

SDLP Draft Position Paper

THE "PARTICULAR CIRCUMSTANCES" OF NORTHERN IRELAND – IMPLICATIONS FOR A BILL OF RIGHTS

October 2007

INTRODUCTION

1. The Good Friday Agreement is widely acknowledged as a framework for the resolution of our conflict and the development of our society based on parity of esteem, tolerance, equality and human rights.

We believe that the broad nature of the commitment quoted below reflects acknowledgement on the part of signatories that the development of a culture of rights was necessary to help counter the legacy of violence, intolerance and sectarianism arising from the conflict.

Extract from the Good Friday Agreement "Declaration of Support"

We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.

"PARTICULAR CIRCUMSTANCES" & NORTHERN IRELAND IN 2007

2. Northern Ireland is a divided society which is emerging slowly from thirty years of violent conflict. Conflict and division have left a legacy which is unique to Northern Ireland, when viewed in the context of developments in Ireland and Britain. For example, social and economic under-development stemming from the conflict is one reason why socio-economic rights must find a place in the Bill of Rights. There is potential to build bridges through the promotion of socio-economic rights.
3. The particular circumstances are reflected in the content of the Good Friday Agreement. The Agreement seeks to ensure a fresh start based on a firm recognition of the need to work together for our common future in partnership. The Agreement is the principal 'particular circumstance' we should have in mind. The architecture of the Agreement must be fully respected and reflected in the Bill of Rights.
4. The Bill of Rights must enhance the Agreement. This political and legal attempt to address division and conflict must be respected as the defining 'particular circumstance' in the context of this debate. The legitimacy of the process has its basis in the Agreement and it therefore must be fully respected in the Bill of Rights.
5. We would stress that the instrument as a whole should reflect the 'particular circumstances of Northern Ireland'; there is

nothing in the language of the Agreement which would justify an excessively restrictive instrument. A timid approach to the Bill of Rights would in practice run counter to the spirit of the Agreement, which promises a fresh start.

6. We believe it is clear from the text that the Agreement imposes minimum obligations on signatories to address in terms of rights, the stated, fundamental problems which helped to produce the conflict. There is nothing to suggest, however, that they should not address other rights issues, and much to suggest that the fresh start should be in the context of a culture of rights.

7. Likewise, parity of esteem between the two "main communities" was referred to in such terms specifically because the lack of it was at the heart of our conflict which required it to be acknowledged and addressed. There is no justification, however, for interpreting this reference as suggesting somehow that there should be parity of esteem only between these two communities. Earlier in the Rights section (para.1 quoted below) it specifically states: "The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community." The welcome agreement of the Forum to acknowledge all our communities is therefore, in our view, not at all at odds with the Agreement. Any statement of rights would obviously be entirely lacking integrity and credibility if it were to apply only to certain sections of society. Principles of universal entitlement to rights and equality before the law underpin all international human rights instruments.

8. Rather than inhibiting us, the requirement to address our particular circumstances can be understood as an acknowledgement that the most progressive bill of rights will be inadequate if it fails to address the issues that contributed to our conflict in terms of national identity and political aspirations and participation.
9. Our particular circumstances reflect to a large degree, but not exclusively, the legacy of our conflict. From the enduring suffering of those bereaved and injured, to the impoverished state of our public services infrastructure, the conflict pervaded many, if not all, aspects of life here.
10. The fact that a majority of both unionists and nationalists support the creation of a Bill of Rights constitutes a feature of our particular circumstances also.

CATEGORIES OF RIGHTS HIGHLIGHTED BY THE AGREEMENT

11. The SDLP negotiated and signed the Agreement on the understanding that the text (set out below for ease of reference) committed signatories to the development of a Bill of Rights using the ECHR as a minimum standard, incorporated into domestic law as referred to elsewhere in the Agreement, and using other international instruments and experience to assist in drafting a locally applicable text.

It also specifically requires us to draft new clauses relating to equality and non-discrimination (bullet points below), which is important given the importance of these issues locally, and given the acknowledged limitations of the ECHR on these matters. The SDLP wishes to see all 9 of the section 75 categories acknowledged in this regard.

Extract from section on “Rights, Safeguards and Equality of Opportunity”

4. The new Northern Ireland Human Rights Commission ...will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be:

- the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and

- a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.

12. The Bill of Rights should reflect the particular rights which arise as a result of conflict and division in Northern Ireland. Central to this will be express recognition of the conflict of national identity which underlies our historic problems, through the incorporation of community rights. In particular, we stress the cross-community partnership arrangements between the two main communities. This is the key idea in the Agreement and should be reflected in the Bill of Rights.

