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Assembly



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Ensuring a Bill of Rights for Northern Ireland remains on the Political Agenda

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Introduction

This presentation will focus on the findings of our report *Political Capacity Building: Advancing a Bill of Rights for Northern Ireland*.¹ The report, funded by Joseph Rowntree Charitable Trust, addresses the current inertia that exists over the Bill of Rights for Northern Ireland. The report explains how Bills of Rights have been used across the world to entrench human rights and build rights-based societies. It also dispels the misunderstandings over the purpose of, and extent of protection afforded by, a Bill of Rights. The report traces the calls for a Bill of Rights back to the 1960s in Northern Ireland and analyses the political parties and UK government's support since that time. Alongside this, the report examines the various political negotiations, agreements and declarations that have set out the specific provisions and obligations on the UK government in relation to a Bill of Rights.

The report notes that a Bill of Rights for Northern Ireland is one of the outstanding issues of the Good Friday/Belfast Agreement. In response to its mandate under the Belfast/Good Friday Agreement, the Northern Ireland Human Rights Commission (NIHRC) delivered the advice on a Bill of Rights to the British Government in 2008. The report includes the background to this advice and the response of the various political parties, based on interviews conducted as part of the research. The report recommends ways in which the British and Irish governments could meaningfully re-engage the parties on this issue. This presentation will focus primarily on the conclusions and will summarise the

¹ A. Smith, M. McWilliams, and P. Yarnell, *Political Capacity Building: Advancing a Bill of Rights for Northern Ireland* (September 1, 2014), available at https://www.ulster.ac.uk/_data/assets/pdf_file/0005/58271/Advancing_a_BOR_NI.pdf

current political thinking on this issue as well as outlining a possible framework to advance a Bill of Rights for Northern Ireland. Since the completion of the report, the UK government has made proposals to repeal the Human Rights Act and replace this with a British Bill of Rights which makes the discussion on a future Bill of Rights for Northern Ireland even more pertinent.

Methodology

The study drew upon a range of literature including but not limited to: political parties' submissions to the NIHRC's 2008 advice, the Bill of Rights Forum's 2008 report, the Northern Ireland Office's (NIO) consultation paper and the final report of the UK Bill of Rights Commission 2012. Material was also drawn from media reports; party manifestos and policy papers; past and current parliamentary and committee debates; on-going political statements; publications from human rights organisations and academic literature on Bills of Rights.

Seven political parties in Northern Ireland were invited to be interviewed with only one party, the Traditional Unionist Voice (TUV), making no response to the invitation. Twelve interviews were held with the leaders or human rights spokespersons for the political parties. In addition seven interviews with civil society organisations were held together with interviews with the NIHRC and individuals with specialist expertise or practice in the field of human rights. Invitations were also sent to the British and Irish governments. The views of the Secretary of State were offered through correspondence. Interviews were held with representatives of the Department of Foreign Affairs (DFA), the Irish representative of the British-Irish Secretariat and members of the Joint Committee on the Implementation of the Belfast/Good Friday Agreement in Dáil Éireann.

The interviews followed a structured format with interviewees being asked their opinions on a Bill of Rights for Northern Ireland; on why they felt the process on a Bill of Rights for Northern Ireland had stalled; on the prospects of moving the process forward and on identifying ways for doing so. Some political interviewees were asked specific questions on the changing positions of their party over the years. A number of parties were asked about the basis of their objection to the Northern Ireland Bill of Rights. Many political interviewees in favour of a Bill of Rights aired their opinion on why they believed other parties were opposed to it. Interviews with civil society groups and other stakeholders focused on their work to date around a Northern Ireland Bill of Rights and their views on how to move the process forward. Request for permission to record the interviews was made and in the majority of cases, this was permitted with interviews being transcribed in full following each interview. All interviewees were told that before any quotes would be used, their permission would be sought. Where an interviewee did not wish to be attributed, the date of the interview was referred to instead.

