

Conference Report

Getting the Bill Right – An Update Keynote address

I am not just delighted to be here but I am really honoured to be with you here today at this important period in Northern Ireland's history as you develop your Bill of Rights. This process of developing a Bill of Rights or any constitutional framework for protecting human rights is one of the most important and exciting projects that a society can undertake.

It is symbolic that your efforts gain momentum in a year that sees the 60th anniversary of a document which is the most widely recognised human rights document or Bill of Rights in the world. On the 10th December this year it will be 60 years since the signing of the Universal Declaration of Human Rights, the foundation document upon which the United Nations and the international community subsequently developed and continues to develop its human rights standards.

The Universal Declaration of Human Rights is a powerful document—setting out as it does in its opening sentence one of the core values of human rights that must be to the forefront of your deliberations, namely the central importance of the dignity of the human being as the basis upon which all other rights are formed:

'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'¹

¹Universal Declaration of Human Rights, <http://www.unhchr.ch/udhr/lang/eng.htm>

This is a truth undiminished by time and as relevant to your process as it was when it was first written—the dignity of the human being is timeless and transcends countries and cultures. As such, the Universal Declaration of Human Rights sought 60 years ago to formulate the rights that the international community wanted to see recognised and upheld for a world only a few short years after emerging from the horror of the world war. The recognition of key rights that were inherent to the dignity of all human beings led to the development of the declaration.

The formal process of developing a Bill of Rights is a process that many societies have done or will go through in order to lay out the type of rights and protections that the people wish to see recognised, respected, and protected. Since each country or jurisdiction is in itself different, the process and indeed the rights contained within any Bill of Rights should aim to reflect and respect those differences, but in a way that preserves fundamental universal human rights standards.

No Forum or singular group can achieve all that a Bill of Rights needs to encompass however. Involving society at every level and at every stage of this process is very important, but particularly involving the most vulnerable and marginalised groups. This can only happen if they are fundamentally involved in its development. Indeed, the measure of both process and content of any Bill of Rights is the extent to which it empowers the most disenfranchised and marginalised groups.

Developing a Bill of Rights should be an attempt to identify the basic values that you all committed to. This is particularly important in a society like Northern Ireland that is emerging from a conflict and seeking to build a shared future together. Recognising a common set of rights in a document that all can commit to, at least in part, is an important element in building a new society, providing the possibility of common identification by all with the basic document.

Your work in securing a Bill of Rights, and the work done afterwards to embed it, should ensure that as wide a cross-section of the public as possible believe that they personally “own” the eventual text. The more inclusive the process of debate, the wider will be the ownership of the Bill of Rights. A crucial measure of success for a Bill of Rights is that the majority of people in society, whatever their race, religion, ethnicity, or political or community affiliations, can say, ‘This is my Bill of Rights’.

For this reason, it is important that the rights identified should not be too narrow in their focus. The narrower the range identified, the less likely it is that individuals will identify with the bulk of rights on the list. In particular, the more the rights specified are seen to appeal across the communities, the more likely it will be that rights can be seen as something that binds the communities together rather than divides them. There is now extensive international experience of this function of a Bill of Rights.

Bill of Rights and constitutional guarantees of rights have proven to be essential in underpinning structures of governance in any region emerging from conflict. We only have to look at the emergence of the Universal Declaration itself from the atrocities of the World War Two. Even before this, looking through the tides of history, one can see other examples of this articulation of rights following periods of civil disturbances and unrest which is the American and French Bills of Rights are cases in point.

In our work at the Rule of Law Unit in OHCHR, we advocate and encourage the development of domestic charters of rights exactly to promote the rule of law and in recognition of the close correlation between democracy, good governance, and human rights.

As part of our work on democracy, however, OHCHR has long recognized that constitution making and reform is an important step in the context of democratic transition and peace building. Over the past 15 years, on states request of course, OHCHR has reviewed draft constitutions and made comments from the perspective of their potential compatibility with human rights standards and democratic principles. Three elements regarding the process are key to consider: First: It is essential to reach an agreement between key constituencies leading on how constitution making is to proceed, including who will be involved in preparing a draft, how they will be selected, how consensus will be built, how the constitution will be adopted, what the timeline will be, and so on. Second, there should be a comprehensive public consultation process led by the drafting body to determine and feed the views of the public into the draft constitution and third, there should be a public education campaign. This is because the bills of rights and constitutional guarantees of rights are not unique to societies emerging from conflict or fledgling democracies; they are part of the constitutional furniture of many modern democracies.

