian administered territory of Papua New Guinea began in earnest in 1972. The process commenced with the establishment of a Constitutional Planning Committee (CPC) comprising representatives from all the major parties in government and a number of political and legal advisers appointed to facilitate discussion. The initial work programme of the CPC envisaged the completion of its report within 14 months including only a six week window for public consultation. Following some objections within the CPC, the Committee abandoned the limited consultation process in favour of a far more ambitious national consultation programme, generating a series of discussion papers and touring the country to record the views of thousands of people. The augmented consultation method helped to promote not only a sense of ownership but instil a sense of confidence and legitimacy in the process leading ultimately to acceptance of the constitution less than three years later despite original popular reluctance to advance independence at such a pace.

Brandt *et al* notes that there is no one size fit all solution to constitutional reform. In assessing how the process has unfolded in a number of states, four guiding principles upon which the potential to build a successful process have been identified. These principles are **public participation**, **inclusiveness & representation**, **transparency** and **national ownership**.[5] The positive effects of designing a process taking account of these principles may include:

- Creating public ownership of the outcomes;
- Improving democratic and participatory government;
- Consensus among otherwise competing or divided groups;
- Reflecting the concerns of marginalised and unrepresented groups;
- Informing policy makers about citizens' aspirations regarding society;
- Creating a space for the emergence of new actors and the strengthening of civil society actors;
- Educating the public about constitutional issues.

[4] Brandt *et al*, 2011
[5] *Ibid.*

1. Public participation

<u>Public participation</u> includes innovative modes of civic education and media campaigns; public consultation (both on how the process should be undertaken and on the substance of reform); national dialogue; other creative means. A good process must balance the interests of competing groups and communities.[6]

The proper and fair management of public participation is essential for a good process.[7] Facilitating direct participation, from ratification of the final outcomes by popular referendum to participant led consultative mechanisms (e.g. constituent assembly, national conference, etc) will foster a sense of empowerment among citizens. The effect is to increase citizens' knowledge and capacity, enhance participation in public affairs, encourage the free exercise of rights and acknowledge the sovereignty of people on matters of national importance. More specifically, the opportunities arising from a successful public participatory process may help to create and develop a more coherent, robust and committed civil society and not merely reflect selected aspects.

Ireland (CRG, 1996)
During the consultation phase of the 1995-1996 Constitutional Review Group (CRG) process, advertisements inviting submissions were placed in the print press in both Ireland and Northern Ireland. It was noted in the advertisement that adequate opportunity for representation would be available when the All Party Oireachtas Committee on the Constitution began its work on foot of the CRGs report. Submissions were made by approximately 30 civil society organisations, approximately 40 individuals and a small number of local councils. The report, a careful and thoroughly comprehensive review of Ireland's Constitution was published in 1996. Following its publication ten subsequent progress reports by an All Party Oireachtas Committee on the Constitution were published between 1996 and 2006 but to date no recommendation directly arising from the process undertaken by the CRG has been put to the people for endorsement in a popular referendum.

The reward for efforts such as those outlined above will be evident in the large scale participation of the public in the consultation phase. In this regard, the current process certainly contrasts with previous attempts to consider constitutional reform in Ireland. Previously the process has been dominated by reference to a generally closed elite based approach. Thus, public consultation has often been undertaken in a far more limited fashion than described above, resulting in limited popular engagement.

Engaging in a robust public consultative approach in advance of the process can help decision-makers determine whether and in what way a process is needed, how it should be conducted and how it can be used to encourage key stakeholders to commit to reform.[8] It is not unusual for consultation to be undertaken both before the process begins and during the early phases of the process particularly when considering subsequent steps to be taken once the process has begun. Of course, the feasibility of widespread consultation must be balanced against time and resource issues but that does not mean that pursuing shortcuts will provide effective outcomes in the long term. While the recent proposals by Government[9] may be viewed as an attempt to strike a balance between a model of public participation and a more practical process of deliberation than in previous social participation models

[6] Brandt *et al*, 2011
[7] *ibid*
[8] *ibid*
[9] See Appendix 1.

