

‘The Particular Circumstances of Northern Ireland’
– Perspective of the Alliance Party

The phrase ‘the particular circumstances’ is effectively meaningless. The phrase can be interpreted as narrowly or as broadly as desired, subject to the desired outcome.

The lack of clarity has bedevilled attempts to build consensus around a NI Bill of Rights over the past decade. The Irish Government may be able to clarify it as they seem to have been the authors.

It is possible to argue that most aspects of Northern Ireland society have been affected through the legacy of violence and the legacy of division. Furthermore, any aspect of society can be deemed to be particular to Northern Ireland.

However, the particular circumstances of Northern Ireland are however not necessarily exclusive to Northern Ireland. They may be present in other societies due either to similar circumstances that have existed or continue to exist in Northern Ireland, or alternatively a different set of circumstances. ‘Particular’ is not the same as ‘unique’.

It must also be noted that the ‘particular circumstance’ of Northern Ireland can change over time. They are not fixed. The ‘particular circumstances’ of 2007 are different than those in place in 1998. Any NI Bill of Rights needs to be sufficiently

flexible to changing circumstances rather than being locked into addressing an increasingly outdated.

The concept of 'particular circumstances' can be approached in at least two different ways. It can be defined from a solely Northern Ireland perspective. Equally, it can be defined in terms of what external actors would reasonably regard as being 'particular' to Northern Ireland.

To expand on this latter approach, the Forum needs to be mindful that the British and Irish Governments will likely be concerned at a situation where rights are recognised in one region with consequent duties/obligations that would create political problems or similar demands in other regions that they cannot or do not intend to address.

There is something to the argument that rights arising out of the 'particular circumstances' are those which sit well in the context of Northern Ireland in isolation of the rest of the British or Irish jurisdictions.

In broader terms, the Forum should be conscious that it is not designing a Bill of Rights for Northern Ireland in a vacuum. Whatever is eventually agreed and recommended needs to achieve the endorsement of the NIHRC, the approval of the NI Assembly (in political terms), and to be acceptable to the British Government (which will be responsible for legislating), with the Irish Government's views also being relevant.

The Forum should avoid following the path, as tempting as it is, to devise an idealised draft Bill of Rights for Northern Ireland that fails to pass the various hurdles for approval and/or is gradually picked apart or pared back. Not only does this approach involve considerable wasted effort, but it would also provide challenges in managing popular expectations.

The views expressed by the British Justice Minister Jack Straw in a lecture at Cambridge University on 25 October 2007.

“However, if specifically British rights were to be added to those we already enjoy by virtue of the European Convention, we would need to ensure that it would be of benefit to the country as a whole and not restrict the ability of the democratically elected government to decide upon the way in which resources are to be employed in the national interest. For example, some have argued for the incorporation of economic and social rights into British law as they have in South African law. But this would involve a significant shift from Parliament to the judiciary in making decisions that we currently hold to be the preserve of elected representatives including decisions around public spending, and implicitly, levels of taxation.”

While these comments do not shut any door either in Northern Ireland or a UK-wide level, they are illustrative of a current mindset.

As a liberal party, Alliance aspires to have a comprehensive and robust set of rights. We further recognise the limitations of the European Convention of Human Rights, in terms of its age, the lack of explicit protection for social, economic and environmental rights, and the need to provide particular protection to persons belonging to minorities (or opting out!). However, as tempting as it is to seek to provide such general and broad protections for the people of Northern Ireland through a special NI Bill of Rights, one must be mindful of the argument that the more appropriate approach for realisation of such an outcome is the recognition of such rights on a UK-wide and/or all-Ireland basis.

Therefore, there is both a legalistic and a political imperative to the Forum adopting a self-denying ordinance in terms of how far it seeks to recommend the recognition of rights.

The starting point is inevitably the terms of the Agreement. However, Alliance does not believe that the process should be hide-bound by an overly strict interpretation of its text. It is worth noting, notwithstanding the passage of the Human Rights Act, that people have been arguing for a Northern Ireland Bill of Rights independent of and prior to the Good Friday Agreement.

The starting reference for the 'particular circumstances' is the reality that Northern Ireland is a deeply divided society.

Societal divisions do exist in the rest of the UK and the Republic of Ireland. However, the nature and degree of divisions in Northern Ireland are on a different scale, often with drastic consequences, though it is worth stressing that it is not a black and white distinction.

There are at least three imperatives to recognise additional rights in Northern Ireland:

1. To address the factors that led to division and conflict in the past;
2. To address the legacy of conflict and division in order to avoid the mistakes of the past, and to move Northern Ireland forward
3. To address and build those aspects of society in Northern Ireland that could have mitigated or prevented the descent into division and conflict.

Therefore, the most clearcut additional rights for recognition are those with specific application to deeply divided societies with clashes of identity on grounds of religion, language, culture or ethno-national identity.

In making this point, Alliance would once again stress the importance that any additional rights recognised for Northern Ireland through an additional NI Bill of Rights must be universal in application, and apply to all persons either as

individuals or in common with others who share particular identities.

There are grounds for saying that racism and other forms of prejudice within Northern Ireland are more acute given our past. Evidence does suggest that racist attitudes are more intense in Northern Ireland than other parts of the UK or Ireland.

Critically, with respect to universality, we note that it is impossible to address the parity of esteem and rights of those associating with the two main traditions in Northern Ireland without addressing the rights of all individuals. Alliance would stress that adopting an open, mixed and multiple approach to identity rather than institutionalising two exclusive identities can serve as an aid to peace and stability. Focusing narrowly on communal rights for only two exclusive traditions may inadvertently reinforce a 'them' versus 'us' mentality with respect to competition over territory and resources.

Alliance is largely content with the terms of the European Framework Convention on the Protection of National Minorities. However, it is important that its terms apply to all sections of society not just indigenous groups.

It is also fairly clear that the presence of victims and survivors in Northern Ireland is a particular circumstance in Northern Ireland.

With respect to economic and social rights, there was clearly an economic and social aspect to conflict in Northern Ireland, and there is also a clear economic and social legacy from the past, not least in terms of the distortions with respect to public expenditure and a legacy of lack of inward investment.

However, it is difficult to argue that public services as a whole have been underfunded. Alliance would recognise some scope for economic and social rights arising out of the 'particular circumstances' but would caution with respect to scope arising out of the points made above.

One way forward may be based around phraseology such as:

"Legislation shall be enacted to secure the protection of social and economic rights in line with the commitments made by the United Kingdom government when it ratified the International Covenant on Civil and Political Rights."

The above views are only an overview, and are made without prejudice to more detailed consideration of draft proposals.

October 2007