I was also glad to see that one of the starting principles of the Forums work was the commitment that *'the Bill of Rights should be in accordance with international human rights standards.'*² This is essential, of course, to your work; any Bill of Rights process must build upon, not undermine or erode, current international standards of human rights. International standards have to be the starting point. One must also remember that these international or regional standards are floors not ceilings—by virtue of their negotiation at an international level or even the regional level it could be argued that they are lowest common denominators.

I also note that the terms of reference for the development of your Bill of Rights, emanating from your peace agreement, state that the rights must reflect the particular circumstances of Northern Ireland. Rightly so. Local contexts must always be taken in to account. A Bill of Rights from one country or indeed an international treaty could not or should not simply be used as 'one size fits all' model or what they say, cut and paste sometimes.

But I reemphasize that the international standards must provide the framework. There is a danger in going too far down the road of particularity. As already highlighted, a Bill of Rights is a document that needs to have support across the community. However, attempting to achieve this support cannot be used to negotiate the content of a Bill of Rights down to the point that it effectively undermines international human rights standards. There are bottom lines and bills of rights that lines should be firmly placed at the protection of international human rights obligations regardless of local circumstances or differences.

As a society emerging from conflict you may in your process of drafting be most immediately concerned with the more obvious conflict related issues that you wish to address. It is well understood. I am thinking of the more obvious civil and political rights associated with the conflict here—the right to life, security of the person, free and fair elections, equality, and it can go on and on. These are undoubtedly the particular circumstances of Northern Ireland.

However, while encouraging you to include rights that adequately address these issues I would also encourage to have the vision to look beyond them. From our own knowledge of your conflict, which I would admit personally, is very limited here, there are more than civil and political rights involved. Economic and Social Rights are equally important, housing, unemployment,

² Page 7, Final Report of the Bill of rights Forum, http://www.billofrightsforum.org/borf_final_report.pdf

education and poverty would seem to be just a few of the social and economic issues which played a part in exacerbating the conflict that saw the lives of so many lost. There are also then part of the particular circumstances of Northern Ireland. It would seem remiss therefore not to try and incorporate provision for the protection of these kinds of rights in any new Bill of Rights here.

The international community, as early as the 1948 Universal Declaration was clear that civil, political, economic, social and cultural rights, were all inter-related and inter-dependent. Sadly world developments led to differing notions emerging from the enforceability of these rights in particular.

I see that one of the Consortium's principles against which they would measure any virtual text is the extent to which the proposals actually create recognisable gains for the most disadvantaged in society. This is a very important objective.

Every effort to produce a social consensus around this text should deliver change on the ground. It is not the inspirational text, or even a beautifully crafted legal instrument we are seeking but how this would generate better outcomes for the people themselves, and improve the lives of those who most need it.

This will go a long way towards guaranteeing that the Bill of Rights is developed which is genuinely capable of changing conditions, ensuring resources are allocated to those most in need and involving people in decision-making in a way that really makes a difference. This is the real test of any Bill of Rights—[if] it cannot do this, it remains simply an aspirational document. And that is a wasted opportunity.

I understand that the inclusion of whether to include social-economic rights into a Bill of Rights may be a matter of some debate here. We can understand some of the reticence—and indeed we often see it in other parts of the world. Protection of Social and Economic rights often gives rise to fears among elected representatives that major decisions, often with resource implications, will be taken away from them and put in the hands of judges.

However, with due respect to this, this is not an issue that should worry people unduly. The judiciary tends – rightly – to be cautious about over-stepping its

authority in matters such as resource allocations which are seen as pre-eminently political in nature.

As your keynote speaker yesterday and I have seen the text Mr Bruce Porter no doubt highlighted, there exists an increasing body of economic and social rights jurisprudence internationally. If you really value the future wellbeing of your people and you want their future underpinned by a rights-based approach to governance and democracy then social and economic rights are exactly the type of guarantees that you would be enshrining on their behalf in your Bill of Rights.

If you still have doubts about including them then I would suggest we would ask the people themselves. Open the content of your Bill of Rights up to public consultations. This was the real experience of South Africa. Their first draft of a Bill of Rights was largely civil and political in nature because it had been drafted as usually by politicians, lawyer, academics. But, when it returned from the people the call for the protection of social and economic rights was overwhelming.

