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Conflict and Human Rights: Northern Ireland Explored

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I. Introduction

On April 10, 1998, after thirty years of bloody conflict, political parties from all sides of the Northern Ireland conflict signed the Good Friday Agreement, pledging to dedicate themselves to ‘...*the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.*’ The peace agreement placed at its core an agenda of human rights including a Bill of Rights for Northern Ireland, a Human Rights Commission and the reform of policing and justice procedures and provision.

Characterised historically for its denial or abuse of human rights, Northern Ireland, in the years since the Peace Process, has become increasingly linked to the promotion and protection of human rights as a cornerstone of political and social life and to significant attempts to create a ‘culture of human rights’ in its day-to-day politics. For some, Northern Ireland, despite its difficulties, now offers a model of the transition from conflict to human rights and political democracy and an ‘instructive case’ in human rights protection.¹³² Since 1995, Northern Ireland has emerged from its most recent phase of conflict and at a variety of significant levels has begun to address the legacy of its historic enmities. Public support for the peace process

¹³² Harvey, C. (2001) Building Bridges? Protecting Human Rights in Northern Ireland, **Human Rights Law Review**, pp. 243-264.

remains very high amongst all communities and the agreement reached in Belfast on February 5th, 2010 represents yet another key ‘political shift’ towards an enduring peace.

Human rights, in many of its key dimensions, have been at the centre of this process. Human rights, human rights abuses and human rights ‘talk’ have been an integral part of the Northern Ireland agenda with the denial of the rights of each ‘community’ providing a justification for continued conflict for decades; they provided much of the underlying argument and justification for events in the period 1960 – 1995, the emergence of the civil rights movement and the subsequent struggle for equality on all sides. Human rights are now explicit in the Good Friday Agreement and the attempt to establish human rights as the fundamental basis for future constitutional arrangements has major implications not only in Northern Ireland but more broadly, and significantly, for the United Kingdom and the Republic of Ireland. The human rights component of the peace process continues to be significantly problematic in its implications for human rights provision in the UK, for devolution itself and for the Westminster political and constitutional systems.¹³³

This paper briefly sketches the human rights background to the conflict; outlines the human rights dimensions of the Good Friday Agreement; focuses on the key challenge of drafting, negotiating and implementing a Bill of Rights for Northern Ireland (a fundamental component of that Agreement) and on the context of broader debates

¹³³ Donald, A., Leach, P. and Puddephatt, A. (2010) Developing a Bill of Rights for the United Kingdom, **Research Report 51**, Equality and Human Rights Commission, Manchester.

concerning a UK-wide Bill of Rights. The article concludes with some broader issues and challenges that arise in the context of moving from the rights violations context of conflict to the rights protection and promotion context of peace.

II. The human rights background to the Northern Ireland conflict

It is important at the outset to acknowledge the scale and impact of the conflict and to relate its consequences in human terms. Between 1969 and 2001, 3,526 people lost their lives in what is euphemistically known as the ‘Troubles’ in Northern Ireland. Of the deaths, the vast majority (over 2,000) have been civilians (including members of paramilitary groups from both communities) and the remainder have been from the security forces – the Police Service of Northern Ireland (PSNI, formerly the Royal Ulster Constabulary – RUC) and the British Army. The majority of dead have been male and young, from urban backgrounds and Catholic.¹³⁴

It is estimated that approximately 40,000-50,000 people have been injured during the Troubles – suffering blindness, loss of hearing, disfigurement, and amputations – injuries which impact on ‘secondary victims’ in families permanently damaged by the severe injury of a close relative or loved one. These deaths and injuries rendered some of the population ‘psychiatric casualties’ of the conflict, while a

¹³⁴ See Fay, M., Morrissey, M. and Smith, M. (1999) **Northern Ireland’s Troubles: The Human Costs**. London, Pluto Press. See also McKittrick, D. et al. (1999) **Lost Lives: The Stories of Men, Women and Children who died as a result of the Northern Ireland Troubles**. Mainstream Publishing, Edinburgh and Darby, J. (1997) **Scorpions in a bottle**. London, Minority Rights Group.