In particular, we emphasise the following rights drawn from the Agreement which must be given specific protection by the Bill of Rights:

- § the right of all people to identify themselves and be accepted as Irish or British or both, as they may so choose;
- § the right to hold British or Irish citizenship, or both; and
- § parity of esteem and just and equal treatment for the identity, ethos and aspirations of both communities.

Regarding the first two of these, there must also be no detriment imposed by virtue of identification as Irish or British, or both. Equally, there must be no detriment imposed by virtue of holding an Irish or British passport, or both.

Regarding the last of these, it is important to note its broad remit. While the term 'identity' might be construed, in the light of some international instruments, as limited to matters of culture etc., the juxtaposition of identity and aspirations makes it clear that parity of esteem must extend to the national aspirations of the two main communities in Northern Ireland.

Also, we believe that the following rights can be deduced from the general principles of the Agreement. These include:

§ the right to proportionate representation of the two main communities in elected bodies; and

§ the right to protection from coercive cultural assimilation by public bodies or as a result of public policy.

13. The preamble and comprehensive nature of the Agreement's content and the references to a wide range of rights quoted below, make it clear that lasting resolution of conflict necessarily requires a focus on issues from civil and political rights to economic, social and cultural matters, justice, policing and victims' rights. The Agreement is intended to offer a new beginning in these and other areas. To adopt an unduly narrow approach to this phrase would run counter to this purpose.

14. Running through all the related sections of the Agreement is a rights-based approach to resolving our conflict and rebuilding our society. We are instructed in general terms to develop a Bill of Rights and specifically to include the following:

Extract from the Agreement:

“Rights Safeguards & Equality” section

1. The parties affirm their commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:

- the right of free political thought;
- the right to freedom and expression of religion;
- the right to pursue democratically national and political aspirations;
- the right to seek constitutional change by peaceful and legitimate means;
- the right to freely choose one's place of residence;
- the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity;
- the right to freedom from sectarian harassment; and
- the right of women to full and equal political participation.

We submit that the following text makes clear the commitment of signatories to address economic social and cultural issues including language and identity issues in a way consistent with their inclusion in a Bill of Rights.

In highlighting these rights, it is worth pointing out that, consistent with the approaches in other international instruments on economic and social rights, we would anticipate that such

rights would be referred to in the context of a reference to “available resources” and should not therefore, give rise to fears about unrealistic or unenforceable expectations, particularly in light of emerging international jurisprudence.

Extract from sub-section on Economic, Social & Cultural Issues

1. Pending the devolution of powers to a new Northern Ireland Assembly, the British Government will pursue broad policies for sustained economic growth and stability in Northern Ireland and for promoting social inclusion, including in particular community development and the advancement of women in public life.

2. Subject to the public consultation currently under way, the British Government will make rapid progress with:

(i) a new regional development strategy for Northern Ireland, for consideration in due course by a the Assembly, tackling the problems of a divided society and social cohesion in urban, rural and border areas, protecting and enhancing the environment, producing new approaches to transport issues, strengthening the physical infrastructure of the region, developing the advantages and resources of rural areas and rejuvenating major urban centres;

(ii) a new economic development strategy for Northern Ireland, for consideration in due course by a the Assembly, which would provide for short and medium term economic planning linked as appropriate to the regional development strategy; and

(iii) measures on employment equality included in the recent White Paper ("Partnership for Equality") and covering the extension and strengthening of anti-discrimination legislation, a review of the national security aspects of the present fair

employment legislation at the earliest possible time, a new more focused Targeting Social Need initiative and a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need.

3. All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland.

4. In the context of active consideration currently being given to the UK signing the Council of Europe Charter for Regional or Minority Languages, the British Government will in particular in relation to the Irish language, where appropriate and where people so desire it:

- take resolute action to promote the language;
- facilitate and encourage the use of the language in speech and writing in public and private life where there is appropriate demand;
- seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language;
- make provision for liaising with the Irish language community, representing their views to public authorities and investigating complaints;

- place a statutory duty on the Department of Education to encourage and facilitate Irish medium education in line with current provision for integrated education;
- explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of Teilifis na Gaeilige in Northern Ireland;
- seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland; and
- encourage the parties to secure agreement that this commitment will be sustained by a new Assembly in a way which takes account of the desires and sensitivities of the community.