Indeed this is a very good experience to look at. And, I understand that opinion polls that have been carried out here indicate that there is a widespread popular support, spanning the political divide, for the inclusion of Social and Economic rights. This cannot be ignored: as already mentioned the Bill of Rights must speak to and for the people if it is to be in any way meaningful and effective.

The last fifteen years have witnessed an increasing interest in the promotion and protection of economic, social, and cultural rights. Actually, the Committee on Economic, Social and Cultural Rights has made considerable effort to insert the perspective of rights claiming constituencies into its "jurisprudence" despite the absence of a complaints procedure.

Strengthening protection of economic, social and cultural rights is an integral part of strengthening protection of all the rights recognized in the Universal Declaration of Human Rights. The newly adopted Protocol on the 10th of June this year will provide an important platform to expose abuses that are often linked to poverty, discrimination, and neglect, and that victims frequently endure in silence and helplessness. It will provide a way for individuals, who may otherwise be isolated and powerless, to make the international community aware of their situation.

The Protocol will allow persons also to petition an international human rights body about violations of rights guaranteed in the International Covenant on Economic, Social and Cultural Rights. In most cases a Bill of Rights is included in the country's constitution. Usually individuals can seek remedies in their local courts for alleged infringements of these rights if they feel a breach has occurred and this is what we are looking for.

But your influence could range well beyond these islands. International interest in Northern Ireland has always been high. Your peace agreement is internationally recognised as one of the most progressive documents of its kind, particularly as regards the prominence it gave to human rights and equality protections. Many in the UN and in other parts of the world will look to you to set the example for others to emulate. The United Kingdom and Ireland are important leaders on the international stage, and advocate human rights as central to their foreign policies. As such, they should also put human rights central to domestic policies and there is no clearer way of doing this than through the development of a strong and inclusive Bill of Rights at the domestic level.

QUESTIONS

Sam Hutchinson, Irish Council of Churches and Convenor of the Working Group on Victims and Criminal Justice: Regarding the buy-in on the part of the people for the Bill of Rights, if that is not achievable, if there is one significant section of the community, or one of the main communities against it, what is the way ahead? Would it be to give up? Would it be that the Westminster Government and possibly the conservation of Dublin would go ahead and enact it anyway? Or, would it be better that there was a UK Bill of Rights incorporating everything?

Elaine Campbell, Age Concern: How do you convince elected representatives that the concerns that their constituents are raising many times, are social and economic rights and that those constituents who are bringing those concerns are actually just as valid as those of the elected representatives?

Mohammad Abuharthieh: I feel that you are now questioning what the next step is if you cannot agree on everything.

We should not rush things by time. It is a process and it should take enough time because maybe people in 100 years or 200 years will be searching for a Bill of Rights of Northern Ireland and you do not want to have a Bill of Rights where people would be asking why at that time did they not take care of this issue of marginalised people or youths or economic and social rights, cultural rights, language issues? When we look at the process, we try to find solutions and there are good practices in many places in many places in the world.

We can search together for these good practices but the important part is public awareness. And when I say public awareness, maybe we should put a list of activities, going through the media, going through the schools, universities etc. If we have a real problem, then we should tell the people what exactly we are talking about and get their opinions slowly to us. At the end of the day, you can choose whether to go to the people or just go through a formal process of the representatives of the people or even politicians would adopt this document. But, if we rush it because we are tired of the process, we will miss too many things.

I would just suggest that we continue with the dialogue and more research in this area. If I was talking in a poor country, where resources are very limited, I would be cautious in pushing the issue of inclusiveness of all sectors of Social and Economic rights. But, here, my voice could be loud and saying that these are the international standards that we have adopted for the last 34 years and countries like the UK, Northern Ireland, Ireland, Europe have the main contributors to these rights. So, how can we talk today about compromise on these issues?

Patricia McKeown, UNISON: It strikes me that one of the starkest examples on the planet of the difference between signing up to international human rights instruments and the absence of rights on the ground is your own people in Palestine. Most recently, we have been working with human rights organisations in both Israel and in the Occupied Territories. We know they have joined together to take some cases, for example, to the Israeli Supreme Court but also internationally in other people's courts, such as the UK and without very much success. And those have been the case particularly around issues like property rights and Social and Economic rights. What difference would a Bill of Rights make in those circumstances and whose Bill of Rights would it be?