(e.g. Social Partnership), the lack of public participation in establishing the rules of procedure, items for discussion, opportunities for wider consultation and choice of format means that the once selected, the assembly is in danger of becoming the very exclusive forum the Government has apparently sought to avoid.

Current Proposals

The proposals published by the Government in February 2012 outline a number of process related criteria - the basis on which the convention is to be established, topics for consideration, working methods, structure, technical and administrative supports and the outcome for recommendations. Yet, the participative aspect of these proposals (notwithstanding the brief consultation with opposition leaders), appears to begin at the point of selection for the convention. The Government has proposed that 66 participants will be drawn at random (or in such form as is feasible) from the electoral register and invited to participate in what will likely be several plenary sessions, workshops, direct consultations and other amenable fora focusing on the complex constitutional issues for discussion. Prior to this aspect of the process, there has been little or no effort to promote the type of participation, civic education or consultation to determine either the establishment or scope the convention as witnessed in other jurisdictions (see **Papua New Guinea** above).

To date, there has been little or no effort at civic education either through advertising, widespread dissemination of information or any other form of campaign to raise awareness of the convention or the topics for consideration. Unless this is addressed, members of the public are likely to remain largely ignorant of the process until the first meeting has been convened. In addition, there has been little or no effort at fostering public discourse either through the media or through an organised and open public consultation concerning the proposals other than a number of short press releases and articles based on the original proposals. Neither has the Government requested the views of the public on any aspect of the convention into which public participation will eventually be invited. In addition, the Government has chosen to expressly exclude civil society organisations on the basis that they represent 'special interests'. It is the view of the ICCL that by arbitrarily curtailing civil society engagement, restricting consultation to a small number of randomly selected citizens and determining political representation on the basis of parliamentary party numbers, the proposed process is in danger of appearing at best cosmetic and at worst contrived.

Recommendations:

The Government should employ a broad multifaceted approach to both civic education initiatives and public consultation on the establishment and operation of the constitutional convention to raise awareness among members of the public regarding the establishment of the convention and the topics for consideration. This should involve a campaign to provide information on the nature and scope of the convention, how members of the public can engage in the process, the selection process, opportunities to publicly debate the issues and a mechanism to provide feedback in a constructive manner.

Learning from previous public consultation processes (e.g. the Government's 2011 public consultation on the *Universal Periodic Review* (UPR) and the current *Review of the White Paper on Development*) should be utilised in the design and implementation of a robust mechanism for consultation.

2. Representation and Inclusion

An <u>inclusive</u> process will attempt to draw in all key stakeholders to the process. Efforts should be made to reach out to marginalised sectors of society, including women, young people, people with disabilities, ethnic/religious minorities and indigenous groups, older people, poorer socio economic and disadvantaged groups, migrants and non citizens formally resident in the state.[10]

Designing the process with the inclusion of key stakeholders has significant advantages. It is a way to identify the relevant stakeholders, inform them of the key objectives to be achieved and determine any role that they can expect to have. In order to promote both popular and effective participation, care should be taken to include members of the public, civil society organisations, and other stakeholders with relevant expertise within the process as early in the process as possible. It is also important to capture the very significant level of knowledge and awareness that civil society organisations, representatives and other interested stakeholders may bring to the table. However, it should not be assumed that people will only be involved through formal or informal organisational structures to which they are affiliated.[11] As such, while it may be difficult to ensure the effective participation of key groups, this approach will ultimately promote greater transparency and ownership among participants engaged in the process.

Thailand (Dressel, 2005)
Thailand has had a chequered history in enacting and reforming its constitution with more than 15 attempts made during the period of 1932 -1996 under various political systems with most constitutions summarily imposed without much public consultation. Following the drive towards democratisation in the late 1990's, CSOs pushed successfully for a drafting mechanism that was independent of parliament. An independent drafting body of 99 members was established comprising 23 academics and 76 directly elected delegates representing each of the country's provinces. Parliament's role was confined to selecting the expert drafters and approving the final draft. It could not make changes. If it did not accept the draft in its entirety, a public referendum would be held. The Public Relations Subcommittee of the Constitutional Drafting Assembly reported that in 6 months, close to a million individuals from and estimated population of 65 million directly participated, along with over 300 professional and nongovernmental organisations. The unprecedented degree of public consultation not only enhanced the legitimacy of the draft, it also created public pressure for parliamentary approval.