much greater proportion suffered from milder forms of stress.¹³⁵

Human rights abuses fuelled the conflict and were a constant and bloody manifestation of its underlying causes. The conflict has been protracted and costly at every level from the time of the foundation of the Northern Ireland state through to the first civil rights marches in 1968, through the terror campaigns of the 70's and 80's to the emergent peace process of the 90's, the cost has been immense.¹³⁶ Although human rights violations alone did not cause the conflict, their ongoing (re)occurrences has prolonged and further deepened it. Bombings, assassinations and 'terror tactics' spread from Northern Ireland to engulf Great Britain and the Irish Republic with the result of fundamentally reduced 'security' for the common person and for all communities. Civil rights in Northern Ireland were seriously eroded and freedom (in the name of security) was sacrificed to a significant extent in both the Irish Republic and Great Britain as a result.¹³⁷ Two of the key pieces of evidence of this include the extensive use of emergency legislation where temporary 'security-driven' legal measures became semi-permanent (and not just in Northern Ireland) and which were used beyond their originally intended purpose, and the large number of human rights cases taken to the Strasbourg Court where the

¹³⁵ Cambell, A, Cairns, E and Mallett, J. (2005) The Psychological Impact of 'the Troubles', **Journal of Aggression, Matreatment and Trauma**, Vol. 9 pp. 1-2, 175-184 and Harbison, J. and Harbison, J. eds. (1980) **A Society Under Stress: Children and Young People in Northern Ireland**, Shepton Mallet, Open Books.

¹³⁶ Committee on the Administration of Justice (1995) **Human Rights: The Agenda for Change – Human Rights, the Northern Ireland Conflict and the Peace Process**, Belfast and *ibid.* Darby (1997).

¹³⁷ Rowthorn, B. and Wayne, N. (1988) **Northern Ireland: The Political Economy of Conflict**. Cambridge, Polity Press.

language and thrust of human rights abuses were firmly focused on the state and its failings.¹³⁸

A pivotal period in which the human rights agenda became more explicit and ‘operational’ in Northern Ireland was that of the 1960’s when the struggle for ‘civil rights’ became the language of the street and of popular politics. The Northern Ireland Civil Rights Association (NICRA) brought groups of Catholics and liberal Protestants together (inspired by the civil rights movements in the United States and elsewhere) to challenge discrimination by the Unionist government through a variety of means, including information provision, public meetings, street protest and civil disobedience campaigning. The issue of equality was central to the core of NICRA’s agenda, challenging systematic and widespread political, social, economic and cultural disparity between Catholics and Protestants. NICRA campaigned for universal suffrage; the repeal of the Civil Authorities (Special Powers) Act (Northern Ireland) 1922, which conferred sweeping powers (deemed by the nationalist population as a means of oppression – the Act was repealed in 1973); the disbanding of the B Specials (an armed force of ‘special’ constables deemed by the nationalist population to be sectarian); the re-drawing of (gerrymandered) electoral boundaries; and the imposition of laws designed to end discrimination in public employment and public housing.¹³⁹ It is important to recognise with regard to the civil rights movement that unlike the Irish Republican Army (IRA, dedicated to the elimination of the Northern Ireland state and to a United 32 county Ireland) it

¹³⁸ Amnesty International (1994) **Political Killings in Northern Ireland**, London, Amnesty International and Committee on the Administration of Justice, (1995), **No Emergency, No Emergency Law: Emergency Legislation related to Northern Ireland: the Case for Repeal**, Belfast.

¹³⁹ Ibid. Rowthorn (1998) p.39

had decided, in effect, to work within the existing political structures to achieve equality and rights. As has been noted by Hancock¹⁴⁰:

‘Rather than attacking the legitimacy of the state or opting out, members of NICRA saw their future as part of Northern Ireland’s state, and they were therefore willing to take steps to integrate more fully into the existing system.’

From this point onwards, the cause of human rights (however differentially understood or embraced within each community), became an essential ingredient in the cause of Northern Ireland and, more significantly, peace and security on both islands.