Findings

In the 1990s, prior to the signing of the Belfast/Good Friday Agreement, there was general all-party support for a Northern Ireland Bill of Rights and most noticeably between the two main Unionist parties. The Democratic Unionist Party (DUP) viewed a Bill of Rights as 'necessary'² and stated that 'it [Bill of Rights] would plant the seed for the development of what has been called a rights

² Ian Paisley Jr., 'Record of Debates', Northern Ireland Forum for Political Dialogue (19 September 1997) 6-9 (Linenhall Library Belfast, LHL – P7592).

culture....Equality and liberty would be seen as being not just for certain sections of the community [...] but for the great mass of the people'.³ They called for the government at that time 'not [to] stand in the way of a Northern Ireland Bill of Rights'⁴ and accused the government of being the stumbling block. In 1997, Ian Paisley Junior stated the following:

....it became very clear that there was cross-party support, that the stumbling block to introduce such a measure was a reluctant Government afraid of the implications for the rest of the United Kingdom. They argued then – that many fundamental rights are already enshrined in separate pieces of legislation, rendering a bill of rights unnecessary. I do not believe that anyone in this Chamber thinks fair-employment or equal-opportunities legislation is any substitute and it is wrong for the government to hide behind that fig-leaf.⁵

The Ulster Unionist Party (UUP) also supported the DUP stating that 'on behalf of the Ulster Unionists, I support the Democratic Unionist Party... which recognises the all-party support for a bill of rights.'⁶

In stark contrast, on analysing the language used most recently by the two main Unionist parties, the pendulum has swung against a Bill of Rights for Northern Ireland. One UUP representative stated 'I feel that Northern Ireland doesn't need a separate Bill of Rights, the party .. feels the same, quite happy to look at the Northern Ireland aspect of it within the UK Bill of Rights.'⁷ This view is shared by the UUP's leader: 'would we vote in favour tomorrow for a Northern Ireland Bill of Rights? The answer would be no, because we don't see the argument and the need.'⁸ The DUP expressed their concern, that should Northern Ireland have a separate Bill of Rights, this would create a 'disparity of human rights across the United Kingdom.'⁹ What this shows is that there has been a sizable regression by the Unionist parties on this issue. That said, the findings of the report also showed that the two main Unionist parties remain open to persuasion but that is where they see their obligation ending. For example, when asked what 'open to persuasion' meant the leader of the UUP added 'I think that there would be merit in looking at a Bill of Rights because it's a commitment that's sat in the Belfast Agreement and fifteen years on, clearly no one has really seriously engaged.'¹⁰ The DUP spokesperson also noted 'we are open to any discussions that are going on and any proposals that are being brought forward.'¹¹

³ Ian Paisley Jr., 'Record of Debates', Northern Ireland Forum for Political Dialogue (19 September 1997) 6-9 (Linenhall Library Belfast, LHL – P7592).

⁴ Ian Paisley Jr., 'Record of Debates', Northern Ireland Forum for Political Dialogue (19 September 1997) 6-9 (Linenhall Library Belfast, LHL – P7592).

⁵ Ian Paisley Jr., 'Record of Debates', Northern Ireland Forum for Political Dialogue (19 September 1997) 6-9 (Linenhall Library Belfast, LHL – P7592).

⁶ Dermot Nesbitt, 'Record of Debates', Northern Ireland Forum for Political Dialogue (19 September 1997) 10-11 (Linenhall Library Belfast, LHL – P7592).

⁷ Interview with Tom Elliot, MLA UUP, 3 May 2013.

⁸ Interview with Mike Nesbitt, MLA, UUP, 7 June 2013.

⁹ Interview with Jonathan Bell, MLA and Emma Little, DUP, 21 May 2013.

¹⁰ Interview with Mike Nesbitt, MLA, UUP, 7 June 2013.

¹¹ Interview with Jonathan Bell, MLA and Emma Little, DUP, 21 May 2013.

Interview with Emma Little, former Special Adviser to First Minister. Interview with Jonathan Bell, MLA and Emma Little, DUP, 21 May 2013.