Current Proposals

The Government's current proposals cannot be described as an example of drawing in all key stakeholders. The method in which participants are to be selected (66 members of the public drawn randomly by a professional polling company while purporting to capture geographical and demographic differences) does not, in the view of the ICCL, enable a representative sample of participants to be drawn from the population. The likelihood that marginalised groups will be under represented, if represented at all, is self evident. The selection process appears to fall somewhat short of (although in some ways reflects) that of the British Colombian and Ontario models in Canada. In those cases, a large number of voters received a communiqué from the polling company employed to make the selection, asking if they would be interested in participating in a citizen's assembly on

[10] Brandt *et al*, 2011
[11] Dressel, 2005

electoral reform.[12] From the replies received, a random selection of participants was drawn, ensuring one man and one woman from each provincial district. A number of seats were also reserved for members of the First Nations community to ensure their representation on the panel.

Similarly, the current Irish proposals suggest that the cohort from whom the sample is drawn will be those on the electoral register, interested in the convention process and with sufficient resources and capacity to attend multiple meetings. This significantly reduces the cohort from whom participants can be drawn while at the same time limiting the representation from certain sections of society. In contrast however, while gender balance has been assured (at least in relation to the 66 members of the public), the inclusion of specific marginalised groups does not appear to be an explicit consideration in the current process. This is problematic for at least three reasons.

British Colombia, Canada, see (Ward, 2008, Vol 43(2))
During the 2001 regional British Colombian election in Canada, the Liberal Party promised to convene a 'citizen's assembly' to consider reform of the province's electoral system from its existing First Past the Post (FPP) method to one of propositional representation (in this case single transferable vote) to tackle what many perceived was electoral stagnation. The result was the 2003 British Colombian Citizen's Assembly on Electoral Reform, comprising an apparently representative group of 160 randomly selected voters convened to review the electoral system and decide if change was needed.[1] The proposal was ultimately defeated at referendum but not before the innovative and often replicated assembly model had emerged as a popular choice for considering citizens' views in electoral reform. Plans to reform the electoral systems in the Canadian province of Ontario and in the Netherlands utilised a broadly similar format. In both cases the assembly either failed to convince the electorate to change (Ontario) or the recommendations for constitutional change were not put to the people by the Government (The Netherlands).[1]

First, unless specifically appointed by Government, representatives from sectors most directly affected by proposed items for consideration, e.g. same sex marriage, reduction in the voting age, status of women, etc may be under represented compared to those less affected by changes. Secondly, the limitation of participation by civil society organisations removes a critical body of experience and knowledge that has been developed across many of the topics for consideration and future potential topics.[13] This has the effect of further limiting the level of representation on certain issues. Thirdly, while it is not possible to identify relevant stakeholders for inclusion from a random selection of participants it is equally not feasible to expect that randomly drawn participants with no training or background on complex constitutional issues can, or should, be able to represent a measured view on certain topics. Equally, though touted as representative, the views expressed by such a small group of participants cannot meaningfully be said to represent the population, particularly when they will be marshalled closely in the convention by experienced political actors.

Recommendations:

The Government should make greater efforts to include a truly representative sample of the Irish population in the constitutional convention if the Citizen's Assembly style model that has

[12] Ontario Citizen's Assembly on Electoral Reform, *One Ballot, Two Votes, A New Way to Vote in Ontario, Background Report*, available at: http://www.**citizensassembly**.gov.on.ca/
[13] Eduardo Lombardo, *The Participation of civil society in the European Constitution making process*., Paper for the CIDEL Workshop, London 12-13 November 2004

been suggested is to be considered inclusive. This includes identifying and inviting participation across differing sectors of society and, in particular, those likely to be under represented and those who will be directly affected by proposed changes.

The explicit exclusion or representative and civil society organisations from participating in the process should be revised.