III. Human Rights, the peace process and the Good Friday Agreement

The Good Friday Agreement, one key element in the overall peace process and the basis for the Northern Ireland Act of 1998, the new constitutional arrangement for Northern Ireland, contains an extensive and far-reaching commitment to human rights protection arising directly from the conflict itself but also from UK human rights legislation in addition to that of Europe (the European Convention on Human Rights). According to Harvey¹⁴¹: *‘The language of rights flows through the Agreement and rights talk has framed the ongoing debate on implementation in many areas of legal and political life.’*

¹⁴⁰ Hancock, L. (1998) **Northern Ireland: Troubles Brewing**. [Internet], Available from: <http://cain.ulst.ac.uk/othelem/landon.htm>

¹⁴¹ Op. cit. Harvey (2001) p. 244

The Good Friday Agreement was by no means the first document to refer to human rights; these were referenced in the Downing Street Declaration of 1993 (which crucially recognised the right to self determination of the people of Northern Ireland) and the Framework Documents for future power sharing in Northern Ireland in 1995. There are numerous references to human rights throughout the text of the Agreement, for example, commitment to the *'protection and vindication of the human rights of all'*, to the *'right to self determination'*; full respect for and equality of *'civil, political, social and cultural rights, of freedom from discrimination ... parity of esteem, just and equal treatment'* etc. The key implication and outcome of the Agreement was that whatever governments or parties would exercise sovereignty over Northern Ireland they must do so within specified human rights related safeguards. The human rights references in the Agreement ensured that the settlement would go well beyond Northern Ireland with significant implications for both islands and for human rights in general in both jurisdictions. These implications are most clearly highlighted in the debates and tensions around the drafting and negotiation of a Bill of Rights for Northern Ireland.

The issue of human rights is addressed most directly in the section of the Good Friday Agreement on 'Rights, Safeguards and Equality of Opportunity' where reference is made to the rights to freedom of political thought and of religion, to pursue democratic aspirations by peaceful and legitimate means; to equal opportunities in economic and social activity; to protection from discrimination on the basis of class, creed, disability, gender or ethnicity, equality for women etc. The Agreement, in its human rights provisions, is wide ranging in its implications - it made it a statutory duty for all public authorities to take this human rights

framework into account; it set up a new Northern Ireland Human Rights Commission (with the primary responsibility to consult and advise on the Bill of Rights); it established an Equality Commission and extended human rights into areas such as policing and criminal justice. The key significance of the Agreement is to be seen in the broader human rights framework it enunciates and its rejection of earlier ‘piecemeal approaches’ with, for example, acceptance of the principle of ‘equivalence’ – ensuring that an equivalent level of human rights exists in, for example, the Republic of Ireland.¹⁴² The Agreement also included reference to the Republic also setting up a Human Rights Commission, ratifying the Council of Europe Convention on National Minorities, improving employment equality legislation and enhancing respect for the different traditions on the island of Ireland. Importantly, the Agreement also includes reference to the importance of human rights education.

However, despite the numerous references and mechanisms for protecting and promoting human rights outlined in the Agreement, the reality of delivering such rights has, according to the 1999 Human Rights Watch World Report, ‘*proved disappointing*’ as the British government ‘*consistently failed to translate the provisions into practical and effective human rights protections*’.¹⁴³ To date, the implementation of the human rights provisions of the Agreement has been significantly mediated by broader UK political and constitutional issues, no more so than in the challenge of delivering the Bill of Rights for Northern Ireland.

¹⁴² Ibid. p. 252

¹⁴³ Human Rights Watch (1999) **World Report**, Washington

IV. The Bill of Rights Debate

The Northern Ireland Human Rights Commission (NIHRC), established in March 1999 as a direct result of the commitment made by the British Government in the Good Friday Agreement, was mandated with the task of drawing up a Bill of Rights for Northern Ireland. This mandate was unique in that it was the first human rights commission established within the United Kingdom and because it implied that Northern Ireland would be the first region of the UK to have its own Bill of Rights. And, it was also distinctive in the process agreed for deliberating on and agreeing the nature and shape of the Bill.

The NIHRC is independent of government but is accountable to Parliament through the Northern Ireland Secretary of State; its duties include reviewing the adequacy and effectiveness of law and practice relating to human rights; advising the Secretary of State and the Executive Committee of the Northern Ireland Assembly on legislation which is required to protect human rights; advising the Assembly on the compatibility of legislation with national and international human rights obligations; promoting understanding of human rights in Northern Ireland and advising the Secretary of State on the possibilities for defining rights supplementary to those in the European Convention on Human Rights in Westminster legislation. The Commission also has the authority to support individuals with legal proceedings involving human rights issues (something which has proved to be controversial amongst the judiciary); to conduct investigations related to its functions and to undertake research and to publicly publish its findings.