The parties in favour of a Bill of Rights (Sinn Féin, SDLP, Alliance, the Green Party and the loyalist-aligned party, the PUP) felt that they were being left to be ‘persuaders’ with the British government having adopted a position that ‘those who are in favour of a Bill of Rights ... should focus their efforts on persuading those in Northern Ireland who remain sceptical and on building such a consensus.’¹² To summarise, these parties argue that it should not be their responsibility to persuade others of the need for a Bill of Rights for Northern Ireland as this responsibility lies with the government. These parties also note that this was a commitment endorsed by the people in the referendum that followed the Agreement.¹³

Recommendations

In that context, as the co-guarantors of the Belfast/Good Friday Agreement, the report argues that the British and Irish governments need to develop a policy framework creating greater coherence in their approach to a Bill of Rights for Northern Ireland. The framework should clarify how the governments see their joint role in implementing the obligations under the Belfast/Good Friday and St. Andrews Agreements and help to dispel the differences that currently exist in their approach to a Bill of Rights for Northern Ireland. On the one hand, the British government’s plan to repeal the Human Rights Act and introduce a British Bill of Rights has been described by some as a breach of the Belfast/Good Friday Agreement.¹⁴ On the other hand, the Irish government regards the Bill of Rights as an important part of the Belfast/Good Friday Agreement. This was clearly articulated on May 14, 2015 by the Irish Minister for Foreign Affairs in expressing his disappointment ‘that a renewed commitment to a Bill of Rights for Northern Ireland based on the European Convention of Human Rights, as provided for by the Good Friday Agreement, was not included in the Stormont House Agreement, despite the Government’s best encouragement.’¹⁵

The report also recommends the framework for taking forward this work should produce guidance for the political parties on what a Bill of Rights for Northern Ireland entails. The importance of having a ‘guided’ process also lies in the fact that a clearer understanding of human rights helps politicians as ‘the bearers of human rights’ to develop a common perspective on the protection of these rights irrespective of the political make-up.

The NIHRC’s advice (alongside the Northern Ireland Office (NIO) consultation document in 2009) has not been deliberated on through all party discussions nor has the British government responded to the findings of the UK Bill of Rights Commission’s report in December 2012 that a Bill of Rights for Northern Ireland is a separate issue and should proceed accordingly.¹⁶ We recommend that the framework, to be agreed between the governments, would provide an opportunity to ascertain the extent of agreement and/ or disagreement on the proposals put forward to date. In establishing a

¹² Letter from Mike Penning, Minister of State for Northern Ireland to the authors (24 May 2013) in response to a letter from the authors to Theresa Villiers, Secretary of State for Northern Ireland (26 March 2013).

¹³ This is the position of the Alliance Party, the SDLP and Sinn Féin.

¹⁴ Brian Gormally, *Fighting the Repeal of the Human Rights Act* June 2015 available at [http://www.caj.org.uk/files/2015/11/11/Fighting_the_Repeal_of_the_Human_Rights_Act\(1\)2.pdf](http://www.caj.org.uk/files/2015/11/11/Fighting_the_Repeal_of_the_Human_Rights_Act(1)2.pdf)

¹⁵ Minister for Foreign Affairs and Trade, Charlie Flanagan, TD. Seanad address on the effect of the repeal of the UK Human Rights Act on the Good Friday Agreement, 14 May 2015, available at <https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2015/may/minister-flanagan-addresses-the-seanad-uk-hr-act/>

¹⁶ Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us Volume 1* (December 2012) 175, para. 12.4.

process for discussions between the parties, as part of this framework, the parties should be asked to address the question as to what they understand to be the role of a Charter/Bill/Covenant of Rights. Answers to such questions, which have been addressed previously, should be used as the basis for banking agreement and building consensus. Following this, parties should be encouraged to agree a set of principles from which the rights appropriate to the particular circumstances of Northern Ireland could be developed. Each stage should allow sufficient time for the deliberations and the process itself should set out a schedule for the eventual outcomes.