3. Transparency

In contrast with the closed elite dominated processes of the past, a transparent process would enable the public, media and civil society to participate by keeping them informed about how the process will be conducted, the modes of appointment and election of their representatives, the adoption process, their role in the process, and by providing feedback about the results of public consultations. Transparency also involves providing for media access at appropriate times.[14]

The degree of transparency will vary from model to model. Much will depend on the approach adopted by the decision-making body towards input from external actors and to the collection, collation and analysis of the information and views arising from public consultation and submissions. The manner in which official bodies (e.g. constitutional commissions, citizen assemblies, etc) process the oral or written submissions made to them is critical. In cases where the draft proposals are prepared by an independent commission (as was the case in some African states, e.g. Uganda 1995, Kenya 2005), such bodies have often been required to promote public participation and to follow public recommendations in drafting the text.[15] In contrast, when the draft is prepared by a committee (or subcommittee) of the legislature or of the citizen's assembly itself (a rather less common arrangement), both public participation and transparency are less evident.[16]

Iceland
In 2010, following its financial crisis, the subsequent 'Pots and Pans' revolution and amid popular calls for far reaching political and legal reforms, a constitutional assembly (eventually the Constitutional Council) was established in Iceland to draft proposals for a new or radically reformed constitution. The council comprised 25 specially elected 'non political' ordinary members of the public tasked with drafting proposals for a new constitution. The process was not without difficulty and resulted in a successful Supreme Court challenge to the election of council members who, despite the Court's decision, were subsequently appointed to their elected role by Government. The Constitutional Council eventually produced a draft set of proposals in 2011 with Icelanders originally scheduled to vote on the new constitution by referendum in 2012.

Current Proposals

While restrictions on access and participation are necessary to ensure that the convention completes its work in a reasonable manner and timeframe this should not come at the expense of transparency and accountability. The Government's proposals suggest that although it may be possible to receive

[14] Brandt *et al*, 2011
[15] *Ibid.*
[16] *Ibid.*

input from interested parties including civil society organisations, the convention proper will be closed to such groups. This is despite a number of issues for consideration directly affecting specific minority groups the interests of whom have been advanced by many well organised and well supported groups for decades. It is also unclear what role, if any, the media will have in either reporting or disseminating information on the various aspects of the convention. This has the effect of decreasing rather than increasing the level of transparency publicly associated with the process. Instead the Government has proposed limiting specific technical input to a small group of experts (political scientists, constitutional experts and academics) who will be called upon, perhaps under different streams of work, to provide information and advice to participants.

However, experts, civil society representatives or members of the public, other than those selected, will not be party to discussions in the convention proper. While it has been suggested that organisations and individuals will be free to make submissions on the process, it is not clear how that information will be utilised or synthesised for participants to aid them in the deliberations. In contrast a significant level of representation has been reserved for parliamentarians (one third of all participants) appointed based on parliamentary numbers. It is also noteworthy that once recommendations have been made, it will be for Government, not the Oireachtas or the constitutional convention to decide if recommendations for constitutional change should be put to the people.

Given the number of limitations imposed on participation, the limited provision for expertise and the disproportionate degree of political representation, the Government's proposals cannot be described as representing either an open and transparent approach or it is difficult to see how they are reflective of international best practice. On the contrary, the Government alone has chosen the methods for consultation, the mode of deliberations, the topics for consideration, the scope of participation, the level of representation and has reserved ultimate authority to determine the outcome of recommendations without reference to other stakeholders.

Recommendations:

An open and transparent mechanism of appointment of participants, experts and parliamentarians to the process should be employed prior to the selection of convention delegates. Any pool of experts employed should not be limited to lawyers, academics and political scientists but drawn also from representative groups, stakeholder organisations and key experts on the issues scheduled for discussion.

National and local media, civil society, community networks and information technology should be utilised to ensure access to the process and to deliberations.

A commitment to limit party representation and attempts at political control should be made prior to establishing the convention.