Mohammad Abuharthieh: There is a difference between a conflict situation and a post-conflict situation from a legal point of view also with the laws that apply to both situations. In peace-making or peace-building, also there is a big difference. When we talk about Israel as a state and even excluding the issue of the Arab minorities there, I would tell you that I wish to see many countries in the world following the same example of the justiciability of all economic and social rights. So, I would see how the rights of workers are protected there - how the right to housing is protected, how the right to health is protected.

The worst example to look at is the issue of the conflict with Palestinians. If I want to draft a Bill of Rights, I would go to the Israeli laws that applies to, I would say, the Jewish people. But when I want also to exclude things, I would look at all those rights which should have been equally provided to the Palestinians or the Arabs there. I think we can draw similarities of the differences if a society does not provide equal rights for its citizens. That is when you could see the difference between promoting rights of specific groups against other groups. That is when it should be uniting rather dividing.

Both lessons could be learned from their domestic law that protects civil, political, economic, and social rights to one specific group and then civil and political rights that divide towards other groups.

Elizabeth Zammit, the REAL Network: Kofi Annan, in 2006, said that for people with disabilities, on paper they have enjoyed the same rights as others, in real life they have often been relegated to the margins and denied the opportunities and offers that others take for granted. And, through yesterday and today we have discovered that the Forum had no actual Working Group on people with disabilities. There may have been the individuals with disabilities on certain working groups, but they had no actual group for people with disabilities. If the UN can see that there should be a special article on disability then should we not have the same say in our Bill of Rights here?

Mohammad Abuharthieh: At the international level, we have reached the consensus of this issue by adopting a Convention on the Rights of Disabilities. And I think that if the Bill of Rights wants to look at what is available today, what we have achieved so far today. What if, in two or three years, five years time or even a few months time, a state would ratify this and if it is not part of the Bill? Are we going to alter the Bill of Rights again and say “oh, we missed this very important part.”

We should bring all these international obligations that we have actually exceeded to—adopted or not yet, and say that are we preparing ourselves to join this obligation, to make it binding or not. If, yes, then we say it is time today to put it in, not tomorrow because then it would be a bit late. And the second thing it is not going to set up a good example to the people that we are behind in achieving rights of the most needed people.

Mike Mann, Killyleagh Community Association: How do you get ordinary people involved in the Bill of Rights?

Mohammad Abuharthieh: If I am sitting, for example, in India with a population of one billion, or more trying to promote those rights to be included, I would be careful in saying every letter of my words. Because by talking about the rights of disabilities, I am talking about maybe 200 million people who would go to courts the next day and say, where is my right to a lift or where is my right in public transportation, where is my right to education etc. We are talking about trillions of Pounds.

But talking here in Northern Ireland, you need to have the public aware of what we are talking about. Not just in a sense of your rights—what are those rights, how are we going to protect them? How much it will cost to protect these rights? And then we can say, can we afford it or not? Short-term, long-term etc.

I would say, as political parties, as individuals, as academics, it is a challenge for you to be able to say at the end of the day, that what we have put here was well studied, it included all the points of view of the whole society and we wanted it to be effective.

You have been involved in this process for more than ten years and you know more than me about it. But, I would say that maybe it is time to go beyond this room, outside.

CONCLUDING COMMENTS FROM MOHAMMAD ABUHARTHIEH

Mohammad Abuharthieh: Because we have two different legal regimes, one is the constitution and one is the common law, I think not many countries use the words 'Bill of Rights' but you could see how their constitutions would include protection for civil, political, economic, and social cultural rights. In

your situation, it is more complicated than other countries which have the constitutional system where it easily can just be put this in the constitution and then later on pass all the related laws.

There are other examples of countries which pass on step-by-step pieces of constitutional bills or basic laws. So if we feel that today we can protect this right we say, yes, we can pass this basic law—slowly, slowly. In your situation, you need to put all of these rights as a list in one document which makes it difficult. We should not rush it so that in the end we will say that we compromise on three or four laws as long we guarantee 90% of what we have agreed upon.

On the point of involving the people, it is the people who would decide that it is their Bill of Rights. It is not our Bill of Rights, as elitists, intellectuals, as lawyers and politicians. We reflect the will of the people in this. In a Northern Ireland which is going out of long conflict, the people deserve much more effort to involve them in the process. Even sometimes you have to go out and look for them. You have to find them. You have to educate them and you have to bring them to the table.