Given the history and legacy of human rights ‘culture’ and the ongoing tensions between communities in Northern Ireland and the nature and scope of its mandate, it is no surprise that the NIHRC has been heavily criticised and its effective functioning has been significantly undermined. It has been undermined by limited financial resources (for the tasks for which it is mandated); by the limitations to its powers of investigation and by political resistance to its agenda at political level in both Northern Ireland and Westminster. From the outset, key political figures in Northern Ireland (for example David Trimble, the initial First Minister of the Northern Ireland Assembly and who has primary responsibility for human rights) have challenged the legality of the Commission, claiming it has no authority to draft a Bill of Rights despite the fact that the Commission and the Bill of Rights are legal outcomes of the Good Friday Agreement.

The debate surrounding an eventual Bill of Rights for Northern Ireland is perhaps best described as three-dimensional. On the one hand there are disagreements amongst the various political parties *within* Northern Ireland; many of these tend to be related to the particular language proposed for the Bill of Rights. Secondly, there are issues which raise questions for specific social interest groups from the disability sector to women, children, ethnic minorities, trade unions and businesses. Thirdly, there are areas of disagreement between Northern Ireland focused parties (political, trade and civil society groups) and Westminster.

The Bill of Rights Forum (established to formulate recommendations to the Northern Ireland Human Rights Commission and comprising members of a range of business, community, political and trade union groups and

chaired by Australian Chris Sidoti) was given specific terms of reference:

'... To produce agreed recommendations to inform the Northern Ireland Human Rights Commission's advice to Government 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 human rights 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.'

These terms of reference prompt two important questions. The first poses the challenge as to what precisely constitutes *'the particular circumstances of Northern Ireland'*? The implication of this is that an eventual Bill of Rights must concern itself solely with matters specific to Northern Ireland, and avoid dealing with broader issues already covered by the UK 1998 Human Rights Act (HRA). Some further issues arise from this; if the Bill of Rights focused on *'the particular circumstances of Northern Ireland'*, would it do so by creating rights supplementary to the European Convention on Human Rights (ECHR), or should it instead restrict itself to the ECHR's remit and simply modify or mould existing provisions to fit Northern Ireland?

The majority opinion within the Forum was that the Bill of Rights ought to add to the ECHR, and not simply re-word an already-existing convention; adding to the ECHR or HRA would mean creating particular rights provisions for Northern Ireland. While many of the sectors represented in

the Forum were in favour of having human rights provisions specific to Northern Ireland, a number of objections were raised (for example, in some key respects economic and social conditions are better in Northern Ireland than in other parts of the UK). The Terms of Reference made it clear that the Forum was to recommend only on issues particular to Northern Ireland, and not on more general issues. In this context, is the Bill of Rights a direct consequence of ‘the Troubles’, or simply informed by them? Some issues could be directly traced back to the conflict, with others less clearly so. Is the mention of ‘the particular circumstances of Northern Ireland’ an oblique reference to sectarian violence and the Troubles, or could it be understood to mean the wider social, economic and political realities of Northern Ireland?

The second question relates to the challenge of how to interpret ‘*the principles of mutual respect for the identity and ethos of both communities*’. As a corollary question to this, there was significant tension over the language used in the drafting of the proposed Article 11 of the Bill of Rights which deals with the right to culture, language and identity. The Democratic Unionist Party, the Ulster Unionist Party and the Alliance Party all voted in favour of a draft article which would protect the culture, language and identity of ‘a minority or a community’; whereas Sinn Fein, the Social Democratic Labour Party and the various representatives of civil society all argued for specific protection for ‘minorities’ as distinct from the broader term ‘communities’. The issue at stake: if ‘communities’ were to be listed alongside ‘minorities’, what repercussions could this have in terms of upholding existing discrimination by majority communities?

In the words of the human rights sector representation:

*'The term "minorities" has a specific connotation in international human rights law. The protection of rights is obviously in the interests of everyone in society, whether one is a member of a minority or a majority community... The purpose of minority rights protections is to protect the most vulnerable groups in society, precisely because they are minority groups. It is quite unacceptable to undermine any of the rights that minority communities have as a result of the Framework Convention, and we believe that the current proposals risk doing that.'*¹⁴⁴

Conversely, the Alliance Party representation argued for the inclusion of 'communities' alongside 'minorities':

'Northern Ireland is a complicated society with multiple identities and cross-cutting cleaves. Cultural and identity rights should apply to all persons belonging to different sections of society. Minorities are not fixed, and majorities in one context can be minorities in another. Recognition of the rights of some does not diminish the rights of others.'