4. National Ownership

The principle of "national ownership" requires not only that the process is 'people led' but also that civil society and the broader public are provided with opportunities to "own" both the process and the outcomes. Ideally, stakeholders will be engaged at every stage of the process, particularly during the early phases of negotiation on establishing the framework and structure upon which the process is to be established. Space, time, and resources to develop the capacity of inexperienced actors to participate, consult, manage and implement the process effectively

must be provided if the process (in this case the citizen assembly model) is to engender a sense of national ownership.[17]

The opportunity to use the constitutional reform process to promote a sense of national ownership through direct public participation, civic education campaigns, consultation about constitutional options and a process of consensus-building among all key stakeholders should not be overlooked. In South Africa, national leaders more readily understood the benefits of focusing on the process of constitution building and not merely on the content or outcome.[18] Drawing on this experience, it is vital that decision makers charged with designing, implementing, and supporting the process do not become so focused on quickly arriving at proposals for reform that they overlook the importance of the process itself. Bringing people together, building trust and developing shared ownership takes time, but it is likely to yield significant benefits as the process unfolds.[19]

South Africa (Brandt et al, 2011)
To foster a sense of legitimacy and national ownership in the process, the South African Constituent Assembly embarked on a programme of consultation and civic education with members of the public. Under the auspices of the Assembly's administrative body a community liaison department was established with a view to engaging as many citizens as possible. The department spent four months planning the participatory process with an emphasis on including marginalised groups such as those with poor literacy skills or those considered disadvantaged. The strategy employed by the community liaison department included meetings with civil society organisations to discuss specific issues, public meetings, civic education workshops and an advertising and a media campaign developed in close cooperation with the constitutional assembly's media department to raise awareness of the constitutional process and to encourage `participation by members of the public.

Current Proposals

The manner in which consultation on the Government's set of proposals has been undertaken has not, and under the current format cannot, engender a sense of national ownership of the constitutional convention. To date, there has been no consultation whatsoever capable of creating national ownership at any stage of the process other than a cursory consultation with leaders of the opposition parties.

Neither sufficient space nor adequate resources have been employed by Government to develop the capacity of inexperienced actors to participate, consult, manage and implement the process effectively. The ICCL has, of its own volition, sought to actively engage with the process in a number of ways. For example, the ICCL has:

- organised a meeting with organisations most directly affected by the themes identified by Government to solicit their views on the process, themes and expected outcomes of the process and to identify potential points of entry into the process;
- organised a briefing for parliamentarians in the AV Room in Leinster House (parliament building) to provide a platform for civil society organisations to express their views and raise concerns directly with TDs and Senators from all parties;
- engaged in high level meetings with senior political advisers;

[17] Brandt *et al*, 2011
[18] *ibid*
[19] *ibid*

- provided a detailed presentation to a broader meeting of civil society organisations convened by Amnesty International;
- engaged in a series of bilateral meeting with parliamentarians up to and including at Minister of State level.[20]

However, in the absence of any engagement or official recognition by Government that civil society has a legitimate role to play in either the creation or facilitation of such space, these activities, while well intentioned, are incapable of achieving the level and quality of national dialogue that will be required for a genuine national process to be achieved.

Recommendation:

Renewed efforts should be made by Government to engage key stakeholders in meaningful discussion and negotiation around the preferred framework and structure for the constitutional convention process. This should include recognition of the need to allocate adequate space, time and resources in order that relevant civil society organisations are facilitated to draw less experienced actors into the process in a manner that allows them to be meaningfully consulted and participate.

Conclusion

There is no doubt that efforts to reform the constitution will be welcome across many sectors of Irish society. However, questions remain as to how the public is to be invited to participate, the level and complexity of deliberations, the role of key stakeholders and how a sense that the process is nationally owned can be fostered. This paper has sought to highlight why learning from the experiences in other jurisdictions can enhance efforts at constitutional reform in Ireland. The methods for deliberation employed in other jurisdictions vary according to circumstances but the degree to which the public is eager to engage in constitutional reform appears uniform.

What emerges clearly is that the greater the level of consensus achieved on the process the higher the chances of success.[21]

[20] Meeting with Joe Costello TD, Minister of State at the Department of Foreign Affairs and Trade with responsibility for Trade and Development, 1 May 2012.
[21] *Brandt et al, 2011*

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Appendix 1

Irish Government Proposals for a Constitutional Convention

28 February 2012

Introduction
The Taoiseach met this evening with representatives of the opposition parties in order to consult with them on the Government's proposals on the forthcoming Constitutional Convention. The opposition parties undertook to revert with their views within a week, following which a further meeting is envisaged.

Background
The Programme for Government (PfG) contains a commitment to establish a Constitutional Convention. The Government has approved the establishment of the Convention and has agreed in principle arrangements for its structure and operation as outlined below.