In taking forward such a process, it is critical that the political parties benefit from the experience of independent human rights experts and those with expertise in scoping out or drafting bills of rights. This is important as the findings of the report showed there is a misunderstanding amongst some political parties of what is a Bill of Rights and what it can and cannot deliver.

The location is going to be a key factor where dedicated discussions can take place away from the glare of publicity and unnecessary interference. In this regard, the model involved in taking forward police reform following the Belfast/Good Friday Agreement could be used as an exemplar given that a series of roundtable events took place outside of Northern Ireland providing a neutral and safe space for parties to discuss a range of options and drawing on a range of expertise in the field. It is important to note that the authors have already embarked on a series of roundtable discussions on a Bill of Rights, the first one was held in Belfast on December 14, 2015. Both the British and Irish governments were represented as were most of the local parties and representatives from the NIHRC and civic society.¹⁷ The feedback was positive and the importance of holding such an event was highlighted especially as the Bill of Rights, to quote one attendee, 'has faded away from the political agenda.'¹⁸ It is also important that any future process build in local institutional capacity and expertise.¹⁹ There is also the question of ownership of the process. Initially the parties should be given the space to work out their points of agreement, and differences. However, the process must be locally and nationally owned, respecting the UK's obligations under international law.

The data presented in this study and from the feedback from the recent Bill of Rights roundtable discussion in Belfast in December 2015, provides strong evidence that there is a need to re-invigorate the discussion on a Northern Ireland Bill of Rights. The findings also show that it is not possible for local political actors to take the lead on this themselves, either because the requisite political will has been lacking, and/or because there is insufficient capacity in terms of both time and resources (technical and legal). Failure to secure an agreement on how to take forward a Bill of Rights for Northern Ireland in both the Haass-O'Sullivan talks (July-December 2013)²⁰, the Stormont House Agreement (December 2014),²¹ and the Fresh Start Agreement (November 2015)²² highlights

¹⁷ There were representatives from the Alliance Party, SDLP, Sinn Féin, UUP, DUP, The Green Party sent their apologies, the TUV, PUP and NI21 did not respond to the invite.

¹⁸ Feedback from the *Roundtable Discussion on Where Next for a Bill of Rights for Northern Ireland* Belfast 14 December 2015, on file with the authors. In response to feedback, we are organising another similar event, details to be arranged.

¹⁹ For further information on the drafting processes of Bills of Rights see Smith A, 'The Drafting Process of a Bill of Rights for Northern Ireland' (2004) *Public Law* 526; 'Bills of Rights as process: the Canadian experience' (2008) 3(4) *International Journal of Law Context* 343; 'Constitutionalising Equality: The South African Experience' (2008) 9 (4) *International Journal of Discrimination and the Law* 201

²⁰ The Haass-O'Sullivan final report made a number of recommendations, one of which was that a Commission on Identity and Culture be set up to consider amongst other issues a Bill of Rights for Northern Ireland.

²¹ The Bill of Rights appears in paragraph 69 of The Stormont House Agreement under the 'Outstanding Commitment' section, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf

the pressing need for an alternative approach as it could potentially provide a resolution to this outstanding issue. Such a resolution is particularly needed for Northern Ireland as it has emerged from years of conflict, where power relationships are often in flux. There is therefore a need to ensure a fundamental coherence in a range of areas particularly where the demand for change and justice is great. The break with the past, embodied in transitions from violent conflict and one-party rule, provides an opportunity to address issues not only of the rule of law and good governance but other structural issues such as violations and abuses against particular communities. It is in such a context that a Bill of Rights for Northern Ireland is most needed. Technical solutions will not be sufficient to address these challenges without a foundational document setting out the principles and standards that will command the allegiance of the people of Northern Ireland.

²² The Bill of Rights is mentioned only in passing towards the end of the Agreement in Section F in paragraph 69. This paragraph repeats the relevant paragraphs of the Stormont House Agreement but in contrast with other issues where next steps are identified, no such steps are set out to deal with the Bill of Rights issue, available at <http://www.northernireland.gov.uk/a-fresh-start-stormont-agreement.pdf>