In this particular case, the debate over this issue was overruled by Westminster. In its November 2009 consultation paper, the British government argued against the proviso in its entirety:

'It is clear from the Advice that this [recommendation on minority rights] does not primarily refer to the two main communities in Northern Ireland but to other cultural,

¹⁴⁴ Bill of Rights Forum (2008) **Final Report: Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland**. Belfast, pp.74-75.

linguistic and ethnic minorities living here. The question of how such minorities should relate to the wider ... is very much part of the national debate started by the Green Paper on a Bill of Rights and Responsibilities and cannot be said to reflect particular circumstances in Northern Ireland”¹⁴⁵

The proviso ‘*except for issues of national security*’ is included in a number of draft articles on the Bill of Rights. This has been raised as an issue of concern by Sinn Fein, the human rights sector and the broader civil society. Given Northern Ireland’s turbulent history, allowing the state the power to suspend rights provisions on ‘national security’ grounds is understandably cause for concern. Objections over the inclusion of this limiting proviso crop up time and time again across the Forum’s deliberations.

There are significant differences of opinion between the Northern Ireland Human Rights Commission and the British Government on any eventual references to the rights of victims of the conflict and the rights of their relatives. The NIHRC’s proposals sought to make the 1998 Human Rights Acts apply retrospectively in cases pertaining to the Northern Ireland conflict – something Westminster has categorically ruled out, on the grounds that doing so would create two uneven ‘tiers’ of rights, in which violations committed as part of the Troubles would be treated differently to any similar crimes committed elsewhere in the UK.

Even if a Bill of Rights were to be agreed upon, there are issues on how it should be integrated into Northern Irish law: three ‘models’ prevail - repeal the Human Rights Act and have the Bill of Rights replace it (favoured by Sinn Fein and

¹⁴⁵ A Bill of Rights for Northern Ireland: The Next Steps. November 2009
Consultation Paper. p.41.

SDLP); amend the Human Rights Act in order to remove any incongruities with the Bill of Rights, and have both functioning side-by-side (favoured by the disability sector, the older people's sector and the trade unions) and retain the Human Rights Act and have the Bill of Rights provide supplementary rights, with separate legislation specific to Northern Ireland (favoured by UUP, Alliance, the business sector, the children's sector, ethnic minority sector and the human rights sector). Having received these proposals, the Commission opted for an approximation of Option 3, in which the 'Convention Rights' laid out in the HRA would be re-enacted:

'alongside [the] Supplementary Rights in a separate piece of legislation, with its own enforcement and implementation mechanisms. This separate legislation would constitute a Bill of Rights for Northern Ireland.' (Advice, p.137)

Westminster remained unconvinced of the NIHRC's suggestion, fearful of the confusion that would arise by having two separate human rights legislative frameworks operating concurrently across the UK. Although Chris Sidoti argued that there was no reason why one couldn't have two separate bills of rights within the one country, the British Government remained unconvinced.

An additional issue that arises is also how would an eventual Bill of Rights be passed? There have been two concrete (and opposing) proposals: one, the Bill would be enacted through Westminster legislation but should first receive cross-community support in the Northern Ireland Assembly and, two, the Bill of Rights should first receive support in a referendum. There is general consensus that

option 1 would be best, but some parties are concerned that it would suit those opposed to a Bill of Rights to have it discussed within the Northern Ireland Assembly, as they would be able to block the bill or try to filibuster it.

The justifiability and enforcement of the Bill is also problematic and reveals the divergence of perspectives across Northern Ireland. Sinn Fein, the SDLP, the children's sector, the human rights sector and the trade unions support the creation of a dedicated Human Rights Court; the DUP, UUP, Alliance, business sector, disability sector, older people's sector, and women's sector favour enforcing the Bill through the existing court system. Other proposals suggest the setting up of a human rights tribunal or a human rights division within existing court structures. The NIHRC and Westminster seem to have agreed on this issue: an eventual Bill of Rights would be enforced through the existing court system, with the NIHRC given statutory powers to monitor and audit its implementation, and a human rights committee established in the Northern Ireland Assembly whose role it would be to scrutinise draft legislation for compliance with the Bill of Rights.