The purpose of this paper is, as promised by the Taoiseach in the Dáil, to consult formally with Opposition Party Leaders on the Government's proposals. The Taoiseach will report their views to Government before any decisions are finalised.

The Government's proposals deal with: the basis on which the Convention will be established; the topics it is to consider; its working methods; its structure and supports; and follow-up on its recommendations.

Basis of Establishment
The Government proposes that the Convention be set up by Resolutions of both Houses of the Oireachtas. The Resolutions will provide for the Convention to submit its final report to the Houses within twelve months of its establishment.

Topics to be considered by the Convention
The PfG sets out a programme of topics to be considered by the Convention and the Government does not propose to depart from that. The PfG proposes that the Convention examine the following matters:

- Review of the Dáil electoral system;
- Reducing the Presidential term to five years and aligning it with the local and European elections;
- Giving citizens the right to vote at Irish embassies in Presidential elections;
- Provision for same-sex marriage;
- Amending the clause on the role of women in the home and encouraging greater participation of women in public life;
- Increasing the participation of women in politics;
- Removing blasphemy from our Constitution;
- Reducing the voting age to 17.

The PfG also makes it clear that the Convention is free to consider "other relevant constitutional amendments that may be recommended by it." It is the Government's view that the Convention should deal first with the topics in the PfG. Matters on which there is already a commitment to hold a referendum (e.g. abolition of the Seanad, and Children's Rights) will not be within the scope of the Convention.

To get the Convention started, the Government proposes that initially it should look at two matters: Reducing the Presidential terms to five years and reducing the voting age to 17.

The Convention will be asked to submit reports on these two matters within two months. In that way, any necessary refinements to the Convention can be made before it starts the rest of its work.

Working Methods
It is proposed that the Convention can, if it wishes, operate in different streams so as to speed up its work. The Government is of the view, however, that any recommendations should be agreed in plenary session.

The Convention will be able and indeed will be expected to submit interim reports, when it has completed work on a particular matter (or matters).

Composition of Convention
It is proposed that the Convention should consist of 100 members, including a chairperson, who must be a person of exceptional ability with a high degree of public acceptability. 66 will be ordinary citizens. The remaining 33 will be made up of Oireachtas members and one parliamentarian from each of the political parties in Northern Ireland which accept an invitation to be represented. The Oireachtas membership – 33 minus the number of representatives from Northern Ireland – will be made up on the basis of parliamentary numbers.

The Government envisages using the electoral register to select the 66 citizens; the question of whether legislation may be required for this is being investigated. A polling company will be used to make the selection so that it is as representative as possible. It is proposed that the involvement of citizens from Northern Ireland, and of Irish people abroad, will be facilitated by electronic means (i.e. social media and other web-based interactive technology). Such technology should of course also facilitate the engagement of citizens at home.

Interest Groups: The Government is conscious that a number of interest groups have signalled a desire to be represented at the Convention. However, as the Convention is intended to be a forum mainly for ordinary citizens, the Government is of the view that interest groups should not be members of it. Of course, the Convention can invite such groups to make a presentation when matters in which they have a particular interest are being examined. They will of course also be able to make written submissions on any topic.

Experts: The Government does not propose that experts be appointed to the Convention. However, expert input will be needed and this is addressed below – see section on Expert Advisory Group. Supports

Supports
Support Staff: The Convention will also need support staff. Given current constraints on public service numbers, they will be drawn from within existing resources. The number and level of back-up staff required will be settled after the scale of the project becomes clearer.

Funding: A sum of €300,000 has been included in the Vote of the Department of the Taoiseach in 2012 to cover the cost of the Convention in the current year.

Expert Advisory Group: The Government proposes that, rather than appoint experts as members of the Convention, an Expert Advisory Group will be established to provide the Convention with information and advice. This Group would be made up of political scientists, constitutional lawyers and academics. The Convention would be able to call on different experts from this panel according as different topics are examined. Persons on the panel will be expected to give their services 'pro bono'.

Other Supports: Members of the Convention, particularly those not familiar with constitutional models and concepts, will presumably need to be able to avail of other supports. The scope of such supports can be settled when the Convention is agreeing its detailed working arrangements.