5. All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required.

OTHER CATEGORIES OF RIGHTS

15. As stated, we do not accept that the Agreement or the phrase "particular circumstances" suggests a narrow approach to the development of a comprehensive Bill of Rights - quite the contrary. The following, therefore, is a

list of the categories of rights we feel should be included in a progressive text. Nevertheless, our comments attempt to address the concerns raised by those who adopt even the most restrictive interpretation of “particular circumstances”.

16. Children’ Rights

Our children are growing up in a country where, until recently, lawlessness and violence were part of life, where the legitimacy of the state and some of its institutions was in question. They are growing up in a country where intolerance and sectarianism are still prevalent. These particular circumstances should be reflected in a progressive statement of rights in relation to children’s rights.

Moreover, the particular circumstances of our young people reinforce the argument for a comprehensive bill of rights generally, as a tool for delivering the fresh start promised by the Agreement, to educate our children, helping them come to an understanding of their rights and responsibilities, of difference and diversity, a central part of our strategy to ensure that no future generation of children will suffer as before.

17. Criminal Justice

Issues of rights in the justice system were central to the conflict which is reflected by the inclusion of commitments on justice in the Agreement. The Criminal Justice Review has addressed many related issues but there remains a strong argument for including

in our Bill of Rights, commitments consistent with international standards.

18. Prisoners' rights.

The Agreement includes a section in which the government commits itself to addressing the needs prisoners in terms of rehabilitation and reintegration and this should be reflected in the Bill. It is widely acknowledged that our prison facilities are inadequate. Moreover, the prison population includes many mental health sufferers and those with learning difficulties, who are arguably in prison, merely due to the inadequacy of other public services.

19. Women's Rights

The Agreement includes a specific commitment to address women's right to participation in public life. The particular circumstances of women in Northern Ireland today cannot be separated from the conflict and the pressures that it created for families. Many women were left struggling to hold families together following injury, bereavement and imprisonment which affected more men than women. Carers, whether men or women were left with little support from government, enduring severe hardship as a result, yet saving the government vast sums.

Today's statistics for mental ill-health reflect this.

While there have been advances in workers' rights over recent years, women still occupy the bulk of badly paid, part-time jobs.

20. Housing

Issues relating to housing rights were central to the divisions and discrimination which underlay the political problems resolved by the Agreement and should be included in our Bill of Rights.

21. Employment Rights

Once again, it is worth noting that lack of regard for employment rights contributed significantly to political difficulties.

22. Health

Northern Ireland has higher levels of ill-health than other parts of Europe especially mental health conditions, partly due to the conflict. We also have a high incidence of suicide very notably in areas that suffered the worst impact of the Troubles. We would link this to broader issues of poverty and social exclusion which result in particular problems in the North. The right should be connected to issues of human welfare in general and inequality.

23. Education

The right to education is essential in the context of the North. Education is fundamental to social and economic development and a lack of equality of opportunity is a feature of our particular circumstances.

24. Freedom of Information

Acknowledging and upholding the right to information will be central in our work to rebuild public trust in our democracy as we move out of conflict.

25. Disability

In a society where so many were injured through the conflict, it is appropriated to consider disability part of our particular circumstances.

26. Older People

The older generation lived through the worst years of the conflict without having the opportunity to reap the rewards and opportunities of the new beginning whether in terms of new standards of equality and participation or new economic opportunities. Protecting and promoting their rights would be an appropriate gesture as we try make inclusion and social cohesion a feature of our new beginning.

27. Migrants and Asylum-seekers

The conflict was one the main reasons that few migrants or asylum-seekers entered Northern Ireland until recently. Partly for this reason, we were ill-prepared for the rapid increase in the arrival of such groups and have not met international standards for their care.

28. Environment

Acknowledgement of environmental rights is increasingly common, given their connection rights relating to health, well-being and minimum standards of living.

CONCLUSION

29. The Good Friday Agreement is acknowledged as defining our remit. The Agreement itself is the particular circumstance we must heed. It sets a framework for resolving our conflict through the creation of a culture of rights. Its broad scope reflects the acknowledgement of signatories of the wide range of issues that must be addressed if we are to resolve our conflict and rebuild our society. It creates opportunities for us to build common ground in our divided society, which we must not squander.
30. The wider context for our work should not be ignored. The UK has signed, and is bound by, many of the international standards referred to in the most progressive submissions to this and previous processes. Surely the opportunity should not be missed to clarify and make more accessible and coherent the existing rights of our citizens.
31. In conclusion, we submit that our particular circumstances extend to our international context. Our Bill of Rights should be a document which stands proudly alongside existing Bills of Rights the world over. The document should be living evidence of the fresh start that has been made and demonstrate that we can be a beacon of hope in the human rights field.