V. Conclusion

In its 2010 research report, the Equality and Human Rights Commission for Great Britain (excluding Northern Ireland) identified 13 key principles arising from the experience of enacting Bills of Rights in 5 jurisdictions – Canada, New Zealand, South Africa and Northern Ireland. These principles include non-regressive (supplementing existing national and international law), democratic (not just in outcome but also in process); inclusive (especially of the

views of those most at risk of human rights abuses); deliberative and participative (building citizenship), educative (in the broadest sense); symbolic (compelling for the public and thus lasting) and, crucially for Northern Ireland, respectful of devolution settlements. Many of these principles have directly informed the Bill of Rights process in Northern Ireland especially those as regards the democratic, deliberative, citizenship and educative dimensions but the process has become mired in debates and difficulties as regards devolution, human rights across the UK and, inevitably as regards constitutional politics.

The devolution statutes across the UK are complicated, and the human rights frameworks underpinning them are directly linked to the Human Rights Act and more broadly to the ECHR. According to the UK legal human rights organization *Justice* a bill of rights covering the devolved jurisdictions would be legally, constitutionally and politically very difficult to achieve. Amendments to the HRA and any enactment of a bill of rights would almost certainly, from a legal perspective, require amendments to those devolution statutes, thus posing significant challenges to the legal status of dimensions of the Good Friday Agreement. Any amendments to the HRA and any enactment of a bill of rights would, from a constitutional or political perspective, need the consent of the devolved institutions. It would also require careful consideration so that the UK would not derogate from its international treaty obligations to the Republic of Ireland in regard to the Belfast (Good Friday) Agreement.¹⁴⁶

Other difficulties and complications also arise – while it might be possible to have an English Bill of Rights, this

¹⁴⁶ Justice (2010) **Devolution and Human Rights**. London

would pose a series of problems between the competing jurisdictions within the UK. According to the analysis offered by *Justice*, the HRA works, and at present the devolution framework has also been successful but amendments to the HRA or legislating for a Bill of Rights would be ‘dangerous and risky’ – to the protection of rights, to the constitution of the UK, and to the Union itself.¹⁴⁷ Additionally, political consensus and consent would be needed across the devolved jurisdictions if there was to be any ‘British’ or ‘UK’ Bill of Rights. Some have argued that a debate about a bill of rights for the UK is an exercise that requires reopening competing assumptions about the Union. There is also the problem of language. The British Parliamentary Joint Committee on Human Rights (JCHR) has taken the position that a ‘British’ Bill of Rights would, by definition, exclude Northern Ireland. Geography also enters the equation in that the term ‘British’ is relevant, in that Northern Ireland is part of the United Kingdom but not part of Great Britain. A ‘British Bill of Rights’ therefore could not therefore, by definition, apply to Northern Ireland.

While recent attitude surveys clearly indicate that the majority of people in Northern Ireland support a Northern Ireland Bill of Rights, nonetheless, unionists and loyalists in Northern Ireland regard themselves as, and wish to be acknowledged as ‘British’, so they may not be willing to accept exclusion from a ‘British’ Bill of Rights. Any such proposal of exclusion would create, or perhaps more accurately antagonise, unionist and loyalist feeling. In contrast, labelling any Bill of Rights as ‘British’ might also antagonise the nationalist aspirations and identities in both Scotland and in Northern Ireland.

¹⁴⁷ Ibid.

The Equality and Human Rights Commission (EHRC) of the UK has summarised the current situation as follows:

*'Overall, this review suggests that current circumstances for any process to create a new UK Bill of Rights are unfavourable. Public understanding of – or enthusiasm for – a new Bill of Rights is not assured and there is little discernible popular or civil society momentum behind the idea.'*¹⁴⁸

One commentator interviewed for the EHRC's research captured the implications of the current challenges in the following terms:

'Political positioning has replaced serious consideration ... [A Bill of Rights] is a fundamental piece of the constitutional architecture: it can't be made subject to the day-to-day need for political rhetoric ... This is deadly serious stuff and it should be treated as such.' (EHRC 2010:71)

¹⁴⁸ Donald, A. (2010) **Developing a Bill of Rights for the UK**, London, Equality and Human Rights Commission, Global Partners & Associates and Human Rights & Social Justice Research Institute, London Metropolitan University p.71