Implementation of Recommendations
It is for the Government to decide whether or not to bring forward legislation proposing Constitutional change, and for the Oireachtas to decide on whether the matter should be put to the people in a Referendum.

It is proposed, therefore, that the relevant Ministers will consider recommendations from the Convention and report to Government as appropriate.

Appendix 2

Government Response to Opposition Views on the Proposal to Establish a Constitutional Convention

7 June 2012

Introduction

The Government published its proposals for the establishment of a Constitutional Convention on February 28th, following an initial consultation with Opposition representatives. It has since received and reviewed observations on those proposals.

The main issues raised and the Government's response are set out below.

The Government now proposes to proceed with the establishment of a Constitutional Convention and to propose the necessary resolutions in the Oireachtas as soon as is possible in the current term.

Key Issues Raised and Government Response

Structure and Operation of the Convention

This will be a matter for the Convention itself to determine.

The Government has put arrangements in train to provide a secretariat, accommodation and a budget (€300,000 in 2012) to support the Convention.

While the secretariat will be relatively small, the issue of whether young unemployed people could be given an opportunity to work on the Convention (e.g. via the Job Bridge programme) will be considered.

It is anticipated that the members will be able to draw on secretarial support, training/education and expert advice as required.

Travel and subsistence expenses of citizen members will be reimbursed.

Provision will also be made by the secretariat for the establishment of a website with the capacity to widely disseminate information, provide interactivity with citizens at home and abroad and broadcast proceedings online as required.

Insufficient Timeframe

Concerns have been expressed that the Convention will have insufficient time to complete its work.

The Government's view is that the proposed work programme and timeframe are appropriate.

It will of course review this in the light of experience, including in consultation with Opposition representatives.

Chairperson

The Government will seek consensus on the nomination of a Chairperson, in the context of the proposed resolution of the Houses of the Oireachtas.

Additional Topics for Consideration

The Government remains of the view that the topics for discussion should be as outlined in the paper published on February 28th.

It would, however, be prepared to consider whether other topics could be considered at a later date, in the light of experience. The Taoiseach will consult with Opposition representatives and the Chair on the Convention at the appropriate time.

The Role (including Membership and Representation) of Interest Groups or Other Specified Groups

A number of views were expressed that interest groups or specific sections of society should be represented at the Convention. Examples included vulnerable, disadvantaged or marginalised groups, children, people from Northern Ireland (including especially Northern unionists), the diaspora and Ireland's newest citizens.

The Government is firmly of the view that the Convention should be composed of ordinary citizens and elected representatives, as set out in the paper published on February 28th.

It is not practical to accommodate as members, in a fair and representative manner, all of the groups or sections of society that have been proposed.

However, it is anticipated that interest groups would be able to interact with the Convention, including by making submissions, and that the Chair and Members would be anxious to hear from a representative spectrum of opinion in carrying out their work.

There is specific provision for representation, on an inclusive basis, from Northern Ireland. It is also proposed that there would be active engagement with the diaspora.

The Use of the Electoral Register and/or Polling Company

The approach proposed is the fairest and most effective way of selecting a representative group of 66 citizens to serve on the Convention.

The selection process will be overseen by the independent Chair.

Public Participation in Setting Future Agendas

The process of establishment of the Convention and its actual operation are matters of public debate and an important innovation in public life.

On the assumption that the Convention successfully carries out the work programme assigned to it by the Oireachtas, it seems likely that the question of its future agenda will be the subject of much further public debate.

Commitment to Act on Recommendations

The Government will commit to giving a public response, through the Oireachtas, to each recommendation from the Convention within four months. It will arrange for a debate in the Oireachtas on that response in each case.

In the event the Government accepts a recommendation that the Constitution be amended, the Government's public response will include a timeframe for the holding of a referendum.

Reference to the Good Friday Agreement and the St Andrews Agreement

The Government agrees that the Good Friday Agreement and the St Andrews Agreement are fundamental to the changed relationships on the island of Ireland and form the cornerstone for the future development of those relationships, especially with Northern Ireland unionists.

They should therefore be referred to in appropriate fashion in the establishing resolution.

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